EBA BS 2014 014

EBA Staff

11 December 2013 / 09.00 – 12.30

Location: EBA, Floor 5, 30 Old Broad Street, London

Joint Board of Supervisors / Banking Stakeholder Group Meeting – Minutes

Agenda item 1: Welcome and Approval of the Agenda

1. The EBA Chairperson and Banking Stakeholder Group (BSG) Chairperson welcomed the Board of Supervisors (BoS) and BSG members. The EBA Chairperson noted that this was the first meeting between the BSG in its new composition with the EBA's BoS, and that he was generally open to any formats of the style of such joint meetings.

Agenda item 2: Report on the activities of the BSG

2. The BSG Chairperson reported to the BoS on the BSG's recent activities since the last Joint BoS/BSG Meeting held on 15 May 2013. He highlighted the End of Term of Office Report (ETOR)[1] that the first composition of the BSG had produced and published earlier in the year.

3. He also noted the EBA's Policy Research Workshop on 14/15 November 2013 which he and the BSG's Vice-Chairperson attended and considered to be very useful. It was to be hoped that this will continue as an annual event.

4. Noting that much of the work of the BSG is necessarily conducted between BSG meetings and by Working Groups, the BSG has established a two-fold structure of such groups: (1) Standing Technical Working Groups (to mainly respond to EBA publications and consultations), and (2) temporary Ad Hoc Working Groups. The latter would be established from time to time and would consider, at its initiative, issues of relevance to EBA work other than responses to EBA formal consultations.

5. In particular, the BSG Chairperson informed that the newly composed BSG had established three Standing Technical Working Groups (STWGs) at its meeting on 10 December, which reflect the EBA's work programme and focus of work ahead, which are:

[1] See http://www.eba.europa.eu/documents/10180/17417/BSG+2013+Final+Report.pdf.

- Capital and Risk Analysis Working Group
- Recovery, Resolution and Systemic Issues Group
- Consumer Issues and Financial Innovation Group

6. The BSG had set up an Ad Hoc Working Group on Risk Weights and Supervisory Consistency. The BSG was also considering whether to establish further Ad Hoc Working Groups on corporate governance, the leverage ratio, proportionality and possibly retail risk indicators, which may provide some issues for the EBA to explore, which it may otherwise be missing.

7. The BSG Chairperson further outlined how the BSG can provide added value to the work of the EBA and advise the EBA on all aspects of its work drawing on the mixed perspectives, expertise and experience of its constituencies in the interests of effective, efficient and internationally consistent bank regulation and supervision. In particular, the BSG's various perspectives, technical expertise, impact assessment capacity and market intelligence may be useful in this regard. He further offered the BSG's assistance to EBA in longer-term strategic issues.

8. The EBA Chairperson informed that the EBA is due to host a legal workshop in January 2014, for policymakers, supervisors, and legal academics, to discuss the latest developments in the EU's regulatory and institutional landscape, and that invitations had been sent to the BSG Chairperson, Vice-Chairperson and BSG legal academics.

Agenda item 3: Recovery and Resolution

i. Presentation from BSG Member, Marco Mazzucchelli, Managing Director, Bank Julius Bär

9. Marco Mazzucchelli presented his market view regarding the bank recovery and resolution regime. He noted that whilst the Single Supervisory Mechanism will help achieve financial stability, a robust recovery and resolution regime is essential, especially given that banks cannot always be expected to be safe and sound.

10. In particular, regarding the recovery and resolution regime he underlined that clarity is key, with the rules needing to be predictable, enable speedy decision-making and establish a powerful resolution board with a strong political backing. Moreover, he advocated that ad-hoc solutions, consensus-seeking decision-making and regulatory home-bias should be avoided. He viewed that effective and credible resolution arrangements would reduce the social costs of bank failures and might mitigate the need for detailed and prescriptive regulation aimed at lowering the probability of bank distress and failures.

11. Regarding the bail-in capital buffer, he noted that 8% of unweighted liabilities would amount (on average) to over 20% of risk-weighted assets, and viewed that were a bank to have losses greater than 8% of unweighted liabilities then there would have been a substantial lack of oversight within the bank and by supervisors. Further, he underlined differences between the Asset Quality Review (AQR) and the Stress Test. The AQR would lead to recognised losses while the Stress Test highlights potential losses. He opined that there was a strong market

preference for separate reporting and disclosure of AQR and Stress Tests results, reflecting a different involvement of creditors.

12. In his view, national backstops needed to be credible but may not be ultimately effective, given the interlinkages between banks and sovereigns and possible contagion effects. A powerful Resolution regime requires therefore some form of mutualisation and, given the SSM set-up, an ECB credit facility could be an incentive-compatible solution for providing funding for an EU backstop.

13. The BSG Chairperson relayed concerns from BSG Members regarding uncertainty on the framework and responsibilities, including those of the EBA, and expressed that the sooner these uncertainties can be removed the better.

14. Frederic Visnovsky (BoS Alternate, ACPR France) acted as discussant to the presentation by Marco Mazzucchelli. He identified four main issues for discussion of the BSG and the BoS:

- Issue 1: "Do effective and credible Resolution arrangements mitigate the need for a detailed and prescriptive Regulation?"
- Issue 2: "How important is the recovery part of the EU framework?"
- Issue 3: "What are the main challenges faced by banks / by supervisors in developing / assessing the recovery plans?"
- Issue 4: "Should EBA be having a role in resolution?"

15. In the ensuing discussion, some BSG Members expressed their concerns as to how much capital would be necessary in order to prevent all banks from the possibility of failing under any circumstances and suggested that the approach should rather focus on enabling orderly failures, if these do occur. Others noted that regulation should differentiate between the resolution of large relative to medium and small institutions. Further, it was noted that the envisaged Bank Recovery and Resolution Directive (BRRD) intended to avoid the use of resolution funds would be challenging to apply.

16. Some BoS Members noted that one of the impacts of the regulation will be that the cost of funding of banks will need to increase, as a result of the proposed bail-in measures. Bail-in would also need to be viewed together with depositor preference, as proposed in the BRRD. It was viewed that AQR and the Stress Test (ST) are indeed separate exercises. It was also acknowledged that the production of reliable resolution plans for banks is a challenging task. Moreover, the distinction between the Single Supervisory Mechanism and the Single Market needs to be reflected in the regulation.

17. BSG Members further referred to implications regarding structural reforms stemming from the work of the so called “Liikanen Group”[2]. Further, it was explained that the 8% threshold is an ex-ante threshold. Some BSG Members expressed their concerns regarding the suggested deadlines for AQR and Stress Test results and suggested that these could be separated in order to minimise leaks, and to enable banks to raise further capital from their shareholders.

18. The EBA Chairperson highlighted the need to distinguish between the long-term implications of the proposed BRRD and Single Resolution Mechanism (SRM) and the immediate next steps of AQR/ST exercises. Further, regulators need to be mindful of State Aid rules and also the need for clarification regarding the treatment of junior debt holders and to ensure appropriate burden sharing up to a level of certain debt holders, in the event of a bank failure.

19. Regarding the communication of AQR and Stress Test results, the EBA Chairperson indicated that he did not support separating the process – as if a shortfall were to exist, measures to address this would be needed, and thus, ideally there should be a single communication point. However, he was supportive of giving separate evidence to the results of the two exercises.

20. In addition, BSG Members asked for clarifications regarding pillar 2 capital and resolution mechanisms. Also others highlighted that the raising of capital is currently further complicated by limited bank surpluses and the availability of investments in the banks coming from other financial institutions, such as insurance undertakings.

21. One BSG Member opined that if a bank’s management does not react to an AQR shortfall, such a bank would not merit rescuing. However, where the Stress Test shows that there is a potential capital shortfall, there are different possible mitigating solutions. Further, the EBA’s role regarding resolution could be that of a standard setter, to monitor and to assess the recovery and resolution plans.

ii. Presentation from Ulrik Nødgaard, BoS Member, Danish FSA

22. Ulrik Nødgaard presented the Danish experience on bail-in instruments. He informed on the different bank resolution packages that have been issued in Denmark over the last few years. In particular, he referred to the Danish “Bank Package III”, in which losses on senior unsecured creditors and large depositors may be imposed.

23. The package provides a winding-up scheme to handle distressed banks offering an alternative to suspending payments or bankruptcy. A new bank subsidiary is established to take over all the failing bank’s assets and some of the liabilities of the failing bank. The failing bank and the Danish Financial Stability Company agree upon an interim payment for the assets based on the value of the assets on the day of the transfer. The new subsidiary would consequently only take over part of the creditors’ claims against the failing institution. The new subsidiary does not take over the equity and other subordinated debt.

[2] The “High-level Expert Group on Bank Structural Reform” established by the European Commission in February 2012 to examine possible reforms to the structure of the EU's banking sector.

24. This package has introduced "bail-in" which should affect ratings and funding prices. However, in the Danish experience transition to a bail-in regime was relatively smooth. Further the "bail-in" did have a pricing effect on funding, reflecting the removal of government guarantees, but no apparent "cliff effects".

25. He also explained potential differences between the Danish regime and the BRRD. The Danish tool box appears to be broader and also more complex than the envisaged BRRD. The timing of "bail-in" should be 2015 as also suggested by the ECB. This will ensure legal certainty, consistency and predictability. Alignment with the SRM would also be crucial. Too much flexibility could undermine the bail-in instrument. Furthermore, he viewed there was a wide range of exemptions and flexibility in the BRRD compared to the Danish model.

26. It was noted that in Denmark, the Danish FSA decides on the non-viability of a bank when a bank is not compliant with its capital requirements and if it cannot find a source of funds. Also, it was considered that the interconnectedness between smaller banks was not considered to be large. None of the banks that were put into resolution in Denmark had foreign operations. The general view was that closed banks suffered less than going through insolvency procedures.

27. BSG Member Eilis Ferran (Professor of Law, University of Cambridge) acted as discussant to the presentation by Ulrik Nødgaard. She cautioned that bail-in regimes have both advantages and disadvantages and potential contagion implications. She noted that the EU has made considerable progress in this regard and that the market has to some extent already priced in bail-in, as have credit rating agencies. The impact of bail-in would appear to be the biggest on small banks whose funding model is more dependent on retail deposits.

28. She opined that the BRRD is minimum harmonisation and creates a partially harmonised regime for resolution and that insolvency regimes still remain largely un-harmonised. In addition, national discretions and powers regarding bail-in would still persist. At the same time, flexibility would be necessary in order to make the framework effective. She suggested discussing whether there are already emerging bail-in regimes in place that are "fit for purpose" for large banking groups.

29. Other BSG Members further queried how the different capital buffers link together, as this is considered key in order to demonstrate to investors the banks role in contributing to financial stability. Also noted was the added complexity given that many of the larger EU cross border banking groups operate both in and outside of the Eurozone, and also outside of the EU.

30. Some BoS Members expressed their preference for resolution and supervision to be carried out by the same body. Other BoS Members highlighted the need to consider the interplay between the legal system and the broader economic climate.

Agenda item 4: Consumer Protection Issues

31. BSG Member Dominic Lindley (Principal Policy Advisor, Which?, the Consumer Association) presented his views regarding current consumer protection issues. He explained "Which?'s" 'Real Consumer' approach and how the root causes of mis-selling/consumer detriment should be tackled (such as through product intervention, incentives/remuneration schemes, reform of banking culture, responsible lending or depositor protection). In his opinion, product intervention should be wider than just banning products and also review governance processes within financial institutions and allocating responsibility for product approval.

32. Further, he viewed that effective competition should be promoted through transparency and comparability of products, easier switching of bank accounts and new innovations, such as "Peer-to-Peer" lending. In addition, past problems need to be cleared up through appropriate conduct risk provisions, improved complaints handling and collective redress.

33. Pedro Duarte Neves (EBA Alternate Chairperson, Bank of Portugal) acted as discussant to the presentation by Dominic Lindley. He focused on the role of supervision with regards to consumer protection, the EBA's work underway and the conclusions to be drawn.

34. Regarding the approach of supervision, he viewed that a complete regulatory framework (e.g. covering information requirements and clear disclosure requirement for banks towards clients) would be essential. Also, comparability of products etc. would need to be ensured, in addition to the close oversight over banks and effective sanction regimes.

35. He made reference to the upcoming EBA Consumer Trends Report, the EBA/ESMA joint Consultation Paper (CP) on Complaints Handling Guidelines, the CP on RTS on Professional Indemnity Insurance for mortgage intermediaries and the draft EBA warning on virtual currencies. He noted also that the EBA was working on bank account fees and switching, mis-selling of products, financial literacy, crowd funding and innovative payment methods.

36. He saw synergies between the mentioned 'Real Consumer' approach and the role of regulation as well as complaints handling. He agreed that effective competition needed to be strengthened while the crisis may generally lead to a consolidation of the system. Past problems would need to be addressed through sanctioning regimes.

37. It was noted that appropriate supervisory frameworks and appropriate incentive structures (including remuneration of sales staff and other staff) are ways to assist changing banks' culture in order to restore trust and confidence.

38. Others noted that actual behaviour between consumers and banks needed to be observed. For example, whilst the individual customer/banks relationship typically remained intact, at the same time banks' public image has deteriorated. Further, developments in financial innovation (e.g. virtual currencies) need to be considered.

39. Concerns were expressed in relation to the mortgage market, noting the possible impact on consumers given potential price bubbles. One way to address this may be the banning of products subject to a variety of factors.

40. Some BoS Members mentioned that in the past very complex products were often mis-sold and provided particular examples from their Member States. Similarly, BSG Members had observed such issues.

41. Given that conduct risk and adequacy of banks' provisioning for such risk was considered important, some BSG members raised the issue of whether it would be feasible to operationalise supervisory measures to assess this and build a supervisory framework for the adequacy of conduct risk.

42. It was also discussed whether promoting competition has the potential to impact on financial stability and whether this may also bear other risks. Further, BSG Members raised that it is key that the consumer has trust in the banking system, and has the ability to have sufficient information in order to make a rational decision which should be able to be executed at a reasonable cost.

43. One BSG Member enquired to what extent the EBA could develop a library of best practices on consumer protection.

Agenda item 5: AOB

44. The EBA Chairperson thanked BoS and BSG for their active participation. There was no other business.

Participants at the Joint Board of Supervisors / Banking Stakeholder Group Meeting

London, 11 December 2013

Chairpersons: Andrea Enria (for the BoS), David Llewellyn (for the BSG)

Country	Voting member or Alternate	Representative NCB
Austria	Helmut Ettl	Ingeborg Stuhlbacher
Belgium	Jo Swyngedouw	
Bulgaria	Nelly Kordovska	
Croatia	Damir Odak	
Cyprus		
Czech Republic	David Rozumek	
Denmark	Ulrik Nødgaard	
Estonia	Andres Kurgpold	
Finland	Anneli Tuominen	
France	Frederic Visnovsky	
Germany	Raimund Röseler	
Greece	Ioanna Seliniotaki	
Hungary	Peter Gabriel	Judit Matusek
Ireland	Cyril Roux, Mary Burke	
Italy	Roberto Rinaldi	
Latvia		
Lithuania	Aldona Jociene	
Luxembourg	Claude Simon	Norbert Goffinet
Malta	Andre Camilleri	
Netherlands	Jan Sijbrand	
Poland	Andrzej Reich	Izabella Szaniawska
Portugal	Pedro Duarte Neves	
Romania		
Slovakia	Tatiana Dubinova	
Slovenia		
Spain	Fernando Vargas	
Sweden	Uldis Cerps	
UK	Katharine Braddick	Fiona Mann

Country	Observers
Iceland	
Liechtenstein	
Norway	Emil Steffensen

BSG Member	Representing
David T. Llewellyn (Chairperson)	Top-ranking academics
Andrea Resti (Vice-Chairperson)	Top-ranking academics
Alf Alviniussen	Users of banking services

Michel Bilger	Credit and investment institutions
Javier Contreras	Consumers
Nikolaos Daskalakis	SMEs
Santiago Fernandez De Lis	Credit and investment institutions
Chris De Noose	Credit and investment institutions
Eilis Ferran	Top-ranking academics
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
Marco Mazzucchelli	Credit and investment institutions
Ute Meyenberg	Employees
Jesper Bo Nielsen	Employees
Robert Priester	Credit and investment institutions
Andrew Procter	Credit and investment institutions
Magdolna Szőke	Credit and investment institutions

Institutions	**Representatives**
European Commission	
European Central Bank	
ESRB	Francesco Mazzaferro
EIOPA	
ESMA	

Others

Executive Director	Adam Farkas
Director Regulation	Isabelle Vaillant
Director of Oversight	Piers Haben

EBA Staff Philippe Allard, Stefan Andresen, Corinne Kaufman, Tea Turcaniova