

AFME response to EBA Consultation Paper on draft ITS on joint decision process for certain prudential permissions

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The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the EBA Consultation Paper on the Draft Implementing Technical Standards on amending Commission Implementing Regulation (EU) 2016/100 laying down implementing technical standards specifying the joint decision process with regard to the application for certain prudential permissions. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We summarise below our high-level response to the EBA Consultation Paper.

Question for consultation:

Q1. Do you consider that the changes proposed in the revised ITS are appropriate and sufficiently clear?

While we do not have comments to the proposed changes in the revised ITS, we wanted to take the opportunity to flag some aspects of the joint decision process that from our members' perspective would benefit from review/ adjustment.

The first issue relates to the timing for issuing a joint decision, that is excessive in most cases. Not only is the time period for the authorities to start the process critical, in addition the time for finalising the decision is also very important for institutions. The second issue relates to co-ordination, in particular the maintenance of models with local regulators/supervisors in third countries. This happens when a material change is requested at the EU level, but local regulators require institutions to comply with different requirements. The priorities of local regulators and the ECB are not the same, which leads to an increase in compliance workload for institutions.

We have provided a number of examples provided by our members that illustrate these issues around timing and co-ordination.

Example 1: affecting a non-EU subsidiary but located in Europe.

- On July 2021 an EU institution asked authorization to the ECB and N-FSA to implement a material change of a specific portfolio.
- On October 2024, more than 3 years later, the joint decision process has not been finalized. The on-site inspection has not yet started and only a review has been performed by the N-FSA. Currently the ECB is raising questions to the N-FSA on the review they performed. The institution has not received either a final response on the query or an estimated finalization date.

- In the meantime, the institution continues using an non-contemporary model, while the new one is turning obsolete.
- In the event that the application was finally accepted, irrespective of the time elapsed between the application date and the acceptance date, the institution will have the obligation to implement the forementioned model, that will be clearly obsolete. In addition, early monitoring is likely to have been performed to analyze potential actions due to the performance of the model.
- The ECB feedback on the requested model is key future models being developed in alignment with the ECB's supervisory expectations.

Example 2: affecting a non-EU subsidiary located in Latin America.

- An institution uses global rating models for certain portfolios across its subsidiaries in different jurisdictions (EU and non-EU).
- The expectations around the maintenance of models differs between the ECB and third country regulators outside the EU.
- While a local LatAm regulator requires a global rating model to be updated annually with the same methodology as the locally implemented version, the ECB requires institutions to prioritise its recommendations on model development, instead of investing time and resources on updating the existing model that has been required locally to be recalibrated.
- In this scenario, local regulators may withdraw the approval to use IRB models to the institution in the event that no updates with the same methodology have been completed. Up to now, no withdrawals of models have occurred; however this is an ever present risk.

Therefore on the specific draft ITS, we would recommend that the EBA adjust the Article 8 text, in order to add a new reference limiting the time period provided to finalize the joint decision (highlighted in red below):

Article 8 Reaching of the joint decision:

1. *The consolidating supervisor shall revise the draft joint decision, as necessary, to reflect the conclusions of the dialogue referred to in Article 7(4), and draw up a final draft joint decision.*
2. *The consolidating supervisor shall send the final draft joint decision to the relevant competent authorities without undue delay and by the deadline specified in the timetable pursuant to Article 5(2)(i), setting them a deadline within which they are to provide their written agreement which may be sent by electronic means.*
3. *The relevant competent authorities receiving the final draft joint decision and not disagreeing with it shall provide to the consolidating supervisor their written agreement within the set deadline.*
4. *A joint decision shall be deemed as reached only when all relevant competent authorities have provided their written agreement.*
5. *The joint decision shall consist of the joint decision and the written agreements attached thereto. The joint decision shall be provided to all relevant competent authorities by the consolidating supervisor.*
6. *The joint decision shall be reached within six months of the completed assessment of the application.*

Furthermore, we also believe that there needs to be closer co-ordination with third country regulators, to ensure that regulatory requirements are consistently aligned and to avoid extra burden to institutions so that institutions can focus on improving their models to comply with new expectations and new rules.

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