
Joint Committee - Annual Report 2022

In 2022 the Joint Committee (JC), under the chairmanship of the European Insurance and Occupational Pensions Authority (EIOPA), continued to play a coordinating role and facilitated discussions and exchange of information across the three European Supervisory Authorities (ESAs), the European Commission and the European Systemic Risk Board (ESRB). The JC focused on issues of cross-sectoral relevance, including joint risk assessment, sustainable finance, digitalisation, consumer protection and financial innovation, securitisation, financial conglomerates and central clearing.

1. Joint Risk Assessment

The Joint Committee prepared two Joint Risk Reports in Spring and Autumn respectively. In Spring, the report highlighted increasing vulnerabilities across the financial sector, notably regarding inflation risk, a possible deterioration in asset quality, increase in yields and a sudden reversal of risk premia, as well as the rise of environmental and cyber risks. It also included a preliminary assessment of the consequences of Russia's invasion of Ukraine. The ESAs encouraged supervisors and market participants to prepare for the challenges ahead, including compliance with sanctions, and warned against rising risks to retail investors. They also called on financial institutions to further incorporate environmental, social and governance (ESG) concerns in their business strategies and governance structures and to strengthen cyber resilience.

The autumn Joint Risk Report argued that the deteriorating economic outlook, high inflation and rising energy prices had increased vulnerabilities across the financial sectors. It considered the implications of Russia's invasion of Ukraine, inflationary pressures and their impact on interest rates and cyber and digitalisation-related risks. The ESAs advised national supervisors, financial institutions and market participants to intensify preparation for the challenges facing them, which remained largely in line with those identified in the Spring Risk Report and also included risks arising from crypto assets.

2. Sustainable finance

Sustainable finance continued to be a central element of the work of the Joint Committee in 2022, which focused on the Sustainable Finance Disclosure Regulation (SFDR). The ESAs issued an updated Joint Supervisory Statement on the application of the SFDR. The statement invited national competent authorities and market participants to use the interim period from 10 March 2021 until 1 January 2023 to prepare for the future application of the Regulatory Technical Standards (RTS) and implement the relevant measures of SFDR and the Taxonomy Regulation

in line with the timeline indicated in the statement. Under Article 5 and 6 of the Taxonomy Regulation, market participants were requested to provide an explicit quantification (i.e., a numerical disclosure of the percentage) of the extent to which investments underlying the financial product are taxonomy-aligned.

In June, the ESAs published a clarification on the ESAs' draft RTS under SFDR. This clarified Principal Adverse Impact (PAI) disclosures, financial product disclosure and Do Not Significantly Harm (DNSH) disclosures. The clarification document responded to numerous requests by stakeholders.

As foreseen by Article 18 of SFDR, the ESAs published their first report on the extent of voluntary PAI disclosure of investment decisions on sustainability factors. The report examined the state of disclosures under Article 4 SFDR on principal adverse impacts, noting that disclosures were made under Level 1 measures. Based on a survey of NCAs' practices, the report found that implementation varied across jurisdictions with discrepancies in how the PAIs were disclosed and in the level of details used in explaining why financial market participants did not take into account PAIs of their investment decisions.

In September, the ESAs published a Final Report containing RTS amending the SFDR Delegated Regulation related to disclosures in financial products of investments in fossil gas and nuclear energy. The Report was prepared in response to an urgent request by the European Commission received in April. The amendments added a 'yes/no' question to identify whether financial products make fossil gas or nuclear energy Taxonomy-aligned investments. In case of a positive answer to the question, additional graphical representations are required. The ESAs also proposed minor technical revisions to the SFDR Delegated Regulation. The ESAs also published practical application Q&As providing clarifications on the SFDR Delegated Regulation.

Finally, the ESAs made progress in preparing of the amendment of the SFDR Delegated Regulation in response to a Commission's mandate received in April. The mandate requested the ESAs to develop further the PAI indicators¹ and to include specific financial product disclosures on decarbonisation targets (i.e., reduction of greenhouse gas emissions). The ESAs aim to submit a final report with draft RTS to the Commission in 2023.

3. Digitalisation

Digital issues were also at the core of the Joint Committee work in 2022. In February, the ESAs published a Joint Report on Digital Finance. The report sets out the findings and advice of the ESAs in response to the European Commission's Call for Advice on digital finance and related issues. It covers cross-sectoral and sector-specific market developments in relation to fragmented financial services value chains, digital platforms and mixed-activity groups. It also considers the

¹ Under Article 4, SFDR, financial market participants need to provide transparency on whether they consider principal adverse impacts of their investment decisions on sustainability factors. The ESAs developed indicators for principal adverse impact covering environmental and social factors, included in Annex I of the SFDR Delegated Regulation.

risks and opportunities posed by digitalisation in finance. The ESAs present ten cross-sectoral and two insurance-specific recommendations for actions to ensure the EU regulatory and supervisory framework remains fit for the digital age.

The Digital Operational Resilience Act (DORA) includes several policy mandates for the ESAs. To follow up on this work, the Joint Committee set up a JC Sub Committee on Digital Operational Resilience (JC SC DOR), with the involvement of National Competent Authorities and relevant European authorities. The JC SC DOR's mandate was published in June and the first meeting took place in November. The Sub-Committee develops technical advice and draft technical standards, guidelines and recommendations mandated by DORA or the European Commission (call for technical advice) to be delivered in 2023 or 2024. It will help the ESAs ensure consistency in this cross-sectoral policy work including ICT risk management (with ICT third-party risk management and operational resilience testing), ICT related incidents and threats reporting, and the oversight of critical ICT third party service providers.

4. European Forum for Innovation Facilitators (EFIF)

In 2022, EFIF remained as a key forum to facilitate information exchange and supervisory convergence in innovation in the FinTech sector in the EU. ESMA chaired the EFIF in first part of 2022. The forum held three meetings, each attended by over 60 EFIF members. EFIF members shared experiences and updates on developments in the design and operation of their innovation facilitators as well as on innovative products and trends identified through the hubs and sandboxes. They also discussed various topics and case studies in the areas of RegTech, Artificial Intelligence, Decentralised Finance, Non-Fungible Tokens, synthetic data, data protection, ESG and GreenTech, digital sandboxes, facilitation of financial innovation, and quantum computing.

In 2022, EFIF finalised the Procedural Framework for Cross-Border Testing. The Framework aims to assist innovative FinTechs in their engagement with innovation facilitators cross-border through digital tools. The ultimate purpose of this initiative is to help innovators save time and money as they deliver new products and services to the market. This Framework was enabled by the launch of the EU Digital Finance Platform in April 2022. The Digital Platform supports the functionalities related to cross-border testing such as a standardised common form that firms can use to indicate their interest in conducting cross-border testing. Finally, the Joint Committee adopted the EFIF Work Programme for 2023, which includes the development of an updated Joint ESAs Report on innovation facilitators in 2023. After the October EFIF meeting, the EBA took over EFIF's chairmanship.

5. Consumer protection and financial innovation

Consumer protection remained at heart of the Joint Committee cross-sectoral work in 2022. The JC continued to work on Packaged Retail and Insurance-Based Investment Products (PRIIPs) and intensified its work on digital and financial education issues.

Regarding PRIIPs, at the end of April, the ESAs delivered their advice of the review of the PRIIPs Regulation following a Call for Advice received from the European Commission. The advice served as input to the Commission's work to develop a strategy for retail investment. The ESAs recommended significant changes to the PRIIPs Regulation in order to make the Key Information Document (KID) more user-friendly, notably by allowing information to be presented in a layered format, including a new section to give prominence to information on sustainable characteristics or objectives and allowing different approaches for different types of products, where necessary, including providing more flexibility on the information provided in the performance section of the KID. They also suggested not to extend the scope to additional products at this stage, but further specify the existing scope and to make changes to better facilitate comparison between different investments in multi-option insurance products.

The ESAs also issued a joint Supervisory Statement about the "What is this product" section of the KID for PRIIPs, having identified a range of poor practices in how manufacturers describe products under this section, such as insufficient information being provided regarding capital protection levels and potential losses for the investor. The supervisory statement provides an overview of these issues and sets out the ESAs' expectations in each area to ensure that information is presented to retail investors in an adequate, clear and accessible manner.

In 2022, the ESAs published two sets of Q&As on PRIIPs incorporating into the existing ESA Joint Q&As on PRIIPs, one in October 2022 and one in December 2022, relating to (a) existing ESMA Level 3 guidance applying to UCITS that is relevant in a PRIIPs context based on the implementation of the PRIIPs KID for UCITS from 1 January 2023, (b) the currently applicable PRIIPs Delegated Regulation (2017/253), and (c) new requirements in the Commission Delegated Regulation (EU) 2021/2268 amending the existing PRIIPs Delegated Regulation and applicable from 1 January 2023.

During 2022, a total of 10 administrative sanctions or measures under the PRIIPs Regulation were reported to the ESAs by the competent authorities in three Member states (Croatia, Denmark 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 Regulation².

The ESAs also worked on addressing the risks to consumers arising from crypto-assets. Against the backdrop of growing consumer activity and interest in crypto-assets and aggressive promotion of those assets and related products to the public, including through social media, the ESAs issued a Joint Warning in March 2022. The warning informs consumers that many crypto-assets are highly risky and speculative and sets out key steps consumers can take to ensure they make informed decisions.

The ESAs were also actively engaging with the public. In February, they organised a high level

² Regarding the fines, the Central Bank of Hungary reported fines totalling 3 500 000 Ft (approximately 8 731 EUR).

hybrid conference on financial education and literacy to exchange ideas and experiences, stimulate the discussion and raise awareness on the topic. The discussion focused on the following topics related to financial education: Capital Markets Union; digitalisation with a specific focus on cybersecurity, scams and fraud; financial resilience of vulnerable groups and sustainable finance. The ESAs also organised the 9th edition of the Joint ESAs Consumer Protection Day, which took place as hybrid event in Frankfurt am Main, Germany in September 2022. It focused on addressing the needs of consumers and helping them navigate the current complex landscape. It tackled issues related to sustainable finance, open finance and financial inclusion.

In addition, the ESAs built a thematic repository of financial education initiatives on digitalisation, focusing on cybersecurity, scams and fraud. The repository contains a list of 127 national initiatives and related description and hyperlinks that consumers can avail themselves with to obtain helpful information to improve their financial literacy.

Finally, based on the thematic repository, the ESAs also drafted a thematic report on the implementation across the EU of national financial education initiatives on digitalization, with a focus on cybersecurity, scams, and fraud. The report identified twelve good practices that National Competent Authorities and other public entities can follow when designing and implementing their financial education initiatives. These include the publication of a blacklist of fraudulent providers and the targeting of digitally literate consumers to help them properly assess the financial risks arising from financial products and services linked to new technologies, such as crypto assets. They also comprise search engine optimisation to ensure that NCAs' financial education websites appear among the first search results when consumers look for information on specific financial subjects. The report also draws on insights from a workshop organised by the ESAs with NCAs to facilitate an exchange on the implementation of financial education initiatives.

6. Securitisation

The ESAs continued their cross-sectoral work on securitisation throughout 2022. Following a Call for Advice from the European Commission to assess whether the current securitisation framework, including its prudential aspects, is functioning in an optimal manner and to identify potential areas for improvement, the ESAs published a JC advice.

The ESAs welcomed the opportunity to assess the capital and liquidity framework for securitisation and thoroughly reviewed the aspects on which the Commission had requested feedback. The advice on banking includes targeted recommendations to support the securitisation market in a prudent manner and to promote the issuance of resilient securitisations qualifying for a more beneficial capital treatment, without jeopardizing investor protection and financial stability.

The Joint Committee also issued a public consultation on the joint RTS on disclosure of information on sustainability indicators for simple, transparent and standardised (STS) securitisations in spring. In the course of 2022, the ESAs analysed the responses to the

consultation and discussed the scope of the RTS.

7. Financial conglomerates

The Joint Committee published its 2022 annual list of identified financial conglomerates, which includes 63 financial conglomerates with the head of group located in the European Union or in the European Economic Area. Following the finalisation of the draft Implementing Technical Standards (ITS) on reporting templates for conglomerates on intra-group transactions and risk concentration, the final ITS was published by the European Commission in the Official Journal in December 2022. The new templates aim to align the reporting to enhance supervisory overview of group-specific risks, in particular contagion risk. They also aim to increase comparability among financial conglomerates of different Member States, thereby improving supervisory consistency.

8. Other relevant cross-sectoral Joint Committee work

The ESAs published their Final Report on EMIR draft RTS with regards to intragroup contracts. The final report comprised new draft amending Regulatory Technical Standards (RTS) on the risk mitigation techniques for over-the-counter (OTC) derivative contracts not cleared by a central counterparty (CCP), notably bilateral margining. The draft RTS proposed to amend the European Commission Delegated Regulation setting out the detailed bilateral margin requirements in relation to the treatment of OTC derivative contracts concluded between counterparties that are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union. The ESAs have also issued a statement to provide clarifications for the period between the publication of the report and the finalisation of the non-objection procedure by the European Parliament and the Council.

Finally, the Joint Committee approved the draft consultation paper on the guidelines drafted pursuant to the mandate from Article 31a of the ESA Regulations to set up a cross-sectoral system for the exchange of information on the fit and proper assessments, paving the way for a public consultation in early 2023. Work also continued on the related IT solution consisting of a cross-sectoral National Competent Authorities' contact list and searchable shared database of holders of qualifying holdings, directors and key function holders assessed for fitness and propriety.

9. ESAs' Joint 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 and is responsible for deciding on appeals against certain decisions by the ESAs. The ESAs provide administrative support to the Board of Appeal and serve as its Secretariat through the Joint Committee. The Board of Appeal took a decision in a case against the EBA in July 2022 and decided to dismiss the appeal as it was directed against a decision of the EBA which was not challengeable.