

EBA BS 2021 430

Board of Supervisors

9 June 2021

Location: teleconference

EBA Regular Use

Board of Supervisors 9 June 2021 – 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 Natasha Cazenave, the new ESMA Executive Director, as a new BoS Observer.
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. A first point on which the Chairperson updated the Members was a series of changes to its internal organisation. The new structure, which entered into force on 1 June 2021, aims at fostering synergies, increasing focus, and developing staff. A new Data Analytics, Reporting and Transparency department was created. It brings together the EBA's Units dealing with Statistics and with Reporting and Transparency. The EBA's financial stability and risk work is further strengthened within an Economic and Risk Analysis department. The department includes the EBA's current Economic Analysis and Impact Assessment Unit and Risk Analysis and Stress Test Unit, as well as a newly created ESG Risks Unit to root the EBA's ESG work in risk identification and measurement. Finally, a standalone AML/CFT Unit is created to carry out the new tasks conferred to the EBA as of 1 January 2020
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6. A second point on which the Chairperson updated the BoS is the Ombudsman inquiry on the disclosure of BoS votes. Since the April BoS conference call, there have been three developments in relation to the disclosure of BoS votes: i) the amendments to the rules of procedure have been approved and this should be confirmed by email shortly; ii) the Ombudsman has closed the EIOPA case concerning votes on draft technical standards, following EIOPA's decision to disclose the PRIIPS KIID votes and to commit to publish future votes, which is now also the EBA's position, iii) the Ombudsman has opened a new inquiry on this topic concerning the EBA's refusal to disclose the votes on the Danske and Pilatus BUL cases. The Ombudsman required us to explain our decision by 31 May which we have done, following helpful input from the Management Board on the letter which was discussed in the MB conference call of 27 May. While the EBA continues to defend the decision, we may be heading for another difficult encounter with the Ombudsman and the EBA will need to keep its approach under review. He noted that the EBA will keep the Members informed and the EBA might arrange a discussion if the EBA finds that the Ombudsman's timetable requires input from the Board ahead of its next meeting.
7. As a third point, the Chair updated the Members on the ECA audit on AML. The EBA circulated to the BoS the European Court of Auditor's planned report on effectiveness of the EU's AML arrangements, together with the EBA's reply. The EBA currently expects that the report will be published on 28 June. EBA's communication lines will essentially be those set out in the cover letter that we sent to the Court.
8. A fourth point on which the Chairperson informed the Members was the end of tenure of the current SConFin Chair. Pedro Duarte Neves will come to the end of his 2nd term this summer. The Chairperson used the opportunity to thank Pedro for his effective and productive chairing of this important committee of the EBA. He reminded the BoS that during the two terms of Pedro, the EBA published two Consumer Trend Reports, two supervisory convergence reports on EBA Guidelines, a Financial Education Report and the underlying EBA financial education repository, and the EBA report on the mystery shopping activities of national authorities. Pedro will chair his last SConFin meeting on July 7th/8th. Following the meeting, the EBA will be sending to BoS members a call for expressions of interest for a new Chair, or Co-Chair, and the EBA looks forward to receiving such expressions, ideally from a member of this Board.
9. A fifth point on which the Chairperson informed the Members was a BoE Discussion Paper on a strong and simple prudential framework for non-systemic banks and building societies. As the Danish BoS Member rightfully pointed out, the EBA would like to ask the Members' attention for a recently published BoE discussion paper on a strong and simple prudential framework for non-systemic banks and building societies. Although this discussion paper still is in a premature phase, we are keeping a close eye on this BoE initiative and we may revisit this issue in the future.

Agenda item 3: Risks and vulnerabilities in the EU

10. The EBA Head of the Risk Analysis and Stress Testing (RAST) unit presented to the Members the main risks and vulnerabilities in the EU, focusing on asset quality aspects as well as conduct and legal risks. The results of the Risk Assessment Questionnaire (RAQ) show that banks target SMEs and Residential mortgages portfolios for lending, while commercial real estate and Sovereign portfolios are of less interest. In addition, the increased debt/GDP ratios reported in European countries might pose a sovereign debt sustainability issue which may have a direct or indirect impact on banks' balance sheets.
11. The EBA Head of the RAST unit informed the BoS that asset quality trends of loans under support measures may pose a heightened credit risk in the next period. In particular, both, expired and current loans under moratoria show a higher allocation in stage 2. Operational risk and in particular cyber risk continue to be on the rise for banks. RAQ results suggest that the majority of banks consider operational risk will increase in the next period, with their focus on cyber risk. Reported cyber incidences in the Euro area have increased during the pandemic, but banks have not been severely impacted so far. The pandemic and the responses to it may give rise of emerging litigation or conduct risks.
12. Subsequently, the EBA Head of the Liquidity, Leverage, Loss Absorbency and Capital (LILLAC) unit presented to the Members the status quo of the IFRS 9 benchmarking exercise. The EBA is progressing on the development of an IFRS 9 monitoring report including: i) the quantitative and qualitative modelling information collected during the 2nd ad-hoc exercise launched in July 2020 with the aim of, inter alia, assessing the impact of COVID 19; ii) the information gathered from the qualitative questionnaire on IFRS 9 implementation, prepared by the SCARA Accounting Sub-Group, covering a broader scope of IFRS 9 topics (not only modelling practices); and iii) results from the analysis of specific IFRS 9 indicators calculated on the basis of the supervisory data reported over December 2020.
13. A presentation by the BoS Member from Poland followed. The Polish Member focused on the latest developments in the Polish banking sector, paying attention to the regulatory developments following the COVID pandemic such as the Polish public guarantee schemes ("anti-crisis shields") and the share of NPLs during the pandemic. The Polish Member paid special attention to the latest developments concerning loans and mortgages that were issued in CHF. These loans were affected by the CHF/PLN exchange rate and resulted in multiple legal challenges that are pending a resolution from the Supreme Court. He then presented a preliminary estimation of the costs for the Polish banking sector according to the different scenarios for the outcome of the court disputes.
14. While thanking the previous presenters, many Members updated the BoS on the developments in their jurisdiction. In that context, several Members mentioned rising upward risks in their jurisdiction, eg. in the form of rising housing prices and potentially asset price inflation. Members noted that the deterioration of the asset quality has so far been contained but still merits attention going forward, as credit risk might still deteriorate materially.

15. One Member noted that the current economic climate still contained a lot of uncertainties and stressed the need for reliable information on economic parameters. Members pointed to the existing cyber risks that deserved supervisor's full attention, also pointing to rising sophistication of attacks. One member also described that they are currently performing scenario analysis about what would happen if one of the member states' most significant institution would become a victim of a major cyber-attack.

Conclusion

16. The Chairperson concluded that overall asset quality seemed to be improving but that given the uncertainties, caution seemed to be warranted. In addition, he took note of the rising upward risks in certain jurisdictions and the increasing threat of cyber-attacks on financial institutions which deserved supervisor's full attention. Lastly, he noted that the nature of sovereign risks seemed to have shifted compared to the previous sovereign crisis.

Agenda item 4: COVID-19 measures monitoring

17. The EBA Director of Prudential Regulation and Supervisory Policy (PRSP) updated the Members on the different COVID-19 measures. In the context of the EBA work to monitor the impact of the COVID-19 pandemic on the banking sector, the EBA continues to reflect on whether the regulatory framework is fit for purpose. She reminded the BoS that in the April BoS meeting, the requests from the industry for relaxation of the regulatory framework did not receive much support. Since that discussion, the EBA received further calls for relaxation of the rules for debt restructuring.
18. The EBA presented to the BoS the question whether the regulatory framework is adequate, considering that regulation should not lead to excessive procyclicality. The focus was in assuring that the regulatory framework does not facilitate debt restructuring for those debtors affected by COVID. Two possible options have been proposed to be explored in case BoS members opine that action is needed: i) temporarily allow a probation period of three months before an exposure in distressed restructuring can return to non-defaulted status, instead of the currently applicable period which should be at least one year; ii) temporarily remove the automaticity in the application of the 1% threshold for distressed restructuring for exposures towards obligors affected by the COVID-19 pandemic. The idea would be that for the purpose of application of the definition of default, the breach of the 1% threshold should not automatically lead to unlikelihood to pay of the obligor. Finally, the EBA Director of PRSP briefly introduced the Members to the main points of the Report on COVID-19 PGS characteristics.
19. The representative of the COM shared his concern that the ending of the support measures that were taken following the pandemic, would result in cliff effects. The supervisory framework should provide sufficient incentives to restructure debt to prevent unwarranted insolvencies and to achieve a smooth transition to post-pandemic times. He emphasized that legislative amendments were not seen as appropriate and reminded the BoS that there was a clear call from stakeholders to use the flexibility that is entailed in the framework. The two

proposals brought to the table were considered by COM proportionate, time bound and accompanied by strong list of safeguards and would provide effective means to achieve these objectives.

20. Most members of the BoS did not support further action. Some Members missed a clear analysis of the necessity of the proposed measures and noted that the financial system should contain sufficient capital to face the challenges COVID brought up. One Member noted that the supervisory framework was not designed for sunny weather only, but also for rainy weather and supervisors should prevent financial institutions from lending to non-viable companies. Another Member suggested to first monitor the current measures closely, some implemented just a few months ago, before deciding on implementing additional measures. Other than that, more focus on the possible use of measures through Pillar 2 could be brought in.
21. In the same context, the representative of the ECB underlined the importance of measuring risks in a correct and consistent manner. In addition, he noted that the two proposals could result in unwanted spill over effects that could negatively impact the supervisory framework, such as IRB modelling. As for such, the two proposals required a high burden of proof.
22. Other Members highlighted that the solvency situations have to be assessed under the constraints of the lockdowns which do not help reflect a true picture of the structural situations. They were of the opinion that the options proposed could give the right incentive to banks to restructure their loan portfolios and for that reason deserved further analyses. The second option on the 1% threshold for distressed restructuring was judged as the most consistent with the objective to incentivize debt restructuring, and as such should be further examined. In this context, reference was made to the need to remain in the driving seat when working out an adequate COVID response.

Conclusion

23. The Chairperson concluded that there was a strong majority for maintaining the status quo at this time. At the same time, he noted that an active monitoring of measures was required. Among those who support further action, of the two options proposed, there seemed to be more support for option 2 although this could result in additional complexity for IRB modelling. He concluded that the EBA would continue to closely monitor the current measures in place and that the EBA stood ready to assess whether the two proposed options needed to be reconsidered should the situation significantly change.

Agenda item 5: EU-wide Stress test - Second assessment of the list of one-off adjustments and update on 2021 EU wide stress test

24. The EBA Head of the Risk Analysis and Stress Testing (RAST) unit presented to the BoS the preliminary results of the 2021 EU wide stress test. In his presentation, he focused on the impact of the stress test scenarios on the transitional and fully loaded CET1 ratio and the dispersion among different EU countries. Subsequently, he introduced the Members to the list of one-off adjustments and invited the Members to approve the final list of one-off adjustments.
25. The Chairperson concluded that the list of one-off adjustments was approved by consensus. Additionally, he shared his observation on the preliminary 2021 EU-wide stress test results by saying that one aspect that may deserve further reflection is whether the impact on banks' capital ratios in the adverse scenario at the end of the 2021 exercise would be similar to the previous exercises, having in mind that the nature of the macroeconomic scenario was different, lower for longer interest rate, and the severity of this exercise seemed to be relatively harsher. Subsequently, the Chairperson informed the Members that a third submission of the results of the stress test is expected per end of June. As in previous years, the report with the results of the stress test will be submitted to the BoS for comments.

Agenda item 6: EBA analysis of RegTech in the EU financial sector

26. The EBA Director of Innovation, Conducts, and Consumers (ICC) presented the main points of the EBA RegTech report. The Report provides an overview of the RegTech market activity in the EU, raises awareness on RegTech within the regulatory and supervisory community, and aims to inform any relevant future policy discussions on the topic. The EBA RegTech report provides deep dive analysis of RegTech solutions in the fields of AML/CFT, fraud detection, regulatory reporting, ICT security and creditworthiness assessment. It also suggests ways forward to facilitate, in technological neutral way, the use of RegTech in order to support the digital transformation of the EU finance sector in line with the implementation of EC's Digital Finance Strategy, where RegTech falls among one of the main topics.
27. The EBA Director of ICC invited the Members to decide whether the deep dive Annexes, that provide further insights into different RegTech segments, should be made available to the CAs via the non-public section of the EBA FinTech Knowledge Hub or alternatively, whether the Annexes should be published along the RegTech report. He reminded the BoS that even if the Annexes were not published, the EBA will be using information included there to support thematic policy work, such as on remote onboarding.
28. There was broad support for publication of the RegTech Report. Regarding the possible publication of the Annexes the views were split, with some Members supporting publication of the Report including the Annexes while other Members preferred to distribute the Annexes in a more restricted manner. The representative of the COM noted that the EBA's policy recommendations would be considered in the context of COM's digital finance strategy.

29. Several Members expressed concern on the possible certification of RegTech institutions by supervisory authorities as this could become a marketing instrument that would take away institutions' own responsibility and additionally could undermine the neutrality of competent authorities.
30. Two Member suggested to disseminate the Report by means of an accompanying seminar. The EBA Director of ICC welcomed the idea.

Conclusion

31. The Chairperson concluded that there was broad support for publication of the Report and that the Annexes would be published for competent authorities only. He welcomed the suggestion to organise a seminar to disseminate the main elements of the RegTech Report to the relevant experts and stakeholders.

Agenda item 7: Report on the ESG risk management and supervision

32. The EBA Director of ICC introduced the BoS to the Report on ESG risk management and supervision. Following CRDV, the EBA is required to submit a report on its findings on ESG risk management and supervision to the European Parliament, to the Council, and to the Commission, by 28 June 2021. According to the IFD, the EBA is required to submit a report with similar scope to the European Parliament, to the Council, and to the Commission, by 26 December 2021. The draft report covers both mandates, although the last chapter on inclusion of ESG risks in the supervisory review and evaluation process (SREP), focuses on credit institutions as the supervisory framework for investment firms is still developing.
33. Based on the outcome of its report and in accordance with Article 98(8) CRDV and Article 35 IFD, the EBA may issue guidelines on the inclusion of ESG risks in the SREP. The report will be used as a basis to include ESG risks in an update to the SREP Guidelines and to include ESG risks in Guidelines addressed to institutions, taking into account potential new mandates arising from the Commission's upcoming Renewed Sustainable Finance Strategy.
34. The BoS supported the Report on ESG risk management and supervision and its subsequent publication. One Member expressed his appreciation on the use of the sequential approach that first focuses on qualitative information before taking into account quantitative information on ESG risks.
35. One Member suggested to slightly revise the figure displaying the main content of the Report so that it would accommodate SREP guidance. Another Member supported this suggestion and asked the EBA to consider using the Report as a starting point for other Guidelines that incorporate ESG risks.
36. One Member suggested to reconsider the wording on the Pillar 2 approach in order to make it a bit more flexible. Another Member expressed concern that the industry is looking at the

regulatory community to guide them on ESG risks, while they should start internalizing the risks already themselves. One member encouraged EBA to involve the new ESG risk unit as well as the EBA Sustainable Finance Network in all ESG-related EBA work at an early stage in order to ensure the consistent integration of ESG risks into all relevant regulatory products.

Conclusion

37. The Chairperson concluded that the BoS supported the Report and its subsequent publication. Furthermore, he suggested to closely intertwine the Report with the work on SREP guidance.

Agenda item 8: Update on the AT1 report and EBA guidance on ESG/Green capital bonds

38. The EBA Head of the Liquidity, Leverage, Loss Absorbency and Capital unit (LILLAC) presented the EBA Report on AT 1 instruments and guidance on ESG/Green capital bonds. She informed the Members that the changes concerning the guidance on AT1 issuances were limited and mainly caused by the changes in the Level 1 text or were targeted to further align the guidance with CET1 or TLAC/MREL monitoring reports. The update of the AT1 report included the EBA's considerations on ESG linked own funds and eligible liabilities instruments. Further, she reminded the BoS that the AT1 report had been chosen to transparently disclose the monitoring of the implementation of EBA's Opinion on legacy instruments, even though at this stage the information included in the AT1 report addresses questions that had been raised by the industry.
39. There was general support for the Report, although a few Members questioned how ESG capital bonds could be linked to ESG targets as this would increase complexity and could negatively impact the loss absorbing capacity of the bonds. In this regard reference was made to underlying investor protection for these ESG related capital bonds and the potential for greenwashing.
40. Another Member noted that ESG related capital bonds could impose a penalty for the issuer if the institution fails to meet the ESG targets set. This could result in a capital flow to a public agency, which would allocate these funds to ESG related projects. The member suggested that this can be a structure, which could be accepted, given that it is not a compensation paid to the investors, but rather ensures the funding of ESG projects. The EBA Head of the LILLAC unit mentioned that these aspects will be kept for further investigation depending on the precise features/structures that might appear in the future, most notably in relation to eligible liabilities.

Conclusion

41. The chairperson concluded that there was support for the Report but acknowledged the possible complexity that could arise when linking AT1 to ESG targets.

Agenda item 9: Consultation Paper on Revised SREP Guidelines

42. The EBA Director of Prudential Regulation and Supervisory Policy (PRSP) presented to the BoS the main elements of the Consultation Paper on the revised SREP Guidelines. This review was initiated to implement the changes in the regulatory framework introduced by CRD V and CRR 2. It also included a number of other revisions to align with other regulatory developments, including other EBA technical standards and guidelines developed since the last review, and with the recently agreed risk taxonomy. She also noted that while the Consultation Paper specifies the application date for 2023, it could be beneficial to consider the application of the revised SREP Guidelines already for the 2022 SREP cycle.
43. There was general support for the Consultation Paper although several Members noted that the text could be revisited to make it more streamlined and proportionate and asked for a fatal flaw review. One Member found the tone of the Guidelines on Pillar 2 Guidance (P2G) quite strong and suggested to consider a bit more flexibility.
44. There were multiple technical comments on the revised SREP Guidelines. A number of Members shared their doubts on the amendments to the paragraphs on the quality of capital to cover P2G addressing the risk of excessive leverage, on the interaction of the P2G with the different buffer requirements (especially the systemic risk buffer) and on the assessment of excessive leverage, as these requirements were still work in progress. One Member suggested to check the paragraphs on excessive leverage for possible unwarranted interference with level 1 text. Another Member suggested to incorporate ESG risks to the paragraph on the identification of key vulnerabilities.
45. Regarding the questions posed in the Consultation Paper, several members expressed concerns on question eight on the possible disclosure of P2G as this question could constrain the flexibility with regard to disclosure by NCAs. One Member suggested to reconsider question two as there was no need to address the possible incorporation of ICAAP information and estimates to the industry. Another Member asked for additional guidance for questions three to five as well as for question seven.
46. The representative of the SSM suggested to make a clearer distinction between the tasks of AML supervisors and the tasks of prudential supervisors.
47. The Director of PRSP responded that the legal risk related to the treatment of exempted exposures will be reviewed by legal experts. She agreed that more guidance on the leverage ratio stack was needed. For this reason, specific questions were included in the CP to gather more information. She noted that the possible offsetting with buffers is an open question and will be further discussed, possibly also with the Commission. On the quality of capital, she

suggested to rephrase the question in a more neutral manner with justifying considerations. Finally, she noted that it was important to keep an open question on disclosures given that ESMA is already looking into the topic and a prudential angle would also be needed.

Conclusion

48. The Chairperson concluded that there was broad support for the Consultation Paper but that a fatal flaw review was warranted to allow Members to share their final comments. He suggested to give Members until 15 June cob to share their fatal flaw comments. Regarding the consultation questions, he concluded to keep them as such as they are open. In addition, he noted that the possible interference with level 1 text should be checked by the EBA legal experts. Finally, he suggested to commence the work on further streamlining the text in order to improve its readability.

Agenda item 10: First draft 2022 AWP + ACP letter of recommendations

49. The EBA Executive Director presented to the BoS the first draft of the 2022 Annual Work Programme (AWP). In the context of the Single Programming Document (SPD) 2022, the EBA had prepared a preliminary version of the 2022 AWP. Based on this version, and following the developments during the first months of 2021, the EBA fine-tuned its 2022 priorities and further developed the work plan. The next step in the process would be to incorporate feedback from the BoS members and submit a final version of the AWP 2022 to the MB and subsequently to the BoS for endorsement. The final AWP 2022 should be transmitted to EU institutions by 30 September 2021. The Executive Director pointed out that, in parallel to this work, the ACP also studied the preliminary version of the 2022 AWP of the SPD 2022 and prepared a set of recommendations to help the EBA enhance proportionality in its work plan.
50. Subsequently, the co-Chair of the ACP presented to the BoS the ACP letter of recommendations which included: i) some general recommendations, and specific advice in the areas of ii) Supervisory Review and Evaluation Progress (SREP), iii) operational risk and investment firms, iv) reporting and transparency and v) ESG. He remarked the different timeline compared to last year's exercise, given that the ACP was set up only in 2020, and thanked the involved parties for the work delivered in a short timeframe.
51. There was broad support for both the 2022 AWP and the ACP letter of recommendations. One Member suggested to combine the vertical priority three with the horizontal priority two also in virtue of the ACP recommendations on reporting and transparency. Another Member suggested to incorporate the lessons learnt from the COVID pandemic into the priorities and to also give consumer protection tasks a more prominent role in the 2022 priorities, which seemed to focus predominately on prudential matters.
52. One Member welcomed the reassessed importance of cyber and ICT risk in vertical priority four but did not agree to the inclusion of innovation as this was more linked to consumer issues

instead of institutions. While the EBA Executive Director agreed that the work on cyber risk would be paramount in 2022, he disagreed to discern innovation. He noted that the EBA had launched multiple initiatives in the field of cyber risks, among others in the context of Regtech/Suptech so there was link between such work.

Conclusion

53. The Chairperson concluded that there was support for both the first draft AWP 2022 and the ACP letter of recommendations. He agreed that the 2022 priorities should advertise some of the EBA work in the area of consumer protection.

Agenda item 11: Final revised GL on incident reporting under PSD2

54. The EBA Director of Innovation, Conducts, and Consumers (ICC) presented to the BoS the final revised GL on incident reporting under PSD2. PSD2 conferred on the EBA and the ECB a central coordination role in relation to national and also other relevant EU authorities on this topic. The Directive provides that the Competent Authority in the home Member State should, without undue delay, share with the EBA and the ECB relevant details of the incident, and that the EBA and ECB should assess the relevance of the incident and notify Union and national authorities accordingly. PSD2 also requires the EBA to review, in close cooperation with the European Central Bank (ECB), the Guidelines on a regular basis and in any event at least every 2 years.
55. The EBA Director of ICC reminded the Members that EBA staff and SCPS reviewed and discussed the interplay between these revised Guidelines and the potential future incident reporting requirements under DORA, including their envisaged application dates. The conclusion was that the benefits of more streamlined reporting outweighed any modest costs of a change to the Guidelines and that EBA should proceed with the finalisation of the review of the Guidelines, in particular given that the negotiation process of DORA is still ongoing and thus its application date remains uncertain. He elaborated that as a result, it seems likely that the revised Guidelines would apply for at least 2 ½ - 3 more years before the reporting requirements under DORA fully apply.
56. One Member commented on the 24-hour timeframe for classification of an incident and that it may be too lenient. The EBA Director of ICC clarified that that the classification of the incident should take place without undue delay and no later than 24 hours after its detection, an approach which SCPS viewed as more stringent compared to existing practices where incidents were classified within 3-4 days.

Conclusion

57. The Chairperson concluded that there was broad support for the revised GL on incident reporting under PSD2 and that the EBA could continue with its publication.

Agenda item 12: Follow up to SCA implementation under PSD2

58. The EBA Head of the Conduct, Payments and Consumers (COPAC) unit presented to the BoS a follow-up update on the industry readiness for SCA implementation under PSD2. In the EBA Opinion on the SCA elements of June 2019, the EBA granted, on an exceptional basis, supervisory flexibility for national competent authorities, not to enforce the RTS on SCA&CSC from its legal application date of 14 September 2019, so as to allow issuing and acquiring payment service providers (PSPs) to migrate to SCA-compliant approaches and solutions for e-commerce card-based payment transactions. The subsequent EBA Opinion of October 2019 on SCA migration plans set the deadline for the supervisory flexibility on the SCA migration to 31 December 2020. In exchange, the Opinion set out the actions to be taken by NCAs, as well as by issuing and acquiring PSPs, during that period.
59. The EBA Head of the COPAC unit reminded the BoS that, at their meeting on 24 February 2021, it was acknowledged that progress on the SCA migration had been made, that non-compliance with the legal requirements of PSD2 and the RTS on SCA&CSC and unlevel-playing field remained due to the SCA ramp-up periods that several NCAs had allowed in their respective jurisdictions, and that therefore an additional reporting by Q2 2021 was agreed by the Board.
60. There was general support for the Report. A number of Members underlined the importance of a full and consistent implementation across all jurisdictions, especially for cross border transactions. One Member emphasized the importance of reliable data when drafting the Report.

Conclusion

61. The Chairperson concluded that the BoS supported the Report on industry readiness to apply SCA under PSD2 and that the EBA could continue with its publication.

Agenda item 13: Peer review work programme 2022-2023

62. The EBA Peer Review project leader presented to the BoS the Peer review work programme 2022-2023. The EBA's founding regulation requires that 'the Management Board shall make a proposal for a peer review work plan for the coming two years'. She presented to the BoS a methodology for the selection of topics from the list of EBA's final Regulatory products which could be subject to an EBA Peer Review, together with a proposal for the draft EBA 2022-23 Peer Review work plan, prepared using this methodology. Accordingly five topics were suggested: i) a peer review on EBA GLs of authorisation & registration under PSD2; ii) a peer review on EBA GLs on application of the definition of default; iii) a peer review on the EBA RTS on methods of prudential consolidation; iv) a peer review on the RTS on credit risk transfer requirements; and v) a peer review of RTS on exclusion from CVA of non-EU non-financial counterparties. The Members of the BoS were then invited to select the preferred topics from the proposed shortlist.

63. There was broad support for selecting the first three topics from the shortlist. One Member noted that the RTS on methods of prudential consolidation was implemented quite recently and suggested to align the planning of a peer review for this topic accordingly.
64. A number of Members expressed support for a peer review on topic five. One Member suggested to target the peer review on the RTS on exclusion from CVA of non-EU non-financial counterparties to CAs who supervise material institutions only. Several Members expressed doubt on the possible selection of the fourth topic as this RTS might not have the same relevance for all jurisdictions.
65. The representative of the COM supported the selection of the first three topics and underlined the significance of the fifth topic in the light of the recent departure of the UK from the EU. In addition, he suggested to add an AML related topic.

Conclusion

66. The Chairperson concluded that there was broad support for selecting the first three topics from the shortlist while noting a slight preference for adding topic five. He noted that the timing was ambitious given that the focal point of the different peer reviews seemed to be in 2023. The EBA Peer Review project leader acknowledged that the timing was ambitious but feasible. The Chairperson concluded that the Peer review work programme 2022-2023 would comprise of the four selected topics.

Agenda item 14: EBA Report on third country branches

67. The EBA expert from the Prudential Regulation and Supervisory Policy (PRSP) unit presented the Report on the treatment of incoming third country branches to the BoS. The Report illustrates the results of a survey on national law, regulation and supervisory practices applied to third country branches (TCBs) and brings to the fore the regulatory fragmentation across the EU, and the divergent treatment of third countries depending on the Member State where the TCB is established. She informed the Members that the Report also provides a mapping of the TCBs currently established in the EU and lays down high level recommendations for further harmonization of EU law, covering among others, authorisation, capital, liquidity, internal governance (including booking arrangements), and reporting. Importantly, it recommends the introduction of a subsidiarisation requirement when certain thresholds are reached.
68. There was broad support for the Report. Several Members underscored the relevance of the Report in light of the Brexit and noted that the role of third country branches did not always receive the appropriate prioritization in the past.
69. A number of Members suggested to further substantiate the Report on the main risks and benefits of branches as this would help provide a concise picture of the potential impact branches could have on the financial stability. Two Members noted that the Report fails to acknowledge the benefits and advantages of branches. Several Members referred to the equivalence regime and the need for a harmonized approach through the EU. The

representative of the COM acknowledged that the recommendations should be adequately substantiated but reminded the BoS that this should not refrain the Report from meeting the legislative deadline of 28 June for submission to the European Parliament, Council and Commission, in order to give the Legislator a good basis to decide. He therefore suggested to launch a fatal flaw review.

70. Some Members suggested to carefully mention the concept of reciprocity in the Report to raise awareness of the possible consequences for the EU institutions with branches in third countries.
71. Several Members underlined the significance of Recommendation two and three on subsidiarization and suggested to further strengthen the wording for these Recommendations. The same member suggested to reconsider the wording on Recommendation eight on capital requirements as it could possibly interfere with national bankruptcy laws. The representative of the SRB appreciated that these recommendations were set out at high level in the report and suggested to include resolution considerations in the criteria for subsidiarization.

Conclusion

72. The Chairperson concluded that there was broad support for the Report. He proposed to launch a final round of fatal flaw comments until Tuesday 15 June cob.

Agenda item 15: AOB

73. One Member brought to the attention of the BoS an issue that arose when implementing IFR/IFD. The issue at hand concerns the time gap between June 26th (the date of application of the IFR/IFD) and the entry into force of the RTS on the methodology for computing the EUR 30 bn threshold (expected late 2021). This time gap has an impact on firms that need to apply for a bank license. The Member involved asked the representative of the COM for some flexibility during this time gap.
74. The Chairperson acknowledged that this was an important issue and he informed the BoS that SCRePol will shortly be presented with a suggestion to address this issue.
75. The representative of the COM confirmed that it was also considering communication – coordinated with EBA – on this matter. However, it was clear that a certain degree of flexibility could be applied as provided in Article 58 of the IFR. He also underlined that the transition needed to be handled in a harmonized way across the COM, the EBA and NCAs.

Participants of the Board of Supervisors' conference call 9 June 2021

Chairperson: Jose Manuel Campa

Country	<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	Jesper Berg & Thomas W. Andersen	
8. Estonia	Andres Kurgpold	
9. Finland	Jyri Helenius	Katja Taipalus
10. France	Dominique Laboureix & Emmanuelle Assouan	
11. Germany	Peter Lutz	Karlheinz Walch
12. Greece	Heather Gibson	
13. Hungary	Csaba Kandrac	
14. Ireland	Gerry Cross	
15. Italy	Bruna Szego	
16. Latvia	Santa Purgaile & Ludmila Vojevoda	
17. Lithuania	Marius Jurgilas	
18. Luxembourg	Claude Wampach	Christian Friedrich
19. Malta	Christopher Buttigieg & Pierre Paul Gauci	Oliver Bonello
20. Netherlands	Maarten Gelderman & Sandra Wesseling	
21. Poland	Kamil Liberadzki	
22. Portugal	Ana Paula Serra	
23. Romania	Cătălin Davidescu	
24. Slovakia	Tatiana Dubinova	
25. Slovenia	Primoz Dolenc & Damjana Iglic	
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	Martin Merlin
3. EIOPA	Kai Kosik
4. ESMA	Natasha Cazenave
5. EFTA Surveillance Authority	Marta Rúnarsdóttir
6. ESRB	Tuomas Peltonen



EBA Directors

Executive Director

Director of Operations

Director of Banking Markets, Innovations and Consumers

Director of Prudential Regulation and Supervisory Policy

Francois-Louis Michaud

Peter Mihalik

Piers Haben

Isabelle Vaillant

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

For the Board of Supervisors

Done at Paris on 26 August 2021

José Manuel Campa

EBA Chairperson

Annex – results written procedures since previous BoS conference call (27 April) including voting disclosure for technical standards

JC report on the functioning and implementation of the securitisation regulation	ADOPTED
2021 EU-wide Transparency exercise and Risk Assessment Report (RAR)	ADOPTED
EBA Report on external credit ratings reliance	ADOPTED
EBA Reporting framework v 3.1 - Phase 1 (technical package)	ADOPTED
Report on Early Intervention Measures	ADOPTED
Final draft RTS on own funds and eligible liabilities	ADOPTED
EBA input on the market developments that could affect the European banking sector (Art 459 CRR)	ADOPTED
Update of EBA Indicators, Methodological Guide and MoU for sharing Risk Indicators	ADOPTED
Provisional list of further instruments and funds (under Article 9(4) of the IFR)	ADOPTED
EBA Opinion on macroprudential measure in accordance with Art 458 CRR (FR)	ADOPTED
Draft Decision to amend the BoS Rules of Procedure	ADOPTED
final draft ITS 2022 on Benchmarking	ADOPTED
Final manuscripts of 2020 EBA Annual Report & 2020 Consolidated Annual Activity Report	ADOPTED
JC Final Reports draft ITS ECAIs mapping	ADOPTED
Assessment of SEC's confidentiality regime for equivalence	ADOPTED
Minutes of the BoS conference call 27 April 2021	ADOPTED

Name	Adopted/Rejected?
JC report on the functioning and implementation of the securitisation regulation	ADOPTED
2021 EU-wide Transparency exercise and Risk Assessment Report (RAR)	ADOPTED
EBA Report on external credit ratings reliance	ADOPTED
EBA Reporting framework v 3.1 - Phase 1 (technical package)	ADOPTED
Report on Early Intervention Measures	ADOPTED
Final draft RTS on own funds and eligible liabilities	ADOPTED
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JC Final Reports draft ITS ECAIs mapping	ADOPTED
Assessment of SEC's confidentiality regime for equivalence	ADOPTED
Minutes of the BoS conference call 27 April 2021	ADOPTED

Final draft RTS on own funds and eligible liabilities

BoS Voting Member/Alternate	Excluded	Endorse	Do not endorse	Abstain	NO VIEWS EXPRESSED*
AT - Michael Hysek		x			
BE - Jo Swyngedouw		x			
BG - Radoslav Milenkov		x			
CY - Constantinos Trikoupis		x			
CZ - Zuzana Silberová		x			
DE - Peter Lutz		x			
DK - Jesper Berg		x			
EE - Andres Kurgpõld		x			
EL - Heather Gibson					x
ES - Ángel Estrada		x			
FI - Jyri Helenius		x			
FR - Dominique Laboureix		x			
HU - Gergely Gabler		x			
HR - Martina Drvar		x			
IE - Gerry Cross		x			
IT - Andrea Pilati		x			
LT - Marius Jurgilas					x
LU - Claude Wampach		x			
LV - Santa Purgaile		x			
MT - Pierre Paul Gauci		x			
NL - Maarten Gelderman		x			
PL - Kamil Liberadzki		x			
PT - Ana Paula Serra		x			
RO - Adrian Cosmescu		x			
SE - Karin Lundberg		x			
SI - Primož Dolenc		x			
SK - Vladimír Dvořáček					x

Final draft ITS 2022 on Benchmarking

BoS Voting Member/Alternate	Excluded	Endorse	Do not endorse	Abstain	NO VIEWS EXPRESSED*	QM
AT - Michael Hysek		x				
BE - Jo Swyngedouw		x				
BG - Stoyan Manolov					x	
CY - Constantinos Trikoupis					x	
CZ - Zuzana Silberová		x				
DE - Peter Lutz		x				
DK - Jesper Berg		x				
EE - Andres Kurgpõld					x	
EL - Heather Gibson		x				
ES - Ángel Estrada		x				
FI - Jyri Helenius		x				
FR - Dominique Laboureix		x				
HU - Csaba Kandrás					x	
HR - Sanja Petričić Turković		x				
IE - Gerry Cross		x				
IT - Andrea Pilati		x				
LT - Marius Jurgilas		x				
LU - Claude Wampach		x				
LV - Santa Purgaile		x				
MT - Pierre Paul Gauci		x				
NL - Maarten Gelderman		x				
PL - Kamil Liberadzki		x				
PT - Ana Paula Serra		x				
RO - Adrian Cosmescu					x	
SE - Karin Lundberg		x				
SI - Primož Dolenc		x				
SK - Vladimír Dvořáček		x				

JC Final Reports draft ITS ECAIs mapping

BoS Voting Member/Alternate	Excluded	Endorse	Do not endorse	Abstain	NO VIEWS EXPRESSED*	QM
AT - Michael Hysek		x				
BE - Jo Swyngedouw		x				
BG - Radoslav Milenkov		x				
CY - Constantinos Trikoupis					x	
CZ - Zuzana Silberová		x				
DE - Peter Lutz		x				
DK - Jesper Berg		x				
EE - Andres Kurgpõld		x				
EL - Heather Gibson		x				
ES - Ángel Estrada		x				
FI - Jyri Helenius					x	
FR - Dominique Laboureix		x				
HU - Csaba Kandrács		x				
HR - Sanja Petričić Turković		x				
IE - Gerry Cross		x				
IT - Andrea Pilati					x	
LT - Marius Jurgilas		x				
LU - Claude Wampach		x				
LV - Santa Purgaile		x				
MT - Pierre Paul Gauci		x				
NL - Maarten Gelderman		x				
PL - Kamil Liberadzki					x	
PT - Ana Paula Serra		x				
RO - Adrian Cosmescu		x				
SE - Karin Lundberg		x				
SI - Primož Dolenc		x				
SK - Vladimír Dvořáček		x				