
Joint Committee

Annual Report 2018

In 2018, under the chairmanship of ESMA, the Joint Committee continued in its role as a central point for coordination and exchange of information between the European Supervisory Authorities (ESAs), along with the European Commission and the European Systemic Risk Board. The focus of the committee on Brexit-related issues increased, as the ESAs continued in their preparation for the withdrawal of the UK from the EU. At the same time, progress continued on work in other important cross-sectoral fields such as enhancing consumer protection, monitoring financial innovation, and combatting money laundering and terrorist financing.

Overseeing market developments and cross-sectoral risks

The Joint Committee continued as an important forum for discussions on market developments and in-depth analysis of emerging risks, helping to identify the main areas of supervisory concern across the EU. As uncertainties regarding the UK's withdrawal from the EU grew, the impact of a potential cliff-edge scenario, ongoing supervisory matters, as well as future cooperation with UK authorities became focal points for the Joint Committee. These escalating uncertainties were reflected in the Joint Committee's biannual Risk Reports, published in spring (JC 2018 07) and autumn (JC 2018 27), which also addressed other necessary measures to ensure consistent EU supervisory oversight in light of Brexit, including on possible relocations, as well as highlighting the need for appropriate contingency planning by financial institutions.

Aside from Brexit issues, both Joint Committee Risk Reports also covered risks associated with repricing of risk premia, increases in yields and interest rates, as well as operational, cyber, and sustainability risk developments. The reports correspondingly conveyed suggested actions to address these rising challenges.

Safeguarding consumers across financial services and examining FinTech developments

Consumer protection and financial innovation once more figured prominently on the Joint Committee's agenda. With the PRIIPs Regulation applying as from 2018, the ESAs focused on ensuring the smooth implementation of the new rules. To this end, additional Questions and Answers (JC 2018 22) were published to clarify the application of the rules and to promote common supervisory approaches and practices. The ESAs also analysed issues raised by National Competent Authorities and stakeholders in order to aid with the coherent functioning of the rules. In July the Joint Committee called upon the European Commission to provide detailed public guidance on the types of products, and in particular bonds, which fall within the scope of the Regulation (JC 2018 21).

In October 2018, the Joint Committee launched a consultation paper (JC 2018 60) on targeted amendments to the Delegated Regulation covering the rules for the PRIIPs Key Information Document (KID). That consultation addressed issues that had arisen since the introduction of the new rules, as well as the application of the KID for UCITs funds taking into account that the exemption for UCITs funds was, at that stage, due to expire at the end of 2019.

In August 2018, the scope of application of the current ESMA-EBA Guidelines on Complaints Handling (JC 2018 35) was extended to authorities supervising the new institutions established under the revised Payment Service Directive and the Mortgage Credit Directive, thus ensuring identical set of requirements for complaints-handling and level of protection for consumers applies to all financial institutions across the banking, investment and insurance sectors.

In the field of financial innovation, the Joint Committee published a Report on the use of Big Data (JC 2018 04), presenting the benefits and risks of allowing the development of products tailored to consumers' needs in recurring to big data analytics and processes. The final Report encouraged the adoption of good practices by financial institutions, and an accompanying consumer information sheet (JC 2018 05) provided a concise overview for consumers about the use of big data in financial services. The Joint Committee also conducted a monitoring exercise on the evolution of automation in financial advice. The resulting Report (JC 2018 29) illustrated that while the phenomenon seems to be slowly growing, the overall number of firms and customers involved is still quite limited.

The ESAs also began working on several joint actions under the FinTech Action Plan. The first joint deliverable from this Action Plan was the Joint Report on Regulatory Sandboxes and Innovation Hubs (JC 2018 74), which set out a comparative analysis of the innovation facilitators established to date within the EU and outlined observed practices for the design and operation of innovation facilitators.

The Joint ESAs Consumer Protection Day 2018, which took place in Lisbon, Portugal, facilitated the ESAs to engage with key – and new – stakeholders, especially representatives of consumers, on important issues faced by consumers and investors across the EU. One of the topics covered that day was the extensive work done by the ESAs on bringing greater transparency to the costs and performance of retail investment products, which will help consumers make better informed decisions and to compare products efficiently.

Stepping up the fight against money laundering and terrorist financing

In a year that presented a number of high-profile cases involving several EU banks, which had failed to implement robust systems and control frameworks to prevent financial crime, the ESAs enhanced their focus on ensuring consistent application of anti-money laundering and countering the financing of terrorism (AML/CFT) rules across the EU and improving standards of AML/CFT supervision.

As part of this, the ESAs organised three workshops on the risk-based approach to AML/CFT, on money laundering and terrorist financing (ML/TF) risks and e-money, and ML/TF risks and money remittance that brought together representatives from national competent authorities, the European Commission, law enforcement, the FATF Secretariat and the private sector. Their aim was to consolidate supervisors' understanding of both, the ML/TF risk associated with different sectors and business models and the AML/CFT systems and controls firms put in place to mitigate those

risks; and to explore different approaches to the AML/CFT supervision of firms. These workshops were attended by over 300 AML/CFT supervisors from all Member States.

At the start of 2018, the ESAs focus was on FinTech and how various innovative solutions are used by firms to meet their AML/CFT obligations. Under EU law, credit and financial institutions are required to assess ML/TF risks associated with their business and put in place effective policies and procedures to mitigate these risks. CDD measures are central to these policies and procedures. However, EU law is technology-neutral and does not set out in detail how these CDD measures should be applied, giving an opportunity to financial and non-financial firms to explore new ways of meeting institutions' CDD obligations. While these innovations can potentially improve the effectiveness and efficiency of AML/CFT controls, they can also present various risks and potentially weaken ML/TF safeguards, if applied unthinkingly. These risks were addressed by the Joint Committee in its Opinion on the use of innovative solutions (JC 2017 81), which was published on 23 January 2018.

Another area of focus was on addressing shortcomings with respect to cooperation and information sharing, both at domestic level between different authorities and across borders in other EU member states. Cooperation and exchange of information between competent authorities responsible for overseeing AML/CFT compliance of credit and other financial institutions is an essential part of an effective AML/CFT regime. EU AML/CFT legislation establishes an obligation for competent authorities to cooperate and exchange information, but it does not set out in detail how this should be achieved. Therefore, in November 2018, a consultation was launched on draft joint guidelines on the supervisory cooperation and information exchange (JC 2018 59). The guidelines envisage that supervisory practices for cooperation and information exchange could be improved through the creation of AML/CFT colleges of supervisors and set out conditions for the establishment of these colleges. In addition, these guidelines also set out the ESAs expectations for bi-lateral communications between the competent authorities.

Managing the Single Rulebook and ensuring a level playing field

In December 2018, the ESAs published two joint draft Regulatory Technical Standards (RTS) to amend the RTS on the clearing obligation (JC 2018 76) and risk mitigation techniques for non-cleared OTC derivatives (JC 2018 77). These standards extend the special treatment currently associated with covered bonds to simple, transparent and standardised (STS) securitisations, to ensure a level playing field with covered bonds.

The ESAs published a statement on disclosure requirements for EU securitisations and consolidated application of securitisation rules for EU credit institutions (JC 2018 70), in response to industry concerns relating to severe operational challenges both in meeting the transitional provisions of the Securitisation Regulation disclosure requirements. The ESAs emphasized that competent authorities should apply a proportionate approach to examining reporting entities' compliance with the rules in the short term.

Since the adoption of two Implementing Regulations on credit assessments by External Credit Assessment Institutions (ECAIs) based on the draft Implementing Technical Standards (ITS) submitted by the Joint Committee in 2016, and subsequent amendments in 2017, the ESAs launched a consultation on further amendments to the Implementing Regulations (JC 2018 40 and JC 2018 41) to reflect the outcome of a monitoring exercise on the adequacy of the mappings, based on a quantitative and qualitative assessment. In particular, the ESAs proposed to change the mapping for two ECAIs, together with the introduction of new credit rating scales for ten ECAIs.

Monitoring of Financial Conglomerates

In 2018, the Joint Committee published its annual list of Financial Conglomerates (JC 2018 68) showing the location of 78 financial conglomerates with the head of group in the EU/EEA area, one financial conglomerate with the head of group in Switzerland, one in Bermuda, and one in the United States. In addition, the Joint Committee continued to work on reporting templates in this field.

Board of Appeal

The ESAs continued to provide operational and secretarial support to the Board of Appeal. In 2018, there were two appeal cases brought against ESMA. In the first case, the Board of Appeal unanimously decided that the appeal should be dismissed (BoA 2018 01), as no ESMA decision could be identified as grounds for appeal, and the appellant could not be contacted. In the second case, against a decision of ESMA not to open a formal investigation of the Cyprus Securities and Exchange Commission (CySEC) in relation to certain dealings in binary options and contracts for differences, the Board of Appeal unanimously held that it had no jurisdiction to hear the appeal (BoA 2018 02)