



EBA BS 2016 001rev1

---

EBA Staff

---

08-09 December 2015

---

Location: London

---

# EBA Board of Supervisors – Final Minutes

---

## Agenda item 1.: Welcome, Approval of Agenda and Minutes

1. The Chairperson opened the meeting. He informed of changes to the Board of Supervisors (BoS) membership of the Latvian Financial and Capital Market Commission (Ms Liga Kleinberga would become the new high-level alternate member), the Supervisory Board of the European Central Bank (Mr Korbinian Ibel would become the new member replacing Ms Danièle Nouy, and Mr Giuseppe Siani the new alternate) and the Icelandic Financial Supervisory Authority (Mr Sigurdur Freyr Jónatansson would become the new alternate observer).
2. The BoS approved the provisional agenda of the meeting; the Chairperson explained that the EBA Opinion on Regulatory and Supervisory Equivalence of Third Countries, which had been initially planned for discussion at the meeting, would be dealt with instead by written procedure. The BoS approved the minutes of the BoS meeting of 27-28 October 2015.
3. The Chairperson invited members to continue promoting the call for expression of interest for the Banking Stakeholder Group (BSG) in view of the closing date for submission of applications (15 December 2015).
4. Finally, the Chairperson informed that the EBA had initiated an independent internal inquiry to clarify what had caused an error in the publication of the fully loaded common equity tier 1 (CET1) ratio figures of some banks in the 2015 EU-wide transparency exercise. He noted that the erroneous data were removed immediately from the EBA website. He committed to inform the Management Board and the BoS of the findings of the inquiry and lessons learned. One member thanked the Chairperson for the swift reaction and the launch of an internal inquiry, which he viewed should also include the treatment of informal Q&As by the EBA.

## Agenda item 2.: Election of the Alternate to the EBA Chairperson

5. The first term of office of the alternate Chairperson was due to expire on 31 December 2015. Having put forward his candidacy for re-election following a call for expression of interest
-

issued by the EBA on 05 November 2015, the BoS was asked to re-elect Mr Pedro Duarte Neves, from the Portuguese Central Bank, for a second, non-renewable term of office.

### Conclusion

6. The BoS re-elected, by secret ballot, Mr Pedro Duarte Neves as alternate Chairperson until 30 June 2018.

## Agenda item 3.: Election of Members of the EBA Management Board

7. The first term of office of two members and the second term of office of another member as members of the Management Board were due to expire on 31 December 2015. Following a call for expression of interest issued on 05 November 2015, three members put forward their candidacies.

### Conclusion

8. An election by secret ballot took place. Mr Andrzej Reich from the Polish Financial Supervision Authority was re-elected for a second, non-renewable term of office until 30 June 2018. Mr Édouard Fernández-Bollo, from the French Prudential Supervisory and Resolution Authority, and Mr David Rozumek, from the Czech National Bank, were elected for a first term of office until 30 June 2018.

## Agenda item 4.: Single Programming Document 2017

9. The Executive Director presented, for an initial exchange of views, the draft 2017 Single Programming Document (SPD), which brought together the annual and multi-annual work programme, the EBA's budget and the EBA's establishment plan. But he cautioned that, in light of the approval of the EBA's 2016 budget by the EU budgetary authorities on 25 November 2015, and its impact on the 2016 work programme and establishment plan, the draft 2017 SDP as presented would have to be reviewed and adjusted.
10. Members opined that the 2016 budgetary situation would impact on the 2017 work programme and a reprioritisation would therefore be needed. The Commission and the EU budgetary authorities should become aware of the difficulties that the EBA would face to deliver all its tasks and activities. In this sense, the Chairperson reiterated his suggestion as expressed at the Management Board meeting of 16 November 2015 that the EBA should use the submission in January, the hearing at the European Parliament in September and the final approval of the budget in December to readjust its work programme and reprioritise tasks and activities in line with possible changes to the EBA's requested budget.
11. Members considered that the top priorities for the EBA should be the regulatory work and the supervisory convergence-related tasks, and that even within those two priority areas, a prioritisation should be conducted. Acknowledging the budget constraints faced by the EBA,

they also called for a clear headcount distribution and resource efficiency. They welcomed the inclusion of Key Performance Indicators (KPIs) of quantitative nature and also asked to include some of a qualitative nature.

12. The Chairperson stressed that the constraints on the EBA's budget had required the EBA to refocus its resources on those areas with clear deadlines mandated in legislation, and that less work was being carried out in other areas while trying to duly observe the legal mandate of the EBA founding Regulation. He noted the request by members to keep the Commission and the EU budgetary authorities duly informed of the impact on the EBA's work of constrained resources.

### Conclusion

13. A revised version of the draft 2017 SPD would be submitted for approval of the Management Board and subsequently, of the BoS in January 2016, following which it would be formally transmitted to the Commission by end-January 2016.

### Agenda item 5.: Update on Risks and Vulnerabilities

14. The EBA Director of Oversight presented an overview of risks and vulnerabilities in the European banking system, and focused in particular on two topics: the transparency exercise, whose final report had been published recently, and the risk assessment report. He noted that the sample of banks for the two exercises differed and so results were not directly comparable. Nonetheless, general themes identified for discussion included: continued risks from emerging markets and the direct and indirect impact on the global economy; continued concerns over asset quality and how quickly problem loans were actively being dealt with; and questions as to whether recent improvements in profitability represented an enduring change or reflected temporary measures.
15. The Chair of SCOP informed the BoS of the outcome of the SCOP discussion on on-going risks and vulnerabilities. He noted, inter alia, the weak macroeconomic environment and, in the longer term, banks' ability to implement adequate strategies for reaching sustainable business models. He considered that it was important to understand possible risks, including cyber risks, emerging from technological innovation in the banking system, taking into account the increasing competition from new non-bank market participants using financial technology.
16. Members commented on the risks presented, notably on the leverage situation in smaller banks, the diverging views of market analysts and banks on the role of deposits in the funding mix and the increasing importance of market funding. Furthermore, the risks that cyber risks be underestimated and the market uncertainty that the EU referendum in the UK could cause were also raised.

17. The Chairperson considered that one area where the EBA should pay a closer attention was that of commodities exposures, in particular trading exposures and direct exposures to producers. He also suggested considering this in the design of the stress test scenario.

## Agenda item 6.: 2016 EU-wide Stress Tests – Preliminary Scenarios

18. The European Central Bank representative explained the process for the preparation of the adverse scenario for the EU-wide stress test exercise in 2016. He also explained in detail the four risk scenarios which had been developed, including the possible financial and economic shocks for each of them. He described the main ESRB deliverables that would be transmitted to the EBA by February 2016.
19. Members inquired about some of the elements contained in the proposed adverse scenarios, in particular on: a) impact that a possible economic deterioration in emerging markets could have on the USD-EUR exchange rate; b) impact of the inflation rate on nominal wages; c) impact that a shock to global GDP could have on oil prices; d) impact of monetary policy decisions, in particular the current low interest rates environment, in the banking sector. On the inclusion of some country-specific parameters under the financial and economic shocks of each of the four risk scenarios, they considered that it was positive while noting that the objective of comparability of results, given the EU-wide nature of the stress test exercise, should not be missed.
20. The ECB representative took note of the comments by the BoS. He explained that, especially in the case of some countries that had undergone an important economic contraction in the past, the scenarios would be adjusted to reflect the unlikelihood of another such occurrence.

### Conclusion

21. The BoS took note of the presentation. The final methodology, the adverse scenarios and the templates would be discussed for approval at the BoS meeting on 04 February 2016.

## Agenda item 7.: Advice on a Possible SST Synthetic Securitisations Framework

22. The Chairperson introduced the draft advice on analysis and market practice assessment on synthetic securitisation in Europe prepared by EBA staff. He referred in particular to the Commission's proposal on a Securitisation Regulation, which provided for a regulatory treatment for senior tranches of SME portfolios retained by originator banks. He stressed the importance of synthetic securitisation for SME borrowers, which remained the focus of the Commission's Capital Markets Union (CMU) reform. The EBA Director of Regulation described the main recommendations included in the draft advice, namely on eligibility of fully cash-funded credit protection provided by private investors (recommendation 1), on the criteria determining eligibility to the qualifying regulatory capital treatment (recommendation 2) and finally on future work on the regulation of synthetic securitisation (recommendation 3).

23. Views among members on the recommendations were split. Some expressed opposition to any regulatory work on synthetic securitisations beyond what the Commission had proposed in its draft Regulation. They considered that more data was needed to back in particular the recommendation to extend the scope to positions other than the most senior positions, exposures other than exposures to SMEs and investor positions alongside originator's retained positions (recommendation 3). They considered that there was more time to reflect on it in light of the mandate to draft a report on the appropriateness of creating an STS framework synthetic securitisation six months following to coming into force of the Securitisation Regulation.
24. A majority of members expressed support for the recommendations on expanding the scope of Article 270 CRR to fully-funded (cash collateralised) credit protection products as well as on the criteria determining eligibility to the qualifying regulatory capital treatment.

### Conclusion

25. The BoS adopted the advice on synthetic securitisations without recommendation 3.

## Agenda item 8.: Shadow Banking

26. The Chairperson presented the draft guidelines on limits on exposures to shadow banking entities carrying out banking activities outside a regulated framework and a report, for publication and transmission to the Commission, on the results of a data collection conducted on the exposures of a large number of institutions towards unregulated or lightly regulated entities. He explained that the treatment of money market funds (MMFs) would be reviewed once the Commission's proposed Regulation had been adopted.
27. On a question concerning the level of application, the EBA Director of Regulation explained that it was decided to apply the Guidelines at the consolidated and solo level with the exemptions of investment firms with limited authorisation to provide investment services, as provided in Article 388 CRR; this option would help address concerns regarding the monitoring and management of exposures to shadow banking entities.

### Conclusion

28. The BoS adopted the Guidelines and the Report.

## Agenda item 9.: Discussion on Q&A 1659 on Large Exposure Reporting and Q&A 1872 on Own Funds and Q&A 2255 on Supervisory Reporting

29. The Chairperson introduced three Q&As which had been referred for discussion at the BoS meeting during the process for their approval under written procedure.

30. Q&A 1659 concerned large exposure reporting, notably the criteria for reducing the value of an exposure secured by commercial immovable property. A reading of Article 402(2) CRR was that Article 194(3)(b) CRR was not mentioned therein and therefore institutions using the Standardised Approach (SA) for credit risk purposes could not rely on it to safeguard the value of an exposure. Some members opposed this reading and argued that Article 194(3)(b) CRR was indeed within the scope of Article 402(2) CRR, for instance via Article 339 CRR on eligible credit risk mitigation techniques. EBA staff argued however that, for the SA under Part 3 Title II Chapter 4 of the CRR, immovable properties were not an eligible collateral.
31. The BoS agreed that Q&A 1659 should be redrafted with a view to stating that Article 399(2) of the CRR states that the general rules for eligible CRM techniques (Part 3 Title II Chapter 4 CRR) are applicable for the recognition of funded or unfunded credit protection permitted under Articles 400 to 403 of the CRR.
32. Q&A 1872 concerned the application of Article 87 CRR on qualifying own funds in consolidated own funds. The main discussion revolved around the treatment of Tier 2 instruments issued by a non-EU subsidiary in a third country, namely whether they should be included in consolidated own funds of the EU parent where they were not recognised by the local supervisors due to non-respect of the applicable local rules although being CRR-compliant.
33. Some members considered that it was sufficient that such instruments were compliant with the CRR only; others viewed that they should comply with the local rules only, whilst others considered that they should comply with both frameworks, although this could imply them having to comply with diverse rules in different jurisdictions. In view of another Q&A concerning AT1 instruments (Q&A 385) which required them to comply with the CRR, the BoS agreed that Q&A 1872 should be re-categorised as category 1 and referred to the Commission for an answer.
34. Q&A 2255 concerned the treatment of counterparty credit risk (CCR) exposures and whether they should be considered in the credit risk portfolio under the draft ITS on benchmarking exercise. The initial view was that they should be included since the draft ITS on benchmarking referred to the ITS on reporting where CCR was within the scope. But it was also considered that it should be separated in the benchmarking exercises: mixing CCR with credit risk would render unusable the results of the benchmarking exercise while not allowing drawing conclusions from the benchmark results.
35. Since the adoption of the ITS was still pending, the Commission's representative proposed to include the breakdown of CCR before the final adoption, which would make the Q&A not relevant anymore. The Chairperson concluded that the EBA staff would liaise with the Commission services for implementing these changes to the ITS, which would have to be adopted by the BoS once received from the Commission.

## Agenda item 10.: Sound Remuneration Policies

36. EBA staff presented the final guidelines on sound remuneration policies which would be applicable as of 01 January 2017 and repeal the CEBS guidelines of 10 December 2010.
37. Members broadly supported its content. A few minor drafting suggestions in the background section and regarding the severance pay would be included in the final Guidelines.
38. The Chairperson then presented a draft Opinion on the application of proportionality, addressed to the Commission, calling for the harmonisation at EU-level of the provisions on remuneration and giving the EBA a mandate to develop an RTS setting out the scope of the exemptions to the remuneration principles.
39. A majority of members expressed their opposition to the EBA developing an RTS in this area. Some stated that a certain degree of flexibility to accommodate diverging practices in national jurisdictions should be envisaged; others considered that, rather than an RTS, a system of waivers should be provided for in the level-1 text.
40. More generally on the policy considerations of the Opinion, one member viewed that the approach to proportionality in remuneration should be general as well as encompassing the bonus cap, rather than affecting only a limited set of the remuneration elements.
41. In light of these comments, the Chairperson noted the majority view and suggested a more neutral wording on the choice of legal tool for achieving an appropriate level of harmonisation.

### Conclusion

42. The BoS adopted the Guidelines. The final version, together with the press release, would be submitted to the BoS for information before publication. The BoS adopted the revised version of the Opinion [paragraph 42] on the application of proportionality.

## Agenda item 11.: Draft Consultation Paper on Guidelines on Remuneration Requirements for Sales Staff

43. The Chairperson updated the BoS on the Joint Committee's Guidelines on cross-selling practices, which had been rejected by the EBA and EIOPA BoSs. Therefore, the Guidelines would be ESMA-only and solely based on MiFID II. A letter would be sent to the Commission explaining the ambiguity in the legal basis which had led to this outcome.
44. With regard to the agenda item, EBA staff presented a draft consultation paper on Guidelines on remuneration requirements for sales staff. Contrary to the guidelines on sound remuneration policies under the CRDIV discussed under agenda item 10, these Guidelines would apply to sales staff, their scope of application were wider than credit institutions to cover also creditors and credit intermediaries under the MCD, payment institutions and

electronic money institution, and were aimed at protecting consumers and addressing conduct risks.

45. An inquiry was made as to whether structured deposits would be covered by the Guidelines after the revised application date of MiFID2 in January 2018, in particular in view of the future adoption by the Commission of delegated acts under MiFID2. EBA staff confirmed that structured deposits would not be covered. Also, some inconsistencies with the Guidelines on sound remuneration policies under the CRDIV were noted, which would be looked at during the consultation stage.

### Conclusion

46. The BoS endorsed the draft consultation paper for publication and public consultation.

## Agenda item 12.: Draft Consultation Paper on RTS on Separation of Payment Card Schemes and Processing Entities

47. EBA staff presented a draft consultation paper. One question was raised with regard to the unclear definition of “processing entities” in the text of the Interchange Fee Regulation (IFR). EBA staff noted that this was planned to be discussed via the cooperation platform with national ministries that had been set up by the Commission for the implementation of the IFR.

### Conclusion

48. The BoS endorsed the draft consultation paper for publication and public consultation.

## Agenda item 13.: Draft Consultation Paper on RTS Specifying Cooperation and Exchange of Information

49. EBA staff presented an overview of the 10 mandates conferred on the EBA in the revised Payment Services Directive (PSD2), noting that its publication in the Official Journal of the European Union (OJEU) would be expected in late December 2015 or January 2016, with an entry into force 20 days later and an application date of 24 months after entry into force. EBA staff also noted that some of those mandates would have to be developed within 12 months, while other mandates were due within 18 or 24 months; and explained that agenda items 13 and 14 represented the first two submissions to the BoS in fulfilment of the PSD2 mandates. Should the BoS endorse the two submissions, they would be published in December and prior to the publication of the PSD2.
50. EBA staff then presented to the BoS a draft consultation paper on one of those mandates, the RTS on passporting notifications. A request was made to amend the text of the consultation paper with regard to the treatment of distributors, as the Commission intended to clarify their status under the PSD2 and the EMD during the PSD2 transposition workshop.

## Conclusion

51. The BoS endorsed the draft consultation with the amendments requested, for publication and public consultation.

## Agenda item 14.: Discussion Paper on future RTS on Strong Customer Authentication and Secure Communication under the PSD2

52. A discussion paper, drafted in cooperation with the ECB, on the future RTS on strong customer authentication and secure communication, was presented. EBA staff explained that the intention of publishing a discussion paper would be to gather initial input from the market on this mandate, due to be delivered within 12 months of the entry into force of PSD2.
53. A concern was raised on the applicable law between the time the PSD2 would become applicable (from January 2018) and the time this particular RTS would apply. EBA staff noted that this would be discussed with national authorities as well as at the future Commission's transposition workshop.

## Conclusion

54. The BoS endorsed the Discussion Paper for publication and public consultation.

## Agenda item 15.: Update Note on Intervention Powers on Structured Deposits under MiFIR

55. EBA staff provided an update on the work carried out by the EBA on several mandates under MiFIR on structured deposits.

## Conclusion

56. The BoS took note of the update, and asked for the work to be submitted once finalised for deciding on the publication of the output.

## Agenda item 16.: Final Draft Report on the Net Stable Funding Requirements (NSFR) Impact and Methodologies

57. Following the discussion at the BoS meeting of 27-28 October 2015 on the preliminary findings and conclusions on the NSFR calibration report, the Chairperson presented the final report which, if adopted, would be published and transmitted to the Commission. EBA staff described the main additions made in the final report, namely: a dedicated chapter on proportionality with a volatility analysis; further explanations on trade finance and a revision of the language in the conclusions, mainly in the impact on financial markets and lending, together with the necessary caveats mainly in terms of available data in the analysis. They

also explained that some further explanatory discussion as to the impact on derivatives and financial markets business had been included. They said that the input by the ESRB, which had been circulated to the BoS prior to the meeting, would be included in the final report with a summary text agreed with the ESRB and the full ESRB letter attached to the package to be submitted to the Commission. In this regard, the ESRB representative explained the main elements of the ESRB's letter.

58. Members supported the report and the recommendations contained therein. On the approach to proportionality, some viewed that a one-size-fits-all NSFR requirement might not be an adequate solution for all banks. In particular the reporting requirements were deemed by some members as too burdensome and costly from an implementation point of view. In light of these comments, EBA staff considered that the report could include some wording to allow the EBA to work further on proportionality, in particular in the context of the future update of the ITS on reporting on a NSFR.
59. Some members also viewed that more work on the impact that the NSFR could have on derivatives business could be carried out, especially in view of the future BCBS review. EBA staff suggested including explicitly in the report that the EBA would stand ready to provide technical advice to the Commission in light of future developments in the derivatives area if needed.
60. Finally, EBA staff explained the approach taken in the final report with regard to pass-through models and the different levels of funding risk concerning non-matched funded lending and fully matched funded lending.

## Conclusion

61. The BoS adopted the NSFR report with minor changes concerning future potential EBA work on proportionality and derivatives, and including the ESRB's input.

## Agenda item 17.: Draft RTS on Risk-Mitigation Techniques for OTC Derivatives Contracts not cleared by a CCP

62. The Chairperson introduced the draft RTS on margin requirements for non-centrally cleared OTC derivatives under Article 11 (15) of the European Market Infrastructure Regulation (EMIR), developed jointly by the ESAs. He explained that there were a few outstanding points which had not yet been addressed and therefore the final version of the draft RTS would be tabled for final approval of the BoS in early 2016. He informed the BoS of the main policy choices contained in the draft RTS and, in particular, explained the principal point for discussion: the timing for the margin exchange. He presented two alternatives for BoS consideration: option 1 (posting of margin at T+1, i.e. the business day following the trade date, which could be T+2 in a cross-border context) and option 2 (posting of margin at a later date, T+1 plus a number of days equal to the length of the settlement cycle of the securities). He reminded the BoS that in deciding on this, it should be taken into account the main

objectives of the BCBS-IOSCO margin framework for OTC derivatives, namely a) the reduction of systemic risk via limiting the interconnectedness among counterparties; b) the promotion of central clearing; and c) the international consistency of the margin rules.

63. On the carve-out of pension schemes arrangements from the concentration limits, the EIOPA representative reported that EIOPA was in the process of consulting its BoS. Although the process was not yet complete, it appeared that EIOPA was in favour of maintaining the concentration limits and therefore the current draft would have to be amended.
64. Members expressed different views on the two options concerning the timing of the margin exchange. A majority, however, expressed a favourable view towards option 1, i.e. posting of margin at T+1.
65. Concerning the exchange of margins with counterparties in non-netting jurisdictions, one member opined that the amount of business done by institutions in these jurisdictions should be taken into account when calculating the threshold under Article 11 of the proposed draft RTS. EBA staff explained that a survey was circulated to CAs and the result would be presented together with the final report.
66. On concentration limits for initial margin on governments bonds, EBA staff explained that members were consulted in the past on this aspect and there was a clear indication that the concentration limits should be introduced also for this asset class. There were also some remarks concerning the treatment of covered bonds and of currencies pegged to the Euro.

## Conclusion

67. The final draft RTS would be submitted for approval of the BoS in the coming months.

## Agenda item 18.: Future of Internal Models in the EU

68. The Chairperson introduced the discussion on the future of internal models in the EU. He first invited the Executive Director to inform the BoS of the conclusions of the BCBS meeting of 01-02 December 2015, where this topic had been broadly discussed and where it was decided to put forward a number of proposals for discussion at the Group of Governors and Heads of Supervision (GHOS) meeting of January 2016.
69. The EBA Director of Regulation then presented a Report on the IRB approach to inform industry of the EBA's intentions on the regulatory repair of internal models; and an Opinion which included the EBA's implementation strategy of the various regulatory deliverables to enable industry and CAs to engage in bilateral discussions for their actual implementation. Noting that the BCBS's intention would be to finalise the review of the IRB approach by end-2016, the suggested timelines in the EBA's Opinion were 4 years thereafter, i.e. end-2020; however these timelines were contingent on a final decision by the BCBS. She explained that further to the conclusions of the GHOS January 2016 meeting, both the Report and the Opinion would be adjusted for alignment.

70. Finally, the Chairperson invited the BoS to express their opinion on the possibility of a common EU stance on the future of internal models. He explained that the EBA supported the BCBS efforts to revise the IRB models considering their high variability especially for low-default portfolios (LDP). However, he expressed some concerns as to whether the BCBS proposals ahead of the GHOS January 2016 meeting dealt adequately with the variability and risk sensitivity issue.
71. Members expressed their views on the Report and the Opinion. They agreed that the line taken in both documents was very much aligned with the BCBS discussion. Some members opined that they should be published before the GHOS January 2016 meeting, whereas others held a different view.
72. The Chairperson concluded the discussion by noting the BoS views on the publication of the Report, Opinion and EU-stance on internal models. He considered that it was necessary to reflect a bit further in light of the BoS discussion, adjusting in particular the paper on the EU-stance on internal models where necessary. The papers would be updated after the GHOS January 2016 meeting and circulated to the BoS before publishing. On the substance, and noting the effects on capital requirements of the proposals made so far (introduction of floors and greater prominence of the SA for corporates and large institutions), he agreed that it was necessary to continue discussing within the BoS, noting also that it was important that any agreement at BCBS level should be acceptable to the EU institutions.
73. Further to the discussion on the future of internal models for credit risk, the Chairperson introduced the discussion on the future of the EBA's work operational risk. The EBA staff explained that the EBA had to develop three other mandates in this area; however, noting discussions at international level, notably the proposed deletion of the Advanced Measurement Approach (AMA) regulatory framework, the EBA should decide whether commencing work to develop those three mandated RTS, undertaking additional work in the area of operational risk, and whether it should develop high-level guidance to the industry on the continued use of the AMA models.
74. Against that background, some members opined that work on the AMA for operational risk should discontinue. But they considered that data collection for operational risk should continue, and that a clear communication on the transition from AMA on operational risk and how to coordinate it was needed.
75. Other members advocated for a more cautious approach, noting that the EBA should receive a clear message from the Commission in this regard. The Commission representative viewed that, before abandoning work on AMA on operational risk, it was necessary to discuss thoroughly and agree on the direction to take; he thus called for more discussion before a final decision be taken.

## Conclusion

76. The Report and the Opinion would be updated where needed after the GHOS decisions and circulated to the BoS before publishing. The EBA would liaise with the Commission services and wait for further developments at international level. The strategy for operational risk should initially be discussed at technical level and later on presented to the BoS.

## Agenda item 19.: EBA Opinion on Interpretation of MDA (Maximum Distributable Amount) Provisions

77. The EBA Director of Oversight presented a draft Opinion on the interaction of Pillar 1, Pillar 2 and combined buffer requirements and restrictions on distributions (or maximum distributable amount, MDA), which the BoS had mandated the EBA to draft at the meeting of 27-28 October 2015. He explained the content and structure of the Opinion, which clarified that the MDA should be calculated taking into account both Pillar 1 and Pillar 2 minimum capital requirements as well as the combined buffer requirement. The Opinion was aimed at supporting the consistent application of distribution restrictions provided by the CRDIV with a view to promoting a level playing field across the single market, as well as to providing greater certainty for banks' capital planning needs and market participants. In this regard, the Opinion advised the Commission to amend the text of Article 141 of the CRDIV in order to ensure certainty and more consistency in view of the different national implementations across the EU that had arisen under the current text. Also the Opinion invited the Commission to consider introducing some degree of flexibility in the application of restrictions, in particular with regard to AT1 instruments.
78. The Chairperson acknowledged the difficulties of reaching a common stance on the MDA calculation given the existence of different treatments across the EU, and for that reason he viewed the EBA's proposed Opinion as a positive step forward in addressing the situation.
79. The Chair of SCOP referred to the discussions held at SCOP level on various elements, namely on the trigger of the MDA calculation and its possible linking with the breach of the combined buffer in accordance with the stacking order of capital requirements; in this regard, whether CET1 Pillar 2 requirements were to be included in the trigger and calculation of the MDA. Another element of discussion had been the disclosure of Pillar 2 capital requirements, on which members had diverging views. Finally, members had also expressed their concerns with the automatism of distribution restrictions introduced by Article 141 of the CRDIV. The Chair of SCOP explained that in light of these concerns, the Opinion introduced some flexibility.
80. The Commission representative acknowledged that the CRDIV text could be stretched to allow for different interpretations and that some clarifications could helpfully be introduced. However, he made clear that the spirit of CRD was univocal in considering Pillar as 2 a bank specific requirement, so very large binding Pillar 2 requirements for all, possibly incorporating elements of the combined buffer, were not the intended outcome of the original CRDIV drafting. Furthermore, he viewed the flexibility proposed in the EBA Opinion in the automatic

distribution restrictions like a weakening of the concept of discretion on AT1 payments and of their loss absorbing function.

81. There were different views by members which highlighted a different approach on the various points addressed in the Opinion. The majority supported it as it sought clarity and consistency and welcomed the possibility of a harmonised approach. They supported, in particular, the stacking order of capital requirements for the trigger and calculation of the MDA as, amongst other reasons, it was in line with the principle of capital conservation as well as already agreed in the EBA SREP Guidelines.
82. On the disclosure of Pillar 2 capital requirements, the views of members were split although a majority viewed that it was important to proceed with disclosure of the relevant MDA capital ratios since, in particular, such disclosure would be conducive to good supervision. In this sense, the statement included in the Opinion that CAs should not prevent or dissuade institutions from that disclosure was well received.
83. The third element of discussion was the automatism of distribution restrictions. The Opinion had included some flexibility given the strong concerns expressed at SCOP level. Generally members did not welcome the introduction of such automatism. Some viewed it as a cause of market uncertainty. The ECB representative invited the EBA to work together with the ECB in this area, and suggested leaving this element of the Opinion aside in view of the work to be carried out by the BCBS in 2016.
84. In light of the comments expressed by members, a revised version of the Opinion was tabled at the BoS. With regard to the automatism of Article 141 of the CRDIV, the Opinion was redrafted as inviting the Commission to carry out some review of the distribution prohibition to apply in all cases when no profits would be made. It clarified that any such changes should apply only in exceptional circumstances. On disclosure, an alternative, more positive wording was proposed by the Chairperson whereby CAs should consider using the provisions of Article 438 (b) to require institutions to disclose MDA relevant capital requirements, in particular the corresponding minimum CET1 ratio as determined in accordance with Title 7 of the SREP Guidelines or at least should not prevent or dissuade any institution from disclosing this information.
85. Some members viewed that the alternative text on the automatism of Article 141 of the CRDIV did not address the concerns expressed and more members requested more time to review the redrafted Opinion. With regard to the alternative text on disclosure, a majority of members expressed their agreement with the strengthened text.

## Conclusion

86. It was agreed to submit the approval of the Opinion by written procedure.

## Agenda item 20.: Presentation on Options and National Discretions

87. The SSM representative gave a presentation on the SSM approach to options and national discretions (ONDs) in EU banking legislation. He described the main content of the draft ECB Regulation and draft ECB Guide which had been issued for public consultation on 11 November 2015. In particular, he asked the EBA to cooperate with the SSM on the definition of an EU-wide list of eligible public sector entities (PSEs) in the context of the option defined in Article 116(4) of the CRR.
88. In view of the work undertaken by the ECB in this area, the Chairperson asked the BoS whether members would be willing to move towards greater harmonisation; he also asked members on their views about the EBA developing, in 2016, guidelines on disclosure requirements in the area of non-deduction of insurance holdings of Article 49(1) of the CRR.
89. Members were supportive of the EBA developing guidelines on disclosure requirements in the area of non-deduction of insurance holdings, as well as on any work to define an EU-wide list of eligible public sector entities (PSEs).
90. Noting the existence of competent authorities outside the scope of the SSM (non-participating countries in the Banking Union), members requested that any harmonisation work by the EBA in the ONDs area should also involve the CAs from those non-participating countries. For this, the EBA would look in particular into those ONDs of special relevance for these CAs.

### Conclusion

91. The EBA would initiate work to define an EU-wide list of eligible public sector entities (PSEs) and would develop, in 2016, guidelines on disclosure requirements in the area of non-deduction of insurance holdings.
92. A technical group under the Standing Committee on Regulation and Policy (SCRePol) would be in charge of any work in the area of ONDs and of ensuring the involvement of CAs from non-participating countries in the Banking Union.

## Agenda item 21.: EBA Draft Opinion on Cooperation with Third Country Supervisory Authorities

93. EBA staff presented a draft Opinion in response to the mandate in Article 161(7) of the CRDIV on cooperation with third countries. Despite generally a good cooperation with third countries, the Opinion would propose legislative amendments of the CRR and CRDIV to clarify further the role of the EBA in equivalence assessments of third countries' supervisory frameworks (at present under three different forms: confidentiality provisions, consolidated supervision and legal and supervisory regimes). It was explained that the amendments proposed did not intend to change or increase the EBA powers but to clarify its role in this

area by bringing more legal certainty and facilitating the allocation of dedicated resources to carry out this task. The Chairperson noted that the EBA was willing to undertake this own initiative work given its value for the supervisory community, but that without a clear legal basis and commensurate resources, the EBA would not be in a position to continue its work on third country equivalence.

94. Members were broadly supportive of the EBA's role in this area. One member opined that a legislative amendment did not appear necessary to achieve the objective of improving the EBA's role in equivalence assessment. EBA staff explained that the purpose of bringing more legal certainty to the EBA's role without changing the powers of CAs to conclude on the assessment of equivalence of confidentiality provisions. In case of equivalence of third countries' consolidated supervision of Article 127 of the CRDIV, the proposal aimed to align the procedure with the assessment of equivalence of the regulatory and supervisory framework.

### Conclusion

95. The BoS adopted the Opinion on Cooperation with Third Country Supervisory Authorities.

## Agenda item 23.: Review of the Guidelines on Stress Tests (draft Consultation Paper)

96. The EBA Director of Oversight presented the draft consultation paper on the review of the Guidelines on stress testing and supervisory stress testing (CEBS Guidelines on Stress Testing (CP32) of 14 December 2009). He explained the main elements of the changes brought about in the reviewed version, noting that the Guidelines reflected lessons learned from previous stress test exercises, and the outcome of the peer review on the implementation of CP32.
97. A few clarifications were made on the request for a capital plan where the Total SREP Capital Requirement (TSCR) was breached; and on the dialogue of CAs with the designated macro-prudential authority to assess systemic risk implications as well as to understand any assumptions regarding macro-prudential requirements for assessing capital adequacy when using the quantitative outcomes of stress tests.

### Conclusion

98. The BoS endorsed the draft consultation paper for publication and public consultation.

## Agenda item 24.: Report of the Stock Take on Assessment Criteria for Exposures to Regional Governments or Local Authorities

99. EBA staff reported on the findings of the stock take of criteria used by CAs to assign regional governments and local authorities to the EBA's list, in which case their exposures would be treated as exposures to a central government and assigned a 0% of risk weights. They noted

that the EBA's list had discrepancies with the list developed by EIOPA (in the form of an ITS) under Article 85 of the Solvency II Directive. The Chairperson asked the BoS whether it could consider an alignment of the EBA's approach with that of EIOPA's. The report also pointed to some differences in the regulatory treatment of Public Sector Entities (PSEs) across Member States. The Chairman noted that the ECB would publish a list of PSEs, as was concluded in the context of the ECB's Options and National Discretions plan (ONDs).

100. Members supported the proposal of aligning the EBA's approach with EIOPA's as a means of achieving an appropriate level of harmonisation in this area. The Commission representative pointed out that the mandates of EIOPA and EBA were similar in many regards, but different in the powers granted to the CAs, and mentioned that the EBA could only issue an opinion to the Commission to advise that these powers should be the same.
101. The Chairperson concluded that the EBA should engage with EIOPA to investigate the differences between the EBA's and EIOPA's approaches; he also asked the BoS whether it could consider undertaking work to support the SSM in their current project on ONDs (agenda item 20) with regard to drafting a list of public sector entities (PSEs) treated as exposures to central governments, regional governments and local authorities.

### Conclusion

102. The BoS supported that the EBA conduct work to consider aligning its list of regional governments and local authorities with that of EIOPA. The BoS also supported the EBA commencing work for drafting a list of PSEs.

## Agenda item 25.: Draft Consultation Paper on RTS on Market Risk Assessment Methodology

103. EBA staff presented the main features of the draft consultation paper on RTS for the assessment methodology of market risk internal models, under Article 363 of the CRR. They explained that the approach adopted in the RTS followed the same approach as adopted for Operational Risk (AMA) and Credit Risk (IRB).
104. On a query concerning the possibility of authorising individual trades in new products before their incorporation into the institution's risk management and control systems, EBA staff explained that the industry's input would be sought during the consultation phase.

### Conclusion

105. The BoS endorsed the draft consultation paper for publication and public consultation.

## Agenda item 26.: Draft Consultation Paper on Guidelines on ICAAP and ILAAP Information

106. EBA staff introduced a draft consultation paper on own initiative Guidelines to identify a common set of information that CAs would need to collect from institutions in order to assess ICAAP and ILAAP. In this regard, and noting the difference in approaches pursued by CAs, these Guidelines would facilitate the consistent implementation of the SREP Guidelines, which would apply from 01 January 2016. It was clarified that the Guidelines would be addressed to CAs and not to institutions.
107. Regarding the proportionality principle, EBA staff explained that it had been implemented throughout the text of the Guidelines, by allowing CAs to deviate from the requirements contained therein when requesting ICAAP and ILAAP information from smaller and less complex institutions, and also by allowing institutions to provide different amount and granularity of information to CAs. EBA staff agreed to a suggestion to slightly amend the text to clearly differentiate, in this regard, SREP Category 1 institutions from SREP Category 2, 3 and 4 institutions.

### Conclusion

108. BoS endorsed the draft consultation paper for publication and public consultation.

## Agenda item 27.: Colleges Action Plan 2016

110. EBA staff described the main tasks and topics for supervisory attention in 2016 under the action plan for supervisory colleges for European cross-border groups. Compared to previous action plans, the 2016 plan would introduce the idea of self-assessment for the whole range of colleges in the European Economic Area (EEA) and bilateral engagement with CAs particularly to discuss horizontal topics. Also, the 2016 plan would extend its scope of monitoring to colleges established for investment firms; moreover, it was explained that rather than setting deadlines for the completion of tasks, colleges would now self-organise themselves in accordance with the supervisory cycles set out in the regulatory requirements. The key topics for supervisory attention in 2016 were also presented as part of the action plan; they would be incorporated in colleges' supervisory examination programmes.

### Conclusion

111. The BoS took note of the Colleges Action Plan for 2016.

## Agenda item 28.: BoS Meeting Dates in 2016

112. The BoS took note of the calendar of meetings in 2016.

## Agenda item 29.: Reports from Standing Committees

113. The BoS took note of the reports from the Standing Committees.

## Agenda item 30.: AoB

114. The Executive Director informed that a written procedure for the approval of the EBA 2016 budget, following the final adoption by the EU budgetary authorities of the EU's budget for 2016, would soon be launched for BoS approval.

**END OF MEETING**

**Andrea Enria**

**Chairperson**

## Participants at the Board of Supervisors' meeting

08-09 December 2015, London

Chairperson: Andrea Enria

<u>Country</u>	<u>Voting Member/Alternate</u> <sup>1</sup>	<u>Representative NCB</u>
1. Austria	- <sup>2</sup>	Philip Reading
2. Belgium	Jo Swyngedouw	
3. Bulgaria	Dimitar Kostov	
4. Croatia	Damir Odak	
5. Cyprus	Argyro Procopiou	
6. Czech Republic	David Rozumek	
7. Denmark	Sean Hove	Peter E. Storgaard
8. Estonia	Andres Kurgpõld	Indrek Saapar
9. Finland	Marja Nykänen	
10. France	E. Fernández-Bollo/Frédéric Visnovsky	
11. Germany	Raimund Roeseler	Erich Loeper
12. Greece	Spyridoula Papagiannidou	
13. Hungary	Kornél Kisgergely	
14. Ireland	Cyril Roux/Gerry Cross	
15. Italy	Luigi F. Signorini/Andrea Pilati	
16. Latvia	Līga Kleinberga	Vita Pilsuma
17. Lithuania	Renata Bagdonienė	
18. Luxembourg	Christiane Campill	Norbert Goffinet
19. Malta	Raymond Vella	Alexander Demarco
20. Netherlands	Jan Sijbrand	
21. Poland	Andrzej Reich	Maciej Brzozowski
22. Portugal	Pedro Duarte Neves/M. Adelaide Cavaleiro	
23. Romania	Nicolae Cinteza	
24. Slovakia	Tatiana Dubinová	
25. Slovenia	Matej Krumberger	
26. Spain	Fernando Vargas/Cristina Iglesias-Sarria	
27. Sweden	Martin Noréus	Olof Sandstedt
28. UK	Andrew Bailey/Sasha Mills	Fiona Mann

<sup>1</sup> Accompanying experts: Ingeborg Stuhlbacher (Austrian Finanzmarktaufsicht); Dries Cools (National Bank of Belgium); Marek Sokol (Czech Česká Národní Banka); Julia Blunck (BaFin); Maurizio Trapanese (Banca d'Italia); Mascha van der Marel and Joost Passenier (De Nederlandsche Bank); Izabella Szaniawska (Polish Financial Supervisory Authority); Damjana Iglič (Banka Slovenije); Mei Jie and Christine Boykiw (UK's Prudential Regulation Authority)

<sup>2</sup> Represented by Eva Désirée Lembeck-Kapfer

**Country****Observer**<sup>3</sup>

- |                  |                            |
|------------------|----------------------------|
| 1. Iceland       | Sigurdur Freyr Jónatansson |
| 2. Liechtenstein | Heinz Konzett              |
| 3. Norway        | Morten Baltzersen          |

**Non-voting Members****Representative**

- |                        |  |
|------------------------|--|
| 1. SSM                 | Korbinian Ibel/Giuseppe Siani <sup>4</sup> |
| 2. European Commission | Mario Nava/Dominique Thienpont             |
| 3. EIOPA               | Carlos Montalvo                            |
| 4. ESMA                | _ <sup>5</sup>                             |
| 5. ESRB                | _ <sup>6</sup>                             |

**Observer****Representative**

- |        |                     |
|--------|---------------------|
| 1. SRB | Dominique Laboureix |
|--------|---------------------|

**EBA Staff**

- |                        |                   |
|------------------------|-------------------|
| Executive Director     | Adam Farkas       |
| Director of Oversight  | Piers Haben       |
| Director of Regulation | Isabelle Vaillant |

Delphine Reymondon; Lars Overby; Slavka Eley; Mario Quagliariello; Dirk Haubrich; Corinne Kaufman; Jonathan Overett Somnier; Bernd Rummel; Luis del Olmo; Valerie de Bruyckere; Tea Turcaniova; Geoffroy Goffinet; Gabriel Cardj; Alessandro Nardi; Oleg Shmeljov; Santiago Barón-Escámez

<sup>3</sup> Representatives from central banks: Örn Hauksson (Central Bank of Iceland); Sindre Weme (Norges Bank)

<sup>4</sup> Accompanied by Sergio Nicoletti Altimari, John Fell and Panagiotis Strouzas (ECB)

<sup>5</sup> Represented by Sophie Vuarlot-Dignac

<sup>6</sup> Represented by Tuomas Peltonen