

Targeted consultation on supervisory convergence and the single rulebook

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

Introduction

There has been considerable progress on both supervisory convergence and the single rulebook since the three [Europe an 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.

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 question

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
The financial system as a whole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Financial stability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>

The functioning of the internal market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
The quality and consistency of supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
The enforcement of EU rules on supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>

Strengthening international supervisory coordination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Consumer and investor protection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Financial innovation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Sustainable finance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>

Please explain your answer to question I on EBA:

5000 character(s) maximum

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

Note: The below answer covers the responses to question 1 for EBA, ESMA and EIOPA.

The three European Supervisory Authorities (ESAs) have played an important role in the development of the EU single financial/capital market: In line with ESAs' tasks defined by their respective regulations, ESAs have worked towards ensuring quality and consistency of supervision across the EU Member States, enforcing common EU rules on supervision, coordinating actions of national competent authorities (NCAs) on the whole spectrum of supervisory topics and tasks. By this, ESAs contribute to strengthening supervisory and regulatory convergence across the EU and cooperation between NCAs, preventing regulatory arbitrage and fostering competition in financial services, as well as protecting customer and investor interests across the EU. Together with the ESRB and NCAs, ESAs make an important contribution to monitoring and assessing systemic risks of the financial sector within their respective remits. Furthermore, ESAs constantly monitor, assess and incorporate in their work new market developments. This has become particularly essential in recent years with the advent of numerous financial innovations and mainstreaming of environmental, social and governance related factors into financial regulation and

supervision.

Based on these considerations, we recognise the impact of the three ESAs for the aspects mentioned in the table. However, there remain numerous aspects/areas of supervision and single rulebook in the EU, which require additional work to strengthen supervisory convergence and achieve a truly integrated capital market with resilient financial institutions, competitive conditions for the companies to conduct their business and raise capital and for retail consumers and investors to use financial services and invest. Please see the consultation sections below for Finance Watch's positions and proposals on the respective issues.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Financial stability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
The functioning of the internal market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
The quality and consistency of supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
The enforcement of EU rules on supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Strengthening international supervisory coordination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Consumer and investor protection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>

Financial innovation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Sustainable finance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>

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.

See the response to question 1 on EBA above.

Question I. EIOPA: How do you assess the impact of each EIOPA'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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Financial stability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
The functioning of the internal market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
The quality and consistency of supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
The enforcement of EU rules on supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>

Strengthening international supervisory	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
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coordination						
Consumer and investor protection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Financial innovation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sustainable finance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>

Please explain your answer to question I on EIOPA:

5000 character(s) maximum

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

See the response to question 1 on EBA above.

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

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

If you think that there are elements which should be added or removed from EBA's mandate, please provide a substantiated answer:

5000 character(s) maximum

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

Refer to the responses in Sections "1 The supervisory convergence tasks of the ESAs", "2 Direct supervisory powers" and "3 The role of the ESAs as regards systemic risk" that highlight the domains of the EBA's mandate and supervisory tasks, for the effective fulfillment of which enhancement of supervisory powers is necessary.

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

If you think that there are elements which should be added or removed from ESMA's mandate, please provide a substantiated answer:

5000 character(s) maximum

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

Refer to the responses in Sections “1 The supervisory convergence tasks of the ESAs”, “2 Direct supervisory powers” and “3 The role of the ESAs as regards systemic risk” that highlight the domains of the ESMA’s mandate and supervisory tasks, for the effective fulfillment of which enhancement of supervisory powers is necessary.

Question II. EIOPA: In your view, do EIOPA’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

If you think that there are elements which should be added or removed from EIOPA’s mandate, please provide a substantiated answer:

5000 character(s) maximum

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

Refer to the responses in Sections “1 The supervisory convergence tasks of the ESAs”, “2 Direct supervisory powers” and “3 The role of the ESAs as regards systemic risk” that highlight the domains of the EIOPA’s mandate and supervisory tasks, for the effective fulfillment of which enhancement of supervisory powers is necessary.

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

☒ Yes

☐ No

☐ Don’t know / no opinion / not relevant

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

5000 character(s) maximum

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

Refer to the responses in the sections below, which highlight specific impediments that ESAs face in delivering their mandates.

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.

Refer to the responses in the sections below, which highlight specific impediments that ESAs face in delivering their mandates.

Question III. EIOPA: In your view, does EIOPA 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 EIOPA:

5000 character(s) maximum

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

Refer to the responses in the sections below, which highlight specific impediments that ESAs face in delivering their mandates.

1. The supervisory convergence tasks of the ESAs

1.1 Common supervisory culture/supervisory convergence

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

☐ 1 - the less significant contribution

☐ 2

☒ 3

☐ 4

☐ 5 - the most significant contribution

☐ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

As stated in the response to section A. above, ESAs play a major role in promoting a common supervisory culture and consistent supervisory practices, which are the cornerstones of the single European capital market. However, as highlighted in the sections that follow below, ESAs do not yet have all necessary resources, enforcement powers/tools and in certain cases appropriate governance structure to achieve a truly consistent supervisory culture and practices across the Member States. This explains the score 3 above.

In the banking sector, in addition to EBA, the authorities of the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM) also contribute significantly to the common supervisory culture and practices.

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.

As stated in the response to section A. above, ESAs play a major role in promoting a common supervisory culture and consistent supervisory practices, which are the cornerstones of the single European capital market. However, as highlighted in the sections that follow below, ESAs do not yet have all necessary resources, enforcement powers/tools and in certain cases appropriate governance structure to achieve a truly consistent supervisory culture and practices across the Member States. This explains the score 3 above.

Question 1.1.1 EIOPA: To what extent does EIOPA 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 EIOPA 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.

As stated in the response to section A. above, ESAs play a major role in promoting a common supervisory culture and consistent supervisory practices, which are the cornerstones of the single European capital market. However, as highlighted in the sections that follow below, ESAs do not yet have all necessary resources, enforcement powers/tools and in certain cases appropriate governance structure to achieve a truly consistent supervisory culture and practices across the Member States. This explains the score 3 above.

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Providing opinions to competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Promoting bilateral and multilateral exchanges of information between competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Contributing to developing high quality and uniform supervisory standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

Contributing to developing high quality and uniform reporting standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Developing and reviewing the application of technical standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Contributing to the development of sectoral legislation by providing advice to the Commission	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Establishing (cross)sectoral training programmes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Producing reports relating to their field of activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

Conducting peer reviews between competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Determining new Union strategic supervisory priorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Establishing coordination groups	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Developing Union supervisory handbooks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Monitoring and assessing environmental, social and governance related risks	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adopting measures using emergency powers	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Investigating breaches of Union law	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Mediating between competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Monitoring the work of supervisory and resolution colleges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Publishing on their website information relating to their field of activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Monitoring market developments	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Monitoring liquidity risks in financial institutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Monitoring of own funds and eligible liabilities instruments issued by institutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Initiating and coordinating Union-wide stress tests of financial institutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Developing guidelines and recommendations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Developing Q&As	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Contributing to the establishment of a common Union financial data strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Providing supervisory statements	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other instruments and tools to promote supervisory convergence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

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.

Reports on best supervisory practices are an additional instrument referred to above are. These have proven useful in the past to promote consistent supervisory practices by providing information to the NCAs and exercising peer pressure.

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

5000 character(s) maximum

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

In the question 1.1.2 response we have marked those EBA's tasks with "most significant contribution", which we consider a) to be of major importance for promoting a common supervisory culture and consistent supervisory practices and b) to be deployed effectively to achieve their respective objectives. The common themes of such tasks are the following:

- They establish and highlight the common standards of the application of Union law and supervisory practices (such as development of guidelines, Q&As, supervisory handbooks, Union supervisory priorities, advice to the European Commission on sectoral legislation)
- They make the diverging practices visible, exercise peer pressure towards common and most effective supervisory outcomes (such as bilateral and multilateral exchanges of information, reports relating to EBA's fields of activities, best practice reports)

The tasks marked as "significant contribution" or below are either less powerful in their impact to achieve supervisory convergence or have not been utilized to their full potential due to certain limitations in ESAs enforcement powers, governance structure or resources, as is explained in the sections below. Specifically, the latter statement applies to the following tasks:

- Peer reviews - refer to section 1.3 for the detailed explanations
- Monitoring and assessing environmental, social and governance-related risks - refer to question 1.4.3
- Adopting measures using emergency powers - refer to section 1.6
- Monitoring the work of supervisory and resolution colleges - refer to question 1.1.3
- Investigating breaches of union law - refer to section 1.5.

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="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Promoting bilateral and multilateral exchanges of information between competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Contributing to developing high quality and uniform supervisory standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

Contributing to developing high quality and uniform reporting standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Developing and reviewing the application of technical standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Contributing to the development of sectoral legislation by providing advice to the Commission	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Establishing (cross)sectoral training programmes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Producing reports relating to their field of activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

Conducting peer reviews between competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Determining new Union strategic supervisory priorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Establishing coordination groups	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Developing Union supervisory handbooks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Monitoring and assessing environmental, social and governance related risks	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adopting measures using emergency powers	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Investigating breaches of Union law	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mediating between competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monitoring the work of supervisory and resolution colleges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Publishing on their website information relating to their field of activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Monitoring market developments	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Initiating and coordinating Union-wide stress tests of financial institutions	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Developing guidelines and recommendations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Developing Q&As	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Contributing to the establishment of a common Union financial data strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Providing supervisory statements	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other instruments and tools to promote supervisory convergence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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.

Same response applies as for EBA - Refer to the EBA section above.

Question 1.1.2 EIOPA: To what extent the following tasks undertaken by EIOPA 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="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Promoting bilateral and multilateral exchanges of information between competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Contributing to developing high quality and uniform supervisory standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

Contributing to developing high quality and uniform reporting standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Developing and reviewing the application of technical standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Contributing to the development of sectoral legislation by providing advice to the Commission	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Establishing (cross)sectoral training programmes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Producing reports relating to their field of activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

Conducting peer reviews between competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Determining new Union strategic supervisory priorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Establishing coordination groups	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Developing Union supervisory handbooks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Monitoring and assessing environmental, social and governance related risks	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adopting measures using emergency powers	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Investigating breaches of Union law	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mediating between competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Monitoring the work of supervisory and resolution colleges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Publishing on their website information relating to their field of activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Monitoring market developments	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Initiating and coordinating Union-wide stress tests of financial institutions	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Developing guidelines and recommendations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Developing Q&As	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Contributing to the establishment of a common Union financial data strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Providing supervisory statements	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other instruments and tools to promote supervisory convergence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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

5000 character(s) maximum

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

Same response applies as for EBA - Refer to the EBA section above.

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

Please rate EBA's contribution to the objectives below:

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

Promote converging supervisory practices among colleges	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Please explain your reasoning when answering question 1.1.3 on EBA:

5000 character(s) maximum

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

Note that the answer applies to three ESAs.

Supervisory colleges are undoubtedly a useful tool to promote communication, exchange and cooperation between NCAs and, by this, supervisory convergence. However, the ESAs' role within supervisory colleges covers monitoring and assessment, which are rather "soft" tools not supported by "hard" enforcement powers. For example, the latest available EBA Report on Supervisory Colleges in 2018, identified a number of issues with respect to the quality of college deliverables and transparency of the college procedural documentation such as meeting minutes publication. Further, effectiveness of ESAs' tasks within the colleges is in many cases hampered by insufficient powers to enforce consistent supervisory outcomes, which in turn are to a large extent due to the current governance structure. The latter is characterized by the incentives and decision-making process and incentives structure that are oriented towards national rather than EU-wide interest, see Section 2 for the details on this.

In the context of the ESAs governance reform, we support the ESAs' role to promote and facilitate the functioning of supervisory colleges.

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="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Foster consistency in the application of Union law among colleges	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
---	--------------------------	--------------------------	---	--------------------------	--------------------------	--------------------------

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

Refer to the response above in relation to EBA.

Question 1.1.3 EIOPA: One of the roles of EIOPA 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 EIOPA'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="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Foster consistency in the application of Union law among colleges	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
---	--------------------------	--------------------------	---	--------------------------	--------------------------	--------------------------

Promote converging supervisory practices among colleges	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
---	--------------------------	--------------------------	---	--------------------------	--------------------------	--------------------------

Please explain your reasoning when answering question 1.1.3 on EIOPA:

5000 character(s) maximum

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

Refer to the response above in relation to EBA.

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.

Not responding to this question.

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

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain your answer to question 1.1.5:

5000 character(s) maximum

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

Timeliness of responses publication has been raised as a concern by multiple stakeholders in the process, in particular the users of the Q&A. For example, the EBA's report "Feedback on the review of the use, usefulness and implementation of the EBA Single Rulebook Q&A" published in August 2019 highlighted that the timeliness of responses should be improved, which is crucial for the cases where the answer to be given by the ESA has an impact on the actions of the stakeholder. Another example is the case of the Q&A on the Market Abuse Regulation (MAR), which were significantly delayed and did not cover the whole spectrum of questions the industry stakeholders and NCAs had in regards of the Level 1 text, which contained a lot of aspects requiring interpretation. After the Q&A process changes introduced in 2019, the final/full Q&A are currently pending to be published by the Commission.

Based on the above, we suggest the efforts should be made to streamline the process. In the above mentioned report, EBA made some suggestions such as reducing the number of review stages for responses; prioritising important and urgent questions using a fast-track process; providing updates on the revised timing where longer review periods are needed; implementing a quicker process for answering follow-up questions about published Q&A.

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.

N/A

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.

Not responding to this question.

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

5000 character(s) maximum

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

Not responding to this question.

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.

Not responding to this question.

Question 1.2.3 EIOPA: 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.

Not responding to this question.

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 distinguish between the situation before the 2019 review and afterwards.

Situation before the 2019 ESAs review for EBA:

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

Convergence in the enforcement of provisions adopted in the implementation of Union law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Further harmonisation of Union rules	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

Situation after the 2019 ESAs review for EBA:

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

Convergence in the enforcement of provisions adopted in the implementation of Union law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Further harmonisation of Union rules	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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

5000 character(s) maximum

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

Note: the answer applies/consistent for three ESAs.

We recognise the importance of peer reviews to strengthen consistency of supervisory outcomes, facilitate the identification of supervisory best practices across competent authorities, as well as to achieve convergence in application of the Union law and the corresponding technical provisions. This consideration is reflected in the "significant contribution" marks above. However, significant obstacles remain in the governance and effective application of the peer review tool to achieve the desired supervisory convergence outcomes - this is highlighted in the responses to questions 1.3.2 and 1.3.4 below. With respect to the differentiation between the situation before and after the 2019 ESAs review, we do not take a stance given that the provisions of the amending Regulation (EU) 2019/2175 went into force on 1 January 2020 and there have been very few peer reviews conducted since then until the present period.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

Convergence in supervisory practices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
More wide spread application of best practices developed by other competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

Convergence in the enforcement of provisions adopted in the implementation of Union law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Further harmonisation of Union rules	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Convergence in supervisory practices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
More wide spread application of best practices developed by other competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Convergence in the enforcement of provisions adopted in the implementation of Union law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Further harmonisation of Union rules	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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.

Refer to the response in the EBA section above.

Situation before the 2019 ESAs review for EIOPA:

	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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Convergence in supervisory practices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
More wide spread application of best practices developed by other competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

Convergence in the enforcement of provisions adopted in the implementati on of Union law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Further harmonisation of Union rules	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

Situation after the 2019 ESAs review for EIOPA:

	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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Convergence in supervisory practices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
More wide spread application of best practices developed by other competent authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Convergence in the enforcement of provisions adopted in the implementati on of Union law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Further harmonisation of Union rules	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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

5000 character(s) maximum

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

Refer to the response in the EBA section above.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
The peer review report is now adopted by written procedure on non-objection basis by the BoS.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Transparency provisions: if the PRC main findings differ from those published in the report, dissenting views should be transmitted to the three	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

European Institutions.						
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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Mandatory follow up to peer reviews within two years after the adoption of the peer review report.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
The possibility to carry out additional peer reviews in case of urgency or unforeseen events (fast track peer reviews).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

The Management Board is consulted in order to maintain consistency with other peer reviews reports and to ensure a level playing field.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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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.

We consider the proposals to be meaningful with the view of increasing the effectiveness of peer reviews and enforcement of their outcomes, in particular the provisions that i) peer reviews are now chaired by ESA staff, ii) recommendations rather than guidelines are issued on the results of reviews under the application of “comply or explain” principle and iii) follow-up peer reviews will be performed 2 years after the original review. However, we are not in the position to assess the actual impact of the changes given that these went into force on 1 January 2020 and there have been very few peer reviews conducted since then until the present period.

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

Note that the answer applies to the three ESAs.

The mandatory peer reviews should be executed based on Article 30 of the ESAs Regulations “Peer Reviews of Competent Authorities”. Rather than defining particular legislative acts to incorporate mandatory peer review obligation, we support peer reviews in any areas of particular risk identified by ESAs on a continuous basis as a result of their risk assessment (i.e. potentially more peer reviews in general). The sectoral topics/areas for the mandatory reviews would be then defined in the ESAs annual and multiannual working program based on the risk assessments and monitoring of market developments. Also, as highlighted in our response to question 1.3.4 below, governance of the peer review process needs to be improved to ensure its effectiveness.

An addition, where deemed appropriate from the sectoral or product perspective, mandatory peer reviews could be introduced via the sector- or product specific legislation via amendments to the articles which defined the powers of supervisory authorities and/or cooperation within the European System for financial supervision.

Please explain your answer to question 1.3.3 for EBA:

5000 character(s) maximum

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

Note: the answer applies to the three ESAs.

Peer reviews are a well-suited tool to achieve supervisory convergence and level playing within the CMU, as these highlight the differences in the supervisory practices and outcomes and in the implementation of the Union law and related provisions. In this sense peer reviews are comparable to the commonly recognized supervisory practices exercised over the financial institutions. At the same time the number of peer reviews conducted by ESAs/ reports published is very small compared to the large number of regulatory and supervisory topics, which fall under ESAs' remit: Per annual reports 2019, EBA delivered 1 peer review; ESMA - 2 (the report on one of these was still pending); EIOPA - 2, both of which were pending the final results and report (EIOPA mentioned follow up being performed on 3 peer reviews from the previous years). Developments within the cross-sectoral topics in the financial industry pose an additional challenge to NCAs, as there is no past experience in dealing with certain topics and/or there is often a lag in the regulation and supervisory guidance. Examples of such developments/trends include digital finance and distributed ledger technologies, fintech, outsourcing and delegation. Under these circumstances peer reviews are particularly warranted to ensure common understanding of risks, consistent treatment by the NCAs and to prevent build-up of risks in certain sectors and countries.

The enforcement aspects are of particular importance in the context of the supervisory convergence and should be included in the mandatory peer reviews as a matter of priority. In particular, this relates to the application of sanctions, as the current national sanctions regimes lack harmonization with respect to the procedural rules, disclosure and types of sanctions and amounts of pecuniary sanctions being imposed by NCAs. The great variability in the sanctions imposed by NCAs has been evidenced in numerous ESAs reports such as:

- ESMA List of administrative measures and sanctions applicable in Member States to infringements of Regulation on short selling and credit default swaps (dated January 2021)
- ESMA Report "Penalties and measures imposed under the UCITS Directive in 2019"
- ESMA Report "Administrative and criminal sanctions and other administrative measures imposed under the Market Abuse Regulation in 2019"
- EIOPA "First annual report on administrative sanctions and other measures under the Insurance Distribution Directive" (dated December 2020)

ESMA's report "Technical Advice to the Commission on the application of administrative and criminal) sanctions under MiFID II/MiFIR" from March 2021 identified a number of issues in regards of consistency of sanctions applications by different NCAs, among these the lack of procedural rules harmonisation, divergence in the sanctions reporting requirements, NCA cooperation with national judicial authorities.

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

5000 character(s) maximum

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

Refer to the response in the EBA section above.

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.

Refer to the response in the EBA section above.

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

Refer to the response in the EBA section above.

Please explain your answer to question 1.3.3 for EIOPA:

5000 character(s) maximum

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

Refer to the response in the EBA section above.

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 suggest to improve the quantity and quality of peer review outcomes, as follows:

- The governance around peer reviews should be improved in order to eliminate the existing conflicts of interest within the review teams and in the broader decision-making process of ESAs. Refer to the detailed explanation of the rationale below.
- Peer reviews as a supervisory convergence tool of ESAs should be used more intensively/frequently to cover a greater number of areas. Refer to question 1.3.3 highlighting the necessity of additional mandatory reviews.

Please explain your answer to question 1.3.4:

5000 character(s) maximum

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

Since the peer review teams are composed of the NCA representatives and the final peer review report is approved by the Board of Supervisors (BoS) of the respective ESA, peer reviews suffer from the same problems as ESAs' governance overall (refer to Section 2 on governance): There is an inherent conflict between the national interests and the European mandate of the peer review teams. The same relates to the NCA heads who are the members of the ESAs BoS. These conflicts of interest hinder the effectiveness of peer reviews and undermine the impact and value added of their results in achieving greater convergence of supervisory practices and convergence in application of the EU law.

In order to resolve this problem, we suggest making peer reviews more independent, which should be done in addition to further suggested changes to the governance of ESAs - refer to Section 2 responses. Greater independence of peer reviews can be achieved by significantly increasing the number of independent ESA-employed staff/experts to conduct such reviews and reducing the number of NCA representatives in peer review teams to a maximum of 50%. This will also allow ESAs to grow their own expertise in different sectoral areas, contributing to the quality of supervisory outcomes and strengthening the position of ESAs as pan-European supervisors going forward. The latter aspect is of particular importance for building a truly single capital market union in the EU.

We also emphasize the importance of the follow-up process on peer review results in the context of the new ESAs Regulations provision in force since January 2020, which granted the status of "recommendations" rather than "guidelines" to the peer review results so that NCAs have to follow the principle "comply or explain" when implementing the recommendations.

Importantly, the problem of incentives and their impact on peer review outcomes had already been identified in the ESAs review 2017, in which the Commission has proposed that the peer reviews would "no longer be "peer" reviews but "independent" reviews under the responsibility of the new Executive Board". Our proposal, as explained above, echoes the Commission's proposal from 2019.

1.4 Other tasks and powers

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

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

Note: the answer applies for three ESAs.

The current collection of information regime as per Article 35 of the ESAs Regulation is not effective as it is not supported by the actual enforcement powers for ESAs to be able to get access to the necessary information in cases where NCAs and/or financial institutions do not cooperate. This problem had already been identified in the ESAs review 2017 and the Commission's legislative proposal included new provisions (Articles 35 to 35h in SWD(2017)308 and SWD(2017)309 to strengthen the effective enforcement of the ESA's right to collect information. The 2017 proposal summarized the amendments as follows: "The ESAs will have at their disposal the necessary means to ensure compliance with a request or decision to submit information. The amendments entrust the ESAs with the power to impose fines and penalty payments of an administrative nature, under the review by the Court of Justice, and subject to the right for the entity to be heard, when a financial institution and/or financial market participant fail to provide adequate information."

We strongly support such increased enforcement powers to collect information, as information access is a minimum basis for ESAs to carry out their tasks effectively. The latter is, in turn, a precondition for the achievement of objectives of internal market harmonisation, for which ESAs were created following the provisions of Article 114 of Treaty on the Functioning of the European Union (TFEU).

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.

Refer to the response in the EBA section above.

Question 1.4.1 EIOPA: 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 EIOPA, please explain:

5000 character(s) maximum

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

Refer to the response in the EBA section above.

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.

The Union strategic supervisory priorities are an important part of the new supervisory convergence toolkit to address the financial sector risks that require specific attention and coordinated supervisory action in the EU. Given that ESAs defined such priorities for the first time in 2021 following the review of the ESAs Regulations, we emphasize the importance of the follow-up process on these supervisory activities by the NCAs - review of supervisory actions and results, issues identified by the NCAs and any common actions/recommendations to be defined and implemented. Such follow-up actions should be made mandatory and executed consistently to ensure the actual effectiveness of the priorities as a supervision tool.

Further, we recommend amending Article 29a of the ESAs Regulations to provide for a possibility of more than two supervisory priorities being defined by ESAs (current definition “up to two priorities”), as well as make the annual definition of priorities mandatory (compared to the current frequency of “at least every three years”). The proposed changes will provide a possibility for ESAs to prioritize supervisory actions in the areas where attention is most needed based on the industry developments without having to unreasonably limit the number of relevant topics. Annual supervisory priorities will enhance the consistency of application and thus the actual effectiveness of this tool in achieving supervisory convergence.

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

If you think there is the need to amend or add a tool to the toolkit of EBA, please specify which one(s):

5000 character(s) maximum

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

Note: The answer below covers three ESAs.

The ESAs toolkit should be extended to include the following:

1) Tool(s) to achieve a greater convergence in mandates, supervisory independence, enforcement rights, access to information rights, application of sanctions and financial resources of the NCAs in the view of the major role they play in the European System of Financial Supervision (refer to question 1.4.4 for additional details). We suggest implementing such tools via **ESAs minimum standards for the mandates, powers, information rights and resources**. Such standards should be established after conducting a review/taking stock of existing powers, mandates and resources in order to identify the biggest divergences, obstacles preventing ESAs from effectively executing their mandates, as well as issues which have led to major materialization of risks in the financial sector (such as accounting fraud, financial market manipulations etc.)

The recent Wirecard case brought to light gaps in national supervisory coverage, lack of powers of national supervisors/clarity when to use certain powers (such as investigation powers), existing conflicts of interest within NCA (such as trading of securities issued by the supervised entities by the NCA employees). The *Joint Committee report on cross-border supervision of retail financial services* (July 2019) included another example of differing NCA responsibilities, namely with respect to the host NCAs supervision of conduct of business rules.

With respect to NCA resources, numerous ESAs peer review reports include indications that the root cause for some of the identified supervisory convergence issues are insufficient resources. In particular, in relation to the Wirecard case, the Compliance table on the ESMA Guidelines on the enforcement of financial information shows that many cases of non-compliance reported by the NCAs are due to their lack of resources. The Wirecard specific example confirmed the necessity to make NCA resources commensurate with their mandates and tasks.

2) Coordination/cooperation tools to achieve **stronger convergence in supervisory approach and EU law application in the cross-sectoral/transversal areas listed below**. For this, we suggest strengthening **the role and powers of the Joint Committee (JC) of ESAs** by including the mentioned areas among its tasks. Dedicated standing sub-committees can be established within the JC and granted resources and effective enforcement powers. It is important to note that strengthening of the JC role needs to be accompanied by streamlining of its governance in order to make the coordination and decision-making process more efficient.

The need for stronger coordination in the mentioned areas is supported by the following:

- **Sustainable finance:** Parallel work on the recent sustainable finance initiatives by three ESAs has in certain instances resulted in inconsistent handling of the same issues across different sectors. For example, this was the case for ESAs' advice to the European Commission under Article 8 of the Taxonomy Regulation. ESAs did not sufficiently align their technical work, timelines and procedures to provide such advice (open consultation by ESMA and EIOPA vs EBA consulting industry stakeholders only). This resulted in inconsistent metrics for disclosing Taxonomy alignment published by three ESAs, whereas consistency and comparability of information is crucial - both for investors and other information users as well as reporting companies which combine information from different entities to prepare their disclosures. Finance Watch has already pointed this out in its response to the EIOPA consultation on the draft advice to the European Commission under Article 8 of the Taxonomy Regulation.
- **Technological innovation and digital finance:** refer to the response to question 1.4.9
- **Outsourcing and delegation arrangements:** The current supervisory practices of outsourcing, delegation and risks transfer from one licensed entity to another entity vary across Member States, which creates a risk of regulatory arbitrage and financial stability implications across the EU. The Wirecard case demonstrated the complexity of outsourcing relationships in practice and highlighted the importance of the uniform supervisory approach across sectors (not only in banking, as it is mostly the case now) to the definition of outsourcing, assessment of materiality and criticality, affiliates, subcontracting and outsourcing on a cross-border basis
- **Supervision of mixed holdings:** An effective collaboration amongst ESAs is needed to get a proper understanding of the complex groups and the applicable regulations to avoid such groups using regulatory arbitrage/loopholes to avoid stricter requirements. Fragmented supervision increased the risk of misusing financial systems for fraudulent activity, as was the case for the Wirecard Group.

For the comments **on consumer and investor protection**, refer to the responses in Section 1.8.

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

If you think there is the need to amend or add a tool to the toolkit of ESMA, please specify which one(s):

5000 character(s) maximum

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

In addition to the comments made in the EBA section above, ESMA's tools need to be strengthened in relation to **market abuse investigations**, in particular in the cases where cross-border activities are involved.

The recent Wirecard case demonstrated that improvements on several crucial aspects are required, specifically:

- the restriction of trading in financial instruments by NCA staff
- effective scrutiny of allegations of market manipulation
- publication of information about enforcement.

For the implementation of such tools we suggest to resort to the Commission's legislative proposal made in the ESAs review 2017, which had already included provisions to grant ESMA an enhanced coordination role in recommending the competent authorities to initiate investigations and facilitating the exchange of information relevant for those investigations in cases of activity with significant cross-border effects that threatens the orderly functioning and integrity of financial markets or the financial stability.

Question 1.4.3 EIOPA: 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

If you think there is the need to amend or add a tool to the toolkit of EIOPA, please specify which one(s):

5000 character(s) maximum

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

Refer to the response in the EBA section above.

In addition, refer to the responses to questions 3.3 and 3.4 with regards to strengthening of the EIOPA's role to ensure supervisory convergence on internal models.

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.

We strongly support the significance of the new ESAs task in monitoring and fostering independence of National Competent Authorities (NCAs). NCAs play a crucial role in achieving the consistency of the Union law application across the EU, as they remain primarily responsible for the day-to-day supervisory practices and implementation of the EU law. This is why it is important to make sure that NCAs are sufficiently independent from political influence, have the necessary resources and appropriate governance structures to effectively fulfil the tasks assigned to them by the European and national legislators.

However, we consider the current implementation and enforcement tools given to ESAs to fulfil the above task as insufficient to achieve the objective of making NCA practices and outcomes effective and convergent: As per the current legislation (Article 30 of the ESAs Regulations), ESAs assess NCA independence within peer reviews, which are not properly designed and governed, as was explained in responses in Section 1.3 above. Further, we suggest introducing additional tools to achieve a greater convergence in NCA mandates, their supervisory independence, effective enforcement rights, access to information rights and financial resources - as was explained in our response to question 1.4.3 above.

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

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

Please specify to what other criterion/a you refer:

5000 character(s) maximum

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

N/A

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.

We consider all of the above criteria to be relevant for the effective fulfilment of NCA mandates.

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

5000 character(s) maximum

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

Refer to our responses on specific questions throughout this consultation, where we emphasize and provide explanations/substantiation for the main obstacles, notably ESAs' governance, resources, enforcement powers, access to information, differences in the practices and mandates and powers of the NCAs.

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.

Refer to our response in the EBA Section.

Question 1.4.6 EIOPA: 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.

Refer to our response in the EBA Section.

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

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

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

Technological innovation / digital finance increasingly erase distinctions between sector-specific financial products and financial service provider business models (e.g. BigTech, FinTech), pose challenges in the domains of data privacy, AML & CTF and big data (such as biases in input data and customer profiling). There is a need for stronger coordination between ESAs, as well as NCAs and ESAs, in order to ensure that i) new/innovative digital financial service providers and new digital financial products are handled consistently across the three sectors under each of the ESAs respective responsibility; ii) digital products and services are incorporated into the existing rules as much as possible in accordance with the principle "same product/service - same risk - same rules". This will help prevent regulatory arbitrage, build-up of risks in certain sectors and ensure consumer and investor protection standards are adhered too. So far, sectoral legislation has not been adjusted to incorporate technological innovation.

We see a need for more cooperation between ESAs and NCAs and ESAs on these topics. As a potential solution we recommend that the tasks of the Joint Committee of ESAs per Article 54 of the ESAs Regulations be expanded to include specifically technological innovation in finance and digital finance - refer to the response to question 1.4.3 for details.

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.

Our response reflects two major aspects in regards of the effectiveness of the ESAs' supervisory convergence tools:

- 1) We consider the tools as such to be useful and well-designed to foster supervisory convergence. As already outlined in our response to question 1.1.2, we support the widest possible usage of the tools, which promote communication and cooperation between NCAs, make divergent practices visible and put peer pressure. Applied tools such as real case discussions have also proven to be most useful and should be increasingly used in the future as well.
- 2) On the other hand, lack of enforcement powers and deficiencies in ESAs governance hamper the actual effectiveness of the convergence tools - refer to our responses in Sections 1.10 and 2 correspondingly.

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.

The breach of union law procedure has not proven to be effective in achieving its objectives in practice. The main reason for this is the conflict of interest inherent in the ESAs' governance, whereby crucial decisions are taken by the Board of Supervisors composed of the NCAs' governors. Thus, decision-making often promotes national interest rather than serves broader EU objectives. Further, the decisions are often delayed or there is an inaction bias in the execution of the breach of EU law procedures, as well as binding mediation and initiation of peer reviews. In addition, for ESAs to be able to substantiate and effectively investigate breaches of Union law, it is absolutely essential that ESAs have access to all relevant information. This turns out problematic in practice, as ESAs do not yet have sufficient powers to enforce their access to information rights, as was outlined in our response to question 1.4.1.

The ESAs latest annual reports (for the year 2019) confirm the problems outlined above: There has been a very low number of ongoing investigations relating to the breach of union law and zero cases of a breach of Union law recommendations. The EIOPA Annual Report did not even include any information regarding potential Article 17 application. In regards of Article 19 procedure, only EBA reported on one case of binding meditation having been performed in 2019, "in which the problem was solved by the amicable agreement of the parties involved during the conciliation stage".

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

adequate?

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

Please explain your answer to question 1.5.2 for EBA:

5000 character(s) maximum

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

N/A

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="checkbox"/>	x	<input type="checkbox"/>
After 2019 ESAs' review	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

Refer to the response to question 1.5.1.
No statement is made as to the adequacy of procedure after the 2019 ESAs' review as the new provisions have entered into force in January 2020, which does not allow for sufficient time to make conclusions.

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

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

Please explain your answer to question 1.5.2 for EIOPA:

5000 character(s) maximum

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

N/A

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.

N/A

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

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

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

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

Not responding to this question.

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.

Not responding to this question.

Question 1.5.6 EIOPA: 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.

Not responding to this question.

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

Please explain how these processes could be improved:

5000 character(s) maximum

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

Not responding to this question.

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.

Not responding to this question.

Question 1.5.7 EIOPA: Why do you think the use of these EIOPA'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.

Not responding to this question.

1.6 Emergency situations and response to COVID-19 crisis

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

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

Please explain your answer to question 1.6.1 for EBA:

5000 character(s) maximum

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

In our earlier publications, Finance Watch has expressed support for the measures taken in response to the COVID-19 crisis by banking regulators (not limited to EBA). These were the measures to address the two important priorities: 1) to ensure that credit is extended to enterprises during these extremely challenging times, and 2) to preserve financial stability.

In particular, we are supportive of the EBA Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis. These have provided the necessary flexibility and certainty on the regulatory framework for the banks, on the one hand, and for the real economy hit by the lock-down measures, on the other hand.

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.

While we recognize the importance of the coordination role that ESMA has played during the COVID-19 pandemic, ESMA did not act in one situation where a uniform EU-wide action was most necessary, namely in the time of increased market volatility when some NCAs imposed short-selling bans. ESMA did not follow by imposing a Union-wide short selling ban. Given the significant degree of capital market integration in the EU, the lack of uniform application of rules had detrimental consequences for participants who are active in many markets or active in products – such as benchmark indices – with constituents in many regulatory jurisdictions. Equally, non-uniform application to participants located in different countries opened-up possibilities for regulatory arbitrage. Refer to our response to question 1.6.5 for the proposed amendments to Article 18 of the ESAs Regulations on “actions in emergency situations” procedure.

Question 1.6.1 EIOPA: Please rate the impact of EIOPA'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 EIOPA:

5000 character(s) maximum

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

The impact of the EIOPA's response was undermined by the lack of enforcement powers. EIOPA and other NCAs rightly issued statements in March/April 2020 asking insurers to temporarily suspend dividend distributions and postpone variable remuneration policies. However, not all insurance companies complied with these appeals. Based on this experience and as previously highlighted in our response to the Commission's consultation on Solvency II, it is necessary to give EIOPA and NCAs the power under Solvency II to enforce their measures. EIOPA should be given a mandate and powers to closely coordinate and oversee the application of such measures to ensure consistency across the Union and contain potential systemic risks caused especially by insurers operating cross-border.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Impact of large scale downgrades of corporate bonds on markets and entities across the financial system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

System-wide restraints on dividend payments, share buybacks and other pay-outs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
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Liquidity risks arising from margin calls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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Please explain your answer to question 1.6.2:

5000 character(s) maximum

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

We positively assess the actions of EBA and EIOPA in response to the ESRB recommendation on dividends: Both ESAs urged the supervised entities in their respective sector to follow conservative distribution policies and temporarily suspend all discretionary dividend distributions and share buy backs respectively. These measures were coherent with the necessity not to diminish the capital base of the financial institutions in order to ensure their stability and ability to continue to perform their functions in the economy.

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain your answer to question 1.6.3 for EBA:

5000 character(s) maximum

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

Refer to the response to question 1.6.1 above.

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

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please give examples of situations where the coordinating activities carried out by ESMA did not successfully contribute to address the COVID-19 challenges:

5000 character(s) maximum

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

Refer to the response to question 1.6.1 above.

Question 1.6.3 EIOPA: Do you think the coordinating activities carried out by EIOPA 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 EBA: Do you think that EBA has always acted effectively, where needed, in the context of the COVID-19 crisis?

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

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

Please give concrete examples where you consider that ESMA should have taken relevant action:

5000 character(s) maximum

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

Refer to the response to question 1.6.1 above.

Question 1.6.4 EIOPA: Do you think that EIOPA 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

Please suggest potential changes to Article 18.2 of the ESAs Regulation:

5000 character(s) maximum

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

We do not consider Article 18.2 to be fit for purpose based on the fact that the current procedure for declaring an emergency situation is overly bureaucratic and significantly restricts ESAs possibility to

react in emergency situations. Per Article 18.2, the decision determining the existence of an emergency situation is adopted by the Council (of the EU) following a request by the Authority, the Commission or the ESRB, which effectively means that ESAs do not have any power and discretion to act until the Council takes a decision, which requires time and political will.

To rectify this, we propose the following amendment to Article 18.2 of the ESAs regulation: ESAs should be empowered to determine the existence of an emergency situation, and submit their decision for the consideration of the Council. The decision would only be revoked by the Council in case of disagreement.

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.

Refer to the response to question 1.6.5 above.

1.7 Coordination function (Art 31 ESAs' Regulations)

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

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

If you identify areas for improvement for the coordination role of EBA, please explain:

5000 character(s) maximum

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

Note that the answer applies to three ESAs.

We consider the coordination roles of ESAs as partially effective with the main obstacles being lack of enforcement powers, limited access to information and decision-making/governance structures of ESAs. Refer to our responses in Sections 1.4, 1.6 and 2 for details and examples to support the statement.

In particular, coordination between ESAs and NCAs, as well as between NCAs, should be enhanced in the areas related to cross-border provision of financial products and services such as the cases where financial service providers / products and services are authorised / receive an EU passport in one country and operate / are distributed to a large extend in a different country. Current lack of cooperation and insufficient exchange of information, as well as differing national interpretations of EU rules are detrimental to the quality of financial products and services and result in unlawful practices. There are numerous examples, which support this statement:

- ESA Joint Committee's Report on cross-border supervision of retail financial services (July 2019) revealed that i) the distribution of responsibilities between home and host NCAs is not always clear and ii) notifications and exchange of information between home and host NCAs need to be improved. In this report ESAs developed high-level principles of cooperation and best practices, which should be taken into account.
- Recent study of retail customer complaints published by the French supervisor (AMF) revealed that more than 60% of all claims and losses reported concerned entities based in one jurisdiction, which is a clear evidence of jurisdictional differences in interpreting the EU rules (AMF report "Analysis of complaints in 2019-2020 by French retail investors to the AMF

public relations centre concerning European financial institutions operating on a freedom to provide services basis, March 2021).

In addition for EBA, stronger coordination role needs to be played by the EBA in enforcing anti-money laundering and combating the financing of terrorism (AML & CFT) actions and sanctions. Deficiencies in this area have manifested themselves in the major money-laundering cases in recent years.

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

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

If you identify areas for improvement for the coordination role of ESMA, please explain:

5000 character(s) maximum

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

Refer to the response in the EBA Section above.

Also refer to our response to question 1.4.3 in relation to ESMA's coordination function on market abuse issues.

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

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

If you identify areas for improvement for the coordination role of EIOPA, please explain:

5000 character(s) maximum

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

Refer to the response in the EBA Section above.

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

Note that the answer applies to three ESAs.

We see a clear need for stronger ESAs' powers to develop data requirements and collect information (as already indicated in our response to question 1.4.1), as well as share such information with NCAs. Access to information is a necessary precondition for timely and highly qualitative supervisory decisions and actions, which are executed to manage risks and guarantee stability of financial institutions. In the current situation ESAs are highly dependent on the NCAs' willingness to cooperate, as they lack effective enforcement powers to gain access to information (again see question 1.4.1). This hampers consistent application of Union law, as well as significantly complicates monitoring by ESAs of potential risks build-ups in the financial system across the EU.

In order to resolve the above problems, ESAs enforcement powers with respect to information collection should be strengthened, as indicated in our response to question 1.4.1. Further, ESAs should be granted access rights to any supervisory and reporting information obtained by NCAs. In this context we strongly support the initiatives aimed at integrating supervisory information at the EU/ESAs level such as the European Single Access Point (ESAP) and Consolidated Tape (CT).

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

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

5000 character(s) maximum

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

Refer to the response in the EBA Section above.

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

Refer to the response in the EBA Section above.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Adopt guidelines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Adopt recommendation s	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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

Please explain why you do not think ESMA's new coordination function is an effective tool?

5000 character(s) maximum

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

We support ESMA's enhanced role in combating market abuse; however the actual enforcement powers of ESMA, incl. powers to obtain information, have proven to be insufficient in this respect. In addition, given the already existing resource constraints (refer to Section 2), the new coordination role requires corresponding financial and personnel resources, incl. build-up of the necessary expertise within ESMA.

Refer to our answer to question 1.4.3 above, which highlights the required improvements in this regard, as well as to question 1.4.1 in regards to the ESAs right to obtain information.

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

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

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

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

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

Question 1.7.5 EIOPA: In your view, does the coordination function of EIOPA, 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 EBA: What are, in your view, EBA's main achievements in the consumer and investor protection area?

5000 character(s) maximum

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

Not responding to this question.

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.

Not responding to this question.

Question 1.8.1 EIOPA: What are, in your view, EIOPA'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.

Not responding to this question.

Question 1.8.2 EBA: Please assess the impact of EBA's work on analysis of consumer trends,

reviewing market conduct, developing indicators, contributing to level playing field, financial literacy and follow up to work in this area:

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

Follow up to work in this area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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Please explain your answer to question 1.8.2 for EBA:

5000 character(s) maximum

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

N/A

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Reviewing market conduct	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Developing indicators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Contributing to a level playing field	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Financial literacy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Follow up to work in this area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

Question 1.8.2 EIOPA: Please assess the impact of EIOPA'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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Reviewing market conduct	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Developing indicators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Contributing to a level playing field	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Financial literacy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Follow up to work in this area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer to question 1.8.2 for EIOPA:

5000 character(s) maximum

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

N/A

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.

We consider the product intervention powers of ESAs to be a very meaningful and useful tool for the ESAs' consumer protection mandate. However, its effective implementation currently critically depends on the ESAs' resources, which are not sufficient to execute the powers, i.e. conduct mystery shopping exercises, investigate cases of consumer/investor rights infringements or unfair/fraudulent practices of financial service providers and/or inappropriately designed financial products. In fact, across the three ESAs, there has been one case where product intervention powers were used: In June 2018 ESMA adopted temporary product intervention measures on the provision of contracts for differences (CFDs) and binary options to retail investors in the EU.

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

5000 character(s) maximum

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

The use of product intervention powers should be possible for any products based on the considerations as per Article 9(5), i.e. consumer or customer protection, orderly functioning and integrity of financial markets or financial stability.

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.

The use of product intervention powers should be possible for any products based on the considerations as per Article 9(5), i.e. consumer or customer protection, orderly functioning and integrity of financial markets or financial stability.

Question 1.8.5 EIOPA: 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.

The use of product intervention powers should be possible for any products based on the considerations as per Article 9(5), i.e. consumer or customer protection, orderly functioning and integrity of financial markets or financial stability.

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

5000 character(s) maximum

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

We strongly support a greater role for ESAs in promoting consumer protection across the Union. We thus welcome the amendment which was introduced to Article 9(4) of the EBA Regulation with respect to the establishment of the EBA Committee on consumer protection and financial innovation (before financial innovation only), which brings together three ESAs, all relevant NCAs and further consumer protection authorities.

However, despite its meaningful mandate, the Committee's tasks are limited to "soft" ones such as promoting transparency, simplicity and fairness for cross-sectoral financial products and services, monitoring of cross-sectoral activities, promoting soundness of markets and convergence of regulatory practice. These tasks are not supported by effective enforcement powers, which undermines the fulfilment of the Committee's mandate. Thus, we emphasize the need to grant direct supervisory and product intervention powers to the Committee in the cases relevant for consumer protection. We refer to the Finance Watch position expressed in the previous ESAs review consultation in 2017, where we supported a strong consumer protection mandate for a cross-sectoral

single European supervisor. Given the already existing Committee on consumer protection and financial innovation, it should effectively play the role of such supervisor and be granted sufficient authority to act. An example of a jurisdiction with cross-sectoral supervision and a joint body to take care of consumer protection is the USA, where this task was conferred to a dedicated Bureau of Consumer Financial Protection.

In this respect, we emphasise the need to strengthen cooperation between ESAs, ESAs and NCAs on the consumer protection and conduct of business rules in order to ensure that all financial service users are treated fairly across the Union. This was already highlighted above in our response to question 1.4.1 on further cross-sectoral topics. To achieve this, appropriate governance, enforcement powers, resources and expertise of ESAs are crucial, as these factors enable the effective implementation of the norms included in the ESAs Regulations - refer to our responses on each of these components in the corresponding sections of this consultation. Among others, the Committee on consumer protection should develop binding technical standards on conduct of business and be granted powers to coordinate enforcement actions on the basis of those standards. In particular, consistent cross-sectoral standards are needed on the consumer protection-related aspects such as financial innovation in retail finance, adequate product and service design, retail disclosures (product disclosures and warnings), inducements.

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

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

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

5000 character(s) maximum

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

We strongly support mystery shopping exercises as an important tool in the supervisory domain of consumer protection and conduct of business. These exercises enable ESAs and NCAs to identify and investigate financial service provider practices and products, which are detrimental for consumer interest. We also emphasise the necessity to back this EBA's task with corresponding resources and enforcement powers (to initiate such exercises and implement any conclusions based on their results), as well as ensure sufficient resources and expertise are available for NCAs to conduct mystery shopping exercises.

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.

Refer to the response in the EBA section above.

Question 1.8.6 EIOPA: In the framework of 2019 ESAs' review, please rate the new EIOPA'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 EIOPA 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.

Refer to the response in the EBA section above.

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

5000 character(s) maximum

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

Refer to our responses to questions throughout Section 1.8.

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.

Refer to our responses to questions throughout Section 1.8.

Question 1.8.7 EIOPA: 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.

Refer to our responses to questions throughout Section 1.8.

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain your answer to question 1.8.8 for EBA:

5000 character(s) maximum

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

Refer to our responses to questions throughout Section 1.8, in particular question 1.8.5.1.

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.

Refer to our responses to questions throughout Section 1.8, in particular question 1.8.5.1.

Question 1.8.8 EIOPA: Are there areas for improvement in the toolkit of EIOPA 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 EIOPA:

5000 character(s) maximum

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

Refer to our responses to questions throughout Section 1.8, in particular question 1.8.5.1.

1.9 International relations

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

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

5000 character(s) maximum

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

We support the greatest possible involvement of ESAs in international relations on the matters, which are of relevance for their mandates. This should include involvement in the preparation of decisions, technical advice and negotiations.

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.

We support the greatest possible involvement of ESAs in international relations on the matters, which are of relevance for their mandates. This should include involvement in the preparation of decisions, technical advice and negotiations.

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

Are there additional international fora in which EIOPA should be active?

5000 character(s) maximum

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

We support the greatest possible involvement of ESAs in international relations on the matters, which are of relevance for their mandates. This should include involvement in the preparation of decisions, technical advice and negotiations.

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

5000 character(s) maximum

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

Not responding to this question.

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

5000 character(s) maximum

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

Not responding to this question.

Question 1.9.2 EIOPA: In the framework of 2019 ESAs' review, how do you assess the new EIOPA'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.

Not responding to this question.

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

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

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

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

Question 1.9.3 EIOPA: 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 EIOPA?

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

Not responding to this question.

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.

Not responding to this question.

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.

Not responding to this question.

1.10 The role of the ESAs as enforcement actors/enforcers

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

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

5000 character(s) maximum

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

Note: the answer applies to three ESAs.

We consider the tools/instruments defined in the above mentioned articles to be meaningful and useful for the purposes of supervisory convergence and consistent application of the EU law by the Member States. However, as already mentioned in the specific consultation sections on each of these Articles, the effective use of these instruments is hampered and the role of ESAs in achieving final supervisory result is diminished due to a number of factors, specifically:

- Deficiencies/conflicts of interest in the ESAs governance, which lead to inaction bias in certain situations and promotion of national interests above the broader EU interests (refer to Section 2 below)
- Insufficient resources available to ESAs in order to fulfill their extensive mandates, which at times result in insufficient expertise and time being devoted to certain reviews and investigations (refer to Section 2 below)
- Insufficient authority given to ESAs to obtain information from NCAs, which they need to execute their tasks (refer to our response to question 1.4.1)
- Non-binding character of ESAs conclusions for the NCAs.

For further details, refer to our responses in Sections 1.5 (breach of Union law), 1.6 (actions in emergency situations) and 1.7 (coordination functions) for the suggested solutions to resolve these issues. In addition, on the last bullet point above, we support granting a more binding character of “recommendations” to the ESAs’ decisions/conclusions in accordance with the principle “comply or explain”, which has become applicable to the peer review results following the last ESAs Regulations review.

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.

Refer to the response in the EBA section above.

Question 1.10.1 EIOPA: How do you assess the role of EIOPA 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.

Refer to the response in the EBA section above.

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain your answer to question 1.10.2 for EBA:

5000 character(s) maximum

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

Refer to the response to question 1.10.1

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.

Refer to the response to question 1.10.1

Question 1.10.2 EIOPA: Do you see room for improvement in the way EIOPA 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 EIOPA:

5000 character(s) maximum

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

Refer to the response to question 1.10.1

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.

Refer to the response to question 1.10.1

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.

Refer to the response to question 1.10.1

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

☐ Sufficiently dissuasive

☐ Disproportionate

☒ Other

☐ Don't know / no opinion / not relevant

Please specify what your mean by 'other' in your answer to question 1.10.5 for EBA:

5000 character(s) maximum

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

The ESAs' reports on the applications of sanctions, which were referred to in our answer to question 1.3.3, show that there is a great degree of divergence between NCAs in terms of sanction procedures and amounts of pecuniary sanctions applied. While some NCAs have applied sanctions in the amounts of millions of Euro, others did not report any sanctions being applied at all for the same sectoral legislation. Some of the NCAs do not make information on sanctions public. We therefore suggest, as already mentioned in our response to question 1.4.3, to introduce minimum requirements to NCAs with respect to sanction application, which should include procedural aspects, as well as consistent sanctions amounts for similar types of infringements/breaches. In particular, all sanctions should be made public (unless public interest warrants otherwise) as an additional dissuasive reputational outcome.

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

Please specify what your mean by 'other' in your answer to question 1.10.5 for ESMA:

5000 character(s) maximum

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

Refer to the response in the EBA section above.

What role could sectoral legislation and ESMA play in improving the situation? Please substantiate your answer and give examples:

5000 character(s) maximum

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

Refer to the response in the EBA section above.

Question 1.10.5 EIOPA: 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 EIOPA, sufficiently dissuasive or disproportionate?

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

Please specify what your mean by 'other' in your answer to question 1.10.5 for EIOPA:

5000 character(s) maximum

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

Refer to the response in the EBA section above.

What role could sectoral legislation and EIOPA play in improving the situation? Please substantiate your answer and give examples:

5000 character(s) maximum

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

Refer to the response in the EBA section above.

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.

ESAs' governance structure has inherent conflicts of interest, which have prevented ESAs from utilising their available supervisory and regulatory convergence tools effectively. In particular, ESAs governing bodies - Boards of Supervisors (with the exception of the Chairperson following the change in the ESAs Regulations in 2019), as well as Management Board - are composed of the NCAs' governors, which leads to tensions between the ESAs' European mandate and the national mandates of the ESAs' board members. Thus, decision-making often promotes national interest rather than serves broader EU objectives. Decisions are often delayed or there is an inaction bias in the execution of the ESAs' powers such as breach of EU law procedures, binding mediation, initiation of peer reviews and raising issues based on their results. We have already referred to the governance shortcomings as the root cause for ESAs' insufficient enforcement and inefficiencies in utilising their existing toolbox throughout Section 1 of this consultation.

It should be also noted that even the appointment of an independent Chairperson to the ESAs' Boards of Supervisors as per the ESAs amending Regulation in 2019 was implemented in a weaker form than the proposal made by the Commission. Specifically, the Commission's proposal suggested that the Chairperson should be appointed on the basis of an open call for candidates organised by the Commission, whereas the finally approved amendment stipulates that the Chairperson is appointed based on an open selection procedure and a final shortlist of candidates drawn up by the Board of Supervisors.

In order to ensure objectivity, independence and efficiency in decision-making, ESAs' governance needs to be reformed by way of including independent appointed directors with a major role in the day-to-day execution of ESAs' mandate. The current Boards of Supervisors would retain only truly supervisory roles. The governance would thus follow the management board vs supervisory board structure similar to financial institutions.

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.

Not responding to this question.

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.

N/A

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

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

If you identify areas for improvement, please explain:

5000 character(s) maximum

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

We refer to our response to question 2.1.1 above. While the Articles concerned increase the transparency of decisions adopted by the Board of Supervisors through publication and delivery of reports to the European Parliament, these provisions do not eliminate the inherent conflicts of interest, as described under question 2.1.1.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Set the agenda to be adopted by the Board and table items for decision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Call a vote at any time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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Propose the composition of independent panels for breach of Union law investigations and dispute settlements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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Propose the composition of peer review committees for peer reviews	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Vote in the Board of Supervisors (except on matters that are decided on the basis of qualified majority voting)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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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.

N/A

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

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.

Refer to our response to question 2.1.1 above.

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

☐ Yes

☒ No

☐ Don't know / no opinion / not relevant

Please explain your answer to question 2.2.2 and indicate how voting modalities could be streamlined:

5000 character(s) maximum

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

Refer to our response to question 2.1.1 above.

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

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

Please explain your answer to question 2.2.2.1:

5000 character(s) maximum

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

N/A

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

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.

Refer to our response to question 2.1.1 above.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

The MB ensures the consistent use of a methodology for all peer reviews conducted	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
---	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	---

The MB proposes a peer review work plan every two years.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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The MB can set up coordination groups on its own initiative	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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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.

N/A

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

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

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

5000 character(s) maximum

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

N/A

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Other preparatory bodies (e.g. technical working groups)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Committee on consumer protection and financial innovation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Proportionality Committee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

Question 2.2.9 EIOPA: Please assess the impact of the work undertaken by preparatory /supporting bodies of EIOPA (e.g. technical working groups, standing committees, task forces etc.) on the EIOPA'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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Other preparatory bodies (e.g. technical working groups)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Committee on consumer protection and financial innovation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Proportionality Committee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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If you identify any shortcomings for EIOPA 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.

N/A

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 indicate what other sources of finance could be considered:

5000 character(s) maximum

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

Increase in ESAs funding could come from contributions by supervised entities, in particular the ones which would fall under the direct supervision by ESAs, as well as from rebalancing of the EU budget and NCA contributions. Potential for a reform of ESAs-NCAs budgets with entities indirectly supervised by ESAs contributing to the budgets of ESAs should be explored given that a similar proposal did not obtain an approval of the legislators in the ESAs review 2017.

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 current ESAs funding provisions and resources are clearly insufficient to ensure ESAs can execute on their mandates and effectively utilise the available toolkits. In particular, the resource shortages are constraining ESAs' coordinating role, investigative activities, mystery shopping exercises, participation in peer reviews and on-site visits, as well in financial and capacity-building support available for the non-industry stakeholders of the ESAs stakeholder groups. Further extensions of ESAs' tasks and toolkit, especially in the cross-sectoral regulatory and supervisory domains and in direct supervision, will also require new resources. More resources are also needed to support evidence-based rule-making and supervision - for building ESAs data collection and data processing capacities, which we have advocated for in our responses in Section 1.

The budgets and employee numbers of three ESAs are dwarfed when comparing with those of the major EU NCAs like BAFin (Germany), ACPR (France), CONSOB (Italy), foreign supervisors like the UK FCA and PRA, as well as the supervisory budget of the ECB. The combined budget of three ESAs in 2020 (EUR 129 mn) was roughly one-fourth of the FCA's budget alone and one-third of the BaFin's budget. In terms of the number of employees, three ESAs personnel (509) was even smaller proportionately than the FCA (3291) or BaFin (2722) staff. Even though these numbers give just a rough picture and the mandates and activities of the mentioned supervisors are not fully comparable, the numbers are quite staggering given the importance of the ESAs mandate, large diversity of standard-setting and supervisory tasks, as well as the EU and financial sector ambition with respect to the expectations being placed on ESAs.

Stronger funding base is needed to ensure guidelines and decisions of ESAs adhere to the highest quality standards and contribute to the competitive and transparent capital markets. Sufficient resources are also a pre-condition for ESAs' expertise being recognised by NCAs and the industry in order for all of these to work in partnership for the common goals of well-functioning markets and a stable financial system.

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.

Refer to our response to question 2.3.2 above.

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.

Based on the Finance Watch experience in participation in the ESAs stakeholder groups, as well as experience of work on legislative files, the number, as well as the quality of consultations appears adequate.

However, the time given to provide consultation responses is often too short given the scope and very technical level of many consultations. More time should be provided for stakeholders to provide qualitative responses.

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

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

Please explain your answer to question 2.4.2 for EBA:

5000 character(s) maximum

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

Refer to our response to question 2.4.2.

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"/>	x	<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"/>	x

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.

Refer to our response to question 2.4.2.

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

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

General consultations launched by EIOPA	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Specific consultations when developing data collection requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Please explain your answer to question 2.4.2 for EIOPA:

5000 character(s) maximum

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

Refer to our response to question 2.4.2.

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

Please explain your answer to question 2.4.3 for EBA:

5000 character(s) maximum

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

Note that the answer applies to three ESAs.

Based on the Finance Watch experience in participation in the ESAs stakeholder groups, ESAs level of transparency and accessibility in interactions with stakeholder is sufficient. However, we also refer to our responses to questions 2.4.5 and 2.4.6 below with respect to the need to enhance ESAs' resources devoted to non-industry participants in stakeholder groups.

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.

Refer to our response in the EBA Section above.

Question 2.4.3 EIOPA: Is EIOPA 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 EIOPA:

5000 character(s) maximum

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

Refer to our response in the EBA Section above.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
EIOPA Occupatio nal Pensions Stakeholder Group	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
ESMA Securities and Markets Stakeholder Group	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
EBA Banking Stakeholder Group	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Selection of members	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Term of office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
A third of its members can issue a separate advice	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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.

- 1) On the changes with respect to the composition of stakeholder groups (SG), refer to our response to question 2.4.6 below
- 2) The significance of provision whereby a third of SGs members can issue a separate advice is very low so that this possibility is not used in practice. The reason for this is timing: In practice, irreconcilable disagreements within SG emerge at later consultation stages after no consensus would have been found in the discussion; thus, at this stage insufficient time remains for the disagreeing members to draft a separate advice.

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.

In answering this question, we need to differentiate between the nominal number of different stakeholders in the SG and the actual balance of opinions representation, which results not only from the number of participants but also from the available resources and expertise devoted to the SG work.

In terms of the formal representation, the current provisions of the ESAs Regulations ensure a balance between the numbers of different stakeholders. This does not hold for EIOPA though: Article 37(2b) of the EIOPA Regulation includes "representatives of relevant professional associations" within the non-industry stakeholders' quota in the EIOPA SG. This category is ambiguous and effectively represents a backdoor through which the number of stakeholders close to industry groups was increased. The Article needs to be amended to exclude the reference to the mentioned stakeholder category. We note that such category does not appear in the otherwise analogous Article 37 (2b) of the EBA and ESMA Regulations.

In terms of the actual balance of interests within the SG, industry representatives are able to devote more time/resources to the SG work in promoting their interests. Non-industry stakeholders such as civil society, academia and consumer representatives often do not have adequate funding and expertise on a wide spectrum of issues, which are in scope of ESAs' work. These groups tend to be more narrowly specialised in their work. The result is the often dominant position of industry representatives in the SG discussions with the resulting imbalances of opinions in the consultation responses. With regards to the financial support, due to own budget constraints, ESAs have not been able to provide adequate remuneration to the non-industry participants, which would match the actual time and effort required for the SG work.

To eliminate these imbalances, ESAs should devote additional resources to the non-industry stakeholders in order to support their contribution in discussions from the financial, as well as expertise perspective - such as by organising workshops and forums for these stakeholders. In order to eliminate relative dominance of industry stakeholders in the discussions and opinion drafting, a split of stakeholders' work into panels should be considered, for which experience of the Financial Conduct Authority can be drawn.

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

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Functioning and time limits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
One joint Board of Appeal for the 3 ESAs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
The composition of the BoA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Working methods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Ensuring cross sectoral cooperation	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ensuring consistent approaches	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision making process	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The legal structure (no legal personality)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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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.

Referring to some of our responses in Section 1 of the consultation, we emphasize the lack of actual enforcement powers of the JC to effectively contribute to coordinating the ESAs and NCAs work . In addition, we see a need for the reform of JS procedures, as the decision-making has been delayed in the past, which effectively undermines the value added of the coordination efforts. Refer to our response to question 1.4.3 with regard to the suggested changes in the role of the JC as a coordinating body for a number of cross-sectoral supervisory topics.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Coordination and cooperation for bi-annual Joint Risk Reports, published in spring and autumn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Financial Conglomerates	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Securitisation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

European Forum of Financial Innovators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
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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.

Refer to our response to question 2.5.2.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Trade Repositories under EMIR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Trade Repositories under SFTR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Securitisati on Repositori es (STS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Trade Repositories under EMIR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Trade Repositories under SFTR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
Securitisati on Repositori es (STS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

N/A

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.

The current set-up of ESAs' direct vs NCAs' supervisory powers has resulted from a combination of the original considerations of the Report of the High-Level Group of Financial Supervision in the EU (known as the Larosière report), the ESAs review 2017, as well as political compromise. The CMU project and global capital market trends make further revisions necessary.

With the increased integration of the European capital markets, more direct supervision is necessary in targeted areas such as the ones with substantial cross-border activities and systemic risk/contagion implications due to reliance on a small number of market players. Decisions to grant direct supervisory powers to ESAs should be based on these criteria and be accompanied with commensurate enhancements of ESAs resources and expertise. Results of ongoing market monitoring and peer review exercises should feed analyses of such criteria in the future so that appropriateness of the level of supervision can be revised.

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

Please explain your answer to question 3.4:

5000 character(s) maximum

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

Based on the approach outlined in our response to question 3.3, potential areas to be placed under ESMA's direct supervision include central counterparty clearing houses (CCP), central securities depositories (CSD), payment systems, big audit companies, as well as Pan-European products such as Pan-European Pension Product (PEPP), European long-term investment funds (ELTIF) etc.

We further support enhancement of the EIOPA's powers in the area of supervision and approval of internal models. Unwarranted divergence of national supervision and approval in internal model leads to inconsistencies and creates an uneven playing field for the European insurers. The ECB's Targeted Review of Internal Models (TRIM) can serve as a potential reference for the design of an EIOPA's supervisory process/controls, albeit NCAs need to play a greater role given that EIOPA does not have direct supervisory powers in the insurance sector.

4. The role of the ESAs as regards systemic risk

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know - No opinion - Not applicable
The quality of the analysis of market developments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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

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

5000 character(s) maximum

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

Finance Watch believes that the active role of the ESAs and the development of the ECB have helped harmonise microprudential supervision in the Union. However, there remains a gap on the macroprudential supervision side. In particular, diverging Member State applications of macroprudential rules means there is a lack of harmonisation.

The designation of Other Systemically Important Institutions (O-SIIs) remains at the discretion of NCAs. Despite the EBA guidelines on the designation of O-SIIs there remain significant national differences in the risk assessment on the systemic importance of these institutions. EBA's peer review report on the O-SIIs designation practices, revealed numerous differences in the national application of requirements with respect to O-SII designation. This has also impacted on how NCAs use the buffers available in the CRD/CRR, resulting in different applications across the Union. A robust approach to systemic risk in the Union implies more consistency and harmonisation than currently exists. Therefore, Finance Watch would like to see a much stronger role for the ESRB. The ESRB should play a more active role in the identification of other systemically important institutions (O-SIIs) and in monitoring the use of macroprudential tools in the EU such as the countercyclical and systemic risk buffers.

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't know - No opinion - Not applicable
The quality of the analysis of market developments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The broader cooperation between the ESRB and the ESAs within the ESFS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
The contribution of the ESAs to facilitating the dialogue between micro- and macro supervisors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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.

Note that this answer applies to the ESMA and EIOPA supervisory domain.

Our responses above are aimed to reflect the lack of a comprehensive macroprudential framework and toolkit to address the risks beyond the banking sector, as the EU macroprudential framework in its current form is largely bank-focused. Back in 2016, ESRB in its “Macroprudential policy beyond banking: an ESRB strategy paper” stated that “[m]acroprudential instruments to address financial stability risks beyond the banking sector should be part of a wider macroprudential policy strategy”. A number of tasks in this respect were identified. However, since then no macroprudential policy framework beyond the banking sector has been developed. In its annual macroprudential policy review reports, ESRB reiterated that “[d]espite the lack of a comprehensive macroprudential toolkit to address risks beyond the banking sector, ESRB members took measures of a macroprudential nature to address such risks” (quote from the report 2019).

At the same time, systemic risks from the non-bank financial sector gain importance with the increasing shift to non-bank/market-based financing, which is one of the objectives of the CMU Action Plan. In order to reflect on supervisory convergence holistically, the current review should be complemented by a revision of the European macroprudential policy framework, which would cover the role and mandate of the European Financial Stability Board (ESRB), as well as broader considerations beyond the existing institutions.

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know - No opinion - Not applicable
The quality of the analysis of market developments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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The cooperation within the European System of Financial Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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The broader cooperation between the ESRB and the ESAs within the ESFS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x
The contribution of the ESAs to facilitating the dialogue between micro- and macro supervisors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

If you identify room for improvement for EIOPA, 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.

Refer to our response in the ESMA section.

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

☒ Yes

☐ No

☐ Other

☐ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

We recognise the importance of the ESAs' work in developing technical standards and guidelines/recommendations for the harmonisation of the EU law application and national norms. Based on our responses throughout this consultation, there remain a lot of areas where further work is needed. In particular, refer to our responses in Section 6.

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.

We recognise the importance of the ESAs' work in developing technical standards and guidelines/recommendations for the harmonisation of the EU law application and national norms. Based on our responses throughout this consultation, there remain a lot of areas where further work is needed. In particular, refer to our responses in Section 6.

Question 5.1 EIOPA: Do you consider that the technical standards and guidelines/recommendations developed by EIOPA 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 EIOPA, please explain:

5000 character(s) maximum

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

We recognise the importance of the ESAs' work in developing technical standards and guidelines/recommendations for the harmonisation of the EU law application and national norms. Based on our responses throughout this consultation, there remain a lot of areas where further work is needed. In particular, refer to our responses in Section 6.

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

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?

Not responding to this question

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

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.

Not responding to this question.

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 specify in which areas it would be useful for the ESAs to adopt such guidelines:

5000 character(s) maximum

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

In order to achieve the objectives of supervisory convergence and harmonisation of the EU law application, ESAs should be able to adopt guidelines pertaining to any areas where there is EU law relevant to the **fields of activities** and **institutions**, which belong to ESAs' remit as Article 1(3) of the ESAs Regulations. Appropriate mandates may need to be given to ESAs in each case by the respective sectoral legislation. Hereby we note that a legal analysis should be done to take account of potential implications of the Meroni case.

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

☐ Including [Regulation \(EC\) No 1606/2002 \(IAS Regulation\)](#) and [Directive 2013 /34/EU \(Accounting Directive\)](#) in Article 1(2) of the ESMA Regulation

☒ Other

☐ No improvements are needed

☐ Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

The Wirecard case revealed a number of deficiencies in the supervision of auditing and financial reporting. Based on the analysis conducted by the European Parliament and ESMA, we consider the following improvements necessary:

- A. Stronger enforcement of financial reporting standards by NCAs with a clear definition of roles and responsibilities of the supervisory authorities involved: In case of a two-tier supervision structure like it is in Germany, competences of the authorities need to be periodically revised and the NCA should be able to directly intervene in the defined cases such as financial fraud suspicion. The intervention and investigative powers of the relevant authority should be sufficiently strong in order to allow for timely and efficient enforcement.
- B. Stronger harmonisation of mandates, powers (in particular, investigative powers), supervisory and operational independence of the relevant competent authorities: As already mentioned in our response to question 1.4.3, ESMA should develop the relevant guidelines to include minimum standards on these aspects and use its enforcement tools to oversee the implementation of such guidelines. Hereby the harmonisation specifically applies to the enforcement of financial accounting standards.
- C. Improvements in the handling of warnings with respect to financial fraud coming from whistleblowers and other sources such as media.
- D. Strengthening of supervisory oversight of audit companies, which, in turn, includes the following aspects:
 - Stronger cooperation between NCAs for the purposes of information/expertise sharing and supervision of cross-border activities. For this, ESMA can use its supervisory convergence tools.
 - Deployment of punitive measures such as sanctions and a ban for audit firms to enter into public contracts for a certain period of time (debarment), including harmonisation of the use of such instruments by NCAs (refer to the bullet point above)
 - Extension of the supervisory powers of ESMA in the area of audit firms oversight. This would include bringing the Accounting, IAS and Audit Directives under the ESMA's mandate, as well as transfer of direct supervisory powers over big audit firms to ESMA.

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 how the role of ESMA with regard to the Transparency Directive could be strengthened:

5000 character(s) maximum

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

Refer to the bullet point B. in our response to question 5.6.1.

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.

In the context of our response to question 5.6, the suggestion here sounds meaningful to support ESMA's accountability within its mandate.

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 what role could ESMA have with regard to the IAS Regulation could be strengthened:

5000 character(s) maximum

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

Refer to our response to question 5.6.

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

5000 character(s) maximum

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

Not responding to this question.

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.

Not responding to this question.

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

5000 character(s) maximum

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

Not responding to this question.

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.

Particular areas, which, in our view, require significantly stronger harmonisation of EU law application and convergence of national implementing standards, are the following (these are to an extent interrelated):

- A. "Point of entry" requirements, i.e. authorisation requirements for financial service providers and passporting requirements for financial products/services in relation to the exercise of freedom to provide services (FPS) and right of establishment (ROE)
- B. Supervision of cross-border activities of financial services providers under FPS and ROE
- C. Conduct of business rules
- D. Conditions for application of short selling bans
- E. Financial innovation / digital finance - refer to our response to question 1.4.9
- F. Oversight over financial accounting standards enforcement and statutory auditors - refer to our response to question 5.6.1

On A-B) Harmonisation of all these requirements is essential to ensure a level playing field across the EU, fair competition between financial market players, high and uniform standards of investor and consumer protection. These are the necessary pre-conditions to overcome the fragmentation of national capital markets, reduce the existing home biases and thus build the CMU.

Divergent national implementation of authorisation and passporting requirements has led to regulatory arbitrage / "jurisdiction shopping" and consumer rights infringements. We have already referred to the example of a recent study of retail customer complaints published by the French supervisor (AMF) revealed that more than 60% of all claims and losses reported concerned entities based in one jurisdiction, which is a clear evidence of jurisdictional differences in interpreting the EU rules (AMF report "Analysis of complaints in 2019-2020 by French retail investors to the AMF public relations centre concerning European financial institutions operating on a freedom to provide services basis, March 2021).

The Joint Committee Report on cross-border supervision of retail financial services has highlighted a number of issues with respect to the application of "point of entry" requirements and supervision of cross-border product/service provision under the FPS and ROE. In particular the report included the following recommendations, which are worth mentioning here:

- to consider requiring that a passport regime includes the proportionate provision of information on whether the products and/or services covered by the notification are, in practice, provided;
- to consider the high-level principles on cooperation identified in this report as the basis for any new legislation or possible amendment to current legislation;
- to consider clarifying the diligences that a home CA should undertake prior to granting a passport".

Additional support for our position can be drawn from the EIOPA's "Supervisory Statement on the sound practices within the registration or authorisation process of IORPs, including as regards suitability for cross-border activity" (November 2020), which mentioned the following: "National requirements for the initial registration or authorisation of IORPs permitting IORPs to operate differ across Member States. Although competent authorities of home Member States have been reviewing their registration and authorisation procedures with regard to the new requirements of the IORP II Directive, supervisory approaches to assess if IORPs are prudentially sound to operate domestically and across borders remain divergent".

Refer to our response to question 1.7.1 for additional support with regards to the need for harmonisation of the cross-border supervision rules and cooperation between NCAs.

On C) With respect to conduct of business rules, there is no general Level 1 text harmonising the conduct rules applicable to financial institutions carrying out business, especially in the banking sector. Conduct of business rules are mostly defined by the product/sector-specific regulatory acts. A good example hereby are the reverse solicitation rules: Differences in the supervisory approach of the NCAs remain in respect of the type of outreach and communication, the categories of clients as well as the types of financial services and products to which reverse solicitation may apply. Equally, not every NCA has published guidance of how reverse solicitation applies in “their” jurisdiction. Among ESAs, only ESMA has published a statement on reverse solicitation following Brexit.

On D) The need for harmonisation of short selling bans application is suggested by the recent Wirecard case, which necessitated a critical challenge of the BaFin’s decision to apply a short selling ban on the grounds of “adverse events or developments which constitute a serious threat to financial stability or to market confidence” (Article 20 of the Short Selling Regulation).

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

Not responding to this question.

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.

Refer to our response to question 6.1.

6.4 Questions regarding the appropriate level of regulation

Question 6.4.1 In your view, are there circumstances in existing EU legislation where level 1 is too

granular, or for other reasons, would rather be preferable to have a mandate for level 2, or guidance at level 3?

☐ Yes

☐ No

☒ Don't know / no opinion / not relevant

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

☒ Yes

☐ No

☐ Don't know / no opinion / not relevant

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

Please select as many answers as you like

☒ Level 1 (legislation agreed by the co-legislators)

☒ Level 2 (e.g. delegated acts and technical standards)

☐ Level 3 ('comply or explain guidance' by ESAs)

Please explain your answer to question 6.4.2 and 6.4.2.1:

5000 character(s) maximum

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

While all three legislative levels are important, Level 1 and 2 are more effective from the harmonisation perspective as they are directly binding for the Member States and thus do not lead to divergences in national interpretation and application when transposing into national law.

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

Please select as many answers as you like

☒ Level 1 (legislation agreed by the co-legislators)

☐ Level 2 (e.g. delegated acts and technical standards)

☐ Level 3 ('comply or explain guidance' by ESAs)

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

5000 character(s) maximum

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

We would like to emphasize the importance of increased use of Regulations rather than Directives as Level 1 legislation. This will help promote convergence of rules and their more consistent application by Member States/NCAs.

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.

Not responding to this question.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
Broad discretion left to national authorities and frequent use of that discretion by these national authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

High level of gold plating by national rules	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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High degree to which supervision of the same type of actors and /or activities render divergent outcomes across Member States	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>
All of the above	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
None of the above	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other aspects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

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

Not responding to this question.

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