

EBA BSG 2013 76

EBA Staff

10 December 2013 / 09.30 – 17.00

Location: EBA premises, 18th Floor,
London

Banking Stakeholder Group Meeting – Minutes

Agenda item 1: Welcome and Approval of the Agenda

1. The BSG Chairperson and the EBA Executive Director welcomed the BSG Members. The EBA Executive Director apologised that the EBA Chairperson was unable to attend the morning session of the meeting as he had been requested to attend a meeting of an EU Institution at late notice.
2. The BSG approved the minutes of the 30 October 2013 meeting subject to minor editorial changes and the EBA Staff were requested to upload the minutes on the EBA's public website.

Agenda item 2: BSG Chairperson to update on developments

3. The BSG Chairperson updated the Group on recent discussions between the BSG Chairperson, BSG Vice-Chairperson and the EBA Staff in relation to the proposed BSG's Working Group structure so as to reflect the EBA's workflow.
4. He informed that he and the BSG's Vice-Chairperson had attended the EBA's Policy Research Workshop held on 17 November 2013 which they considered to be very informative.

Agenda item 3: Banking Stakeholder Composition - Ombudsman Complaint 1966-2011- (EIS)LP

5. The EBA Executive Director noted that the European Ombudsman has issued its decision on 07 November 2013 in respect to the complaint raised by UNI Europa, which had been lodged on 29 September 2011. This was one of four complaints lodged with the European Ombudsman in 2011 in respect of the composition of the first BSG, and the first to which the European Ombudsman has opined.
6. It was noted that the European Ombudsman had taken into account the EBA's written statement of 31 January 2012 and the outcomes of an on-site inspection at the EBA's offices

by Ombudsman staff on 19 March 2013. It was noted that the EBA and the other ESAs had informally received most of the feedback mentioned in the decision, and as a result these points had, to a great extent, been taken into account in the revised selection procedure for the recently renewed BSG composition.

7. The UNI Europa Finance representative welcomed the decision by the EBA to appoint two employee representatives, which is an improvement compared to the first BSG. However, the UNI Europa Finance representative viewed that “balanced proportions”, in line with the other categories (consumers, users, etc.), would mean three employee representatives.
8. The BSG Chairperson noted that the EBA’s task in selecting the BSG would seem to be an impossible optimisation problem, where it is very difficult to fulfil all the objectives laid out in the EBA’s Regulation with the limited amount of freedom that is available to the EBA including, the applications received.
9. The EBA informed the BSG that it will prepare its response, as requested by the European Ombudsman, by 30 April 2014 and that the EBA would consider sharing a draft with the BSG. It was clarified that the response would not affect the current composition of the BSG, as the complaints did not relate to this.

Agenda item 4: BSG Working Groups

10. The BSG Chairperson noted that most of the work of the BSG is conducted through working groups. It was proposed to have two levels of such working groups: Standing Technical Working Groups (STWGs) and temporary Ad Hoc Working Groups.
11. Standing Technical Working Groups (STWG) will be mainly responsible for drafting responses to EBA documents such as Regulatory Technical Standards, Implementing Technical Standard, Discussion Papers, and Guidelines etc. In cases where it might not be clear which STWG would be responsible for a particular Consultation Paper, it was agreed that the BSG would decide on the responsibility flexibly on a case-by-case basis. Temporary Ad Hoc Working Groups would be established from time to time as and when BSG wishes to report on an issue on its own initiative rather than in response to an EBA publication.
12. The BSG Chairperson emphasised that the work of BSG was certainly not restricted to responding to EBA documents and consultations and that it was free to consider, and make written submissions, on any issue that relates to the work of EBA. The two-fold structure of Working Groups is designed to reflect this.
13. The BSG established three Standing Technical Working Groups, to which Members had been asked to volunteer in advance of the meeting. The BSG also selected coordinators for each of these Working Groups, while noting that the STWG structure and coordination may be reviewed periodically at a later stage:
 - Capital and Risk Analysis Working Group: Louise Lindgren

- Recovery, Resolution and Systemic Issues Working Group: Santiago Fernandez de Lis
 - Consumer Issues and Financial Innovation Working Group: Robin Jarvis
14. BSG Members were asked to further consider whether they wished to join Working Group(s) (noting greater Consumer representation on the Capital and Risk Analysis Working Group and greater Credit and Investment Institutions representation sought on the Consumer Issues and Financial Innovation Working Group).
15. Further, the BSG set up an Ad Hoc Working Group on Risk Weights and Supervisory Consistency, headed by Andrea Resti, who provided a presentation on its possible considerations. Interested BSG Members were invited to contact Andrea Resti by 31 December 2013, suggesting:
- Topic to be covered (ideally, through a temporary title of 5-20 words) and main steps of the analysis (e.g., through 5-10 bullet points)
 - Short narrative describing the topic and expected results
 - Approach to be used in the analysis (descriptive, empirical, based on mere logical reasoning, based on previously published evidence, etc.)
16. Furthermore, BSG were asked to consider whether to establish further Ad Hoc Working Groups on either the leverage ratio or proportionality. In particular, the BSG Chairperson asked Chris De Noose to propose possible outlines of the work of both working groups.
17. BSG Members were requested to send suggestions for possible other Ad Hoc Working Groups to the BSG Chairperson and BSG Vice-Chairperson.
18. The BSG agreed to assign among its Working Groups, the draft BSG opinions on the following EBA Consultation Papers, currently out for consultation:
- [EBA/CP/2013/38], [EBA/CP/2013/37] and [EBA/CP/2013/39] (deadline 22 December 2013) – assigned to the Capital and Risk Analysis Working Group, Andrew Procter to lead the work on these CPs
 - [EBA/CP/2013/40] (deadline 18 January 2014) - assigned to the Capital and Risk Analysis Working Group, Jesper Nielsen to lead the work
 - [EBA/CP/2013/41] (deadline 24 January 2014) - assigned to the Capital and Risk Analysis Working Group, Chris De Noose to lead the work
 - [EBA/CP/2013/43] (deadline 24 January 2014) - assigned to the Capital and Risk Analysis Working Group, Michel Bilger to lead the work

- [JC/CP/2013/03] (deadline 07 February 2014) - assigned to the Consumer Issues and Financial Innovation Working Group: Dominic Lindley to lead the work

19. The three Working Group Coordinators were asked to initiate the preparation of a possible BSG opinion, which they may wish to discuss by convening conference calls, if necessary. The coordinator of the Capital and Risk Analysis Working Group suggested that the STWG hold a conference call on 17 December 2013 to initiate such discussions.

Agenda item 5: Update on Regulatory and Oversight Developments

i. EBA Executive Director to Update on General Developments

20. The EBA Executive Director reported on the EBA's peer review exercise on the implementation of the EBA stress testing guidelines, which had been published on 12 November 2013. The report showed that National Competent Authorities (NCAs) largely complied with the three assessed guidelines.

21. Further, he noted that the EBA recently presented data on high earners in EU banks, regarding the remuneration of EU bank staff who received one million Euro or more in total in 2012, which is part of the EBA's work on bank staff remuneration policies aimed at ensuring prudent and sustainable risk taking in the EU banking sector, as mandated to the EBA under the CRD/CRR framework.

22. The BSG noted that in some Member States their banks' highest earners earn less than one million Euro, and that the name of the report may, thus, be misleading.

23. He also reported on recent and upcoming workshops the EBA has held, including the EBA Policy Research Workshop to discuss measures on how to regulate and resolve systemically important institutions which was held on 14/15 November 2013 in London. Further, the EBA hosted a workshop on the conclusions of the EBA analysis of Pillar 3 reports on 28 November 2013.

24. In addition, the EBA hosted a workshop on stress testing on 05 December 2013, where the most recent issues regarding stress testing in banks, stress tests as a risk management tool, as well as stress testing from a regulatory perspective were discussed. He announced that on 17 January 2014, the EBA will host a legal workshop, which will bring together policymakers, supervisors, and legal academics to discuss the latest developments in the EU's regulatory and institutional landscape. Legal academics in the BSG as well as its Chair- and Vice-Chairperson had been invited to the Workshop.

25. The EBA Executive Director updated on liquidity that the EBA is mandated to produce a report for the European Commission on uniform definitions of liquidity by 31 December 2013, as was presented at the 30 October 2013 BSG meeting. In this regard, the EBA had held a public hearing on 23 October 2013 during which the preliminary findings of the report were presented.

26. Some BSG Members enquired about concerns that were noted in particular in Denmark, with regards to the treatment of covered bonds compared with government bonds. The EBA Executive Director explained that the report still needed to be endorsed by the EBA's Board of Supervisors and would then be sent to the European Commission. The Commission may subsequently consider the EBA's assessment when drafting the delegated act, which must be adopted by 30 June 2014. This means that the European Commission has the final say on any policy options regarding definitions of liquidity.
27. Regarding the 2014 stress testing, the EBA Executive Director noted that the EBA was currently considering (and discussing with the ECB and non-SSM supervisors) the key components that an EU wide exercise should have, taking into account the need: i) to leave sufficient flexibility to national supervisors, ii) while maintaining comparability of the results and a level playing field across jurisdictions.
28. BSG Members suggested that it needs to be communicated by the EBA and ECB that there is only one European stress testing exercise. Concerns were raised by BSG Members as to the confidentiality of AQR and stress test results, given legal disclosure requirements.
29. In addition, the EBA Executive Director reported on the on-going review of the European System of Financial Supervision (ESFS) where under the ESAs Regulation, the Commission's review of the ESAs is due to be finalised by 2 January 2014, and the review of the ESRB by 17 December 2013.
30. He noted that the consultants (Mazars) commissioned by the European Parliament, for its assessment of the ESAs, had published its final report on the ESAs review on 21 November 2013. The report concludes that the ESAs have made significant progress towards being recognised Authorities in their own right, and have gained influence within the financial services industry and with national competent authorities.
31. Furthermore, the European Parliament has drafted and published its own initiative report in October 2013. This draft report provides an overall very positive assessment of the EBA and proposed recommendations to enhance the ESAs powers, competences as well as resources. It is envisaged that the European Parliament will vote on its final report by early February 2014.

ii. EBA Risk Assessment Report

32. EBA Staff presented its current draft of the next edition of its EBA Risk Assessment Report. The report draws on the views of banks and national supervisors to construct a forward-looking view of risks that are of concern to regulators and policymakers.
33. The main outcomes of the report are:
- There are several indicators showing that confidence is returning. At the same time, developments in the global money and financial markets remain fragile and susceptible to a sudden switch of market sentiment.

- The institutional reforms at EU level are critical to breaking pernicious linkages, in particular the establishment of the banking union including the creation of a more integrated framework for bank resolution, and a single deposit guarantee scheme.
 - A dislocation between financial markets and the real economy continues to be observed.
 - Uncertainties about asset quality persist and remain a fundamental issue across the EU. The uncertainties about asset quality have heightened the need for rigorous Asset Quality Reviews (AQRs), with consistent definitions, across the EU.
 - The issue of profitability is a cause of concern for both banks and their supervisors. The need for bank restructuring and changes to business models will remain a challenge.
 - As well as reputation risk, the potential prudential impact of conduct-related issues also remains a concern.
34. BSG Members had been asked for written comments in advance of the meeting which were taken into account by EBA Staff together with comments coming from the EBA's Board of Supervisors.
35. BSG Members noted further that the Risk Assessment Report was mainly based on aggregates and suggested that the EBA could consider differentiating further by region or Member State. The EBA Staff explained that this would become possible going forward with the new European reporting framework which would provide the EBA with a larger sample of banks to assess. Also, compensation issues around governance were noted including who would eventually pay such compensation, e.g. in relation to benchmark fixing, and whether consumers may eventually pay through higher charges. In relation to cost-reduction measures, some BSG Members suggested clarifying to what extent these would have an impact on bank staff. .
36. Further, some BSG Members highlighted the importance of the relationship between banks and customers and considered that it could be clarified that consumers lost significant amounts of money in the financial crisis, which contributed to a perceived loss of trust and confidence.
37. It was noted that the EBA was shortly due to publish the final report which would be circulated to the BSG for information. Also, the EBA Staff would consider some of the issues raised by the BSG in future risk assessment reports, to the extent that these have not yet been incorporated.

iii. EBA Staff to Present Update on EBA's Regulatory Work Under Development

- (a) EBA work carried out on the Guideline for Point on Non Viability and the Guideline on resolvability assessment (B-point)

38. EBA Staff reported on the above mentioned Guidelines and took note of the extensive amount of work undertaken internationally under the auspices of the Financial Stability Board (FSB) on the subject, i.e. regarding the assessment in Crisis Management Groups (CMGs) for individual Global Systemically Important Financial Institutions (G-SIFIs) as well as the FSB's thematic review of readiness planned for 2014.

39. EBA Staff reported on resolution triggers and noted that Article 27 of the draft Bank Recovery and Resolution Directive (BRRD) requires authorities to determine that three conditions are all met before triggering resolution:

- The institution is failing or likely to fail,
- There is no reasonable prospect of an alternative action preventing failure,
- Resolution is necessary in the public interest.

40. Thus, the EBA was mandated to develop Guidelines on the interpretation of 'failing or likely to fail'.

41. In the European Union, regarding the interpretation of 'failing or likely to fail', the draft BRRD lays down:

- Breach of requirements for authorisation, or objective elements to indicate a breach in the near future,
- Assets are, or 'objective elements' indicate will be, less than liabilities,
- Unable to, or 'objective elements' indicate will be unable to, pay debts as they fall due.

42. In addition, the EBA would provide Guidelines to provide further detail on 'objective elements'. Some open issues relate to whether these should include market indicators and also on the role of (non-binding) quantitative benchmarks.

43. Regarding resolvability it was noted by the EBA Staff that:

- Article 13 of the draft BRRD requires resolution authorities to assess, and identify impediments to resolvability,
- Article 14 of the draft BRRD provides powers to remove such impediments.

44. Thus, the EBA was mandated to develop Guidelines on matters to assess under Article 13 and Guidelines on circumstances to apply Article 14 measures.

45. The envisaged resolvability assessment would constitute an iterative process in which authorities choose a proposed resolution strategy and then assess its feasibility and credibility. Such strategies would be broadly classified as Single Point of Entry or Multiple Point of Entry

(thus, following the FSB's classification). In any case, the resolution objectives (Article 26) must be achieved, respect resolution principles (Article 29) and avoid the use of extraordinary public financial support (i.e. state aid).

46. Resolvability measures in line with Article 14 of the draft BRRD powers are already very broad, i.e. supervisors could require institutions to change their structures or business models. The BRRD process requires measures to be necessary, suitable and proportionate.

47. BSG Members noted that with regard to European banks a single point of entry would be more appropriate, while this may be different outside of the EU, thus, resulting in a hybrid regime differentiating between the European and non-European parts of groups. The BSG Members also suggested that the definition of pillar 2 capital should be more clearly defined. Further, difficulties relating to the interplay between national GAAP and IFRS were noted. Employment issues in relation to bail-in were also noted.

48. BSG Members were invited to provide their possible written input on the presentation to EBA Staff.

(b) ESA work on Bilateral Margining

49. EBA Staff explained that in September 2009, G20 Leaders agreed that:

- "All standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements."

50. Among the main areas of reform of over-the-counter (OTC) derivatives are margins for non-centrally cleared OTC derivatives. Within the development of such reform, the following open questions currently exist:

- Exchange of variation margin is industry practice, exchange of initial margin is not,
- List of eligible collateral to be defined in the Technical Standard, Covered bonds, use of references to external ratings (Credit Quality Steps),
- Re-use and re-hypothecation,
- Models approval,
- Timing.

51. Further to the RTS on Margin Requirements which the EBA would continue to develop in 2014, the requirement to collect a variation margin would become effective on 01 December 2015 for new contracts. Furthermore, a staged introduction of the requirement to collect initial margin from 01 December 2015 to 01 December 2019.

52. BSG Members were invited to provide their possible written input on the presentation to EBA Staff.

(c) EBA work on Consumer Protection

53. The EBA Staff updated on its current work on consumer protection. In particular, reference was made to the upcoming Consumer Trends Report, the joint EBA/ESMA Consultation Paper (CP) on Complaints Handling Guidelines out for consultation, the CP on RTS on Professional Indemnity Insurance for mortgage intermediaries and the draft EBA warning on virtual currencies.

54. Regarding the EBA's annual report on Consumer Trends, it was noted by the EBA Staff that the report identifies trends in the market and helps the EBA prioritise its consumer work. Preparations are underway for the EBA's next report which is due to be published in March 2014, where the EBA has revised its methodology to include more sources of information, both quantitative & qualitative.

55. The EBA Staff thanked the BSG for its feedback to a request to identify the BSG's perceived main consumer issues, to which 19 Members of the BSG had responded. The top six nominated topics by BSG were "mis-selling of products" (14), "financial advice" (14), "household borrowing" (12), "consumer trust and confidence" (11), "financial literacy" (9) as well as "bank account fees and switching" (8).

56. With regard to the joint EBA/ESMA consultation on complaints handling guidelines [JC CP 2013 03], the EBA Staff noted that as financial institutions are able to provide services across borders throughout the EU, consumers ought to be able to rely on the same complaints handling arrangements, no matter where they reside, where the firm resides, and what type of financial service they bought. Moreover, the EBA/ESMA had developed guidelines, based on the existing EIOPA guidelines developed for the insurance sector. EBA Staff requested the BSG to contribute to the consultation and the BSG Chairperson informed EBA Staff that they will do so in a combined response.

57. With regard to the EBA consultation on RTS on Professional Indemnity Insurance for mortgage credit intermediaries, the EBA also sought the BSG's opinion. It was noted that Article 29 of the proposed Mortgage Credit Directive (MCD) required Member States to ensure that mortgage intermediaries hold professional indemnity insurance (PII) against liability arising from professional negligence or a comparable guarantee. Further, the EBA has been mandated to develop draft RTS to stipulate the minimum monetary amount of the professional indemnity insurance.

58. The EBA Staff explained that currently virtual currencies are unregulated in the EU and cannot be easily classified as a payment system, currency, or electronic money. The question arises as to whether virtual currencies can and ought to be regulated, which the EBA and ESMA will jointly assess. However, given the risks identified for consumers, as a first step, the EBA would shortly be issuing a warning to consumers.

59. BSG Members inquired about the EBA's role with respect to the Bank Account Directive¹. Further, the BSG took note of the EBA's consumer protection work plan, where the EBA would be seeking the BSG's views.

(d) EBA Q&A Process

60. The EBA Staff informed of the EBA's Single Rulebook Questions and Answers (Q&A) process in respect to the CRD/CRR framework, in which institutions, supervisors and other stakeholders can use an online Q&A tool (since June 2013) for submitting questions on the CRD, the CRR, related Technical Standards developed by the EBA and adopted by the European Commission (RTS and ITS), as well as the EBA guidelines. It was noted that whilst the Q&A have no binding force in law, their application is likely to be scrutinised and possibly challenged.

61. The EBA Staff informed that the objective of the Q&A process was to assist with the consistent and effective application of the regulatory framework across the EU and to contribute to the Single Rulebook in Banking.

62. The Q&A process builds upon the close cooperation with national supervisory authorities and the European Commission. Further, the EBA's Board of Supervisors approves the provided answer to the raised questions, unless a question goes beyond the consistent and effective application of the framework, which is then relayed to the European Commission.

63. In this Q&A process, stakeholders are requested to provide specific questions, accompanied by concise background information, a proposed answer and supporting arguments as well as relate to the practical application or implementation of provisions of the legislative framework. So far, stakeholders have submitted more than 600 questions (of which around 250 relate to reporting issues). To date, the EBA has published answers to around 80 questions.

64. The EBA Staff highlighted that they are considering enhancing the process, to seek stakeholders and possibly trade associations' assistance in grouping and providing greater clarity in the questions raised, which could enable the EBA to enhance its prioritisation of addressing the range of questions. Also, the EBA is looking to enhance the "search engine" facility in the Q&A tool.

65. In addition to a number of questions from one BSG member seeking clarification on the process as such or on its remit, one BSG Member suggested that the EBA may wish to provide its responses to questions posed in PDF format, too.

Agenda item 6: Joint BSG/BoS meeting 11 December 2013

¹ Proposal for a Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0266:FIN:EN:PDF>.

66. The BSG Chairperson provided an outline of the agenda for the following day's Joint BSG meeting with the EBA's Board of Supervisors (BoS). He informed that he had prepared a short presentation highlighting the BSG's working group structure and the BSG's added value.

67. One Member reflected on their experience from Joint meetings between another ESA and their Stakeholder Groups, such as in the possible use of break-out sessions. It was mentioned also that other ESAs had on occasion organised common dinners of Stakeholder Group and BoS Members which were considered useful.

68. The BSG Members discussed the different presentations envisaged by selected BSG Members, and it was suggested that it should be clarified that the views so expressed related to those Members and not necessarily the BSG as a whole. The BSG Chairperson agreed to highlight this to the BoS.

69. The BSG also noted suggestions which could be raised to the BoS, such as the work on retail risk indicators, work on the leverage ratio, governance and proportionality.

Agenda item 7: Next Meetings

70. The BSG Members were reminded of the 2014 meeting dates, as already communicated at the BSG's 30 October 2013 meeting.

Agenda item 8: AOB

71. The BSG Chairperson asked BSG Members to refrain from sending email messages to the whole BSG, which are merely courtesy messages in order to limit unnecessary email traffic.

72. BSG Members were invited to suggest agenda items for discussion at future meetings, to both the BSG Chairperson and EBA Staff.

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

London, 10 December 2013

<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
Kay Blair	Consumers
Javier Contreras	Consumers
Nikolaos Daskalakis	SMEs
Santiago Fernandez De Lis	Credit and investment institutions
Chris De Noose	Credit and investment institutions
Ernesto Fiorillo	Consumers
Dorothee Fuhrmann	Credit and investment institutions
Jose Antonio Gonzalo-Angulo	Top-ranking academics
Sandra Hafner	Credit and investment institutions
Zdenek Hustak	Top-ranking academics
Alin Iacob	Users of banking services
Robin Jarvis	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
Ute Meyenberg	Employees
Jesper Bo Nielsen	Employees
Robert Priester	Credit and investment institutions
Andrew Procter	Credit and investment institutions
Magdolna Szóke	Credit and investment institutions

From the EBA

Adam Farkas
 Mark Adams
 Philippe Allard
 Stefan Andresen
 Gabriel Cardi
 Samuel Da Rocha Lopes
 Guy Haas
 Corinne Kaufman
 Vinay Pranjivan
 Tea Turcaniova