

## Banking Stakeholder Group Meeting - Minutes

28 June 2013 / 09.30 to 17.00

Location: EBA

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

1. The BSG Chairperson welcomed Members and noted that the BSG was set to decide on four key issues at its meeting: the prioritisation of its work in progress; the finalisation of its End of Term of Office Report (ETOR); BSG input on bail-in mechanisms, and BSG input to the EBA's Risk Assessment Report. The BSG Chairperson would also give feedback to the EBA on Staff support to the BSG.
2. The minutes of the 14 May BSG meeting [EBA BSG 2013 32] were approved without further comments. There were no comments to the minutes of the 15 May Joint BSG/Board of Supervisors (BoS) meeting [EBA BS 2013 214].

### Agenda item 2: BSG Chairperson to update on developments

3. The BSG Chairperson gave a short update on recent developments in financial regulation. In particular, he noted that the UK's Parliamentary Commission on Banking Standards published its Final Report – 'Changing banking for good' on 19 June 2013. He explained that the Report identified a lack of individual responsibility at banks and suggested establishing a new concept of senior persons in banks, who should be named and be held accountable. Included in the Report's recommendations was the proposal that there could be a clawback power for supervisory authorities regarding bonuses over a 10-year horizon and that there should be less emphasis on Return on Equity as a performance benchmark. There was also a proposal for the introduction of a new criminal offence for reckless behaviour. The BSG Chairperson also noted developments in relation to Bail-in and regulatory complexity.

### Agenda item 3: Update on regulatory developments

#### **i. EBA Chairperson to update on general developments**

4. The EBA Chairperson noted that in the EU many economic parameters were improving and that EU banks were now approximately on the same line as US banks in terms of risk-weighted capital ratios; however, the adjustment in the EU is occurring mainly through a de-risking in existing business models rather than a radical deleveraging and change of business models. He also
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mentioned some evidence pointing to a rise in complex products (e.g. CDOs, structured products), albeit constructed on an apparently sounder basis.

5. The EBA is progressing in its work on the consistency of Risk-Weighted Assets (RWAs), essential to restore market confidence in the regulatory measures of capital adequacy. The EBA's BoS had recently approved a recommendation on the Asset Quality Review, which will be conducted in close coordination with the Balance Sheet Assessment to be conducted by the Single Supervisory Mechanism (SSM).
6. Furthermore, the EBA Chairperson highlighted that the CRD IV/CRR had been published in the Official Journal on 27 June 2013. He mentioned that the final legislative package contained a number of additional tasks for the EBA without increasing its resources at the same time (also see below).
7. In addition, the EBA succeeded in facilitating the first non-binding mediation agreement between two European National Supervisory Authorities. Further mediation cases were currently underway.
8. The BSG Chairperson explained that the observed de-risking by banks may be an illusion and that banks could, in fact, still find ways to employ regulatory arbitrage that only appear to reduce risks. Likewise, the complexity of the regulatory regime may in some ways be conducive for banks to "game the system", which could be endemic in the regulatory process. The BSG Vice-Chairperson highlighted that banks did, in fact, reduce their risks. This did often entail focusing on the core business of banks and reducing activities in other business areas.

#### **ii. EBA Staff to present update on EBA's regulatory work under development**

9. EBA Staff (Corinne Kaufman) updated on the EBA's work under development and considerations for the EBA Work Programme 2014. She explained that the EBA's 2013 Work Programme was approved in September 2012 and that it was recognised that the key input into EBA's work programme was the CRDIV/CRR legislative proposal, which at that time was not stable. The EBA Staff had been requested by the BoS to update the 2013 work programme to include all changes introduced in the CRDIV/CRR package.
10. Based on a review of the May 2013 Trilogue text, it was noted that the number of deliverables expected from the EBA in relation to the CRD IV/CRR package had increased considerably as a result of the Trilogue negotiations, from approximately 170 on the basis of the Council's proposal of May 2012, to approximately 270. The majority of these products relate to the development of more detailed technical rules mostly via the development of binding regulatory or implementing technical standards. Other types of deliverables include guidelines, reports, opinions, mediation activities, or the receipt and processing of notifications. Moreover, the EBA was expected to complete 41 deliverables in 2013, 33 of these related to the development of Draft Technical Standards.
11. The EBA staff also informed the BSG that it was due to hold a workshop on proportionality at the end of October 2013. The intention is to have a practical workshop, with both regulators and

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industry representatives, as well as to gather further material on how to consider proportionality in the development of EBA technical standards.

### iii. EBA work on Market Risk

12. EBA Staff (Federico Cabanas) presented the Draft RTS on non-delta risks for options [EBA CP 2013 16], Draft RTS on definition on Market [EBA CP 2013 15], Draft ITS on closely correlated currencies [EBA CP 2013 21] and Draft ITS on diversified stock indices [EBA CP 2013 22].

13. Regarding the Draft RTS on the definition of Market, the EBA is consulting on two possible definitions for the term “market”, namely:

- Market is identified on the base of a nationality criterion;
- Market is identified on the base of a currency criterion. This would imply that the euro-area would be considered as a unique market.

14. Regarding the Draft RTS on non-delta risks for options, the EBA is required to “develop Draft regulatory technical standards defining a range of methods to reflect in the own funds requirements other risks, apart from delta risk in a manner proportionate to the scale and complexity of institutions' activities in options and warrants”. The Consultation Paper provided four alternative methods, three of them contemplated in the Basel framework:

- a simplified-approach which can be applied exclusively by institutions that only buy options;
- the delta-plus method which can be applied by banks that also sell options;
- the scenario approach which is more sophisticated for banks with a considerable trading activity in options;
- In addition, it also provides a fallback (punitive) treatment for non-vanilla options for which the delta plus method is not appropriate because of discontinuities in delta and gamma.

15. Regarding the Draft ITS on closely correlated currencies, the proposed Draft ITS were in accordance with Article 343(1) of the Draft CRR relating to the identification of closely correlated currencies for the purposes of calculating the capital requirements for foreign-exchange risk according to the standardised rules. Positions in closely correlated currencies are subject to a 4% (instead of 8%) capital charge.

16. Regarding the Draft ITS on diversified stock indices, the EBA is required to identify those relevant indices that can be exempted from specific capital requirement if the stock-index future in question is exchange traded and represents an appropriately diversified index. The EBA proposed a set of criteria to assess the minimum level of diversification.

17. The BSG agreed not to develop an official BSG Opinion on these CPs. BSG members would consider individual input on the CPs.

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#### iv. Policy work related Pillar 2 and supervisory cooperation

18. EBA Staff (Slavka Eley and Oleg Shmeljov) presented the Draft Guidelines on capital measures for foreign currency lending to unhedged borrowers under the Supervisory Review and Evaluation Process (SREP) [EBA CP 2013 20], Draft ITS on joint decisions on institution specific prudential requirements [EBA CP 2013 10] and the Draft RTS/ITS on information exchange between home and host supervisors [EBA CP 2013 25 & 26].
19. Regarding the Draft Guidelines, the EBA Staff explained that in 2011, the ESRB Report on FX lending highlighted risks associated with excessive FX lending and highlighted that such lending can lead to increased systemic risks for national economies and can create conditions for negative cross-border spill-over effects, adversely impacting financial stability within and across member states. As part of the report, the ESRB issued 7 Recommendations, one of which was directed to the EBA to draft guidelines to address capital measures related to FX lending risk to unhedged borrowers and taking account of the non-linear relation between credit and market risk.
20. The guidelines are addressed to Competent Authorities and describe how these should address FX lending risk in the supervisory review and evaluation process, when it is considered to be a material risk to an institution. The proposed approach details components for assessing risk, governance and capital adequacy related to it and would not always lead to a capital add-on even if the risk is deemed to be material. Further, supervisors must first seek to understand that the risk has been properly addressed in the ICAAP and also what risk mitigating measures are in place.
21. BSG members inquired whether the consumer protection aspect had been considered in the development of the paper and how the Guideline would impact existing loans of banks and eventually consumers. EBA Staff explained that, as per the mandate given by the ESRB, the Guidelines do not address the process of issuing new loans or consumer protection aspects, as these are addressed by a separate ESRB recommendation addressed to national authorities. The capital impact was not assessed as it is contingent on many factors meaning that the capital add-on may not always be used. It was therefore deemed to be misleading if a figure were to be provided.
22. Regarding the Draft ITS on joint decisions on institution specific prudential requirements, EBA Staff explained that the EBA is mandated to develop Draft ITS pursuant to Article 113 of the CRD IV in order to ensure uniform conditions of application of the joint decision process.
23. Regarding the Draft RTS/ITS on information exchange between home and host supervisors, EBA Staff explained that the EBA was mandated to develop RTS to specify what information host Member State competent authorities and home Member State competent authorities shall exchange with each other and to establish standard forms, templates and procedures. It was noted that there would be no direct impact on institutions as the focus would be on supervisory information already available from regulatory reporting and supervisory findings.
24. BSG members mentioned that banks are often asked for information by host supervisors that had been supplied at the group level to the consolidating supervisor. To this end, the EBA Staff

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explained that although consolidating supervisors will have the possibility to provide information on the consolidated level, host supervisors will have possibilities for requesting additional information as they have such powers under the CRD. Furthermore, the confidentiality of data was raised as a possible issue. However, EBA Staff explained that confidentiality is covered by relevant EU Directives and should not be a concern for the exchange of information between EEA supervisors, subject to these standards.

25. The BSG agreed not to develop an official BSG Opinion on these CPs. BSG members would consider individual input on the CPs as part of the public consultation process.

#### **v. Draft RTS on identified staff and work in progress on remuneration issues**

26. EBA Staff (Bernd Rummel) presented the workplan on remuneration and discussed the RTS on criteria to identify staff [EBA CP 2013 11]. Regarding the RTS, the main criteria (internal, qualitative and quantitative) referring to remuneration and the identification of staff were introduced. Staff would be identified if at least one of the criteria (internal risk analysis criteria or regulatory qualitative/quantitative criteria) was met. Identified staff which was only identified under the criteria based on the payment bracket or variable remuneration could be excluded from the scope of identified staff if institutions can demonstrate that the staff member had in fact no material impact on the institution's risk profile.

27. BSG members had a number of comments and mentioned, for example:

- The criteria are too wide, in particular those on remuneration – only persons who have a material impact should be identified;
- If the qualitative criteria, as they relate to risks, are deemed more important, some BSG members wondered why there are so many criteria based on remuneration which would identify also a broad population of staff;
- Exclusion for staff earning more than EUR 500,000 should be possible;
- EBA should consider the burden for the individual which comes with a broad identification;
- Identification of committee members (collective risk taking) might be too broad and could mean that staff would be discouraged from taking part in committees, in particular if some staff only participates in certain meetings and not on a permanent basis;
- Smaller institutions should have different rules;
- The identification results should be stable;
- The criterion of 0.3% of staff with the highest remuneration was perceived as too high, and some BSG members wondered whether this would identify the right people – while others commented, at the same time, that this was too low.

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28. The BSG discussed the challenge of distinguishing between risks and caused losses and why the systemic risk caused to the banking system is not considered. However, it was noted that these issues were outside the EBA's mandate and are stipulated in Level 1 text.

29. The BSG was notified about the further work of the EBA in this area, namely the CP on Draft RTS on classes of instruments which can be used for the purposes of variable remuneration (August 2013 publication envisaged) and the CP on Guidelines on the applicable notional discount rate for long term deferred variable remuneration (Q4/2013 publication envisaged).

30. Regarding the Draft RTS on classes of instruments which can be used for the purposes of variable remuneration, it was explained that Article 94 of the CRD requires that 'a substantial portion, and in any event at least 50%, of any variable remuneration shall consist of a balance of the following:

- (i) shares or equivalent ownership interests ... or share-linked instruments or equivalent non-cash instruments, in case of a non-listed company;
- (ii) where possible, other instruments within the meaning of Article 52 (AT1) or Article 63 (Tier2) of Regulation (EU) No ... 2013 or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect the credit quality of the institution as a going concern and are appropriate to be used for the purposes of variable remuneration.

31. Thus, the EBA was mandated to define such classes of instruments. These should adequately reflect the credit quality as a going concern and instruments should accommodate deferral and retention periods.

32. Regarding the CP on Guidelines on the applicable notional discount rate for long term deferred variable remuneration, EBA Staff mentioned that EBA was required to prepare and publish, by 31 March 2014, guidelines on the applicable notional discount rate taking into account all relevant factors including inflation rates and risk, which includes length of deferral. In addition, other work streams regarding remuneration, i.e. the Data collection exercise for High Earners, were noted.

33. The BSG agreed that its Vice-Chairperson would aim to identify high level issues that could further be taken up in an overall BSG Opinion on the RTS on criteria to identify staff. Individual BSG member's opinions seemed to differ widely and it might, thus, be difficult to reach a larger consensus. All BSG members would be invited to provide their individual views.

#### Agenda item 4: End of Term of Office Report (ETOR)

34. The BSG Chairperson informed that he had revised the ETOR on the basis of the discussions at the last BSG meeting, and also from written comments received from BSG members. BSG discussed the optimal time for the BSG to publish the Report, i.e. July or September 2013, given the BSG's mandate would expire this September.

35. The ETOR was in principle agreed by the BSG and it was decided to publish in September so as to consider further BSG opinions on EBA's regulatory proposals. Further, the input from the Systemic

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Issues Working Group had still to be included. The BSG members were asked to review the proposed final Draft and to raise any remaining issues, if necessary.

36. The EBA Staff and the BSG Chair/Vice-Chairperson would update the ETOR further, in light of envisaged further BSG Opinions to provide a complete factual overview as at the end of the current BSG's mandate in September, in preparation for the publication of the Final ETOR upon expiration of the BSG's mandate.

### Agenda item 5: Feedback session on EBA's support to the BSG

37. The EBA Staff asked the BSG for suggestions about how the working processes of the BSG could be improved. BSG members made the following suggestions:

- BSG would appreciate a running overview of the outstanding opinions sought by the EBA, as well as the envisaged deliverables to be sought based on the EBA work programme, in order to better prioritise its own input;
- BSG should assign more clearly its proposed Opinions amongst its members;
- The BSG could establish sub-structures to better reflect the technical expertise of its members, whilst respecting the EBA regulation which enables working groups on technical issues only;
- Meeting documents and minutes could be distributed more timely;
- Meeting presentations by EBA Staff should highlight the key technical messages and corresponding timelines of the EBA's consultations/proposals and identify particular areas where feedback from BSG would be welcome.
- BSG sought to be informed as early as possible in the development cycle of EBA's regulatory work, especially before publication of CPs.

38. BSG Members were asked to send their further feedback to EBA Staff, using the feedback survey template, by 05 July in order for the EBA to consider BSG input in future proceedings.

### Agenda item 6: Report from the BSG Working Group on Bank Liquidity

39. BSG Members were asked to signal their willingness to contribute to the BSG's Opinion on (i) Draft ITS related to supervisory reporting of additional monitoring metrics for liquidity [EBA CP 2013 18] and (ii) Draft RTS on additional collateral outflows [EBA CP 2013 19] by 05 July.

40. The BSG agreed that those BSG members who so volunteered, should send their input to the Coordinator of the BSG Working Group on Bank Liquidity (Andrea Resti) by 19 July. The BSG WG would provide its input to the CPs by 14 August.

### Agenda item 7: Report from the BSG Working Group on Consumer Protection



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41. The Coordinator of the Working Group (Robin Jarvis) provided an update on the recent activities of the WG. He made reference to the ESA “Joint ESAs Consumer Protection Day” that took place on 25 June 2013 in Paris. The aim of the event was to provide a forum for exchange and discussion on important and current cross-sectoral consumer issues. The Joint Consumer Protection Day attracted around 250 consumer representatives, academics, legal and financial consultants, national supervisors, experts from the EU institutions and financial services industry.

42. During the panel discussion on PRIPs participants discussed the scope of the proposal together with considerations as to personalise the so-called Key Information Document enabling comparison between covered products (e.g. by including national information on tax implications). Different break-out sessions on consumer trends, sales incentives and product intervention were held.

43. As noted at the previous BSG meeting, the EBA had asked the BSG CP WG members to nominate financial innovation products, services or processes that they would want the EBA to review. The BSG had noted the following issues:

- Peer to peer lending;
- Unregulated products;
- Fees for advice;
- Adjustable margins for mortgages.

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

44. The Coordinator of the Working Group (Louise Lindgren) explained that the WG had developed the BSG’s Opinion on the CP on the conditions for assessing the materiality of extensions and changes of internal approaches for credit, market and operational risk [EBA CP 2013 02]. The BSG response supported the efforts of harmonising and clarifying the conditions for assessing the concept of materiality and identified a number of issues where improvements could be made.

45. In addition, the BSG provided its Opinion on the CP on supervisory reporting on forbearance and non-performing exposures [EBA CP 2013 06]. The BSG response favoured the aim of empowering supervisors with the appropriate tools to assess, on a comparable basis across the EU, the level of non-performing exposures as well as of forbearance activities, by harmonising their definitions. However, the BSG response underlined several issues, due to the complexity and innovation that these reporting requirements imply. It was strongly suggested that there should be further debate on these issues. The EBA was asked to consider clarifying the scope of CP and whether it is only applicable to institutions under FINREP/COREP.

46. Furthermore, the BSG noted two additional issues that should be in focus for the next BSG, namely the Asset Quality Review (AQR) and the EBA stress test in 2014.

47. The BSG Vice-Chairperson was asked to check the possibility of BSG input on EBA CP on Asset Encumbrance Reporting [EBA CP 2013 05]. The Bank Capital WG was to consider input to the CP



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on Technical Standards for Own funds – Part III [EBA CP 2013 17] by 18 July as well as input to the Draft RTS on the determination of the overall exposure to a client or a group of connected clients in respect of transactions with underlying assets [EBA CP 2013 07] by 16 August.

48. Furthermore, the Coordinator of the Working Group and the BSG Vice-Chairperson would consider input to the CP on Draft RTS on the assessment of recovery plans [EBA CP 2013 08] and Draft Regulatory Technical Standards specifying the range of scenarios to be used in recovery plans [EBA CP 2013 09] by 20 August. The BSG Vice-Chairperson would consider input to EBA CP on Draft Technical Standards on securitisation retention rules [EBA CP 2013 14] by 22 August.

### Agenda item 9: Report from the BSG Working Group on Systemic Issues

49. The BSG Working Group on Systemic Issues finalised its bail-in paper, which was discussed at the previous BSG meeting.

50. Michelle Brennan explained further that regarding the Bank Recovery and Resolution Directive several issues were currently unclear, e.g. the hierarchy or burden sharing between jurisdictions. Further, the role of the capital conservation buffer lacked clarity. Investors would still need to better understand how the future regime would work, e.g. when payments on coupons would be stopped or what types of ratios could be expected. She viewed that US investors would still assume that there might be a possibility of government support, while in the EU it is often priced-in but seemingly no longer for all banks.

51. Some BSG members queried whether changes in business models might be observed given these developments. More centralisation of banks could be the results with smaller networks. Others noted that banks should not reduce their exposure in retail markets but that their networks have often become insufficiently profitable.

52. The BSG discussed the EBA's Risk Assessment Report [EBA BS 2013 149], which had been circulated in advance of the approval by the EBA's Board of Supervisors. The Coordinator of the Working Group (Sony Kapoor) noted that the Report had an overall pessimistic tone. He viewed that the biggest threat was the general macroeconomic environment resulting in a severe credit crunch in which the EU banking sector seemed to be stuck. Further, even if growth were to resume, he viewed that potential growth might be reduced. These developments would bear the risk of a double-dip banking crisis in which especially smaller banks would be threatened. He also noted that banks were at the same time expected to build up additional capital. The BSG Chairperson raised similar concerns and that incidences of forbearance had increased in order not to impair banks' capital positions.

53. BSG Members were asked to provide written comments to the EBA's Risk Assessment Report by 01 July 2013 COB. The EBA would issue the Report during July 2013.

### Agenda item 10: Rest of BSG term and current status of renewal process

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54. The EBA Staff briefly updated on the current status of the BSG renewal process, where the Call for Interest was due to close at the end of that day. It was explained that there would be a 'caretaker' BSG which would enable the BSG to carry out its tasks for the time between the official expiration of the current BSG's terms of office until the official appointment of new BSG members. This should, however, be limited to only a few weeks.

55. The BSG was asked to consider the need to provide further input to upcoming EBA Consultation Papers, until their end of term of office. EBA Staff were asked to keep an overview of CPs and planned BSG input and update BSG of newly published EBA consultations, where appropriate.

### Agenda item 11: AOB

56. There was no other business.

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## Participants at the meeting of the Banking Stakeholder Group (BSG)

London, 28 June 2013

<u>BSG Member</u>	Representing
Andrea Resti	Top-ranking academics
Arnold Kuijpers	Industry
Birgit Roos	Industry
Bostjan Krisper	Consumers
Chris De Noose	Industry
Christian Lajoie (Vice-Chairperson)	Industry
David T. Llewellyn (Chairperson)	Top-ranking academics
Eric Berggren	SMEs
Giles Williams	Users of banking services
Giovanni Ferri	Top-ranking academics
Guglielmo Zadra	Industry
Hiltrud Thelen-Pischke	Users of banking services
Holger Schwannecke	SMEs
Javier De Andrés	Top-ranking academics
Louise Lindgren	Industry
Lubomir Christov	Consumers
Magdolna Szóke	Industry
Michel Barbet-Massin	Users of banking services
Michelle Brennan	Users of banking services
Monica Cueva Díaz	Industry
Robin Jarvis	SMEs
Rudi Vander Vennet	Top-ranking academics
Sony Kapoor	Consumers
Sylvie Bourguignon	Users of banking services
Ute Meyenberg	Trade Unions
Vera Cottrell	Consumers

### From the EBA

Andrea Enria  
Adam Farkas  
Stefan Andresen  
Federico Cabanas  
Slavka Eley  
Corinne Kaufman  
Bernd Rummel  
Oleg Shmeljov