EBA BS BSG 2022 032

Banking Stakeholder Group

13 December 2022

Location: WebEx

Banking Stakeholder Group 13 December 2022 – Minutes

Agenda item 1: Welcome and approval of the agenda

1. The BSG Chairperson asked the BSG members whether there were any comments on the draft agenda. There were no comments on the agenda.

2. The BSG Chairperson asked the BSG members to approve the minutes of the 19-20 October Joint BoS-BSG and BSG meetings. The minutes have been approved and will be published.

Conclusion

3. The BSG approved the minutes and the agenda of the meeting.

Agenda item 2: BSG update on the latest developments

4. The BSG Chairperson provided an update on the work done by the Group members since the October meeting such as the preparation of an own initiative report on DORA, of an answer to the call for evidence on greenwashing and the work towards finalising a follow-up report to the January workshop on Basel III.

5. She also provided the outcome of the COP 27 and thanked the EBA Chair for his participation to this event. She noted that the conclusions of the COP were below expectations, in particular because of the absence of a lifting of fossil fuel in the final declaration. However, she noted that a positive aspect of the COP 27 was the fact that losses and damages for vulnerable countries that are affected by climate change will be taken into account in the future.

6. She underlined that the priorities for the BSG work for 2023 will be mainly on DORA and MICA to support the EBA workplan. She also mentioned the interest of BSG members on the implementation of Basel III, PSD 3 related matters, MCD review and the work for the joint consumers JC protection day. In addition, she noted that there should be a focus on the usual answer to EBA consultations for which EBA staff has shared the list of upcoming consultations

until May 2023. Finally, the work of the group on sustainable finance will continue through upcoming workshops.

7. The BSG Vice-Chair added that he has represented the Financial institutions side of the BSG at a workshop with the industry on integrated reporting organised by the EBA.

8. The floor was given to the BSG Working Group coordinators. On Capital and Liquidity (Working Group 1A) the coordinators explained that they should finish soon the report on Basel prepared as a follow-up to their January workshop. After an agreement is reached on the final version, the report should be published in the BSG section of the EBA website.

9. On Recovery and Resolution (WG 1B), the BSG members were reminded of the public consultation on the *Guidelines amending Guidelines EBA/GL/2022/01 on improving resolvability for institutions and resolution authorities (EBA/CP/2022/12)* with the deadline until 15 February 2023 and the *Guidelines on the overall recovery capacity in recovery planning (ORC)* until 15 March 2023.

10. Members of WG 4 are finalising an own initiative paper on DORA to be presented at the February meeting of the BSG. A bilateral discussion is planned for mid-January with the EBA staff to exchange views on this topic.

11. The WG 6 on AML / CFT is preparing a response to the EBA consultation on access to financial services in the context of AML and will present a draft before the deadline of 6 February and in time for a discussion the next BSG meeting.

Agenda item 3: EBA update on general developments

12. The EBA Chairperson highlighted some of the major developments since the 20 October meeting.

13. He explained that the annual ECON hearing with the other ESAs took place on 24 October where he presented the EBA priorities, as the completion of the single rulebook and the fostering of the single market, the work towards consumers and the increased work on ESG (transparency and Pillar 3 disclosure hub). Reference was made to the ongoing work on DORA and MiCA, insisting on the new supervisory role for the EBA and stressed the importance of the new regulatory and supervisory framework being put in place in Europe to tackle AML/TF risks. The EBA Chair concluded that it was a good exchange of views and relatively comforting in the sense that MEPs did not seem to have concerns about the EBA or the banking sector.

14. He also mentioned the work on IRRBB (interest rate risks for banking book), particularly important in the current interest rate environment. He stressed that the EBA will emphasise its work on both the implementation and the monitoring of this topic.

15. He reminded BSG members that the EBA did publish the templates for the 2023 EU-wide stress test, and is currently working on the macroeconomic scenario with the ESRB. The exercise will

be launched in January 2023 with the publication of the macroeconomic scenarios and the results will be published by the end of July 2023. The EBA Chairperson also suggested having a discussion about the overall exercise at the February BSG meeting.

16. Further, he noted that the EBA has adopted an opinion to clarify the framework applicable to the set-up and operationalisation of intermediate EU parent undertakings (IPUs) by third country groups (TCGs) operating in the EU. This Opinion, which is addressed to the competent and resolution authorities, aims to ensure a harmonised and effective application throughout the Union of the requirement introduced by Article 21b of the revised Capital Requirements Directive (CRD5).

17. The EBA chair then mentioned that on the 9th of December, the EBA published the 2022 EU-wide transparency exercise and annual risk assessment report. He stressed that this is an important milestone, where the EBA has published over 10 million data points and made a great effort to make it more user friendly by using interactive tools. The EBA Chairperson encouraged the BSG members to have a look as it gives a lot of information on the EU banking framework, for 122 banks across 26 EEA / EU countries.

18. He then gave an update on the EBA'S work on RRIs (retail risk indicators). He underlined that the fruitful discussion with the BSG has led the EBA staff to take on board most of the suggestions provided by the BSG (for instance not taking into account only EU averages, but also data per Member State). This approach was discussed with the BoS, who reacted positively to the proposal and is therefore proceeding with a final vote with a view to publish these indicators for the first time in January 2023. The EBA Chair thanked the BSG members for their feedback to the team, which was very useful in finalising this document.

19. He then informed BSG members that the EBA is finalising a peer review of authorisations under PSD2, which was presented to the BoS in December with an outcome to be published in January 2023. He stressed that this is the first peer review the EBA has conducted in the payments area, containing very good recommendations both on best identified practices and areas for improvement in specific Member States.

20. He also noted that the EBA has published the European Supervisory Examination Program (ESEP) for 2023, which identifies key topics for supervisory attention across the European Union (EU). Competent Authorises should take these priorities and embed them in their work programme. The key topic included were macroeconomic and geopolitical risk, operational and financial resilience, transition risks towards sustainability and digitalisation, anti-money laundering aspects.

21. The BSG Vice-Chair mentioned the recent publication of the ECB SSM on supervisory expectations, which are matching the EBA ESEP and asked whether the EBA will also publish any priorities on resolution in 2023. The EBA Chairperson replied that on 27 October, the EBA published the European Resolution Examination Programme (EREP) for 2023, which identifies

key topics for resolution attention across the European Union. The EREP is aimed at shaping resolution authorities` work priorities and respective practices.

22. One of the BSG members asked about the 2023 stress test exercise, for which she stressed an uncertainty regarding the treatment of the leverage ratio by the supervisor and asked whether the EBA was planning to produce specific Guidelines on that aspect. The EBA Chairperson explained that in the stress test there is no specific feature on the leverage ratio and reminded that there hasn't been a discussion on providing guidance on that aspect yet.

23. Another BSG member asked whether the EBA ITS on information requirements that sellers of NPLs should provide to the buyers will be published by the end of the year. The EBA Chairperson confirmed that this ITS is under finalisation and should be published in early January.

24. There was also a question from the BSG members on a possible update regarding the setting up of the new Authority on anti-money laundering (AMLA) and the new AML Directive. The EBA Chairperson mentioned that the work of the EU Parliament is delayed as one of the co-rapporteurs has resigned and a new one had to be appointed. However, he confirmed that an agreement is expected in Spring before going to trialogues. He also noted that from an EBA perspective, some key aspects of the AML file are (1) to ensure a proper cooperation between the EBA and AMLA to avoid fragmentation of the single rulebook; (2) to ensure there is an adequate transition timing in the resources that EBA need to dedicate to AML and (3) to make sure the body of work that the EBA is working on continues to be effective and that there is good transition until the new AML Authority comes into place.

Agenda item 4: Update on risks and vulnerabilities in the EU (B-Point)

25. EBA staff from the Economic and Risk Analysis Department presented the risks update in three parts, macroeconomic outlook, Q3 bank data and market reaction to Q3 banks' results. He noted that business and consumer confidence have been further dented while the Purchasing Managers' Index (PMI) indicators remain at very low levels compared to historic data. Business and consumer confidence have been further dented while PMI indicators remain at very low levels compared to historic data.

26. He also stressed that asset quality indicators further improved in Q3 (NPL ratio, and forbearance ratio), while Cost of Risk moved even lower compared to Q2. This is in contrast to banks' expectations of deteriorating asset quality in mainly unsecured portfolios (e.g. SMEs and consumer credit). He concluded that banks are revising down their expectations for asset quality across all portfolios.

27. EBA staff also noted that profitability in Q3 2022 is still high compared to historical records with an average return on equity of 7.7%. At a country level however, some countries are presenting a negative RoE (DK and MT) mainly due to a particular one-off case driven by a bank. Inflationary pressure is already noticeable. There are some concerns about the future impact on the macroeconomic environment.

28. EBA experts also noted that funding conditions have deteriorated and there are low levels of LCR in some currencies, in USD mainly and some banks may face challenges to raise or swap FX funding.

29. Market reactions have been positive to banks' results in Q3 with the asset swap (ASW) spread tightening and the bank equity index outperforming other sectors in the past two months. Analysts remain optimistic on the sector amidst rising rates and NII momentum.

30. The presentation by the EBA experts concluded with a focus on the recent results of the EBA transparency exercise and the main conclusions and recommendations of the Risk Assessment Report (RAR). He stressed in particular that banks need to strengthen their screening systems to ensure an adequate compliance to all the sanctions that have been imposed this year in response to the Russian aggression to Ukraine.

31. The EBA Vice-Chair thanked for the presentation and the work done by the EBA on the transparency exercise and the RAR. He commented that indeed so far on the banks' side there is no visible credit deterioration observed. Regarding the situation in Spain where, given the macroeconomic outlook, banks are trying to increase overlays with the need to find an agreement of their auditors, which has proven very difficult and expensive (making reverence especially to the funding of MREL). He also noted that the ECB is currently running a stock take on how the banks are handling this matter. EBA experts noted the concerns regarding the challenges with their auditors to reallocate the overlays and asked whether the need to book overlays may be related to the incapacity of provisioning models to deal with this new challenging conditions. Indeed, funding conditions have deteriorated, which is reflected in the risk assessment report. Another BSG member noted that from an auditor side it is acknowledged that banks need overlays as they cannot include them properly in their internal models.

32. One BSG member mentioned issues raising potential systemic risks in the Polish banking system where a significant amount of mortgage loans has been distributed in CHF and are currently legally challenged by consumers. She mentioned that the potential costs for banks would be equivalent to 60% of the own funds of the banks that hold those loans. Beyond those FX lending issues, she mentioned that there are also legal proceedings against PL Zlotys loans that were lined to WIBOR without enough information on the costs to customers. She also mentioned a case of whistleblowing raised to EIOPA saying that banks could manipulate WIBOR although PL banks consider that there is no evidence for such manipulation. EBA staff mentioned that the issue of FX lending and WIBOR denominated loans in Poland was also discussed at the latest BoS meeting and is being monitored by the EBA.

33. One BSG member underlined that the positive tone of the RAR regarding the market perception on banks commenting may be a short-term perspective as the recent improvement is small compared to the loss of confidence in banks observed over the last years. She underlined that the average price to book ratio of European listed banks is still below 1 (0.68) compared to US banks that stand at 1.47 which meant to her that everything equal to Europeans' banks value is half the one of the US. The EBA expert however underlined that although share prices have gone down in 2022 on equity markets, banks have actually outperformed the overall expected index.

34. Another BSG member underlined that for her, the deterioration of the macroeconomic outlook was not yet materialised in the data. She asked the EBA staff whether the expected impact on housing was already taken into account. EBA staff mentioned that the impact on housing markets is a source of concern. He also stressed a decline in mortgage lending that is already observed and the fact that prices are not rising for the first time in years. He also noted that the decrease of cost of risk could be the result of a reallocation of COVID overlays that would hide an increase of provisions. On funding, he stressed that no major tensions have been observed for the time being.

35. Another member explained that investigations started in 10 banks in Romania who are accused of manipulating the ROBOR index. It is supposed that this practice has led to establishing this ROBOR index to an upper level than normal. Since this investigation started, the index has started to decrease. She also commented on dubious declaration that a bank made regarding the possibility for an early repayment that consumers would like to use in case interest rates increase. The EBA Chair thanked for this information and noted that there is currently a combination of three aspects that are affecting consumers: (1) inflation that affects people's cost of living, (2) higher interest rate environment, which is hitting households that have borrowed in flexible rate and finally (3) there is increased pressure on banks on compliance issues. He underlined that banks need to be more and more aware of these issues and the EBA is indeed putting the consumers at the core of the key activities to be conducted in the coming years.

36. The BSG Chair asked whether there is an evolution on NPLs for the last quarter of 2022. She also asked whether there is data on the government guarantees and whether there is an observed increase of the deposit rates? EBA staff explained that NPLs remained flat between Q2 and Q3 but seems that NPL inflows has increased while the outflow seems to decrease. Public guarantees stand at 350 billion, concentrated in ES, IT and FR. Regarding deposing rates, overall, for the stock of deposits, in the case of NFCs the increase was higher than the increase of lending rates. This is detailed in the EBA RAR, with a detailed annex. The EBA Chair also mentioned that the monitoring of COVID19 guarantees was about to end.

37. BSG Chair thanked EBA staff for the risk presentation and suggested that information on deposit rate per country is included in the next risk presentation.

Agenda Item 5: EBA MREL shortfall report and impact assessment (B-Point)

38. EBA staff from Prudential Regulation and Supervisory Policy Unit explained the background for this presentation which comes from a BRRD mandate, completed by an impact assessment to assess the impact of MREL on the market to feed into the ongoing discussion on BRRD. He stressed that this mandate had been included in BRRD2 at a time where MREL was already implemented Therefore the analysis does not look back before MREL time (2015), but is trying to assess impact of MREL today on financial markets. He noted that the Commission is currently reviewing the CMDA framework and looking whether MREL is appropriate for all banks in a context of increased funding costs, which impacts profitability. Finally, he concluded that since the report is not yet public, the presentation provided to the BSG is focused on key messages.

39. Another EBA staff provided an overview of the draft report showing evidence of whether MREL issuance has an impact on specific banks. The report shows that banks facing difficulties to issue MREL remain limited in terms of total assets, but they can represent a significant share of total assets in some member states.

40. Regarding the impact on banks' profitability, the cost of closing the MREL shortfall, calculated only considering shortfall banks and not all the sample, would be manageable and amounts to 2% NII (1.5 for O-SIIs and 2.3% for other banks). The cost of existing shortfall of eligible debts considering all banks in the sample, is estimated at 1.22% of NII (0.96% for G SIIs, 1.44% for O SIIs and 1.70% for other banks). 70 banks out of a sample of 245 reported an MREL shortfall of €33bn (down by 42% compared to last year's quantitative report on MREL). The EBA received 337 external MREL decisions that cover 81.2% of EU banking sector assets, with bail-in as the prominent strategy covering 77.3% of EU banking sector assets. The MREL requirement for the 245 banks subject to an external MREL requirement was on average 22.6% of the total risk exposure amount (TREA) with a combined buffer requirement of 3.3% of TREA. The MREL requirement for the 133 non-resolution entities subject to an internal MREL was on average 20.2% of TREA with a combined buffer of 2.9%.

41. Resolution entities made progress in complying with MREL by increasing the stock of eligible instruments rather than from deleveraging. The cost of MREL issued so far is generally manageable for all banks but varies by type of banks.

42. The BSG Chair asked whether the final report would include detailed information at country level. One of the EBA experts replied that in terms of shortfall, the report does not show data by country, but in terms of MREL, it shoes the data by country in the brief board. The report will most likely be published in January 2023.

43. The BSG Vice-Chair member noted that impact on profitability should not be limited to NII but should also look at the bottom line and look deeper at the category of medium size banks among which there may be other issues. He also noted that the funding plans of the banks are mainly

driven by MREL requirements at the moment. Another driver of the funding plans that would explain the use of Tier 2 is the subordinated requirement of MREL. So far, as there is plenty of room on the subordinated requirement of MREL, there is a preference on senior non preferred.

44. Another BSG member thanked for the report and requested data on shortfall country by country. She underlined that this goes in a wider topic of transparency and disclosure of MREL requirements (actual levels) and could be a sensitive subject. She underlined that in SE and also other countries in the Nordics, the supervisory and resolution authorities are producing reports, bank by bank, providing a high level of transparency and disclosure on capital composition. If the Resolution Authorities hadn't shared the data, probably the banks would have shared them voluntarily, which helps create confidence in the market. She also congratulates the EBA for being on the right track with this analysis.

45. Another BSG member thanked for the report and welcomed the fact that this information will be provided on an annual basis, given the change in monetary policy that occurred in 2022. She also noted that most of the information is shown in percentage, but it would be useful to show them in absolute numbers to assess the market capacity to absorb the instruments. She agreed that cost should be expressed as a percentage of net earnings, not only NII.

46. EBA staff thanked BSG members for their comments and welcomed the push for further transparency. He explained that through the EBA ITS on MREL reporting and disclosure, as of 1st January 2024, individual banks will have to disclose their MREL requirements and resources. He noted that the shortfall report is annual but that the impact assessment will be produced every three years. Following the BSG comments, the impact of MREL is included on the bottom line by looking at RoE but added a box on the cost of refinancing and the changes of the funding conditions.

47. EBA staff explained that the final report will include detailed information in absolute amounts (i.e. impact on balance sheet), however the impact on profitability will appear in percentage, but broken down by Member State. On the transparency side, she confirmed that the data is displayed by country on eligible instruments and on shortfall.

48. The BSG Vice-chair suggested it would be useful to see not only the impact of MREL but also the contributions to the Single Resolution Fund, to show the efforts the banks are making to contribute to this safety net. EBA staff explained that the only difficulty is that the EBA report is EU 27 wide, while the SRF is a Banking Union specific scope, so there are various types of arrangements of resolution funding inside and outside of the Banking Union.

Agenda Item 6: EBA report on the thematic review on the transparency and level of fees and charges of retail banking products (B-Point)

49. EBA staff from the Innovation, Conducts, and Consumers Unit provided an overview of a recent EBA thematic review on the transparency and level of fees and charges of retail banking products. Fees and charges levied by financial institutions on the banking retail products is one of the topical issues causing the greatest detriment to consumers and which has been identified in several editions of the EBA Consumer Trends Report (CTR).

50. In order to gain a detailed insight of the market practices on fees and charges and a better understanding of the detriment caused to consumers, the EBA has used one of the newly conferred powers and carried out a thematic review on this issue in 2021. The report on the thematic review on fees and charges has been submitted to EBA BoS for approval for its meeting of 7 December 2022.

51. The thematic review is only a first step into a challenging topic, and the main findings in terms of regulatory framework, relevance of fees and charges for firms, and most detrimental fees and issues identified through the review for each product or service under the EBA's remit of consumer protection.

52. EBA staff also thanked for the BSG input regarding 'Consumer concerns about the rise of interest rates', provided in the previous meeting by a representative member of consumers. The thematic review is very much in line with findings in the BSG presentation.

53. A BSG Member selected to represent consumers, thanked EBA staff for the presentation which he interprets as a signal that EBA is taking on board some of the concerns raised by consumers associations. He asked for further details on the timeline and the participants to the exercise. With regards to level of fees, he acknowledged that EBA has no powers towards banks but was wondering how EBA can assess whether the level of fees is justified. Regarding terminology confusion (creating difficulties for consumers), he noted that the PAD was trying to solve that issue but already mentioned in the CTR and at the BSG that there is still a lot of confusion, for instance with mortgages where there can be several different names for the opening of a process. The consumers have access to a standardised sheet, but they don't know how to compare the fees and corresponding charges, which is the aspect that needs most of the work. Further, he asked whether only retail fees and charges were assessed or if corporates were included as well and whether there is an analysis per member state.

54. EBA staff answered that questionnaires were sent to 12 consumers' associations (representatives of many jurisdictions) in August 2021, with a one-month window to reply. 5 national consumer associations replied, among which also the Portuguese one. She explained that EBA will continue to monitor through the CTR, which will be published Q1 2023. EBA and most of the NCAs have limited powers in their Founding Regulation, so the EBA will keep

monitoring. On terminology, which is sometimes misleading to consumers, she confirmed that it was observed that standardisation was better for products under the PAD. She also confirmed that questionnaires were on retail banking products, so the expected answers were on retail banking products. Replies were received by jurisdiction, but the report is anonymised.

55. Another BSG member asked for further details on the consumers' associations that participated to the exercise. He also questioned why early repayment is perceived as a problem, underlining that fees are usually not an issue for early repayment. EBA staff explained that early repayment is a source of a high number of claims submitted by consumers on fees.

56. Another BSG member noted that the level of responses and the concerns appear very general, missing precise information about the level of fees and charges. As previously stated, he insisted on having a situation on every member state and be able to analyse the differences. He also expressed his interest in participating to the next exercise of the EBA, as a specialised consumer organisation in financial services may be more helpful than general ones.

57. Another member agreed that consumer protection authorities should be the ones receiving complaint against banks and it would indeed be useful to involve them in the debate. She underlined that SE authority publishes quarterly information on the margins on mortgages. SE central bank has also run a large cost study, to be published soon, where all products and segments of the SE payment markets are detailed. These are good examples of how comparison can be done for the sake of transparency.

58. On the general level of information on the level of fees, EBA staff acknowledged that this is a first attempt (the first exercise on thematic review on fees and charges that the EBA carried out) and that they found a limitation to share quantitative information given the confidentiality of such data. Regarding the NCA powers, the EBA cannot act on this issue. When it comes to future participation in the exercise, the BSG members will be update on all the EBA initiatives and exercises from a consumer protection point of view.

59. Further comments from BSG members were focused on overdraft fees. In terms of consumer detriment, there is a difference depending on the situation of the consumer and for those who are in financial difficulties, overdraft fees are a real issue. It was also suggested that a future exercise should focus on an analysis on how fees are used to push customers not to use a service. For instance, banks would give credit card for free and debit card with a fee. The ranking and order of these issues is not necessarily associated to the ranking of the detriment that has been caused to consumers. In some members states there is an ongoing campaign to try an cap the overdraft fees, but not all banks are applying it.

60. A member commented that some authorities clearly do have a mandate to intervene on the level of fees and charges, but due to the cumbersome procedure, do not act on it. For other authorities it is more a matter of interpretation about whether they have a mandate or not. She also noted that competition authorities are key in this area, where there is a lack of competition transparency has limited benefit as there is little choice. There were further

suggestions for consideration to be included in the next iteration of retail risk indicators, explaining why the presence of fintech is not a complete substitute for banking concentration.

61. EBA staff answered that the report includes information provided from the respondent's feedback. She took good notes of the suggestions for further work and confirmed that the report focused on retail banking products for consumers. Notes were also taken on the issues related to procedure.

Agenda Item 7: BSG comments on the ESAs joint call for Evidence on greenwashing (B Point)

62. BSG members (the Vice-Chair and the coordinators of the Sustainable Finance WG) made a presentation on greenwashing in order to prepare their upcoming answer the ESAs joint call for evidence on greenwashing. This is not the official answer of the BSG to the consultation (the official answer will arrive in a couple of weeks). BSG members provided two presentations including (1) a stoke take of greenwashing trends in the financial sector (concerns, drivers and examples of greenwashing) and (2) an initial view on the key issues and priority topics that should be addressed by the ESAs in its responses to the call for advice to Commission.

63. EBA staff thanked BSG members for their interest and acknowledged that ESAs are still at an early stage on the work on greenwashing and stressed the importance of this survey for the ESAs whose purpose is to gather inputs from a wide range of stakeholders on how to understand the key features, drivers and risks associated with greenwashing and to collect examples of potential greenwashing practices. Little knowledge and experience has been in this are gained yet, as we are still in early development and implementation of the Sustainable Finance Regulation by credit institutions, but also because the monitoring on greenwashing risk by supervisors is also yet to be developed.

64. As a reaction from the EBA expert to the presentation, it appears that the suggested approach to greenwashing included in the presentations by the BSG is globally in line with ESAs/ EBA's plan to address the Commission's call for advice. Still a black box on how greenwashing may occur in retail banking, corporate banking, funding and own funds management, because based on the research done so far on the available sources to the EBA and publicly available sources, it is possible to capture those issues at entity level, but it is more difficult at product level, or in specific segment of banking activities. This is necessary to better assess the risk drivers and the materiality of the issue. The EBA agrees on the fact that at this stage, emphasis should be put on clarifying the concept of greenwashing, but setting up the core features and evidence of greenwashing. Greenwashing is not considered as an overarching category but rather a sub-category of misconduct. Some existing EBA products are already there to include greenwashing matters (ie. Guidelines on loan origination). Finally, she noted that the primary purpose of this work is not to build a more punitive approach to greenwashing, it is about understanding the greenwashing phenomena, identifying the activities or products where it

may occur and see how we can build up regulatory guidance to support the monitoring of greenwashing and supervision of greenwashing.

65. A BSG member emphasised the context that presenting data about sustainability is challenging and that many institutions are trying to do it on their best efforts, but equally considered that this approach is too restrictive to make a distinction between negligence or intentional greenwashing as it does not make a difference from the recipient perspective. For instance, lots of investment funds have banking groups behind them, so it's hard to clearly separate them. There are examples of funds, which are labelling themselves as green funds and choosing benchmarks which have nothing to do with the green characteristics against which they are being marketed. It may or may not be deliberate, but it does not change the issue for the investor. Many of the challenges faced are not different from the misleading representation.

66. The BSG Chair referred to a broader debate on greenwashing related to the offsetting mechanisms, that has been discussed also at several closed groups at the COP 27. Some of these offsetting mechanisms could be innovative and prove useful to combat climate change, while others might certainly be used to greenwash, which need to be identified and carefully assessed.

67. Another BSG member supported the work on this topic and raised two points. On one, he totally understands the desire to have an element of intentionality brought into the definition. There is quite some reluctance with financial institutions to take on certain commitments because they are afraid of being sanctioned, but it is difficult to draw the line between negligence and incompetence. The other point is whether BSG should say it is enough if there is a recognised international organisation that recognises that this is up to standard. The risk may arise from getting into a kind of privatisation of the Regulation, as a lot of these initiatives are to a certain extent sector lead initiatives. As conclusion, if you make a commitment you need to organise research.

68. Another member noted that the difficulty of this Call for evidence is that it comes at a time when lots of issues have been solved. At the same time, she mentioned the need to be extremely humble about competence in the field of ESG, as financial experts are not climate experts, banks are not scientists and science is evolving. She agreed on the point that private sector initiatives cannot be the benchmark. One of the reasons why there is this proliferation of greenwashing allegations in particular by NGOs and media, she considered that it is because of the lack of clarity in the regulatory framework.

69. The EBA Chairperson provided the BSG members with two key issues where their input would be useful: firstly, identifying what are bad practices in standard banking activities (in governance, risk management, lending), in order to identify potential vulnerabilities. Secondly, identifying a common definition of greenwashing, capturing the key ingredients that the definition should or should not have and then merge together the views on this definition from the BSG and the other ESAs.

Agenda item 9: BSG Mystery Shopping (B-Point)

70. The BSG members prepared a presentation of a mystery shopping exercise carried out in Spain by ASUFIN and WWF to assess whether the new MIFID 2 reform changes have been implemented by investment entities.

71. EBA staff from the Innovation, Conducts, and Consumers Unit thanked BSG members for this presentation. She underlined that this exercise is focused on investment products, which is not in the EBA remit, but also reminded that the EBA is interested in better understanding how such activity was run. She reminded BSG members that EBA has already published a report on NCAs activities.

72. BSG member suggested a further discussion with EBA to better explain the preparation and the process of this exercise.

73. Several BSG members expressed their support for the presentation and the exercise.

Agenda item 8: EBA response to the CfA on the review of the securitisation prudential framework

74. EBA staff from the Prudential Regulation and Supervisory Policy Unit mentioned that this presentation is quite timely, as the response to this call for advice had been published a day ahead of the meeting (12 December). It consists of two parts, the assessment of the recent performance and appropriateness of the rules on capital and liquidity requirements for banks and the review of the securitisation capital framework applicable to (re)insurers.

75. Securitisation has played a limited role in Europe since the aftermath of the 2008 crisis. Overall, the current market is smaller, but of a higher quality and more prudently regulated, and the pre-crisis levels have been unhealthy and unsustainable and do not serve as a benchmark to be targeted. The ESAs welcome the current review as an opportunity to assess the performance of the current framework and support the objective of reviving the EU securitisation market. However, for the three ESAs, re-calibrating the securitisation prudential framework would not be a solution which alone would ensure the revival of the securitisation market. Therefore, the targeted proposals aim at improving consistency and risk sensitivity of the capital framework for banks whereas the liquidity framework for banks and the prudential framework for (re)insurers should be maintained as it currently stands.

76. A BSG member reacted on the comparison with the US since some instruments used in the EU differ from those used in the US. She took the example of covered bonds, which are more a funding instrument like senior non preferred or senior debt in the EU. She also suggested a more harmonised approach at the supervisory level. EBA staff explained that when comparing

US and Europe, only public markets are compared as we do not have the same data (excludes synthetic private securitisation, netting agencies RMBS and covered bonds). In a nutshell, the outstanding balance of public securitisation in Europe has decreased by 25% from 2014 to 2020, while in the US there was a growth of only 3% in the outstanding amounts of non-agencies mortgage-backed securities.

77. Another member welcomed the conceptual statement of the report like the point on limited agency risk for originators on retained tranches, the importance of the SRT market or suggestions that financial stability risk is limited and could support some growth in the market. She agreed that the proposals made are in step in the right direction, in particular with floor on retail tranches in IRBA. She asked the EBA whether there is already an idea of how the EU COM will follow up with this report and if there is any appetite from the Basel Committee to reopen any discussion.

78. The EBA expert confirmed that the COM is aware of the EBA proposal and there is hope that some of the proposed changes could fit in the Banking Package.

Participants of the Banking Stakeholder Group meeting 13 December 2022[1]

Annex 1: Attendance list, by constituency

Attending

Julia	Strau	AT	Raiffeisen bank International AG
Christian	König	DE	Association of private Bausparkassen
Eduardo	Avila Zaragoza	ES	BBVA Group
Johanna	Orth	SE	Skandinaviska Enskilda Banken (SEB)
Vèronique	Ormezzano	FR	BNP Paribas
Erik	De Gunst	NL	ABN AMRO Bank
Wolfgang Johann	Gerken	DE	JP Morgan SE
Sèbastien	De Brouwer	BE	European Banking Federation
Leonhard	Regneri	DE	Input Consulting gGmbh
Andrea	Sità	IT	UILCA Italian Labor Union - credit and insurance sector
Patricia	Suárez Ramírez	ES	ASUFIN
Jennifer	Long	IE	International Monetary Fund
Monica	Calu	RO	Asociatia Consumers United/Consumatorii Uniti
Tomas	Kybartas	LT	The Alliance of Lithuanian consumer organisations
Vinay	Pranjivan	PT	Associação Portuguesa para a Defesa do Consumidor
Martin	Schmalzried	CZ	Confederation of Family Organisations in the EU
Rens	Van Tilburg	NL	Sustainable Finance Lab
Alin Eugen	Iacob	RO	Association of Romanian Financial Services Users
Constantinos	Avgoustou	CY	Regtify Limited
Rym	Ayadi	TN	City University of London, Business School and CEPS
Monika	Marcinkowska	PL	University of Lodz
Concetta	Brescia Morra	IT	University Roma Tre
Edgar	Löw	DE	Frankfurt School of Finance & Management
Sebastian	Stodulka	AT	Erste Group Bank AG

<u>EBA</u>

Chair	Jose Manuel Campa
Executive Director	Francois-Louis Michaud

Heads of Unit

Philippe Allard;
Angel Monzon;
Dirk Haubrich;
Francesco Mauro.

EBA experts

Mihnea Sarca;
Juan Garcia;
Achilleas Nicolaou;
Maria Rocamora Fernandez;
Thibault Godbillon;
Margaux Morganti;
Mira Lamriben;
Fabien Le Tennier;
Noemie Papp;
Roberta De Filippis.

For the Banking Stakeholder Group

Done at Paris on 21 December 2022

José Manuel Campa

EBA Chair