

# Targeted consultation on supervisory convergence and the single rulebook

## Taking stock of the framework for supervising European capital markets, banks, insurers and pension funds

Fields marked with \* are mandatory.

### Introduction

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There has been considerable progress on both supervisory convergence and the single rulebook since the three [European Supervisory Authorities \(ESAs\)](#) were created in 2011. Nevertheless, both require continued and appropriately targeted efforts to make further progress. In this context, the [Commission's capital markets union \(CMU\) action plan published on 24 September 2020](#) includes the following action:

**CMU action plan - Action 16:** *The Commission will work towards an enhanced single rulebook for capital markets by assessing the need for further harmonisation of EU rules and monitoring progress towards supervisory convergence. It will take stock of what has been achieved in Q4 2021 and consider proposing measures for stronger supervisory coordination or direct supervision by the European Supervisory Authorities.*

The Commission will also carefully assess the implications of the *Wirecard* case for the regulation and supervision of EU capital markets and act to address any shortcomings that are identified in the EU legal framework.

The [CMU](#) is the EU's plan to create a truly single market for capital across the EU. It aims to get investment and savings flowing to the companies and projects that need them across all Member States, benefitting citizens, investors and companies, regardless of where they are located. The CMU provides new sources of funding for businesses, helps increase options for savers and makes the economy more resilient.

Without well-developed and integrated capital markets, there can be no economic prosperity. And without supervision, capital markets could not contribute to economic prosperity. Supervision is an essential condition for a well-functioning CMU. This will be particularly relevant in a post-Brexit world with multiple financial centres across the EU. Gradual progress towards more integrated capital markets supervision will be indispensable.

It is essential for people and firms to have confidence in the financial system and also for the providers of financial services to operate in a stable and fair environment. Supervision should ensure that divergences in outcomes of supervisory practices in Member States do not undermine confidence, stability, investor protection and fairness in the

Single Market. The three European Supervisory Authorities (ESAs) are mandated to ensure the convergence of supervisory practices among the national competent authorities (Within the [banking union](#), the [single supervisory mechanism](#) ensures uniform supervision of banks. For banking resolution, the [single resolution board](#) is directly responsible for resolution planning and decisions for all significant banks and cross-border ones). In addition, the [European Securities Markets Authority](#), is responsible for direct supervision of some market activities and market operators. However, supervisory convergence reaches its limits where the national rules that supervisors have to apply and enforce differ between Member States or where the common European rules leave room for interpretation or too much discretion to Member States for its transposition, application and enforcement. The ambition for a European single rulebook therefore seeks to reduce differences between national laws and to provide more detailed rules where it is important for stability and fairness in the Single Market. Taken together, supervisory convergence and the single rulebook provide the framework for effective and efficient supervision.

The input to this consultation, which seeks to take stock of what has been achieved so far, will feed into the preparation of the report required by the CMU action plan which will cover the review required under the ESAs founding Regulations as well (Article 81 of the [ESAs founding Regulations](#) requires the Commission to review the functioning of the ESAs every 3 years, and next time by end 2021). This consultation seeks targeted views on certain aspects related to the 2019 ESAs review (The ESAs founding regulations were amended in 2019. These recent legislative changes entered into force in January 2020: [Regulation \(EU\) 2019/2175](#), which reviews the powers, governance and funding of the ESAs, [EBA Regulation consolidated version of 1 January 2020](#), [EIOPA Regulation consolidated version of 1 January 2020](#), and [ESMA Regulation consolidated version of 1 January 2020](#)) and contributes to a wider debate on supervisory convergence and the single rulebook.

Please note that not all questions are relevant for all stakeholders and that you are not expected to reply to each question. Please indicate the ESA for which the reply is intended.

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**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-esas-review@ec.europa.eu](mailto:fisma-esas-review@ec.europa.eu).

More information on

- [this consultation](#)
- [the consultation document](#)
- [the European system of financial supervision](#)
- [the protection of personal data regime for this consultation](#)

## About you

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\* Language of my contribution

- Bulgarian
- Croatian
- Czech

**Question I. EBA: How do you assess the impact of each EBA's activities on the following aspects?**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
The financial system as a whole	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial stability	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The functioning of the internal market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The quality and consistency of supervision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The enforcement of EU rules on supervision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strengthening international supervisory coordination	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer and investor protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Financial innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sustainable finance	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## **Please explain your answer to question I on EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The EBA is sufficiently visible and active with regard to the aspects mentioned and contributes to the achievement of the objectives to a (more than) adequate extent. We therefore do not see any need for further expansion of its activities.

In the area of financial stability, internal organisation could be improved through cooperation in the Government Board.

**Question I. ESMA: How do you assess the impact of each ESMA's activities on the following aspects?**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
The financial system as a whole	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Financial stability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The functioning of the internal market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The quality and consistency of supervision	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The enforcement of EU rules on supervision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Strengthening international supervisory coordination	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Consumer and investor protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Sustainable finance	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Please explain your answer to question I on ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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**Question II. EBA: In your view, do EBA's mandate cover all necessary tasks and powers to contribute to the stability and to the well-functioning of the financial system?**

- Yes
- No
- Don't know / no opinion / not relevant

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**Question II. ESMA: In your view, do ESMA's mandate cover all necessary tasks and powers to contribute to the stability and to the well-functioning of the financial system?**

- Yes
- No
- Don't know / no opinion / not relevant

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**Question III. EBA: In your view, does EBA face any obstacles in delivering on their mandates?**

- Yes
- No
- Don't know / no opinion / not relevant

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**Question III. ESMA: In your view, does ESMA face any obstacles in delivering on their mandates?**

- Yes
- No
- Don't know / no opinion / not relevant

# 1. The supervisory convergence tasks of the ESAs

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## 1.1 Common supervisory culture/supervisory convergence

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**Question 1.1.1 EBA: To what extent does EBA contribute to promoting a common supervisory culture and consistent supervisory practices?**

- 1 - the less significant contribution
- 2
- 3
- 4
- 5 - the most significant contribution
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.1.1 for EBA and indicate if there are any areas for improvement:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The EBA makes an adequate contribution to achieving a common supervisory culture and consistent supervisory practices. We do not see any need for improvement or an extension of its responsibilities.

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**Question 1.1.1 ESMA: To what extent does ESMA contribute to promoting a common supervisory culture and consistent supervisory practices?**

- 1 - the less significant contribution
- 2
- 3
- 4
- 5 - the most significant contribution
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.1.1 for ESMA and indicate if there are any areas for improvement:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First of all, it is absolutely crucial that Q&As issued by ESMA comply with Level 1 and Level 2 texts originating from the European lawmakers and do not go beyond them.

The current provision for Q&A consultation in Article 16b paragraph 4 of Regulation 1095/2010 is too cumbersome (three voting members of the BoS have to support the consultation). In addition, some Q&As are not comprehensible in themselves and need further explanation. In some cases, setting implementation periods might make sense.

**Question 1.1.2 EBA: To what extent the following tasks undertaken by EBA have effectively contributed to building a common supervisory culture and consistent supervisory practices in the EU?**

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Providing opinions to competent authorities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promoting bilateral and multilateral exchanges of information between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to developing high quality and uniform supervisory standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to developing high quality and uniform reporting standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing and reviewing the application of technical standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to the development of sectoral legislation by providing advice to the Commission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Establishing (cross)sectoral training programmes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Producing reports relating to their field of activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conducting peer reviews between competent authorities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Determining new Union strategic supervisory priorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Establishing coordination groups	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Developing Union supervisory handbooks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring and assessing environmental, social and governance-related risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adopting measures using emergency powers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investigating breaches of Union law	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediating between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Monitoring the work of supervisory and resolution colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Publishing on their website information relating to their field of activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring market developments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring liquidity risks in financial institutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring of own funds and eligible liabilities instruments issued by institutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Initiating and coordinating Union-wide stress tests of financial institutions	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Developing guidelines and recommendations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing Q&As	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to the establishment of a common Union financial data strategy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing supervisory statements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other instruments and tools to promote supervisory convergence	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Please specify to what other instruments and tools to promote supervisory convergence you refer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our view, no further instruments/tools are required. We consider the existing mechanisms to be adequate in every respect. In any case, consistent supervisory practices must develop gradually and organically. The addition of further supervisory tools would unduly complicate the process, without no apparent overriding benefit. The EBA should be given more time before it is determined whether the “tools” already at its disposal are adequate for the performance of its duties. If necessary, optimising or streamlining the plethora of available instruments should be considered. Proportionality, in particular, should be consistently taken into account to avoid placing an excessive burden on small, non-complex and medium-sized institutions.

There also needs to be democratic scrutiny of the Q&As.

The EBA stress test should be improved, for example by eliminating unrealistic assumptions and aligning it more closely with banks’ ICAAP models. This would enhance its informative value and reduce the burden on supervisors and banks.

**Please add any qualitative comments you may wish to explain your reasoning when answering question 1.1.2 on EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not see any need to change the EBA’s mandate.

In our view, the current system of securities supervision, which is based not only on EBA but also on the national competent authorities (NCAs), should generally remain in place because it is best suited to deal with the different market structures of the Member States. The NCAs have a sound knowledge of the particularities of the respective national financial markets and, therefore, the necessary supervisory expertise. The 2019 ESA review provided meaningful and sufficient adjustments to EBA’s mandate and we currently see no need for further additional elements.

In our view, it is not possible for banks to meaningfully evaluate the deluge of Q&As. In addition, the Q&As are highly specific and frequently relate to matters associated with national rules or practices, meaning that they are not always relevant to all banks in all Member States. Particular emphasis should be given to important Q&As that are of special significance for the market as a whole.

Although they are not formally binding, in practice EBA Q&As develop almost legal status. Therefore, it is important that there are adequate transition periods. Furthermore, it needs to be possible to have the answers reviewed by an independent institution (external to the EBA), since in individual cases there is considerable concern that the interpretations may significantly exceed the scope of the Level I text. In addition, important Q&As should be issued for consultation in advance. An opportunity to have the answers reviewed must also be established.

**Question 1.1.2 ESMA: To what extent the following tasks undertaken by ESMA have effectively contributed to building a common supervisory culture and consistent supervisory practices in the EU?**

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Providing opinions to competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Promoting bilateral and multilateral exchanges of information between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Contributing to developing high quality and uniform supervisory standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to developing high quality and uniform reporting standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Developing and reviewing the application of technical standards	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to the development of sectoral legislation by providing advice to the Commission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Establishing (cross)sectoral training programmes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Producing reports relating to their field of activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Conducting peer reviews between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Determining new Union strategic supervisory priorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Establishing coordination groups	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Developing Union supervisory handbooks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Monitoring and assessing environmental, social and governance-related risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Adopting measures using emergency powers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Investigating breaches of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Mediating between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Monitoring the work of supervisory and resolution colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Publishing on their website information relating to their field of activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Monitoring market developments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Initiating and coordinating Union-wide stress tests of financial institutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Developing guidelines and recommendations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing Q&As	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Contributing to the establishment of a common Union financial data strategy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Providing supervisory statements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other instruments and tools to promote supervisory convergence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please add any qualitative comments you may wish to explain your reasoning when answering question 1.1.2 on ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The NCAs are the competent supervisory authorities in the field of securities regulation and investor protection. They have a sound knowledge of the particularities of the respective national financial markets and, therefore, the necessary supervisory expertise. Therefore, we think that the granularity of ESMA's publications often goes beyond what is necessary to create common supervisory standards.

However, ESMA's "Public Statements" provided helpful information and necessary clarity in relation to market structure topics (e.g. recently with respect to the application of the temporary suspension of the obligation to publish RTS 27 reports due to the MiFID Quick Fix; Brexit-related aspects, supervisory priorities with regard to reporting under SFTR in light of the COVID-19 pandemic, etc.) and should be also issued in the future in this regard. In some cases, setting implementation periods might make sense.

**Question 1.1.3 EBA: One of the roles of EBA is to promote and facilitate the functioning of supervisory colleges, where established by sector legislation, and foster the consistency of the application of Union law among them.**

**Please rate EBA's contribution to the objectives below:**

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Promote the effective and efficient functioning of colleges of supervisors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Foster consistency in the application of Union law among colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Promote converging supervisory practices among colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please explain your reasoning when answering question 1.1.3 on EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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**Question 1.1.3 ESMA: One of the roles of ESMA is to promote and facilitate the functioning of supervisory colleges, where established by sector legislation, and foster the consistency of the application of Union law among them .**

**Please rate ESMA's contribution to the objectives below:**

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Promote the effective and efficient functioning of colleges of supervisors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Foster consistency in the application of Union law among colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Promote converging supervisory practices among colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

## Please explain your reasoning when answering question 1.1.3 on ESMA:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

### In the framework of the 2019 ESAs review:

## Question 1.1.4 How do you assess the new process for questions and answers (Article 16b)?

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We appreciate that, among other things, the new Q&A tool gives an overview of all new questions received by ESMA and pending publications. This ensures that questions are not duplicated.

However, the sheer number of Q&As is difficult to manage. At nearly four years in some cases, the period between receiving and responding to a question is clearly too long. Moreover, it might be useful if the EBA had an option to discuss the question with the asker and also made use of this opportunity. This would help clarify any misunderstandings more quickly and speed up response times.

Additionally, in our experience, the list of new questions available online does not allow any assessment of the direction in which the question and answer might go. Thus, the practical benefit of the new tool is limited.

The current provision for Q&A consultation in Article 16b paragraph 4 of Regulation 1095/2010 is too cumbersome (three voting members of the BoS have to support the consultation).

It should also be ensured that an adequate period is provided to implement amendments to the Q&As. Institutions could then also complete the process before the end of this period. This would provide additional time to notify the ESAs of any problems potentially arising from implementation of the Q&A that had not been considered when drafting the response.

Furthermore, there should be a review mechanism for Q&As, since – as mentioned above – they can have a significant influence on institutions even though they are not legally binding.

## Question 1.1.5 In your view, does the new process for questions and answers allow for an efficient process for answering questions and for promoting supervisory convergence?

- Yes
- No
- Don't know / no opinion / not relevant

## Please explain your answer to question 1.1.5:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It must be ensured that all unanswered Q&As are published so that there are no duplicate submissions and so that market participants can contact the ESAs if they have any comments on the submitted question.

When it comes to the possibility foreseen in Article 16b(4) to consult on Q&As, we think that the process is not practical in its current form. So far, as far as ESMA and EBA are concerned, no Q&As have (to our knowledge) been issued for consultation.

The current provision for the launching a Q&A consultation in Article 16b paragraph 4 of Regulation 1095 /2010 is too cumbersome. The requirement for to align three voting members of the Board of Supervisors (BoS) to agree in order to issue a new Q&A consultation is too burdensome. The mechanism should be simplified.

In many cases, the question does not adequately address all aspects, since it often arises from the particular perspective of the asker and relates to a specific individual situation. Publication of the questions before they are answered would give other market participants who are affected by the issue an opportunity to usefully supplement and introduce additional perspectives to the response process.

## 1.2 No action letters

**In the framework of the 2019 ESAs review:**

**Question 1.2.1 In your view, is the new mechanism of no action letters (Article 9a of the ESMA/EIOPA Regulations and Article 9c EBA Regulation) fit for its intended purpose?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.2.1:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The no action letters mechanisms is welcome in principle. Although we have not seen many no action letters apart from ESMA' no action letter on ESG disclosure requirements under the Benchmark Regulation, we believe that the instrument is not helpful the way it is designed. See answer 1.2.3. below.

**Question 1.2.2 How does the new mechanism, in your view, compare with “no action letters” in other jurisdictions?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See response to 1.2.1

### **Question 1.2.3 EBA: Could you provide examples where the use of no action letters would have been useful or could be useful in the future?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

CRR2 will apply from 28 June 2021 and provides for a mandatory substitution approach in the large exposures regime. Fundamental interpretation questions, essential to the implementation of the regulation by banks, have not been clarified. Since the EBA was also unable to meaningfully interpret the legal text, it referred the unresolved questions to the European Commission. However, it appears that no answer will be forthcoming from the Commission in good time before the application date, or with sufficient time for implementation before application of the regulation. In such cases, it would be helpful if the EBA could postpone the application date until any outstanding questions have been clarified. Banks cannot be expected to implement a regulation regarding which national supervisors, the EBA and the European Commission have failed to arrive at fundamental decisions in the space of two years.

A no action letter would be reasonable in the case of mandatory substitution introduced in the context of CRR2. However, there are still a large number of unresolved questions that have been referred to the Commission and not yet answered. Technical implementation before these questions are answered – or rapid implementation by 28 June 2021 after answers are provided – is not possible.

### **Question 1.2.3 ESMA: Could you provide examples where the use of no action letters would have been useful or could be useful in the future?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Article 46(2) of the MiFID II Delegated Regulation raises some practical problems in situations where a client who has neither an email address nor internet access wants to place an order by telephone. This may also be the case where a client who has an email address or internet access nevertheless insists on placing an order by telephone without delaying the transaction to consult on the costs and charges information provided on a durable medium. Indeed, for transactions where time is of the essence, it may not be in the best interest of the client to delay the transaction so that the client can consult on the costs and charges information provided by the firm on a durable medium.

ESMA remedied this situation by issuing a Q&A. In our opinion, a no action letter would have been a suitable means in this case.

## **1.3 Peer reviews**

**Question 1.3.1 To what extent peer reviews organised by the ESAs have contributed to the convergence outcomes listed below?**

**Please distinguishing between the situation before the 2019 review and afterwards:**

**Situation before the 2019 ESAs review for EBA:**

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Convergence in supervisory practices	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More wide spread application of best practices developed by other competent authorities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Convergence in the enforcement of provisions adopted in the implementation of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Further harmonisation of Union rules	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Situation after the 2019 ESAs review for EBA:**

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Convergence in supervisory practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
More wide spread application of best practices developed by other competent authorities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Convergence in the enforcement of provisions adopted in the implementation of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Further harmonisation of Union rules	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please explain your reasoning when answering question 1.3.1 for EBA and give examples:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given that the requirement has only existed for a short time and the highly focused nature of the EBA's activities due to the pandemic, it is too early to provide an assessment.

**Situation before the 2019 ESAs review for ESMA:**

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Convergence in supervisory practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
More wide spread application of best practices developed by other competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Convergence in the enforcement of provisions adopted in the implementation of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Further harmonisation of Union rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Situation after the 2019 ESAs review for ESMA:**

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Convergence in supervisory practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
More wide spread application of best practices developed by other competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Convergence in the enforcement of provisions adopted in the implementation of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Further harmonisation of Union rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please explain your reasoning when answering question 1.3.1 for ESMA and give examples:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given that the requirement has only existed for a short time and the highly focused nature of ESMA's activities due to the pandemic, it is too early to provide an assessment.

**Question 1.3.2 How do you assess the impact of each of the changes below introduced by 2019 ESAs review in the peer review process?**

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Ad-hoc Peer Review Committees (PRC) composed of ESAs' and NCAs' staff and chaired by the ESA are responsible for preparing peer review reports and follow-ups.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The peer review report is now adopted by written procedure on non-objection basis by the BoS.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Transparency provisions: if the PRC main findings differ from those published in the report, dissenting views should be transmitted to the three European Institutions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
PRC findings may result in recommendations to NCAs under Article 16 of the ESAs Regulations that are now distinguished from guidelines, addressed to all NCAs. The use of this type of individual recommendations entails the application of the "comply or explain" mechanism and allows a close follow-up.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Mandatory follow-up to peer reviews within two years after the adoption of the peer review report.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The possibility to carry out additional peer reviews in case of urgency or unforeseen events (fast track peer reviews).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

The Management Board is consulted in order to maintain consistency with other peer reviews reports and to ensure a level playing field.



**Please explain your reasoning when answering question 1.3.2:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given that the requirement has only existed for a short time and the highly focused nature of the EBA's activities due to the pandemic, it is too early to provide an assessment.

---

**Question 1.3.3 EBA: Do you think mandatory recurring peer reviews, covering also enforcement aspects, could be introduced in some sectoral legislation?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please specify the piece of legislation and concrete provision under which mandatory peer reviews could be introduced for EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**Question 1.3.3 ESMA: Do you think mandatory recurring peer reviews, covering also enforcement aspects, could be introduced in some sectoral legislation?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 1.3.4 Are there improvements that could be made to the peer review process?**

- Yes
- No
-

Don't know / no opinion / not relevant

## 1.4 Other tasks and powers

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**Question 1.4.1 EBA: In your view, is the collection of information regime (Art 35 ESAs Regulations) effective?**

- Yes
- No
- Don't know / no opinion / not relevant

**If you identify areas for improvement for EBA, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Direct information requests by EBA contradict the fact that NCAs are better able to monitor their national markets.

---

**Question 1.4.1 ESMA: In your view, is the collection of information regime (Art 35 ESAs Regulations) effective?**

- Yes
- No
- Don't know / no opinion / not relevant

**If you identify areas for improvement for ESMA, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Direct information requests by ESMA contradict the fact that NCAs are better able to monitor their national markets.

**Question 1.4.2 In the framework of the 2019 ESAs review, in your view, are the new Union strategic supervisory priorities an effective tool to ensure more focused convergence priorities and more coherent coordination (Article 29a ESAs Regulations)?**

- Yes

- No
- Don't know / no opinion / not relevant

**If you identify any areas for improvement, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our opinion, the new strategic supervisory priorities tool is in general effective for achieving supervisory convergence.

Given that the requirement has only existed for a short time and the highly focused nature of the EBA's activities due to the pandemic, it is too early to provide a conclusive assessment of the tool's effectiveness.

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**Question 1.4.3 EBA: Do you think there is the need to amend or add a tool to the toolkit of the ESAs for achieving supervisory convergence?**

- Yes
- No
- Don't know / no opinion / not relevant

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**Question 1.4.3 ESMA: Do you think there is the need to amend or add a tool to the toolkit of the ESAs for achieving supervisory convergence?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 1.4.4 Please assess the significance of the new ESAs' task of fostering and monitoring the supervisory independence of national competent authorities:**

- 1 - Not significant at all
- 2 - Rather not significant
- 3 - Neutral
- 4 - Rather significant
- 5 - Very significant
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.4.4:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As demonstrated by ESMA's report on the "Wirecard" case, the reference to supervisory bodies' potentially inadequate political independence has also resonated in the discussions on the reorganisation of banking supervision in Germany. In light of this, the corresponding comments from the ESAs appear to have at least some impact.

**Question 1.4.5 What criteria would be the most relevant, in your view, for the ESAs to perform effectively their new task of fostering and monitoring supervisory independence of national competent authorities?**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	Don't know - No opinion - Not applicable
Operational independence	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial independence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Appointment and dismissal of governing body	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Accountability and transparency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adequacy of powers and ability to apply them	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

### **Please explain your answers to question 1.4.5:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our view, the existing competences of the ESAs are comprehensive and adequate. The acceptance and legitimacy of the EBA could be enhanced through improved transparency and accountability requirements.

---

### **Question 1.4.6 EBA: What are, in your view, the main remaining obstacle(s) to allow for a more effective supervisory convergence?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There are no obstacles to the EBA achieving effective supervisory convergence. It is possible for the EBA to ensure supervisory convergence to an adequate extent. It is important to bear in mind that it is not a question of achieving convergence to the greatest possible degree in the sense of best practice. Instead, maintaining good practice should be sufficient. However, to promote cross-border business, care should be taken to ensure that supervisory practice is as compatible as possible across the different Member States. However, to promote cross-border business, care should be taken to ensure that supervisory practice is as compatible as possible across the different Member States.

In addition, a single data dictionary (see discussion paper on the integrated reporting system) would enhance convergence between national and international reporting requirements.

---

### **Question 1.4.6 ESMA: What are, in your view, the main remaining obstacle(s) to allow for a more effective supervisory convergence?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our view, there is no obstacle to effective supervisory convergence.

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### **Question 1.4.7 EBA: Do you consider that EBA ensures that enough information on their activities and on financial institutions is available?**

- Yes
  - No
  - Don't know / no opinion / not relevant
- 

**Question 1.4.7 ESMA: Do you consider that ESMA ensures that enough information on their activities and on financial institutions is available?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 1.4.8 Do you consider that the purpose and outcome of inquiries under Article 22.4 is clear?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 1.4.9 In your view, is there the need to add any tools or tasks in order to enhance supervisory convergence towards digital finance?**

- Yes
- No
- Don't know / no opinion / not relevant

**If there is need to add tools or tasks, please specify which one(s) and explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First, there is a need for far-reaching and effective supervisory regulation regarding digital finance. Currently we lack a legal framework that ensures a level playing field for all market participants. An assessment of Level 1 regulation is needed in this regard. Furthermore, there is a need for clarification about which concrete supervisory tasks should be taken. At the moment, however, the existing tools appear to be sufficient for achieving supervisory convergence once the tasks are identified.

EBA in particular is already conducting several activities in the area of digital finance. Discussions are taking place around the idea of a European sandbox. The intention of regulatory sandboxes is to accommodate financial innovators' testing processes by providing a dedicated environment under the monitoring of competent authorities.

The ESAs' Report on Regulatory Sandboxes and Innovation Hubs (01/2019) states that sandboxes currently observed in EU Member States "do not allow [...] the carrying out of regulated financial services without a licence" nor do they "involve the disapplication of regulatory obligations [...] as a result of EU and/or national law". It is important that any leeway on behalf of competent authorities regarding the application of relevant regulatory requirements which might be implemented in the future to allow all market participants the testing

of new products must be backed by a legal basis in the relevant level 1 text.

As a prerequisite, regulatory sandboxes should be open to every kind of innovator, including not only newly founded financial institutions, but also incumbent institutions and technology providers, given the importance of cooperation among established firms and financial start-ups.

However, access to sandboxes provides participating firms with a potential advantage compared to those who develop the same innovation outside the sandbox. These advantages can be of both an operational (e.g. less time required from innovation to market, lower costs, accelerated authorization processes, etc.), as well as of a regulatory nature (e.g. more proportionate treatment by supervisors engaging closely with the fintech inside the sandbox). The sandbox approach therefore carries a potential risk of undermining the level playing field and fair market conditions. Therefore, sandboxes should only be considered in liaison with the definition of very clear selection criteria.

**Question 1.4.10 Please assess the effectiveness of supervisory convergence tools developed by the ESAs (e.g. common supervisory actions, real case discussions, etc.) for achieving supervisory convergence:**

- 1 - Least effective
- 2 - Rather not effective
- 3 - Neutral
- 4 - Rather effective
- 5 - Very effective
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.4.10:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We think that common supervisory actions (CSAs) are a good tool in principle for achieving an overview of the different practices in different Member States. However, from the perspective of market participants, it is not transparent what ESMA “makes” from the results of CSAs. For example, in its guidelines on appropriateness that are currently being consulted, ESMA mentions that it incorporates the results of the CSA on appropriateness in 2019. However, it remains unclear to market participants which ESMA findings in the CSA eventually made their way into the draft of the appropriateness guidelines. We would appreciate it if the results were to be made public in a way that allows market participants to identify which (national) market practice, which national supervisory practice or which national particularity led to the findings and to the ESMA actions following the CSA.

## 1.5 Breach of Union law and dispute settlement

**Question 1.5.1 Do you think that the ESAs' powers in relation to breaches of Union law (Article 17 ESAs' Regulations) and binding mediation (Article 19 ESAs' Regulations) are effective?**

- Yes

- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.5.1:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 1.5.2 EBA: Do you think that the use of the breach of Union law procedure by EBA is adequate?**

	Yes	No	N.A.
Before 2019 ESAs' review	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
After 2019 ESAs' review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Please explain your answer to question 1.5.2 for EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Too little time has passed since the last ESA review and work has been too focused on the pandemic to be able to conclusively and appropriately assess the question.

**Question 1.5.2 ESMA: Do you think that the use of the breach of Union law procedure by ESMA is adequate?**

	Yes	No	N.A.
Before 2019 ESAs' review	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
After 2019 ESAs' review	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please explain your answer to question 1.5.2 for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 1.5.3 Should there be other instruments available to the ESAs to address instances of non-application or incorrect application of Union law amounting to a breach ex-post?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 1.5.4 Do you think that the new written non-objection procedure by the BoS and the new independent panels for the decisions on breaches of Union law and dispute settlements introduced in the 2019 ESAs' review have improved these decision making processes?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.5.4:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Too little time has passed since the last ESA review and work has been too focused on the pandemic to be able to appropriately assess the question.

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**Question 1.5.5 EBA: Do you think that ESMA has always acted, where needed, under Article 17 and Article 19 of the ESAs' Regulations?**

- Yes
- No
- Don't know / no opinion / not relevant

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**Question 1.5.5 ESMA: Do you think that ESMA has always acted, where needed, under Article 17 and Article 19 of the ESAs' Regulations?**

- Yes

- No
- Don't know / no opinion / not relevant

---

**Question 1.5.6 EBA: Could you provide concrete examples where the introduction of further binding mediation provisions in sectoral legislation would be useful?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**Question 1.5.6 ESMA: Could you provide concrete examples where the introduction of further binding mediation provisions in sectoral legislation would be useful?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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**Question 1.5.7 EBA: Why do you think the use of these EBA's powers has been limited?**

**Please explain how these processes could be improved:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**Question 1.5.7 ESMA: Why do you think the use of these ESMA's powers has been limited?**

**Please explain how these processes could be improved:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## **1.6 Emergency situations and response to COVID-19 crisis**

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**Question 1.6.1 EBA: Please rate the impact of EBA's response in the context of the COVID-19 crisis:**

- 1 - the less significant impact
- 2
- 3
- 4
- 5 - the most significant impact
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.6.1 for EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The EBA has provided extensive guidance on the key issues relevant to banking supervision and specified requirements/granted exemptions. However, the specific guidance from BaFin, the national supervisory authority, was in most cases easier to understand and took into account the particular features of the national markets. We understand that due to the urgency of the situation, it was initially only possible to produce the guidance in English. Nevertheless, providing information only in the English language makes it difficult for small institutions, in particular, to implement the new measures in a timely manner.

The EBA guidelines on legislative and non-legislative moratoria on loan repayments applied in light of the COVID-19 crisis were not published until the beginning of April 2020, which was very late in relation to the first wave of the COVID-19 pandemic. By that point, many banks had already been forced to find their own solutions or classified exposures as forborne. The issuance and notification of network payment moratoria further delayed the deferral process. Furthermore, the process of preparing the notifications was very time consuming and excessively complex (see paras. 17 and 19 of EBA/GL/2020/02 and para. 17(bis) of EBA/GL/2020/15). We would have preferred to see a simpler process. In addition, the option of deferring payment for up to nine (9) months was severely limited due to application of the reactivated guidelines (EBA/GL/2020/15), since payment holidays already granted under payment relief initiatives were required to be taken into account. Consequently, this did not cushion the impact of the second wave as intended. Pragmatic solutions covering a significantly longer period would have been appropriate, particularly as the COVID-19 crisis is not yet over. However, the three-month extension of the implementation period for the EBA guidelines of April 2020 provided by EBA/GL/2020/08 was positive.

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**Question 1.6.1 ESMA: Please rate the impact of ESMA's response in the context of the COVID-19 crisis:**

- 1 - the less significant impact
- 2
- 3
- 4
- 5 - the most significant impact
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.6.1 for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is a positive sign that ESMA provided a quick response in the investor protection area in relation to the recording of telephone conversations in the context of securities transactions (public statement on COVID-19: Clarification of issues related to the application of MiFID II requirements on the recording of telephone conversations). In addition, we fully appreciate and support ESMA's relief measures in other market-related areas such as best execution or transparency calculations that provided certainty for market participants. We also have a positive impression of the cooperation between ESMA and the EU Commission during the crisis, for instance with respect to the amendments to the bilateral margin requirements under EMIR.

**Question 1.6.2 Please rate the effectiveness of the ESAs' follow-up actions on the European Systemic Risk Board (ESRB) recommendations below in the context of the COVID-19 crisis:**

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Market illiquidity and implications for asset managers and insurers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Impact of large scale downgrades of corporate bonds on markets and entities across the financial system	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
System-wide restraints on dividend payments, share buybacks and other pay-outs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Liquidity risks arising from margin calls	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

## Please explain your answer to question 1.6.2:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not consider the system-wide restraints on dividend payments, share buybacks and other pay-outs for banks recommended to supervisory authorities by the ESRB to be expedient. The supervisory authorities have all of the information required to ask individual banks to refrain from making dividend pay-outs. A blanket extension would unsettle institutional investors in particular, leading to refinancing becoming more difficult and expensive for banks. This would be compounded by competitive disadvantages compared with foreign banks that are not subject to such restrictions.

---

## Question 1.6.3 EBA: Do you think the coordinating activities carried out by EBA has successfully contributed to address the challenges posed by the COVID-19 crisis?

- Yes
- No
- Don't know / no opinion / not relevant

## Please explain your answer to question 1.6.3 for EBA:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The EBA has provided extensive guidance on the key issues relevant to banking supervision and specified requirements/granted exemptions. However, the specific guidance from BaFin, the national supervisory authority, was in most cases easier to understand and took into account the particular features of the national markets. The fact that significant parts of the guidance were only available in English was unsatisfactory.

Unfortunately, no exemptions were granted with regard to the inclusion of promotional loans in asset encumbrance reporting. Institutions make significant use of this product, since it is provided by the government with the intention of promoting the economy. This in turn increases the leverage ratio, particularly for smaller institutions, and – where the 15% threshold is exceeded – has resulted in more extensive reporting requirements during the coronavirus pandemic. Small institutions quickly reach this threshold through promotional transactions due to the low level of their total assets, while large institutions rarely even come close a ratio of 15%.

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## Question 1.6.3 ESMA: Do you think the coordinating activities carried out by ESMA has successfully contributed to address the challenges posed by the COVID-19 crisis?

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.6.3 for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see our answer to 1.6.1 above.

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**Question 1.6.4 EBA: Do you think that EBA has always acted effectively, where needed, in the context of the COVID-19 crisis?**

- Yes
- No
- Don't know / no opinion / not relevant

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**Question 1.6.4 ESMA: Do you think that ESMA has always acted effectively, where needed, in the context of the COVID-19 crisis?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 1.6.5 Do you think Article 18.2 of the ESAs Regulation (declaration of an emergency situation) is fit for its intended purpose?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 1.6.6 In case you identified areas for improvement in the ESAs' powers in emergency situations, do you have any suggestions on how to address them?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## 1.7 Coordination function (Art 31 ESAs' Regulations)

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**Question 1.7.1 EBA: Do you think the coordination role of EBA is effective?**

- Yes
  - No
  - Don't know / no opinion / not relevant
- 

**Question 1.7.1 ESMA: Do you think the coordination role of ESMA is effective?**

- Yes
  - No
  - Don't know / no opinion / not relevant
- 

**Question 1.7.2 EBA: Do you see a need for greater coordination between EBA and/or with other EU and national authorities as regards developing data requirements, data collection and data sharing?**

- Yes
- No
- Don't know / no opinion / not relevant

**If you do see a need for greater coordination for EBA, please explain your answer to question 1.7.2 and indicate what changes you propose:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It must be ensured that the EBA only approaches institutions with its own data requirements in extreme cases. Further coordination and alignment should be sought to reduce redundancy and harmonise definitions. The approach outlined by the EBA in its report on the feasibility study shows that this matter is under consideration.

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**Question 1.7.2 ESMA: Do you see a need for greater coordination between ESMA and/or with other EU and national authorities as regards developing data requirements, data collection and data sharing?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 1.7.3 In the framework of 2019 ESAs' review, please rate the effectiveness, in your view, of the tools below in order to fulfil the new coordination role of the ESAs facilitating the entry into the market of actors or products relying on technological innovation:**

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Exchange of information and best practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Adopt guidelines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Adopt recommendations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please explain your reasoning when answering question 1.7.3:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Too little time has passed since the last ESA review and work has been too focused on the pandemic to be able to appropriately assess the question.

**Question 1.7.3.1 In the framework of 2019 ESAs' review, do you think ESMA's new coordination function (Article 31b ESMA Regulation) in relation to orders, transactions and activities that give rise to suspicions of market abuses and have cross-border implications for the integrity of financial markets or financial stability in the EU is an effective tool?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 1.7.4 In the framework of 2019 ESAs' review, do you think the new coordination groups (Article 45b of the ESAs Regulations) are effective tools to coordinate competent authorities regarding specific market developments?**

- Yes
- No
- Don't know / no opinion / not relevant

---

**Question 1.7.5 EBA: In your view, does the coordination function of EBA, ensuring that the competent authorities effectively supervise outsourcing, delegation and risk transfer arrangements in third countries, work in a satisfactory way?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please indicate how the coordination function of EBA should be adjusted:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There was already an explosion of content with the development of the EBA GL on Outsourcing (CEBS GL = 11 paragraphs. EBA GL = 119 paragraphs). The EBA GL contains a vastly excessive number of descriptive requirements, which is disproportionate and also makes harmonisation more difficult.

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**Question 1.7.5 ESMA: In your view, does the coordination function of ESMA, ensuring that the competent authorities effectively supervise outsourcing, delegation and risk transfer arrangements in third countries, work in a satisfactory way?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please indicate how the coordination function of ESMA should be adjusted:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA published its GL on Outsourcing to Cloud Service Providers one year after the EBA GL on Outsourcing. The contents of the ESMA GL only refer to a small part of outsourcing, namely outsourcing to cloud service providers. It is incomprehensible why the scope is significantly reduced compared to the EBA GL. In addition, ESMA has not taken over the content from EBA GL in many places, but has created new content and definitions. These new contents and definitions in turn lead to an increase in complexity with regard to the regulations on outsourcing. ESMA's intentions are not comprehensible from the perspective of the banking industry. Since the ESMA GL on Outsourcing to Cloud Service Providers is still in the process of being transposed into national regulations, no statement can be made on ESMA's coordination function.

## **1.8. Tasks related to consumer protection and financial activities**

---

**Question 1.8.1 EBA: What are, in your view, EBA's main achievements in the consumer and investor protection area?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The EBA has promoted the consistent interpretation of European requirements, for example PSD2.

---

**Question 1.8.1 ESMA: What are, in your view, ESMA's main achievements in the consumer and investor protection area?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has promoted the consistent interpretation of European requirements (e.g. MiFID II) and improved dialogue and coordination between NCAs.

It is very positive that ESMA clarifies in Q 28 of its Q&A on investor protection that, in the case of orders placed by telephone, the cost information can in some situations be provided orally over the phone prior to the transaction and on a durable medium after the transaction (thus avoiding the transaction being delayed).

-----

**Question 1.8.2 EBA: Please assess the impact of EBA's work on analysis of consumer trends, reviewing market conduct, developing indicators, contributing to level playing field, financial literacy and follow up to work in this area:**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Analysis of consumer trends	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reviewing market conduct	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing indicators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Contributing to a level playing field	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial literacy	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Follow up to work in this area	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

## **Please explain your answer to question 1.8.2 for EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Contributing to a level playing field: The objective of achieving a level playing field and a single European retail banking market also envisaged by points (e) and (f) of Article 9(1) of Regulation (EU) No. 1093/2010 has not yet been achieved, or at least not in full (please also see our response to 1.8.1 above). A single retail banking market would be advantageous for providers of cross-border services.

Financial literacy: Consumer education is a recognised component of consumer protection. However, consumer protection is by no means paternalistic and does not absolve anyone of responsibility. Informed consumers should be accorded the freedom to make their own decisions. This freedom involves consumers taking responsibility for the risks and consequences of their own decisions. The objective should therefore be to have informed consumers who are able to optimally align their decisions with their economic interests. Consumers must be provided with the necessary knowledge and skills to be able to achieve this. Children and young people are a particularly important target group here.

-----

**Question 1.8.2 ESMA: Please assess the impact of ESMA's work on analysis of consumer trends, reviewing market conduct, developing indicators, contributing to level playing field, financial literacy and follow up to work in this area:**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Analysis of consumer trends	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reviewing market conduct	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing indicators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Contributing to a level playing field	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial literacy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Follow up to work in this area	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please explain your answer to question 1.8.2 for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 1.8.3 In the framework of 2019 ESAs’ review, the ESAs can now, where sectoral legislation enables them, use their product intervention powers for practices and products that cause consumer harm and after two prolongations of six months, an automatic one-year prolongation of the prohibition is possible (Article 9.5).**

**In your view, are these powers effective for their intended purpose?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.8.3:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Product intervention is a very powerful supervisory instrument which, however, should only be used as a last resort and with a clearly defined scope. The new timeframes which were introduced in the 2019 review do provide legal certainty in case a product intervention measure is issued by ESMA, so, in our view, the powers are even more effective for their intended purpose. Prior to this, there was uncertainty in the market e.g. as to how often respective measures could be prolonged.

**Question 1.8.4 Would you consider it useful if the ESAs could adopt acts of general application in cases other than those referred to in Article 9(5) of the ESAs Regulations?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.8.4:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA's product intervention powers are already a very strong instrument. There is no need for additional intervention powers.

---

**Question 1.8.5 EBA: Could you provide concrete examples where enabling the use of the product intervention powers in sectoral legislation would be useful?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We see no need to modify the current legal framework.

---

**Question 1.8.5 ESMA: Could you provide concrete examples where enabling the use of the product intervention powers in sectoral legislation would be useful?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We see no need to modify the current legal framework.

**Question 1.8.5.1 EBA: In the framework of 2019 ESAs' review, under the expanded scope of the competences as regards the consumer credit directive and the payment account directive, EBA will also be able to look at consumer issues across a range of activities, for example lending practices. How do you assess this change?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In principle, we welcome the EBA addressing the issue of consumer protection, particularly questions relating to greater harmonisation (point (f) of Article 9(1) of Regulation (EU) No. 1093/2010). A level playing field, or a single European retail banking market, has not yet been achieved (please refer to our responses to 1.8.1 and 1.8.2. for details)

Too little time has passed since the last ESA review and work has been too focused on the pandemic to be able to conclusively assess the question.

---

**Question 1.8.6 EBA: In the framework of 2019 ESAs' review, please rate the new EBA's task to coordinate mystery shopping activities of competent authorities, if applicable, according to its relevance to promote consumer protection at EU level:**

- 1 - irrelevant
- 2 - rather irrelevant
- 3 - neutral
- 4 - rather relevant
- 5 - fully relevant
- Don't know / no opinion / not relevant

**Please explain your answer for EBA and indicate whether you consider enhancing national competencies for conduct supervision may be beneficial for the overall coordination of mystery shopping activities:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We see no need to expand the existing legal framework.

Furthermore, too little time has passed since the last ESA review to be able to conclusively assess the question.

---

**Question 1.8.6 ESMA: In the framework of 2019 ESAs' review, please rate the new ESMA's task to coordinate mystery shopping activities of competent authorities, if applicable, according to its relevance to promote consumer protection at EU level:**



- 1 - irrelevant
- 2 - rather irrelevant
- 3 - neutral
- 4 - rather relevant
- 5 - fully relevant
- Don't know / no opinion / not relevant

**Please explain your answer for ESMA and indicate whether you consider enhancing national competencies for conduct supervision may be beneficial for the overall coordination of mystery shopping activities:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our view, mystery shopping is disproportionate intervention in banks' integrity.

In Germany, the fulfilment of supervisory requirements is already reviewed extensively (e.g. by securities auditors). Effective supervision should be ensured in all Member States, although this task should be left to NCAs. This also applies with regard to mystery shopping.

---

**Question 1.8.7 EBA: What are, in your view, the main strengths and weaknesses of the current framework on consumer protection (Article 9 ESAs Regulations) and what would you suggest to address any possible shortcomings?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We see no need to improve the existing ESA consumer protection framework. Consumer protection matters are the joint responsibility of the EU and the Member States. The principle of subsidiarity must therefore be applied. In general, we consider the numerous existing consumer and investor protection competences of the ESAs to be adequate. In pursuing the legitimate aim of consumer protection, however, consideration must be given at all times to the specific characteristics of the national financial markets.

In pursuing the aim of creating a single European retail banking market, care should be taken to ensure that customers in the EU are offered new options and products are not harmonised or limited in terms of variety. Providers should be able to offer the same product in different Member States, without the need to comply with different customer information requirements, for example.

Furthermore, both the European lawmakers and the ESAs should focus as closely as possible on the experiences and needs of market participants and use their expertise to help shape the customer-bank relationship. For example, information quality – rather than quantity – should be the priority. “Too much” information often leads to consumers becoming overwhelmed and unable to absorb the content. Attention should instead be paid to providing key information to strengthen the informed consumers' confidence in their own decisions. This could be further supported through financial training measures.

**Question 1.8.7 ESMA: What are, in your view, the main strengths and weaknesses of the current framework on consumer protection (Article 9 ESAs Regulations) and what would you suggest to address any possible shortcomings?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is questionable whether ESMA – as a supervisory authority – is qualified to make political decisions. ESMA should focus on insufficient implementation of European law.

---

**Question 1.8.8 EBA: Are there areas for improvement in the toolkit of EBA when it comes to coordinating supervisors in the area of consumer protection?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.8.8 for EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We see no need to modify the current legal framework.

---

**Question 1.8.8 ESMA: Are there areas for improvement in the toolkit of ESMA when it comes to coordinating supervisors in the area of consumer protection?**

- Yes
- No
- Don't know / no opinion / not relevant

## Please explain your answer to question 1.8.8 for ESMA:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA's toolkit is already very comprehensive (e.g. peer reviews, common supervisory actions). We therefore do not see any need to extend these powers.

## 1.9 International relations

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### Question 1.9.1 EBA: How do you assess the role and competences of EBA in the field of international relations?

#### Are there additional international fora in which EBA should be active?

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EBA should pursue a regular dialogue and constructive cooperation on an equal footing with competent regulatory and supervisory authorities of all relevant third countries, notably including relevant authorities in the United States and United Kingdom. Administrative arrangements with supervisory authorities, international organisations or administrations in third countries should be agreed to strengthen international supervisory coordination and establish consistent, efficient and effective supervisory practices to the benefit of the EU internal market and market participants.

### Question 1.9.1 ESMA: How do you assess the role and competences of ESMA in the field of international relations?

#### Are there additional international fora in which ESMA should be active?

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA should pursue a regular dialogue and constructive cooperation on an equal footing with competent regulatory and supervisory authorities of all relevant third countries, notably including relevant authorities in the United States and United Kingdom. Administrative arrangements with supervisory authorities, international organisations or administrations in third countries should be agreed to strengthen international supervisory coordination and establish consistent, efficient and effective supervisory practices to the benefit of the EU internal market and market participants.

---

**Question 1.9.2 EBA: In the framework of 2019 ESAs' review, how do you assess the new EBA's role in monitoring the regulatory and supervisory developments, enforcement practices and market developments in third countries for which equivalence decisions have been adopted by the Commission?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The European Union's equivalence regime has been a focus of discussion in the recent past. Some main points of criticism are the overly politicised nature of equivalence determinations; the lack of a standardised, transparent EU framework; the limited areas covered by equivalence; and the lack of a uniform benchmark.

While we believe that the EU's equivalence regime should be amended, we are also of the opinion that EBA could also contribute to the improvement of the system. In particular, the EBA can contribute to the establishment of a more objective decision-making mechanism and consistent principles for the assessment of third-country equivalence; the EBA can play a pivotal role in exploring further areas to expand the scope of the current equivalence regime; and the EBA can increase the transparency of its own processes as regards monitoring the regulatory and supervisory developments, enforcement practices and market developments in third countries. This would, in turn, contribute to increased transparency of granting and withdrawing equivalence, thus establishing a more predictable and reliable system as a whole.

Overall, however, our response is limited by the fact that too little time has passed since the last ESA review and work has been too focused on the pandemic to be able to conclusively and appropriately assess the question.

---

**Question 1.9.2 ESMA: In the framework of 2019 ESAs' review, how do you assess the new ESMA's role in monitoring the regulatory and supervisory developments, enforcement practices and market developments in third countries for which equivalence decisions have been adopted by the Commission?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The European Union's equivalence regime has been a focus of discussion in the recent past. Some main points of criticism are the overly politicised nature of equivalence determinations; the lack of a standardised, transparent EU framework; the limited areas covered by equivalence; and the lack of a uniform benchmark.

While we believe that the EU's equivalence regime should be amended, we are also of the opinion that ESMA should also contribute to the improvement of the system. In particular, the ESMA can contribute to the establishment of a more objective decision-making mechanism and consistent principles for the assessment of third-country equivalence; the ESMA can play a pivotal role in exploring further areas to expand the scope of the current equivalence regime; and the ESMA can increase the transparency of its own processes as

regards monitoring the regulatory and supervisory developments, enforcement practices and market developments in third countries. This would, in turn, contribute to increased transparency of granting and withdrawing equivalence, thus establishing a more predictable and reliable system as a whole.

---

**Question 1.9.3 EBA: Are the powers and competences in the field of international relations as set out in Article 33 of the ESAs' Regulations adequate in light of the tasks conferred on EBA?**

- Yes
- No
- Don't know / no opinion / not relevant

---

**Question 1.9.3 ESMA: Are the powers and competences in the field of international relations as set out in Article 33 of the ESAs' Regulations adequate in light of the tasks conferred on ESMA?**

- Yes
- No
- Don't know / no opinion / not relevant

---

**Question 1.9.4 EBA: How do you assess the role of EBA in the development of model administrative arrangements between national competent authorities and third-country authorities? Should this role be further specified?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N.A.

---

**Question 1.9.4 ESMA: How do you assess the role of ESMA in the development of model administrative arrangements between national**

**competent authorities and third-country authorities? Should this role be further specified?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N.A.

---

**Question 1.9.4 EIOPA: How do you assess the role of EIOPA in the development of model administrative arrangements between national competent authorities and third-country authorities? Should this role be further specified?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**1.10 The role of the ESAs as enforcement actors/enforcers**

Under Articles 17 (breach of Union law), 18 (action in emergency situations) and 19 (settlement of disagreements between NCAs in cross-border situations/binding mediation), in case a competent authority fails to ensure that a market participant or financial institution complies with requirements directly applicable to it, the ESAs have the power to investigate the alleged breach or non-application of Union law and, following a specified procedure and under certain conditions, adopt an individual decision towards the market participant or financial institution requiring it to comply with EU law.

---

**Question 1.10.1 EBA: How do you assess the role of EBA under these articles of the founding Regulations?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is a lack of concrete experience with these requirements. In principle, however, exercise of these powers would represent significant intervention and they should therefore be used as judiciously as possible. Nevertheless, in cases of explicit breaches of applicable EU law, the ESAs would naturally be obliged to exercise these powers in the interests of ensuring a level playing field.

---

**Question 1.10.1 ESMA: How do you assess the role of ESMA under these articles of the founding Regulations?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**Question 1.10.2 EBA: Do you see room for improvement in the way EBA could ensure that competent authorities enforce more effectively EU rules towards market participants/financial institutions?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.10.2 for EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We consider the existing requirements to be adequate.

---

**Question 1.10.2 ESMA: Do you see room for improvement in the way ESMA could ensure that competent authorities enforce more effectively EU rules towards market participants/financial institutions?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.10.2 for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 1.10.3 In your view, are the powers of the ESAs to enforce EU rules towards market participants/financial institutions under Articles 17, 18 and 19 ESAs Regulations well balanced, adequate and effective?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.10.3:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The requirements are at least adequate and do not need to be expanded.

**Question 1.10.4 Do you think the respective roles of the ESAs and of the Commission are clearly defined in Article 17, 18 and 19 ESAs Regulations?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.10.4:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The requirements are at least adequate and do not need to be expanded.

---

**Question 1.10.5 EBA: Do you think the use of sanctions laid down in the EU acquis by competent authorities in case of non-compliance of market participants/financial institutions with EU rules is, in practice for EBA, sufficiently dissuasive or disproportionate?**

- Sufficiently dissuasive
- Disproportionate
- Other
- Don't know / no opinion / not relevant

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**Question 1.10.5 ESMA: Do you think the use of sanctions laid down in the EU acquis by competent authorities in case of non-compliance of market participants/financial institutions with EU rules is, in practice for ESMA, sufficiently dissuasive or disproportionate?**

- Sufficiently dissuasive
- Disproportionate
- Other
- Don't know / no opinion / not relevant

## **2. Governance of the ESAs**

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### **2.1 General governance issues**

**Question 2.1.1 Does the ESAs' governance allow them to ensure objectivity, independence and efficiency in their work/decision making?**

- Yes
- No
-

Don't know / no opinion / not relevant

**Please explain your answer to question 2.1.1:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In principle, the ESAs' governance allows them to ensure objective, independent and efficient decision making. However, there is still room for improvement. For example, with regard to the appointment of the ESMA Stakeholder Group, representation of the different pillars of the banking system (cooperative, private and public) should be factored in. This means that representatives of all pillars of the banking system should be considered – as is already the case with the EBA Stakeholder Group.

In addition, the decision-making processes within the ESAs are overly protracted. This is attributable to the large number of Member States and reflects their different backgrounds.

**Question 2.1.1.1 If you consider that there should be differences in governance between different types of tasks, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 2.1.2 In the framework of 2019 ESAs' review, in your view, has the new provision in Article 42 of the ESAs' Regulations according to which the Board of Supervisors members must abstain from participating in the discussion and voting in relation to any items of the agenda for which they have an interest that might be considered prejudicial to their independence, improved the decision making process?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 1.2.2:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Too little time has passed since the last ESA review and work has been too focused on the pandemic to be able to appropriately assess the question.

**Question 2.1.3 In the framework of 2019 ESAs' review, do you think the requirements in Articles 3 and 43a of the ESAs' Regulations are sufficient to ensure accountability and transparency?**

- Yes
- No
- Don't know / no opinion / not relevant

**If you identify areas for improvement, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 2.1.4 In the framework of 2019 ESAs’ review, to what extent the recent enhancements in the role of Chairperson improve the decision making process?**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Request to the Board to establish internal committees for specific tasks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Set the agenda to be adopted by the Board and table items for decision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Call a vote at any time	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Propose the composition of independent panels for breach of Union law investigations and dispute settlements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Propose the composition of peer review committees for peer reviews	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Vote in the Board of Supervisors (except on matters that are decided on the basis of qualified majority voting)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

### **Please explain your answers to question 2.1.4:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Too little time has passed since the last ESA review and work has been too focused on the pandemic to be able to appropriately assess the question.

### **Question 2.1.5 Should the role of the Chairperson be strengthened in other areas?**

- Yes
- No
- Don't know / no opinion / not relevant

## **2.2 Decision-making bodies and preparatory bodies**

### **Question 2.2.1 Does the current composition of the Board of Supervisors (BoS) and of the Management Board (MB) ensure that decisions are taken efficiently and independently?**

- Yes
- No
- Don't know / no opinion / not relevant

### **Question 2.2.2 Do the current voting modalities (e.g. simple majority, qualified majority...) of the BoS ensure efficient decision making?**

- Yes
- No
- Don't know / no opinion / not relevant

### **Please explain your answer to question 2.2.2:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 2.2.2.1 EBA: Does the current voting system that, for some decisions, requires additional simple majorities from competent authorities participating and not participating in the Banking Union ensure efficient and balanced decision making?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 2.2.2.1:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 2.2.3 Does the current allocation of tasks between the BoS and the MB ensure that the ESAs are run effectively and perform the tasks conferred on them?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 2.2.4 In the framework of 2019 ESAs' review, to what extent the enhanced role of the Management Board has improved the decision making process?**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
The MB can give opinions on all matters to be decided by the Board of Supervisors	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MB ensures the consistent use of a methodology for all peer reviews conducted	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MB proposes a peer review work plan every two years.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MB can set up coordination groups on its own initiative	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Please explain your answers to question 2.2.4:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 2.2.5 Should the role of the Management Board be strengthened in other areas?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 2.2.6 In the framework of 2019 ESAs' review, do you think the written non-objection procedure for core convergence tools (breaches of Union law, dispute settlements and peer reviews) is effective for achieving its objective?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 2.2.7 Do you think ad hoc committees composed of staff of the ESAs and members from the competent authorities (e.g. peer review committees) are effective tools to improve the decision making process?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 2.2.8 Do you think the functioning of preparatory/supporting bodies of the ESAs (e.g. technical working groups, standing committees, task forces etc.) is effective and efficient?**

- Yes
- No
- Don't know / no opinion / not relevant

**If you identify any shortcomings please specify how these could be addressed:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our opinion, supporting bodies of the ESAs (such as the ESMA IPISC-CWG) contribute a great deal to the quality of the ESAs' work. Among others, these working groups comprise practitioners from different Member States who can reflect the particularities of national markets.

In our view, however, the banking industry is not sufficiently represented in the supporting bodies. It should be on an equal footing with the other stakeholders.

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**Question 2.2.9 EBA: Please assess the impact of the work undertaken by preparatory/supporting bodies of EBA (e.g. technical working groups, standing committees, task forces etc.) on the EBA's overall work and achievements:**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Standing committees and other permanent committees	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other preparatory bodies (e.g. technical working groups)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Committee on consumer protection and financial innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Proportionality Committee	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**If you identify any shortcomings for EBA please specify how these could be addressed:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

So far, the outcome of the work of the Proportionality Committee is not satisfactory or at least has not been transparently communicated.

**Question 2.2.9 ESMA: Please assess the impact of the work undertaken by preparatory/supporting bodies of ESMA (e.g. technical working groups, standing committees, task forces etc.) on ESMA’s overall work and achievements:**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Standing committees and other permanent committees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other preparatory bodies (e.g. technical working groups)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Committee on consumer protection and financial innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Proportionality Committee	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**If you identify any shortcomings for ESMA please specify how these could be addressed:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 2.2.9.1 ESMA: Should there be a different governance in case of direct supervisory decisions in ESMA (for example, similar to the new governance for CCPs)?**

- Yes
- No
- Don't know / no opinion / not relevant

## **2.3 Financing and resources**

**Question 2.3.1 Do you consider the provisions on financing and resources for the general activities of the ESAs appropriate to ensure sufficiently funded and well-staffed ESAs taking into account budgetary constraints at both EU level and the level of Member States?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 2.3.1:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While the financial crisis may have created political pressure to make financial entities contribute more heavily to their regulation and supervision, there are strong reasons in favour of a significant public EU contribution to ESA funding:

1. The ESA's responsibilities are overwhelmingly of a regulatory nature. Without the ESAs, their tasks would largely have to be carried out by the European Commission itself and under the European Parliament's and the European Council's scrutiny.
2. The control currently exercised by the European Commission, the European Parliament and the European Council over the ESAs' budgets has proven to be beneficial to maintaining budgetary discipline, while a transition to a fee-based financing could induce significant expansions of the ESAs' budgets.

3. The adoption of a funding model based on fees by market participants would constitute discrimination against actors in other sectors as it would be in stark contrast to the general practice in regulation and supervision.

4. In many cases, financial entities are already contributing to ESA budgets via their NCA contributions. However, national funding models differ considerably across the EU.

5. Introducing additional ESA fees on top of these funding models would only exacerbate the existing distortions.

In summary, GBIC strongly advocates maintaining the current composition of ESA funding to ensure budgetary discipline and consistency with other sectors.

In the past, the Legal Service of the European Council has also come to the conclusion that there is no legal basis for industry fees. It has also criticised the fact that there is no provision for a sufficiently proportionate calculation method, which has not been addressed so far.

We consider the current funding and sources of finance for the ESAs, comprising contributions from NCAs and the EU budget, to be sufficient. This funding is also justified, since – if the ESAs did not exist – the European Commission and/or the European lawmakers would be required to perform their tasks. We also consider the current funding mechanism to be appropriate given the budgetary discipline of the ESAs.

### **Question 2.3.2 Do you think that the ESAs have sufficient resources to perform their tasks?**

- Yes
- No
- Don't know / no opinion / not relevant

### **Please explain your answer to question 2.3.2:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

### **Question 2.3.3 Do you think there are enough checks and balances for how the ESAs spend their budget?**

- Yes
- No
- Don't know / no opinion / not relevant

### Please explain your answer to question 2.3.3:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Budgetary control needs to be improved considerably by introducing audit committees with representatives from supervised entities (at least with non-voting rights).

We would welcome a budget audit committee, as is customary in other institutions.

## 2.4 Involvement and role of relevant stakeholders

### Question 2.4.1 In your view, are stakeholders sufficiently consulted or, on the contrary, are there too many consultations?

- Yes
- No
- Too many consultations
- Don't know / no opinion / not relevant

### Please explain your answer to question 2.4.1:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Since 2020, there have been numerous instances where ESAs have finalised selected Level 2 and Level 3 rules without visibly involving stakeholders. While it is understandable that the COVID pandemic has required swift regulatory action in some cases, we strongly suggest adequately involving stakeholders or their representatives as widely as possible.

In our view, stakeholders are not always sufficiently involved.

In principle, the EBA consults stakeholders and market participants on all relevant papers. To a certain extent, the EBA also provides feedback to market participants. However, the processes between consultation and publication of the final papers are not transparent, including for example the decision-making processes, the reasons behind the decisions and the related discussions. Market participants are still too frequently forced to have voluntary discussions with national supervisory authorities, which take a different form depending on the individual Member State in question.

It should also be noted that willingness to take on board the comments of market participants in public consultations and hearings varies widely depending on the subject matter and the employees involved. Additional guidance for employees would enhance consistency and quality.

Some Q&A are not comprehensible in themselves and need further explanation.

---

### Question 2.4.2 EBA: Please assess the quality, in your view, of the consultations launched by EBA:

	1 (lowest quality)	2	3	4	5 (highest quality)	Don't know - No opinion - Not applicable
General consultations launched by EBA	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Specific consultations when developing data collection requirements	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Please explain your answer to question 2.4.2 for EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See response to 2.4.1

**Question 2.4.2 ESMA: Please assess the quality, in your view, of the consultations launched by ESMA:**

	1 (lowest quality)	2	3	4	5 (highest quality)	Don't know - No opinion - Not applicable
General consultations launched by ESMA	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Specific consultations when developing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

data collection requirements						
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**Please explain your answer to question 2.4.2 for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A positive factor is that consultations by ESMA on new guidelines provide useful background information. Moreover, the final report often contains useful explanations and an analysis of the most important remarks by stakeholders.

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**Question 2.4.3 EBA: Is EBA sufficiently transparent and accessible for stakeholders to ensure effective and efficient interaction?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 2.4.3 for EBA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In principle, the EBA consults stakeholders and market participants on all relevant papers. To a certain extent, the EBA also provides feedback to market participants. However, the processes between consultation and publication of the final papers are not transparent, including for example the decision-making processes, the reasons behind the decisions and the related discussions. Market participants are still too frequently forced to have voluntary discussions with national supervisory authorities, which take a different form depending on the individual Member State in question.

The consultations should not only be formally conducted to meet legal requirements, but should also promote a real exchange of views and result in necessary amendments to the relevant drafts.

It is our understanding that, since the ESAs were established, no significant changes have ever been made to the papers consulted on – even in the case of extensive and justified criticism from market participants. In principle, the ESAs are of course free to adhere to their view. However, it is unlikely in reality that no amendments would ever have been appropriate.

---

**Question 2.4.3 ESMA: Is ESMA sufficiently transparent and accessible for stakeholders to ensure effective and efficient interaction?**

- Yes
- No
-

Don't know / no opinion / not relevant

**Please explain your answer to question 2.4.3 for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is still room for improvement when it comes to transparency at ESMA. Among other things, this concerns Level 3 measures such as Q&As that have a great impact on the practice of securities business in the Member States. Therefore, it is crucial that ESMA Q&As comply with Level 1 and Level 2 texts of the European lawmakers and do not go beyond them. We also think that the launching of the consultation process with regard to Q&As (article 16b) is too burdensome and should be simplified (see above).

The consultations should not only be formally conducted to meet legal requirements, but should also promote a real exchange of views and result in necessary amendments to the relevant drafts.

It is our understanding that, since the ESAs were established, no significant changes have ever been made to the papers consulted on – even in the case of extensive and justified criticism from market participants. In principle, the ESAs are of course free to adhere to their view. However, it is unlikely in reality that no amendments would ever have been appropriate.

**Question 2.4.4 Please rate the impact of stakeholders groups within the ESAs on the overall work and achievements of the ESAs:**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
EIOPA Insurance & Reinsurance Stakeholder Group	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
EIOPA Occupational Pensions Stakeholder Group	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
ESMA Securities and Markets Stakeholder Group	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
EBA Banking Stakeholder Group	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## **Please explain your answers to question 2.4.4:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The ESMA Securities and Markets Stakeholder Group includes practitioners from different Member States who can reflect the particularities of national markets. This contributes a great deal to the quality of ESMA's work.

The EBA's BSG is generally only involved in standard-setting at a very late stage. As a result, it is no longer possible to influence the content.

**Question 2.4.5 In the framework of 2019 ESAs' review, please assess the significance of the recent changes in the composition, selection, term of office and advice of the stakeholders groups (Article 37 ESAs Regulations)?**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Composition of stakeholders groups	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Selection of members	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Term of office	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
A third of its members can issue a separate advice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

### **Please explain your answers to question 2.4.5:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Too little time has passed since the last ESA review and work has been too focused on the pandemic to be able to appropriately assess the question.

### **Question 2.4.6 Does the composition of stakeholders groups ensure a sufficiently balanced representation of stakeholders in the relevant sectors?**

- Yes
- No
- Don't know / no opinion / not relevant

### **Please explain your answer to question 2.4.6:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

With regard to the appointment of the ESMA Stakeholder Group, representation of the different pillars of the banking system (cooperative, private and public) should be factored in. This means that representatives of all pillars of the banking system should be considered.

We believe there is room to improve the ratio between representatives that are direct addressees of supervisory requirements and representatives of groups that are at best indirectly affected (researchers, consumers).

### **Question 2.4.7 In your experience, are the ESAs' stakeholders groups sufficiently accessible and transparent in their work?**

- Yes
- No
- Don't know / no opinion / not relevant

### **Please indicate the areas where the transparency could be improved:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The public perception of the Stakeholder Group's work is virtually non-existent. It is almost impossible to determine the extent to which the assessments, comments and advice of the Stakeholder Group are actually taken into account. The work of the Stakeholder Group has hardly any resonance with the public.

## 2.5 Joint bodies of the ESAs

**Question 2.5.1 Please assess the aspects described below regarding the Board of Appeal (BoA) of the ESAs:**

	1 (least effective)	2 (not so effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Functioning and time limits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
One joint Board of Appeal for the 3 ESAs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The composition of the BoA	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**If you identify areas for improvement, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 2.5.2 Please assess the aspects described below regarding the Joint Committee of the ESAs:**

	1 (least effective)	2 (not so effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Functioning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Working methods	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring cross-sectoral cooperation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring consistent approaches	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Decision making process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The legal structure (no legal personality)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**If you identify areas for improvement, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 2.5.3 Please assess the work of the Joint Committee of the ESAs in the areas below:**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Consumer Protection and Financial Innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Coordination and cooperation for bi-annual Joint Risk Reports, published in spring and autumn	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial Conglomerates	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Securitisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
European Forum of Financial Innovators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**If you identify areas for improvement, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

### 3. Direct supervisory powers

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**Question 3.1 Please assess ESMA’s direct supervisory powers in the field of:**

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know - No opinion - Not applicable
Credit Rating Agencies	<input type="radio"/>	<input checked="" type="radio"/>				
Trade Repositories under EMIR	<input type="radio"/>	<input checked="" type="radio"/>				
Trade Repositories under SFTR	<input type="radio"/>	<input checked="" type="radio"/>				
Securitisation Repositories (STS)	<input type="radio"/>	<input checked="" type="radio"/>				

**Please explain your answers to question 3.1:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 3.2 Please assess ESMA’s performance as a direct supervisor of the entities below:**

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know - No opinion - Not applicable
Credit Rating Agencies	<input type="radio"/>	<input checked="" type="radio"/>				
Trade Repositories under EMIR	<input type="radio"/>	<input checked="" type="radio"/>				
Trade Repositories under SFTR	<input type="radio"/>	<input checked="" type="radio"/>				
Securitisation Repositories (STS)	<input type="radio"/>	<input checked="" type="radio"/>				

**If you identify areas for improvement, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 3.3 How do you envisage the future scope of direct supervisory powers of ESMA or any other ESA?**

**What principles should govern the decision to grant direct supervision to the ESAs?**

**If you see room for improvement, please provide evidence where you see weaknesses of the current set-up:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our view, the current system of securities supervision, which is based not only on ESMA but also on the national competent authorities (NCAs), should generally remain in place because it is best suited to deal with the different market structures of the Member States.

The NCAs are the competent supervisory authorities in the field of securities regulation and investor protection. They have a sound knowledge of the particularities of the respective national financial markets and, therefore, the necessary supervisory expertise. Therefore, we think that the current system is well balanced. Direct supervisory powers can only be appropriate if there is a pan-European dimension to the activity or service. This was the case, for instance, with respect to the supervision of administrators of critical benchmarks. Where this pan-European dimension is non-existent, we are clearly against any changes to the existing set-up.

With regard to the EBA, we see no need for direct supervisory powers. Banking supervision powers are exercised by the ECB and the NCAs. Any further splitting of supervisory powers would be counter-productive and inexpedient.

Any transfer of additional direct supervisory responsibilities to ESMA or EBA could contradict the principle of subsidiarity and should only be considered if the subject is of a genuinely European nature. The national supervisory authorities are familiar with their own national market conditions and the business models on which these are based, but also the crucial interaction with civil law. In this respect, they have the supervisory competencies that ESMA lacks.

In addition, granting the ESAs further supervisory powers while at the same time they act as standard-setters could be problematic with regard to democratic principles.

### Question 3.4 Have you identified any areas where supervision at EU level should be considered?

- Yes
- No
- Don't know / no opinion / not relevant

## 4. The role of the ESAs as regards systemic risk

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### Question 4.1 EBA: Please assess the aspects described below regarding the role of EBA as regards systemic risk:

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know No opinion Not applicable

The quality of the analysis of market developments	<input type="radio"/>	<input checked="" type="radio"/>				
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs	<input type="radio"/>	<input checked="" type="radio"/>				
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk	<input type="radio"/>	<input checked="" type="radio"/>				
The cooperation within the European System of Financial Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing	<input type="radio"/>	<input checked="" type="radio"/>				
The broader cooperation between the ESRB and the ESAs within the ESFS	<input type="radio"/>	<input checked="" type="radio"/>				
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors	<input type="radio"/>	<input checked="" type="radio"/>				

**If you identify room for improvement for EBA, please specify how this could be addressed:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 4.1 ESMA: Please assess the aspects described below regarding the role of ESMA as regards systemic risk:**

	1 (lowest rate)	2	3	4	5 (highest rate)	Don' know No opinio Not applica
The quality of the analysis of market developments	<input type="radio"/>	<input checked="" type="radio"/>				
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs	<input type="radio"/>	<input checked="" type="radio"/>				
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk	<input type="radio"/>	<input checked="" type="radio"/>				
The cooperation within the European System of Financial						

Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing	<input type="radio"/>	<input checked="" type="radio"/>				
The broader cooperation between the ESRB and the ESAs within the ESFS	<input type="radio"/>	<input checked="" type="radio"/>				
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors	<input type="radio"/>	<input checked="" type="radio"/>				

**If you identify room for improvement for ESMA, please specify how this could be addressed:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## B. Questions on the single rulebook

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Please click on next to respond to the questions.

### 5. The ESAs work towards achieving a rulebook

---

**Question 5.1 EBA: Do you consider that the technical standards and guidelines/recommendations developed by EBA have contributed sufficiently to further harmonise a core set of standards (the single rulebook)?**

- Yes
- No
- Other
- Don't know / no opinion / not relevant

**If you have identified areas for improvement for EBA, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is not possible to give a blanket response to this question. Harmonisation measures by the EBA are generally to be welcomed. However, it is a question of whether each individual measure is necessary, covered by the relevant basis for authorisation and appropriately structured.

Additional measures are required in the area of investor and consumer protection in particular (please refer to our responses to 1.8.1 and 1.8.2 for details).

However, each individual measure should be carefully reviewed to determine whether it is necessary, covered by the relevant basis for authorisation and appropriately structured.

---

**Question 5.1 ESMA: Do you consider that the technical standards and guidelines/recommendations developed by ESMA have contributed sufficiently to further harmonise a core set of standards (the single rulebook)?**

- Yes
- No
- Other
- Don't know / no opinion / not relevant

**If you have identified areas for improvement for ESMA, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 5.2 Do you assess the procedure for the development of draft technical standards as foreseen in the ESA Regulations effective and efficient in view of the objective to ensure high quality and timely deliverables?**

- Yes
- No
- Other
- Don't know / no opinion / not relevant

**Please explain your answer to question 5.2:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The established consultation process for RTS is positive. However, RTS should not include requirements that were not issued for consultation.

**Question 5.3 When several ESAs need to amend joint technical standards (e.g. PRIIPs RTS) and there is a blocking minority at the Board of Supervisors of one of the ESAs, what would you propose as solution to ensure that the amendment process runs smoothly?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The easiest way would be a flexible entry into force of changes on Level 1 (e.g. expiry of exception for funds under the PRIIPs regulation that is linked to a final Level 1 legal act). RTS must be supported by all ESAs and within their BoS. There must a rational mechanism for solving conflicts.

**Question 5.4 In particular, are stakeholders sufficiently consulted and any potential impacts sufficiently assessed?**

- Yes
- No
- Other
- Don't know / no opinion / not relevant

**If you have identified areas for improvement, please explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Although stakeholders and market participants are consulted, clear suggestions are sometimes not addressed and the scope of the Level 1 mandate is occasionally exceeded.

The consultations should be arranged in such a way that market participants are involved at an appropriate stage and their concerns and suggestions are actually taken into account. Making modifications based on the comments received should be the rule rather than the exception.

**Question 5.5 Can you provide examples where guidelines and recommendations issued by the ESAs have particularly contributed to the establishment of consistent, converging, efficient and effective supervisory practices and to ensuring the common, uniform and consistent application of Union law?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The guidelines on product governance have led to a largely uniform target market in the European market.

**Question 5.6 Would you consider it useful if the ESAs could adopt guidelines in areas that do not fall under the scope of legislation listed in Article 1 (2) of the ESAs founding Regulations and are not necessary to ensure the effective and consistent application of that legislation?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 5.6:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The central task of the EU financial supervisory authorities is to promote the consistent application of EU law in the Member States. In the past, however, just the issuance of guidelines and recommendations has been on such a scale that it has effectively amounted to rule-making. The European supervisory authorities should concentrate their activities on verifying the consistent implementation in the Member States of the supervisory law adopted by the EU lawmakers. Guidelines should therefore only be applied to a limited extent and for this purpose.

The EBA and ESMA should only be able to adopt guidelines within the legally prescribed framework. Otherwise, the principle of the primacy of the law is undermined and the EBA and ESMA would be able to independently extend their remit. It should be borne in mind in this context that the EBA and ESMA are subject to relatively little legal oversight compared with the NCAs, meaning that it is difficult for those affected by guidelines to challenge their binding effect.

**Question 5.6.1 If you think of the Wirecard case as an example, how could supervision be improved in the field of auditing and financial reporting?**

- Including [Regulation \(EC\) No 1606/2002 \(IAS Regulation\)](#) and [Directive 2013/34/EU \(Accounting Directive\)](#) in Article 1(2) of the ESMA Regulation
- Other
- No improvements are needed
- Don't know / no opinion / not relevant

**Please explain what you mean by 'other' in your answer to question 5.6.1:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

International Financial Reporting Standards (IFRSs) are developed and interpreted by bodies made up of recognised international experts (IASB, IFRS IC) with extensive input from all stakeholders. There is a tried and tested procedure for adopting the standards into European Community law, which involves all significant political bodies (European Commission, European Parliament, European Council). As globally comparable financial reporting standards, we believe that the IFRSs should, as far as possible, be applied unchanged – i. e. as published by the IASB – worldwide. We take a highly critical view of European amendments to these standards. We oppose ESMA having the power to further interpret the standards, since this would increase the risk of European discrepancies. With regard to the European Accounting Directive, legislative power lies with the European lawmakers. Responsibility for transposition of the requirements is held at national level by the Member States. If ESMA had a right of interpretation, this would encroach on both European and national legislative powers. We therefore oppose ESMA having such rights. Overall, the existing processes for developing and interpreting IFRSs and the Accounting Directive have been tried and tested over many years; they are recognised and appropriate. We therefore see no need for modification.

**Question 5.7 Do you think that the role of ESMA with regard to [Directive 2004/109/EC \(Transparency Directive\)](#) could be strengthened?**

**For example, by including a mandate for ESMA to draft RTS in order to further harmonise enforcement of financial (and non-financial) information:**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 5.7:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

With the aim of achieving further harmonisation in Europe, ESMA already has various working groups on corporate reporting. In addition, the ESMA Guidelines on Enforcement of Financial Information must be applied by the national enforcement bodies. The revised guidelines will enter into force in early 2022.

The European Enforcers Coordination Sessions (EECS) remain a cornerstone of European cooperation. The EECS represent a permanent discussion platform for national enforcement institutions and ESMA regarding IFRS application issues with cross-border significance.

We do not therefore believe it is necessary to extend ESMA's mandate.

**Question 5.8 Do you think that [Directive 2004/109/EC \(Transparency Directive\)](#) should require ESMA to annually report on the supervision and enforcement of financial and non-financial information in the EU on the basis of data provided by the national competent authorities regarding their supervisory and enforcement activities?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 5.8:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA publishes guidelines with the aim of establishing coherent, efficient and effective supervisory practices within Europe and ensuring the common, uniform and consistent application of EU law (see Article 16 of the ESMA Regulation). The competent national enforcement bodies and financial market participants are required to take all necessary steps to adhere to these guidelines. In 2017, ESMA conducted the first peer review on compliance with the ESMA Guidelines on Enforcement of Financial Information by European enforcers. A peer review of this sort – perhaps in a more streamlined form – could be carried out at regular intervals, for example every four years, and the corresponding reports published. Existing audit and control processes could be used and the findings could be made transparent to the public. In general, we do not see any need for an additional annual report.

**Question 5.9 Do you think that ESMA could have a role with regard to [Regulation \(EC\) No 1606/2002 \(IAS Regulation\)](#) and [Regulation 537/2014/EU \(Audit Regulation\)](#)?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 5.9:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Knowledge of the legal environment in the Member States is essential for ensuring audit quality. The same applies to the effectiveness of the oversight of auditors. The Audit Directive and the Audit Regulation therefore consciously provide for the Member States appointing competent authorities at national level to guarantee the application of the provisions of the Audit Regulation and Audit Directive.

The competent authorities in the Member States cooperate at European level in a committee of oversight bodies. This committee is made up of high-level representatives of the national competent authorities and a member appointed by ESMA. EBA and EIOPA participate as observers. The committee can adopt (non-binding) guidelines or opinions. This all contributes to the gradual harmonisation of the auditing of public interest entities, while at the same time taking account of the specific legal circumstances in the Member States. ESMA, as well as EBA and EIOPA, are able to support this process and provide impetus. We do not consider it necessary or beneficial for ESMA to have additional functions in the area of auditing and auditor oversight.

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### **Question 5.10 EBA: What is your assessment of the work undertaken by EBA regarding opinions and technical advice?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The extent of the work undertaken is sufficient and we see no need for expansion.

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### **Question 5.10 ESMA: What is your assessment of the work undertaken by ESMA regarding opinions and technical advice?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The established consultation process for RTS is positive. However, RTS should not include requirements that were not issued for consultation.

## 6. General questions on the single rulebook

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**Question 6.1 Which are the areas where you would consider maximum harmonisation desirable or a higher degree of harmonisation than presently (rather than minimum harmonisation)?**

**Please give your reasons for each:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In the context of banking regulation, we have already achieved a high degree of harmonisation. In principle, the European process should continue to work towards gradual harmonisation, without losing sight of specific national circumstances.

**Question 6.2 Which are the areas where you consider that national rules going beyond the minimum requirements of a Directive (known as “gold-plating”) are particularly detrimental to a single market?**

Please select as many answers as you like

- Banking
- Insurance
- Asset management
- Market infrastructure (CCPs, CSDs)
- Market organisation (MiFID, MIFIR, MAR)
- Other

### Banking

**Please identify the relevant sectoral legislation in the area of banking for which national rules going beyond its minimum requirements and explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

CRR, BRRD, CRD

## Please provide examples of gold plating in the area of banking and explain:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Rules regarding loans to managers etc.: the decision-making and audit requirements of section 15 of the German Banking Act (KWG) in places considerably exceed the requirements of the CRD.

Corporate Governance: the requirements applicable with regard to management board members and supervisory board members set forth in sections 25c and 25d of the KWG are more extensive than the requirements of the CRD and the EBA guidelines.

Large exposures: section 13 of the KWG includes decision-making requirements in relation to large exposures that are not provided for in the CRR.

Loans of EUR 1 million or more: in accordance with section 14 KWG, loans of EUR 1 million or more must be separately reported in Germany. The CRR does not provide for such an obligation.

## Market organisation (MiFID, MIFIR, MAR)

## Please identify the relevant sectoral legislation in the area of Market organisation for which national rules going beyond its minimum requirements and explain:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

National product information: The German Securities Trading Act (Wertpapierhandelsgesetz, WpHG) stipulates that product information sheets have to be prepared for simple products as well. On the other hand, the European legislator decided in its Regulation 1286/2014 (PRIIPs Regulation) that European key information documents need only be prepared for packaged investment products. This assessment should also be considered by the German legislator.

Inclusion of old age pension products in MiFID II: Recital 89 of MiFID II stipulates that individual and occupational pension products having the primary purpose of providing the investor with income in retirement should be excluded from the scope of MiFID II in consideration of their particularities and objectives. Unfortunately, the German legislator did not consider this easement in national law.

National registry of advisers/list of complaints: With regard to the use of employees in investment advice, as sales supervisors, in portfolio management or as compliance officers, German law includes requirements on the notification of the employees (section 87(1), (4) and (5) of the Securities Trading Act, WpHG). The European lawmakers, in contrast, have expressly spoken out against a European notification obligation. The same applies for complaints by retail investors. These notification duties should be removed.

Section 80(1) sentence 2 no. 3 of the WpHG includes specific national requirements regarding sales targets, contrary to Article 16(11) of MiFID II.

The European rules only stipulate specific requirements regarding the knowledge and competence of investment advisers and sales representatives (see Article 25(1) of MiFID II in conjunction with the relevant ESMA guidelines in accordance with Article 25(9) of MiFID II). By contrast, German law (section 87(3) to (5) of the WpHG) also provides for requirements regarding the expertise of other employees, including sales supervisors, employees working in asset management and compliance officers. National gold-plating of this sort would require specific authorisation in MiFID II.

**Please provide examples of gold plating in the area of Market organisation and explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 6.3 Do you consider that the single rulebook needs to be further enhanced to reach the uniform application of Union law or rules implementing Union law and efficient convergent supervisory outcomes?**

- Yes
- No
- Don't know / no opinion / not relevant

**Please explain your answer to question 6.3 and, where appropriate, support your response with examples:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The single rulebook has made a significant contribution to harmonising banking regulation. Broadly speaking, the application of Union law is sufficiently consistent and there is adequate convergence of supervisory practices. However, in the context of a uniform single financial market that needs to keep pace with the international financial markets, more work is required to remove obstacles to cross-border transactions, without losing sight of specific national circumstances.

This includes not only avoiding gold-plating at national level, but also establishing cross-border capital and liquidity waivers or greater consolidation of reporting requirements, for example. Particularly with regard to new regulatory fields, for example crypto assets, consideration should be given to a uniform European approach from the outset (please also refer to our response to 6.1).

**6.4 Questions regarding the appropriate level of regulation**

**Question 6.4.1 In your view, are there circumstances in existing EU legislation where level 1 is too granular, or for other reasons, would rather be preferable to have a mandate for level 2, or guidance at level 3?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 6.4.2 On the other hand, in your view, could reducing divergences in rules at level 1 (legislation agreed by the co-legislators), as well as rules regarding delegated acts (regulatory technical standards) or implementation at level 2, (implementing acts and implementing technical standards) and/or level 3 ('comply or explain guidance' by ESAs) further enhance the single rulebook?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 6.4.2.1 Which of the three levels and/or a combination thereof are more effective in building the single rulebook?**

Please select as many answers as you like

- Level 1 (legislation agreed by the co-legislators)
- Level 2 (e.g. delegated acts and technical standards)
- Level 3 ('comply or explain guidance' by ESAs)

**Please explain your answer to question 6.4.2 and 6.4.2.1:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Level 1 provides the legal framework.  
Level 2 and 3 should not go beyond Level 1.  
Level 3 should not go beyond Level 2.

**Question 6.5 Generally speaking, which level of regulation should be enhanced/tightened in order to ensure uniform application of the single rulebook?**

Please select as many answers as you like



- Level 1 (legislation agreed by the co-legislators)
- Level 2 (e.g. delegated acts and technical standards)
- Level 3 ('comply or explain guidance' by ESAs)

**Please explain your answer to question 6.5 and substantiate with examples, where possible:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

All significant points should be regulated by the lawmakers themselves and not addressed by subordinate levels.

Level 1 provides the legal framework.

Level 2 and 3 should not go beyond Level 1.

Level 3 should not go beyond Level 2.

**Question 6.6 In your view, what, if anything and considering legal limitations, should be improved in terms of determining application dates and sequencing of level 1, level 2 and level 3?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

With regard to the application dates of legal requirements, the targets set should be realistic and not overburden the relevant institutions. If the implementation periods for the application of complex legal requirements and sequencing are too short, this in itself is counter-productive, as it creates new operational risks.

Start of implementation periods:

As a general rule, the date when the new requirements become applicable is defined in the Level I requirements, although Level II measures are subsequently enacted. This fixed definition leads to problems if there are delays in publishing the Level II requirements, with the result that the applicability of MiFID II /MiFIR and the PRIIPs Regulation had to be temporarily deferred. This led to considerable additional costs at the institutions, for example because implementation projects had to be prolonged.

Therefore, the implementation period should only start running once all the more detailed requirements for which Level I contains an authorisation have been published.

Need for implementation periods also for interpretations:

The legal requirements do not contain any implementation periods for Level III measures (guidelines, Q&As), although implementing them often involves considerable effort and expense (including IT modifications).

Going forward, reasonable implementation periods should therefore be provided for interpretations as well to enable the institutions to ensure appropriate implementation.

Cost-benefit-analysis:

Cost-benefit-analyses are often abstract, i.e. the added value for clients is often not substantiated by the legislator. Therefore, the legislator should conduct a concrete cost-benefit-analysis before each legislative

procedure showing that the envisaged project brings added value for clients. We would welcome cost-benefit-analysis not only by legislators, but also by ESAs.

**Question 6.7 Please indicate whether the following factors should be considered when deciding on the need for further harmonisation in rules:**

	1 (unimportant)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (fully important)	Don't know - No opinion - Not applicable
Strong interlinkages with areas of law which remain non-harmonised (e.g. CRIM-MAD and national criminal law)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Broad discretion left to national authorities and frequent use of that discretion by these national authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
High level of gold plating by national rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
High degree to which supervision of the same type of actors and /or activities render divergent outcomes across Member States	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All of the above	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
None of the above	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other aspects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 6.8** As part of the Commission’s work on enhancing the single rulebook under the Capital Markets Union project, do you consider that certain EU legislative acts (level 1) should, in the course of a review, become more detailed and contain a higher degree of harmonisation? Would any of those legal frameworks currently contained in Directives, or any part therein, benefit from being directly applicable in Member States instead of requiring national transposition?

- Yes
- No
- Don’t know / no opinion / not relevant

**Please select the legislative sector(s) of the specific piece(s) of legislation you have in mind:**

Please select as many answers as you like

- Banking
- Insurance
- Asset management
- Market infrastructure (CCPs, CSDs)
- Market organisation (MiFID, MIFIR, MAR)
- Other

### Banking

**Please identify the specific piece(s) of legislation you have in mind in the area of banking and explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The quality of legislation is important, not its granularity. We very much support the idea of principle-based regulation.

**Please provide examples in the area of banking and explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Market organisation (MiFID, MIFIR, MAR)**

**Please identify the specific piece(s) of legislation you have in mind in this /these other area(s) and explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Please provide examples in the area of Market organisation and explain:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 6.9 Do you consider that on the basis of existing mandates, additional/more detailed rules at level 2 should be introduced to provide the supervised entities and their supervisors with more detailed and clearer guidance?**

- Yes
- No
- Don't know / no opinion / not relevant

**Question 6.10 Against the objective of establishing the single rulebook for financial services, how would you increase the degree of harmonisation of EU financial legislation?**

Please select as many answers as you like

- Across the board (e.g., via an Omnibus act which amends multiple sectoral acts at the same time)
- In a targeted manner through individual sectoral reviews

## Please explain how would you increase the degree of harmonisation of EU financial legislation in a targeted manner through individual sectoral reviews:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## Additional information

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Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

### Useful links

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2021-esas-review\\_en\)](https://ec.europa.eu/info/publications/finance-consultations-2021-esas-review_en)

[Consultation document \(https://ec.europa.eu/info/files/2021-esas-review-consultation-document\\_en\)](https://ec.europa.eu/info/files/2021-esas-review-consultation-document_en)

[More on the European system of financial supervision \(https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/european-system-financial-supervision\\_en\)](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/european-system-financial-supervision_en)

[Specific privacy statement \(https://ec.europa.eu/info/files/2021-esas-review-specific-privacy-statement\\_en\)](https://ec.europa.eu/info/files/2021-esas-review-specific-privacy-statement_en)

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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