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Joint Committee

Annual Report 2020

In 2020, the Joint Committee under the chairmanship of the EBA, continued to have a central role for the coordination and exchange of information between the European Supervisory Authorities (ESAs), the European Commission (EC) and the European Systemic Risk Board (ESRB). Progress continued on other important cross-sectoral areas such as enhancing consumer protection, sustainable finance and joint risk assessment as well as monitoring financial innovation and cyber security. Moreover, the revision of the ESAs' Founding Regulation required amending the Joint Committee's rules of procedure. Those now reflect the new requirements for the Joint Committee, notably with regard to its scope, tasks, meeting frequency and transparency.

With the outbreak of the COVID-19 pandemic, the Joint Committee proved to be an active platform to ensure close coordination within the European System of Financial Supervision (ESFS) – and in particular among the ESAs, the ESRB and the EC. Between mid-March and June, there were eleven additional extraordinary meetings of the Joint Committee for Members to exchange on cross-sectoral market developments, risks and potential actions to mitigate effects. In particular, the Joint Committee discussed how to best use the emergency frameworks provided for in the ESAs' Founding Regulations in the situation caused by the pandemic and how to reduce the impact of the COVID-19 financial crisis. The Joint Committee coordinated relief measures across the sectors. This was the case both by providing guidance or common approach on specific technical issues, such as accounting or securitisation as well as by providing constituents more time by delaying consultations or proposing delay in application of specific rules.

The Joint Committee continued discussions and coordination on any cross-sectoral issue following the UK's decision to leave the European Union. Apart from the regular monitoring of the impact across the sectors and risk assessment of the repercussions and expected impacts, this included taking measures in the area of bilateral margining and securitisation.

Joint risk assessment

The Joint Committee also issued the joint risk assessment on risks and vulnerabilities in the EU Financial System after the outbreak of the COVID-19 pandemic. The 2020 Autumn joint report¹ focused mainly on the impact of COVID-19 and gave the first cross-sectoral perspective on risks as potential sources of instability. The Report highlighted that valuation, liquidity, credit and solvency risks have increased across the board. The impact of the pandemic on EU banks' asset quality remained a key concern as significant uncertainty about the timing and size of a recovery persists. The report encouraged supervisors and financial institutions to make use of the flexibility in the existing regulatory framework, including the use of capital and liquidity buffers to absorb losses. It described how the pandemic has led to further amplified profitability concerns across financial sectors, and to increasing asset quality concerns. The issue of decoupling of financial markets valuations and real economy perspectives was also covered in depth, as well as the further build-up of valuation risks in securities markets. The report moreover featured that usage of and dependency on information and communication technology have further increased with the spread of COVID-19, and that sound ICT and security risk management must be high on the agenda. It is key to supervise digital transformation, and the report highlights that financial institutions and their service providers to carefully manage their ICT and security risks, including when outsourcing ICT activities.

Safeguarding consumer protection and strengthening sustainability across financial services

Consumer protection has been and continues to be a key element in the work of the Joint Committee.

During 2020, the ESAs worked to conclude their review of the PRIIPs Key Information Document (KID) following a public consultation on amendments to the PRIIPs Delegated Regulation in the last quarter of 2019. In July 2020, a Final Report including draft regulatory technical standards (RTS) was approved at the EBA and ESMA Boards of Supervisors, but it did not receive the support of a qualified majority at the EIOPA Board of Supervisors. In December 2020, the European Commission invited the ESAs to jointly submit an RTS within a six week period, and in response the EIOPA Board further analysed the draft RTS. In January 2021, based on further details provided by the European Commission on their approach to the broader review of PRIIPs Regulation, the EIOPA Board also approved the RTS. From the ESAs' perspective, the proposals should result in substantive improvements to the KID, before the upcoming review of the PRIIPs Regulation.

During 2020, in total eight administrative sanctions or measures under the PRIIPs Regulation were reported to the ESAs by the competent authorities in Croatia, Germany and Hungary. These measures were administrative fines and orders to the PRIIPs manufacturer to remedy specified breaches of the PRIIPs Regulation² and the PRIIPs Delegated Regulation³. Regarding the administrative fines, the Central

¹ Joint Committee Report on risks and vulnerabilities in the EU financial system, 4 September 2020 (JC 2020 67), [link](#).

² Articles 6(1), 6(4), 8(3), 13(1) and 14(3).

³ Articles 1(d), 2(2), 2(3), 2(4), 2(5), 3(2), 4, 5(1), 5(4), 6, 7 and 8.

Bank of Hungary reported two administrative fines imposed during 2020 totalling 4.000.000 HUF (approx. €10.928) and BaFin reported one administrative fine of €49.000⁴.

As part of consumer protection, the work on the complaints handling guidelines and its implementation continued.

Progress on sustainability-related disclosures

The Regulation on sustainability-related disclosures⁸ (SFDR), which has been amended by Article 25 of the Taxonomy Regulation, aims to strengthen protection for end-investors by standardising and enhancing Environmental, Social and Governance (ESG)-related disclosures. It mandates the ESAs to develop through the Joint Committee a number of Technical Standards (TS). Six RTS will be delivered by the end of January 2021, two draft RTS by 1 June 2021, one draft RTS by 30 December 2021 and two draft RTS by 1 June 2022. There is no set deadline for developing the ITS.

A Consultation Paper (CP) was published by the ESAs on 23 April 2020, covering seven draft RTS related to entity-level principal adverse impact disclosures and product-level disclosures on sustainability characteristics or objectives, as well as on the “do not significant harm” principle as empowered by the amendment to the SFDR by the Taxonomy Regulation. Due to the COVID-19 pandemic, the ESAs informed the European Commission via a letter that the delivery of the final report will be delayed by around four weeks, to end-January 2021. A public hearing, with more than 1,200 participants, took place on 2 July 2020 in webinar format. In parallel with the draft RTS, ESA staff developed templates to be used by the financial market participants for the pre-contractual and periodic disclosures.

The European Commission proposed that the application date of the RTS should be delayed, while the original date of application of the level 1 legislation should remain 10 March 2021. This was laid out in a letter sent by the Commission to the ESAs’ Chairs on 20 October 2020 and has also been communicated to financial market participants.

Furthermore, through the Joint Committee, the ESAs coordinated their respective responses to the consultation on the revision of the Non-Financial Reporting Directive (NFRD). In June 2020, in a letter to the European Commission, the ESAs have highlighted the importance of ensuring consistency of the NFRD with other pieces of legislation in the sustainable finance area, notably the Disclosure Regulation and the Taxonomy Regulation and the ESAs underlined their readiness to support this work further to ensure consistency and contribute to the development of non-financial reporting standards.

⁴ In the 2019 JC Annual Report, it was stated that no administrative sanctions or measures had been reported to the ESAs in 2018 or 2019. However, after the publication of that Report, the Central Bank of Hungary reported to the ESAs two administrative sanctions or measures imposed during 2019 under the PRIIPs Regulation. These measures were orders to the PRIIPs manufacturer to remedy specified breaches of the PRIIPs Regulation (Articles 6(1), 6(4), 8(3) and 14(3)) and the PRIIPs Delegated Regulation (Articles 2(5), 4, 5(4), 6, 7, 8(1) and 9).

⁸ Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR), 27 November 2019, link.

Securitisation Committee moving ahead on its mandates

With a view to helping in the recovery of the securitisation market, the Joint Committee continued the previous year's work that sought to identify obstacles to the implementation of the Securitisation Framework.

In particular, the Joint Committee considered the difficulties to ascertain the jurisdictional scope of application of certain provisions in the Securitisation Regulation in relation to securitisations where one or more of their parties are located in a third country. The Joint Committee continued to develop an opinion on this subject.

In July the Joint Committee launched a consultation to gather competent authorities' and market participants' feedback for the purposes of the report referred to in article 44 of the Securitisation Regulation. The report must provide the Commission and the co-Legislators with, inter alia, the ESAs' assessment on:

- (i) the implementation of the STS requirements and the functioning of the Securitisation Regulation as regards the due diligence, transparency and risk retention requirements laid out therein;
- (ii) competent authorities' actions to tackle new material risks and emerging vulnerabilities in the securitisation market;
- (iii) market participants' actions to standardise transaction documentation.

The opinion and the report are expected to be delivered within the first quarter of 2021.

In the context of the COVID-19 pandemic, the Joint Committee considered the potential impact of debt moratoria and public guarantee schemes on securitised debt. The Joint Committee also discussed the interpretation of "default" in securitisation transactions subject to moratorium schemes.

Lastly, the Joint Committee noted the loss of the 'Simple, Transparent and Standardised' (STS) label for UK securitisation transactions after the end of the Transition Period on 31 December 2020 and agreed to the press release issued by the ESAs to make market participants aware of this change.

Innovation and digital finance as integral part

In 2020 the Joint Committee stepped up its innovation and digital finance-related work, including in the context of the European Commission's Digital Finance Strategy, with extensive technical discussions on topics such as crypto-assets, digital operational resilience and cross-border sandbox testing. To further support the Joint Committee's work in this area and coordinate the response to the specific elements of the European Commission's Digital Finance package the ESAs established an ESA staff workstream under the auspices of the Joint Committee. The main task for the new ESAs' Coordination Group on Technological Innovation and Cybersecurity is to facilitate cooperation and coordination on cross-sectoral issues.

European Forum of Financial Innovation Facilitators (EFIF)

The European Forum for Financial Innovators (EFIF) continued to bring value in bridging national innovation facilitators (regulatory sandboxes and innovation hubs) on innovation-related issues. The EBA handed its Chairmanship of this forum over to EIOPA in May 2020.

Under EIOPA's chairmanship, discussions continued on how to strengthen the EFIF and delivery a procedural framework to facilitate cross-border testing in accordance with the mandate set out in the Digital Finance Strategy. EFIF members continued to exchange views on the design and development of new innovation facilitators, innovation trends, as well as on the application of specific technologies in the financial sector, including the issues of multi-purpose digital platforms facilitating the provision of financial services, RegTech, and AI, Big Data and machine learning and on cross-cutting themes such as the role of FinTech in responding to the COVID-19 crisis. Engagement with other stakeholders such as the European Bank for Reconstruction and Development (EBRD) and DG REFORM at the European Commission, and third country supervisory authorities was also strengthened.

Financial Conglomerates' work continues

In 2020, the Sub-Committee on Financial Conglomerates finalised the Final Report on the draft Implementing Technical Standards (ITS) under the Financial Conglomerates Directive (FICOD)⁹ on reporting templates for intra-group transactions (IGT) and risk concentration (RC) and the relevant annex. The harmonisation of the IGT and RC templates for conglomerates aim to align the reporting under FICOD with one single set of templates and common definitions and instructions to fill in the templates as set out in the Annex to the ITS.

Moreover, the Joint Committee published its 2020 annual list of identified Financial Conglomerates showing 65 financial conglomerates located with the head of group in the EU/EEA area and one financial conglomerate with the head of group in Switzerland.

Other relevant cross-sectoral Joint Committee work

The Joint Committee finalised the Joint final report on the second amendment to the draft ITS on the allocation of credit assessments of external credit assessment institutions (ECAIs) to an objective scale of credit quality steps in accordance with Solvency II. This amendment addressed the JC monitoring mandate to ensure the adequacy of existing mappings. The approval process for the Solvency II Final Joint Report was decoupled from the CRR Final Joint Report (which concluded in May 2019) and published by the European Commission in June 2020.

⁹ Directive (EU) 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, 16 December 2002, link.

Further, the ESAs started work towards a third amendment to the draft ITS, to continue delivering on the JC mandate by assigning mappings to additional newly established ECAIs and new rating scales, as well as monitoring that existing mappings remain representative of the ECAI's risk profile.

The ESAs have moreover amended the joint Final Report on the draft amending RTS under EMIR on the risk mitigation techniques for OTC derivative contracts not cleared (bilateral margining). The amendment covers a variety of aspects. The amendment background provides a clarification of the requirements when below the 50 million initial margin threshold. The amendment provides an extension of the phase-in of the implementation of the initial margin requirements, in two ways: introducing of an additional implementation phase (an additional 50 billion threshold was added), and a 1-year deferral in response to the Covid-19 outbreak. The amending RTS also extend the specific treatment provided for physically settled FX Forwards to physically settled Swaps. Finally, the targeted update extends for 18 months the intragroup exemption (to align the framework with the clearing provisions) and the equity exemption for three years. In addition, the amended RTS also re-introduces a regulatory solution to facilitate novations from UK counterparties to EU counterparties in the context of the end of the transition period, which had first been designed two years ago but which had then become void following the withdrawal agreement from the start of the year.

The Joint Committee moreover discussed the mandate in article 31a ESA Review to set up a cross-sectoral system for the exchange of information on the fit and proper assessments. The work on the policies, procedures and templates for the exchange of information, and on a possible IT system will continue. The Joint Committee also agreed to start an IT pilot project in the area of banking and insurance.

ESAs' Board of Appeal

The Board of Appeal is a joint independent body of the ESAs, introduced to effectively protect the rights of parties affected by decisions adopted by the Authorities. The ESAs provided secretarial support to the Board of Appeal. In 2020, there were three appeal cases finalised, two brought against ESMA and another brought against EIOPA.

The Board of Appeal unanimously decided to dismiss the appeal brought by the credit rating agency Scope Ratings GmbH against ESMA and to confirm the decision imposing fines and the measure of public notice for breaches of the Credit Rating Agencies (CRA) Regulations. In particular, the Board of Appeal found that ESMA did not err in law in its interpretation of the applicable legal provisions of the CRA Regulation.

The Board of Appeal issued its Decisions dismissing 2 cases lodged by the same appellant against ESMA and EIOPA on alleged non-application of Union law. The Board of Appeal dismissed the appeal against ESMA as inadmissible as (i) the facts described by the Appellant did not relate in any way to aspects under the supervision of the relevant national authorities nor of ESMA; and (ii) the conclusion of ESMA provided to the Appellant, should be considered as a simple provision of information and not as a decision pursuant to Article 17 of the ESMA Regulation which could be challenged before the Board of Appeal. The Board of appeal dismissed the case against EIOPA as manifestly inadmissible as Appellant merely reiterated the very same complaints which the Board of Appeal determined to be inadmissible in that context.