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Joint Committee

Annual Report 2021

In 2021, the Joint Committee under the chairmanship of the ESMA, 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). The main areas of cross-sectoral focus continued to be joint risk assessment, enhancement of consumer protection, development of the regulatory and supervisory frameworks for sustainable finance and securitisation as well as monitoring and contributing to the development in digital finance, supporting scale up of FinTech through innovation hubs and sandboxes and cyber security.

Joint risk assessment

The Joint Committee issued two Joint Risk Assessment Reports on Risks and Vulnerabilities in the EU Financial System. The 2021 Spring Joint Risk Report highlighted how the COVID-19 pandemic continued to weigh heavily on short-term recovery prospects, focused on a number of vulnerabilities in the financial markets, and warned of possible further market corrections. The ESAs also warned of a possible deterioration of asset quality and recommended policy actions for supervisors and regulated institutions, including for banks to ensure sound lending practices and adequate pricing of risks, and to adjust provisioning models to adequately address the impact of the economic shock of the pandemic. The ESAs also called on competent authorities, financial institutions, and market participants to continue to develop further actions to accommodate a “low-for-long” interest rate environment and its risks.

The 2021 Autumn Joint Risk Report highlighted increasing vulnerabilities in the financial sector, not least because of side effects of the COVID-19 crisis measures, such as increasing debt levels and upward pressure on asset prices. The Report noted that expectations of inflation and yield growth, as well as increased investor risk-taking, might put additional pressure on the financial system. Against this context, the ESAs warned of the continued risk of possible asset quality deterioration, potential disorderly increases in yields and sudden reversals of risk premia. In addition to these economic vulnerabilities, the Joint Risk Report highlighted the increased exposure of the financial sector to cyber risk and information- and communication technology (ICT) related vulnerabilities. The ESAs highlighted the need that appropriate technologies and adequate control frameworks are in place to address threats to information security and business continuity in the financial sector.

Consumer protection and financial education

In 2021, consumer protection continued to be a key element in the work of the Joint Committee.

Following the submission of the draft RTS with the proposed amendments to the PRIIPs Delegated Regulation to the European Commission in January 2021 and as part of a wider initiative of the European Commission to develop a new retail investment strategy for the EU, the Joint Committee received in July 2021 from the Commission a Call for Advice on the review of the PRIIPs Regulation. The scope of the mandate from the European Commission follows the areas referred to in Article 33 of the PRIIPs Regulation, as well as additionally including issues related to the use of digital media. In order to gather evidence, the Joint Committee published a Call for evidence for a public consultation until 16 December 2021 and is working to deliver its Joint Advice by the end of April 2022.

During 2021, in total 13 administrative sanctions or measures under the PRIIPs Regulation were reported to the ESAs by the competent authorities in 3 Member states (Croatia, Czech Republic and Hungary). These measures were fines and orders to the PRIIP manufacturer or person advising on, or selling, the PRIIP to remedy specified breaches of the PRIIPs Regulation or the PRIIPs Delegated Regulation¹.

Furthermore, the Joint Committee finalised its review of the application of the Joint ESAs' Guidelines on complaints-handling that the three ESAs had issued in 2014. The review concluded that the Joint Guidelines have contributed to a consistent approach to complaints-handling across the banking, insurance and securities sectors and have resulted in better outcomes for consumers. This review examined how the ESAs Guidelines on complaints-handling have been applied since they came into force. In particular, the Final Report of the review describes the extent to which the objectives of the Guidelines have been achieved, the supervisory actions that NCAs have undertaken as a result of their national implementation, including the steps taken to identify good/poor practices by firms, as well as the remaining challenges faced.

Finally, the Joint Committee started a new work stream on Financial Education with the aim to fulfil the ESAs' mandate to review and coordinate national financial education initiatives. The main focus of the Joint Committee work in this area in 2021 was the preparation of a joint high-level conference on financial education and the development of a Joint ESAs repository of national education initiatives focused on fraud, scams and cybersecurity, both of which are scheduled for February 2022.

Sustainability-related disclosures

A very significant part of the work of the Joint Committee in 2021 focused on development of the regulatory and supervisory framework for sustainability-related disclosures.

The Sustainable Finance Disclosure Regulation (SFDR), which has been amended by Article 25 of the Taxonomy Regulation mandated the ESAs to develop through the Joint Committee a number of

¹ Regarding the fines, the Croatian Financial Services Supervisory Agency, the Czech National Bank and the Central Bank of Hungary reported fines totalling 390,000 HRK (approx. 51,636 EUR), 1,000,000 CZK (approx. 40,225 EUR), and 3,000,000 Ft (approx. 8,118 EUR), respectively.

Regulatory Technical Standards (RTS). In 2021, the Joint Committee have developed two sets of draft RTS, containing a total of 13 RTS.

Firstly, the ESAs published on 4 February 2021 draft RTS on the content, methodologies and presentation of disclosures under SFDR that aim to strengthen protection for end-investors by providing sustainability disclosures on the principal adverse impacts of investment decisions and on the sustainability features of a wide range of financial products. This will help to respond to investor demands for sustainable products and reduce the risk of greenwashing. In addition, the draft RTS contain proposals under Taxonomy Regulation on the do not significantly harm (DNSH) principle.

Secondly, the ESAs have also published on 22 October 2021 draft RTS regarding disclosures under SFDR that relate to financial products investing in economic activities that contribute to environmental objectives. The draft RTS provide disclosures to end-investors regarding the investments of financial products in environmentally sustainable activities, providing them with comparable information to make informed investment choices and enable a single rulebook for sustainability disclosures under the SFDR and the Taxonomy Regulation. The draft RTS include pre-contractual and periodic disclosures for products referred to in Articles 5 and 6 of the Taxonomy Regulation that identify the environmental objectives to which the product contributes and show how and to what extent the product's investments are aligned with the EU Taxonomy.

The ESAs have also addressed emerging implementation and supervisory issues. In a letter to the European Commission on 7 January 2021 the ESAs highlighted the priority issues relating to the draft RTS under SFDR. The European Commission responded in July 2021 and provided interpretative guidance to a number of the questions highlighted in the letter in its response.

In addition, the Joint Committee published on 25 February 2021 a Joint ESAs Supervisory Statement to mitigate the risk of divergent application of SFDR within the period from 10 March 2021 (SFDR application date) to the application date of the SFDR RTS. The overall objective of the joint supervisory statement is to achieve an effective and consistent application and national supervision of the SFDR, promoting a level playing field and the protection of investors.

The Commission informed the European Parliament and Council in November 2021 that due to the technical complexity of the RTS and the timing of the submission, the bundled February and October RTS would become applicable by 1 January 2023.

Apart from the SFDR related work, through the Joint Committee, the ESAs coordinated their approach with regards to the membership and governance of the new Sustainability Reporting Pillar of European Financial Reporting Advisory Group (EFRAG). In the letter in July 2021 the ESAs reiterated their strong commitment to contribute to the development of high-quality sustainability reporting standards, and expressed their preference to remain active observers in the EFRAG governance framework. The ESAs considered that such an observer status is in line with the proposal for a Corporate Sustainability Reporting Directive (CSRD) to require ESMA, and invite the other ESAs, to provide an opinion on EFRAG's draft sustainability reporting standards.

Securitisation

With a view to support the development of the EU securitisation market, the Joint Committee continued its work to address obstacles in the implementation of the Securitisation Framework and to suggest improvements to the regulatory and supervisory regime to the National Competent Authorities (NCAs) and the European Commission.

In particular, the Joint Committee considered the difficulties to ascertain the jurisdictional scope of application of certain provisions in the Securitisation Regulation in case one or more of the securitisation parties are located in a third country. In the Joint Opinion issued in March 2021, the ESAs examined the EU securitisation requirements which may be applicable to third-country parties, as well as related compliance aspects of a transaction under the Securitisation Regulation. The ESAs also set out their common view on the practical difficulties faced by market participants and recommended that these difficulties should be addressed through interpretative guidance from the European Commission.

Furthermore, in the report prepared according to Article 44 of the Securitisation Regulation, the ESAs assessed the implementation and the functioning of the Securitisation Regulation, and provided recommendations on how to address initial inconsistencies and challenges which may affect the overall efficiency of the current securitisation regime. In particular, the report highlighted specific issues related to transparency and due diligence requirements, criteria for simple, transparent and standardised (STS) securitisation and requirements related to supervision of securitisation. The report was meant to provide guidance to the European Commission in the context of its review of the functioning of the Securitisation Regulation. It also includes an analysis of the efficiency of the STS securitisation framework, considering in particular the role that securitisation could play in the economic recovery post the Covid-19 pandemic.

In addition, the Joint Committee provided further guidance on the application of the Securitisation Regulation through Q&As. These Q&As clarify in particular: (i) the content and the format of the information of a securitisation transaction that should be disclosed by the originator, sponsor and securitisation special purpose entity (SSPE); (ii) the transaction documentation of a STS securitisation that should be made publicly available to facilitate investors' compliance with its due diligence requirements; and (iii) the type of STS certification services that can be provided by Third-party Verifiers to the securitisation parties. These Q&As were subsequently updated to clarify whether a "vendor financing" structure can be considered a synthetic securitisation.

Finally, the Joint Committee has initiated work to address the Call for Advice from the European Commission in October 2021. This Call for Advice seeks the Joint Committee's assistance to assess the recent performance of the rules on capital requirements (for banks, and insurance and reinsurance undertakings) and liquidity requirements (for banks) relative to the framework's original objective of contributing to the sound revival of the EU securitisation market on a prudent basis. The Joint Committee report is scheduled for submission to the European Commission by 1 September 2022.

Digital finance

In 2021 the Joint Committee stepped up its 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 and digital operational resilience. Moreover, the ESAs prepared a comprehensive response to the Call for advice from the European Commission's February 2021 Call for Advice on Digital Finance on value chains, platformisation and new mixed activity groups.

The ESAs have been actively involved in the discussions on the legislative proposals for a regulation on markets in crypto-assets (MiCA) and the regulation on digital operational resilience for the financial sector (DORA). In particular, apart from considering technical and resource elements relating to operational preparations for the proposed supervision and oversight tasks, the Chairs of the ESAs sent a letter to co-legislators, where the ESAs set out their views on how to take forward most efficiently important aspects of the governance and operational processes of the oversight framework for critical third-party service providers and the application of the proportionality principle in the proposed DORA. Among other things the ESAs stated that the proposal raised challenges on the practical functioning of the oversight framework, especially the complexity of the governance and decision-making process between the Joint Committee of the ESAs, the Boards of Supervisors of the ESAs and the Oversight Forum.

European Forum for Financial Innovation Facilitators (EFIF)

The European Forum for Innovation Facilitators (EFIF) continued to bring value in bridging national innovation facilitators (regulatory sandboxes and innovation hubs) on innovation-related issues. EIOPA handed its Chairpersonship of this forum over to ESMA in September 2021 and the first ESMA-chaired meeting took place in October 2021.

Under EIOPA's chairmanship, the EFIF finalised the procedural framework to facilitate cross-border testing² in accordance with the mandate set out in the Digital Finance Strategy.

EFIF members continued to exchange views on the design and development of already established and new innovation facilitators, innovation trends in the financial sector, including the issues of multi-purpose digital platforms facilitating the provision of financial services, RegTech, AI, Big Data and machine learning; with the objective to promote greater coordination and cooperation between innovation facilitators and thus support the scaling up of FinTech across the single market.

² Available at https://www.esma.europa.eu/sites/default/files/library/efif_procedural_framework_for_cross-border_testing.pdf

Financial Conglomerates

The Joint Committee published its 2021 annual list of identified Financial Conglomerates showing 67 financial conglomerates, out of which 65 located with the head of group in the EEA, one financial conglomerate with the head of the group in the United Kingdom, and one financial conglomerate with the head of group in Switzerland. Work also continued to develop reporting templates for conglomerates on intra-group transactions and risk concentration as well as on capital adequacy.

Other relevant cross-sectoral Joint Committee work

The Joint Committee finalised the Joint final report on the third 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 CRR and Solvency II. This amendment addressed (i) the registration of two new credit rating agencies (CRAs), (ii) the outcome of a monitoring exercise on the adequacy of existing mappings; and (iii) the deregistration of a number of CRAs.

The ESAs have developed Joint Q&A on Commission Delegated Regulation on bilateral margin requirements under EMIR clarifying different aspects regarding the bilateral margin regime. The Q&A clarify in particular (i) the relief covered by a partial intragroup exemption from bilateral margin requirements; (ii) the procedure to grant intragroup exemptions from bilateral margin requirements between a financial counterparty and a non-financial counterparty that are based in different Member States; and (iii) the exemption regime from bilateral margin requirements for derivatives entered into in relation to covered bonds.

Finally, the Joint Committee discussed the mandate in Article 31a of the ESA Regulations to set up a cross-sectoral system for the exchange of information on the fit and proper assessments. The work continued on the draft guidelines for the exchange of information, and on an IT solution consisting of a cross-sectoral CAs contact list and searchable shared database of holders of qualifying holdings, directors and key function holders assessed for fitness and propriety.

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 administrative support to the Board of Appeal and serve as its Secretariat. As of 1 December 2021, the ESAs renewed 10 members and alternates of the ESAs Board of Appeal. Following the renewal, Mr. Michele Siri has been elected as the new President and Mr. Christos Gortsos as new Vice-President of the ESAs Board of Appeal.

In 2021, there were three appeal cases finalised, one brought against each of the ESAs:

In its decision “A” against ESMA, the Board of Appeal unanimously decided to dismiss the appeal brought by an institution that wishes to stay anonymous as inadmissible. The appeal was in relation to the launch of an investigation into an alleged breach of EU law by a NCA.

In its decision, Howerton against EBA, the Board of Appeal unanimously decided to dismiss the appeal brought by Mr Howerton against the EBA in relation to an alleged non-application of Union law by eight NCAs as manifestly inadmissible, as the facts described do not seem to involve a subject-matter within the remit of the EBA nor of the Board of Appeal

Finally, the Board of Appeal decided in its decision Societatea de Asigurare-Reasigurare City Insurance SA (City Insurance) against EIOPA that the appeal was inadmissible. The appeal was in relation to a balance sheet review (BSR) exercise of the Romanian insurance sector that is carried out by the Autoritatea de Supraveghere Financiară (ASF) with the support of EIOPA.