



EBA BS 2021 292

Board of Supervisors

27 April 2021

EBA-Regular Use

Board of Supervisors meeting – 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) and reminded the Members of the conflict of 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 gave a special welcome to Mr Claude Wampach from Luxemburg as a new BoS Member and to Mr Jyri Helenius and Mr Marko Myller from Finland who have taken up new positions in the BoS as Member and Alternate.
3. Finally, the Chairperson asked the BoS whether there were any comments on the draft agenda. There were no comments on the agenda.

Conclusion

4. The BoS approved the agenda of the meeting.

Agenda item 2: Update from the EBA Chairperson

5. The first point on which the Chairperson informed the Members is the Product Oversight and Governance (POG) Guidelines court case. The EBA is awaiting judgment from the European Court of Justice in the case concerning the validity of the POG Guidelines which were issued in 2017. This case arises from a challenge by the French Banking Federation to the ACPR's notification that it would apply the POG Guidelines to financial institutions under its supervision. The Court of Justice held an oral hearing last year at which the EBA made submissions defending the Guidelines. The Advocate General's Opinion in the case was published on the 15th of April. The Advocate General expressed the opinion that the POG Guidelines should be ruled to be invalid because their substance goes beyond the scope of the CRD and the other relevant sectoral acts. In particular the Advocate General's view is that it is
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unclear how the POG Guidelines, which deal with product governance, fall within the scope of the relevant provisions in the sectoral acts which deal with corporate governance.

6. While that is disappointing, the EBA is looking forward to having the Court's judgment on the case, which is expected around September or October 2021. In the meantime, the POG Guidelines continue to apply.
7. A second point on which the Chairperson informed the Members was a Call for Advice (CfA) that was addressed to the EBA by the European Commission on the Crisis Management and Deposit Insurance framework (CMDI). The CfA was published 19 April 2021 on the EBA website. The EC has launched a public consultation to gather stakeholders' experience with the current crisis management and deposit insurance framework as well as their views on the revision of the framework.
8. The CfA calls on the EBA to i) assess the reported difficulty for some small and medium-sized banks to issue sufficient loss absorbing financial instruments (MREL); ii) examine the current requirements to access available sources of funding in the current framework, including in view of the funding structure of the above mentioned banks, and iii) assess the quantitative impacts of various possible policy options, as specified by the Commission services, in the area of funding in resolution and insolvency and their effectiveness in achieving the policy objectives. The deadline for the delivery of the CfA (mid-June) is very tight but work has already started. The aim is to present the EBA advice to ResCo by the end of May and to BoS early June.
9. A third point on which the Chairperson updated the Members was an audit by the Court of Auditors on the work of the ECB, Commission and EBA on AML in the banking sector. The auditors recently sent the EBA their preliminary observations and recommendations, and the EBA replied in writing and will have meetings with them in May to discuss the content of the proposed observations and recommendations before the auditors finalise their audit report.
10. The proposed recommendations relating to the EBA cover the integration of money laundering and terrorist financing risk in prudential supervision and the use of Breach of Union Law (BUL) powers. On prudential supervision the auditors propose a recommendation that the EBA and the ECB should work to better incorporate ML/TF risk into prudential supervision by, for example, the EBA enhancing its guidance in this area, and by revising guidelines for AML supervisors to provide more consistency in AML assessments of supervised entities. The EBA has expressed agreement with some part of these recommendations while seeking to correct other elements.
11. On BUL the auditors propose recommending that the Commission and the EBA should make better use of their BUL powers. In that context they recommend the EBA should ensure prompt decisions on whether to investigate when BUL requests are received, and that rules are introduced preventing BoS members from seeking to influence panel members during their deliberations. In the written replies, the EBA accepted that there should not be undue delay in

deciding whether to investigate cases and that existing procedures should be reviewed to identify possible amendments to ensure the independence of panel members at the Panel stage.

12. Lastly, the Chair informed the Members that the EBA plans to reduce the two-day BoS meeting in June (9-10 June) to a one-day BoS meeting. In addition, EBA plans to cancel the BoS away days in July. Instead, a regular one-day BoS meeting may be held if needed. In order to upkeep the spirit of the BoS Away days, the EBA is planning to organize a social event following EBAs 10 year's anniversary celebration on 26 October. The exact form of this social event will be largely dependent on the COVID restrictions at that time.

Agenda item 3: Risks and vulnerabilities in the EU

13. The EBA Head of the Risk Analysis and Stress Testing (RAST) unit updated the Members on current risks and vulnerabilities in the EU banking sector and gave a first view on the 2020 Q4 results. The December 2020 data showed that outstanding loans towards corporates and households had decreased in Q4 2020, reversing the loan growth in the first half of the year. Compared to Dec 2019, only the SME segment showed a year-on-year increase (around 4%). All other segments decreased during 2020. The share of stage 2 loans further increased in Dec 2020 to 9.1% (Dec 2019: 6.5%). Both the share of stage 2 loans as well as cost of risk showed a wide dispersion among banks and countries, indicating diverging provisioning practices among banks.
14. The head of the RAST unit informed the Members of the results of a sensitivity analysis that stressed the banks' relevant positions with COVID-19 support programs and reminded the Members that there were a few major caveats in the sensitivity analysis that one needed to be aware of when interpreting the results.
15. Finally, the head of the RAST unit updated the Members on other relevant areas of work such as the 2021 EU-wide Transparency exercise and the EBA Risk Assessment Report. He reminded the Members that the annual 2021 EU-wide Transparency exercise is carried out with the results to be published at the end of the year jointly with the EBA Risk Assessment Report. The proposal, together with the transparency package will be submitted to the BoS after the April BoS meeting via a written procedure.
16. A presentation by the BoS Member from Belgium followed. The Belgian Member focused on the COVID-related fiscal measures that were considered decisive to absorb the shock. Their wide range and interactions made it hard to predict cliff-effects, which overall seemed manageable in Belgium. Among the different COVID related measures, the revenue support measures and the moratoria on loans had the potential to generate the largest cliff effects. The Belgian Member then updated the Members on the development of the moratoria on

loans, the credit growth and NPLs in Belgium and provided the Members a breakdown of loans and impairments by the different IFRS9 stages.

17. Lastly, the Irish BoS Member updated the BoS on the main risks and developments in the Irish banking sector in the context of the COVID pandemic and amid recent announcements of the withdrawal of one foreign bank from the Irish market and a second foreign bank entering into non-binding discussions on a possible exit from the Irish market.
18. While thanking the previous presenters, a number of Members updated the BoS on the developments in their jurisdiction. Several Members noted that the banking sector in their jurisdiction seemed to be resilient and able to absorb additional provisioning or dividend pay outs. At the same time, multiple Members pointed to the relatively high level of uncertainty regarding the macroeconomic path. One Member noted that the full impact of the pandemic is not yet fully reflected in the balance sheets of the banking sector.
19. Multiple Members underlined the need for adequate capital management, as there remains huge uncertainty related to provisions. The ECB representative agreed that some different provisioning practices could be seen and even in some sectors the probability of default was going down.
20. Multiple Members praised the EBA Note on provisioning policies in the US and the EU and the contribution it made to a correct understanding of provisioning practices in different jurisdictions. At the same time, several comments were made with regard to the analyses and conclusion of the Report, with suggestions for some editorial amendments.
21. Lastly, one Member pointed to the tension faced by banks between the pressure to loosen credit standards on the one hand, while on the other hand the need for early recognition and discontinuing their relation with insolvable clients.

Conclusion

22. The Chairperson concluded that the banking sector in the EU seems to be robust and capable to absorb the expected upcoming increase in NPLs. On the thematic note on provisioning policies in the US and the EU, he concluded that there was wide support for the note but that there was a clear need to introduce some of the comments from the BoS before proceeding with its publication. This will be done by means of a written procedure.

Agenda item 4: Prudential considerations on EBA COVID-19 response

23. The EBA Director of Prudential Regulation and Supervisory Policy (PRSP) presented to the members a note on the way forward for the EBA exit strategy on COVID-19 measures. The note proposed a status quo on the current regulatory framework. The Director shortly elaborated

on the different aspects of the note such as the 1% threshold for distressed restructuring, and the proposed stance in the areas of Distribution Policies, SREP and Recovery Planning.

24. Overall, there was a lot of support for the EBA proposals for the COVID-19 response. Still, the EC representative asked the Board of Supervisors to have another look at the prudential framework in order to assess the need of any changes. She reminded the Members that the level of uncertainty still was high and that stakeholders were getting increasingly anxious, before concluding that it was time to give stakeholders clear signals that they will continue to have access to finance.
25. On the threshold for distressed restructuring, many Members supported the EBA proposal to keep the threshold unchanged. In this context, many Members noted that there is a clear need to get back to normal and that risks needed to be assessed in a correct manner. Moreover, a certain degree of market pressure was welcome as institutions should have an incentive to fully account for possible credit losses.
26. However, some Members requested to look into the extra temporary needs for some specific sectors and transactions where more flexibility could be needed when restructuring loan portfolios or in the application of the criteria, in particular with regard to the 1% threshold. In the same vein, the EC representative noted that additional action was commendable as the legislative framework allowed for sufficient margin of maneuver to consider a temporary increase of the threshold. Therefore, she urged the Members to use this flexibility in order not to create additional uncertainties. One Member proposed to further reflect at the level of the TFMV and SRePol on the issue of application of the definition of default at facility level in the context of factoring exposures before taking any decisions in this regard.
27. Members supported the proposal not to extend the scope and/or timeline of CRR Art. 500. The current toolbox is deemed sufficient and that there was no support to tweak it as this could hurt the credibility of the tools. In the same regard, Members supported the suggestion to further analyze this topic in the EBA continuous monitoring effort.
28. On recovery planning, there was overall consensus to return to normality following last year's operational relief measures. However, on recovery planning scenarios, various Members suggested they may consider reducing the number of scenarios from three (as required by the EBA GL on recovery plan scenarios) to two but with a focus on COVID-19 developments. In this context, the representative of the ECB confirmed that the benefits of asking in 2021 for not more than two scenarios would outweigh the possible costs as banks and supervisors could use freed up resources and time to devote to crisis preparedness.
29. On the possible introduction of additional binding powers to competent authorities to impose restrictions on distributions in exceptional circumstances, Members did not favor such a formal approach. The representative of the ECB added to the discussion that chasing a more formal approach could be problematic for the funding costs of banks. On the other hand, some Members did see merit in further analyzing pro's and cons of additional powers to competent

authorities. In this regard, some suggestions were made to explore this possibility with stakeholders at the EU or the Basel level when it comes to systemic crisis.

Conclusion

30. The Chairperson concluded that there was broad support for getting back to normal when it comes to regulatory and supervisory setting, in particular for not extending the deadline of the CRR Art. 500, which is still in application until 2022, and for maintaining the current level of the threshold for distressed restructuring as it is key to keep straight risk management. On the latter, he did note that the EBA would continue to closely monitor the threshold with a view to detect excessive pro-cyclical risks if any. On recovery planning, the Chairperson acknowledged the need for a pragmatic approach proposed by some members and for using flexibility in light of the COVID-19 scenarios in particular, but stressed the need not to send a signal to downplay the guidelines provisions at this juncture.

Agenda item 5: Report on convergence of supervisory practices in 2020

31. The EBA Head of the Supervisory Review, Recovery and Resolution (SRRR) unit presented the main outcomes of the EBA Report on convergence of supervisory practices in 2020. It was explained that the EBA had a number of convergence tools to deliver upon its convergence mandate, among them the setting of the annual convergence plan and its follow-up by the EBA. For this purpose the EBA conducted a desk-based review as well as four bilateral visits to competent authorities in Q4 2020 on how the key topics of the 2020 convergence plan were implemented in supervisory practices.
32. Overall, the EBA found that supervisors took into account the key topics of the 2020 convergence plan, though it was also concluded that the implementation of the key topics was impacted by the COVID-19 related reprioritization of supervisory activities as the different areas received different degrees of supervisory attention. The main observations regarding the convergence in P2R and P2G were also presented, as well as the convergence in supervisory colleges.
33. The EBA head of SRRR informed the Members that the 2021 convergence plan, as a stand-alone document, was approved by the BoS in October 2020, and integrated into the Report for publication purposes. He also reminded the Board of Supervisors of the four key topics for supervisory attention for 2021, as included in the 2021 convergence plan: 1) asset quality and credit risk management, 2) ICT and security risk and operational resilience, 3) profitability and business model, 4) capital and liability management.

34. The Members had no comments on the Report. The Chairperson concluded that the BoS had approved the Report.

Conclusion

35. The BoS approved the EBA Report on convergence of supervisory practices.

Agenda item 6: NPL templates

36. The EBA Director of Banking Markets, Innovation and Consumers (BMIC) introduced the Members to the main points of the EBA discussion paper on the review of NPL transaction data templates. This discussion paper proposed a preliminary assessment and review of the NPL data templates and focused on some key aspects such as criticality and availability of data fields, data confidentiality, structure and design of the templates and proportionality. The initial proposal presented in the discussion paper also took into account the responses received to the EBA's targeted online survey in Q1 2021. The Director of BMIC informed the Members that the EBA is planning to publish the revised templates in December 2021.
37. There was general support for the discussion paper. The representative of the EC welcomed EBA's commitment in tackling NPL's and recognised that the work could facilitate transparency and comparability of NPL data. Several Members pointed to the voluntary status of the NPL templates and reminded the EBA that further revision and reduction in data fields is needed, if these templates were to become mandatory. In the same vein, some members asked EBA to reflect on the future status of the templates (e.g. potential to turn them into binding standards) when consulting with the industry. One member suggested EBA to include in the consultation paper a reference to the phase of the transaction process when the templates are to be used, attending that the data requirements in the initial stages of non-binding offers are different from those in the final binding offers stage.
38. Although there was general appreciation for the reduction in the number of data points, several Members noted that the discussion paper could go even further in terms of cutting back the number of cells and/or critical fields. In this regard, the representative of the ECB considered it important to take on board the market practices in different jurisdictions in order to create a certain benchmark for the content of the templates.
39. One Member asked the EBA why it chose to launch two different consultations, while it could have waited for the formal mandate before consulting the current discussion paper. The Director of BMIC responded by explaining that industry engagement was crucial when working out the NPL templates as there was little room to further delay the industry consultation. Stakeholder engagement in 2021 for the review and revision is also explicitly requested in the Commission Action Plan. The Director of BMIC clarified that the revised templates (to be published by December 2021 following the consultation process to the discussion paper) would be used as a starting point for a further consultation if the templates became

mandatory. Another Member highlighted the importance of introducing proportionality and asked for more involvement and agreement of competent authorities to fine-tune the discussion paper after the consultation period.

40. The Chairperson stated that there was broad support for the NPL templates as long as they are on a voluntary base and that EBA could continue with the publication of the discussion paper. If the templates would ever become mandatory, a new consultation might be needed.

Conclusion

41. The BoS approved the publication of the EBA discussion paper on the review of NPL transaction data templates.

Agenda item 7: Report on the study of the cost of compliances with supervisory reporting requirements

42. The EBA Head of the Reporting, Loans Management and Transparency (RLMT) unit presented to the Bos the key findings and the recommendations of the EBA Report on the cost of compliance with supervisory reporting requirements. That report assesses the cost and benefits of supervisory reporting and aims at making recommendations on how the reporting cost of small and non-complex institutions can be reduced by 10% -20%.
43. She informed the Members on the key findings from the analysis and recommendation presented in the report. The analysis had been performed on the basis of extensive input from the industry that was gathered through voluntary qualitative and quantitative questionnaires, interviews, and case studies. Furthermore, the Report also made use of the input from users of supervisory reporting, collected through a user questionnaire and discussions with various EBA expert groups and SCARA. Following approval, the report would be published on the EBA website and sent to the EU Commission, Parliament and Council.
44. There was general support for the Report from the Members. A number of Members echoed the reports' recommendation to stabilize the underlying regulatory framework. One Member noted that the supervisory reporting and associated costs of compliance are driven by the regulatory framework that continues to change, and that it was therefore necessary to give a clear signal to stakeholders that some restraint should be practiced when launching new regulatory initiatives. This Member also supported the progressive implementation of the "core and supplement approach" presented by EBA. One Member noted that supervisory reporting tables should be designed in the light of what information is truly needed and will be used by authorities for their ongoing supervision and, hence, reflection on the value of the information requested is necessary.
45. Multiple Members expressed some concerns that the recommendations on the coordination of ad hoc information requests or additional reporting requirements at the national level may

be misinterpreted as limiting authorities' powers to launch such data requests, as those powers are an important part of the national toolkit. The EBA Head of the RLMT unit responded by clarifying that the Report only aims at better coordination and reducing overlaps in ad hoc requests in order to do them in a more efficient manner and that the recommendations do not limit powers to ask for data.

46. Another Member asked the EBA to follow a more conservative approach with regard to the long-term recommendations on integrated reporting as they may pre-empt the outcomes of the feasibility study on integrated reporting. In response, the Head of the RLMT unit noted that the recommendations do not discuss possible findings of the feasibility study, but only recognize that there will be long-term efficiency gains irrespective of the form of integration.
47. One Member suggested to broaden the focus of the Report and, in particular, of the recommendations to analyse also the situation of institutions other than small and non-complex institutions. The Member saw merit in analyzing the impacts of the recommendation in general and identify what could be done for bigger institutions.
48. Given that there will be no public consultation on the report, one Member asked the EBA whether there was any assurance that the project was on the right track and that the addressees will be fine with the approach that was chosen and the conclusions. The EBA Head of the RLMT unit pointed out that the EBA was planning to discuss the findings and recommendation with different stakeholders after the publication, and also that there will be separate consultations on various regulatory products implemented on the basis of recommendations.
49. One Member asked the EBA to reconsider the paragraph of the Report that included the statement that institutions may have an incentive to overestimate the reporting costs in their responses to the questionnaire, as there was no objective evidence that this was indeed the case. Another Member asked EBA to review how some charts on the reporting costs are presented in the report, and to focus more on the costs associated with the EBA supervisory reporting framework instead of overall reporting costs; in particular, it would be misleading if in a ratio total reporting costs, including also the costs for non-supervisory reporting, would be compared with the costs of complying (only) with regulatory requirements. One Member pointed out that C69 shall be kept mandatory for SNC-institutions as this template is the only tool providing the EBA, the ECB and NCAs with price level information for the liability side.
50. The representative of the EC expressed broad support to the report and commented on the recommendation to investigate the possibility of enabling simplified reporting also at consolidated level. Whilst such investigation may be useful, she neither saw a clear case for excluding banking groups from certain elements of reporting, nor for changing the rules regarding the consolidation at this point. However, if the EBA was able to obtain evidence that simplifications for certain types of banking groups would not adversely affect the supervision of those groups, the EC was open for changes to the regulatory framework.

Conclusion

51. The Chairperson concluded that there was general support for the Report. The recommendations and their accompanying analysis were agreed. The Chairperson also noted that some minor editorial clarifications needed to be addressed before it could be published, and therefore suggested to launch a written procedure so that Members could provide their final drafting comments, aiming to improve the clarity, articulation and presentation of the findings and key messages in the report. Lastly, he also shared the remarks made by several Members on the need for proportionality in the regulatory work and the need to reflect on the value of information that is being asked from supervised entities. That should be considered in all aspects of the EBA's work.

Agenda item 8: Greensill and its implications [restricted session]

52. The German BoS Member gave a presentation on the developments at Greensill Bank AG that ultimately led to its insolvency. Among other things, the German Member informed the BoS of the results of the forensic on-site investigation at the bank and the supervisory measures that were taken in the months preceding the insolvency. Lastly, he discussed the role of cooperation with NCAs and the DGS during the developments that led to the insolvency of Greensill Bank AG.
53. The EBA Head of the Conduct, Payments and Consumers (COPAC) unit presented to the Members the potential implication of the insolvency of Greensill Bank AG for competent authorities in the EU. The potential implications were analyzed from three different perspectives: i) from an AML and qualified holdings perspective, ii) from a deposit protection perspective and iii) from a governance and business model perspective. Among other things, the head of the COPAC unit briefly touched upon the role of deposit brokerage platforms in attracting deposits.
54. Some Members asked for some restraint when drawing conclusions on the wider supervisory implications of this particular insolvency, although these Members acknowledged that it was good to analyze the developments that led to the insolvency. Some were not supportive of the idea to concentrate only on the three perspectives that were discussed in the EBA presentation.
55. The representative of the EC underlined that efforts should be made to prevent a situation where organizations cannot take actions in absence of a complete picture. In this context, she asked whether BaFin was lacking any supervisory tools that prevented them from taking actions. The representative of BaFin reacted to this by stating that it was not a question of tools, but of finding the necessary facts that could warrant further supervisory investigations. Finally, the EC representative questioned whether cross border cooperation was working adequately, or whether there were lessons to be learnt.

56. The representative of the SRB informed the BoS of their involvement in the case at hand. He commented on the role of deposit brokerage platforms and the risks entailed in these platforms. He confirmed that further analyses of the functioning of deposit brokerage platforms was important in order to get a better understanding of the role these platforms play in aggregating deposits.

Conclusion

57. The Chairperson concluded by stating that it was always important to extract lessons from these kind of events. He confirmed that the role of deposit brokerage platforms, and the issue of qualified holdings needed further analyses and he encouraged all NCAs to actively share information when facing similar situations. He concluded that the EBA will continue to analyze the events that took place and to first reflect on the lessons learnt before deciding on any further measures.

Agenda item 9: EU-wide Stress test

- i. Long term changes to the EU wide stress test framework (for discussion)
- ii. Update on 2021 EU wide stress test (for information)

58. The EBA Director of Economic Analysis and Statistics (EAS) reminded the BoS that at its December meeting, the BoS mandated the STTF to start developing the new hybrid approach for the EU-wide stress test based on a set of principles. In the hybrid approach, some selected elements would follow a centralised approach while the rest of the methodology would remain inherently bottom-up, with some constraints to be relaxed to increase the realism of the exercise. The integration of centralised items and the relaxation of constraints should go hand in hand for cost efficiency reasons. The objective would be to have a more realistic and less burdensome exercise.
59. The EBA Director of EAS informed the Members that, following the guidance from the BoS, the STTF will work further to fine-tune the new proposed framework. In a later stage, the BoS will be asked to make a final decision on the new framework. A decision on the potential changes to the framework for the 2023 stress test is needed by October 2021 at the latest.
60. There was broad support for further developing the hybrid approach which means to follow a top-down approach for some risk areas and to relax some assumptions in the current bottom-up approach. Most Members noted that the level of ambition for the 2023 stress test was fine although there was still work to do in its operationalization. One member was of the opinion that moving too much away from a bottom-up approach would lessen the usefulness of stress-testing on some dimensions and that top-down approaches does not necessarily relieve

supervisors from external pressures in the process. Members welcomed the idea to setup a dedicated work stream under the STTF that could develop and validate top-down models for the 2023 EU-wide stress tests.

61. Other Members found the proposal still lacking ambition, stating that it did not differ much from previous exercises. Several Members suggested to aim for a higher level of ambition for the period beyond 2023. One Member suggested to start working on a roadmap for the stress test beyond 2023, reflecting on the level of centralisation that should be aimed for. Another Member suggested to also reflect on the purpose of the stress test when reviewing the stress test over a longer time horizon.
62. The EC representative noted that it was important to thoroughly test the centralised items to make sure they provide reliable results. A number of Members noted that more centralisation should go hand in hand with a strict governance of the stress test exercise in terms of execution of the exercise.
63. One Members suggested to also collect bottom up projections for the risk areas that would be centralised. However, the representative of the ECB expressed some doubt on any form of duplication that could undermine the purpose of centralisation i.e. cost effectiveness.
64. Most Members supported the static balance sheet approach but agreed to leave banks some room to make the balance sheet more 'active' by disclosing some management actions that would not be taken into account in the quantitative results of the stress test (i.e. below the line of the capital depletion). Other Members noted that static balance assumptions could be less relevant for institutions that have restructured their loan portfolios, possibly resulting in a lack of realism when dealing with certain hypotheses.
65. The EBA Director of EAS responded to the comments by pointing to the costs and benefits of the bottom-up approach. Regarding the collection of bottom-up projections for the risk areas that would be centralised, he highlighted that it would be detrimental for the incentive of these institutions if these projections would subsequently be ignored. On the level of ambition, he noted that if the EBA would centralise Net Interest Income and Net Fees and Commission Income, this would be a first step.

Conclusion

66. The Chairperson concluded that the EBA proposal is a good starting point for further work of the STTF on the implementation of the different suggestions for a hybrid approach. Moreover, the STTF could start working on a roadmap for the stress test beyond 2023. Lastly, the Chairperson concluded that a dedicated work stream under the STTF should be launched to work on the development of the top-down models for the stress test.
67. The EBA Head of the Risk Analysis and Stress Testing (RAST) unit informed the Board of Supervisors on the progress so far in the 2021 stress test and on the outcomes from the first submission by banks.

Agenda item 10: ACP Note on Impact Assessment methodology

68. The EBA Head of the Economic Analysis and Impact Assessments (EAIA) Unit presented to the BoS the ACP note on the Proportionality Assessment methodology. One of the mandates of the ACP is to establish a methodology for identifying relevant sectoral differences and assessing how they may be considered by the EBA in its measures. The proportionality assessment methodology presented in the note comprised two separate steps: i) the classification of institutions and ii) the definition of the impact metrics for judging whether the impact is materially different amongst different categories of institutions.
69. There was general support for the ACP note on the Impact Assessment methodology. Some Members noted that smaller jurisdictions could have relatively concentrated markets, and that the specificities of institutions operating in these markets should be taken into account in the proportionality assessment.
70. The EC representative expressed support for the ACP Note and the coherent way it treated proportionality, in particular by incorporating the classifications that correspond to the definitions that were introduced in CRR II and IFR.
71. One Member encouraged the ACP to collect views from a wide range of different market participants through a broad consultation. The same Member suggested the EBA to conduct regular reviews of the quantitative thresholds to avoid significant reclassifications over time. Finally, the Member noted that the wording of the Report could be smoothed in some parts and offered to provide drafting suggestions in written form.
72. The Head of the EBA EAIA Unit commented on the issue of size and complexity in the European banking landscape and the tradeoff that needs to be made when assessing proportionality as institutions can also be small-and-complex or large-and-non-complex. To fully cover all the different institutions, it would be important to receive not only data from larger institutions but also from small and non-complex institutions.

Conclusion

73. The Chairperson concluded that there was support for the Note on Proportionality Assessment methodology and that the ACP could go forward with a public consultation after the BoS members provide drafting suggestions.

Agenda item 11: Implications of Case C-501/18, BT v Bulgarian National Bank

74. The EBA Head of Legal & Compliance introduced the Members to the developments regarding a 2014 Breach of Union law case in which the EBA issued recommendations to the Bulgarian National Bank and the Bulgarian DGS scheme (BDIF). The European Court of Justice had recently declared the Breach of Union Law recommendation that the EBA issued in 2014 partially invalid.
75. The EBA was particularly concerned not to have been notified by the Court of the case and the EBA has been in correspondence with the Court on this. The European Court of Justice has apologised and provided assurances as regards notification on current and future cases, but concluded that the case is closed and therefore no further action was to be taken. The Chairperson added that the entire process was frustrating from EBA's side but he was hopeful that in the future no similar incidents were to be expected.
76. The representative of the EC noted that the litigation only proved the importance of the decision making of the EBA. Furthermore, she acknowledged that in his particular case the European Court of Justice did not apply its own Rules of Procedure. She informed the Members that the EC will analyse the incident and will look for ways to further improve collaboration when there is litigation involving the ESAs.
77. One Member warned the Board of Supervisors that decisions of competent authorities are increasingly scrutinized by the courts and that this called for a diligent anchoring of the legal basis of future decisions. Another Member asked the EBA whether there was an opportunity to reopen the case. The EBA Head of Legal & Compliance explained that the Court had confirmed that this was not possible, and while other avenues may be available to challenge the failure to notify the EBA it was considered that in light of the Court's commitments it was not beneficial to pursue this further. One Member asked the EBA whether there was a risk of liability for the EBA. The EBA Head of Legal & Compliance informed the Members that although such a risk can't be ruled out completely, the chances for this were very low as the Bulgarian authorities had ultimately not acted upon the relevant part of the EBA's Recommendation.

Agenda item 12: Update on disclosure of BoS Member's votes following Ombudsman case

78. The EBA Head of Legal & Compliance updated the Members on the proceedings of the Ombudsman inquiry into EIOPA's non-disclosure of its Board's votes on the PRIIPS KID draft RTS last year. EIOPA's Board has decided that, in light of the Ombudsman's preliminary findings, it will start systematically disclosing votes on draft technical standards, whether taken in meetings or in written procedure. ESMA already discloses votes taken in its meetings unless they are held in closed session, and had no objections to extending this to written procedures. The EBA now needed to decide on the direction it should take. The EBA Head of Legal & Compliance noted that, given the Ombudsman's, EIOPA's and ESMA's respective positions, the EBA will need to move towards increased disclosure of votes on draft technical standards.

79. Several Members expressed support for the EBA proposal but questioned the need to implement measures immediately. It was suggested to take some time to amend the internal procedures to safeguard a harmonized implementation across the three ESAs. One Member asked whether it was foreseen that the disclosure of BoS votes in the future would include votes on Guidelines or Recommendations.
80. Multiple Members pointed to the negative consequences that the disclosure of BoS votes could have for the pro-European spirit of decision making and the independent functioning of the BoS. In that regard, Members pointed to the increased pressure that they could face in their home market. One Member pointed out that after BoS approval, draft technical standards can be amended at the level of the EC and questioned whether the EC had any plans to provide more transparency in the underlying discussion on these amendments. The Head of Legal & Compliance explained that the proposal was to align with EIOPA in terms of both the scope and timing of vote disclosures.
81. Another Member asked the EBA whether there were any plans for retrospective disclosure of BoS votes, as this could be problematic from a conceptual point of view. The EBA Head of Legal & Compliance explained that the EBA currently was not planning to publish votes retrospectively on a systematic basis, but that retrospective disclosure could not be ruled out if a request was received for the disclosure of votes on draft technical standards – as had happened in the case of EIOPA’s voting on the PRIIPS KID draft RTS. One member asked the EBA whether the disclosure of votes would include any reasoning that accompanied the vote. The EBA Head of Legal & Compliance responded that this indeed would be the case.

Conclusion

82. The Chairperson concluded that there was general support for the proposal but underlined the need to liaise with ESMA and EIOPA to align the Rules of Procedures of the three ESAs.

Agenda item 13: AOB

83. No other business was discussed.

Participants of the Board of Supervisors' conference call 27 April 2021

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	
3. Bulgaria	Stoyan Manolov	
4. Croatia	Martina Drvar	
5. Cyprus	Constantinos Trikoupis	
6. Czech Republic	Zuzana Silberová	
7. Denmark	Thomas W. Andersen	
8. Estonia	Andres Kurgold	Timo Kosenko
9. Finland	Jyri Helenius	
10. France	Dominique Laboureix & Emmanuelle Assouan	
11. Germany	Raimund Roseler & Peter Lutz	Karlheinz Walch
12. Greece	Heather Gibson	
13. Hungary	Gergely Gabler	
14. Ireland	Gerry Cross	
15. Italy	Bruna Szego	
16. Latvia	Ludmila Vojevoda	
17. Lithuania	Marius Jurgilas	
18. Luxembourg	Claude Wampach	Christian Friedrich
19. Malta	Pierre Paul Gauci	
20. Netherlands	Sandra Wesseling	
21. Poland	Kamil Liberadzki	
22. Portugal	Ana Paula Serra	
23. Romania	Cătălin Davidescu	
24. Slovakia	Tatiana Dubinova	
25. Slovenia	Primoz Dolenc & Damjana Igljic	
26. Spain	Angel Estrada & Alberto Rios Blanco	
27. Sweden	Karin Lundberg	

<u>EFTA Countries</u>	<u>Member</u>
1. Iceland	Unnur Gunnarsdóttir
2. Liechtenstein	Markus Meier
3. Norway	Morten Baltzersen

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

<u>Other Non-voting Members</u>	<u>Representative</u>
1. ECB/SSM	Stefan Walter, Carmelo Salleo



- | | |
|--------------------------------|--------------------|
| 2. European Commission | Nathalie Berger |
| 3. EIOPA | Kai Kosik |
| 4. ESMA | Tomas Borovsky |
| 5. EFTA Surveillance Authority | Marta Rúnarsdóttir |
| 6. ESRB | Tuomas Peltonen |

EBA Directors

Executive Director	Francois-Louis Michaud
Director of Operations	Peter Mihalik
Director of Banking Markets, Innovations and Consumers	Piers Haben
Director of Economic Analysis and Statistics	Mario Quagliariello
Director of Prudential Regulation and Supervisory Policy	Isabelle Vaillant

EBA staff

Philippe Allard; Lars Overby; Jonathan Overett Somnier; Slavka Eley; Francesco Mauro; Angel Monzon; Olli Castren; Dirk Haubrich; Tijmen Swank

For the Board of Supervisors

Done at Paris on XX May 2021

José Manuel Campa

EBA Chairperson