

EBA BSG 2014 62 Rev1

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BSG

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26 June 2014 / 09.30-17.00

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Location: London

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# Banking Stakeholder Group Meeting – Minutes

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## Agenda item 1.: Welcome and Approval of the Agenda

1. The BSG Chairperson and the EBA Executive Director welcomed the BSG Members. The minutes of the BSG 12 May 2014 and the Joint BSG/BoS meeting of 13 May 2014 were approved by the BSG. The Joint BSG/BoS meeting minutes were submitted to the BoS for written comments and approval.
2. The BSG asked the EBA staff to check for IT solutions regarding a BSG Member email distribution list.

## Agenda item 2.: Introduction of new BSG Members

3. The BSG Chairperson welcomed Erin Mansfield (Barclays, representing ‘credit and investment institutions’), as new BSG Member. Erin Mansfield briefly introduced herself.

## Agenda item 3.: BSG Chairperson to update on developments

4. The BSG Chairperson reported on the BSG’s activities since the last BSG meeting. It was recalled that the BSG had since October 2013 produced 14 responses to EBA Consultation Papers. Two further responses were under preparation. He further noted that the EBA staff had prepared a draft template for BSG to use in order to ensure a consistent style of BSG submissions to the EBA.
5. Further, the BSG Vice-Chairperson informed the BSG of a meeting with the Chairs/Vice-Chairs of the other ESA Stakeholder Groups (SHGs) which took place on 3 June 2014 at the EBA’s premises. He noted that all SHGs felt that their scope was somewhat constrained by the very technical nature of the mandates assigned to the ESAs, and looked for opportunities to deliver more “strategic” contributions.

6. It was discussed that agendas could be exchanged prior to the Stakeholder Group meetings, and that SHG Chairs/Vice-Chairs may join other SHG meetings when issues of common interest are discussed. However, some BSG Members pointed out that confidentiality should still be ensured in such discussions.
7. The different SHGs may cooperate in the future, for example by producing a joint submission which could serve as a “test case”. Possible areas could be: product design and oversight, financial conglomerates, financial conduct risks, listed banks, self-placement and especially PRIIPs. Consideration could also be given to producing a common “end of term of office” report, however, perhaps in addition to the BSG’s own report of that kind.
8. It was discussed that BSG could consider initiating work regarding financial conglomerates and check with the EIOPA Insurance and Reinsurance Stakeholder Group whether there is room for cooperation between the two Stakeholder Groups in this regard. It was agreed that several BSG Members should prepare a draft proposal to be discussed at the next BSG meeting. The EBA staff explained that the Joint Committee of the ESAs was responsible for work regarding financial conglomerates and input from the Stakeholder Groups was welcomed.

## Agenda item 4.: Update on Regulatory and Oversight Developments

### (a) Recovery and Resolution

9. The EBA staff updated the BSG on the EBA’s ongoing work regarding recovery and resolution planning. It was explained that the Bank Recovery and Resolution Directive (BRRD<sup>1</sup>) provides common rules and a toolkit across the EU. The Single Resolution Mechanism (SRM) would provide the institutional framework for the Eurozone. The aim is to have cross-border resolution across the whole Single Market. Problems for resolution of cross-border banks should be front-loaded, i.e. be addressed before a crisis situation occurs, and solutions would be provided through group-wide Recovery and Resolution Plans (RRPs). Further, firm commitments (joint decisions) on these RRP’s should be adopted.
10. The EBA has been requested to develop around 40 technical standards and guidelines as well as other reports and advice regarding Commission delegated and implementing acts. Further, the EBA would participate in resolution colleges and facilitate the process of reaching joint decisions on RRP’s. Also, the EBA would benchmark and peer review RRP’s. The EBA could internationally contribute to cross-border resolution on a global scale, e.g. by becoming the point of contact and coordinator for the relationship between the EU and third countries with regard to resolution cooperation agreements.

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<sup>1</sup> The BRRD was published in the Official Journal of the European Union on 12 June 2014: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.173.01.0190.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.173.01.0190.01.ENG).

11. It was explained that most of the EBA's rulemaking is required within 12 months after the BRRD's entry into force (i.e. end of June 2015). Thus, most of the EBA's consultations will take place by the end of 2014. In autumn 2014, the EBA will set up internally a Resolution Committee due to the legally required separation between supervisors and resolution authorities.
12. The BSG noted the overview of the EBA's BRRD and Deposit Guarantee Schemes Directive (DGSD) mandates. The BSG Working Group Coordinator on Recovery, Resolution and Systemic Issues viewed that the assessment of resolvability should be tailored to each bank's features. Due to banks' different structures and business models, a "one-size-fits-all" approach would not work. Thus, the banks' characteristics should determine the resolution strategy and the resolvability assessment.
13. He agreed that the BSG should ensure consistency in the approaches of resolution colleges. Also, it was viewed that the concept of "likely to fail" should be a key priority in the BSG's future submissions, which would also entail the resolution triggers.
14. Further, he explained that the FSB's outlined two different resolution strategies, i.e. the "single-point-of-entry" versus the "multiple-point-of-entry". The latter would typically best fit decentralised banks compared with the former.
15. Some BSG Members argued that in practice banks in a crisis situation may already be forced to exit the market before all the measures set out in recovery and resolution regulation would be triggered. Nonetheless, the usefulness of such planning was understood and that the general objective of the regulation was to minimise the social cost of bank failures.
16. The BSG would explore how best to react to the upcoming consultations and on which issues to focus on. The EBA staff agreed to further consult the BSG through its Working Group on Recovery, Resolution and Systemic Issues, also regarding the outcomes of the upcoming consultations, i.e. as a "sounding board".

## (b) EBA Executive Director to Update on General Developments

17. The EBA Executive Director updated the BSG on ongoing regulatory developments. He reported that the EBA would shortly launch its Consultation Paper on the Guidelines for the Supervisory Review and Evaluation Process (SREP), draft ITS on Joint Decisions on Prudential Requirements as well as draft RTS and ITS on Supervisory Colleges and recalled that these had been presented to the BSG at its meeting on 12 May 2014.
18. He informed that the EBA BoS had approved and would shortly publish its Report on the Peer Review of the EBA Guidelines 31 Regarding Credit Concentration Risk.
19. Further, he informed of the EBA's Response to the European Commission's Call for Advice on Article 513 CRR on Macroprudential Policies. The EBA opinion provides some policy recommendations, which are mainly related to the provisions of capital requirements for real estate

exposures, the O-SII buffer, the Systemic Risk Buffer, the pecking-order of macroprudential instruments and the coordination between competent and designated authorities.

20. The EBA Executive Director referred to the EBA's recently published Risk Assessment Report. Whilst the EBA's key risk indicators show a positive market sentiment, the signs of recovery remain modest and fragile. He noted that European banks have taken advantage of favourable market conditions to raise capital ahead of the 2014 EU wide stress test exercise. Nonetheless, the quality of some banks' loan portfolios continued to decline in 2013 and in the first months of 2014 and remains a concern across the EU, pointing to the need for rigorous asset quality reviews. EU banks' income and profitability has continued to be faced with significant headwinds, which are unlikely to dissipate in 2014 with the looming redress costs related to conduct issues a key concern.
21. Several BSG Members queried possible developments regarding the EBA's budget and its future funding structure. The EBA was asked to provide further information to the BSG regarding its budget. The BSG Chair and Vice-Chair noticed that, if EBA could not get access to an adequate amount of financial and human resources, its ability to conduct a deep and fruitful interaction with the BSG itself may be severely impacted. The BSG gave the Chair and Vice-Chair a mandate to raise with the EU Institutions EBA's budget issues and BSG's concerns. It was noted that any request for further resources to be made available to EBA should not be phrased in a way which may imply additional charges to financial institutions (and thus, indirectly, on bank services' users and consumers).

### (c) EBA's 2015 work programme

22. The EBA staff presented the EBA's 2015 work programme. Main topics to note were the regulatory mandates sought of the EBA contained in the Capital Requirements framework (CRD/CRR), the BRRD framework, and the revision of the DGSD.
23. Guidelines, Technical Standards, Notifications and Reports under the CRD/CRR would include, for example, the liquidity and leverage ratio, loss absorbency capital or minimum eligible requirements for bail-in. Regarding the DGSD, the EBA would develop methods for calculating risk based contributions to deposit guarantee schemes and requirements on mediation. In respect to the BRRD, reference was made to the earlier agenda item tabled on BRRD. Further, the EBA received European Commission requests for Calls for Advice relating to the CRD/CRR (e.g. on Liquidity /LCR, 3rd Country Equivalence) and on technical specifications in the BRRD and DGSD with short timelines to deliver.
24. Other regulatory work was in relation to:
- Audit Directive,
  - Money Laundering Directive (4th AMLD),
  - European Markets Infrastructure Regulation (EMIR),
  - Credit Rating Agency Regulation (CRA3),
  - Payment Services Directive (PSD2),

- Financial Conglomerates Directive (FICOD).

25. In the oversight area, the EBA's work on supervisory cooperation would continue. Topics include binding mediation, recovery and resolution plans, the identification of key risks and vulnerabilities in the financial sector, the monitoring of supervisory convergence as well as technical advice to the European Commission.

26. Other tasks of the EBA relate to the development of the Single Rule Book and its Questions and Answers Tool<sup>2</sup>. Also, the EBA would continue to undertake peer reviews of supervisory practices, training of National Competent Authorities, and the investigation of alleged breaches of EU Law and the handling of complaint investigations. The EBA staff also mentioned the work ahead regarding consumer protection (see below for further detail).

27. The BSG Members were asked to provide their suggestions concerning topics in the EBA's work programme that may be of special interest to the BSG. BSG Members mentioned financial inclusion, SME access to finance, and further monitoring of the implementation of EBA Guidelines and Technical Standards. Some BSG Members further warranted that some of the Calls for Advice the EBA received seemed to be of a rather political nature and should probably also be addressed to other bodies.

28. It was also noted that the EBA should clearly communicate priorities in its work programme due to the large amount of different tasks ahead. In addition, further details regarding the exact timing of the different deliverables and when these go into consultation would facilitate BSG involvement further. Implications from the Single Supervisory Mechanism may further impact the EBA's work programme.

29. Noted was the EBA's limited resources and its resulting limiting capacity to conduct own initiative work. The BSG was asked for suggestions to the EBA in how it should prioritise its work and whether there were any topics missing on the EBA draft 2015 Work Programme. BSG members were requested to send their views by e-mail to the Group's Vice-Chair by 10 July 2014.

#### (d) EBA work on consumer protection

30. The EBA staff reported on the outcomes of the recent BoS meeting and also mentioned that the EBA would soon publish an Opinion of Virtual Currencies, which entails a long term approach about what would be required in terms of regulation and discouraging firms to buy/hold/sell Virtual Currencies as long as no such framework is in place.

31. Work was also underway regarding a Commission request for Technical Advice on Intervention Powers for Structured Deposits, given the EBA's mandate for Structured Products in the Market in Financial Instruments Regulation (MiFIR). The EBA work programme for 2015 contained deliverables relating to the:

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<sup>2</sup> <http://www.eba.europa.eu/single-rule-book-qa>.

- Mortgage Credit Directive,
  - Payment Services Directive,
  - Payment Accounts Directive,
  - Packaged Retail and Insurance-based Investment Products Directive (PRIIPs) (Joint Committee),
  - Market in Financial Instruments Directive/Regulation (MiFID/MiFIR) – structured deposits,
  - Consumer trends report.
32. Further, EBA staff re-iterated a request already made at the BSG meeting in May 2014, for the BSG to contribute to the EBA's work by identifying particular risks and drivers of risks with regard to innovative payment services. As time has now passed and the EBA work has progressed, EBA staff offered to send a draft version of a 'risk tree' to the BSG Chair, for BSG to review and provide feedback by 25 July 2014 to the EBA staff.
33. The BSG was asked to further consider its input to particular EBA workstreams underway. In particular, the BSG was asked to consider whether a joint submission with the other ESA Stakeholder Groups could be developed in response to the joint EBA/ESMA/EIOPA work on cross-selling, a consultation paper on which will be published in October 2014, for a period of three months.
34. Some BSG Members noted the feedback of the EBA given in the publication of the final draft RTS on the minimum monetary amount of the professional indemnity insurance (PII) or comparable guarantee for mortgage credit intermediaries, under Article 29(2)(a) of Directive 2014/17/EU, on credit agreements for consumers relating to residential immovable property. The EBA staff explained that some of the more far-reaching suggestions of the BSG had not been possible to be taken up at this stage, due to lack of data, but will be re-considered at the next review of this RTS.

## Agenda item 5.: BSG Standing Technical Working Group on Consumer Issues and Financial Innovation

### i) Update on the Working Group on Consumer Issues and Financial Innovation

35. Several of the BSG Members, who are also members of the European Commission's Financial Services User Group (FSUG), reported on FSUG's work. The task of the FSUG is to advise the Commission in the preparation of legislation or policy initiatives which affect the users of financial services, to provide insight, opinion and advice, to proactively seek to identify key financial services issues and to liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level. Further noted were past activities of the FSUG and its research programme.
36. The BSG agreed to discuss the potential for cooperation with the FSUG at its next meeting.

## ii) Presentation on financial advice

37. One BSG Member presented the outcome of the Danish Ministry of Business and Growth's Committee on liability relating to financial advice, which she chaired. It was explained that in the past the burden of proof regarding wrong financial advice was with the claimant. Between February 2013 and January 2014 the Committee developed a Report on the possible way forward, which was published in March 2014.<sup>3</sup>

38. The Committee suggested that a passage in the Danish regulation regarding the character of the regulation should be deleted. The Committee also suggested a new rule which would establish a link between the executive orders and the general rules of compensation. Cases proved that it is hard for both the customer and the financial institution to lift the burden of proof. The Committee did not suggest specific rules regarding the burden of proof – but agreed that it is up to the courts and the complaint boards to use their competences in that area.

39. BSG Members viewed that the Danish regulation seemed to have been an example where general well-intended laws for consumer protection led to unintended consequences for individual consumers. However, it was also noted that the situation in Denmark was quite specific and could not be immediately translated into European measures or measures in other Member States.

## Agenda item 6.: Workstream of Technical Working Groups

### i) Allocation of work

40. The BSG Chairperson explained that the BSG had submitted 14 responses to EBA papers since October 2013. Two further responses were under active preparation.

41. Further submissions of the Working Group were agreed to be developed. The following leads for these submissions were identified:

- [EBA/CP/2014/07] – DL: 19 August 2014 (Louise Lindgren),
- [EBA/CP/2014/08] – DL: 12 September 2014 (Michel Bilger/Sandra Hafner/Robert Priester),
- [EBA/CP/2014/09] – DL: 13 September 2014 (Magdolna Szőke),
- Michel Bilger to lead the work on the CP on draft Guidelines on the Supervisory Review and Evaluation Process (SREP).

### ii) Discussion of proportionality and complexity

42. The Coordinator of the Ad hoc Working Group on Proportionality updated on the current status of this BSG own-initiative work. It was noted that the objective was to submit the Working

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<sup>3</sup> See <http://www.evm.dk/publikationer/2014/~media/oem/pdf/2014/2014-publikationer/rapport-udvalget-om-erstatningsansvar.ashx> (in Danish).



Group's position to the full BSG at the occasion of its 9/10 December 2014 meeting. Once agreed upon, the position should be made public and shared with the European institutions, regulators and National Competent Authorities.

43. Three workstreams have been set up in the Ad hoc Working Group. One will deal with the definition of proportionality and its economic perspective, the application of proportionality and an impact/costs analysis. The BSG asked the Ad hoc Working Group on Proportionality to take forward its work on the basis of the presented outline and to keep the BSG informed of developments.
44. The Coordinator of the Standing Technical Working Group on Capital and Risk Analysis gave an overview of the capital requirements for Swedish banks in order to illustrate the impact of the complexity of Basel III regulation on Swedish banks. She referred to the implementation of the CRD IV in Sweden, the timetable for implementation, the transparency of internal capital requirement and the resulting internal capital requirements themselves.
45. It was reported that the Swedish FSA intended to develop standardised methods for some pillar 2 risks. This would include standardised pillar 2 capital requirement reporting to the FSA, including data on what capital the credit institution intends to hold to cover these risks. Further, credit institutions should quarterly publish the results of the ICAAP. The methods, as well as the FSA's assessment of the larger institutions, will be published by the FSA.

## Agenda item 7.: Report from the BSG Standing Technical Working Group on Capital and Risk Analysis

46. The Coordinator of the Standing Technical Working Group on Capital and Risk Analysis updated on recent work undertaken by the Working Group. She gave an overview of the BSG's initial comments regarding [EBA/CP/2014/07]<sup>4</sup>. She noted that these represented a yearly data exercise which needs to be implemented and for which reporting standards have to be developed.
47. Further, such reports would have to be sent to NCAs at the beginning of March, which coincides with the pillar 2 and 3 processes. In order to analyse the differences between internal models there needs to be a cooperative effort between the NCA and credit institutions.

## Agenda item 8.: Next Meetings

48. The BSG was reminded of the remaining 2014 meeting dates. BSG Members were reminded to provide suggestions for the structure/content of BSG meetings and Joint meetings.

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<sup>4</sup> Draft Regulatory Technical Standards on benchmarking portfolio assessment standards and assessment sharing procedures under Article 78 of Directive 2013/36/EU (Capital Requirements Directive – CRD IV) and Draft Implementing Technical Standards on benchmarking portfolios, templates, definitions and IT solutions under Article 78 of Directive 2013/36/EU (Capital Requirements Directive – CRD IV).



## Agenda item 9.: AOB

49. One BSG Member enquired whether the EBA was directly involved in the Transatlantic Trade and Investment Partnership. The EBA explained that this had so far not been the case.

## Participants at the meeting of the Banking Stakeholder Group (BSG)

London, 26 June 2014

<u>BSG Member</u>	Representing
David T. Llewellyn (Chairperson)	Top-ranking academics
Andrea Resti (Vice-Chairperson)	Top-ranking academics
Alf Alviniussen	Users of banking services
Jean Berthon	Consumers
Michel Bilger	Credit and investment institutions
Javier Contreras	Consumers
Nikolaos Daskalakis	SMEs
Santiago Fernández De Lis	Credit and investment institutions
Chris De Noose	Credit and investment institutions
Ernst Eichenseher	Credit and investment institutions
Eilis Ferran	Top-ranking academics
Ernesto Fiorillo	Consumers
Sandra Hafner	Credit and investment institutions
John Hollows	Credit and investment institutions
Troels Hauer Holmberg	Consumers
Zdenek Hustak	Top-ranking academics
Alin Iacob	Users of banking services
Bostjan Krisper	Consumers
Nina Dietz Legind	Top-ranking academics
Louise Lindgren	Credit and investment institutions
Dominic Lindley	Users of banking services
Erin Mansfield	Credit and investment institutions
Ute Meyenberg	Employees
Jesper Bo Nielsen	Employees
Robert Priester	Credit and investment institutions
Holger Schwannecke	SMEs
Magdolna Szóke	Credit and investment institutions

From the EBA

Adam Farkas  
 Philippe Allard  
 Stefan Andresen  
 Stefano Cappiello  
 Dirk Haubrich  
 Corinne Kaufman