

## Banking Stakeholder Group Meeting - Minutes

26 February 2013 / 09.30 to 17.00

Location: EBA

### Agenda item 1: Welcome and approval of Agenda

1. The BSG Chairperson (Sony Kapoor), who on 22 January 2013 announced his intention to step down as BSG Chairperson following his recent accident, thanked BSG Members and EBA staff for their support and good cooperation (see Agenda item 3 below).
2. The minutes of the last BSG meeting [EBA BSG 2012 29 Rev1] were approved.

### Agenda item 2: Introduction of new BSG member

3. Following the EBA's Board of Supervisors (BoS) recent appointment of a new BSG member, Vera Cottrell, following the resignation of Marcin Kawinski, the BSG Members welcomed Vera Cottrell to her first BSG Meeting. Vera Cottrell introduced herself and expressed interest in participating in some of the BSG Working Groups.

### Agenda item 3: Election of a new Chairperson of the BSG

4. Subsequent to the resignation of Sony Kapoor, the EBA Chairperson took over chairing the meeting and explained the process to the BSG for the election of a new BSG Chairperson. In preparation of the meeting, EBA Staff had issued a call for nominations for the position of BSG Chairperson, after Sony Kapoor had already announced his intention to step down. One BSG member had expressed his interest, David Llewellyn (the BSG's Vice-Chairperson). No other candidates emerged at the meeting. A vote was held by secret ballot and David Llewellyn was elected unanimously by BSG members.
  5. With the election of David Llewellyn as new BSG Chairperson, the position of BSG Vice-Chairperson became vacant at the meeting. The BSG Members were then asked for nominations for Vice-Chairperson. One BSG Member expressed interest, Christian Lajoie. A vote was undertaken by secret ballot, and Christian Lajoie was elected unanimously by BSG Members.
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## Agenda item 4: BSG Chairperson and Vice-Chairperson to update on developments

6. The newly elected BSG Chairperson, David Llewellyn, reported on several regulatory concerns. In his view, the banking sector in Europe seemed ever more fragile and was concerned that banks might be under-provisioned. Also, he noticed discrepancies in the use of risk-weight models and uncertainties about the general future regulatory regime (e.g. status of the implementation of Basel III in Europe and the US, the Banking Union proposal and developments arising from the 'Report of the European Commission's High-level Expert Group on Bank Structural Reform' also known as the 'Liikanen Report').
7. The BSG Vice-Chairperson, Christian Lajoie, reported that he shared many of these concerns. He observed that banks were developing strategies that entail the stopping or reduction of some businesses and refocusing on the core businesses. Another concern was the general political situation and developments relating to the BCBS.

## Agenda item 5: Update on regulatory developments

### i: EBA Chairperson to update on general development

8. The EBA Chairperson highlighted the general need to finalise the work that had been agreed in the G20 financial reform package, which had initiated the Basel III development, among others. For the EU, focus should be on adoption and implementation in the near term of CRDIV/CRR. BSG members raised the issue of the lack of a firm deadline for the implementation of Basel III in the United States.
9. The EBA was also following the possible outcome(s) stemming from the 'Liikanen Report' and other developments, including whether any structural reforms might be taken on a national basis. Regarding liquidity, the expectation was that there might be a review of the standards and the EBA expects banks to maintain a strong commitment away from business models that placed high reliance on wholesale funding or leverage.
10. He also mentioned EBA's concern about the quality of banks' assets. Recently, there had been cases in some Member States where banks were suffering from legacy assets (including derivatives) or other structural problems. In this regard the EBA places high importance on the harmonisation of definitions (e.g. forbearance and non performing loans) and on Stress Testing. The EBA intends to issue shortly a Consultation Paper on the Draft ITS 'on supervisory reporting for forbearance and non-performing exposures as sought under Article 95 of the Capital Requirements Regulation' as well as seeking an informal consultation with Stakeholders on its proposed Stress Testing Methodology for its next stress testing exercise. BSG members noted the positive aspects of the sovereign buffer. It was proposed that the next European Stress Test exercise should be an item tabled for discussion at the next BSG meeting.
11. The EBA Chairperson mentioned the EBA's recapitalisation exercise and EBA's intention to repeal its Recommendation in regard of this exercise as soon as the CRDIV/CRR have been

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approved, and replace it with a different Recommendation to enable an orderly transition (also see Agenda item 5ii a).

12. Furthermore, it was mentioned that the EBA had just published its 'Interim Report on the Consistency of Risk-Weighted Assets in the Banking Book' which contains the EBA's interim results of its investigation on risk-weighted assets (RWAs). This EBA Report illustrates the outcome of the first phase of EBA's investigation, as part of a wider EBA analysis on the consistency of RWAs, whose ultimate objective is to better understand the differences in the calculation of RWAs and, if need be, to formulate the necessary policy solutions to enhance convergence between banks and to improve disclosure. A second report will follow in June 2013 which is due to be followed by a separate report regarding residential mortgages. The EBA updated the BSG on its work in relation to the benchmark-setting processes (such as the Euribor), which it performed in coordination with the National Competent Authorities and ESMA. A consultation on 'Principles for Benchmarks-setting processes in the EU' [JC CP 2013 01] had been issued on 11 January 2013, after it had previously been circulated in advance to the BSG. Further, the EBA had sent an opinion to the European Commission in this regard.
13. On the Banking Union proposal, the EBA Chairperson mentioned that the political discussions were expected to close in March 2013. Regarding the possible changes to the EBA's Regulation, it was noted that EBA's role in regard to Stress Testing and also in regard to the Single Supervisory Handbook for the Single Market, were under discussion. Also, the EBA's internal voting mechanisms at the BoS were under discussion having regard to those Member States who would be part of the Single Supervisory Mechanism and those that were not. Regarding the Single Supervisory Handbook, its legal status with regard to peer reviews and being able to be subject to binding mediation, were not clear.
14. He also updated the meeting on the on-going discussions regarding the Recovery and Resolution Directive, including the possible role/remit of EBA. EBA envisages a role in crisis management and also in resolution work and would be seeking views from the BSG in relation to its advice under development in the coming months (also see agenda item 5 ii d).

## ii: EBA Staff to present update on EBA's regulatory and oversight work under development

15. EBA Staff (Isabelle Vaillant) presented a general overview of the EBA's upcoming activities regarding regulatory developments. She especially noted the following topics for the BSG's contribution:
  - ▶ Liquidity (see also 5ii c) further below)
  - ▶ Supervisory Colleges
  - ▶ Recovery & Resolution Planning
  - ▶ Risk-weighted Assets and disclosure under the third pillar

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16. She noted that several BTS are currently frozen due to the non-finalisation of the CRDIV/CRR at the current point in time. The EBA had aggregated the comments and prepared feedback tables which would be disclosed once the BTS are finalised and can be published.
  17. EBA Staff and BSG-Chair/Vice-Chairperson agreed to further liaise regarding the EBA's work programme for 2013 in order to enable further BSG planning.

#### a) Recommendation on the preservation of core Tier 1 capital in the transition to the CRD IV/CRR framework

18. EBA Staff (Mario Quagliariello) presented the EBA's Draft Recommendation on the preservation of core tier 1 capital in the transition to the CRDIV/CRR framework, which will replace the existing December 2011 EBA 'Recommendation on the creation and supervisory oversight of temporary capital buffers to restore market confidence' [EBA REC 2011 01] once the CRDIV/CRR have been finalised.
19. [EBA REC 2011 01], as part of a comprehensive suite of policy measures, was a necessary step towards restoring confidence in the EU banking system. This measure was not designed as a permanent shift in the regulatory landscape. The introduction of the CRDIV/CRR package in 2013 will change the legal setting for assessing capital levels. Once the CRDIV/CRR enters into force, the EBA will issue a new Capital Preservation Recommendation that will replace the 9% Core Tier 1 ratio requisite with a capital preservation requirement and will avoid that capital accumulated so far is depleted.
20. The Recommendation will ensure that the credit institutions subject to it maintain a nominal buffer of Core Tier 1 capital as defined in the [EBA REC 2011 01], corresponding to 9% of risk weighted assets as at June 2012, after taking account of the sovereign buffer.
21. The new EBA Recommendation will be addressed to the National Competent Authorities in charge of the supervision of the sample of 61 banks involved in the final assessment of the EBA 2011 Capital Exercise and of the compliance with the [EBA REC 2011 01].
22. One BSG member criticised the reporting burden associated with the Recommendation and its general resource impact. There were also questions about the interplay with other capital buffers (e.g. for SIFIs, countercyclical, etc.) under the Basel III regime. EBA Staff reiterated that the nominal buffer will be an interim measure aiming at ensuring that existing capital levels of banks are not depleted in the transition to the CRDIV/CRR regime. It was agreed that EBA Staff will circulate the Draft Recommendation to the BSG following BoS approval.

#### b) EBA's Risk Assessment work

23. EBA Staff (Mario Quagliariello) presented the main findings stemming from the EBA's Risk Assessment of the European Banking System Report [EBA BS 2012 273] that had been published in January 2013. Main risks mentioned in the Report were funding, fragmentation of the Single Market, reputational risk, asset quality, valuation concerns and credit risk.

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24. While there had been improvements in CDS spreads and it might appear that banks are in a better position, the link to sovereigns still appears to be in existence. Fragmentation of the Single Market could lead to a misallocation of resources across EU Member States and result in reduced benefits for some cross-border banks from their cross-border activity. The reputational risk might lead to reduced confidence from consumers and reduced trust in the banking sector with a risk for the consumer/bank relationship. In terms of asset quality, dispersions were increasing and the probability of default remained stable over the last years. Also noted was a recommendation from the ESRB on the 'funding of credit institutions' [ESRB/2012/2].
25. BSG members appreciated the update and noted that loan forbearance had risen in the UK and discussed whether comparison can be drawn with previous crises. Also, it was noted that [EBA BS 2012 273] does not make reference to the international dimension of European banks beyond the European Union and that this could be added in future iterations. Furthermore, BSG members raised the issue that regarding longer-term refinancing operations (LTROs) there may be a stigmatising effect for those banks that do not pay back their loans. Also, consumer confidence and reduced trust regarding financial advice were highlighted as a particular concern from the perspective of BSG members.
26. It was agreed to schedule a discussion on the next EBA's Risk Assessment Report on the agenda of the next BSG meeting to facilitate BSG input.

### c) Draft RTS/ITS on liquidity

27. EBA Staff (Ivo Jarofke) updated the BSG on the current state of play regarding the EBA's work on liquidity. The CRR mandates the EBA to transpose the Basel III liquidity rules and requires the EBA to deliver both BTS as well as Reports.
28. The EBA had published the 'Discussion paper on retail deposits subject to higher outflows for the purposes of liquidity reporting under the Capital Requirements Regulation (CRR)' [EBA DP 2013 02] and the 'Discussion paper on Defining Liquid Assets in the LCR under the draft CRR' [EBA DP 2013 01] both on 21 February with a deadline for comments on 21 March 2013.
29. Further BTS under development are:
- ▶ RTS on additional outflows on derivative contracts according to Article 404 CRR
  - ▶ ITS on additional monitoring metrics according to Article 403(3)(b) CRR
  - ▶ ITS on currencies with narrow central bank eligibility according to Article 411(3) CRR
  - ▶ ITS listing currencies which could benefit from 'ALA treatment' according to Article 407(4)(1) CRR
  - ▶ ITS to specify derogations according to Article 407(5) CRR

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30. Furthermore, a Report regarding the impact of the Liquidity Coverage Ratio (LCR) is planned to which no public consultation is envisaged but consultation with the BSG would be sought. This Report would also form a basis for the further calibration of the LCR.
31. The Coordinator of the BSG's Working Group on Bank Liquidity (Andrea Resti) noted the insufficient availability of data as an issue for further analytical work of the BSG. This need was in his opinion further reiterated by the two recent Discussion Papers that also mention data quality issues. Limited data availability hampers effective comparison to evaluate the effects of possible regulation.
32. EBA Staff were asked to circulate to BSG further draft papers in relation to RTS/ITS on liquidity under CRDIV/CRR as they become available. The BSG agreed to develop Opinions in response to EBA's proposals for Draft RTS/ITS on liquidity, which were further discussed under Agenda item 6.

#### d) The Recovery and Resolution Directive: the bail-in tool design and interplay

33. EBA Staff (Stefano Cappiello) presented general remarks regarding the future bail-in tool as well as key questions for the BSG to comment upon. Generally, the 'bail-in tool' regards the power of the resolution authority to write off or convert into equity institution's liabilities *after* the institution entered into resolution (which is also explained in the FSB's 'Key Attributes on Effective Resolution for Financial Institutions' from October 2011)<sup>1</sup>. In addition, 'write down' refers to the power of the supervisory authority (or by contract) to write off or convert into equity additional tier 1 and tier 2 capital instruments as a means to avoid the point of non viability and/or *before* any bail-out (Basel agreement) and any bail-in.
34. Regarding the scope of bail-in, one of the questions raised by EBA Staff was whether and to what extent derivatives or short-term liabilities could be subject to bail-in as both could have domino effects or produce self-fulfilling noise. Furthermore, the pricing of these instruments would need to reflect and account for possible bail-in.
35. It was also discussed whether there should be a waterfall of liabilities and whether a two-tier approach would be meaningful. This would entail that banks' subordinated debt would be bailed-in first. If that is deemed to be insufficient, the other eligible liabilities would be bailed-in. Also, the design of the ratio for the loss absorbing capacity (LAC) was raised and whether this should be discussed at the European level instead of the national level. Furthermore, the definition of triggers is an issue under discussion both for bail-in as well as write down. Also, the treatment of shareholders is to be clarified (e.g. whether it should be possible to dilute shareholders without wiping them out or to apply bail-in to debt instruments without completely wiping out equity).

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<sup>1</sup> See [http://www.financialstabilityboard.org/publications/r\\_111104cc.pdf](http://www.financialstabilityboard.org/publications/r_111104cc.pdf).

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36. The proposed Recovery and Resolution Directive is scheduled to be approved by the European Council and Parliament at the end of June 2013. EBA welcomed input from the BSG to assist it in providing its advice to the Commission in this regard, and also EBA's work under development in regard to the various BTS and Guidelines sought from EBA in relation to this proposed Directive.
37. BSG members commented that the LAC should normally be similar to own funds. Also, the need for a careful approach was highlighted as creditors might challenge the bail-in powers when they are exercised. Concerns were expressed about whether the Directive would be applicable for all banks or only to SIFIs. It was clarified by EBA Staff that while it generally does apply to the whole sector, the proportionality principle should be duly considered.
38. Other issues noted related to the overlap of the bail-in tool with the more general capitalisation policies of banks. Furthermore, the hierarchy of liabilities was raised as well as whether liabilities towards employees would be subject to bail-in. EBA Staff clarified that the latter should be carved-out. Regarding a possible market solution in which banks determine themselves whether to issue bail-in securities, EBA Staff noted that this would result in uneven refinancing costs for banks and result in the non-credibility of the bail-in tool.
39. BSG was asked to provide input to EBA's ongoing work by March 2013 in order to enable the EBA to take these into account in its advice to the European Commission. Comments could be raised both individually as well as through the BSG's Systemic Issues Working Group (see Agenda item 9).

#### Agenda item 6: Report from the BSG Working Group on Bank Liquidity

40. The Coordinator of the Working Group (Andrea Resti) made reference to the earlier presentation by EBA Staff and presented an outline for the BSG's work to develop its input to the two Discussion Papers subject to public consultation. He asked BSG members for their comments by 08 March. The Working Group would subsequently finalise its input and aim to circulate a final draft BSG Opinion by 21 March.

#### Agenda item 7: Report from the BSG Working Group on Consumer Protection

41. The BSG Chairperson noted that the EBA Consumer Trends Report, whilst containing many important points, did not raise the issue of financial advice. It was suggested that the BSG might want to look at the related issues of trust, competence and advice. Further, one BSG member mentioned that he had dealt with similar issues in a previous position, when working in Australia. It was noted that other Stakeholder Groups might be looking at the issue as well. The EBA Chairperson noted that the Joint Committee of the ESAs was working on these issues.
42. Furthermore, it was mentioned that some Members of the European Parliament were discussing what financial products could be considered the most dangerous and that this may become an issue for the BSG or ESMA/EBA. The BSG Chairperson viewed that while this is



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an important issue and should be mentioned by the BSG, this should be done as part of the more general work of the BSG on Consumer Protection.

43. EBA Staff were asked to circulate the EBA's latest Consumer Trends Report to the BSG. The Coordinator of the Working Group (Robin Jarvis) was asked to check with the ESMA Securities and Markets Stakeholder Group on their activities regarding financial advice.
44. Furthermore, BSG members were informed by EBA Staff about an upcoming investor warning from EBA and ESMA on Contracts for Difference (CfDs) in addition to an EBA Opinion addressed to National Competent Authorities on this issue. Also, EBA was working on a Good Practice Report on ETFs to which the BSG's Consumer Working Group had provided some views.

### Agenda item 8: Report from the BSG Working Group on Bank Capital

45. The Coordinator of the Working Group (Louise Lindgren) noted that risk-weighted assets and disclosure were potential issues for the Working Group to assess. Javier de Andrés presented the main points that were raised by the BSG in its recent response to EBA's consultation on the EBA Discussion Paper on Draft Regulatory Standards on Prudent Valuation [EBA DP 2013 03]. EBA Staff (Federico Cabanas) explained that the BSG's input on the Discussion Paper would be taken into account by the EBA in the current stage of the process. The finalisation of the resulting Draft RTS is envisaged by end-2013.

### Agenda item 9: Report from the BSG Working Group on Systemic Issues

46. The Coordinator of the Working Group (Sony Kapoor) proposed that the Working Group should identify the main issues and provide specific input in the key legislative proposals such as recovery and resolution (including bail-in), the EBA's Risk Assessment Report, the 'Liikanen Report' and general regulatory uncertainty.
47. It was proposed that the BSG's input to the EBA's next Risk Assessment Report be sought at the next BSG meeting. In regard to structural reforms, the BSG agreed to wait for further developments from the EC before collating its views in this regard.
48. Recovery and resolution was identified as the main focus of the immediate work for the Working Group and that the BSG's focus should be targeted at the possible role for EBA in this regard. The Coordinator of the Working Group announced that a conference call of Working Group members should be held after the meeting in order to provide the EBA with BSG input as soon as possible.

### Agenda item 10: BSG's contribution to the review of the European System of Financial Supervision (ESFS)

- (a) *EBA staff (Corinne Kaufman) to update on EC's Review of the ESFS*



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49. EBA Staff (Corinne Kaufman) updated the meeting on the current status of the Commission's review of the ESFS. Article 81 (1) of the ESAs Regulation requires the EU Commission to publish a general report "on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation" by 02 January 2014, and every three years thereafter. The review will focus on the performance of the ESAs during their first years.
50. She highlighted that EBA staff had provided the Commission with a note, predominantly on the quantitative input of EBA's work performed to date. The Commission is shortly to launch a public consultation, which would be open to BoS and BSG members. Further, the EU Commission intends to hold a public hearing on 25 May, and at this juncture appears not to intend to propose any concrete further legislative proposal in relation to ESAs before 2014/2015.
51. The ESAs have also been in contact with Mazars, a consultant – which has been appointed by the European Parliament to perform its review of the ESAs. Mazars aims to submit a report to the European Parliament by the summer 2013. Michel Barbet-Massin explained that Mazars would be interviewing some BSG members, as well as some BoS members.
- (b) BSG Members to discuss its possible contribution to the review of the EBA as part of the EU Institution's review of the ESAs.*
52. BSG members agreed that the report mentioned under (c) would most usefully form the BSG's basis for its contribution to the ESFS review.
- (c) BSG's report on its activities during its first term of office. BSG members to discuss way forward on the drafting process.*
53. EBA Staff had provided a draft outline of a report on the work of the BSG [EBA BSG 2013 13] which presents a purely factual overview of BSG activities over the past two years of its existence. The BSG Chairperson asked each Working Group Coordinator to provide him with drafts regarding the activities of their Working Groups. This should also help to identify common themes and messages for the BSG as a whole. It was also noted that such a report could contain messages on the general effectiveness of the BSG and how it could be improved as well as lessons learned.
54. The BSG Chairperson will coordinate the further drafting process. After receipt of input from Working Group Coordinators, the BSG could form a small internal drafting group to produce a revised version of an overall draft. A first draft of activities report based on EBA Staff input should be produced before the next BSG meeting. It was agreed to aim for finalisation by the last BSG meeting on 28 June 2013.
55. The BSG asked EBA Staff to advise on reports produced/under development by ESMA and EIOPA's Stakeholder Groups.

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## Agenda item 11: Selection process for the BSG's second term

56. EBA Staff (Stefan Andresen) pointed out that the BSG was initially appointed in March 2011 and that the current group's mandate would expire in September 2013. Accordingly, the EBA intends to start a new public selection procedure for the whole BSG. A public Call for the expression of interest was likely to be issued in April/May for a period of six weeks. This Call will largely be in line with the Call that had been issued in late 2010 when the BSG was initially set up.
57. EBA Staff informed the BSG that existing BSG members are able to reapply for a second term as member of the BSG, in line with Article 37 (4) of the EBA Regulation. At the same time, the term of office of those BSG members that have become members as a replacement for BSG members that had resigned mid-term, will be limited to the expiration of the current mandate of the whole group (i.e. September 2013).
58. The EBA was liaising with the other ESAs and European bodies regarding several issues before officially issuing the Call for interest. Furthermore, the EBA aims to ensure some level of continuity between the current BSG's membership and the next BSG.

## Agenda item 12: Joint BSG/BoS meeting

59. BSG Members discussed the general format of the next Joint meeting due to be held between BSG and the EBA's BoS on 15 May 2013. It was discussed whether to structure the meeting in three parallel break-out sessions or whether to keep most of the discussions in the plenary. After discussion, the BSG members decided not to have break-out sessions.
60. It was agreed to first identify priority issues that merit discussion before deciding on the eventual format, which will eventually be subject to a decision on the agenda between the Chairpersons of the EBA and the BSG.
61. The EBA Chairperson noted liquidity, recovery and resolution planning as high priority issues that could be discussed. Also, the review of the ESAs could merit discussion. Other issues may especially refer to consumer protection. The BSG Chairperson agreed that consumer protection should in any case be discussed between both the BoS and the BSG.
62. BSG Members were asked to communicate possible agenda items of particular interest to the BSG Chair-/Vice-Chairperson and EBA Staff by 12 March 2013. The agenda will subsequently be further discussed between EBA Staff and BSG Chair-/Vice-Chairperson.

## Agenda item 13: BSG Meeting dates for 2013

63. The BSG noted the meeting dates as outlined in the Agenda.

## Agenda item 14: AOB

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64. Louise Lindgren enquired regarding when the 2013 Stress Testing exercise might take place. EBA Staff explained that currently the BoS is still discussing the issue and that nothing had been fixed yet.

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## Participants at the 11<sup>th</sup> meeting of the Banking Stakeholder Group (BSG)

London, 26 February 2013

<u>BSG Member</u>	<u>Representing</u>
Andrea Cesare Resti	Top-ranking academics
Andrew Procter	Industry
Arnold Kuijpers	Industry
Bostjan Krisper	Consumers
Chris De Noose	Industry
Christian Lajoie (Vice-Chairperson)	Industry
Daniel Gros	Top-ranking academics
David T Llewellyn (Chairperson)	Top-ranking academics
Eric Berggren	SMEs
Giles Williams	Users of banking services
Giovanni Ferri	Top-ranking academics
Guglielmo Zadra	Industry
Hiltrud Thelen-Pischke	Users of banking services
Javier De Andrés	Top-ranking academics
Louise Lindgren	Industry
Magdolna Szóke	Industry
Michel Barbet-Massin	Users of banking services
Michelle Brennan	Users of banking services
Monica Cueva Díaz	Industry
Pamela Walkden	Industry
Rudi Vander Vennet	Top-ranking academics
Sony Kapoor	Consumers
Sylvie Bourguignon	Users of banking services
Ute Meyenberg	Trade Unions
Vera Cottrell	Consumers

### From the EBA

Andrea Enria  
Adam Farkas  
Stefan Andresen  
Federico Cabanas  
Stefano Cappiello  
Dirk Haubrich  
Ivo Jarofke  
Corinne Kaufman  
Mario Quagliariello  
Isabelle Vaillant  
Gerbert van der Kamp