

EBA BS 2011 175

25 November 2011

Minutes of the EBA Board of Supervisors Teleconference

22 November 2011: 16:30 CET - 18.00hrs CET

1. The Chair opened the call by outlining the main topics to be discussed.
2. One member asked whether an extraordinary BoS meeting should be convened and for clarification on the entire package including the vote.
3. The Chair explained that at the MB the voting procedure had been discussed and there was consensus that the rules of procedure on voting of all the three ESAs should be discussed at the next JC meeting. This would be flagged at the December BoS meeting.
4. The Chair confirmed that members would be given a few days to comment on the Recommendation and confirmed that it would be voted upon by QMV as per Article 16 of the EBA Regulation. He clarified that until now all votes were for orientation only. Members could table amendments to the Recommendation which would also be subject to QMV. The overall package would include the Recommendation, procedures, plans, annexes on the methodology and capital instruments and also the floors.

Feedback on EFC/ECOFIN

5. The Chair provided an overview of what was discussed at EFC and ECOFIN, emphasising the importance of seeing the banking component as part of a broader package of policy measures.
6. ...¹

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

Methodology for computing the floors

7. On the issue of transitional floors, some NSAs complained of no level playing field as floors were applied in some countries and not in others. The preference would be to have transitional floors applied to all banks across the board.
8. There are different ways in which the floors are calculated across the single market but these can be narrowed down to either assessing the floors against total own funds or taking an RWA approach which would have more impact on the EBA exercise.
9. The Chair asked the Board to express its views on the 2 possible options for the calculation of the transitional floors. There was no clear majority for either option, although the more restrictive option proposed by EBA Staff garnered more support. It was decided that both options would be left available to choose between and the final results will be presented giving full disclosure of the choices made.

Term sheet contingency on capital instruments

10. This was discussed at MB; the document will be circulated again taking into account comments provided by members. The Chair suggested members put forward their comments in writing. The Chair indicated that a revised version would be sent out with members' comments on 24 November.

Buy-backs

11. This issue was also discussed at the MB. CEBS' Guidelines stated that in exceptional circumstances NSAs could allow certain buy-backs such circumstances exist at present. A few comments were received from members indicating that there was general agreement here and so the document would be reviewed to reflect the comments. There would be a vote on the issue.

Moratorium

12. The issue of a moratorium on the exercise of calls on innovative capital instruments was also raised at last week's MB week where most members were not convinced and argued that this should be applied on a case by case basis. Based on comments on the call the Chair acknowledged that there was no strong support for this proposal.

Structure of the Recommendation

13. The Chair explained what were considered to be the appropriate articles to base the Recommendation on namely articles 16(1), 21 (2)(b) 31. Annexes would contain the methodology and an explanatory memorandum. He proposed to allow members to table amendments to the Recommendation, with a subsequent vote for the overall package.

14. The Chair noted that some NSAs might lack the legal basis for implementation and members to flag this should it be the case. If there was a legal vacuum one option is to fill it with a piece of legislation. However, if legislation is put forward it is important not to reopen the technical discussions. Another consideration here is that further legislation might be needed to repeal the legislation after it is introduced. Members pointed out that any legal obstacles to implement the legislation will be addressed with national legislation already under consideration. No new piece of EU legislation was considered necessary.

15. There was consensus at the MB that QMV would apply to the decision on the Recommendation on the capital buffer. A baseline proposal will be tabled after comments and members will have the option to table amendments to this proposal.

Conclusion

16. The Chair noted that good progress has been made and that the EBA would have a comprehensive package for ECOFIN. EBA Staff would contact members who did not express a preference today on the floors. With regard to the term sheet, EBA Staff would circulate a revised version incorporating the comments received. With regard to buy-backs, the paper would be finalised and submitted for final endorsement. The Recommendation would be circulated on 23 November at the latest. The timing of the final decision and publication of the Recommendation would be revisited in light of the discussion at ECOFIN and on advice of the Commission.

The teleconference was adjourned.

Andrea Enria
Chair