

Minutes of the 17 November 2011 Meeting of the Management Board

Opening and approval of the minutes and agenda

1. The Chair welcomed Matthew Elderfield to his first meeting of the EBA MB. On the minutes one Board member raised a point regarding the fact that his comments on both the MB's 8 September meeting and its 22 September telco appeared not to have been reflected. The Chair apologised for this oversight and confirmed that the necessary amendments would be made during the course of the meeting. *The relevant minutes were subsequently amended and agreed with the relevant MB member bilaterally.*
2. The agenda was approved subject to the addition of an item on voting, added at one member's request.

Voting

3. The Chair explained that he would welcome the MB's input on a number of issues - but that in light of the relevance of some of these for the other ESAs, he would suggest that they are referred, together with the related issue of the alignment of all three ESAs' Rules of Procedure, to the Joint Committee meeting of 14 December for final resolution.
4. He noted that there are 4 issues to discuss: (i) how to treat failures to vote or abstentions in the BoS, particularly in written procedures; (ii) whether a simple majority in the BoS always requires 14 positive votes out of 27 or could be attained through a majority of the members who actually vote, probably with a quorum attached; (iii) when to use QMV and SM voting respectively, especially in relation to aspects of the current capital exercise and in particular the proposed EBA recommendation; and (iv) whether acts subject to QMV, namely BTS and Article 16 Guidelines & Recommendations, should be voted by QMV only in final form or at every stage of their procedural development.
5. On issues (i)-(iv) above the consensus, following discussion, was as follows:
 - the approach of treating failures to vote in written procedures as approvals for a proposal was not supported;
 - a discussion of the treatment of abstentions will be tabled at the December BoS, proposing use of a SM of votes cast with a 2/3 quorum

(as for physical meetings) – this proposal will be taken on to the JC if the BoS supports it;

- the question of SM v. QMV voting can be answered by reference to the EBA Regulation. The Chair confirmed that the EBA's recap recommendation is likely to be based in part on Article 16 and so require a QMV vote, although the 2012 stress tests will remain SM;
 - generally, and in line with Commission advice and practice in the other ESAs, QMV votes will only be held on the final package; as far as possible there should be no formal BoS votes at preliminary stages of the EBA's development of BTS and GL&Rs *but* members' substantive opposition will be reflected through open questions in the consultation process and could also be tabled as amendments;
 - on ITS reporting, the Commission will hopefully soon confirm that the *scope* of the reporting requirement is set by the level 1 CRD text and not an issue for BoS decision, although the question of appropriate proportionality and transitional periods for non-IFRS firms is.
6. One member noted that the RoP probably need to be reviewed and expanded in relation to written procedure. Also in relation to written procedures, it was noted that separate lists of voting members might be useful and that it is the responsibility of each voting member to cater for appropriate cover/substitution where necessary.
 7. Another member added that he would favour votes being cast more formally than the current practice of a show of hands. He asked that the outcomes of board votes be recorded, for the benefit of members, but not included in the published minutes. It was agreed that votes should be cast according to members' names rather than the nationality of their authority.
 8. Finally, one member requested that the BoS be kept informed of all information communicated to national press officers. *It was later confirmed that these usually follow on the back of BoS communications and that the EBA's communications team will seek to ensure that this happens in future.*

EBA 2012 Work Programme

9. The Executive Director talked the Board through the recent changes to the WP, explaining that (i) it might not be possible to include the items relating to both crisis management and audit as these are still under discussion and have not yet been proposed publicly by the Commission; and (ii) items on consumer protection and others 'carrying over' from 2011 had been added. The programme had been discussed recently at the FSC where the fact that the EBA's current and prospective resources are insufficient was minuted.
10. The Chair noted that it would be helpful if the timings of consultations, DPs and calls for evidence could be included for the benefit of external stakeholders. He also explained that the CRD 4 workloads and deadlines, as well as headcount constraints in the establishment plan, mean that the EBA is going to have to rely on help from NSAs for the drafting. In this regard

the ED added that there should be scope for the EBA to start paying NSAs a fixed amount to cover some costs of secondments to EBA and that he will prepare a proposal to change the procedure for allocation of EBA budget for this purpose.

11. One member noted that concerns are being expressed over the time it appears to be taking EBA Staff to do the necessary legal quality control checks on draft BTS, some of which were approved in March 2011.
12. The ED confirmed that to deliver all its priority 1 tasks EBA had calculated that it needed 38 additional staff, whereas 10 was the number allocated, and these are likely to arrive too late in any event.
13. One member suggested that the balance of work between SCRePol and SCOP might be usefully reviewed in this context.
14. The Chair promised to try to have some specific information as to exactly how many CRD4 drafters were needed and for how long for the December BoS. He expressed his frustration at the EBA's ongoing exclusion from Council WGs on CRD 4 – although the representative from the Commission confirmed that the EBA has been invited to the 15 December meeting.

Update on bank recap exercise

15. The Chair and Director Oversight led a discussion about the divergent calculations of the transitional floors...¹
16. After some discussion it was agreed that one member would provide an alternative formula, based on total capital for the EBA Staff to put to the BoS alongside their preferred approach.
17. Discussion on the possible alternative floors proposals resumed after lunch...
18. The option of retaining the divergent calculations used to date with disclosure was discussed...
19. The Chair concluded that the best way forward would be to ask the BoS for a steer on the two options...

¹ Please note that these minutes include information which the EBA cannot disclose under its Access to Documents regime due to (i) the public interest as regards the financial, monetary & economic policy of the EU; and (ii) its own, and the Council's, internal consultations and deliberations in order to safeguard their ability to carry out their tasks.

20. On the EBA's draft termsheet, it was agreed that, following adjustment to reflect the appropriate 7% trigger, this should be circulated to the BoS for comments with a view to eventual publication within the package.
21. On the EBA Staff papers on calls and buybacks, there was general scepticism amongst the MB about the position on the former but unanimous support for the latter.

Update on 2012 stress-test

22. The MB supported the proposal for postponement and agreed this should be put to the BoS. One issue arising from the Director Oversight's proposals is the likely timing for the core 2012 work; it was also suggested that the programme countries' exercises should be aligned with the EBA's, including on publication.

Planning for a possible Article 18 emergency situation

23. The Chair alerted the MB to a joint ESA paper on the possible Article 18 actions which could be taken in the event that an emergency situation is declared. The key point to note is that, under the level 1 legislation as currently drafted, the ESAs have important responsibilities but limited options for action. In this regard a possible checklist of tools for an EBA Staff-led crisis management team is being prepared, considering options such as planning for effective external communications, working level contacts and cascade/telco lists, decisions log etc.
24. The MB agreed that this is useful and important work and that EBA Staff should return to it with further proposals as these develop.

Mission Statement

26. Following some misunderstanding in May as to who would take forward the necessary work on this document as currently drafted - in particular the incorporation of concerns about compliance with the Regulation - it was agreed that the Executive Director would lead the review of the Statement (together with any required revisions of the MB's RoP).
27. The Chair noted that although he saw value in maintaining an extended role for the MB and continuing to involve it in substantive as well as administrative and operational matters, the difficulty with reserving to it a gatekeeper function over all EBA decisions is that the BoS may not support such an extended role. It was clarified that the intention is for the Statement to prescribe more precisely the MB's remit rather than to extend this.

28. The Chair suggested that, once finalised, the revised and shorter Mission Statement of the MB might be approved by the BoS via written procedure.

Access to documents and publication of minutes

29. EBA Staff presented a short paper detailing the proposed approach to publication of summaries of EBA minutes (BoS, MB and BSG) and access to documents more generally, summarising relevant exceptions. The Executive Director confirmed that any confidential information will in future be clearly distinguished and contained in a separate annex where appropriate in order to avoid inadvertent disclosure.

Administrative and Operational Status Report

30. It was noted that the process for stakeholder reimbursement had been speeded up although there have been some ongoing issues in this regard with members of the BSG.
31. On recruitment in general good quality candidates are applying; the challenges are the bottleneck and the fact that there is a quota on numbers at grade AD9 and above. The lack of any international school in London has recently been addressed by the MB Decision on nursery & school fees.
32. The Executive Director provided an update on the procurement for a property adviser to find the EBA premises until the review in 2014. Precautions are being taken in order to avoid any conflict with the preferred candidate who, like other major London players, is also a letting agent in the market.

AOB: Transfer of Assets and Liabilities from the 3L3 committees to the new ESAs

33. It was confirmed that this transfer has been completed and approved by the Commission. The EBA Staff will come back to the BoS with the surplus to be attributed back to NSAs from CEBS.
34. EBA Staff noted that volunteers will shortly be sought by the Staff from amongst the MB for inputting on the Chair's and Executive Director's probationary periods.

List of Participants

Andrea Enria	Chairperson
Danièle Nouy	MB member

Karoly Szasz	MB member
David Rozumek	MB member
Jukka Vesala	MB member
Raimund Röseler	MB member
Uldis Cerps	MB alternate member for Martin Andersson
Dominique Thienpont	European Commission
Matthew Ederfield	Alternate Chair
Frédéric Visnovsky	SCARA Chair
Fernando Vargas	SCOP Chair
Adam Farkas	Executive Director
Isabelle Vaillant	Director Regulation
Piers Haben	Director Oversight
Peter Mihalik	Director Operations
Michelle Ewing	EBA Staff - Legal
Joseph Mifsud	EBA Staff - Legal
Corinne Kaufman	EBA Staff - Policy Coordination & Analysis
Delphine Reymondon	EBA Staff - Regulation