



EBA BS 2017 457rev1

Joint Meeting (BoS/BSG)

24 October 2017/9:00-12:10

EBA REGULAR USE

Joint Meeting (BoS/BSG) Minutes

Item 1: Welcome and approval of the agenda

1. The EBA and BSG Chairpersons welcomed BoS and BSG members. The agenda and the draft minutes were approved.

Item 2: Report on the activities of the BSG

2. BSG chairperson provided details on recent BSG activities, in particular the responses provided to the EC's Consultation on the Review of the ESAs, including a letter submitted jointly together with the other stakeholder groups of EIOPA and ESMA. He informed of a BSG position paper on Sandboxes, supporting the use of a coordinated EU approach to their use, as a contribution to the EBA's ongoing work on Fintech.

Item 3: Capital Market Union – Proposed STS Securitisation Regulation

3. The EBA Director of Regulation presented an overview of the envisaged EU Securitisation framework, noting that it builds on EBA's advice provided in its report on qualifying securitisation in July 2015, which proposed a 'two stage approach' to qualifying securitisation; defined criteria for simplicity, transparency and standardisation (STS) and proposed more risk-sensitive capital treatment of the STS securitisation. She noted that evidence supported the view that more risk-sensitive regulatory capital should contribute to reviving this market. She informed that the proposed EU Legislation contains 22 mandates for the EBA, (and also mandates for ESMA,) elaborates roles and responsibilities for Rating Agencies, a Securitisation Repository, STS 3rd Party Certificates and market participants, amongst others. She informed that the EBA sees many benefits of STS securitisations, noting they represent one of the main pillars of the Capital Market Union and should contribute to an overall objective of more diverse and resilient European economy. She observed that the STS Securitisation market has been fairly slow to start, and at times, erratic, but viewed that this could be due to participants waiting for legislation to legally underpin the market.
4. One BoS Member responded noting in his Member States' experience, the products securitised were predominantly mortgages. He concurred with the EBA's empirical evidence illustrated noting that EU Asset Backed Securities and EU Residential Mortgage Backed Securities had experienced minimal losses; whereas the loss experience of US CDOs and US Commercial mortgage-backed securities was severe, e.g. subprime. He viewed that asset quality is key, but that much work is needed so as to provide clarity, remove the stigma of securitisation, in order to encourage market participants to use these products, albeit there is no guarantee that this

market will take-off. He was not supportive of securitisations of NPLs, as viewed every NPL is different, that it is difficult to model their cash flows, and if this type of securitisation goes wrong, it might damage the reputation of the securitisation product more generally. He concluded that securitisation can be a good funding product, but the underlying collateral is key.

5. One BSG Member informed of the Prime Collateralised Securities (“PCS”) - a private led initiative to revitalise the securitisation market. PCS were originally not supportive of synthetic securitisations but now supportive of them provided certain conditions are met, i.e. for SME financing. Further PCS is supportive of 3rd Party Certificates, which he viewed as good for originators and should facilitate investors. He viewed securitisations are good for NPLs, subject to information availability on NPLs, noted the diversification of recovery rates for some assets, but did not view it would be difficult to model their cash flow.
6. Some BSG Members viewed that synthetic securitisations were too complex for investors to understand. They recalled the US experience where Credit Rating Agencies had not rated them correctly. They viewed that the Securitisation market should be left to revive itself without regulatory intervention. It was also viewed that securitisation should only be used for medium and larger enterprises and not small enterprises.

Item 4: Discussion on the criteria and the challenges when performing a valuation for the purposes of resolution.

7. The EBA staff presented an overview of the high level principles behind EBA’s recently agreed Draft Regulatory Technical Standards on Valuation - both before resolution and after resolution. She highlighted the differences in the types of resolution valuations, on the need to assess failure or likely to fail against resolution objectives, including moral hazard; and compare with IFRS9 – which has the potential to narrow the gap between valuation under business as usual and in resolution. She noted that valuation in practice introduces a lot of challenges, i.e. access to data, cooperation amongst authorities and potential legal disputes, raising risk/damage mitigation to which she viewed much preparedness by Resolution Authorities (ResAus) and banks should assist. She informed that the EBA is working on the design of suitable Management Information System to be used for valuation purposes, noting availability of timely and good quality data is key.
8. The SRB Representative illustrated some of the practical challenges from Resolution Authorities’ perspectives. These included the ability to recruit truly independent valuers, noting potential conflicts of interest arising i.e. from the major auditor firms; , and the ability to recruit them on time; the capacity of a bank to provide timely and good quality data for valuation purposes. He recommended that valuers should have a good knowledge of local national accounting frameworks in order to understand the discrepancy between national accounting standards and IFRS9/consolidated approaches, such as treatment of DTAs, and also the differences between a statutory yearly audit and an audit under resolution. He cited the interplays between the three types of valuations, and viewed it was unavoidable to start work on valuation 2 before knowing the result of valuation 1. He noted the link between the selected tools for the resolution scheme and the valuation of the assets/liabilities; he mentioned potential difficulties in valuing assets in the context of State Aid and transfer strategies. He highlighted that for international cross border banking groups, it is key ex ante for ResAus to develop good working arrangements amongst each other, noting a 3rd Country host ResAus can appoint their own valuer.
9. The BSG Representative responded sharing the view that valuation of assets before resolution is problematic, and that the assessment of bank solvency is a matter of expert judgment, which

needs to be undertaken only by those with sufficient expertise to make the numerous assumptions needed. He shared the view that the independence of a valuer is key. He noted that certain banks' assets are difficult to value, given the absence of their meaningful prices i.e. NPLs. Regarding bail-in, he cited the need to put it within the context of the planning, and have regard to MREL and the restructuring of the bank, noting that the bail in tool is applied only if there is a reasonable prospect of recovery, and questioned what if the prospect does not materialise, the bank is liquidated and ex post values greatly differ, which can cause investors to litigate. He suggested the need to enhance the transparency of valuations carried out for resolution.

10. Several BoS Members shared the concerns that the valuation approaches raise potential litigation risk, viewing with time and experience, that the legal boundaries may become clearer.
11. It was noted that whilst the choice of resolution tool, provides the context for the valuation, it also provides its limitations.
12. Several BSG Members shared the concern on the independence of valuers, the lack of transparency of the valuations performed, and the difficulties due to paucity of market valuation data. Some viewed it was too premature to assess the quality of valuations performed to date, albeit they already noted differences from the regular audits and the valuations performed, and suggested making valuations transparent in a shorter time frame. One BSG Member highlighted the practical challenge for ResAus to apply the 'No Creditor Worse Off' principle, and could expect future litigation in this regard.

Item 5: Consumers and Big Data - Discussion on big data and the regulatory challenges

13. Two BSG Members presented some concerns for consumers regarding Big Data.
14. One BSG Member highlighted that consumers do not understand how Big Data is collected, stored and centralised. Moreover they do not understand their risks, even if they give their consent to providers having access to their data. Other risks to consumers include exclusion risk; cost of privacy - versus higher premium costs; disparate impact of big data – correlation does not mean causality; price discrimination; price optimisation; false security of the illustration of advice, which may be packaged as getting advice but is not in reality. She proposed that there should be some good principles to address the consumer risks from big data, within the General Data Protection Regulation (GDPR), such as "our data" being "ours". She proposed that financial supervisors and Data Protection Authorities should work together to elaborate on common guidance on the application on this Regulation.
15. One BSG Member viewed that consumers' needs cannot be fully personalised by providers from Big Data, as consumer behaviour remains driven by free will. He raised the concern that 'derived data' i.e. credit rating scoring data, is not considered personal data under GDPR. He recommended that regulation should be a mixture of technical measures (i.e. algorithms testing for bias); regulatory sandboxes, and principles, i.e. non-discrimination, financial exclusion.
16. EBA staff updated on the EBA's Discussion Paper and Report on uses of innovative data, where EBA staff have raised awareness of consumer legislation and GDPR; and are currently assessing the use of existing rules before proposing whether further rules may be needed. She also referred to the EBA Discussion Paper on Fintech, currently out for consultation, and the ESAs joint work on Big Data, to which the ESAs are still assessing the consultation's responses and hope to revert by the end of the year/early next year. She shared the view that many of the

risks that the EBA had identified are already covered in existing or forthcoming EU legislation, such as GDPR, as noted in the EBA's Report. She also stated that financial supervisors and Data Protection Authorities should work together on GDPR's application, which is what the EBA did with the European Data Protection Supervisor when it developed its report.

17. One BSG Member responded that Big Data provides both benefits and drawbacks for consumers, but in general views it is good for financial service providers, with certain caveats. He viewed that GDPR appears a positive framework, whose evolution should be assessed. He illustrated that Big Data can enhance risk management, anti-fraud and AML systems, and has the potential for providers to offer more tailored products and relevant advice. However it has its risks, such as data leaks, exclusion and price diversification, and aggressive marketing practices.
18. Several BSG Members shared the concerns for consumers from big data, and welcomed GDPR, but highlighted the lack of enforcement and monitoring of actions taken post the crisis to protect consumers. Other BSG members expressed the view that big data increases the possibilities for consumers and improves their user experience. In their view the GDPR is cross-sectoral and very protective for consumers, and so do not support the need for additional specific measures on the financial sector.
19. One BSG Member proposed the creation of a consumer consent dashboard, detailing which and what data had been shared by a consumer and for what use, to which a consumer could revoke their consent.
20. Several BoS Members shared the BSG Member proposal that supervisors could use Big Data for regulatory purposes, such as developing algorithms to reduce consumer bias. Moreover one BSG Member questioned whether banking supervisors have the appropriate tools to respond to the developments/trends in market.

Item: AoB

21. One BSG Member highlighted the recent ECB Consultation on its Guidance on NPLs, and its proposed use of Pillar 2 as a tool to address insufficiently conservative provisioning practices, noting the Commission was due to review Art. 104 CRD, as requested in the Council Action Plan on NPLs, July 2017.
22. BoS and BSG members took note that the next Joint BoS-BSG meeting was scheduled for 18 April 2018.