



END OF TERM OF OFFICE REPORT OF THE EBA'S BANKING STAKEHOLDER GROUP

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BANKING STAKEHOLDER GROUP

BSG III: End of Term of Office Report (ETOR)

BY THE EBA BANKING STAKEHOLDER GROUP

London, 8 October 2018

On behalf of the Banking Stakeholder Group (BSG) of the European Banking Authority (EBA), we are honoured to present this End of Term of Office Report, covering the period between April 2016 and October 2018.

The BSG is the EBA's officially designated advisory group. It is composed of thirty members from six constituencies: credit institutions, consumers, academics, users of banking services, employees of credit institutions, and small and medium-sized enterprises. This multidisciplinary composition is a key asset in terms of human capital. Our output gains significantly in value because we are more than the sum of our parts.

In the period under review, the EBA continued developing regulations to ensure a Single Rulebook for the EU banking sector and monitoring risks to financial stability, as well as developing a common supervisory culture. It did so in the context of progress towards banking union, but with vulnerabilities remaining in the European banking sector, and with the adverse impact of Brexit in the background.

With the purpose of providing added value to the EBA in mind, the BSG has focused on being more active in anticipating the Authority's needs, as well as on providing a more strategic vision to help the EBA achieve its goals and objectives.

In the period under review, we set up two new technical working groups (one on payments, digital and FinTech and another on supervision, governance, reporting and disclosure); we worked jointly with the other European supervisory agencies' stakeholder groups on the reform of the agencies; we produced a report on regulatory sandboxes; we analysed dynamic currency conversion; and we participated in the EBA Q&A review process.

The report we present now describes the role and functioning of the BSG and summarises the work of the five technical working groups as well as other relevant activities of the Group. Some lessons, challenges and recommendations for the future are presented in the final chapter.

In presenting this report, we are following the precedent of the previous BSGs, from whose lessons and experience we have benefited. We expect that this report will help future BSG members to improve the functioning of the group and its contribution to the EBA's endeavours.

Santiago Fernández de Lis (Chairperson)

Alin Iacob (Vice-Chairperson)

1. INTRODUCTION

The ETOR aims to summarise contributions of the Banking Stakeholder Group (BSG) in its role in supporting EBA in achieving its missions and tasks. The EBA's main purpose is the full implementation of the European Single Rulebook for the banking sector, a set of homogeneous prudential rules that has three main goals: a level playing field; safeguards for depositors, investors and consumers; and greater supervisory convergence.

This is the third edition of the ETOR and covers the period between May 2016 and October 2018. The two previous reports covered the periods from March 2011 to September 2013 and October 2013 to April 2016, and were the result of the valuable work of the BSG I and BSG II members, respectively.

The first ETOR was an important milestone. It covered five principal areas: the appointment, structure and membership of the BSG; its working methods and its interaction with the EBA; the development of the technical working groups (TWGs); the output of the BSG; and emerging themes.

The second ETOR had a similar structure and also included a new section on recommendations for the future. At least three of them are worthy of mention: BSG II recommended more flexibility in the composition of the BSG; a more prominent role for the BSG in implementation of the EBA's Q&As; and a more proactive role for the BSG, with a forward-looking perspective.

This third ETOR highlights some new activities: the joint work of BSG III with the three other stakeholder groups (SGs) of the European supervisory agencies (ESAs); the creation of two new TWGs¹; the production of a report on regulatory sandboxes (a key piece of the EBA's Roadmap on FinTech); and the active participation of the BSG in the EBA's Q&A implementation review process — a significant step towards implementing the Single Rulebook.

There are some developments worth noting in the BSG and EBA context from an EU perspective: the Brexit process, the review of the ESAs by the European Commission and the progress made towards banking union. All these developments have had an impact on the BSG's focus and activities.

Brexit is posing significant challenges for financial firms and for supervisory authorities. Regulators, supervisors and stakeholders need to work closely to preserve financial stability and a level playing field. Achieving a harmonised set of rules and supervisory practices is vital, and the EBA will play a major role in achieving this goal. The EBA is closely monitoring firms' levels of preparedness and can also help them to devise solutions for the problems that the industry may face. Depending on the final arrangements, the EBA may have an important task to carry out in assessing the regulatory equivalence requirements to provide market access. Last but certainly not least, one major implication of Brexit for the EBA was the relocation of its headquarters to Paris, a complex logistical process that will have significant implications for the organisation and its staff.

¹ One on payments, digital and FinTech and another on supervision, governance, reporting and disclosure.

As part of the review of the ESAs by the Commission, a public consultation on their operations was launched; it ran from 21 March to 16 May 2017. In addition to that, on 20 September 2017 the Commission proposed a review of the European System of Financial Supervision (ESFS)². The BSG has actively participated in both of these reviews. With regard to the first, we sent our individual response to the consultation, and in June 2017 we sent a joint statement to the Vice-President of the European Commission and other EU authorities with the European Securities and Markets Authority (ESMA) Securities and Markets Stakeholder Group (SMSG) and the two European Insurance and Occupational Pensions Authority (EIOPA) SGs (the Insurance and Reinsurance Stakeholder Group (IRSG) and the Occupational Pensions Stakeholder Group (OPSG)). It should be emphasised that this was the first time that the four SGs had produced a common position paper and sent it to the EU authorities.

After the publication of the Commission's revised version of the review of the ESAs on 20 September 2017, the four SGs sent a second letter, in April 2018, this time focused on their role in the Commission's proposal.

With regard to the progress made towards banking union since May 2016, a comprehensive risk reduction measures package that would entail changes to banking legislation has been put forward by the Commission, which is at the time of writing this report in the process of discussion with the Council and the European Parliament ('trialogues'). Several initiatives were proposed to address the risks related to non-performing loans (NPLs). A proposal on sovereign bond-backed securities to help banks diversify their sovereign bonds portfolios was also discussed, following a report by the European Systemic Risk Board (ESRB) and a subsequent paper by the Commission. Initial discussions on the fiscal backstop for the Single Resolution Fund have started. Work on other, more ambitious initiatives, such as the European Deposit Insurance Scheme was stopped owing to lack of political consensus.

The EBA has shown an impressive capacity to adapt to the changing environment since its creation in January 2011. The challenges have been huge, among them the crisis and its impact on EU banks, the overhaul of global and European banking regulation, the progress towards banking union and the ensuing institutional changes. The challenges that the future holds — Brexit, the FinTech revolution, the completion of the banking union — are not lesser. We are sure that the EBA will continue responding to these challenges in a proactive and efficient way, and the BSG stands ready to assist the EBA in facing them. This report is our contribution to ensuring that the legacy of the current BSG is passed on to future members.

² More recently, on 26 July 2018, the European Parliament released its amendments to the Commission's proposal on the review of the ESAs.

2. ROLE AND FUNCTIONING OF THE BSG

The BSG is officially designated as the EBA's advisory group in Article 37 and recital 48 of the Authority's founding regulation. Its role is to help facilitate consultation with stakeholders in areas relevant to the EBA's tasks, in accordance with the Rules of Procedure of the BSG.

The Group is consulted on regulatory technical standards and implementing technical standards as well as guidelines and recommendations whenever they do not pertain to specific financial institutions at an individual level. We are empowered to express our opinions — at the request of the Authority or on our own initiative — and advise the EBA on all the issues linked to its mission, especially those related to the achievement of a common supervisory culture; peer reviews of competent authorities; and the appraisal of particularly relevant market developments. Last but not least, the BSG may, if appropriate, examine possible breaches or non-implementation of EU law.

As mentioned above, BSG III has focused its efforts on the implementation of some of the recommendations for the future made in the previous ETOR³. It has also attempted to be more proactive in anticipating the Authority's needs. Furthermore, we have done our best to provide a more strategic vision to help the EBA in achieving its goals and objectives. Three examples of that are the joint work with the ESMA and EIOPA SGs, the report produced by the ad hoc Working Group on Regulatory Sandboxes and our engagement in the Q&A implementation review.

BSG III is composed of 30 members with diverse backgrounds and expertise: representatives of credit and investment institutions, consumers, independent top-ranking academics, users of banking services, employee representatives of credit and investment institutions, and representatives of small and medium-sized enterprises. This diversity, resulting in a range of analyses and opinions, represents the most meaningful asset of the BSG in terms of human capital. The BSG's output gains significantly in value because the Group is more than the sum of its parts.

Members serve in a personal capacity for a period of two and a half years for a maximum of two successive terms. The appointment of the Group's members is made by the EBA's Board of Supervisors (BoS)⁴.

The EBA's founding regulation specifies a minimum of four BSG meetings per year, and more frequent meetings are allowed. ESA staff members and representatives of the Commission are invited to attend the official meetings of the group. In addition, there is a formal requirement for joint BoS and BSG meetings twice a year.

BSG III held 16 meetings, 12 of which were BSG members' sessions⁵ and four of which were joint meetings with the EBA's BoS⁶. Face-to-face meetings are very important, but it must be emphasised that members spend significantly more time on BSG-related tasks than is accounted for by the meetings. For example, we participate in conference calls to jointly agree with the Authority on the

³ See pp. 21-24.

⁴ In accordance with Article 37(3) of the EBA's founding regulation.

⁵ Three in 2016, five in 2017 and four in 2018.

⁶ One in 2016, two in 2017 and one in 2018.

agendas for all the meetings well in advance. We also analyse and discuss drafts of our submissions to EBA consultations. Correspondence is exchanged and, where necessary, teleconferences arranged to ensure an appropriate discussion that takes into account all members' views and sensitivities. We generally aim to reach a consensus position, since we think that this is where the added value of the BSG lies, compared with contributions from other industry associations, consumers' associations or other stakeholders. However, when a consensus position is not reachable we include minority dissenting views in our reports.

The BSG is occasionally asked for advice by the Authority before releasing a public consultation or in its early stages, either in a BSG meeting or in writing. As stated above, we can also produce notes or reports on our own initiative.

A typical agenda for a BSG meeting includes an update on the latest developments in the EU banking sector, presentations by the EBA and/or the BSG on the most relevant regulatory and supervisory issues, followed by discussion; and an update on the next regulatory deliverables by the EBA. The agendas and minutes of BSG meetings are published on the EBA website.

BSG III has organised its work through five TWGs: Capital, Liquidity and Risks; Recovery, Resolution and Systemic Issues; Supervision, Governance, Reporting and Disclosure; Consumer Protection; and Payments, Digital and FinTech.

During the period from May 2016 to October 2018, we provided responses to 23 EBA consultations⁷, sent two joint letters with the ESMA and EIOPA SGs on the review of the ESAs to the EU authorities and produced a working paper on regulatory sandboxes. We also sent a note on dynamic currency conversion (DCC) to the EBA and, later, to the Commission, in the context of the public consultation on transparency and fees in cross-border transactions in the EU. The BSG and the SMSG also released a Joint Statement on the draft Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders.

The BSG has also been actively participating — as requested by the EBA — in the Q&A implementation review. The Q&A tool aims to ensure the consistent and effective application of the new regulatory framework across the Single Market, and thus contribute to the implementation of the Single Rulebook in banking.

The EBA is currently undertaking a review of the Q&A process to obtain a general overview of its use and effectiveness and analysing its application by competent authorities and institutions to increase its efficacy. The review was launched in the summer of 2018 and it is expected to be finalised by the end of 2018, with the final results available in early 2019. The BSG is firmly committed to assisting the EBA in this process.

⁷ One in 2016, 14 in 2017 and eight in 2018

3. SUMMARY OF THE WORK OF THE FIVE TECHNICAL WORKING GROUPS

Most of the BSG’s work has been organised through the TWGs, whose main activities are summarised below. The table below lists the members of each TWG.

BSG Technical Working Groups

CAPITAL, LIQUIDITY AND RISKS	RECOVERY, RESOLUTION AND SYSTEMIC ISSUES	SUPERVISION, GOVERNANCE, REPORTING AND DISCLOSURE	CONSUMER PROTECTION	PAYMENTS, DIGITAL AND FINTECH
<i>Soren Holm</i>	<i>Giovanni Petrella</i>	<i>Sergio Lugaresi</i>	<i>Martin Schmalzried</i>	<i>Angel Berges Dominic Lindley</i>
Angel Berges Michel Bilger Ernst Eichenseher Simon Hills Gerda Holzinger-Burgstaller Arnold Kuijpers Sergio Lugaresi Monika Marcinkowska Sabine Masuch Sara Monteiro Christophe Nijdam Jesper Bo Nielsen Giovanni Petrella Guillaume Prache Mark Roach	Emilios Avgouleas Angel Berges Ernst Eichenseher Luigi Guiso Soren Holm Gerda Holzinger-Burgstaller Sergio Lugaresi Peter Muelbert Christophe Nijdam Giedrius Steponkus	Emilios Avgouleas Michel Bilger Simon Hills Soren Holm Arnold Kuijpers Dominic Lindley Monika Marcinkowska Christophe Nijdam Mark Roach	Mike Dailly Luigi Guiso Dermott Jewell Dominic Lindley Sabine Masuch Sara Monteiro Peter Muelbert Guillaume Prache Michael Phryne Thaer Sabri Michael Schmalzried Giedrius Steponkus	Mike Dailly Nikolaos Daskalakis Anne Fily Luigi Guiso Gerda Holzinger-Burgstaller Sara Monteiro Peter Muelbert Jesper Bo Nielsen Mark Roach Thaer Sabri Michael Schmalzried Giedrius Steponkus
Alin Iacob Santiago Fernández de Lis	Alin Iacob Santiago Fernández de Lis	Alin Iacob Santiago Fernández de Lis	Alin Iacob Santiago Fernández de Lis	Alin Iacob Santiago Fernández de Lis

3.1. Capital, Liquidity and Risks

The Capital, Liquidity and Risks Technical Working Group (CLR TWG) monitors and — when necessary in accordance with BSG procedures — drafts a BSG response to consultations and discussion papers launched by the EBA in relation to the management of capital, liquidity and other types of risk in banks.

Following the determination of the updated capital and liquidity risk management requirements for banks (in particular CRR/CRDIV and the LCR Delegated Act) in 2013-15, this BSG term has been characterised by the determination of the more technical (Level 2) measures. Thus, the CLR TWG has been working on those technical issues that have some political aspects, rather than aiming to submit comments on all of the EBA consultations and discussion papers launched.

The CLR TWG has drafted responses to the EBA on the following:

- draft EBA Guidelines on PD estimation, LGD estimation and the treatment of defaulted exposures;
- draft EBA Q&A on own funds — taps on callable instruments;

- EBA Discussion Paper on the treatment of structural FX hedging under Article 352 of the CRR;
- final regulatory technical standards (RTS) on risk mitigation techniques for over the counter (OTC) derivatives not cleared by a central counterparty under Article 11(15) of EMIR with regard to physically settled foreign exchange forwards;
- EBA Discussion Paper on significant risk transfer in securitisation;
- EBA Consultation Paper on draft Guidelines on the management of interest rate risk arising from non-trading book activities (IRRBB);
- EBA Consultation Paper on draft Guidelines on institutions' stress testing;
- EBA Discussion Paper on EU implementation of the revised market risk and counterparty credit risk frameworks;
- draft EBA Q&A on credit risk — application of the definition of 'speculative immovable property financing' under the Standardised Approach.

Overall, the CLR TWG agrees with the EBA's approach to clarifying and improving the technical standards, ensuring a higher level of confidence in and greater resilience of banks' risk management, for instance the major work that the EBA has done to improve internal models for credit risk.

During this term, the BSG has also been discussing other topics related to the management of capital, liquidity and other types of risk in banks. The members of the CLR TWG have been active in presenting views and opening up debate at the BSG meetings. Among other things, this has included discussions of (i) the Basel standards (the completion of the Basel III reforms) and the potential consequences for European banks and/or consumers, (ii) Brexit and the potential consequences for European banks, and (iii) elements of the risk reduction measures for European banks (CRR II, CRD V, BRRD II and SRM II).

3.2. Recovery, Resolution and Systemic Issues

The Technical Working Group on Recovery, Resolution and Systemic Issues (RRSI TWG) was established to support the BSG's activities with respect to topics related to the Bank Recovery and Resolution Directive (BRRD), as well as associated systemic issues.

The main task of the RRSI TWG consisted in drafting BSG replies to EBA consultation papers for discussion and subsequent approval by the entire BSG. The TWG also screened outstanding EBA consultations to select those to which a BSG reply was deemed to be appropriate.

On 30 August 2016, the RRSI TWG produced a paper, submitted to the EBA, in response to the consultation on the *Interim Report on MREL* (EBA-Op-2016-12, 19 July 2016). The BSG paper primarily addressed the provisional recommendations put forward in the EBA report, providing replies to specific questions raised by EBA, as well as general comments. The main points raised in the paper related to the reference base for the minimum requirement for own funds and eligible liabilities (MREL) (i.e. the denominator), the relationship with regulatory requirements (i.e. the stacking order of CET1 buffers), breaches of MREL, the adequacy and calibration of MREL, the eligibility criteria for MREL and the third country recognition of resolution powers.

On 22 February 2017, a discussion on the implementation of the bail-in tool was held at the BSG meeting. The discussion concerned the following main points: the interplay between EU state aid rules and BRRD rules on recapitalisations; the Commission's proposal to amend the BRRD; and the implications of the BRRD for investor protection, also with reference to self-placement (i.e. financial instruments issued by banks and offered directly to their own clients).

On 8 August 2017, the RRSI TWG produced a paper, submitted to the EBA, to respond to the EBA Consultation Paper on simplified recovery and resolution plans (EBA/CP/2017/05). The BSG supported the concept of simplified obligations for recovery and resolution planning for less systemically important banks. The BSG also supported the incorporation of the significant elements of the existing guidelines, thus increasing harmonisation and reducing compliance costs, and the two-stage approach to identifying institutions that may be subject to simplified obligations in relation to recovery and resolution planning.

On 24 October 2017, a discussion on valuation for resolution purposes was held at the joint BoS-BSG meeting. The discussion concerned valuations in the context of resolution, as well as some particular issues in relation to valuations for the purposes of resolution (the assessment of bank solvency and the choice of resolution tool, valuation of NPLs and the risk of legal disputes).

On 14 December 2017, a discussion on the BRRD review was held at the BSG meeting. The discussion concerned the proposals put forward by the Commission (one relating to total loss absorption capacity (TLAC) implementation and integration, and a second relating to creditor hierarchy). The introduction of non-preferred senior bonds, a new category of senior unsecured debt established by the amended BRRD (BRRD II), was also discussed.

3.3. Supervision, Governance, Reporting and Disclosure

The Supervision, Governance, Reporting and Disclosure Technical Working Group (SGRD TWG) monitors and — when necessary in accordance with BSG procedures — drafts a BSG response to consultations and discussion papers launched by the EBA in relation to banking supervision (the supervisory examination programme; colleges; inspections; authorisations; sanctions; options and discretion; transparency; etc.), the internal governance of banks and disclosure requirements.

The SGRD TWG has drafted responses to the EBA on the following:

- RTS on a central contact point to strengthen the fight against financial crime (JC-2017-08);
- EBA/ESMA Guidelines on the assessment and suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, including the Joint Statement of the SMSG and the BSG;
- draft Guidelines on fraud reporting requirements under Article 96(6) of Directive (EU) 2015/2366 (PSD2), namely on alignment with RTS.
- Consultation Paper on supervision of significant branches (EBA/CP/2016/24);
- Guidelines on technical aspects of the management of interest rate risk (EBA/CP/2017/19);

- disclosure of non-performing and forborne exposures, namely with regard to overlapping requirements, definition and implementation, quantity and granularity of information, and its scope;
- Guidelines regarding the exposures to be associated with high risk.

During this term, the BSG has also been discussing other topics related to banking supervision, governance, reporting and disclosure. These included the establishment and supervision of branches in the EU, Guidelines on internal governance, the implementation of IFRS 9 by EU banks and strengthening the Pillar 2 framework.

3.4. Consumer Protection

The Technical Working Group on Consumer Protection aims to advise the EBA on the preparation, implementation and enforcement of legislation or policy initiatives affecting users of financial services, and to proactively identify key issues affecting users of financial services that are within the remit of the EBA. The TWG submitted several responses to EBA consultations during the BSG III period.

Consultation on the Discussion Paper on innovative uses of consumer data by financial institutions (EBA/DP/2016/01)

The TWG on Consumer Protection addressed, in its response, the challenges that emerge from the advent of big data. As more and more information is available about consumers, especially with the explosion of online data, consumers' privacy is increasingly at risk, which may lead to, among other things, discrimination in relation to accessing certain essential financial services. Policy-makers will have to address these risks and ensure that innovative financial services and products are in line with certain key principles such as privacy and inclusion.

Consultation Paper on draft RTS and ITS under the Payment Accounts Directive (EBA/CP/2016/13)

In its response to this consultation, the BSG put a strong focus on drawing up a more comprehensive list of services considered to be part of a payment account, especially overdraft and other types of penalties and fees, which many consumers end up paying each year. Transparency about costs associated with a payment account was also emphasised as a key requirement for the information document given to consumers.

Public consultation on transparency and fees in cross-border transactions in the EU (10/2017)

This consultation addressed the issue of fees in cross-border transactions and how best to bring about a real single market in payments given the variability in fees between countries, especially those outside the eurozone. The views expressed by the BSG reflected a split between the consumer representatives, advocating for regulatory intervention to get rid of or cap the fees, and the industry representatives, who did not agree that such measures were necessary or possible given how cross-border transactions function.

Presentations to the BoS-BSG meetings

The TWG on Consumer Protection also made several presentations on key issues affecting consumers, such as floor-rate clauses in mortgage loans with variable interest rates, the Irish mortgages situation after the financial crisis, DCC, loans in foreign currency (Swiss franc loans), and big data and consumer protection in financial services.

3.5. Payments, Digital and FinTech

The TWG on Payments, Digital and FinTech aims to analyse and review the EBA's consultation papers dealing with financial technology and innovations, especially in the area of payments, and to draft responses and/or opinions to be submitted to the entire BSG for final approval. The TWG on Payments and FinTech delivered a number of submissions on EBA consultations during the BSG III period.

The EBA's approach to financial technology (EBA/DP/2017/02)

This consultation arose from the EBA's commitment to produce an opinion on the regulatory treatment of selected activities and the provision of different forms of financial products and services under national law and EU law with a view to reviewing the perimeter of regulation, including the nature of the regulated activities prescribed in EU law, and level playing field and consumer protection issues, taking into account also the levels of activity and risk, and how regulation in this field might affect the development of FinTech in the EU. The BSG's response was published on 31 October 2017.

ESA Joint Committee consultation on use of big data by financial institutions (JC 2016 86)

The BSG response, published on 15 March 2017, represented the consensus among BSG members on a subject that is especially sensitive across the different constituencies, as financial institutions are clearly increasing their use of consumer data and there are many potential impacts on the market. The evolution of the use of consumer data by financial institutions depends on various factors, most importantly the willingness of consumers to share their data.

The EBA's consultation on the conditions to be met to benefit from an exemption from contingency measures under RTS on strong customer authentication (SCA) and common and secure communication (CSC)

This consultation aimed to clarify the four conditions to be met to benefit from an exemption from the fallback option. The BSG response was published on 13 August 2018.

Members expressed concerns about how account servicing payment service providers (ASPSPs) would be commercially impacted by the obligation to publish performance indicators regarding the interfaces offered to users and third parties. Thus, the Group encouraged the EBA to provide harmonised criteria for calculating the performance of all payment service user (PSU) interfaces so that the publication of these indicators does not generate confusion or inappropriate comparisons.

Furthermore, the BSG pointed that the timelines to be met by ASPSPs seeking exemption are very tight. Therefore, the Group suggested that the EBA work with the competent authorities to ensure the quality/consistency of the exemption assessment process during the transitional period. Members also noted that if ASPSPs were not given assurances regarding the possibility of exemption from having to offer the fallback mechanism, they would build it in anyway. This would

completely undermine the incentive to deliver high-performing application programming interfaces (APIs).

It is worth pointing out that PSD2 has finally come into effect after two years of intense work and that the EBA has already published all the Level 2 regulation mandated by PSD2. In that regard, BSG members would like to recognise the significant efforts made by the Commission and the EBA to find a compromise text that balances the interests of the diverse players that have participated in the debate.

4. OTHER ACTIVITIES

BSG III discussed several issues and made proposals and suggestions to the EBA; these issues included the format of the EBA Risk Dashboard and the proposed secured and transparent securitisations (STS) regulation, with the BSG emphasising the importance of third party certification, and with a focus on synthetic securitisation and securitisation of NPLs. The BSG also discussed US financial reform (the Crapo Bill), paying particular attention to the issue of proportionality and the treatment of foreign banking organisations.

4.1. Review of the ESAs

The Final Report of the Committee of Wise Men on the Regulation of European Securities Markets, also known as the Lamfalussy Report (February 2001), included among its recommendations fostering convergence and ensuring efficient work among the European regulatory and supervisory structures, and reinforcing cooperation among financial markets and cross-sectoral regulators and micro- and macro-supervisors. It also advocated taking fully into account the institutional balance established in the Treaty of Lisbon.

The ESFS, comprising the ESRB and the three ESAs (the EBA, ESMA and EIOPA) was created in 2010. The system became operative in January 2011, after the enactment of the corresponding package of legislative acts.

The review of the ESFS started in 2014. The European Commission released a general report on the operation of the ESAs and the ESFS as a whole, and a review of the mission and organisation of the ESRB. The Commission launched a public consultation on the review of the ESFS in 2013 and one on the review of the EU macro prudential framework in 2016.

In 2017, the Commission launched a third consultation, on the operation of the ESAs, with the consultation period running from 21 March to 16 May. BSG III sent its own response and a first joint letter, with the three other SGs to European authorities, to the Commission. The joint letter emphasised some shared views on three main topics: the value and the role of the SGs, the enhancement of cooperation between the SGs and the clarification of the ESAs' convergence tools.

- On the role of the SGs, the letter underlined the importance of their working in a proactive way on their own initiative, as well as of direct interaction with ESA staff, especially in preparing for and following up on SG meetings. The effectiveness of the SGs' work for the ESAs could be improved, however. Fluid and regular interaction between the SGs and the ESAs' BoS is much appreciated. It gives the SG members the opportunity to convey their views to BoS members directly and allows them to have a better understanding of BoS

members' sensitivity to key regulatory and supervisory topics. Enhanced support from ESAs ahead of meetings of the SGs would be welcomed, for example in the form of the circulation of summary papers that explain an issue in more detail, the timely submission of background notes ahead of meetings and early interaction of ESA staff with SG working groups ahead of the production of consultation papers.

- With regard to fostering cooperation between the SGs, the four groups would welcome a framework that continues to bolster their joint high-level work in the future, particularly as regards consultations by the ESA Joint Committee. Additional financial resources are needed to facilitate that work, increase its impact and enable more regular contact throughout the year.
- As regards the ESAs' convergence tools, the SGs felt that some clarification was necessary regarding the role of Level 1 and 2 texts, to strengthen coherent Union-wide application and minimise room for misinterpretation by national competent authorities. In particular, more transparency should be introduced when the ESAs provide advice on Level 2 legislation, to ensure accountability. More clarity is also needed in the development of Level 3 texts. No draft or preparatory Level 3 measures should be issued before the Level 2 text is finalised.

After reviewing the comments received, on 20 September 2017 the Commission proposed a new review of the ESFS. The SGs also replied to this proposal in a joint letter (dated 1 June 2018), this time specifically focusing on five key issues linked to the role of the SGs: the extension of the period of service and support to SGs; minority opinions; joint opinions; commenting on guidelines and recommendations exceeding the ESAs' competences; and the impact of ESA governance changes on the SGs:

- The SGs supported the extension of the period of service of members to four years, which will increase the effectiveness of the SGs and result in greater continuity of knowledge and experience. They appreciated the clarification that this would not alter the ability of SG members to apply for a second term. With regard to support to SGs, the four committees emphasised that it is of the utmost importance that the ESAs provide adequate resources to support the workload of SG members.
- With regard to minority opinions, the letter clarifies that all SGs already have specific procedures to ensure that they are voiced. These procedures are seen to work well by SG members. The SGs do not see a need to modify the rules of procedure in this regard.
- With regard to joint opinions and advice from SGs, the four groups are in favour of these, especially on issues relating to joint positions and common acts by the ESAs. The SGs' letter clarifies that the option to issue joint opinions and advice already exists and has been used on a number of occasions (as the letter itself confirms). The Chairs of the SGs have met occasionally to exchange general views, concerns and operating practices. A budget allocation to facilitate joint opinions would be welcome given financial constraints and the additional time required to coordinate views.
- As regards the issue of guidelines and recommendations exceeding the ESAs' competences, the Commission proposes that if two thirds of SGs are of the opinion that the ESA has exceeded its competence they may send a reasoned opinion to the Commission. The SGs

agree that effective checks and balances and increased scrutiny of guidelines and recommendations are important, and members generally agree that SGs should continue to have a prominent role in commenting on guidelines and recommendations, as well as other ESA initiatives. However, in the SGs' view, the Commission should not be dependent on SGs to challenge ESAs. The members' specific expertise does not necessarily put the SGs in a better position to judge whether the ESAs have exceeded their competences or not. Furthermore, it places a significant responsibility on experts sitting on the SGs in a personal capacity.

- Concerning the impact of ESA governance changes on the SGs, the four committees emphasised that each wanted to retain its existing relationship with the Chair and BoS of its ESA. Some mechanism for dialogue with the Executive Board would also be valuable, through either regular meetings or some other means of effective communication.

All in all, the cooperation with the other three SGs was very successful. Although the coordination process is sometimes complicated, it is worth the effort, especially on topics concerning joint work by the ESAs or the very role of SGs, as in the case of the review of the ESAs. We look forward to continuing this type of cooperation in the future.

4.2. Report on sandboxes

Within the TWG on Payments, Digital and FinTech a specific subgroup was created ad hoc to produce a position paper on regulatory sandboxes, to be submitted to the EBA.

Regulatory sandboxes are controlled 'safe spaces' in which innovative products, services, business models and delivery mechanisms can be tested without immediately being subject to all of the regulatory requirements.

As an increasing number of European countries are joining the trend towards creating or supporting regulatory sandboxes, the risk arises of a fragmented ecosystem of national sandboxes with different regimes. In this context, the BSG judged that an own-initiative report would be the best method to raise awareness of regulatory sandboxes and the challenges that they may bring for the EBA in relation to increasing supervisory convergence.

The report produced by the ad hoc working group, and subsequently approved by the BSG, can be summarised in the following recommendations made to the EBA, most of which were later adopted by the EBA in its Roadmap on FinTech.

- Regulatory sandboxes are increasingly being developed in many countries as an attempt to encourage innovation in finance without any detriment to consumer protection and financial stability.
- The BSG considers that the EBA should take the lead in developing guidelines in order to achieve harmonisation of regulatory practices as well as supervisory criteria in relation to nationally established sandboxes. This would minimise the risk of creating a fragmented ecosystem of national sandboxes with different regimes.
- Those guidelines should aim to establish clear and harmonised criteria for entering, staying in and exiting regulatory sandboxes, as well as transparency about those criteria and the authorisation process to be followed.

- An important harmonisation aspect to be covered in the guidelines relates to appropriate consumer safeguards, as well as limiting the scale of activities to be performed in sandboxes, on grounds of consumer protection and financial stability.
- As regulatory sandboxes are not part of the open market, entry to them for innovators and customers or users must be limited and restricted. Customers or users must be well aware of the risks that sandboxes entail. Therefore, it would be advisable for sandboxes to be open only to innovators on the one side, and on the other side to private customers or institutional users who are accredited by the competent authority.

It would also be advisable to explore the possibility of cross-border sandboxes in the EU.

4.3. Dynamic currency conversion

The BSG established an ad hoc working group, coordinated by its vice-chairperson, to address an important topic for consumers — dynamic currency conversion — which was considered by consumer and user representatives a bad practice; because of its importance, this topic had also been included in the Action Plan for Retail Financial Services proposed by the Commission.

The most important conclusions of the research paper produced by the working group were the following:

- Consumers pay more when they use DCC than they do if they use the conversion offered by card issuers.
- Sometimes, the difference is significant, and it can reach up to almost 10% of the payment or cash withdrawal.
- Consumers do not understand what exactly DCC is or how it works.
- We found evidence that consumers are not properly informed about DCC by the devices they use.
- In most cases, devices (ATMs, EPOSs) and/or representatives of merchants encourage consumers to opt for DCC, without any mention of the advantages of this option for merchants (we found out that merchants receive rebates from DCC providers, as a percentage of the conversion fees).
- Merchants are told by DCC providers that conversion rates are accurate, market driven, updated daily and very competitive with those charged to the cardholder by card issuers.

We provided evidence of specific cases of ATMs and EPOSs (from desk research and personal experiences of using credit cards and comparing conversion rates with the values mentioned in the card statements).

Considering that there is much evidence against DCC, the BSG decided to ask the EBA and national supervisors to carefully analyse the issue and take all the necessary measures to better protect EU consumers.

4.4. Q&As

The EBA BSG reviews draft responses to FAQs that have been prepared by EBA staff, supported by experts from national competent authorities.

During the third term, it has commented on two draft FAQ responses, which is only a small proportion of the total number of FAQs answered by the EBA. The basis on which the decision on whether or not to refer a draft answer to the BSG is made is unclear, although it would appear that questions relating to areas with the most significant potential capital impact on banks' capital requirements are passed to it for review.

The responses provided by the BSG have identified unintended consequences, for instance based on members' experience of and understanding of the secondary market for bank capital instruments, or alternative approaches to answering a FAQ, drawing on BSG members' familiarity with third country jurisdictions' approaches to similar issues. However, these market-based insights have not been reflected in the published answers to the FAQs, in the view of some BSG members, because engagement with the BSG started at too late a stage in the process.

In the future, the BSG recommends:

- greater clarity about the decision process for referring a draft FAQ response to the BSG;
- earlier engagement with the BSG when FAQ responses are being developed;
- pragmatic recognition of approaches adopted in third country jurisdictions to:
 - avoid regulatory divergence;
 - benefit from the deliberations of regulators and supervisors in other jurisdictions.

5. LESSONS, CHALLENGES AND RECOMMENDATIONS

- As consultation papers become more and more technical, the capacity of the BSG to provide useful insights to the EBA on them becomes, in some cases, limited. For this reason, the BSG III was more selective in replying to consultation papers. We consider that this trend should continue in the future.
- At the same time, the added value provided by the BSG, given its multidisciplinary composition, background and expertise, lies in providing more strategic feedback on the EBA's activities. For instance, the EBA work plan could be discussed in its early stages and in a more systematic way with the BSG.
- The expression of the richness of different stakeholders' views is sometime limited by the different specialisations of members: industry representatives tend to specialise in prudential regulation and supervision, while consumer representatives tend to specialise in consumer protection. The EBA could provide an initial overview of various broad issues to new members (a kind of induction day) to encourage cross-fertilisation.

- BSG contributions on its own initiative are also a way to take advantage of the added value that it can provide. The Group could, for instance, identify areas of future work for the EBA and provide early input in the form of initial reflections on a particular topic.
- BSG meetings are a very useful means of providing direct feedback to EBA management and staff on relevant topics. However, the BSG's size and composition may make it difficult to enter into more technical discussions with EBA staff in particular areas, especially in the early phases of their work. For that purpose, working groups are more suitable: for example regular bilateral meetings between working groups and relevant EBA experts may be useful. However, resource constraints mean that working group meetings are difficult to arrange. An avenue worth exploring — for greater efficiency — is increasing the frequency of meetings, perhaps in the form of telephone or video calls, to enable working group members to interact with EBA staff when they are starting to analyse certain topics in relation to which a BSG working group's expertise may prove helpful.
- We consider that it would be beneficial to increase awareness of the BSG and its very important role and work, and we suggest including an interview with the BSG's Chairman in the EBA's annual report.
- To increase the efficiency of the work carried out by the BSG, it would be a good idea to establish a mechanism of regular feedback from EBA staff to the BSG regarding the main points/suggestions made in response to the consultation papers, discussion papers, etc., and why they were or were not included in the final version of RTS, ITS, guidelines, recommendations, etc.
- Regarding the joint meetings with the BoS, the format normally followed by BSG III was similar to that normally followed by BSG II, consisting of three presentations on three topics, one by one member of each constituency (the BSG, the EBA and the BoS), with discussions on each topic with representatives of the other two constituencies. BSG III explored an alternative format, with only one main point on the agenda (i.e. digital banking), which offered the opportunity for a deeper exchange of views, and this may be suitable when the topic is sufficiently important.
- Although we understand the workload constraints on EBA staff, we consider that important products such as the *Consumer Trends Report* (CTR) should be published yearly. The *Financial Education Report* cannot be considered a substitute for the CTR. The BSG is ready to help EBA staff in this regard.



EUROPEAN BANKING AUTHORITY

Floor 46 One Canada Square, London E14 5AA

Tel. +44 (0)207 382 1776

Fax: +44 (0)207 382 1771

E-mail: info@eba.europa.eu

<http://www.eba.europa.eu>