

## Banking Stakeholder Group Meeting - Minutes

29 November / 09.30 to 16.30

Location: EBA

### Agenda item 1: Welcome and approval of Agenda

1. The BSG noted the late announcement by the BSG Chair informing BSG Members that he was unable to attend the meeting. Accordingly, the meeting was chaired by the BSG's Vice-Chair. A call was made to table on the meeting's agenda a new agenda item "Chair of the BSG" in order to discuss related concerns. This was added as Agenda item 10 below.
2. The BSG Vice-Chair proposed a clarification regarding BSG's concerns on liquidity measures at the last BSG meeting. Taking this into account, the BSG Members approved the minutes.

### Agenda item 2: Introduction of new BSG member

3. The BSG Vice-Chair welcomed the new BSG member, Chris De Noose, who was appointed by the EBA's Board of Supervisors (BoS) on 14 November 2012, following the resignation of Oliver Schuetz.

### Agenda item 3: BSG Chair and Vice-Chair to update on developments

4. The BSG Vice-Chair reported on recent developments, highlighting the EBA's Day on Consumer Protection on 25 October 2012 and the EBA's Research Workshop<sup>1</sup> "Banks' business models after the crisis: incentives, strategies, de-risking" held on 21 / 22 November 2012. He commended the EBA for organising these events, and suggested they become regular events, and invited BSG Members to read the Workshop's papers.
5. The BSG Vice-Chair further highlighted four recent regulatory developments which would impact on BSG's work: the banking union discussion, bank recovery and resolution, the Liikanen Report, and the FSB's recommendations on shadow banking. Regarding the Liikanen report, the EBA should monitor and contribute to its implementation. He mentioned his concerns regarding the EU Commission's recent report on banking union, such as its lack of proposals for resolution arrangements.

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<sup>1</sup> See <http://eba.europa.eu/News--Communications/Year/2012/EBA-research-workshop--Banks--business-models-afte.aspx>

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6. The EBA Chair viewed the banking union/SSM as a prerequisite for some MS for the trigger to activate the ESM. The ability to use the ESM is key, especially to break the sovereign-bank link. He advised that the Commission, in its September 2012 communication, announced legislative proposals on bank recovery and resolution in 2013. He highlighted the need to assess the treatment of guarantees, provided by resolution funds of institutions, with similar characteristics that are reluctant to contribute to a broader pool with higher perceived risks. For the EBA, an important aspect of the banking union proposals is how the future EBA voting provisions could look like. He welcomed BSG views on possible changes to EBA voting modus operandi.
  7. BSG members highlighted potential conflicts of interest between the ECB and national supervisory authorities (NSAs) in the future banking union. While the ECB may issue instructions to NSAs, these would still perform the day-to-day supervision and might be responsible for potential losses of institutions.

#### Agenda item 4: Update on regulatory developments

##### a. Generic Update

##### 1) EBA Chairperson to update on general developments

8. The EBA Chairperson presented a synopsis of key matters of concern, major developments and horizon issues in EU banking. He clarified the intention to give certainty to markets regarding the G20 package and existing BCBS work.
9. He also mentioned two letters that the EBA sent to the European Commission regarding discrepancies in the application of “transitional floors” to capital requirements and regarding the “definition of own funds”. On the letter on own funds, he highlighted the need to keep the definition of capital aligned with that in Basel III. Regarding transitional floors, he mentioned, that during the recapitalisation exercise it was noted that NSAs apply different methodologies for calculating the transitional floors and that this may represent a serious level playing field issue. BSG members suggested that an impact assessment could be done regarding capital floors. EBA staff will circulate both letters to BSG members.
10. The EBA Chair mentioned also that the EBA’s BoS has approved several draft Technical Standards at its last meeting, on the understanding that given CRD IV/CRR has not yet been finalised, these BTS might need to be changed if the underlying legislation changes. If the finalisation of the CRDIV/CRR is not done by the end 2012; the EBA will publish preliminary drafts, in order to provide more clarity to banks and aid their implementation planning.
11. Regarding risk-weighted assets, the EBA Chair announced that EBA was working on several issues, including Pillar 3 disclosure (e.g. residential mortgage portfolios). The analysis done by the EBA has proven to be an important tool for analysing differences in applied risk weights but has some limitations. Currently, the EBA only has rough data and this issue might need to be addressed. Methodology, results and conclusions can be enhanced if more detailed

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information is obtained. He encouraged the BSG to undertake its own work on this. The BSG Vice-Chair agreed and BSG members queried whether any data could be made available for the BSG in order to facilitate its research. The EBA advised that it was subject to confidentiality constraints set out in the EBA Regulation. Some BSG members highlighted that not all such information is readily available in banks.

12. BSG members enquired about the EBA's 2013 stress testing exercise. The EBA Chair indicated that the EBA is making progress on this but that the timing is not yet clear. Also, the EBA is in discussions with the ECB, taking into account the future SSM setup.

## 2) EBA staff to present update on EBA's regulatory work under development

13. EBA staff (Philippe Allard) updated BSG Members on EBA's regulatory work under development, and highlighted the EBA's possible response to the European Commission's consultation on the "High-level Expert Group on reforming the structure of the EU banking sector" chaired by Erkki Liikanen.
14. The EBA generally welcomed the report which offers a broad set of European structural measures instead of a patchwork of national measures which may have a negative impact on the Single Market in the EEA. The EBA also welcomed that the report tries to balance the European universal banking model with the need to strengthen the financial sector. However, the effect of the Report's recommendations should be assessed in the context of the on-going regulatory reforms, and their potential impact on banking business models need to be properly assessed. In addition, structural measures should not be used to lower supervision in any way. The Report also underlines that bail-in instruments are a useful tool which needs clarification to be properly implemented, which is supported by EBA staff. However, there is a need to maintain full consistency between the forthcoming legislation on banking Recovery and Resolution and additional structural measures (e.g. regarding financial support within a banking group). The EBA Chair mentioned the FDIC's model as another useful example that the EU could look at.
15. There were diverging views within the BSG regarding structural measures. BSG members enquired whether there will be an impact assessment on the Liikanen Report, especially because restructuring might have an impact on bank jobs. Some members welcomed structural measures as this would be preferred to a stricter separation of banking business models and would still enable the Universal Banking model to be sustained. However, it was not understood by some members why market-making needs to be separated and would prefer to stay with the provisions as set out in the CRD.
16. Generally, the definition of trading was criticised by some BSG members and they see this as problematic and impractical. Also, it was noted that Credit Rating Agencies (CRAs) would most likely rate bail-in bonds lower than other existing instruments. At the same time, CRAs indicated that they factor in government support in their ratings in line with their opinion of the

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risk that a bond will not be supported. Another issue was the lack of a clear trigger point regarding bail-in bonds.

17. Some BSG members were worried that structural separation would imply that certain activities (e.g. investment banking) could no longer be performed by most European banks as they do not have the necessary liquidity from retail banking. This view was, however, not shared by other BSG members.
18. It was suggested that the BSG Systemic Issues Working Group could look further into this issue.

## b. Specific Update on Liquidity

### 1) EBA update on current work underway

19. EBA staff (Ivo Jarofke) introduced the current state of play, noting that CRDIV/CRR has yet to be finalised. In case of no political agreement on the CRR before year-end, the EBA is considering to publish a feedback statement on its CP05 (liquidity reporting) and draft templates in order to be transparent on the results of the public consultation and its intentions how to consider responses.
20. Regarding the economic impact assessment, EBA staff mentioned that the EBA has to submit a first report to the European Commission by September 2013. In order to do so, quantitative data is necessary for which the EBA has launched a voluntary data collection on the liquidity coverage ratio already at the end of 2011, in the absence of an adopted CRR and ITS on liquidity reporting. In order to assess possible bank reactions to the introduction of liquidity ratios, the EBA is also considering three case studies of countries which have already introduced liquidity coverage requirements
21. The EBA is looking at different business models and how intra-group capital flows work. Potential waivers for cross-border flows might be looked at. The EBA has also sent a data request to ESMA regarding MiFID data on transactions in order to substantiate its work on developing metrics and common definitions for assets of high liquidity and credit quality.
22. The BSG Vice-Chair noted international debates at the BCBS about the easing up of liquidity requirements. The EBA Chair mentioned an upcoming paper of the Basel Committee.

### 2) Report from the BSG Working Group on Liquidity (B-point)

23. The Chair of the Working Group (Andrea Resti) presented the feedback that was received on the BSG's Liquidity position paper which was published after the last BSG meeting. He mentioned that some NSAs had criticised the tone of the paper and that one NSA in particular had highlighted that the BSG paper did not adequately represent that Member State's legal situation. A separate amendment had, therefore, been made public. It was suggested by the BSG to merge the amendment to the position paper into the actual paper.

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Agenda item 5: BSG to discuss formulation of BSG's opinion to:

a. **EBA's Consultation on Draft RTS on Cooperatives, Mutuals, Savings Institutions and Similar Institutions for the Purpose of Part Two of the CRR (Own Funds) [EBA/CP/2012/11]**

24. EBA staff (Delphine Reymondon) introduced the Draft RTS. She recalled that the EBA had issued the first part of its consultation on own funds on 04 April 2012. This current consultation paper lays down the definitions as to when an undertaking that is recognised under national law qualifies as a mutual, cooperative, savings institution or similar institution for the purposes of the recognition of CET1 instruments in the regulatory own funds of the institution.
25. The BSG Vice-Chair noted that while cooperatives and savings banks have similar characteristics, they are not identical and that differences exist not only between Member States but also within countries. Concerning mutuals in the UK, one issue that is sometimes raised is that they have typically no access to external capital which can be a vulnerability.
26. As to the question of whether national definitions only would be sufficient instead of developing some conditions in the draft RTS, EBA staff argued that this would not bring transparency on the specificities of each type of institution and that such an approach would not add any value since all applicable national laws are already available to the public. EBA Staff also underlined that the mandate given to the EBA covers only undertakings that are recognised under applicable national laws.
27. The BSG Working Group on capital will discuss its opinion (see item 8) with a view to providing an opinion to the EBA noting the consultation period runs until 21 December 2012.

b. **EBA's Discussion Paper on the Draft RTS on Prudent Valuation [EBA/DP/2012/3]**

28. EBA staff (Federico Cabanas) introduced the Discussion Paper on Prudent Valuation that expresses the EBA's preliminary views on the topic. The mandate is established in Articles 31 and 100 of the draft CRR, which require the application of prudent valuation requirements for all positions measured at fair value. The starting point for the assessment of prudent value is fair value ("exit price"). The EBA considers that the assumed period over which the exit should be achieved does not need to be instantaneous. The prudent value should reflect exit prices at which the institution can transact within the time horizon for capital purposes. The EBA considers it necessary to define the 'appropriate degree of certainty' required by establishing a "confidence level".
29. The EBA recognises the limits inherent in the use of a level of confidence when sufficient data are not available which means that judgment-based approaches need to be applied. It is proposing a 95% level.

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30. BSG members were generally worried about the underlying notion that a fair value may not be prudentially sufficient and that this might lead to a double accounting system, with e.g. a double income statement. Further potential issues could be related to the documentation of how banks would comply with such a regulation.
  31. The connection to the IFRS was also highlighted by BSG members. The EBA was also asked to clarify the 95% level as a proposal. Generally, an impact assessment was suggested by the BSG. Also from an auditor perspective, concerns were raised as there could be different values for the same instruments. BSG members suggested that it might then be advisable to follow existing BCBS principles.
  32. EBA staff clarified that the EBA follows its mandate as set out in the regulation and that this is also in line with Basel regulations. It also noted that some banks currently account more prudently than others and that it is necessary to build clarity. EBA staff noted that the reporting should incorporate existing accounting adjustments to the valuations to ensure that more conservative institutions will not be penalised.
  33. The public consultation of the DP started on 13 November and goes until 13 January 2013. During the second quarter 2013 a draft RTS will be published for consultation. The BSG Working Group on Capital will discuss its opinion (see Agenda item 8) with a view to providing an opinion to the EBA noting that the consultation period runs until 13 January 2013.

#### c. EBA's Draft RTS on Criteria to Identify Staff

34. EBA staff (Bernd Rummel) introduced the initial thinking on the issue of criteria to identify staff who have a material impact on the institution's risk profile. Article 90 (2) of the CRD IV mandates the EBA to develop this draft RTS to set out the criteria for the identification of categories of staff members for whom a specific remuneration policy according to Article 88 (2) would be applied. CEBS had previously issued a Guideline on Remuneration Policies and Practices, but this did not lead to a sufficient harmonisation between Member States' implementation and institutions' practices. A consultation paper is envisaged around the end of Q1 2013.
35. Regarding whether staff within the whole institution or only within material risk areas should be assessed, both options were presented. Either there could be a limitation to material risk areas (option A) – which would require to set out requirements on the risk assessment, or the identification of risk takers in the whole institution (option B). The latter has so far been preferred by the EBA Task Force on Remuneration to ensure that all risk takers are identified and to avoid additional costs for the identification of material risk areas.
36. BSG members raised several questions, e.g. if only executive directors would be covered. The draft RTS may include both, the members of the management body in its management and supervisory function. However, the RTS is still in a very early stage. A view was raised by one member whether risk taker is the relevant concept and that the aim should be to change certain behaviours, e.g. through bonus triggers. This BSG member would, therefore, support

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option A. The BSG Vice-Chair encouraged BSG members to provide further views to EBA staff by email, while copying the whole BSG in order to produce a dialogue.

### Agenda item 6: Report from the BSG Working Group on Consumer Protection

37. The Chair of the Working Group (Robin Jarvis) reported on the EBA Day on Consumer Protection held on 25 October 2012 and commended the EBA for organising it. He made reference to the three panels at the event and some observations regarding them. Furthermore, he reported on discussions between the Working Group and EBA SCConFin representatives. He was informed that SCConFin is currently working on two Guidelines (“Responsible Lending” and “Borrowers in Payment Difficulties”).
38. The Working Group sought from each BSG Member their five key consumer issues, with a view to informing the EBA’s work in this regard. The BSG Vice Chair and the Chair of the Working Group undertook to write a brief note for circulation to BSG members and EBA on the outcome of the exercise. The note would also be sent to the SCConFin.
39. The EBA Executive Director added that the EBA had chosen a new Head of the Consumer Protection Unit and that the person will take up his position most likely early next year.

### Agenda item 7: Report from the BSG Working Group on Systemic Issues

40. It was noted that the BSG Chair had provided a short feedback on the Working Group’s conference call discussion on 25 October, which noted the banking union proposal, banking resolution, and the Liikanen Report developments, with a view to assessing whether the BSG could provide an opinion on these issues.
41. The BSG Vice-Chair suggested that the BSG could write a paper on the banking union and bank resolution noting the dependencies between the two issues. Some BSG members questioned as to whether this was captured within the BSG’s mandate.
42. The EBA Chair highlighted that the BSG could provide input on such issues to the extent to which they relate to the EBA’s tasks. Further, he suggested BSG views on how the EBA could contribute to an effective functioning of the banking union, its role in relation to stress testing, risk monitoring, and the single rule book for the single market, being mindful of the need to communicate clearly the BSG’s view and role relative to that of the EBA.

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## Agenda item 8: Report from the BSG Working Group on Capital

43. The Chair of the Working Group (Louise Lindgren) had asked Christian Lajoie to report on the Working Group activities in her absence. He reported that the Working Group had developed BSG opinions on two EBA consultations, which were the CP on technical standards on the calculation of credit risk adjustment [EBA/CP/2012/10] and the CP on the application of the capital calculation methods for financial conglomerates [JC/CP/2012/02].
44. The BSG discussed how to take forward the development of possible opinions on the two on going EBA consultations mentioned under agenda items 6 a) and b). Regarding [EBA/CP/2012/11], no action had been taken yet and the Working Group will further discuss the paper internally. Regarding [EBA/DP/2012/3], the BSG noted that Javier De Andres had volunteered to steer the work on possible EBA input and to evaluate the best way forward.

## Agenda item 9: Discussion of annual report of the BSG's work

45. The BSG Vice-Chair recalled the suggestion of the BSG Chair that the BSG should produce a report concerning the activities of the BSG at the end of its 2½ year mandate, instead of producing a 2012 annual report. The BSG agreed to produce such a report, and proposed a first draft of the report should be ready for its May 2013 meeting. The BSG Vice-Chair sought EBA's staff assistance in the structure, and for inputs from the various BSG Working Groups.

## Agenda item 10: Chair of BSG

46. After a discussion, BSG members mandated the BSG Vice-Chair to communicate their concerns to the BSG Chair and to revert to the BSG after a response had been received.

## Agenda item 11: BSG Meeting Dates for 2013

47. The EBA Chair informed the meeting that the EBA would be launching the public call for applications for future BSG membership around April 2013, noting that the term of office of current BSG Members was due to expire on 11 September 2013. Whilst members of the BSG can reapply for membership, there will not be an automatic continuation of membership, although the EBA will be mindful of the need to reflect a suitable element of BSG continuity in its selection process. Accordingly, it was proposed to amend slightly the envisaged 2013 meeting schedule, also regarding the timing for the joint meeting with the EBA's BoS.

## Agenda item 12: AOB

48. The BSG Vice-Chair reminded members that everyone is welcome to make suggestions regarding agenda items in advance of meetings to the BSG Chair/Vice Chair and/or to EBA staff. The BSG Vice Chair undertook to send an invitation to submit agenda items to BSG members ahead of future meetings.

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## Participants at the 10<sup>th</sup> meeting of the Banking Stakeholder Group (BSG)

London, 29 November 2012

### BSG Member

Andrea Cesare Resti

Arnold Kuijpers

Birgit Roos

Bostjan Krisper

Chris De Noose

Christian Lajoie

Daniel Gros

David T Llewellyn (Vice-Chair)

Eric Berggren

Giles Williams

Guglielmo Zadra

Hiltrud Thelen-Pischke

Holger Schwannecke

Javier De Andrés

Lubomir Christoff

Magdolna Szóke

Michelle Brennan

Monica Cueva Díaz

Pamela Walkden

Robin Jarvis

Sylvie Bourguignon

Ute Meyenberg

Zita Čeponytė

### Representing

Top-ranking academics

Industry

Industry

Consumers

Industry

Industry

Top-ranking academics

Top-ranking academics

SMEs

Users of banking services

Industry

Users of banking services

SMEs

Top-ranking academics

Consumers

Industry

Users of banking services

Industry

Industry

SMEs

Users of banking services

Trade Unions

Consumers

### From the EBA

Andrea Enria

Adam Farkas

Philippe Allard

Stefan Andresen

Federico Cabanas

Ivo Jarofke

Corinne Kaufman

Delphine Reymondon

Bernd Rummel

Tea Turcaniova