

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

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.

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.

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

* Language of my contribution

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech

- ☐ Danish
- ☐ Dutch
- ☒ English
- ☐ Estonian
- ☐ Finnish
- ☐ French
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Irish
- ☐ Italian
- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
- ☐ Polish
- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak
- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☒ Company/business organisation
- ☐ Consumer organisation
- ☐ EU citizen
- ☐ Environmental organisation
- ☐ Non-EU citizen
- ☐ Non-governmental organisation (NGO)
- ☐ Public authority
- ☐ Trade union
- ☐ Other

* First name

Maximilian

* Surname

Lueck

* Email (this won't be published)

lueck@dai.de

* Are you a member of an ESA Stakeholder Group?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

* Organisation name

255 character(s) maximum

Deutsches Aktieninstitut e.V.

* Organisation size

- ☐ Micro (1 to 9 employees)
- ☒ Small (10 to 49 employees)
- ☐ Medium (50 to 249 employees)
- ☐ Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

38064081304-25

* Country of origin

Please add your country of origin, or that of your organisation.

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<input type="radio"/> Bahrain	<input type="radio"/> French Polynesia	<input type="radio"/> Micronesia	<input type="radio"/> South Africa
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● Bhutan	● Greenland	● Myanmar /Burma	● Svalbard and Jan Mayen
● Bolivia	● Grenada	● Namibia	● Sweden
● Bonaire Saint Eustatius and Saba	● Guadeloupe	● Nauru	● Switzerland
● Bosnia and Herzegovina	● Guam	● Nepal	● Syria
● Botswana	● Guatemala	● Netherlands	● Taiwan
● Bouvet Island	● Guernsey	● New Caledonia	● Tajikistan
● Brazil	● Guinea	● New Zealand	● Tanzania
● British Indian Ocean Territory	● Guinea-Bissau	● Nicaragua	● Thailand
● British Virgin Islands	● Guyana	● Niger	● The Gambia
● Brunei	● Haiti	● Nigeria	● Timor-Leste
● Bulgaria	● Heard Island and McDonald Islands	● Niue	● Togo
● Burkina Faso	● Honduras	● Norfolk Island	● Tokelau
● Burundi	● Hong Kong	● Northern Mariana Islands	● Tonga
● Cambodia	● Hungary	● North Korea	● Trinidad and Tobago
● Cameroon	● Iceland	● North Macedonia	● Tunisia
● Canada	● India	● Norway	● Turkey
● Cape Verde	● Indonesia	● Oman	● Turkmenistan
● Cayman Islands	● Iran	● Pakistan	● Turks and Caicos Islands
● Central African Republic	● Iraq	● Palau	● Tuvalu
● Chad	● Ireland	● Palestine	● Uganda
● Chile	● Isle of Man	● Panama	● Ukraine

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| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

* Field of activity or sector (if applicable):

- ☒ Accounting
- ☒ Auditing
- ☒ Banking
- ☐ Credit rating agencies

- ☐ Insurance
- ☐ Pension provision
- ☐ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- ☒ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Social entrepreneurship
- ☒ Other
- ☐ Not applicable

* Please specify your activity field(s) or sector(s):

Representation of capital markets oriented companies, especially non-financial companies

The Commission will publish all contributions to this consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, ‘business association’, ‘consumer association’, ‘EU citizen’) country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

☐ Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

☒ Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☒ I agree with the [personal data protection provisions](#)

ESA(s) you want to focus on

* About which ESA(s) will you be providing responses in this questionnaire?

Please select the ESA that you know best. You can select one, two or the three ESAs. In case you choose more than one ESA you will be asked, in certain questions, to provide answers for each ESA.

at least 1 choice(s)

- ☐ About the European Banking Authority (EBA)
- ☒ About the European Securities and Markets Authority (ESMA)
- ☐ About the European Insurance and Occupational Pensions Authority (EIOPA)

A. Questions for the assessment of the European Supervisory Authorities (ESAs) and the recent changes in their founding Regulations

Please click on next to respond to the questions.

General questions

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 type="radio"/>
Financial stability	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
The quality and consistency of supervision	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
Strengthening international supervisory coordination	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
Financial innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sustainable finance	<input type="radio"/>	<input type="radio"/>	<input 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.

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

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

Please explain what you consider to be the main obstacles for ESMA:

5000 character(s) maximum

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

Policy makers on EU level sometimes defer political questions to level 2 in an attempt to overcome political deadlocks encountered in the European Parliament or the Council. This can pose serious challenges for ESMA's work: ESMA needs to decide how to fill the political void which is not its remit as substantial questions need to be tackled on Level 1. The challenge is aggravated by the fact that in those instances, ESMA is often left with unclear legal terms used in the level 1 text. This is why we demand from policy makers to better assume their political mandate in order to better guide ESMA in its technical (not political (!)) work.

This is in particular important from the end user perspective: it is difficult for end users to plan ahead if crucial elements that are important for the implementation are only being provided at a later stage. Often in such cases, rules are then being adopted on level 2 that lack practical feasibility- also because the issues have not been thoroughly tackled on level 1, including feedback from market participants.

1. The supervisory convergence tasks of the ESAs

1.1 Common supervisory culture/supervisory convergence

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.

1. Appropriate balance between level 1 and level 2: To our understanding, the major issue is lack of appropriate balance between Level 1 and Level 2 legislation. Over the years, we have observed a significant increase of provisions being delegated to level 2 in many financial services dossiers. Often, these are crucial issues that in our view should be tackled at level 1. This is against better regulation principles and may create regulatory uncertainty for market participants, ESAs, National Competent Authorities. We also believe it questions a common supervisory culture in Europe.









































































It is important that EU co-legislators ensure that all crucial political issues are negotiated at level 1. A temptation of overcoming possible deadlocks at level 1 negotiations by deferring discussions on some key contentious matters by delegating them to level 2 should be avoided. Hence, the delegation of power must be clear, precise and detailed and may only aim to supplement certain non-substantive elements of the legislative acts.

2. Effective use of the “toolbox” provided under the ESAs regulation: In our opinion, ESAs do not lack powers to promote supervisory culture throughout Europe. We rather see room for improvement in implementation of the existing powers that are conferred to ESAs in this regard.

3. Governance and accountability: Governance and accountability should not be neglected. The past has shown that ESAs have on several occasions overstepped powers conferred to them, thereby not respecting the political will set out at level 1. This risks the institutional balance being impaired and democratic legitimacy being decreased. In addition, a stronger and more balanced stakeholder consultation and engagement is needed to ensure that market participants' views are better reflected in the final measures drafted or proposed by ESAs.

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 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 type="radio"/>
Contributing to developing high quality and uniform supervisory standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
Developing and reviewing the application of technical standards	<input type="radio"/>	<input type="radio"/>	<input 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 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 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 type="radio"/>
Conducting peer reviews between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

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 type="radio"/>
Providing supervisory statements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 checked="" 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.

Deutsches Aktieninstitut deems stakeholder engagement an important tool to promote supervisory convergence in Europe. Market participants are often active in several jurisdictions across Member States and can hence contribute in detecting inconsistencies and fragmentation across Europe. We thus appreciate the work of the various consultative working groups as well as the SMSG, where stakeholders are able to provide input. We stress that it remains crucial that the composition of the stakeholder groups needs to be balanced, giving a large variety of market participants the possibility to express their views in an equal and fair way. It has to also become more transparent on how their advice is taken into account by the ESMA decision making bodies.

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.

1. Supervisory handbook:

We do not see the advantages of the "Supervisory Handbook" with best practice proposals for the supervision of financial market participants within the EU.

Regular coordination between ESMA and the NCAs as well as the issuance of Q&As already today provide sufficient guidance for the supervision of financial market participants. Furthermore, a codified guideline leaves less flexibility for regulators to react to new or country-specific situations, as opposed to a coordination system. Hence, we deem its introduction as redundant to existing tools which are already at ESMA's disposal.

2. Peers Reviews:

For the peer review process to work more efficiently, we would appreciate if ESAs were obliged to solicit comments of stakeholders when drafting EU peer reviews in order to have other case-specific input than those coming from the reviewed authorities themselves.

3. Stress tests:

Deutsches Aktieninstitut deems conducting stress tests as being important to assess the resilience of market participants being under the direct supervision of ESMA. However, we are against extending Union-wide assessments to non-financial market participants not being under direct supervision.

Stress tests on financial stability are currently regulated in EU supervisory, capital markets and banking regulation, referring to market stability risks eg in case financial institutions face bankruptcy or illiquidity. Those situations can barely be compared with non-financial markets participants using capital markets on a regular basis. As we have expressed several times in the past, we do not believe those participants do pose any kind of significant risk for the stability of financial markets. This perception for example correctly resulted in reliefs and exemptions for non-financial companies in major regulations like EMIR and MiFID/MiFIR.

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 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 type="radio"/>
Promote converging supervisory practices among colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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.

In general, Deutsches Aktieninstitut deems that the new Q&A procedure has brought improvements as it allows for more transparency, especially as regards the conduct of public consultations.

At the same time, we would like to stress that also within the new Q&A procedure, Q&As need to be issued cautiously and on a principle based approach.

Last, we still find it problematic that the implementation periods for changes of the Q&As are not clearly defined. It is very challenging for market participants to apply the updates immediately, lacking other timing information. This should be remedied accordingly.

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

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.

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.

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.

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 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 type="radio"/>
Convergence in supervisory practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>
Further harmonisation of Union rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify what you mean by other:

5000 character(s) maximum

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

For the peer review process to work efficiently, we would appreciate if ESAs were obliged to solicit comments of stakeholders when drafting EU peer reviews in order to have other case-specific input than those coming from the reviewed authorities themselves.

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 type="radio"/>
Convergence in supervisory practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>
Further harmonisation of Union rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify what you mean by other:

5000 character(s) maximum

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

For the peer review process to work efficiently, we would appreciate if ESAs were obliged to solicit comments of stakeholders when drafting EU peer reviews in order to have other case-specific input than those coming from the reviewed authorities themselves.

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.

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 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 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 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 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 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 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.

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

Please explain your answer to question 1.3.3 for ESMA:

5000 character(s) maximum

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

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

Please specify which improvements could be made to the peer review process:

5000 character(s) maximum

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

We would appreciate if ESAs were obliged to solicit comments by stakeholders when drafting EU peer reviews in order to have useful comments other than those coming from the reviewed authorities themselves. The ESMA Principles on stakeholder engagement in peer reviews point into the right direction, but need to be strengthened and improved.

ESMA Principles leave too much discretion left to the NCAs regarding the participation of stakeholders to ESAs activities. It seems to us that the NCA can de facto veto the participation of stakeholders included in the last categories or 'mute' their voice, because the Board of Supervisors decides whether the intervention is needed; the NCA can always veto a stakeholder of category B; furthermore, the NCA prepare the list of stakeholders to be contacted; last, according to the ESMA Principles, the NCA should always be present whenever there are contact with a stakeholder.

1.4 Other tasks and powers

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.

We deem Art. 35 paragraph 6 that allows to directly request information from financial participants as being problematic: Deutsches Aktieninstitut considers it problematic to grant ESMA such far-reaching powers, as they are not proportionate: such a right is generally only granted to the competent authority having direct supervisory powers over the respective market participant. This even more as there exists the possibility to fine market participants for not following an ESAs' information request.

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.

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.

Question 1.4.5 What criteria would be the most relevant, in you 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 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 type="radio"/>
Appointment and dismissal of governing body	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adequacy of powers and ability to apply them	<input type="radio"/>	<input type="radio"/>	<input 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 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.

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.

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

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.

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 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 type="radio"/>
After 2019 ESAs' review	<input type="radio"/>	<input type="radio"/>	<input 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.

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 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.

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

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.

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 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 type="radio"/>
System-wide restraints on dividend payments, share buybacks and other pay-outs	<input 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 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.

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

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)

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 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 type="radio"/>
Adopt guidelines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adopt recommendations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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.

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 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

1.8. Tasks related to consumer protection and financial activities

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.

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reviewing market conduct	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
Contributing to a level playing field	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial literacy	<input type="radio"/>	<input type="radio"/>	<input 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 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.

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

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.

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.

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.

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.

1.9 International relations

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.

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.

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 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.

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 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 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.

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.

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

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.

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.

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

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 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 type="radio"/>
Call a vote at any time	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 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 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 type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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.

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

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 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 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 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 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

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 type="radio"/>	<input checked="" 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.

We strongly oppose changing the current ESAs funding model to a system fully funded by the NCAs or the private sector. Especially for non-financial companies participation in the financing of the EU supervisory authorities would not be appropriate. Supervision is the primary responsibility of the state and its costs shall be borne by revenues stemming from taxes.

Also, for non-financial companies, the mere circumstance that securities of non-financial companies are traded on capital markets does not turn non-financial companies into active market participants. They should, thus, not be required to contribute to the financing of the ESAs, whose task is first and foremost to regulate and supervise capital markets and those being considered as active market participants.

Non-financial companies are primarily affected by ESAs' activities when it comes to issuer-related measures. Such matters only form a minor part of the ESAs' activities and expenditure and, therefore, cannot be compared with those for really active market participants. Furthermore, the ESAs' activities

regarding non-financial companies clearly have the character of a public good which cannot be financed according to the causation principle. Consequently, it does not seem proportionate to burden the funding obligation on non-financial companies.

Moreover, requiring non-financial companies to contribute to the ESA budget would create an additional burden for non-financial companies who are already exposed to a significant amount of obligations under capital markets regulations. This contrasts with the European EU Commission's agenda on the establishment of a Capital Markets Union, which is supposed to make capital markets more attractive for companies throughout Europe in order to foster investment and growth.

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.

The supervisory expenditure by the ESAs is allocated partly from the EU budget and partly from national competent authorities (collecting indirect fees from supervised market participants in relation to ESMA's respective expenditure), so that the ESAs should have sufficient resources to perform their tasks. Since the ESAs started their operation, staff and financing needs have been adjusted depending on the growth in tasks and mandates until today.

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.

As explained above, we believe that the current funding regime with contributions from the EU budget and Member States should be retained, as it ensures efficient budgetary control by the EU 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.

Deutsches Aktieninstitut strongly believes that decisions should be based on the broadest possible input. We hence recommend greater industry involvement and adequate opportunities to comment on Level 2/Level 3. It should also be possible to receive feedback on why contributions have been discarded by ESMA decision making bodies.

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 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

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.

Effective stakeholder engagement is only possible if there is transparency in the ESAs regulatory process. This includes better transparency of the ESAs decision making process and of their stakeholder groups. At the EPTF, a lot of information is public, including dates of next meetings, agendas and minutes of the meetings. We very much applaud this approach and we believe that ESAs CWGs' governance should follow a similar approach.

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 type="radio"/>
EIOPA Occupational Pensions Stakeholder Group	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ESMA Securities and Markets Stakeholder Group	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
EBA Banking Stakeholder Group	<input type="radio"/>	<input 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.

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 type="radio"/>
Selection of members	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Term of office	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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.

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.

We would like to see a balanced representation of stakeholders: while in recent years' investors and financial services consumers have become overrepresented on ESMA stakeholder and CWGs, there is often a lack of representation of non-financial companies. If at all, only one representative of SMEs is allowed, not however any representative of non-financial companies. Thus, Deutsches Aktieninstitut asks for securing at least two seats on each CWG for representatives of non-financial companies (including one for SMEs). As regards the Securities and Markets Stakeholders Group and the CWG that are the most relevant for non-financial companies (notably corporate reporting and corporate finance), at least a quarter of the seats should be allocated to non-financial companies, reflecting their significant role in the issue discussed by the group.

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.

Deutsches Aktieninstitut believes that stakeholder and consultative Working Groups should be improved with regards to transparency and the balance of representation and governance:

- no minutes of the meetings are provided;
- members are not allowed to share information with their companies or organisations;
- no members appointed representing associations (in case of EPTF there are members appointed in a

personal capacity but also in a capacity of associations, even allowing to provide a substitute for different meetings);

- in case of a resignation of a member, no possibility to provide a replacement is provided and no new call for interest is being launched;
- balanced representation of stakeholders: while in recent years' investors and financial services consumers have become overrepresented on ESMA stakeholder and consultative WGs, there is often a lack of representation of non-financial companies. If at all, only one representative of SMEs is allowed, not however any representative of non-financial companies. Thus, Deutsches Aktieninstitut asks for securing at least one seat on stakeholder or expert groups for 2 representatives of non-financial companies (including one for SMEs).

Effective stakeholder engagement is only possible, if there is provided transparency in the ESAs regulatory process. Whilst there has been progress with regard to transparency, we still see room for improvement. This includes in particular better transparency of the ESAs decision making process. Transparency would e. g. be enhanced by publishing agenda and minutes of the meetings of the Board of Supervisors.

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 type="radio"/>
Functioning and time limits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
The composition of the BoA	<input type="radio"/>	<input type="radio"/>	<input 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 2.5.2 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
Working methods	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring cross-sectoral cooperation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring consistent approaches	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Decision making process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The legal structure (no legal personality)	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial Conglomerates	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Securitisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
European Forum of Financial Innovators	<input type="radio"/>	<input type="radio"/>	<input 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.

3. Direct supervisory powers

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trade Repositories under EMIR	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trade Repositories under SFTR	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Securitisation Repositories (STS)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trade Repositories under EMIR	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trade Repositories under SFTR	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Securitisation Repositories (STS)	<input type="radio"/>	<input type="radio"/>	<input 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 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.

Market participants operate within a wide range of different supervisors at national and EU level, following the principles of subsidiarity and proportionality – this system has proven to be effective and resilient over time, helping to manage the unprecedented market turmoil during the Covid-19 pandemic and ensures a sufficient level of supervisory convergence. We would also recall in this context that ESMA has just seen further supervisory mandates through the last ESA Review which will become effective in early 2022. We should give both ESMA and our markets time to thoroughly implement the new supervisory mandates and gain some experience with them before considering further changes.

















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

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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						
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						
The broader cooperation between the ESRB and the ESAs within the ESFS						
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors						

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

Please click on next to respond to the questions.

5. The ESAs work towards achieving a rulebook

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 revised Arts. 10 and 15 under the 2019 ESA Review seem to provide for an efficient process to develop technical standards. We welcome the provisions to conduct open public consultations, cost-benefit analysis and request advice by the SMSG. However, there have been instances where the initial timelines set out in Level 1 have been very challenging and Level 2 has not been finalized at the time of application of the

regulation. This is extremely challenging for industry as there is no clarity about how to implement measures. We would thus welcome procedures for conflicts of implementation timelines to ensure legal certainty for market participants, e.g. where deadlines set on Level 1 cannot be fully met, legislation needs to be postponed, Level 2 or Level 3 measures cannot be provided in time to allow for efficient and timely implementation and compliance by the industry.

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.

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.

We observe that a significant amount of consultations are being launched to give stakeholders the opportunity to comment. However, it is often unclear, how the input has- if at all- been taken into account. Explanations on the assessment and the decision making would make outcomes more comprehensible.

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.

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.

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

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.

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.

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.

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.

6. General questions on the single rulebook

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.

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

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.

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 6.5 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)

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.



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 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

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

Additional information

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

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[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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