



EBA BS 2020 589 rev. 2

Board of Supervisors

16 September 2020/09:30 – 15:30

Location: teleconference

EBA-Regular Use

Board of Supervisors meeting – Final 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).
2. No Members declared any conflict of interest regarding the agenda items.
3. The Chairperson informed that the Minutes of the 17 June 2020 meeting had been approved in the written procedure.
4. The Chairperson proposed changing the order of the agenda and to discuss item 9 (Access to documents requests) after item 4 during the morning session.

Conclusion

5. The BoS approved the amended agenda of the meeting.

Agenda item 2: Update from the EBA Chairperson

6. The Chairperson reminded the Members that the purpose of this item was to inform the BoS about various events and issues that took place between the meetings.
 7. The Chairperson welcomed Mr Francois-Louis Michaud as the EBA's new Executive Director as of 1 September 2020.
 8. The Executive Director introduced himself and briefly presented his work plan for the upcoming months. He stressed that his main focus would be on increasing efficiency of the EBA's work. He also mentioned that he attended virtually, together with the Chairperson, the EUROFI event and that the EBA would launch a written procedure on the budget in the coming days.
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9. The Chairperson and the Executive Director acknowledged the efforts and work done by Mr Peter Mihalik as an Acting Executive Director and thanked him for his exceptional contribution and dedication during almost one year while the position of the Executive Director was vacant.
10. The Chairperson provided an update on industry readiness for strong customer authentication (SCA) under PSD2. He reminded the BoS that the competent authorities (CAs) had agreed on migration plans with industry participants and were required to collect information on the progress of SCA readiness from their respective national industries, at set points in time during that 15 months period, and were asked to report this to the EBA in aggregate form. While the first reporting in March was waived as part of the COVID-19 relief measures that the EBA granted, in the second reporting in July 2020, a significant number of CAs did not provide relevant data. Therefore, the EBA was planning to discuss the status of the transition after the next reporting deadline.
11. The Chairperson informed the BoS that the European Parliament (EP), in its Resolution of 10 July 2020, called on the EBA to conduct an inquiry into the Luanda Leaks revelations, in particular to assess whether there were breaches of either national or EU law, and to assess the actions taken by financial supervisors. To respond to the EP's request, the EBA was carrying out a fact-finding exercise. The aim of this fact-finding exercise was to gain a comprehensive view of the types of actions AML/CFT CAs have taken so far to identify and act upon the issues raised by the leaks.
12. The Chairperson reminded the BoS of the European Court of Justice's case on the legality of the EBA's Product Oversight and Governance (POG) Guidelines. He mentioned that the EBA submitted its observations in support of the Guidelines in June and welcomed the observations of the ACPR and French and Polish governments, which also supported the Guidelines. An oral hearing was scheduled to take place on 20 October, focusing on a number of questions posed by the court.
13. Finally, the Chairperson referred to his meetings with different stakeholders and main topics of interest which included: assessing the COVID-19 situation, ESG, FinTech, finalisation of Basel III and the EBA's long term plans and initiatives.

Agenda item 3: Risks and vulnerabilities in the EU

14. The EBA Head of Risk Analysis and Stress Testing Unit (RAST) updated the Members on current risks and vulnerabilities in the EU banking sector and focused on second quarter (Q2) results as reported by market and analysts' information. He said that reported CET1 ratios have increased in the Q2, owned to the SME support factor, as well as rather decreased RWAs. Cost of risk has also increased in Q2, reportedly around 85-100bps. Profitability has substantially decreased due to the increased provisions booked in the Q2 coupled by lower revenues too. He concluded by mentioning that analysts provided a positive note on the credit growth momentum which was greatly supported by government guarantee schemes.

15. Presentations by ES and IE BoS Members followed. In their presentations, the two Members focused on recent macroprudential developments and initial assessment of the Covid-19 support measures, such as payment moratoria and credit guarantee schemes and related new initiatives.
16. The ESRB representative asked if the increase of capital in Q2 and different practices in provisioning policies were of any concerns or a natural response to the fact that the large part of loans were guaranteed (therefore affecting the capital) and the different underlying exposures, driven by difference in the business model of the bank (therefore affecting the provisioning needs). The Head of RAST mentioned that while the capital was increasing, the banks were not using buffers. However this aspect needs to be monitored closely.
17. Several Members updated on their national developments. Members agreed the credit growth is mostly driven by loans towards NFCs backed by government guarantee schemes. One Member noted that some new loans are not driven by public guarantee schemes, and in particular those towards households. Another Member mentioned different national trends, in particular decreasing lending to households and limited use of public guarantee schemes. The Member also mentioned that some of their banks were frontloading the cost of risks.
18. With regard to the profitability, one Member stated that many of their banks were implementing cost reduction strategies and increasingly using digital banking to support this. Other Member noted that the pandemic seemed to be a trigger for significant revision of banking structures and models.
19. On the phasing out of the support programme, Members supported the view that it would be preferable to adopt coordinated approaches. One Member emphasised the uncertainty on the market, which was caused also by the upcoming US elections and the end of the Brexit transitional period. The Member suggested to further consider where the EBA could coordinate the phasing out of measures and what could be its role.
20. One Member stressed that the end of the payment moratoria might have significant impact of current trends in the banking sector.
21. The Chairperson concluded by noting that there were no major concerns on the market related to the flow of lending to the economy and that the measures that were put in place at the beginning of the Covid-19 crisis facilitated immediate impacts of the pandemic. He also stressed that the uncertainty on the economic outlook and the expected increase in NPLs in banks required continued monitoring. Finally, the crisis may also act as a catalyst for the restructuring of the sector.

Agenda item 4: EU-wide Stress test

22. The Chairperson introduced the item by explaining that there were two aspects for the BoS discussion - preparation for the 2021 EU-wide stress test, focusing on the finalisation of the stress test methodological package; and the future changes to the EU-wide stress test, in

particular, the feedback received on the discussion paper. The two issues were discussed sequentially.

23. On the preparation for the 2021 EU-wide stress test, the EBA Director of Economic Analysis and Statistics Department (EAS) reminded the BoS of previous discussions on the changes that have been introduced to the methodology, templates and the template guidance compared to the 2020 stress test package. He also updated the BoS on the timelines and mentioned that the EBA was expecting to test the templates with banks during October. He continued by explaining that during the STTF discussion, views were split on how to account for FX economic hedges of net profit, i.e. when the hedged item was the net P&L in foreign currency. As no agreement has been reached at the STTF, the BoS has been asked to discuss the proposal of not including these economic hedges. The Director of EAS also referred to the methodological adjustments to account for the Covid-19 measures implemented by the different countries. In particular, in relation to the COVID-19 moratoria, the proposal was to disregard them in the stress test, having also in mind that the majority of these moratoria were expected to end during the first year of the exercise. Finally, he referred to three open topics: how to consider the upcoming RTS on software; the treatment of loans subject to public guarantee schemes that mature during the stress test horizon; and reporting of loans under moratoria and public guarantee schemes (including the transparency templates). These outstanding items had to be further discussed by the stress test working groups. Once these topics were discussed and agreed, the EBA would submit them for final approval to the BoS.
24. The ECB Banking Supervision representative questioned whether the final methodology would be submitted to the BoS in written procedure. The Director of EAS confirmed this. The ECB Banking Supervision representative continued stressing that several improvements have been introduced in the methodology on FX. On the issue of including economic hedges of FX, he was of the view that this change could only be done if detailed templates were developed to ensure an appropriate quality assurance. For this reason, introducing any changes at this point of time may have significant operational risk.
25. The majority of the Members supported changes presented and were of the view the status quo with regard to FX hedges was preferable. One Member questioned whether there would be a cap on the FX hedges and the Director of EAS confirmed it. This Member supported the proposal for changes in the methodology related to the FX hedges. Other Member voiced his concerns regarding the methodology and in particular the proposal on the FX treatment of P&L, as, in his opinion, this treatment was still insufficient, leaving apart very relevant items, especially for the stressed scenarios.
26. One Member pointed that details in the methodology could have a great impact on individual banks and asked if the EBA had a communication strategy on how to present all changes to the public. She also stressed that in the current crisis situation, the stress test would be a communication challenge and therefore, the communication plan should be discussed at the BoS level.

27. The Chairperson acknowledged that the 2021 stress test would be performed in a very exceptional circumstances and that a particular focus would be on the public communication.
28. With regard to the payment moratoria, a few Members proposed to consider it in the stress test. One Member asked whether impact figures for banks on an individual level could be made available.
29. The Director of EAS clarified that the impact assessment of moratoria included only averages. and that banks should not reclassify the exposures to different stages at the beginning of the exercise.
30. The Chairperson asked if, based on the discussion on the FX hedges, any changes to the templates were feasible. In his response, the Director of EAS confirmed that the stress test working group would re-discuss but if no agreement could be reached at the working level, the current status quo should remain.
31. The Director of EAS continued by summarising the feedback on the discussion paper on the potential long term changes to the stress test exercise. He said that stakeholders welcomed the initiative of revising the EU-wide stress test framework but were negative on the two-leg approach and would rather prefer the current approach with possible adjustments to the methodological constraints. Some suggested leaving the projections fully to banks, so they could preferably use ICAAP models, others preferred the current approach or even allow a mechanistic approach for parts of the methodology. Stakeholders also asked for more clarity on the P2G methodology, proposed less overall disclosures and a reduction in overall costs. He also mentioned that stakeholders were of the view that the overall exercise would benefit from a closer link between the results and the P2G/capital distribution. To address this, the EBA suggested that revision of the SREP guidelines could be used for aligning more stress test outcomes and P2G setting, but also for avoiding that stress test results give a sense of precision that was misleading. He also mentioned the need at some point to communicate with the industry on the outcome of the consultation.
32. The ECB Banking Supervision representative was of the view that the proposal of some stakeholders to use their ICAAPs was not feasible. To address the feedback, he proposed to add more top down elements to the current approach. In addition, he also expressed the need to work on the transparency of the exercise. More generally, he suggested that in light of the consistently highly critical industry feedback, pursuing the two-leg approach would not be successful and that instead, it seemed preferable to improve the existing bottom-up approach in areas of key concern.
33. Several Members noted the reluctance of the stakeholders towards the two-leg approach and agreed to further discuss the option of keeping the current status quo while introducing more top down elements; i.e. developing a hybrid approach. One Member was of the view that a bottom up approach should be preserved and used a starting point while a more top down approach should not prevent from considering other risk categories different from credit risk

(like market risk and operational risk). Moreover, it was essential to preserve the supervisory dialogue. A number of Members stressed a need for reduction of costs and increased realism of the exercise. In this regard, one Member suggested including some dynamic elements to increase the realism.

34. With regard to the transparency, several Members were reluctant to disclose P2G.
35. Two Members asked to avoid layering of banks depending on their size or complexity, as this could have an impact on the level playing field.
36. One Member proposed allowing enough time for further analysis of any changes to the stress test exercise.
37. The Chairperson noted the broad consensus of the Members on the usefulness of the feedback. He concluded on the need to work on an alternative to the two legs approach and the focus should be on developing a hybrid approach with more top down elements and also on increasing realism of the exercise in order to address the purpose of it. It was also important to work on the level of transparency of the exercise and the interaction with P2G. He also expressed the view that there is an expectation that the stress test should provide some guidance on the impact on capital distributions. Given that the changes should apply to the 2023 exercise and the need to start the preparation of the new methodology in autumn 2021, the Chairperson acknowledged a need to have a first strategy and principles by the end of 2020 for the BoS discussion.

Conclusion

38. The BoS approved all the proposed changes to the 2021 stress-test methodology, as reported in the note presented to the BoS.
39. The BoS mandated the stress test task force to further work on the templates in order to address the FX hedges potential amendments. The BoS agreed that the current status quo should remain if there was no broad agreement at the stress test task force on the changes to address the issue of FX hedges.
40. The BoS agreed that the stress test task force would identify principles for a revision of the current stress test framework with the aim to come back to the BoS with these principles by the end of the year.

Agenda item 5: EBA Opinion on the notion of credit institution

41. The Chairperson introduced the item by explaining that the draft Opinion was aimed at flagging a number of issues related to the definition of credit institution and the scope of authorization to the European Commission (EC) with a view to raising awareness for the upcoming review of the CRD/CRR.

42. The EBA Policy Expert further clarified that the Opinion largely restated the existence of divergent interpretations of elements of the definition of credit institutions which had already been identified and brought to the EC's attention by previous comprehensive analyses carried out by the EBA, and also highlighting two additional points related to the existing divergent approaches as to the scope of the authorisation. Given that the aim of the Opinion was to effectively support the EC's ongoing review, it did not suggest specific policy solutions but limited itself to recommending to the EC to address the identified issues.
43. The EC representative acknowledged that the banking framework has been changed in the past years and that not all definitions were amended accordingly. Therefore, the EC welcomed the initiative. However, as the Opinion did not propose specific solutions to the identified issues, he pointed that this would make it harder for these issues to be addressed as part of the next banking package, which would be submitted to the legislator and that the EC and supervisors would need to liaise on the most pressing issues in the coming months.
44. The BoS supported the draft Opinion. One Member was of the view that many issues, given their sensitiveness and significance, should be discussed at the political rather than the experts' level. Another Member noted that the Opinion should not give an impression that the definitions were not clear since they have been used for years. A few Members questioned which institutions would fall under the new definition. One Member emphasised the need for an impact study in this context. Finally, one Member proposed to put more emphasis on making comprehensive analysis of current practices and best solutions that the EBA would like to promote and to have a pragmatic approach.
45. The Chairperson concluded by noting the broad support of the BoS to submit the draft Opinion to the EC and to publish it.

Conclusion

46. The BoS approved the EBA Opinion on the notion of credit institution by consensus.

Agenda item 6: Covid-19 implementation issues

47. The Chairperson clarified that the item had two aspects; one related to the IFRS9 and one focusing on the implementation issues arising from the Covid-19 policy measures.
48. The EBA Director of Prudential Regulation and Supervisory Policy Department (PRSP) underlined that the use of flexibility in the regulations remained important also during the recovery phase of the COVID-19 pandemic. She mentioned that banks were continuing to support the economy and made an extensive use of the support measures extended via the regulatory measures taken by EU authorities and the Member States. She summarized the pro's and con's regarding the extension of the deadline in the Guidelines on general payment moratoria as well as the three options in this regard. While under the option 1, the EBA was proposing no further extension of the deadline in the Guidelines, options 2 and 3 were based on the extension of the deadline until the end of 2020, accompanied by a communication that

no further extensions will be granted (option 2) or a commitment to review the situation before year-end and once again consider the need for a further extension (option 3).

49. The EBA Head of Liquidity, Leverage, Loss Absorbency and Capital Unit (LILLAC) updated on the feedback received from auditors and selected banks as part of preparatory works before launching the second phase of the IFRS9 benchmarking exercise. She said that preliminary observations showed that banks have implemented guidance provided by EBA and other bodies. The higher flexibility provided might have led to higher variability in the determination of ECL and, as a result, there were different practices from banks and the EBA was planning to analyse the main drivers of these diverging practices.
50. Finally, the EBA Head of Risk-based Metrics Unit (RBM) reminded the BoS that the EBA published on 7 July its first report providing an overview of the Covid-19 policy implementation issues and on 7 August, its second report where a section on technical questions related the Guidelines on COVID-19 reporting and disclosures has been added. He informed that the a third COVID-19 report would include additional sections on the COVID-19 downturn LGD estimation, the A-IRB treatment of COVID-19 public guarantee schemes and, conditional on the BoS decision to extend the deadline of the Guidelines on general payment moratoria, an additional set of FAQs.
51. Several Members supported the monitoring work on IFRS 9 and reiterated the importance of the benchmarking exercise in this field. One Member suggested to present the early findings of the second exercise to the BoS.
52. The EC representative supported the extension of the deadline, in particular considering uncertainty on the market and suggested to review the deadline again in December 2020.
53. The ECB Banking Supervision representative acknowledged that the extension of the deadline would allow some flexibility. However, she stressed risks that might arise and noted that many companies did not need so much immediate liquidity any longer and that there were also other tools that could be used to help corporate clients.
54. The views of the BoS Members were split. While some Members supported the extension of the deadline, others were against. Several Members suggested to keep open the option to reinstate such measure later, if needed and based on the developments. One Member pointed that the economic context was improving differently in different sectors and that there should be a clear distinction between the extension of the application date and the extension of payment holidays. Other Members stressed that regardless of the expiration of the Guidelines, the existing regulation already provided banks the flexibility to grant payment holidays if considered necessary based on their national developments. Another Member was concerned about banks not recognising expected losses in time.
55. Based on various views presented by the BoS Members, the Chairperson concluded by informing the BoS that the EBA would launch a written procedure after the meeting to vote

between two of the options presented: no extension of the deadline, an extension of the deadline until December 31, 2020.

Conclusion

56. The EBA to launch a written procedure on the extension of the deadline set out in the Guidelines on general payment moratoria.

Agenda item 7: Update on the Basel III Call for Advice

57. The Chairperson reminded Members that the EC asked the EBA on 4 May 2018, in a form of technical advice, to provide an update on the quantitative impact of the implementation of the Basel III reforms on the EU banking sector and the wider EU economy.
58. The EBA Head of Economic Analysis and Impact Assessment Unit (EAIA) continued by mentioning that during August and December 2019, the EBA published the answer to the Commission's original call for advice on this issue. The impact assessment was based on QIS data as of end of Q2 2018, collected in parallel with the regular Basel III monitoring exercise. In 2020, the EBA delivered additional work on assessing the impact at the individual entity (solo) level. He also said that due to the delay in the preparation of the legislative proposals caused by the Covid-19 crisis, on 21 August 2020 the EC invited the EBA to update its previous advice on the various elements of the final Basel III reforms package. The Head of EAIA summarised that the EBA's response would include an update of the Basel III impact based on data collected as of 4Q 2019 through the Basel III monitoring exercise, including an update of the individual impact of the three output floor implementation options and as well as an estimation of the additional impact that may have resulted from the Covid-19 pandemic. He stressed that only the quantitative impact figures would be updated without any changes to the policy recommendations. Finally, he explained that the update would be based on available 4Q 2019 QIS data, and 2020 Q2 COREP figures would be used to fill in where possible. The analysis on the impact from COVID, for which no additional data was available, would be based on estimation and proxies produced on a best effort basis.
59. The ECB Banking Supervision representative asked how the EBA was planning to measure the impact of the output floor under the so called option - the "parallel stacks" approach where the methodology was not spelled out in the previous CfA publications. The Head of EAIA responded that the methodologies of all elements not included in the previous publications were still under consideration and they would be clearly spelled out in the drafts to be sent for approval. However, the extremely tight timeline did not leave much room for considering alternative options.
60. The EC representative acknowledged the limitation of the exercise and stressed its deadline, the end of November 2020, given that the EC was planning to use the input in its own impact assessment still this year prior to the launch of the legislative proposals early next year.

61. One Member asked that it should be specifically clarified that since no recent data was available, the results of the updated impact assessment might be of limited quality. This would be particularly the case for the analysis of the Covid-19 impact where even the Q2 2020 data was unlikely to show any impact due to the government guarantees and moratoria.
62. The ECB representative informed the BoS that the ECB has also received a request from the EC to update the macroeconomic impact assessment that accompanied the previous report. Due to the complexity of the exercise and the tight timeline, the ECB was unlikely to be able to deliver its assessment at the same time with the rest of the update and has sent a request for an extension of its deadline to the EC. The ECB had been liaising with the EBA in order to receive data on non-SSM banks that was needed for the exercise.
63. The Chairperson concluded that the EBA would present the key results of the Basel III update at the next BoS meeting, after receiving comments from relevant working groups.

Conclusion

64. The BoS supported the work and the presentation on the key outcomes of the analysis at the next BoS meeting.

Agenda item 8: Work programme 2021 and ACP Recommendation letter

65. The Chairperson informed the Members that based on the discussion at the BoS meeting on 17 June and the EC opinion on the Single Programming Document, the EBA updated its 2021 Work programme. Furthermore, the draft Work programme was assessed by the Advisory Committee on Proportionality (ACP) and the ACP drafted its recommendation letter on how the Work programme could be improved to take account of specific differences prevailing in the sector.
66. The Co-Chair of the ACP briefly clarified the concept of proportionality and considerations of the ACP with regard to the Work programme. He explained that the ACP selected five topics for which it suggested possible enhancements of proportionality measures. These topics were: i) the IFD/IFR for Investment firms, ii) the revised SREP Guidelines, iii) the Guidelines on internal governance, iv) the cost of compliance study following CRR, and v) the disclosure templates on ESG risks. Moreover, he touched upon some high level procedural principles to ensure that proportionality was considered when developing European banking regulation.
67. The EBA Head of Policy Coordination Unit (PAC) continued by acknowledging the recommendations of the ACP and mentioned that these would be considered after the BoS meeting in the updated version of the Work programme, which would be sent to the BoS for approval via written procedure. He also summarised the main changes to the Work programme since the last BoS meeting, in particular related to the activities and its deliverables and the annex on resources allocated per activity.

68. The SRB representative underlined the need that the various streams of the work on resolvability and critical functions, as well as the envisaged work on crisis simulations exercises should be consistent with the work already conducted and on-going by the SRB, therefore any duplication or conflicting approaches should be avoided.
69. The EC representative supported the substance of the Work programme but underlined the need to check further the details of the annex on resources allocated per activity before launching the final approval of the work programme with the BoS.
70. The Chairperson concluded by noting the support of the Members, the adjustment in the work programme to reflect the comments received, and pointed that the Work programme had to be submitted to the EU institutions before 30 September.

Conclusion

71. The EBA to launch a written procedure on the updated 2021 Work programme.

Agenda item 9: Access to documents requests

72. The Chairperson informed the Members that over the summer, the EBA received a request from an MEP, Sven Giegold, for access to the responses supplied by the CAs to our surveys in the context of the inquiry in relation to dividend arbitrage schemes.
73. The EBA Head of Legal Services Unit (Legal) explained that the EBA has been regularly receiving access to documents requests, but this was the first time it has received such a broad one involving documents received from all CAs. He continued by clarifying the framework and procedures that the EBA had to follow after it had received an access to documents request, noting that while CAs had generally supported disclosure of information that they had provided to the EBA in this particular case, concerns had been raised about potential negative effects that widespread disclosure of CA information could have on the ability of CAs to share information with the EBA. The Head of Legal stressed the reliance that the EBA places on receiving comprehensive information from CAs in order to carry out its tasks effectively, and recognised the need to ensure that CAs information is not inappropriately disclosed, taking into account professional secrecy requirements and the need for CAs to be able to carry out their tasks effectively too, and the need to find the right balance given the transparency requirements that apply to the EBA. He also referred to the ability to make use of exceptions under the Access to Documents Regulation (AtD Regulation) based on which the EBA may decide to refuse to disclose requested documents based on case-by-case assessment, and to the consultations that take place with CAs in relation to their documents which ensure that the EBA is in a position to justify non-disclosures. Finally, he presented several steps that the EBA was proposing in order to facilitate consultations with the CAs, in particular the establishment of access to documents contact points.
74. The ECB Banking Supervision representative acknowledged that the access to documents request was a challenging topic with many different aspects and highlighted that there should

be confidence both on the side of the EBA and the CAs. He proposed that the EBA could contact the relevant CA each time it received a request to disclose a document provided by that CA in order to discuss whether the exceptions under the AtD Regulation could apply.

75. The BoS supported the establishment of access to documents contact points at national authorities. Several Members stressed that the EBA should never disclose documents that the CAs would not disclose under their national legislative frameworks. Some Members also mentioned that if any documents could be relevant for the procedures under the criminal law, the EBA should not be involved in disclosure. One Member was concerned that requests for disclosure were not helpful in promoting cooperation, supervisory dialogue and convergence. The Member stressed that if the CAs could not be sure that what they provide to the EBA would not be publicly available, they might be reluctant to disclose anything which would impact on the EBA's ability to deliver its tasks. Therefore, the EBA should be more transparent on the legal requirements in this regard. Another Member asked for further clarity on how the EBA observed and follow confidentiality regimes.
76. One Member noted that this issue was particularly administrative in its nature but as it had significant consequences, it was welcome to discuss it at the BoS level. She supported the proposal to consult the CAs each time the EBA received a request to disclose documents provided by CAs and she also suggested that the EBA might assess ex ante the appropriateness for disclosure of documents from the CAs for the purpose of future requests, the link between the AtD Regulation and the ESAs Founding Regulations could be considered under the next ESAs review exercise in order to enhance legal certainty. Finally, she suggested that the EBA could ex ante consider all documents from the CAs for the purpose of future requests.
77. The Chairperson asked the Head of Legal to respond to the proposal for consultations with the CAs each time there was a request and whether there were any specific requirements related to the disclosure for the financial sector.
78. The Head of Legal explained that where requests for access to documents are received which involve CA documents, the EBA does consult the CAs systematically and, while the EBA may seek to clarify a CA's arguments to ensure that the EBA can properly explain any non-disclosure under the AtD Regulation, it will normally defer to any reasonable case put forward by a CA. He also explained that, in the event of disagreement between the EBA and a CA, there is an escalation mechanism in place which ensures that the Executive Director reviews the case and can discuss it with the CA concerned. The Head of Legal also clarified that the obligations of professional secrecy in the EBA Regulation and sectoral legislation are used to justify non-disclosure where appropriate, although the Court of Justice has indicated limits on the scope of this principle, and noted that all access to documents requests are treated equally regardless of the status of the requesting person. In relation to using national exemptions from disclosure, the Head of Legal explained that they could not be used directly as justifications had to be based on the EU regime, but national justifications would often be linked to justifications available under the AtD Regulation. With regard to the ex-ante consideration of whether information could be disclosed, he was of the view that implementing any such

procedure would be challenging as each request has to be assessed case-by-case. He proposed, however, that the EBA could look at whether in its requests to CAs for information could invite CAs to separate information between confidential and non-confidential information in order to assist in assessing any future disclosure requests.

79. The Chairperson concluded by noting the real concerns raised by CAs and by Board Members which could have significant implications for the EBA's work if information was withheld. The Chairperson said that the EBA would take forward the establishment of contact points in order to further explain the relevant framework in order to ensure that CAs and Members are aware of legislative disclosure requirements and are in a stronger position to explain reasons for non-disclosure in terms of the AtD Regulation. He also mentioned that the EBA would consider how the ex-ante procedure could be introduced for specific sensitive cases.

Agenda item 10: AOB

80. The Chairperson introduced the item by noting that the Wirecard case and its insolvency could have potential implications for a large number of the EBA's objectives and tasks, in relation to not only the prudential supervision of credit institutions and their holding companies in the EU but also the regulation of payment and e-money services across borders, the protection of deposits, the supervision of corporate groups, and AML/CFT aspects.
81. A presentation by BaFin followed, explaining the composition of the Wirecard Group when BaFin carried out its assessment in 2016/17 of the applicability of the criteria set out in Art. 4 of the Capital Requirement Regulation; subsequent actions taken with regard to a proposed reorganisation of Wirecard Group, including the interactions with the ECB; the distribution of AML/CFT supervisory responsibilities in Germany, which is such that there is no AML/CFT supervisory authority responsible for Wirecard Group. BaFin also explained the business model and key indicators of Wirecard Bank; the supervisory measures taken by BaFin; BaFin's current priorities, such as the risks arising from Wirecard Bank's loan portfolio, the potential removal of a member of Wirecard Bank's management board, and Wirecard Bank's supervisory board; and a summary of the insolvency proceedings and sales of Wirecard Bank.
82. The ECB Banking Supervision representative clarified that the ECB was not involved in the assessment or decision as regards the question whether Wirecard AG should be designated as a financial holding company. In January 2019, ECB Banking Supervision took a qualifying holding decision on an internal reorganisation of Wirecard group (which was never carried out) in which it refers, as a fact, to BaFin's decision that Wirecard is not a financial holding company. The BaFin representative confirmed this statement but explained also that the ECB required additional information about this issue before January 2019.
83. The Chairperson concluded by thanking BaFin for its presentation and that the BoS should be informed of any further relevant developments.

Participants of the Board of Supervisors' conference call

16 September 2020

Chairperson: Jose Manuel Campa

<u>Country</u>	<u>Voting Member/High-Level Alternate</u> ¹	<u>National/Central Bank</u>
1. Austria	Helmut Ettl	Karin Turner-Hrdlicka
2. Belgium	Jo Swyngedouw	
3. Bulgaria	Stoyan Manolov	
4. Croatia	Martina Drvar/Sanja Turkovic Petrinic	
5. Cyprus	Stelios Georgakis	
6. Czech Republic	Zuzana Silberová	
7. Denmark	Jesper Berg/Thomas W. Andersen	Peter E. Storgaard
8. Estonia	Andres Kurgpold	Timo Kosenko
9. Finland	Jyri Helenius	Katja Taipalus
10. France	Dominique Laboueix/Emmanuelle Assouan	
11. Germany	Raimund Roeseler	Karlheinz Walch
12. Greece	Spyridoula Papagiannidou	
13. Hungary	Csaba Kandracs	
14. Ireland	Gerry Cross	
15. Italy	Andrea Pilati	
16. Latvia	Ludmila Vojevoda	Vita Pilsuma
17. Lithuania	Marius Jurgilas/Jekaterina Govina	
18. Luxembourg	Christiane Campill/Martine Wagner	Christian Friedrich
19. Malta	Christopher Buttigieg/Pierre Paul Gauci	Oliver Bonello
20. Netherlands	Maarten Gelderman/Sandra Wesseling	
21. Poland	Kamil Liberadzki	Olga Szczepańska
22. Portugal	Ana Paula Serra	
23. Romania	Adrian Cosmescu	
24. Slovakia	Vladimir Dvoracek/Tatiana Dubinova	
25. Slovenia	Primoz Dolenc/Damjana Iglic	
26. Spain	Angel Estrada/Alberto Rios	
27. Sweden	Karin Lundberg	Camilla Ferenius

<u>Country</u>	<u>Member</u>	<u>Representative NCB</u>
1. Iceland	Finnur Sveinbjörnsson	
2. Liechtenstein		
3. Norway	Morten Baltzersen	Sindre Weme

<u>Observer</u>	<u>Representative</u>
1. SRB	Sebastiano Laviola

Doris Oswald (OENB), Pascal Hartmann (FMA); Kurt Van Raemdonck (NBB); Jose Rosas (Banco de Portugal); Michele Lanotte (Bank of Italy); Eida Mullins (CBI); Izabella Szaniawska (PFSA); Pawel Gasiorowski (NPB); Petroula Georgaraki, (SRB); Vincent Woyames (ECB);

Other Non-voting Members

1. ECB/SSM/ESRB
2. European Commission
3. EIOPA
4. ESMA
5. EFTA Surveillance Authority
6. ESRB

Representative

Korbinian Ibel, Linette Field, Carmelo Salleo
Martin Merlin
Kai Kosik
Tomas Borovsky
Marta Margrét Ö. Rúnarsdóttir
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Philippe Allard; Lars Overby; Jonathan Overett Somnier; Delpine Reymondon; Angel Monzon; Olli
Castren; Dirk Haubrich

Tea Eger

For the Board of Supervisors

Done at Paris on 27 October 2020

José Manuel Campa

EBA Chairperson