



EBA BS 2023 271 rev. 1

Board of Supervisors

19 April 2023

Location: teleconference

Board of Supervisors 19 April 2023 – Minutes

Agenda item 1: Welcome, approval of the agenda and Declaration of conflict of interest

1. The Chairperson welcomed the Members of the Board of Supervisors (BoS). He reminded the Members of the conflict of interest policy requirements and asked them whether any of them considered themselves as being in a conflict. No Member declared a conflict of interest.
2. The Chairperson welcomed Mr Francois Haas as a new BoS Alternate representing France.
3. The Chairperson asked the BoS whether there were any comments on the draft agenda. There were no comments on the agenda.
4. Finally, the Chairperson reminded the BoS that the Minutes of the BoS meeting on 15 February 2023 were approved by the BoS in a written procedure.

Conclusion

5. The BoS approved the agenda of the meeting by consensus.

Agenda item 2: Update from the EBA Chairperson and the Executive Director

6. The Chairperson updated the Members on six items.
 7. Firstly, the Chairperson informed about the EBA work on equivalence and said that the MB has approved the EBA internal Equivalence Roadmap in November 2022. The roadmap outlined the equivalence work until mid-2024 and the focus would be to proceed with ongoing Confidentiality and Professional Secrecy assessments, with the Regulatory and Supervisory Framework assessment of Andorra and Montenegro and with an overhaul of our monitoring methodology. At the same time, the roadmap allowed a certain degree of flexibility necessary to accommodate requests from the European Commission (EC) on files of particular sensitivity,
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such as the UK and Ukraine. He concluded by noting that the EBA Network of Equivalence had currently active members from six competent authorities (CAs) and the ECB and in view of the upcoming assessments, the EBA was planning to launch a call for candidates to expand the network.

8. Secondly, the Chairperson updated the Members on the EBA's work under the European Forum for Innovation Facilitators (EFIF) which the EBA has been chairing in 2023. He said that the EBA was planning to publish a Joint ESAs Report on regulatory sandboxes and innovation hubs, updating the 2019 report mainly by identifying good practices in innovation facilitators; as well as a report on cross-sectoral mapping of financial services provided by Mixed-Activity Groups' (MAGs). Both reports should be finalized by the end of 2023.
9. Thirdly, the Chairperson mentioned that on 14 March 2023, the EC sent a letter to the EBA informing of its intention to endorse with amendments the draft RTS specifying supervisory shock scenarios, common modelling and parametric assumptions and what constitutes a large decline for the calculation of the economic value of equity and of the net interest income in accordance with Article 98(5a) of Directive 2013/36/EU ('RTS on supervisory outlier test'). The EC submitted on the same date to the EBA a modified version of the RTS. The amended RTS was circulated to the BoS on 18 April 2023 together with the EBA Opinion on the amendments.
10. Fourthly, the Chairperson informed the BoS that DG FISMA has approached the EBA to seek feedback from CAs on their 'draft template on sanction provisions' which was a set of articles that they seek to include in future sectoral financial services legislation in order to have more consistency across legislation on supervisory powers in relation to administrative/criminal sanctions. EBA staff has accepted to support EC colleagues by way of a written short questionnaire addressed to the CAs. The documents (the draft template and the questionnaire) would be circulated after today's call ahead of starting a consultation via the EU Survey tool. Furthermore, EBA staff was planning to organise an informative session on the 10 May, where the EC services would present their work and the questionnaire.
11. Fifthly, the Chairperson reminded the Members to complete their annual declaration of interests. He noted that the EBA used a new online system this year which was simpler to use and the Members who have submitted their declarations already did not raise any issues with regard to the new system.
12. Sixthly, the Chairperson announced that as result of Jesper Berg's departure, the BoS would be approached to elect a new BoS representative in the Advisory Committee on Conflict of Interest (ACCI).
13. Finally, the Chairperson reminded the BoS that the EBA Away Day was scheduled to take place on 10 and 11 July 2023 in Malaga, Spain and that the registration process would be open in the coming days.
14. The Executive Director updated on three items.

15. Firstly, the Executive Director updated the Members on the EBA' continuous work on gender equality and diversity and said that on 07 March 2023, the EBA organised a high-level conference open to all management and staff from the 48 EU agencies with very prominent speakers including Commissioner McGuinness, the Chairs of the 3 ESAs, senior officials from the EC and other EU agencies. On 12 April 2023, the EBA adopted a Charter on diversity and inclusion based on the EC's Charter on Diversity and Inclusion. In this regard, he mentioned that there was a new page on the EBA website on diversity and inclusion.
16. Secondly, the Executive Director informed about the internal project on the evolving of the EBA premises reflecting the EBA's commitment under the EMAS certification, teleworking arrangements as well as onboarding of new staff for MICA and DORA.
17. Thirdly, the Executive Director summarised a number of external meetings attended and said that on 08 March 2023, the Euro Cyber Resilience Board for Pan-European Financial Infrastructures at the ECB took place, and the main points of discussion included the cyber threat landscape and outlook, cybersecurity initiatives, including the interplay between the revised Network and Information Security Directive (NIS2) and DORA. On 15 March 2023, at the FSC, he presented the EU wide stress test and the EBA's assessment of the risk landscape – the situation about US banks and whether we had similar issues in the EU. Finally, he noted that on 22-23 March 2023 the BCBS met and discussed about the risks, disclosure about climate risk (EBA was very involved at the technical level to try and foster maximum convergence) and Basel Core Principles update.
18. The Members did not raise any comments.

Agenda item 3: Risks and vulnerabilities in the EU

19. The EBA Director of Economic and Risk Analysis Department (ERA) updated the BoS on the latest developments in the EU related to risks and vulnerabilities. He provided a brief overview of the drivers affecting the main risk areas over a 6m-12m horizon and noted that the bank sector tensions in March have induced a change in the risk perception. European banks' share prices were down, below the wider share price index. Bank credit spreads also increased, while government yields reduced mainly due to flight to safety. Spreads for AT1s widened more to the Credit Suisse AT1s write-down but have since narrowed. Loan growth has slowed down in the last quarter of 2022. Banks reported lower outstanding volumes of loans. The trend seems to have continued in Q1, with loans towards households and NFCs roughly stable since the year-end. NPLs volumes remained stable while share of stage 2 allocation was marginally lower compared to previous quarter yet it remained elevated even compared to pandemic levels. Liquidity positions declined in Q4 2022 compared to Q4 2021, but LCR still remained at comfortable levels. While EU banks' deposit base was stable, latest ECB data indicated that deposit flows were declining, albeit marginally. The Director of ERA concluded by presenting a tentative EBA analysis of possible implications of a current consensus scenario for EU banks. The analysis assumed slower economic growth and higher policy interest rates and significantly higher corporate bond yields. The analysis focused on implications for capital

ratios, loan losses, net interest income and losses on bond holdings as well as profitability. It pointed to overall moderate and manageable implications for most banks.

20. A presentation by the Italian BoS Member followed. In his presentation he focused on recent developments in the Italian banking sector and noted that while the banking sector was resilient, there were still three main sources of vulnerabilities – weak macroeconomic perspectives, uncertainties from the geopolitical backdrop, and implications stemming from recent market turbulence episodes. He then also mentioned reinforced supervisory monitoring – inter alia - on banks' liquidity position (including the dynamic of less stable funding sources) and the unrealized losses on assets booked at the amortized cost.
21. The Members updated on their national developments. Several Members stressed the continuous uncertainty on the market. The majority of Members confirmed that lending volumes have dropped in the first quarter of 2023, in particular for mortgage lending, and in some cases significantly. The trend was mainly driven by lower demand and higher rates. In a number of Member States, the decrease was noticeable already in the second half of 2022. With respect to the commercial real estate segment, a few Members saw increased risks. The majority of Members have not observed asset quality deterioration for this sector. On deposits flows, some Members noted that there was a slight decrease of deposits and a move from sight deposits to fixed term deposits. Most Members remained vigilant but did not report any pressing issues related to liquidity. Some Members noted that the liquidity buffers were much higher than required by the legislation. Other Members said that banks in their jurisdictions were well placed to use liquidity reserves to repay TLTRO amounts and still have sufficient resources available to support their plans for credit growth. One Member questioned whether it was appropriate to consider liquidity risks as a high risk/red area, given the ample liquidity available for banks. Some Members remarked that they have not observed any significant contagion for the banks in their jurisdiction, as result of the recent developments in the US and Switzerland. However, one Member noted that rather than focusing on averages, it was the outliers that could affect the stability effects of the banking sector. In the recent case in the US, the market has seen an individual bank creating stability risks. Members welcomed the analysis on possible implications from higher interest rates and lower economic growth. Some Members pointed to the current high level of uncertainty and recommended continued vigilance. They also noted that supervisory caution was particularly required for banks with weaker market perceptions. Specifically, one Member noted that the health was determined by liquidity and capital, but it could be driven by emotions. Some price/book ratios were fragile and this was an area in which the regulators could push further.
22. The ESRB representative raised concerns in relation to the recent developments in the US and Switzerland and called for continuous monitoring of the situation in the EU banking sector.
23. The ECB Banking supervision representative stressed that while an average overview of the EU banking sector did not indicate any single issue of specific concern, there might be individual institutions that may cause negative developments on the market. Therefore, he highlighted the need of close monitoring. He noted that observed lending volume contraction was mainly

demand driven, and that to date only few weaknesses were observed in the real estate lending sector. He also noted that the commercial real estate sector was not very active, therefore it was difficult to estimate whether there has been material fall in commercial real estate prices. Finally, he mentioned that expectations persisted that banks would use mainly deposits held with the central banks to pay back outstanding TLTRO.

24. In his response, the Director of ERA acknowledged that the averages should not be considered as the leading guide and pointed at the ongoing 2023 EU-wide stress test exercise which was primarily focused on individual institutions. He noted that the EU-wide stress test aimed at providing good insights on the vulnerabilities in the banking sector.
25. The Chairperson concluded by noting the comments and confirmed that while the overall situation in the banking sector might not be worrying regarding the performance of the banks, the EBA would continue its monitoring for any potential weakness, which would also be also one of the aims of the ongoing stress test exercise.

Agenda item 4: Own funds: pre CRR review of CET1 instruments – lessons learnt

26. The Chairperson introduced the item by reminding the BoS of the mandate from 2017 based on which the EBA organized a review of the pre-CRR CET1 instruments performed during the past five years. The exercise has greatly improved the collective knowledge on the practical implementation of the CRR and RTS provisions and the CET1 eligibility criteria and its results would be included in the next version of the CET1 report.
27. The EBA Head of Liquidity, Leverage, Loss Absorbency and Capital Unit (LILLAC) summarised the main findings of the exercise. She said that in total 237 single issuances have been assessed by the EBA. While the EBA considered the majority of the instruments as fully compliant, some instruments were assessed as presenting non-compliant features with regard to the eligibility criteria. Instruments assessed as non-compliant have been kept in the EBA CET1 list when remedial actions were (planned to be) undertaken by the institution/the relevant authority within a foreseeable time horizon. For many instruments assessed, the EBA identified issues or non-best practices. In 16 cases amendments in national laws have been made. While at first sight these changes in national laws could have appeared challenging to process, in practice they have been effective in most of the cases, appropriately accompanied by necessary transitional periods granted to pass the amendments in law. Finally, the review led to an increase of the collective knowledge on how to implement in practice regulatory provisions from the Level 1 text in the context of the EBA ongoing monitoring work on capital. Going forward the review would focus on new types of instruments, in particular for investment firms.
28. The Members welcomed the work and review performed as a very useful tool to improve the quality of capital instruments and appreciated the knowledge built up as part of the exercise.

29. The SRB representative supported the work.

30. The Chairperson concluded by noting the Members' support also for the work forward.

Conclusion

31. The BoS approved the outcome of the review of the pre-CRR CET1 instruments and the conclusions by consensus.

Agenda item 5: Report on convergence of supervisory practices and on colleges referred to 2022

32. The Chairperson introduced the item by noting that one of the key mandates of the EBA was to actively foster supervisory convergence across the internal market. In this context, the EBA had to prepare, on an annual basis, a report to the European Parliament and the Council on the degree of convergence of supervisory practices.

33. The EBA Head of Supervisory Review, Recovery and Resolution Unit (SRRR) continued by clarifying that the EBA was mainly pursuing the convergence mandate by actively fostering it in the form of the annual European Supervisory Examination Programme (ESEP) and confirmed that the five key topics identified in the EBA's 2022 ESEP (i. Impact of the COVID-19 pandemic on asset quality and adequate provisioning ii. ICT security risk and ICT outsourcing risk, risk data aggregation iii. Digital transformation and FinTech players iv. ESG risk v. AML/CFT) were overall adequately incorporated into CAs' supervisory priorities, supervisory assessments and colleges' work. CAs were, however, still in the process of building up their capacity to review the risks associated with the digital transformation and ESG and supervisory intensity on these topics was expectedly not homogeneous. He noted that the Report was also acknowledging that the colleges monitored worked effectively in 2022, although more attention was expected to the full compliance with the provisions of the ITS on the Joint Decision for institution-specific prudential requirements, and that Supervisors showed ability to react to macro events that materialised in 2022 affecting the financial situation of institutions under their supervision, although information exchange and cooperation should be enhanced and policy work was already ongoing to ensure such improvements. He concluded by saying that the relevant standing committee unanimously supported the Report and its submission to the BoS, also welcoming the new, streamlined, format.

34. The Members supported work and did not raise any comments.

35. The Chairperson concluded by noting the Members' support.

Conclusion

36. The BoS approved the EBA Report on convergence of supervisory practices in 2022 and its subsequent publication by consensus.

Agenda item 6: Final draft RTS on synthetic excess spread

37. The Chairperson introduced the item by saying that following the public consultation, the EBA was presenting the final draft RTS on the calculation of the exposure value of synthetic excess spread (SES). He stressed that SES has not been subject to capital requirements prior to the amendment of the CRR made by the Capital Markets Recovery Package in 2021, which also introduced a preferential treatment for STS synthetic securitization.
38. The EBA Head of Risk-based Metrics Unit (RBM) continued by saying that the extension of the STS label to cover synthetic securitisations. A mandate has been given to the EBA in the context of Article 248(4) CRR to develop a RTS on the exposure value of SES, which applied both to STS and non-STS synthetic securitisations, reflecting the compromise achieved by the co-legislators. Concretely, EBA was asked to specify how originator institutions are to determine the exposure value of SES as referred to in Article 248(1)(e) CRR, taking into account the relevant losses expected to be covered by the SES. The consultation paper on the draft RTS was published in August 2022, and a public hearing was held in September 2022. The consultation period finished by mid-October. He explained that a key choice for the EBA was on the time horizon that the SES should cover, i.e., the full life or a 1-year horizon of the transaction/commitment. In the consultation paper, the EBA put forward two approaches, both based on lifetime approaches: the full model approach and the simplified model approach, which could be opted for on a consistent basis by the originator institution. In addition, a box was included on the 1-year approach, the so-called rolling window approach, which was seeking input on the issue. In general, the lifetime approaches led to more conservative outcomes, albeit the calibration on lifetime approaches could adjust the expected increase in capital requirements. In contrast, the rolling one-year time horizon approach proved to have merely any capital impact. The Head of RBM noted that consultation responses raised concerns on the high impact and favoured the rolling window approach, which was closer to the current supervisory approach applied by the SSM. Against this background, the EBA drafted two fully-fledged legal texts, for the rolling-window and the simplified model approach considering all the possible implications and discussed in particular with the European Investment Fund (EIF) who was the major European actor in this regard. The capital impact of the originally proposed simplified approach was therefore reduced to consider the industry views by reducing the scalar from to 0.6 from the 0.8 put forward for consultation. He concluded by noting that the RTS included a provision that allowed to grandfather existing securitisations arguing that in order not to disrupt the market and avoid the unwinding of existing transactions. Such transactions would remain under the careful supervision of the relevant authorities.
39. The Members supported the work and highlighted that the tabled drafting of the RTS was a compromise text, with different views expressed on optimal choice, but noting the need to find a compromise on the matter and bringing clarity to the market. The Members also agreed on the appropriateness to conduct an internal monitoring review after two years.

40. The ECB Banking supervision representative noted that the current framework was well accepted by the market and the EIF.
41. The Chairperson concluded by noting the BoS support with the compromise text.

Conclusion

42. The BoS approved the Final draft RTS on synthetic excess spread and the proposed internal monitoring review after two years by consensus.

Agenda item 7: Consumer Trends Report 2022/23

43. The Chairperson introduced the item by mentioning that the tabled report was the 8th edition of the Consumer Trends Report which has been published every two years. He explained that the EBA requested and collected input from CAs in the 27 EU Member States (MSs), a selection of national and EU consumer associations, the national ombudsmen of FIN-NET, EU industry associations, and statistical datasets produced by ECB, Eurostat and World Bank. He also reminded the Members that at the joint BoS/BSG conference call the next day, a follow-up discussion on the CTR issues of payment fraud and over-indebtedness was planned, for EBA to get inspiration what actions it should take to address these two issues.
44. The EBA Director of Innovation, Conduct and Consumers Department (ICC) continued by stressing the importance of the tabled report for the EBA's work in the area of consumer protection.
45. The EBA Head of Conduct, Payments and Consumers Unit (COPAC) continued by explaining that the objective of the CTR was to summarise, in its first chapter, the trends and issues that the EBA has observed in the two years preceding the biennial covered by this report on the products and services within its remit. Furthermore, in its second chapter, the CTR identified the two topical issues that arose or have arisen for consumers, which would shape the EBA's consumer protection priorities in the next two years. He added that this CTR reflected on the initiatives that the CAs have taken in response to the issues identified in the previous edition and those implemented by the EBA.
46. The Members supported the work and did not raise any comments.
47. The Chairperson concluded by noting the Members' support.

Conclusion

48. The BoS approved the publication of the EBA Consumer Trends Report 2022/23 by consensus.

Agenda item 8: DORA update on policy development

49. The Chairperson explained that the objectives of this item were to inform the Members on the status of the DORA mandates, the envisaged submissions and engagement with the BoS and

to collect early views and steer from the Members to facilitate the smooth and timely approval process.

50. The EBA Director of Innovation, Conduct and Consumers Department (ICC) highlighted that the DORA policy development was progressing well as planned. Scoping notes have been agreed for all DORA policy mandates. She briefly summarised the main discussions and conclusions of the Joint Committee SC DOR meeting which took place on 18 April 2023 focusing on the policy instrument with delivery deadlines in 2023.
51. The EBA project manager of DORA reminded the Members that DORA has entered into force on 17 January 2023 and that the ESAs have received 13 policy mandates, split in two groups with 12- and 18-month deadlines for delivery. He indicated that the note provides a detailed overview of the policy mandates with 12-month deadline and the work on the Call for advice on criticality criteria for designation of critical third party providers (CTPPs) and oversight fees. He highlighted that the ESAs were planning to submit to the BoS a Discussion paper on the Call for advice in May, followed up by a batch of Consultation papers on the 12-month policy mandates in June. He continued by indicating the main topics that attracted attention during the policy development in relation to the RTS on ICT risk management framework, RTS on classification of ICT incidents and the ITS on the register of information and highlighted that these have been in the process of being addressed by JC SC DOR.
52. The Chairperson noted that the Chair of the responsible JC sub-committee was not present at the BoS conference call but that he expressed his views in writing and stressed that to deliver effectively and on time it would be essential that BoS Members liaise closely and on an ongoing basis with their JC sub-committee members.
53. The Members welcome the update and encourage engagement with the BoS on the topic. On the RTS on ICT risk management framework, the majority of the Members stressed that the RTS should be principle based rather than rules based, proportionate for smaller institutions and not too prescriptive and overly detailed. A few Members also expressed preference to align with the EBA Guidelines on ICT and security risk management. On the RTS on classification of ICT incidents, the majority of Members expressed preference on a simple, proportionate and harmonised approach for all financial entities within the scope of ESA. A few Members also commented on the approach to repetitive incidents opining that smaller incidents should not be reported as the incidents reporting meant to capture events relevant for the whole market. On the ITS on the register, a few Members commented that the templates should be simple and less granular, and that careful consideration was needed in relation to reporting on consolidated level. One Member stressed the need for consistency in definitions used in the ITS. Some Members commented on the earlier delivery on the Feasibility report for centralisation of major incidents, the expected level of CTPPs and the interplay between the criteria and methodology for designation of CTPPs, the need to ensure repetitiveness of the stock-take exercise on CAs' preparedness for DORA, and procedural matters on timelines for distribution of documents to JC SC DOR and the need to have proper discussions ahead of BoS submissions.

54. In her response, the Director of ICC confirmed that a simple, harmonised, principle-based and proportionate approach would be followed by the ESAs when finalising the planned deliverables. The EBA project manager of DORA reflected on the more technical comments made.
55. The Chairperson concluded by noting the BoS' support of the work and the good progress made and thanked Members for their comments that would be duly considered for next steps.

Agenda item 9: MiCA update on policy development

56. The Chairperson reminded the Members of the discussion at the last BoS meeting in February when the EBA presented the MiCA implementation plan.
57. The Director of ICC informed that the EBA had commenced work on the L2/L3 mandates under MiCA and wished to raise for first discussions with the BoS a number of questions on a set of key prudential mandates following discussions with relevant working groups and standing committees.
58. The Director of PRSP continued by informing the Members that the relevant standing committee reviewed the crypto-ecosystem and its general risks including i) interconnection and crossholdings between issuers and other critical service providers and ii) risk of using crypto assets in traditional financial activities. It also discussed specific prudential risks to issuers including i) run risk (similar to fast deposit out-flow), ii) maturity transformation risks between crypto and reserve assets and iii) operational risks, including cyber risk. She mentioned that MiCA would address the majority of these risks and noted that three areas of the prudential policy regime started being scoped which required backing on the direction of the work by the BoS: on the applications for authorisation of issuers of asset-referenced tokens (ARTs) the information request needed to be proportionate but include all information functional to the prudential assessment, inspired by the requirements applicable to investment firms; they should also include that absence of material conflict of interest of members of the management body should be covered by the information request as part of their good repute, despite the absence of the more general requirement of independence of mind in the Level 1. With regards to the liquidity and composition of the reserve assets the regulatory standards would build on the LCR and UCITs framework having regard to both liquidity and concentration risks. She noted that while deposits (with banks) should be included under a minimum of 30% of this reserve given MiCA L1 provisions, the BCBS was discussing whether it should be prohibited to be part at all hence the need for the EU to elaborate its rationale at the global table. With regards to the "own funds" requirements, the Director of PRSP explained that the mandate was analysed as a Pillar 2 type requirement starting from the minimum capital of EUR 350.000 euros, a size factor (25 of the Reserve of assets), and possible supervisory adjustments, but with no apparent link to specific requirements to the quality of the capital.

59. The Director of ICC continued by providing an overview of the expected timeframe for the delivery of the mandates and said that the EBA was planning to submit to the BoS the bulk of the mandates in September-November for approval for consultation with a batched approach followed, also to assist the industry in their consideration of the mandates. On the measures to promote convergence in the transition to the application of MiCA, she also referred to the discussion at the February BoS meeting and said that since then, the EBA has progressed, under the leadership of the Network on Crypto-assets, the data collection on ART and EMT issuance and credit institutions, payment institution and electronic money institution crypto-asset services. Work was now underway to develop 'best practices' and this would be presented to the BoS later in June for discussion.
60. The Members welcomed the update and supported the initial review and direction of the work when it came to the policy mandates developments, supporting analogies with investment firms setting. They stressed a need to pay special attention to the specifics of the issuers especially the concentration risks, the ICT risks and the conflict-of-interest area. They also noted the tight deadlines which should be aligned with ESMA's and asked for close engagement of the BoS in the preparation of the policy mandates, potentially with additional approaches to the BoS beyond those foreseen already tabled for the BoS conference call, should the need arise. One Member asked for LCR-Level 1 assets as reserve assets of ARTs and a less rigid concentration limit for sovereign issuers, particularly for non-EU issuers. One Member noted that some CAs might not have all supervisory powers under the MiCA to enforce the 'best practices' during the transitional phase and asked for confirmation as to legal effect, and intersection with any applicable requirements under national regimes. Other Member noted that an iterative approach would be needed as experience was acquired with the development of the L2/L3 mandates under MiCA.
61. The EC representative stressed the importance of cooperation between the supervisors, in particular during the transitional period, to ensure convergence. He welcomed the work underway by the EBA and ESMA and noted their central role in promoting convergence in the transition.
62. The Director of ICC explained that the best practices were not legally binding and that the aim was to share best practices to promote a 'compliance by design' approach. A principles-based approach would be adopted with no contradiction with any applicable national regimes and emerging policy in the context of the L2/L3.
63. The Chairperson concluded by noting the comments by the Members.

Agenda item 10: FTR: Guidelines on sanctions – Discussion note

64. The Chairperson introduced the item by reminding the BoS that in July 2021, the EC published an AML Package consisting of four legislative proposals. Three of these, including the Regulation on the future AMLA, were still being negotiated. A fourth proposal, on a recast Transfer of Funds Regulation (TFR), was agreed in June 2022. The negotiation of the TFR

coincided with the war in Ukraine and it soon became apparent that the current approach to complying with restrictive measures – sanctions – was not as effective as it could be because the responsibility for the supervision of sanction systems and controls was not clearly assigned and, in some cases, the systems were not fully functioning. The co-legislator recognized this and gave the EBA a mandate, in the recast TFR, to issue guidelines on ‘internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures when performing transfers of funds and crypto assets under this regulation.

65. The Director of ICC continued by explaining that restrictive measures target individuals, companies, groups or organisations. They could include targeted financial sanctions, such as the freezing of funds and a prohibition to make funds or other economic resources available to sanctioned persons or entities. They could also include measures such as arms embargoes, import and export restrictions, and restrictions on the provision of certain services, such as banking services. The violation of Union restrictive measures is a criminal offence in 22 Member States.
66. The EBA Head of AML/CFT Unit informed that the relevant standing committee discussed and agreed the general approach to delivering the mandate in October 2022. At its meeting in March 2023, based on a review of the draft guidelines, members expressed divergent views on two points relating to the scope of these guidelines: one regarding governance arrangements and in particular the explicit allocation of responsibility for compliance with restrictive measures to a sanctions compliance officer; and the other, regarding the proposed treatment of transactions screening as an essential part of restrictive measures systems and controls. Furthermore, the Head of AML/CFT explained that while the EU legal framework did not prescribe how financial institutions should comply with restrictive measures regimes, the EC provided some guidance in its 2021 Opinion. The EBA was proposing to build on the EC’s approach and issue two guidelines – one set of guidelines would be addressed to payment service providers (PSPs) and crypto asset service providers (CASPs). Their scope would be limited to transfers of funds and crypto assets and they would set out what PSPs and CASPs should do to be able to comply with restrictive measures when performing transfers of funds and crypto assets and focus in particular on KYC, due diligence and screening; a second set of guidelines would be addressed to payment service providers and their prudential supervisors, based on Article 74 of CRD, Article 11(4) of PSD and Article 3(1) EMD. They would specify the governance and internal controls requirements relating to compliance with restrictive measures, including guidance on the associated risk management framework.
67. The Members supported the work. One Member mentioned reservations that the proposed guidelines went beyond the level 1 mandate, regardless of sympathy for the content of the requirements, and asked whether the requirement of a sanctions exposure assessment, debated in the relevant standing committee, was still intended to be included in the guidelines. With regards to the compliance officer, the Members agreed that tasks and responsibilities for compliance with restricted measures should be clearly allocated. Several Members explicitly supported the proposed approach, which provided these responsibilities could be allocated to a member of staff who held other positions/officers where this was proportionate to the

institution's size, business model and risk profile. On the screening, most Members considered that screening was a key component of effective restrictive measures controls. Those who took the floor emphasised that compliance with restrictive measures was an absolute requirement and not risk-based. A small number of Members plead for a risk-based approach and a case-by-case assessment. They noted that transaction screening was essential, but they would not go as far as in the Guidelines to make screening mandatory in all cases (e.g., in case of instant payments it would not be possible). Also, PSPs did not necessarily have the same controls in place as banks. One Member mentioned that the guidelines should also be addressed to AML supervisors who had relevant competences. Some Members also pointed out that compliance with EU restrictive measures and financial sanctions was not necessarily supervised by financial supervisory authorities and that it had to be ensured not to go beyond the mandate as provided for by the current TFR-Draft. Some Members expressed concerns on the robustness of the legal mandate regarding the sanctions' compliance officer and sanctions screening.

68. The EC representative welcomed the EBA's work that would foster convergence. He was of the view that the wide mandate should be covered in one set of guidelines. He also said that the guidelines should not require transaction screening for all cases, and that the Sanctions Compliance Officer role should be allocated to the AML Compliance Officer.
69. In her response, the Director of ICC confirmed that the responsibilities of the compliance officer could be assigned to an already existing other position, including the AML Compliance Officer, noting that in practice those functions were often separate because of the fundamental difference in the AML/CFT and sanctions regimes. The draft guidelines would now be prepared and discussed at the relevant EBA SCs. She also assured to analyse the question of the sufficient legal basis in more detail and noted that the diverging views on clarity of the legal mandate could be followed-up by legal team and the relevant standing committee.
70. The Chairperson concluded by noting the BoS' comments.

Agenda item 11: CVA peer review report

71. The Chairperson introduced the item by mentioning that the EBA has been working on several peer reviews and according to the approved methodology, input from the BoS was requested at the start and the end of each peer review. He noted that the tabled report was submitted to the Management Board's discussion in March 2023.
72. The EBA Legal Expert continued by explaining that this was the first peer review that aimed at reviewing a smaller set of competent authorities (CAs). The peer review focused on how CAs verify the compliance by institutions with the most relevant conditions which were required under the Regulation for the purpose of excluding transactions with non-financial counterparties established in a third country from the own funds requirements for CVA risk in accordance with point (a) of Article 382(4) of Regulation (EU) No. 575/2013 (Exclusion RTS). In terms of the general approach to the report it built on the structure developed in the PSD2

Peer Review Report in that it set out a series of clear measures. The Peer review committee established a number of 'supervisory expectations' around the area of CVA Risk and to assess and benchmark the practices of CAs, it took as a basis the supervisory expectations in the EBA's Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP GLs). The committee found that there were different approaches to the assessment of CVA risk performed by CAs for the institutions under their jurisdiction. In terms of the findings of the report there were no deficiencies tied to particular CAs so the follow up measures identified were of a general nature and thus applicable to all CAs engaging in the activities outlined in the report, that did not necessarily mean that target peer reviews would always take the same approach, it would depend on the individual CAs and whether deficiencies appear to be more specific to a CA or of a more general nature. The Management Board as well as the CAs that have been subject to this review have been consulted. Following discussion at the Bos the next steps were to send to BoS for written approval and publication thereafter.

73. The Members supported the work. One Member was of the view that one of the requirements related to the review appeared to be quite wide-ranging, as it required CAs to follow up with all institutions.
74. In their response, the Legal Expert and the Head of RBM explained that the measure was based on the fact that more than three years had passed since the entry into force of the Exclusion RTS and that the information collected would form a basis for the EBA's review report which should be prepared two years after the publication of the peer review report. It was however noted that the wording did only require CAs to follow up, with the institutions that were relevant in this regard – the recommendation would therefore be clarified in the final version.
75. The Chairperson concluded by noting the support by the BoS and said that the final report would be sent to the BoS in written procedure.

Agenda item 12: Q&A update and proposals for process improvement

76. The Chairperson introduced the item by reminding the Members that one year ago, the BoS agreed to a review of the changes introduced to the Q&A process at the time in order to increase its efficiency.
77. The EBA Policy expert continued by noting that thanks to the process amendments agreed by BoS in early 2022 (which included a maximum of two written procedures for Standing Committees (SCs) to approve Q&A answers, unless three members or the Chairs request escalation to the BoS) much progress was made over the last 12 months, with the existing backlog of Q&As submitted before July 2021 being cleared and improvements being made towards closing Q&As within the 9-months target for finalisation, although not yet consistently. Deployment of an internal Q&A workflow; internal organisational adjustments and revised Q&A manual have all contributed to the reduction of the backlog. The Policy expert

however explained that to further increase the efficiency of the Q&A process in order to deliver on the 9-month commitment, the EBA proposed to simplify the governance process by introducing a more flexible approach instead of a one-size-fits-all process, i.e., an approach adapted to the topics under the scope of each SC to reduce task duplications and get feedback faster as well as more efficiently, by sharing incoming Q&As directly to the body (subgroup, task force or other) best equipped to deal with the respective type of question. To do so the structure based on one Q&A Network per legal act would be replaced by one for which the distribution of topics was based on the scope of the SCs. At the same time the Q&A reporting to the BoS would be optimised and integrated to the one provided at the SC level and to the MB.

78. The Members supported the work and did not raise any comments.

79. The Chairperson concluded by noting the support by the BoS.

Conclusion

80. The BoS approved by consensus the EBA's proposal for the flexible governance process and the changes to the reporting.

Agenda item 13: Call for mediation panel candidates

81. The Chairperson informed the BoS that the EBA has been working towards reaching a conciliation in a recent mediation case triggered in December 2022 between two deposit guarantee schemes (DGSs). Given that no agreement has been reached, the EBA has opened a binding phase of the mediation in March 2023. The binding phase required the setting-up of a mediation panel to prepare for a decision to be approved by BoS. The panel was to be established by early May, with meetings and any right to be heard held in the course of May and June. The draft decision was to be submitted to the BoS in July or September. The Chairperson concluded by noting that a call for candidates for the mediation panel would be launched after the BoS conference call.

82. The EBA Senior Legal Expert summarised the mediation case in detail and explained the main functions of the mediation panel. He said that the proposal was that the panel was composed of seven Members including the EBA Chairperson, three BoS Members, two senior staff members of the taskforce dealing with DGS issues, and one senior EBA staff. To ensure independence, the six members should not be from CAs of the two Member States which were in disagreement, nor should they have any other conflicting interest in the matter or direct links to the DGSs concerned. He also recalled that in line with the additional rules adopted in December 2021, the members of the mediation panel must act independently and objectively in the sole interest of the Union as a whole. No other persons, including members of the BoS who were not members of the mediation panel, may interfere in its work or influence its members.

83. The panel's considerations would be based on parties' positions, EBA staff analysis, other evidence, such as the input from the EC as part of panel deliberation. Confidential discussions during conciliation would not be used and the panel could propose a decision requiring CAs to take specific action or to refrain from action in order to settle the matter, with binding effects for the CAs concerned, in order to ensure compliance with Union law. Parties would have the opportunity to provide views on draft decision and the BoS was to take the final decision at double simple majority vote (i.e. SMV participating MSs' CAs + SMV non-participating MSs' CAs) using a written procedure, unless objection by three voting BoS members.
84. The Members did not raise any comments.
85. The Chairperson concluded by noting the support by the BoS on the composition of the mediation panel and noted that the call for candidates would be launched after the BoS conference call.

Conclusion

86. The BoS approved by consensus the proposal on the composition and the scope of the call for candidates for the mediation panel.

Agenda item 14: AOB

87. None of the Members raised any comments.

Participants of the Board of Supervisors' meeting on 19 April 2023¹

Chairperson: Jose Manuel Campa

<u>Country</u>	<u>Voting Member/High-Level Alternate</u>	<u>National/Central Bank</u>
1. Austria	Helmut Ettl	Karin Turner-Hrdlicka
2. Belgium	Jo Swyngedouw/Kurt Van Raemdonck	
3. Bulgaria	Stoyan Manolov	
4. Croatia	Sanja Petrinic Turkovic	
5. Cyprus	Constantinos Trikoupis	
6. Czech Republic	Zuzana Silberova	
7. Denmark	Thomas W Andersen	Morten Rasmussen
8. Estonia	Andres Kurgpold	Timo Kosenko
9. Finland	Jyri Helenius	Hanna Freystatter
10. France	Nathalie Aufauvre/Francois Haas	
11. Germany	Peter Lutz	Karlheinz Walch
12. Greece	Heather Gibson/Kyriaki Flesiopoulou	
13. Hungary	Csaba Kandracs/Laszlo Vastag	
14. Ireland	Gina Fitzgerald*	
15. Italy	Andrea Pilati/Francesco Cannata	
16. Latvia	Kristine Cernaja-Mezmale/Ludmila Vojevoda	
17. Lithuania	Simonas Krepsta/Renata Bagdoniene	
18. Luxembourg	Claude Wampach	Christian Friedrich
19. Malta	Anabel Armeni Cauchi	
20. Netherlands	Steven Maijor/Willemieke van Gorkum	
21. Poland	Kamil Liberadzki	Olga Szczepanska
22. Portugal	Rui Pinto/Jose Rosas	
23. Romania	Catalin Davidescu	
24. Slovakia	Tatiana Dubinova/Linda Simkovicova	
25. Slovenia	Primoz Dolenc/Damjana Igljic	
26. Spain	Angel Estrada/Agustin Perez Gasco	
27. Sweden	Karin Lundberg/Magnus Eriksson	David Forsman
<u>EFTA Countries</u>		
	<u>Member</u>	
1. Iceland	Palmi Reyr Ísólfsson	
2. Liechtenstein	Markus Meier	
3. Norway	Morten Baltzersen/Ann Viljugrein	Sindre Weme

<u>Observer</u>	<u>Representative</u>
1. SRB	Sebastiano Laviola

<u>Other Non-voting Members</u>	<u>Representative</u>
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¹ Pascal Hartmann (FMA); Matthias Hagen (OENB); Luca Serafini (Banca d'Italia); Eida Mullins, Morgan Allen (Central Bank of Ireland); Pawel Gasiorowski (NPP); Marek Sokol (CNB); Annemijn van Rheden (DNB); Christian Elbers (BaFin); Ivan Carl Saliba (MFSA); Francesco Pennesi (SRB); Georg Pontus (EC); Liga Kleinberga (Latvijas Banka); Jennie Bergman (Finansinspektionen)

*Expert representing the Central Bank of Ireland without voting rights

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|--------------------------------|-------------------------------|
| 1. ECB/SSM | Carmelo Salleo, Stefan Walter |
| 2. European Commission | Martin Merlin |
| 3. EIOPA | |
| 4. ESMA | Tomas Borovsky |
| 5. EFTA Surveillance Authority | Marta Margret Runarsdottir |
| 6. ESRB | Andreas Westphal |

EBA

Executive Director	Francois-Louis Michaud
Director of Economic and Risk Analysis Department	Jacob Gyntelberg
Director of Prudential Regulation and Supervisory Policy Department	Isabelle Vaillant
Director of Innovation, Conduct and Consumers Department	Marilyn Pikaro
Director of Data Analytics, Reporting and Transparency Department	Meri Rimmanen

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Philippe Allard
Angel Monzon
Dirk Haubrich
Ruta Merkevičiute
Delphine Reymondon
Carolyn Gardner
Lars Overby

EBA experts

Tea Eger
Enrica Piovesan
Adrienne Coleton
Juan Manuel Rodriguez
Antonio Barzachki

For the Board of Supervisors

Done at Paris on 07 June 2023

[signed]

José Manuel Campa

EBA Chairperson