



EBA BS BSG 2022 014

Board of Supervisors and Banking
Stakeholder Group

22 April 2022

Location: EBA premises

Banking Stakeholder Group 22 April 2022 – Minutes

Agenda item 1: Welcome and approval of the agenda

1. The Chairperson welcomed the Members of Banking Stakeholder Group (BSG) at the EBA premises.
2. The Chairperson asked the BSG whether there were any comments on the draft agenda. There were no comments on the agenda.
3. Finally, the Chairperson informed the BSG that the Minutes of the have been approved in written procedure.

Conclusion

4. The BSG approved the agenda of the meeting.

Agenda item 2: BSG update on the latest developments

5. Since the February meeting, the BSG has provided a response to the EBA's CP GL Remote customer on-boarding. Members of WG4 (Payments, Digital, Fintech and Regtech) had a bilateral meeting with EBA staff regarding the Call for advice on non-bank lending, following their presentation at the February meeting.
 6. BSG working group 1B (Resolution) met with EBA to discuss their feedback on EBA resolvability guidelines, transferability guidelines, resolvability testing and the publication of the bail-in mechanics by resolution authorities.
 7. The BSG working group 1A has been working on follow-up paper converging the views of the stakeholders who participated to the workshop on the implementation of Basel III in the EU with high-level speakers from the EC, SSM, industry and academia. They expect to finalise their paper in April.
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8. The BSG has started planning a workshop on ESG to be organised later in 2022.

Agenda item 3: EBA update on general developments

9. The EBA Chairperson highlighted some of the major developments since the last virtual meeting on 9 February. He underlined that the last two months have been very conditioned for the EBA with the geopolitical situation of the Russian invasion in Ukraine, where the main focus was on analysing the short-term implications, monitoring the situation, having an active collaboration with NCAs, especially with resolution authorities, the ESRB and the other ESAs. Another area of focus was helping and providing support to the COM in the effective enforcement and implementation of the sanctions regime in EU Member States. The Chairperson underlined that most EU CAs do not have a direct mandate on sanctions.
10. Then he mentioned that in March, the ESAs published a warning for consumers regarding the highly risky and speculative nature of crypto assets. Therein the ESAs set out key steps consumers can take to ensure they make informed decisions. This warning comes in the context of growing consumer activity and interest in crypto-assets and the aggressive promotion of those assets and related products to the public, including through social media.
11. He also noted that the EBA published on 12 April its final draft Regulatory Technical Standards (RTS) specifying the requirements for originators, sponsors and original lenders related to risk retention as laid down in the Securitisation Regulation and as amended by the Capital Markets Recovery Package (CMRP). These RTS aim to provide clarity on the risk retention requirements ensuring a better alignment of interests and reducing the risk of moral hazard, thus contributing further to the development of a sound, safe and robust securitisation market in the EU.
12. He noted that the EBA published on 22 March the findings from its assessment of competent authorities' approaches to the anti-money laundering and countering the financing of terrorism (AML/CFT) supervision of banks. Since the EBA started those reviews in 2019 and strengthened its AML/CFT guidance, national supervisors have started to adopt meaningful reforms to improve their AML/CFT supervision, but the EBA found that significant challenges remain in important areas such as the identification and assessment of money laundering and terrorist financing (ML/TF) risks.
13. Finally, he mentioned that the EBA published on 18 March its final revised Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing. The revisions aim at implementing the amendments to the Capital Requirements Directive (CRD V) and Capital Requirements Regulation (CRR II) and promoting convergence towards best supervisory practices.
14. The floor was given to the BSG members for comments and questions. One member asked if there will be an update on the EBA Opinion on Customer Due Diligence on Asylum Seekers from higher-risk third countries or territories. The EBA Chairperson responded that there will

not be an update, but the EBA will provide information on how that opinion will translate into guidelines on customer onboarding, financial inclusion and AML/CFT.

15. Another question from one of the BSG members was about the initiatives on macroeconomic stability tools and if steps will be taken toward EU level decisions. The EBA Chair responded that there is the perception at EU level that additional tools may be needed leading to a broad discussion on harmonisation to maintain flexibility at national level.

Agenda item 4: Update on risks and vulnerabilities in the EU

16. The presentation by EBA staff covered Q4 supervisory reporting data, followed by an analysis of the impact of the Russian war on EU/EEA banks. He explained that Q4 data show that banks maintain comfortable capital and liquidity buffers. The FL CET1 ratio remained stable at 15.4% in Q4 (15.4% in Q3 and 15.1% in Q4 2021). A slight increase in RWAs was offset by organic capital generation (rise in retained earnings). He noted that the overall NPL ratio continues a downward trend (2% in Q4 vs 2.1% in Q3). The volume of FBL has also been on a declining trend since March and in Q4 stood at EUR 365bn (-4.5% QoQ). In the sectors most affected by the pandemic asset quality deteriorated somewhat over the quarter.
17. RoE declined slightly QoQ (7.3% in Q4 vs 7.7% in Q3) but it is well above the levels observed in Q4 2020 (1.9%). He concluded that the main concern at present is the potential impact of the war in Ukraine, the imposed sanctions and the potential impact this may have on the wider economy and banks. Equity and debt markets reflect developments related to the Russian war.
18. EBA staff then explained that equity indices have fallen substantially, particularly at Eastern EU stock exchanges. Shares of more exposed banks are 50% down compared to the maximums reached by mid-February. Euro area bonds had benefitted from the flight to safe haven assets, but yields started widening again. Spreads (to Bund) are slightly up. Some tensions are observed in Eastern non-EA countries.
19. Gas and oil prices have risen substantially. Agricultural products have also been affected while metal markets are experiencing mixed trends.
20. The EBA staff explained that the current indications are that first round effects of the Ukraine war will be limited to some banks: total exposures towards Russia and Ukraine close to EUR 90bn (0.3% of total).
21. He also stressed that indications are that neither derivatives with Russian counterparties, nor commodity related exposures are a major business of EU/EEA banks, but there might be some risks in a limited number of banks. Several analysts provided calculations of “walk away” scenarios, with CET1 impact of up to around 200bps. Banks have on broad average limited positions in very volatile commodity markets, with exceptions.

22. EBA staff explained that the key concerns from the second-round effects are, on Credit risk, direct credit losses likely limited to a few banks. Medium-term sanctions and macroeconomic deterioration (stagflation or recession) poses a bigger risk to the broader EU/EEA banking sector. Concerning the liquidity and funding risks, banks impacted by sanctions could experience massive deposit outflows and restricted access to USD funding. There have also been reports (anecdotal evidence) that fake news resulted in elevated deposit withdrawals. Regarding the operational risks, there is the risk of disruptions to financial infrastructure due to cyber-attacks and rising operational challenges related to the application of different sanction regimes. The cyber war has been milder than expected so far but related risks and vulnerabilities remain high.
23. A BSG member presented possible walk away scenarios. On 3rd country subsidiaries, he underlined the need to write-down all capital instruments. He explained that in the case of 3rd countries where banks have struggled to issue AT1 instruments to be considered at consolidated levels, the issuance is rather inefficient. Loss absorbing capacity has to be found locally. The last CRR version tried to solve this, but the real interpretation of the ECB makes it impossible. The BSG Member considered that in general minority interests are not very well treated by prudential Regulation and that it is very inefficient to have CET1 minority interests eventually. He stressed that the CRR is pushing banks not to find local funding and local loss absorbency capacity. He then added that the National Bank of Ukraine (NBU) has reported some reluctance from some banks to make payments through Ukrainian banks. The NBU made clear banks are fully operating, a fact confirmed by EBA staff.
24. Another BSG member asked if there will be a moratoria like the one adopted by the EBA during the pandemic. The member noted that cash withdrawals in neighbouring countries to Ukraine were three times higher since the beginning of the war than at the beginning of the pandemic. The demand for cash was even higher than in Ukraine. He noted that in Eastern Europe, many people fear an escalation of the war and are asking what will happen to their money if the war extends to their country. He stressed that in his country some people are withdrawing money for precautionary reasons and others are buying crypto assets. In in this regard, he suggested that banks should have included worst case scenarios in their contingency plans and would be wise to provide some communication to the market for reassurance, having in mind that the main issue is how to convince citizens that the war will not wipe out their savings eventually.

EBA staff explained that there is no plan to adopt an EU-wide moratoria for the Ukraine war similar to the one that was adopted for the COVID-19 crisis at this stage. The Chairperson noted that NCAs are asking banks to update their Internal Capital Adequacy Assessment Processes (ICAAPs) to consider more severe scenarios. On the commodity slide, it was sad that EU banks have retreated from derivative markets (some of these derivative exposures were hedged). Value at risk (VAR) is increasing because the volatility is increasing, but also the multiplier of the VAR is increasing because back-testing is affected.

Agenda Item 5: BSG own-initiative report on de-risking

25. The BSG presented an own-initiative paper on de-risking, in which the BSG acknowledges and welcomes the EBA's opinion and annexed report on de-risking issued in January 2022. Overall, the BSG approach to de-risking is aligned to the one set out in the EBA Opinion.
26. Focusing on specific categories of customers affected by de-risking, the BSG provides several recommendations to the EBA. The scope of these recommendations includes Payment Service Providers, where the BSG recommends the EBA to play the role of facilitator at EU level by organising the dialogue between banks and non-bank PSPs on de-risking - NGOs and non-profits, where the BSG recommends the EBA to facilitate and coordinate educational effort between NCAs.
27. The BSG report refers to 'Accidental Americans', understood as EU citizens who have some connection with the US, sufficient for them to be potentially in the scope of the American 'FATCA' legislation, which brings very significant reporting obligations for financial institutions along with the risk of very significant financial penalties if obligations are not met. For those 'accidental Americans', the BSG recommend the EBA to build a more robust 'evidence based', convene supervisory convergence work and to seek further input from financial institutions on the challenges they encounter in relation to US persons and to promote transatlantic dialogues.
28. For financially excluded and vulnerable groups, the BSG recommends the EBA to coordinate mystery shopping activity among national competent authorities to explore the access available in practice for those customers and to ensure that the digitisation of on boarding and CDD does not lead to further exclusion of those who are less technologically literate or enabled.
29. EBA staff reacted to the BSG presentation to provide insights on the follow-up work that has been carried out at EBA level on de-risking. This includes a workshop organised on the 11th of March on 'lessons learnt and good practices' to tackle unwarranted de-risking. The COM requested the EBA to issue Guidelines on the interaction between AML/CFT requirements financial inclusion and these are currently in preparation. The aim of these Guidelines is to solve as much as possible the problem of the interaction and possible conflict in between the Payment Accounts Directive (PAD) on one hand and the AMLD on the other, but also to tackle specific categories of customers in this context, the COM referring specifically to refugees and NPOs.
30. When it comes to Payment Institutions, the COM has been clear that they will try as much as possible to resolve some of the issues, including the clarification of Article 36 of PSD2, in the current revision. The EBA has also been asked to provide a response for the call for advice on the revision of PSD2 and in this context the AML and COPAC Units are working closely in order to make sure that the issue of de-risking of payment institutions is dealt with as part of the discussion and the preparation of the new PSD3.

31. The EBA Chair reacted on the term 'Accidental American' not being well defined. . He underlined that as American citizen, you have obligations and the AML rules should not facilitate people not to comply with the obligations they have through their citizenship. The 'FATCA' legislation is clear, well defined and the financial institutions in the EU must be aware and comply with basic obligations. However, he agreed that some groups could be exposed to financial exclusion, like minors or students that have no income.
32. One BSG member asked about the specific recommendation of the EBA to play the role of facilitator in case there is a problem between a bank and a payment institution. The EBA Chairperson said the EBA indeed has a mediation role, but it does not apply to payment institutions..

Agenda Item 6: Call for advice on the Mortgage Credit Directive

33. The Chairperson opened the floor drawing the attention to the fact that the European Commission (COM) has initiated the process for review of the Directive and has submitted to the EBA in December 2021 a Call for advice on the review of the MCD. The EBA has already started the work on the development of the EBA's response to the Call for advice.
34. The EBA then introduced the undergoing work on the development of the EBA's response to the Call for advice on the MCD review.
35. The Mortgage Credit Directive (MCD) has applied since 2016. Article 44 of the MCD requires the COM to undertake a review of the Directive to consider the effectiveness and appropriateness of the provisions relating to consumers and the Single Market. In response to Article 44, the COM published a report on 11 May 2021 which concludes that the MCD has been effective in raising the standard of consumer protection and helped to harmonise mortgage lending practices across Member States. However, the level of protection still differs between Member States. The COM published also an Open Public Consultation and a Call for Evidence and intends to commission a study to support an impact assessment of any possible measures to be taken at EU level.
36. On 21 December 2021, the EC submitted to the EBA a Call for Advice on the review of the MCD (CfA), posing 25 questions spread across 6 different chapters which cover, inter alia, the MCD evaluation (exclusions from the scope of the MCD, tying / bundling, foreign currency loans), impact of digitalisation (peer-to-peer lending platforms, information disclosure rules at pre-contractual and advertising stage, creditworthiness assessment, robo-advice), ways to facilitate the cross-border provision of mortgages, ways to contribute to financial stability and lessons learned from Covid, sustainability (green mortgages and properties at risk due to climate change), other issues. The deadline for the EBA to reply to the COM is 30 June 2022.
37. EBA has started the work on its response to the CfA by developing a methodology to reply to the request, which includes identification of the most important and controversial issues

stemming from each question under each chapter. The EBA reply will also propose potential solutions on how to mitigate / address the issues identified.

38. The EBA agreed to develop its response to the CfA based only on feedback received from competent authorities, due to the short and challenging timeline for the submission of the response. The input from competent authorities might be complemented with observation from EBA staff as well as other EBA committees, if needed. EBA discarded the possibility to use feedback from external stakeholders to avoid duplication of work with the EC's parallel and public call for evidence and the external study.
39. The BSG members had several comments on the criteria of creditworthiness, the issue of information overload, which was raised by consumer organisations and the banking supervisors warning of having too much information (more than 60 pages) which the consumer is rarely reading and understanding. A proposed solution would be the creation of a standardised information sheet, possibly a one-page summary. On the issue of tying / bundling, an example, of practices is when banks may force clients to have a payment account in the same institutions that issued the mortgage. Considering the changes in banking fees and charges related to the payment account, using the Annual Percentage Rate (APR) as a criterion for choosing the best mortgage will become a bad choice in two years' time. It was also suggested that macroprudential tools are still at national discursion. Regarding the issues that come with the use of IT-supported and AI-supported in the assessment of creditworthiness (a challenge that applies to credit institutions using the system, as it does to the consumer or recipient), it was suggested to take into account and be aware of the explainability and transparency of the decision.
40. EBA staff acknowledged the issues raised by the BSG. On the information disclosure, consumers are indeed overwhelmed by information and there is work in progress on the matter to find a solution. The EBA staff is still reviewing the feedback from the NCAs on the review of the MCD and identifying potential issues. The input from the BSG is always welcomed and the EBA takes note of all the suggestions and will also assess them. Another issue raised by the BSG members was the cross-border lending aspect (especially in Member states using a different currency than EUR), the challenges in creating a common market mainly arise from areas that are outside the scope of the MCD and more from national legislation (NCAs).
41. The EBA Chair acknowledged that the feedback from the BSG was very helpful and invited the members to contribute to the open consultation of the COM on MCD and PSD.

Agenda Item 7: EBA presentation on the report on the application of the Guidelines on the remuneration of sales staff

42. EBA staff presented the report on the review of Guidelines on the remuneration policies and practices of sales staff. Remuneration policies and practices provide an important incentive for

sales staff. However, they must not create incentives that lead to consumer detriment arising from incentive-driven mis-selling.

43. The report shows that there is considerable room for improvement by financial institutions to put the consumers' interest into focus. The good practices outlined in the report provide detailed examples how financial institutions can ensure that they put consumers' interest at the centre of their operations and comply with the Guidelines.
44. While the report represents the most extensive supervisory convergence work that has been done in consumer protection by the EBA, and even though the report identifies highly valuable good practices, there are limitations to the methodological robustness of the exercise: only 12 NCAs participated, which approached 70 financial institutions and did so through a questionnaire only, i.e. no interviews or supervisory visits. To address this issue going forward, future supervisory convergence work will apply the revised EBA peer review process instead.
45. No resources are allocated to further advance the work on the remuneration policies and practices of sales staff for now. There was also little interest by SCConFin to support further work. Instead, EBA staff will focus on other consumer protection topics, such as the review of fees and charges, financial education and the response to the COM's CfA on the mortgage credit directive (MCD).
46. Several BSG members complimented the EBA for the high-quality report and the good presentation and concurred with the good practices identified. The findings were supported and it was stated that NCAs should be nudged to communicate the good practices to the institutions and consider them when supervising said institutions. That view was echoed and suggested that NCAs follow up with the institutions to assess their compliance with the Guidelines.

Agenda item 8: Call for advice on the PSD2

47. The European Commission has initiated the process for review of the PSD2 and has submitted to the EBA in October 2021 a Call for advice on the review of PSD2. The EBA has already started the work on the development of the EBA's response to the Call for advice.
48. EBA staff presented the undergoing work on the development of the EBA's response to the Call for advice on the PSD2 review.
49. The revised Payment Services Directive (PSD2) has applied since 13 January 2018. The EBA developed in total 14 sets of Technical Standards and Guidelines under PSD2. The EBA also 9 EBA Opinions and more than 200 answers to questions posed in EBA's Q&A clarifying various aspects of the legal framework.
50. The review clause in Article 108 of PSD2 requires the EC to report on the application and impact of PSD2 to the Co-legislator (the European Parliament and the Council), the European Central

Bank and the European Economic and Social Committee. The EC is to accompany the report with a legislative proposal, if appropriate.

51. On 20 October 2021, as one of the main pillars of its work on the review of PSD2, the EC submitted to the EBA a Call for technical advice on the review of PSD2 (CfA), posing 28 questions spread across the following 9 different sections - 'Scope and definitions', 'Licensing of PIs and supervision of PSPs under PSD2', 'Transparency of conditions and information requirements', 'Rights and obligations', 'Strong customer authentication', 'Access to and use of payment accounts data in relation to AIS and PIS', 'Access to payment systems and accounts maintained with a credit institution', 'Cross-sectoral topics' and 'Enforcement of PSD2'. The deadline for the development of EBA's response is 30 June 2022.
52. EBA has started the work on the EBA's response to the CfA by developing a methodology for the development of the work, which includes identification of the most important and controversial issues in relation to the interpretation and application of PSD2 and the related EBA instruments, and identification of the potential solutions on how to address these issues.
53. The EBA also agreed to develop the response to the CfA solely based on input received from competent authorities, mainly because of the very extensive content of the CfA and the very short and challenging timeline for the development of EBA's response. EBA discarded the possibility to use feedback from external stakeholders to avoid duplication of work with the EC's parallel and public call for evidence and the external study.
54. In the development of EBA's response to the CfA, EBA will leverage on the experience accrued during the development of the EBA legal instrument under PSD2 and the monitoring of their application, as well as on the very extensive clarifications provided through various Opinions and more than 200 answers to questions posed in EBA's Q&A tool.
55. Several BSG members asked and also encouraged on the possible merger of the PSD2 and EMD2. The business model that was envisaged when the EMD was developed was very limited and it has become a regime that is used for a wide range of purposes for which it was not designed and there are now big risks for consumer and potentially other constituencies. Consumers are using other licencing regimes, like an EMI licence in tandem with their crypto services. The main issue is combating fraud. On the issue of the implementation of Strong Customer Authentication (SCA), consumer representatives pointed out the exclusion happening in some MS. In these cases, a single solution based on mobile phone applications is in place to perform the second authentication factor, leaving out several consumers who do not use/trust/have smartphones. Regarding the magnitude of the changes in the transition from PSD2 to PSD3 and MCD the BSG members raised a call for the chance to contribute and provide feedback.
56. The EBA staff responded to the comments of the BSG members. In relation to the merger of PSD2 and EMD2 it is something the EBA will look closely into, considering the similarities and merging of business models. This would make sense, but it needs a discussion to assess all the

potential challenges of the move to open finance. On the contactless payments, this is unlikely to be part of the response to the call for advice, because this related to the RTS on Strong Customer Authentication (SCA). Thus, any requirements on these particular exemptions of the application of SCA might be handled through a revision of the RTS.

57. Regarding the work on the development of EBA's response to the CfA and sharing more detailed information on the issues, the EBA staff explained that due to the reasons highlighted in the presentation (limited timeline for the development of EBA's response and avoiding overlap with work carried out by the EC), it will not rely on input from external stakeholders. The issues to be included in EBA's response to the CfA are still under assessment and discussion within EBA's governance structure and the final issues to be covered will depend on the agreement by EBA's BoS.

Agenda item: AoB

58. The EBA Chair again underlined the importance of the contributions from the BSG to the EBA work and products, for which a formal comment is expected during public consultation periods. He explained that the EBA has been receiving an increased number of Calls for Advice from the EU COM over the last years for which a BSG input is not foreseen as BSG members' input on these matters should be submitted as part of the EU COM public consultation. This does not prevent from having a dialogue with the BSG on the Calls for Advice submitted to the EBA to exchanges views and provide input.
59. BSG members asked whether the July 2022 meeting could be organised on-site. The EBA Chairperson explained that the EBA has an overall target to reduce on-site meetings by 50% compared to 2019 in order to comply with its sustainability objectives as set for the EMAS certification. Therefore, since the October 2022 meeting is scheduled to be on-site, the July one has to be organised remotely.

Participants of the Banking Stakeholder Group meeting 23 April 2022¹

Vice-Chairperson: Eduardo Avila Zaragoza

Patricia	Suárez Ramírez	ASUFIN	Consumers
Jennifer	Long	International Monetary Fund	Consumers
Monica	Calu	Asociatia Consumers United/Consumatorii Uniti	Consumers
Vinay	Pranjivan	Associação Portuguesa para a Defesa do Consumidor	Consumers
Martin	Schmalzried	Confederation of Family Organisations in the EU	Consumers
Christian	Stiefmueller	Finance Watch AISBL	Consumers
Tomas	Kybartas	The Alliance of Lithuanian consumer organisations	Consumers
Julia	Strau	Raiffeisen bank International AG	Financial institutions
Christian	König	Association of private Bausparkassen	Financial institutions
Eduardo	Avila Zaragoza	BBVA Group	Financial institutions
Johanna	Orth	Swedbank	Financial institutions
Véronique	Ormezzano	BNP Paribas	Financial institutions
Erik	De Gunst	ABN AMRO Bank	Financial institutions
Sébastien	De Brouwer	European Banking Federation	Financial institutions
Sebastian	Stodulka	European Savings and Retail Banking Group (ESBG) & World Savings and Retail Banking Institute (WSBI)	Financial institutions
Elie	Beyrouthy	European Payment Institutions Federation	Financial institutions
María	Ruiz de Velasco Camiño	ABANCA	Financial institutions
Monika	Marcinkowska	University of Lodz	Top-ranking academics
Concetta	Brescia Morra	University Roma Tre	Top-ranking academics
Edgar	Löw	Frankfurt School of Finance & Management	Top-ranking academics
Alin Eugen	Iacob	Association of Romanian Financial Services Users	Users of Banking Services
Poul	Kjær	Copenhagen Business School	Users of Banking Services

EBA

Chair
Executive Director

Jose Manuel Campa
Francois-Louis Michaud

Heads of Unit

Philippe Allard; Jonathan Overett Somnier

EBA experts

Tea Eger
Mihnea Sarca
Andreas Pfeill
Amandine Scherrer
Margaux Morganti
Christoph Erkunt
Antonio Barzachki

For the Banking Stakeholder Group

Done at Paris on 08 June 2022

José Manuel Campa

EBA Chair