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EBA Staff

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20 September 2016

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Location: London

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# EBA Board of Supervisors – Final Minutes

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

1. The BoS approved the agenda of the meeting, and the minutes of the BoS meeting of 20-21 June 2016 and of the teleconferences of 10 June and 26 July 2016.
2. The Chairperson informed that the member from the Estonian Financial Supervisory Authority (Finantsinspeksioon) had offered to host in Tallinn the BoS away day on 13-14 July 2017.

## Agenda item 2.: Update on Risks and Vulnerabilities

3. The EBA Director of Oversight presented an overview of risks and vulnerabilities in the European banking system. He noted in particular a recovery of the CET1 ratio in Q2 2016, although with a wide country dispersion. On non-performing loans (NPL) ratios, even if asset quality had slightly improved, they continued being too high in Europe. The Chairperson also considered that conduct risk had an impact on profitability. The Chair of the Standing Committee on Oversight and Practices (SCOP) referred to the increasing cost of equity, which together with the current levels of RoE, could explain the reluctance to invest in bank capital.
  4. Members commented on the drivers of profitability. Some noted the links between profitability and business models and the direct impact of increasing capital requirements on profitability. In this regard, some argued that supervisors should explore the consolidation of the banking sector as a means to improve it. The effects of weak economic growth on low profitability were also mentioned.
  5. On the credibility of banks' funding plans, some members viewed that a legally certain framework would be beneficial to promote their stability.
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6. On NPL ratios, the Chairperson referred to the EBA report published in July 2016<sup>1</sup> which mentioned three different actions to address NPLs.<sup>1</sup> He opined that concentration of NPLs in some Member States and in some banks continued being an important issue. He also mentioned the issue of absorption of excess capacity. One member agreed that NPLs remained a serious supervisory issue, posing serious concerns to market perceptions and their potential destabilising effect to the real economy.
7. The Chairperson invited the representative from the Bank of Slovenia to explain the outstanding legal challenges following the 2013 AQR/stress test exercise, in particular, a) the compulsory write down of capital instruments (equity and subordinated instruments) as a prerequisite for state aid intervention in case of bank resolution, and b) the carry out of an AQR/stress test exercise based on a methodology that led to the identification of losses and as a result, the adoption of resolution measures by Bank of Slovenia, including the decision to write down equity and subordinated instruments.
8. The BoS held a discussion on the issues raised by the member from the Bank of Slovenia.

### Conclusion

9. It was agreed to formally highlight some issues to the Commission and then reply to the Bank of Slovenia, for which the Chairperson invited SCOP to look at the supervisory side of the Slovenian case, and prepare a letter addressing the questions raised by Bank of Slovenia.

## Agenda item 3.: Election of a Member of the Management Board

10. The BoS was invited to elect a new member of the Management Board following the departure on 30 June 2016 of Mr Andrew Bailey, from the UK's Bank of England's Prudential Regulation Authority. Mr Jesper Berg, from the Danish Financial Supervisory Authority (Finanstilsynet) submitted his candidacy.

### Conclusion

11. An election by secret ballot took place. Mr Jesper Berg was elected as member of the Management Board for a first term until 19 March 2019.

## Agenda item 4.: Election of a Member and Substitute Members of the Mediation Panel

12. Following the approval of an amendment to the Rules of Procedure for the settlement of disagreements between competent authorities, whereby the number of substitutes of the Mediation Panel was increased from four to six members, and the arising of a vacancy for one

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<sup>1</sup> Namely, supervisory work; structural issues such as judicial system and processes, transparency and assets management; and a functioning secondary market in loans as a means to facilitate their disposal. See report under <http://www.eba.europa.eu/documents/10180/1360107/EBA+Report+on+NPLs.pdf>

member, the Chairperson invited the BoS to elect one member and three substitutes from among voting members.

### Conclusion

13. An election by secret ballot took place. Mr Jo Swyngedouw (Banque Nationale de Belgique/Nationale Bank van België) was elected member of the Mediation Panel. Mr Jesper Berg (Danish Financial Supervisory Authority (Finanstilsynet), Mr Martin Noréus (Swedish Financial Supervisory Authority (Finansinspektionen) and Mr Sam Woods (UK's Bank of England's Prudential Regulation Authority) were elected substitutes of the Mediation Panel.

## Agenda item 5.: Draft Rules of Procedure on Professional Secrecy and Confidentiality for Non-Staff

14. The Chairperson explained that the ESAs had decided to adopt rules on professional secrecy and confidentiality for non-staff to prevent the unauthorised disclosure of restricted information. He clarified that the new rules did not intend to create a new legal framework on top of those existing at national level or impose disciplinary measures, but to enable the EBA to conduct investigations and preserve its information under a known procedural framework for all participants. A summary of the discussion at the MB on the proposed rules was provided to the BoS. The BoS was invited to comment on the draft Rules of Procedure.

15. Members agreed that it was necessary for the ESAs to have common rules. They asked to clarify the legal basis for the adoption of such rules; but also noted that the CRD contained already a duty of professional secrecy that had to be implemented by Member States. In this regard, a concern was voiced by a number of members that there was a lack of proper articulation with national regimes, which in some cases could lead to a clash; and questioned whether the rules could impose restrictions on the sharing of information with other institutional actors who were crucial in the supervisory function; EBA staff confirmed that it should not be the case. Some also viewed that the remedial measures contained in the rules were a bit too disproportionate while the Chairperson noted the need for the ESAs to be able to take steps to protect itself against leaks.

16. Some members also noted that the exceptions to the principle that information should not be divulged were not fully aligned among the ESAs; but it was clarified that the rules were not yet final and that such alignment would be sought with a view to having a common set of rules.

### Conclusion

17. Members were invited to provide written comments. The EBA would continue working on the rules, with the BoS input, and discuss further with the other ESAs. The BoS would be kept informed with the final rules to be adopted by the MB.

## Agenda item 6.: Discussion on EBA Training Activities

18. The Chairperson introduced a proposal for EBA training activities, based on the previous discussions by the BoS and the Management Board (MB) although adjusted in view of the Commission's Directorate-General for Budget's views that training should be funded by the EBA's general budget as being part of the EBA core activities. But he confirmed that the training's long-term general ambitions remained in the new proposal, with a staggered implementation. Also, the EBA Director of Oversight confirmed that the training proposal was linked to the EBA's supervisory convergence's agenda and sought synergies with other training offers like the FSI's and the SSM's.
19. Members welcomed the new training proposal. Amongst other things, they reiterated the need to reinforce the coordination with other training offers, also with the SRB and national resolution authorities such that the EBA's training could cover training on resolution matters. They asked the EBA to elaborate further on the training curriculum.
20. The EBA Director of Oversight explained the operational aspects of developing the training material, in particular the cost-related ones; and confirmed that the EBA intended to engage with other training partners to ensure that the EBA's training could add value to the current offer, while at the same time being active in facilitating training for non-SSM countries. He noted that the EBA would continue engaging with the European University Institute (EUI) although it should also develop its own in-house expertise.

### Conclusion

21. The BoS supported the training proposal, which would be included in the draft 2018 budget. The EBA would ensure a better alignment of the training offer with the activities and priorities as reflected in the EBA's Work Programme.

## Agenda item 7.: Approval of the 2017 EBA Work Programme

22. The Chairperson introduced the draft 2017 EBA's work programme, which had been adjusted further to the MB comments during its meeting of 13 September 2016. The Executive Director updated the BoS on the latest discussions by the EU budgetary authorities, and explained that a revised Work Programme would be submitted for approval of the BoS by end-2016 in view of the final budget for 2017.
23. Members shared their comments on the different activities and strategic areas, and the level of priority assigned to each. They opined that the work on operational risk should be scaled down. Members held different views regarding the level of priority that should be assigned to equivalence assessment of third countries, with some members considering that it should have a low priority while others considered that it should be enhanced given its increasing importance. In this respect, the Chairperson called on the BoS to lend resources to the EBA to

conduct such work, as well as to ensure continuity of CA's membership of the network on equivalence.

24. Members also agreed that the importance of Q&As should be reflected in the Work Programme, and asked to include more resources to carry out work on FINTECH, which was considered as a priority task to be addressed under a single heading in the work programme. In view of the Commission's review of the CRR and CRDIV and future work on the revision of the macroprudential framework, the EBA was advised to ensure a sufficient level of flexibility such that the Work Programme could accommodate the work ensuing from those initiatives.
25. Other topics raised by members were: EBA's coordination role with regard to Basel negotiations and meetings; the update of the guidelines on outsourcing of credit institutions' business activities; the publication of the list of public sector entities (PSEs), to what the Executive Director noted that the EBA sought to clarify with the Commission the EBA's role in determining which entities could qualify as PSEs. Moreover, the Executive Director confirmed that the EBA intended to work intensively on resolution matters as well as on IFRS9, and opined that work on systemic branches could be included under supervisory convergence.

## Conclusion

26. The Work Programme would be amended to reflect the BoS comments and then transmitted to the European Parliament, the Council and the Commission before 30 September 2016.

## Agenda item 8.: Update on Peer Review 2016 and Discussion on Topics for Peer Review 2017

27. The Executive Director explained that the Report on the peer review on the ITS on Supervisory Reporting would be discussed at the BoS meeting of 06-07 December 2016. On the topic for the 2016-2017 peer review exercise, he informed that the MB had expressed its preference for, a) Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of Other Systematically Important Institutions (O-SIIs); and b) Reminder to credit institutions and insurance undertakings about applicable regulatory requirements regarding placement of financial instruments with depositors, retail investors and policy holders ("self-placement"). He noted however the difficulties in carrying out a peer review on the distribution aspects of self-placement, which largely fell under the Markets in Financial Instruments Directive (MiFID) and thus under ESMA's remit.
28. A majority of members expressed their preference for the Guidelines on O-SIIs, with many saying that self-placement was a highly relevant topic although not for a peer-review. The Executive Director confirmed that the EBA would discuss with ESMA on possible avenues to conduct work on self-placement other than a peer review.

## Conclusion

29. The BoS agreed to conduct the 2016/7 peer review exercise on the Guidelines on the criteria to determine the conditions of application of Article 131(3) of CRDIV in relation to the assessment of O-SIIs.

## Agenda item 9.: Discussion on the Expansion of EBA COREP/FINREP Sample and EBA Data Infrastructure

30. The Chairperson presented a proposal to expand the EBA data collection under the ITS on Supervisory Reporting to the full population of EU financial institutions, covering the full COREP/FINREP. He explained that the intended benefits of such expansion would be, amongst other things, the possibility to conduct more complete risk analyses, more granular impact assessments and proportionality testing, as well as limiting ad-hoc data requests to CAs. He confirmed that no additional reporting burden would be imposed on institutions.

31. Members supported the proposal. Some members expressed their concerns regarding the impact that the project could have on the ECB and on CAs. On the operational aspects, concerns were raised on the resources needed and the timeline for implementation. But the Executive Director said that the project should be carried out in full or not at all, for which sufficient resources were a premise; given the intensity and expertise required, the EBA would need an adequate increase of human resources to carry out successfully the project. He then clarified that the EBA's IT system should be upgraded to carry out the expansion of data collection, however this would be a one-off investment in 2018 which would allow the EBA to go-live in 2019.

## Conclusion

32. The BoS supported the project in principle. A more detailed proposal with budgetary implications would be presented in the context of the discussions of the 2018 Single Programming Document in early-2017.

## Agenda item 10.: Quantitative and Qualitative Analysis of IFRS 9 Implementation – Preliminary Results

33. EBA staff introduced the EBA impact assessment of IFRS9 and its interaction with prudential requirements, and asked for BoS views on, inter alia, the content of the report, its publication – suggesting the publication of the first three sections and some limited quantitative data-, the necessity to introduce some transitional arrangements, and finally, the need of guidance at EU-level on the classification of provisions under IFRS9 as specific or general. The BoS was informed that the publication of the report was due post-October BoS meeting.

34. Members expressed different opinions about the merits of publishing quantitative data. Some viewed that there were some open questions on data reliability; other members opined,

however, that some quantitative data should be published to prevent questions arising on the preparedness to implement IFRS9 and the current estimated impact. Others said that publishing only qualitative information could undermine the credibility of the EBA exercise.

35. On the appropriateness of introducing transitional arrangements, some supported that they should be agreed now; but others agreed with the staff proposals to stay neutral for the time being, awaiting for the results of the second exercise while start working in the coming months on a technical solution for a transition to be ready by early-2017 in case transitional arrangements would be finally agreed. Some members also enquired about the legal tool which would be used for a potential transition.

36. With regard to the need of guidance on the classification of provisions under IFRS9, members agreed to conduct such work.

### Conclusion

37. The publication would include both qualitative and quantitative information; the Standing Committee on Accounting, Reporting and Auditing (SCARA) would work further on appropriate drafting and caveats to ensure, in particular, cautiousness around the estimated quantitative impact. On transitional measures, the report would remain neutral for the time being and technical work should start; some limits would be fixed in case a transition was to be introduced. The second report would be launched shortly in order to be ready in Q1 2017. And the BoS agreed to conduct some work on interaction with prudential requirements, including guidance on the classification of provisions under IFRS9 as specific or general.

## Agenda item 11.: Own Funds – AT1 Final Standard Templates and Monitoring Report

38. The Chairperson presented the final version of the updated AT1 monitoring report and AT1 standardised templates, which was the result of a long work. He invited the BoS to express their views and agreement to publication.

### Conclusion

39. The BoS agreed to the publication of the report and templates in the EBA's website.

## Agenda item 12.: Final Report on EBA Guidelines on Remuneration Requirements for Sales Staff

40. The Chairperson introduced the Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services, applicable to sales staff. It was explained that the Guidelines would apply not only to credit institutions under the CRDIV but also to payment institutions under the PSD, e-money institutions under the EMD, and creditors and credit intermediaries under the MCD.

## Conclusion

41. The BoS approved the Guidelines.

**Agenda item 13.: Consultation Paper on draft ITS on Standardised Format of the Fee Information Document and Symbol (Incl. Consumer Testing); on ITS on Standardised Format of the Statement of Fees and Symbol; and on RTS on the Standardised Terminology for Services linked to a Payment Account (all under PAD)**

42. EBA staff presented the consultation papers on three technical standards and invited the BoS to provide their comments prior to their publication for a 3-month consultation period.

## Conclusion

43. The BoS approved the publication of the three consultation papers, and the EBA committed to informing the Commission of the late submission of these technical standards.

**Agenda item 14.: Consultation Paper on EBA draft Guidelines on Minimum Monetary Amount of the Professional Indemnity Insurance under PSD2**

44. EBA staff presented a consultation paper and invited the BoS to provide comments prior to its publication for a 10-week consultation period.

45. On the guideline that indicators denominated in Euro should be converted into the respective national currency equivalent in each non-euro Member State, it was suggested to leave discretion to CAs by changing the guideline to 'may be converted into the respective national currency equivalent in each non-euro Member State'. It was also suggested to remove from the consultation paper the question on whether undertakings could hold the PII and comparable guarantee at the same time.

## Conclusion

46. The BoS approved the publication of the consultation paper with the comments suggested.

**Agenda item 15.: Discussion on the Outcome of the Written Procedure on the final draft RTS on Passporting under PSD2**

47. The Chairperson asked members for their views on how to ensure the delivery of these RTS.



48. Some members considered that the RTS gave rise to issues related to provisions in PSD2 and 4AMLD, in particular with regard to the status for passporting purposes of payment service providers using agents or distributors in another Member State.

49. The Commission representative informed that the Commission services would try to provide clarification in writing by mid-October 2016 on the criteria to be applied by CAs when deciding whether the activities of agents/distributors should be performed under the freedom to provide services or under the freedom of establishment.

### Conclusion

50. The BoS agreed to wait for the Commission services' clarification, including a clarification in response to the comments raised by members during the written procedure, before deciding on how to proceed with the RTS.

## Agenda item 16.: Draft Consultation Paper on Guidelines on IT Risk Supervision

51. EBA staff presented a consultation paper on own-initiative guidelines on ICT Risk Assessment under the Supervisory Review and Evaluation process (SREP), to support supervisors with guidance on a common methodology and procedure to conduct ICT risk assessment under operational risk in SREP.

### Conclusion

52. The BoS agreed to its publication of for a 3-month consultation period.

## Agenda item 17.: Follow-up to the BoS Away Day 2016

53. The Chairperson referred to the discussions on FinTech at the BoS away day meeting on 07-08 July 2016, pointing out the request of several members to conduct common work under the EBA's umbrella. He asked for the BoS views on how the EBA could develop its work in a more consistent, structured way, and proposed to group the different topics and work streams under a coordinated project, details of which would be presented to the BoS at the December 2016 meeting. One member raised the importance of proportionality and developing a risk appetite and EBA staff agreed this could be considered.

54. The BoS agreed to such approach, and asked that the work stream on FinTech under SCOP should continue working until then.

55. The member from Bank of Portugal invited members to participate in the 'Workshop on Digital Banking and FinTech: Challenges and Threats for the Banking System' on 4 October 2016 in Lisbon.

## Agenda item 18.: Incorporation of Recent Financial Services Law into the European Economic Area (EEA) Agreement

56. The Chairperson informed of the adoption of a Council Decision incorporating the ESA Regulations into the European Economic Area (EEA) Agreement, this being the first package of Union law in the area of financial law including also the European Systemic Risk Board (ESRB) Regulation, the Alternative Investment Fund Managers Directive and related Delegated Acts, the Short Selling Regulation and related delegated acts, the European Markets Infrastructure Regulation ('EMIR') and the Credit Ratings Agency Regulations. A Commission's proposal for a Council Decision on a second package of Union law would include, inter alia, the CRR and CRDIV, the BRRD, and the DGSD.
57. The national Parliaments of Liechtenstein and Norway had already approved the first package, with the Icelandic Parliament's approval expected very shortly. A decision by the EEA Joint Committee should then follow, which would lead to the amendment of the EEA Agreement.
58. In view of this, the Chairperson informed that it would be necessary to amend the BoS Rules of Procedure to entitle the CAs of Iceland, Liechtenstein and Norway to attend all BoS discussions relating to individual financial institutions. Furthermore, the ESAs would work on a joint MoU with the EFTA Surveillance Authority establishing how the authorities should cooperate, exchange information and consult with each other.

## Agenda item 19.: Reports from Standing Committees

59. The BoS took note of the progress reports of the EBA's Standing Committees.

## Agenda item 20.: AoB

### Discussion on Developments at International Level at the BCBS

60. The EBA Director of Regulation presented the state-of-play of discussions and outstanding issues on the reform package following the meetings held in September 2016 of both the Basel Committee on Banking Supervision (BCBS) and the Governors and Heads of Supervision (GHOS). Amongst other things, she explained the status of the different components under the revised Standardised Approach (SA), Internal Ratings Based-approach and operational risk. She also noted the impact on minimum capital requirements (MCR) on EU banks under the latest proposals on an output floor.

### Budget 2016

61. The Executive Director explained that, in view of the latest downwards fluctuations of the GBP-EUR exchange rate, the EBA had decided to introduce an amendment to reduce the EBA's 2016 budget, which would be presented for approval in December 2016. The EBA would issue credit notes to all 28 CAs, with the corresponding amount being deducted from the first payments due in 2017.

**END OF MEETING**

**Andrea Enria**

**Chairperson**

## Participants at the Board of Supervisors' meeting

20 September 2016, London

Chairperson: Andrea Enria

<b>Country</b>	<b>Voting Member/Alternate<sup>2</sup></b>	<b>Representative NCB</b>
1. Austria	Michael Hysek	Michael Boss
2. Belgium	Jo Swyngedouw/David Guillaume	
3. Bulgaria	Stoyan Manolov	
4. Croatia	Damir Odak	
5. Cyprus	Argyro Procopiou	
6. Czech Republic	David Rozumek	
7. Denmark	Jesper Berg	Peter E. Storgaard
8. Estonia	Andres Kurgpõld	Indrek Saapar
9. Finland	- <sup>3</sup>	-
10. France	Frédéric Visnovsky	
11. Germany	Peter Lutz	Karlheinz Walch
12. Greece	Spyridoula Papagiannidou	
13. Hungary	Csaba Kandrás	
14. Ireland	Gerry Cross	
15. Italy	Luigi F. Signorini/Andrea Pilati	
16. Latvia	Ludmila Vojevoda	Vita Pilsuma
17. Lithuania	Renata Bagdoniene	
18. Luxembourg	Martine Wagner	Pol Simon
19. Malta	Marianne Sciclunna/Ray Vella	Silvio Galea
20. Netherlands	Olaf Sleijpen	
21. Poland	Andrzej Reich	Maciej Brzozowski
22. Portugal	Pedro Duarte Neves/M. Adelaide Cavaleiro	
23. Romania	- <sup>4</sup>	
24. Slovakia	Vladimír Dvořáček	
25. Slovenia	Primož Dolenc	
26. Spain	Fernando Vargas	
27. Sweden	Martin Noréus	Olof Sandstedt
28. UK	Sam Woods/Sasha Mills	Richard Spooner

<sup>2</sup> Accompanying experts: Ingeborg Stuhlbacher (Austrian Finanzmarktaufsicht); Dries Cool (National Bank of Belgium); Marek Sokol (Czech National Bank); Julia Blunck (BaFin); Constantinos Botopoulos (Bank of Greece); Gina Fitzgerald (Central Bank of Ireland); Maurizio Trapanese (Banca d'Italia); Tijmen Swank (De Nederlandsche Bank); Izabella Szaniawska (Polish Financial Supervisory Authority); José Rosas (Banco de Portugal); Miha Kristl (Bank of Slovenia); Cristina Llagunes (Banco de España); Christine Boykiw (UK's Prudential Regulation Authority)

<sup>3</sup> Represented by Jyri Helenius

<sup>4</sup> Represented by Lucretia Paunescu

**Country**

1. Iceland
2. Liechtenstein
3. Norway

**Observer**<sup>5</sup>

Jon Thor Sturluson  
 Heinz Konzett  
 Morten Baltzersen

**Non-voting Members**

1. SSM
2. European Commission
3. EIOPA
4. ESMA
5. ESRB

**Representative**

Giuseppe Siani<sup>6</sup>  
 Dominique Thienpont  
 Fausto Parente  
 -<sup>7</sup>  
 -<sup>8</sup>

**Observer**

1. SRB

**Representative**

Dominique Laboureix

**EBA Staff**

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

Slavka Eley; Mario Quagliariello; Delphine Reymondon; Lars Overby; Dirk Haubrich; Jonathan Overett Somnier; Philippe Allard; Gaetano Chionsini; Tea Turčániová; Santiago Barón Escámez

<sup>5</sup> Representatives from central banks: Örn Hauksson (Central Bank of Iceland); Sindre Weme (Central Bank of Norway)

<sup>6</sup> Accompanied by Fátima Pires (ECB)

<sup>7</sup> Represented by Mette Sicard Filtenborg

<sup>8</sup> Represented by Tuomas Peltonen