

**Decision JC DOC 2011 001
21 June 2011**

**Decision of the Joint Committee of the European Banking Authority,
European Insurance and Occupational Pensions Authority, and
European Securities and Markets Authority adopting the Rules of
Procedure of the Joint Committee of the European Supervisory
Authorities**

The Joint Committee

Having regard to

Section 1 of Chapter IV of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (the "EBA Regulation" and "EBA");

Section 1 of Chapter IV of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (the "EIOPA Regulation" and "EIOPA");

Section 1 of Chapter IV of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (the "ESMA Regulation" and "ESMA");

Commonly referred to as "the European Supervisory Authority (ESA) Regulations"

Acting in accordance with Article 55 paragraph 4 of the ESA Regulations adopt these Rules of procedures

Whereas:

- (1) The predecessors of EBA, EIOPA and ESMA (the "European Supervisory Authorities" or "ESAs"), the three Level 3 Committees - Committee of European Banking Supervisors (CEBS), Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and Committee of European Securities Regulators (CESR) - have coordinated their actions and cooperated under a Joint Protocol of Cooperation since 2005 which is repealed by this decision.
- (2) The Joint Committee shall serve as a forum in which the three European Supervisory Authorities shall cooperate regularly and closely and ensure cross-sectoral consistency among them. The Joint Committee shall ensure

cross-sectoral consistency of work and reaching joint positions where appropriate, in particular regarding the area of supervision of financial conglomerates, accounting and auditing; micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability; retail investment products; measures combating money laundering; and information exchange with the European Systemic Risk Board (ESRB) and developing the relationship between the ESRB and the ESAs.

Has adopted this Decision:

Article 1. The Chairperson

- 1.1. The Joint Committee shall be chaired by one of the Chairpersons of the ESAs (the "Chair") on an annual rotational basis. The order of the rotating annual chairmanship shall be: EBA, ESMA, and then EIOPA.
- 1.2. In accordance with the objectives of the Joint Committee provided for in the ESA Regulations, when carrying out his/her tasks, the Chair shall, act objectively and in the best interest of the Joint Committee¹.

Role of the Chair

- 1.3. The Chair shall convene and chair the Joint Committee's meetings.
- 1.4. The Chair may represent the three ESAs on cross-sectoral issues in international organisations in accordance with the common agreement by the three ESAs in this respect.
- 1.5. The Chair of the Joint Committee shall be the second Vice-Chair of the ESRB.
- 1.6. The Chair, with the support of the Executive Director of the Chair's ESA and the Joint Committee Secretariat, shall be responsible for the fulfilment of the tasks in the work programme of the Joint Committee.
- 1.7. The Chair, with the support of the Executive Director of the Chair's ESA and the Joint Committee Secretariat, shall serve as the main contact point for the EU institutions and other stakeholders for issues related to the Joint Committee.

Article 2. Date and place of meetings

- 2.1. The Joint Committee shall decide on the dates of its meetings on a proposal from the Chair submitted at the start of each calendar year. The Joint Committee shall meet at least every two months.
- 2.2. The Chair shall convene a meeting of the Joint Committee if a request is submitted by two ESA Chairpersons. The Chair may also convene a meeting when he/she deems it necessary, including in the case of adverse developments which may seriously jeopardise the orderly functioning and

¹ As per Article 49 of the ESA Regulations

integrity of financial markets or the stability of the whole or part of the financial system in the EU.

- 2.3. The Joint Committee shall normally hold its meetings at the premises of the Chair's ESA.
- 2.4. Meetings may also be held by means of teleconferencing.

Article 3. Attendance at meetings

- 3.1. Except as otherwise provided herein, attendance at meetings of the Joint Committee shall be restricted to the following Members and Observers of the Joint Committee:-
- 3.2. Members:
 - 3.2.1. the Chairpersons of EBA, EIOPA and ESMA (each an "ESA Chairperson"); and
 - 3.2.2. The Chairperson of each Sub-Committee of the Joint Committee.
- 3.3. Observers:
 - 3.3.1. The Executive Directors of EBA, EIOPA and ESMA;
 - 3.3.2. A representative of the European Commission; and
 - 3.3.3. A representative of the European Systemic Risk Board (the "ESRB").
- 3.4. The Joint Committee Secretariat may attend meetings of the Joint Committee.
- 3.5. A Member may appoint an alternate to represent him/her in meetings if he/she cannot attend.
- 3.6. The Joint Committee may admit other observers and experts, where appropriate.
- 3.7. The observers, with the exception of the Executive Directors, shall not attend any discussion of the Joint Committee relating to individual financial institutions, unless otherwise provided for in the acts referred to in Article 1(2) of the ESA Regulations in line with Article 44(4) of the ESA Regulations, or any other confidential issue according to the ESAs' Rules on confidentiality.

Article 4. Agenda and documents

- 4.1. The provisional agenda of the meetings of the Joint Committee and the related documents shall be sent to the Members and Observers at least five working days before the relevant meeting, except in emergencies where this delay may be shortened having regard to the circumstances.
- 4.2. The Joint Committee may decide to remove items from or add items to the provisional agenda on a proposal from the Chair or from any Member or Observer of the Joint Committee.

Article 5. Minutes

- 5.1. The conclusions and summary of the proceedings of each meeting of the Joint Committee shall be submitted to its Members and Observers for approval by its Members within two weeks of the meeting.
- 5.2. After their approval, the conclusions and summary of the proceedings shall be signed by the Chair.

Article 6. Tasks

- 6.1. The Joint Committee shall monitor and coordinate all the joint work and tasks of cross-sectoral relevance carried out by the ESAs.
- 6.2. Upon request of an ESA, an external request, or on its own initiative, the Joint Committee shall identify and propose areas for joint work and tasks of cross-sectoral relevance.
- 6.3. The Joint Committee shall establish Sub-Committees of the Joint Committee (in accordance with Article 12).
- 6.4. The Joint Committee shall prepare a proposal for a joint position on:
 - 6.4.1. The joint work programme as reflected in the ESAs' work programmes and changes to the ESAs' joint work programme (including any joint work streams derived from the work programmes of each ESA);
 - 6.4.2. Joint reports, letters and other documents to be sent to EU institutions and other fora, in particular cross-sectoral risks reports; and
 - 6.4.3. A cross-sectoral training programme to be carried out by the ESAs.
- 6.5. The Joint Committee shall prepare a proposal for common acts as referred to in the second paragraph of Article 56 of the ESAs Regulations
- 6.6. The Joint Committee shall resolve disagreements between competent authorities across sectors, as referred to in Article 20 of the ESA Regulations, in accordance with the procedure laid down in Article 19 of the ESA Regulations.
- 6.7. The Joint Committee shall ensure overall and cross-sectoral coordination of the activities carried out by the ESAs in accordance with Article 22(5) of the ESA Regulations, including coordination with the ESRB. The Joint Committee shall coordinate, where necessary, the information exchange of the ESAs with the ESRB.
- 6.8. Each year, the Joint Committee shall provide a report on cooperation by the ESAs over the past year to be included in the annual reports of the ESAs.
- 6.9. The Joint Committee Secretariat shall provide secretariat support to the Board of Appeal in accordance with Article 58(8) of the ESA Regulations. The Joint Committee shall, following consultation with the Board of Appeal,

adopt a decision on the functioning of the Joint Committee Secretariat when providing secretariat support for the Board of Appeal.

Article 7. Adoption of proposals for joint positions

- 7.1. Proposals for the joint positions of the ESAs, as referred to in Article 56 of the ESA Regulations, namely those that fall in the scope of the ESAs' tasks in Chapter II of the ESA Regulations, and in particular with respect to the implementation of Directive 2002/87/EC, where relevant, shall be adopted by consensus by the ESA Chairpersons and where applicable, the Chairperson of the Sub-Committee on Financial Conglomerates.
- 7.2. The ESA Chairpersons shall take the necessary steps for approval of an adopted proposal within their respective ESAs in a timely manner and close co-ordination within with each other. Standard practice should be that proposals for joint positions from the Joint Committee should be submitted by written procedure, with the same timeline to all three ESAs Board of Supervisors simultaneously.
- 7.3. If an ESA does not approve a proposal for a joint position proposed by the Joint Committee, the Joint Committee shall reconsider the proposal.

Article 8. Adoption of Common Acts²

- 8.1. In its preparation of a proposal for adoption of acts referred to in Article 56 of the ESA Regulations, namely acts under Articles 10 to 15, 17, 18 19, or 20 of the ESA Regulations in relation to the application of Directive 2002/87/EC and of any other Union acts referred to in Article 1(2) of the ESA Regulations ("common acts"), the Joint Committee shall consider the implications of the adoption of those acts. The ESA Chairpersons shall be responsible for ensuring their counterparts are informed of the positions of their respective ESAs and any potential areas of concern.
- 8.2. Proposals for common acts of the ESAs shall be adopted by consensus by the ESAs Chairpersons, and where applicable, the Chairperson of the Sub-Committee on Financial Conglomerates.
- 8.3. The ESA Chairpersons shall take the necessary steps for approval of an adopted proposal of common acts within their respective ESAs in a timely manner and close co-ordination with each other. Standard practice should be that proposals of common acts from the Joint Committee should be submitted by written procedure, with the same timeline to all three ESAs Board of Supervisors simultaneously.
- 8.4. If an ESA does not approve a common act proposed by the Joint Committee, the Joint Committee shall reconsider the proposal, taking into account the reasons the common act was not approved. An amended version of the common act shall be prepared and proposed by the Joint Committee, which shall be submitted to the ESAs for approval.
- 8.5. The Joint Committee shall adopt supplementary rules for common acts.

² As referred to in Article 56 of the ESA Regulations

Article 9. Voting and adoption of decisions on settlement of disagreements between Competent Authorities of different sectors

- 9.1. The decisions on settlement of disagreements in the Joint Committee, as referred to in Article 20 of the ESA regulations, shall be implemented in accordance with the Rules of Procedure for settlement of disagreements in cross border situations across sectors.
- 9.2. The decisions shall be adopted as a Common Act.

Article 10. Composition and tasks of the Secretariat of the Joint Committee

- 10.1. The Joint Committee shall have a dedicated staff provided by the ESAs that shall act as a Secretariat of the Joint Committee.
- 10.2. In accordance with the objectives of the Joint Committee provided for in the ESA Regulations, when carrying out the tasks of the Joint Committee, the Secretariat shall, act objectively and in the interest of the Joint Committee.
- 10.3. The number of staff dedicated to the Secretariat of the Joint Committee shall be commensurate to the tasks of the Joint Committee.
- 10.4. The Joint Committee Secretariat shall be composed of:
 - 10.4.1. The general contact point from the staff of each of the ESAs;
 - 10.4.2. Staff of each of the ESAs who support the work of the Joint Committee, including those who support the work of the Sub-Committees of the Joint Committee; and
 - 10.4.3. Where relevant, other contact points from the staff of each of the ESAs.
- 10.5. Staff working for the Joint Committee Secretariat shall be based at the ESA where they are employed.
- 10.6. Each staff member of the Joint Committee Secretariat shall support the Chair in the fulfilment of his/her role and report to the Chairperson and Executive Director of their respective ESAs.
- 10.7. The Joint Committee Secretariat shall, amongst other things:
 - 10.7.1. support the Executive Director of the ESA who is reporting to the Joint Committee rotational Chair, by facilitating cooperation amongst the ESAs within the Joint Committee;
 - 10.7.2. contribute to implementing the Joint Committee work programme and monitor and report on its implementation;
 - 10.7.3. draw up the annual conclusions of the implementation and results of the cooperation of the ESAs, to be approved by each ESA and published in each ESA's annual report;
 - 10.7.4. provide support to the meetings of the Joint Committee, including appropriate preparation and follow-up;

- 10.7.5. provide support to the preparation of the Joint Committee's proposals for joint positions and common acts; and
- 10.7.6. support and coordinate the Sub-Committees and other joint work streams of the Joint Committee.

Article 11. Delegation of tasks

- 11.1. The Joint Committee may delegate tasks to the Chair, to its Sub-Committees, Task Forces and other joint work streams/networks, and its Joint Committee Secretariat, where appropriate.

Article 12. Sub-Committees and other joint work streams

- 12.1. The Joint Committee shall establish and dissolve Sub-Committees, and other joint work streams, such as networks and Task Forces.
- 12.2. Sub-Committees shall contribute to the work of and shall report to the Joint Committee.
- 12.3. The Joint Committee shall prepare the draft mandates of its Sub-Committees and propose to the ESAs the appointment of their Chairpersons. The draft mandates and proposed chairpersons should be submitted to the ESAs for approval.
- 12.4. Documents for Sub-Committee meetings shall be sent well in advance of a meeting and no later than five working days before the meeting.
- 12.5. The Sub-Committees and the other joint work streams shall present proposals related to their assigned tasks and deliverables to the Joint Committee, in order to propose joint positions and common acts, as referred to in Articles 7 and 8 of these Rules, to be submitted to the ESAs for approval.
- 12.6. When carrying out their tasks as Chairpersons of a Sub-Committee or leaders of a Joint Committee's work stream/network, these Chairpersons shall act objectively in the interest of the European Union.
- 12.7. In consideration of whether a Sub-Committee of the Joint Committee shall be formed, regard should be given to objective criteria. This may include:
 - 12.7.1. Whether the task is a permanent one for the Joint Committee or it is a task which is not intended to be disbanded in a short term;
 - 12.7.2. Whether the task implies that a minimum number of representatives of more than one ESA is to be involved;
 - 12.7.3. Whether the task is related to Level 2 Committees not directly supported by an ESA; and
 - 12.7.4. Whether the task is related to EU political institutional work of a cross sector nature, and/or other cross sectoral work with the ESRB.
- 12.8. A Sub-Committee on Financial Conglomerates shall be established as per Article 57 of the ESA Regulations and as per Article 14 of these rules.

- 12.9. Further, a Sub-Committee shall be formed from the membership of the three ESAs, to assist in providing an adequate coverage of cross-sectoral developments, risks and vulnerabilities and overall and cross-sectoral coordination of the activities carried out by the ESAs in relation to systemic risk, as stipulated in Article 22 of the ESA Regulations.
- 12.10. Furthermore, a Sub-Committee on Anti Money Laundering shall be established, to assist in supervisory input to measures combating money laundering.
- 12.11. Other Sub-Committees can be formed with members of more than one ESA on specific subjects of common interest for more than one ESA.
- 12.12. The Chairperson of a Sub-Committee shall strive to reach decisions amongst the Sub-Committee Members by consensus. In the event that a consensus cannot be reached, any issues of a controversial nature being discussed in a Sub-Committee shall be remitted by the Chair of the Sub-Committee to the Joint Committee for its consideration.

Other joint work-streams

- 12.13. The fulfilment of the Joint Committee's tasks may imply the creation of joint work streams/networks different from the Sub-Committees, involving representatives of more than one ESA or more than one ESA staff member with the appropriate expertise, if and where necessary.
- 12.14. Staff members from one ESA may be appointed as 'lead' ESA staff members for a particular work stream, such that it could be asked to draft the proposals, invite and process the comments and input from the other ESA's structures.
- 12.15. A Joint Committee Training network shall be formed with members of the three ESAs for the planning and implementation of the cross sectoral training activities to be carried out by the ESAs.
- 12.16. The Joint Committee and the ESAs shall be supported in their cost-benefit analysis, by an Impact Assessment Advisor Network as appropriate.

Article 13. Composition of Sub-Committees³:

- 13.1. This Article applies to Sub-Committees other than the Sub-Committee on Financial Conglomerates.
- 13.2. The Chairperson of each Sub-Committee shall be either an ESMA or EBA Board of Supervisor Member or his/her alternate, or an EIOPA permanent representative or his/her alternate.
- 13.3. Each Board of Supervisors Member may be represented on each Sub-Committee. Further there should be no more than two members per Member State, except where provided in the terms of the reference of the Sub Committee's Mandate.
- 13.4. Where there is more than one supervisory authority in a Member State with competencies relating to the role of the Sub-Committee, then both/all

³Specific rules for the Sub-Committee on Financial Conglomerates are set out in Article 14

those authorities could attend the Sub-Committee, except where provided in the terms of the reference of the Sub Committee's Mandate.

- 13.5. There should only be one vote per Member State.
- 13.6. For those Member States who choose not to nominate a representative to attend the Sub-Committee, a contact person may be designated to make sure that the respective authority(ies) in that Member State is (are) able to follow and contribute to the work of the Sub-Committee.
- 13.7. Sub-Committees may appoint a Vice-Chair if deemed practical.
- 13.8. The following shall be invited as observers to the Sub-Committees:
 - 13.8.1. The Executive Directors of the EBA, EIOPA and ESMA;
 - 13.8.2. A representative from the European Commission; and
 - 13.8.3. A representative from the ESRB;
- 13.9. The following may be invited as observers to the Sub-Committee of Financial Conglomerates' meetings:
 - 13.9.1. A representative from each of the EEA countries and from applicant countries of the EU, provided they are from a competent authority which has a national representative as an observer on the Board of Supervisors of the relevant ESA.
- 13.10. Other observers and experts may be invited, where appropriate.

Article 14. Composition of the Sub-Committee on Financial Conglomerates

- 14.1. The ESA Chairpersons and one high-level representative from the current staff of the relevant competent authority from each Member State shall be Members of the Sub-Committee on Financial Conglomerates.
- 14.2. The Chairperson of the Sub-Committee on Financial Conglomerates shall be elected from among the Members of this Sub-Committee.
- 14.3. Each Member State may be represented in the Sub-Committee. Further, there should be no more than one member per Member State where there is a single supervisory authority.
- 14.4. Where there is more than one supervisory authority in a Member State with competencies of the role of this Sub-Committee, then both/all those authorities could attend the Sub-Committee, albeit there should only be one vote per Member State.
- 14.5. For those Member States who choose not to nominate a representative to attend the Sub-Committee, a contact person may be designated to make sure that the respective authority(ies) in that Member State is (are) able to follow and contribute to the work of this Sub-Committee.
- 14.6. This Sub-Committee may appoint a Vice-Chair if deemed practical.
- 14.7. The following shall be invited as observers to the Sub-Committee of Financial Conglomerates' meetings:

- 14.7.1. The Executive Directors of the EBA, EIOPA and ESMA;
 - 14.7.2. A representative from the European Commission; and
 - 14.7.3. A representative from the ESRB.
- 14.8. The following may be invited as observers to the Sub-Committee of Financial Conglomerates' meetings:
- 14.8.1. A representative from each of the EEA countries and from applicant countries of the EU, provided they are from a competent authority which has a national representative as an observer on the Board of Supervisors of the relevant ESA.
- 14.9. Other observers and experts may be invited where appropriate.

Article 15. Code of conduct

- 15.1. Members shall disclose to the Joint Committee any conflict of interest which that member may have and is aware of before the resolution of a matter to which that conflict relates. No voting member may vote on a matter where that voting member has a material conflict.

Article 16. Obligation of professional secrecy

- 16.1. All proceedings of the Joint Committee shall be confidential. The Joint Committee shall adhere to the ESAs' internal rules of procedure regarding professional secrecy.

Article 17. Transparency

- 17.1. The decisions and minutes of meetings of the Joint Committee should be subject to the provisions on access to documents in Article 72 of the ESA Regulations and measures taken for its implementation.
- 17.2. The three ESAs shall ensure transparency in matters related to the activity of the Joint Committee and shall consult openly with interested parties.

Article 18. Confidentiality of and access to documents

- 18.1. The conclusions and summary of the proceedings of the meetings of the Joint Committee, its Sub-Committees and their substructures, its Task Forces, Panel and joint work streams shall be confidential.
- 18.2. The Joint Committee shall adhere to the rules and practical measures regarding the public access to the documents of the ESAs.

Article 19. Access to information among ESAs

- 19.1. The Members of the Joint Committee Secretariat shall share the documents for the meetings of their respective ESA's Boards of Supervisors and Management Boards. They shall also be forthcoming in sharing other documents and information which are of relevance to the joint work of the ESAs. However, such sharing of information shall not take place where confidentiality requirements apply.
- 19.2. In areas in which cross-sectoral interests have been identified, working documents discussed at the level of sectoral expert groups/working groups are also circulated to the other ESAs at an early stage.

Article 20. Publication

- 20.1. The ESAs shall publish jointly agreed documents at the same time.
- 20.2. In the case of requests for feedback to the documents, the time given and the deadlines provided to each ESA should be the same.

Article 21. Joint work programme and annual report

- 21.1. The Joint Committee shall agree each year on a proposal for a joint work programme for the joint work of the ESAs. The proposed work programme shall be submitted to the ESAs for their approval and sent to the EU institutions together with the annual work programme of each ESA.
- 21.2. The Joint Committee work programme establishes the areas where the ESAs have agreed to work together to reach joint positions and common acts and to fulfil the tasks described in Article 6 of these Rules. The joint work programme shall mention the Sub-Committees and the different work streams, including those that are proposed to be constituted.
- 21.3. The Joint Committee work programme selects defined items with allocation of responsibilities and identifies deliverables and priorities.
- 21.4. The Joint Committee work programme shall match planned tasks against available resources.
- 21.5. The Joint Committee Secretariat shall prepare the draft of the Joint Committee work programme. The draft is initiated in due time each year by the general contact person of the Chair's ESA for finalisation and approval by the ESAs in September in line with the timing of the sectoral work programmes.
- 21.6. Any proposed changes in the joint work programme shall be discussed and agreed by the Joint Committee and shall then be submitted to the ESAs for the ESAs' approval.
- 21.7. The Joint Committee shall discuss annually the implementation and results of the cooperation of the ESAs, and agree on a proposal for its conclusions. The conclusions are submitted to the ESAs for their approval, and for the ESAs to reflect in their respective annual reports.

Article 22. Third Parties

- 22.1. The Members of the Joint Committee may, where necessary, make operational contacts with third country bodies, such as the Joint Forum⁴.
- 22.2. All contacts should be made in close coordination and consistency with the ESAs.

⁴ The Joint Forum was established in 1996 under the aegis of the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS) to deal with issues common to the banking, securities and insurance sectors, including the regulation of financial conglomerates. The Joint Forum is comprised of an equal number of senior bank, insurance and securities supervisors representing each supervisory constituency: <http://www.bis.org/bcbs/jointforum.htm>

Article 23. Article 23 – Budget

23.1. The ESAs shall contribute adequate resources to administrative, infrastructure and operational expenses needed for the functioning of the Joint Committee.

Article 24. Relations and reporting to the EU political institutions

24.1. On cross-sectoral risks, there shall be joint reporting to EFC-FST and FSC.

24.2. The ESAs shall use common formats and structures for sectoral contributions which are to be incorporated into joint reports to be sent to the EU institutions.

Article 25. Reporting to the ESAs

25.1. The Chairpersons or the Executive Directors of the ESAs shall report periodically and at least at each Board of Supervisors' meeting, to the respective ESAs, on the progress and the fulfilments of the tasks established in the joint work programme, and brief them on the ongoing contacts and relevant work under these arrangements.

25.2. The ESAs' Board of Supervisors Members shall be notified of forthcoming meetings and agendas of the Joint Committee and have the opportunity to propose items for the agenda. Further the conclusions and summary of the proceedings of the Joint Committee meetings shall be distributed to the ESAs' Board of Supervisors Members.

Article 26. Amendments to these rules of procedure

26.1. The Joint Committee may amend these rules of procedure. The Joint Committee may adopt supplementary rules where provided for in these rules of procedures.

Article 27. Review clauses

27.1. These Rules of Procedures shall be reviewed within two years.

Article 28. Date of Entry

28.1. This decision enters into force as of the date of its publication and shall apply immediately.

Done in Frankfurt on 21 June 2011

For the Joint Committee

Andrea Enria
Chairperson, EBA

Steven Maijoor
Chairperson, ESMA

Gabriel Bernardino
Chairperson, EIOPA