



EBA BSG 2015 083

Banking Stakeholder Group

26 October 2015/9:30-17:00

Location: London

CONFIDENTIAL (if relevant)

Banking Stakeholder Group meeting – Minutes

Agenda item 1.: Welcome and approval

1. The BSG Chairperson welcomed BSG members. He introduced the three new BSG members appointed since the last meeting in June 2015.
2. The minutes and the agenda of the 23 June 2015 BSG meeting were approved.

Agenda item 2.: BSG Update on developments

A) BSG Chairperson's update on recent developments

3. The BSG Chairperson reported on the BSG activities undertaken since the last meeting. He proposed that the BSG draft an End of Term of Office Report (ETOR), mentioning the BSG activities in its second mandate and suggesting some improvements in the functioning of the Group and its relations with the EBA. He invited BSG members to suggest any issues to be included to the ETOR.
4. The BSG Chairperson distributed the work to be carried out in preparing the BSG response to three consultation papers recently launched by the EBA:
 - a. EBA CP 2015 16 - allocated to Dominic Lindley
 - b. EBA CP 2015 17 – unallocated at that moment - BSG members are required to provide the BSG Chairperson with their views as to whether they want to submit a response to this Consultation Paper.
 - c. JC 2015 060/061 - allocated to Robert Priester and Nina Legind.

B) Amendments of the BSG Rules of Procedure

5. The BSG Chairperson introduced the tabled amendments to the BSG Rules of Procedure (RoP). The BSG approved all the proposed amendments with one minor adjustment. An updated version of the RoP will be circulated to BSG members and published on the EBA's website.

C) Update on BSG Technical Working Groups' activities

6. The leader of the Technical Working Group on Capital and Risks Analysis suggested that BSG may discuss in a future meeting the standardised approach of the regulatory capital standard. This discussion could focus on the design of the ratios as the Basel Committee on Banking Supervision (BCBS) should publish its final paper on Revisions to the Standardised Approach for credit risk by the end of the year.
7. The leader of the Technical Working Group on consumer protection and financial innovation noted that the Working Group was very active in different areas, as the consumers' representatives had worked on the finalisation of the BSG Proportionality Report and the EBA's Discussion Paper on SMEs lending and SMEs supporting factors (EBA DP 2015 02).

D) BSG Report on Proportionality

8. The BSG Chairperson introduced the Report by presenting its objectives and its structure. He underlined that the BSG as a whole was not antagonistic to regulation in general and acknowledged regulatory and supervisory agencies' commitment to the principle of proportionality. But the BSG identified that in some areas this commitment has not been fully applied in five dimensions described in the report, namely the objectives of the regulation, the consideration of the totality of the regulation as opposed to each regulation being assessed on a stand-alone basis, the excessive complexity of the regulation, the differentiation between the credit institutions, and the materiality.
9. The leader of the Ad Hoc Working Group on proportionality presented the key findings of the report, the current status and the next steps. He also referred to the Workshop on proportionality organised by the EBA on 3rd July 2015 where one BSG member presented the work done by the Ad Hoc Working Group.
10. Further, some BSG members expressed their views on proportionality. One BSG member highlighted that proportionality was a source of controversy between the bankers and the society in general as both groups have sometimes antagonistic expectations. Another member observed that the benefits of regulation were seldom taken into consideration in the analysis of proportionality, and that benefits are particularly difficult to assess through impact assessments. Another member pointed out that proportionality is a broader issue than the one focused on regulation as it is also an issue of interpretation and practice.
11. On complexity of the regulation perceived as a major problem hampering the application of proportionality, the EBA Chairperson viewed that at times the complexity is needed to reflect the intricacies, such as of the financial innovations.

12. The BSG Vice Chairperson noted that supervisory convergence should trigger an increasing degree of consistency which is perceived as a likely way for the regulation to become less detailed. At the same time, harmonisation across the EU may be regarded as a factor of complexity as the regulation has to be detailed to reach this level of convergence.
13. From a consumer perspective, the principle of proportionality has to be balanced and the latest version of the report reflects this view.
14. Some additional points were raised regarding the report. The BSG Chairperson asked BSG members to let him know their views with regards to the title of the report. Second, the dissemination of the report was considered. The EBA's Executive Director suggested that the BSG may wish to send its report as a BSG input to the European Commission's Call for Evidence on EU regulatory framework for financial services, which was launched on 30 September 2015. BSG members proposed different channels to make the report public, including the publication on the EBA's website, press conferences.

Agenda item 3.: EBA to update on general developments

A) EBA Chairperson to update on general developments

15. The EBA Chairperson informed on the EBA's work on its NSFR Report due to be discussed at the following day's Joint BSG/BoS meeting. He also updated on EBA's work on internal models, referring to assessing feedback to the EBA DP on the Internal Risk Based Approach and work underway by the Basel Committee on Banking Supervision.
16. He mentioned the work done by the EBA in the area of training to EU national supervisors with a view to enhancing supervisory convergence. In spite of the stringent budgetary constraints, the EBA has found partnerships especially with other European institutions, including the European University Institute in Florence.
17. With regard to the EBA's request to seek BSG view on some of its proposed Answers to the EBA's Questions and Answers Tool (Q&As) on those envisaged to have material impacts, the EBA Chairperson considered that BSG should be the more appropriate channel to assess the Q&As, rather than some credit institutions who have requested to open a consultation process. Further he mentioned the coming 4th Annual EBA Research Workshop to be held in EBA's premises on 18/19 November 2015 on the impact of the financial regulation on the real economy for which the BSG Chairperson and Vice-Chairperson will chair some of the sessions.
18. The Executive Director presented the EBA 2016 Work Programme pointing out that the EBA was conferred lots of new mandates, and remained budgetary constrained. He noted that one of the EBA key priorities is the development of the Single Rulebook in 2016. He also informed of the other areas in which the EBA is committed including risk analysis, consumer protection for which there is an increasing volume of activity and the enhancement of the EBA's

supervisory convergence activities through the development of trainings. He presented also the list of upcoming consultations papers to which the EBA shall consult the BSG.

19. BSG members asked questions covering different areas of the work done by the EBA:

- One BSG member focused on the EBA's continuing work on internal models and the impact of IFRS 9 on banks' capital. On the first item, the EBA has developed a roadmap to be published in December. On the second aspect, the EBA Chair informed that it aims to assess the impact of IFRS 9 in 2016.
- Several BSG members questioned about the work done on remuneration, including the application of proportionality in the small institutions and the current status of the EBA regulatory products regarding remuneration and governance.
- Another BSG member raised his concerns about the SREP Guidelines which are not applied in the same way everywhere and should be clarified.
- On securitisation, BSG members wished to have clarification on the next developments.
- On Payment services, one BSG member observed that there were delays in some areas and asked for a clarification of the EBA's role. As the Payment Services Directive (PSD) II will enter into force in 2018, the work flow in payments services have been delayed. The EBA has also to take into consideration the ECB's role and its responsibilities in payment systems. It was noted that the EBA works together with the ECB in the Secure Pay Working Group in this area too.

B) Joint ESAs Guidelines regarding Anti-Money laundering

20. The EBA staff presented the EBA's role in Anti-Money Laundering (AML) and the mandates that have been conferred to the 3 ESAs under the 4th Anti-Money Laundering Directive (AMLD) and the AML Regulation. The ESAs had just published a first set of two AML guidelines for consultation.

21. One BSG member raised concerns regarding the lack of protection afforded to staff who reported suspicious transactions, and wondered whether the draft guidelines would address this. The EBA staff explained that protection of staff in those cases was addressed by the Level 1 text and national laws transposing the AMLD. The Joint Committee's AML Sub-Committee was aware that implementation of these provisions was at times ineffective and would keep the situation under review. It was important to note that supervisors' competence in this field was limited to ensuring that credit and financial institutions have adequate systems and controls to protect employees, but that the main responsibility remained with national legislators and law enforcement.

22. Another BSG Member suggested that the ESA Guidelines were unlikely to achieve their stated aim of fostering the application by firms of more proportionate and risk-based AML policies and processes as banks aligned their approach with US authorities' expectations, which the member felt was incompatible with an EU-style risk-based approach. The EBA staff acknowledged that recent US enforcement action had made some banks more risk-averse, but stressed that the proposed guidelines were consistent with international standards the US had also signed up to. Furthermore, these Guidelines did not only address international banking groups, but the entire financial services industry in the EU – including very small firms with no or little US/USD exposure. Since the risk-based approach to AML had only recently been enshrined in Europe's legal framework and since the AMLD provided little detail, it was important to use these Guidelines to create a common understanding, across the EU, of what the risk-based approach to AML entailed and how it should be applied. Furthermore, these Guidelines were key to fostering the harmonisation of supervisory practices and a consistent interpretation of the underlying legal provisions in this field.
23. One member also asked that the EBA issues guidelines on the application of Customer Due Diligence (CDD) measures in cases where customers do not possess the required identity documentation. This had become urgent in light of the current refugee crisis. The EBA staff explained that the Guidelines set out what firms could do to adjust their CDD requirements in cases where the money laundering or terrorist financing risk was reduced, and how this could inform their approach under the current crisis. The EBA was considering whether further, more targeted work was warranted to address the specific needs of refugees; but it was important to remember that the Guidelines could not override national legislation, which in many cases specified exactly which documents applicants had to provide.
24. Another BSG member underlined one loophole in the AML Directive which does not require Member States to have a common or joint register of beneficial owners, which would be accessible by all across Europe. The EBA staff explained that this had been a political decision by the legislator.

C) Update on risks and vulnerabilities

25. The EBA staff updated BSG members on risks and vulnerabilities using the figures of the second quarter of this year. The main risks were identified, namely credit risk, low level of banks' profitability, fragmentation across Europe and sovereign risks. However, a repair process is under way in the European banking system which has driven a strengthening of banks' capital position as the CET 1 has improved to 12.5%. The asset quality has followed a trend towards stabilisation even though impairment ratios stay high. The EBA staff tried to explain the evolution of asset quality along banks' willingness to resolve non-performing loans. The EBA staff also presented exposures towards some emerging countries.
26. BSG members questioned about:

- The link between banks' low profitability and the increasing level of capital. One BSG member compared the situation in Europe to that with the United States to demonstrate that the European banks are suffering from overregulation. The EBA staff noted that the level of banks' capital is quite similar between the United States and Europe;
- The aggregated data could be analysed following a geographical breakdown to better illustrate fragmentation in Europe;
- BSG members also inquired on the reasons of the decreasing cost-to-income ratio, the market's concentration regarding the exposures towards Russia, the relation between the Non-Performing Loans (NPL) and the coverage ratio, the impacts of TLAC on capital requirements;
- On methodology, BSG members suggested adding additional variables so as to better illustrate the breakdown of the results by countries and a set of prospective slides. The BSG Chairperson determined three areas which may be taken into consideration: i) the liquidity in markets, ii) the correlation between the different types of assets, iii) the position of the central counterparties (CCPs).

D) 2016-wide Stress Test – Update and last developments on Stress Test

27. The EBA staff raised three aspects on the new stress test exercise, namely the process, the timeline and the methodology.
28. On process, the EBA staff explained that the exercise has been initiated by the EBA in cooperation with the ESRB. The EBA staff reminded that it was the role of the Competent Authorities, including the ECB SSM, to carry out the stress tests.
29. On methodology, he explained that the EBA has maintained its static balance sheet approach to ensure consistency with the previous stress test exercises. He analysed the sample of banks which will be subject to the stress tests. Further the EBA intends to consult on the draft methodology in November.
30. On timeline, the launch of the exercise will be in February 2016 and results are expected to be published in July 2016.
31. One BSG member flagged that prior recommendations provided by the BSG have been taken into consideration by the EBA in the design of this stress test exercise. This member suggested setting up a BSG Working Group to pursue the reflection on stress tests.
32. Another BSG member welcomed the idea of including conduct risk under the scope of the exercise.

Agenda item 4.: EBA to update on consumer protection and financial innovation

33.The EBA staff updated BSG members on the recent publications and the ongoing consultations in consumer protection and financial innovation.

34.On Payment Accounts Directive (PAD), the EBA staff explained the EBA’s mandate and the next steps which should lead to the publication of ITS on standardised presentation format of Fee Information Document (FID) and common symbol, ITS on standardised presentation format of the statement of Fees (SoF) and its common symbol and RTSs on setting out the union standardised terminology. The EBA staff further specified the main issues regarding Fee Information Document (FID) and Statement of Fees Document (SoF).

35.On this point, BSG members asked questions and the EBA staff provided responses on:

- a. Clarification on the composition and the constitution of the list of services included in FID;
- b. Clarification on the format of the list, in particular to understand whether the consumers will have the opportunity to access an electronic version of this document;
- c. Further precision on the differences between the two documents (FID and SoF), and a more precise definition of the two acronyms;
- d. Clarification as to whether the EBA intends to work in cooperation with the other ESAs on this question;
- e. Whether the consumers have been involved to set up this list; and
- f. Whether BSG members will be consulted on the design of the common symbols.

36.Another BSG member asked EBA staff to take into consideration consumers using non-euro currency whilst designing the two documents.

37.On the EBA’s Consultation Paper on Benchmark Rate under Mortgage Credit Directive (MCD) published on 12 October 2015, the EBA staff presented the work undertaken. The EBA staff requested BSG members to provide their views at the public consultation stage.

38.On the Joint Committee work on Packaged Retail and Insurance-based Investment Products (PRIIPS), the EBA Staff informed of the key issues to be discussed in the forthcoming Consultation Paper, focusing on the risk indicator, the performance scenarios and the costs. BSG members asked questions on the Key Information Document and requested a specific focus on the breakdown of the costs.

39. On the Joint Committee work on Automation in Financial Advice, the EBA staff updated on the work being carried out. One BSG member asked further clarification on the perspective taken by the ESAs when assessing this topic as he saw many benefits arising from such financial innovation. EBA staff replied that the ESAs are taking a balanced approach to the topic, analysing its potential risks, but also aiming to harness potential benefits of automation in financial advice, both to consumers and financial firms. Another BSG member noted that this topic is also discussed in other consumers' group, including European Commission's Financial Service User Group (FSUG), given that it is considered as a matter of concerns for consumers.
40. On the 2016 EBA Consumer Trends Report, the EBA staff provided BSG members with an overview on the process and the timeline for the report. BSG input will be sought through a questionnaire to be sent out shortly. BSG responses would be welcome by 17 November 2015. Some BSG members raised an issue regarding dynamic currency conversion, urging the EBA to investigate this issue.

Agenda item 5.: EBA to update on other regulatory products

A) Update on Recovery and Resolution matters

41. The BSG leader of the Recovery and Resolution Working Group presented an overview of the work done by the EBA in this area. He explained the role played by the EBA to clarify and complete its mandates under the Bank Recovery and Resolution Directive (BRRD) and informed that the BSG had provided feedback to 22 EBA's Consultation Papers in this regard.
42. One BSG member asked as to whether the Technical Standard on contractual recognition has been finalised. Another BSG member questioned certain aspects of the bail-in, including the legal certainty that should be increased according to BSG members, the clarification of rules on subordination. One BSG member suggested presenting the initiatives implemented by the Danish Resolution Authority at a future meeting.
43. The EBA staff updated the BSG on resolution colleges under the BRRD by clarifying their tasks, their composition, the scope of the banks covered by a resolution college and the EBA's role in the resolution colleges. BSG members underlined the case of cross-border institutions operating outside Europe.

B) Draft Consultation Paper on Credit Value Adjustment (CVA) under SREP

44. The EBA staff presented the background and general features of the proposed Draft Consultation Paper on draft Guidelines on the treatment of CVA risk under SREP currently being considered by the BoS, which is a follow-up work on the publication of the CVA report in February 2015, which among other things identified the significance of CVA risk from the transactions exempted from the calculation of minimum own funds requirements in the EU

framework as material, and recommended to address such risk prudentially by means of coordinated approach under SREP.

45. The draft Guidelines implement the policy recommendations of the CVA report and provide a common European approach to: (1) determining the relevance and materiality of CVA risk to an institution, (2) assessment of material CVA risk under SREP, (3) assessment of the adequacy of own funds to cover material CVA risk, and (4) determination of additional own funds requirements, where the risk is not adequately covered by the minimum own funds requirements, in particular due to the exemptions in the EU legislative framework.

46. BSG members asked for a clarification regarding quality of own funds needed to meet potential additional own funds requirements for material CVA risk. In this regard the EBA staff noted that such own funds requirements will be set as part of the overall P2 capital requirements as specified in the EBA SREP Guidelines, so the same quality would apply. BSG members also asked for the EBA view regarding the disclosure of additional own funds requirements, where the EBA staff noted that this topic is wider than the CVA risk charge and a general approach will need to be found and was being considered.

Agenda Item 6: Discussion on whistleblowing

47. The BSG presenter explained the main issues of whistleblowing, including the requirements already in place in the ongoing legislation having regard to Article 71 of the Capital Requirements Directive (CRD IV), some suggested areas to improve the situation of protections of whistle-blowers and provided an illustration of local implementation.

48. Some other BSG members raised the issue of some firms' practices with the whistle-blower needing to report to the Chief Executive Officer (CEO), where the CEO might be involved in such wrongdoings. In this regard, it was noted that the Danish FSA has implemented an encrypted website where individuals can easily report in complete anonymity. BSG Members discussed the merits of external or internal channels to report any wrongdoings. Some examples were discussed providing various ways to ensure anonymity and protection of whistle-blowers, in particular by sending protected files with evidence to external agencies, by setting up a Confidence committee as in the Netherlands ensuring anonymity, by setting up independent external agencies carrying out investigations on the behalf of the firm. Also, the compliance officer was viewed as a possible channel to report any wrongdoings, but there is a problem with confidentiality if this officer has to report also to the Board of the bank.

49. Some BSG members stressed that the existence of functioning channels is key, an external channel e.g. via the supervisor would be supplementary. The effectiveness of any whistleblowing procedure also depends on the culture within the Member States. To ensure a confidential reporting channel, the idea of setting up an independent institution was welcomed.



50. The EBA staff informed that it has not issued any specific Guidelines in this area so far. The EBA Chairperson raised the question of how the EBA could add value in this area.

List of participants - London, 26 October 2015

<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
Emilios Avgouleas	Top-ranking academics
Michel Bilger	Credit and investment institutions
Javier Contreras	Consumers
Nikos Daskalakis	SMEs
Chris De Noose	Credit and investment institutions
Ernst Eichenseher	Credit and investment institutions
Santiago Fernández De Lis	Credit and investment institutions
Anne Fily	Consumers
Jose Antonio Gonzalo-Angulo	Top-ranking academics
Sandra Hafner	Credit and investment institutions
Troels Hauer Holmberg	Consumers
John Hollows	Credit and investment institutions
Alin Iacob	Users of banking services
Robin Jarvis	Users of banking services
Dermott Jewell	Consumers
Bostjan Krisper	Consumers
Arnold Kuijpers	Credit and investment institutions
Nina Dietz Legind	Top-ranking academics
Louise Lindgren	Credit and investment institutions
Dominic Lindley	Users of banking services
Sabine Masuch	Credit and investment institutions
Ute Meyenberg	Employees
Jesper Bo Nielsen	Employees
Robert Priester	Credit and investment institutions
Holger Schwannecke	Credit and investment institutions
Hustak Zdenek	Top-ranking academics

From the EBA

Andrea Enria – EBA Chairperson
 Adam Farkas - Executive Director
 Piers Haben
 Corinne Kaufman
 Mario Quagliariello
 Rita Bairros
 Cédric Coraillon-Parquet
 Carolin Gardner
 Joseph Mifsud
 Orestis Nikou



Vinay Pranjivan
Bernd Rummel
Oleg Shmeljov
Vaidotas Tamulenas
Tea Turcaniova