

Summary report

*Targeted consultation on taking stock of the framework for supervising European capital markets, banks, insurers and pension funds: supervisory convergence and the single rulebook
12 March 2021 – 21 May 2021 (closed on 4 June 2021).*

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1. Summary of key messages

A total 107 respondents replied to the consultation (57 from businesses or their representatives, 36 public authorities, 2 consumer organizations, 2 NGOs, 2 citizens, 2 trade unions, 1 research institute and 5 classified as other). The consultation included a significant number of questions to assess the 2019 ESAs review as well as more general questions on supervisory convergence and the single rulebook.

Regarding the 2019 European Supervisory Authorities (ESAs) review changes, the most recurrent comment from the majority of stakeholders is that it is too early to evaluate the recent amendments and to consider further changes, given the short period of time and the extraordinary events caused by COVID-19. The new Q&As process and the new mechanism of no action letters are the two main areas where stakeholders asked for improvements.

Respondents assessed rather positively the impact of the ESAs on the financial system as a whole, financial stability, the functioning of the internal market, the quality and consistency of supervision, strengthening international supervisory coordination, consumer and investor protection and sustainable finance. More than 70% of the respondents consider that the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA)'s mandates cover all necessary tasks and powers to contribute to the stability and well-functioning of the financial system. However, in the case of the European Securities and Markets Authority (ESMA), respondents are divided equally between those that consider that ESMA have all necessary powers and those who do not.

The vast majority of respondents rated very positively the extent to which the ESAs contribute to promoting a common supervisory culture and consistent supervisory practices. Respondents consider that the main obstacles to allow more supervisory convergence are the specificities of local markets and different legal environments (e.g. civil, commercial and company law). Enforcement was also mentioned as an area where convergence should be improved.

As regards ESMA's existing direct supervisory powers for Credit Rating Agencies and Trade Repositories, the majority of respondents assess these rather positively. Respondents nevertheless pointed out that there is some room for improvement mainly related to communication and transparency aspects. Regarding the future scope of direct supervisory powers, most respondents do not see the need for further centralisation, arguing that it is too early to assess and that the current set-up seems largely appropriate. However, some respondents mentioned potential areas for central supervision at EU level such as ESG rating agencies, ESG data providers or EU central counterparties (CCPs).

Regarding funding the vast majority of respondents consider that the provisions on financing are appropriate and that the ESAs have sufficient resources to perform their tasks. Public authorities argued that the current split 40/60 is adequate and that the fact the ESAs' work relates largely to a public function justifies that the funding is mainly based on public contributions. Some public authorities are of the view that the portion of financing from the EU budget should be increased.

A majority of stakeholders considered that the ESAs responded appropriately in the COVID-19 crisis and that the current ESAs powers are largely adequate. Most responding authorities appreciated the swift reaction and the increased market monitoring and coordination between national competent authorities (NCAs) and that the ESAs provided guidance to market participants. Nevertheless, some public authorities are of the view that more effective coordination powers are required for supervision of cross-border services. One consumer association is of view that the ESAs should be empowered to conduct mystery shopping themselves.

A majority of stakeholders are positive as regards the achievements of the ESAs in the field of consumer and investor protection and consider that they can play an important role in fostering supervisory practices in the area of consumer protection. However a few stakeholders are of view that ESAs are less well positioned to intervene given that consumer issues are often local.

A few public authorities, a number of industry representatives, academia and NGOs consider that the limited amendments by the previous ESAs review are inadequate to overcome the perceived structural flaw that all the decisions are taken by representatives of the NCAs who might be driven more by national than European interest. However, the overall majority of public authorities see the ESAs “as a member driven organization” where the NCAs representatives should keep the last word in all affairs.

Public authorities and industry stakeholders have shown a positive stance on the role of ESAs as regards systemic risk. Most public authorities responding on this topic are of view that the cooperation and coordination of systemic risk functions has generally improved.

In terms of ESAs coordination function, many respondents pointed out it works in a satisfactory way. Among all the respondents one common trend for the three authorities is the importance to enhance coordination, ensure consistency among the various sectoral legislation, avoid duplication, reduce compliance costs and complexity and streamline the existing processes (i.e. data reporting).

In terms of ESAs international role, a large majority of respondents stressed the importance of the ESAs’ work at international level to ensure coordination. Many respondents, both from public authority and industry, considered that the powers and competence of the ESAs are adequate.

Stakeholders were also consulted about their involvement with the ESAs and how the Authorities have been performing in this area. The majority of public authorities and few industry respondents considered that the current framework works well and that stakeholders are sufficiently consulted. However, many respondents from the industry underlined the too short time given to provide feedback which does not provide for an adequate consultation of all stakeholders. Industry respondents highlighted that ESAs should intensify their interaction with the industry and adopt a more open and less bureaucratic approach.

Few respondents voiced an opinion on how to improve supervision in light of the Wirecard case. Among public authorities, the same number of respondents are in favour and explicitly oppose the inclusion of the International Accounting Standards (IAS) Regulation and Accounting directives in ESMA’s remit. Only a third of the industry respondents think that no improvements are necessary.

As far as the single rulebook is concerned, the stocktaking exercise did not reveal strong support for further-reaching EU-level harmonisation across all sectoral legislation. However, respondents overwhelmingly converge in their request to better align the timing of level 2 measures with the timing for the application of level 1. The overall majority of respondents considers that technical standards, guidelines and recommendations have sufficiently contributed to harmonise the single rulebook. The majority of respondents believe that the procedure for the development of technical standards is effective and efficient. The main issue raised concern the timeline of the procedure.

2. Overview of respondents

As seen in table 1, the majority of respondents came from businesses or their representatives (53,2%) and public authorities (33,6%). Respondents originated from 27 countries and mainly from Belgium (19.6%), Germany (12,1%), France (11,2%) and Luxembourg (8,4%).

Table 1: Types of entity replying

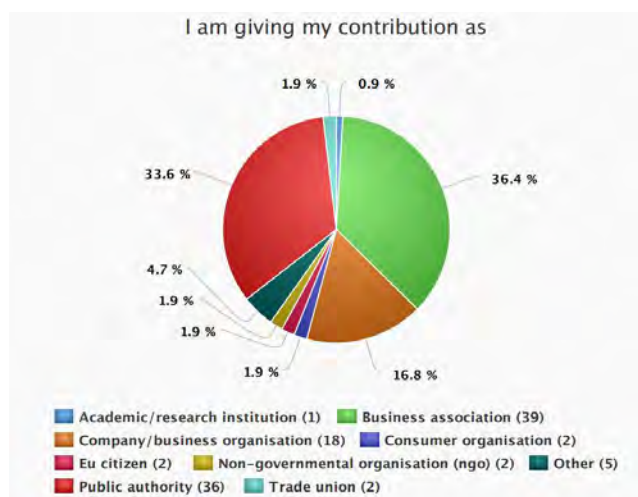
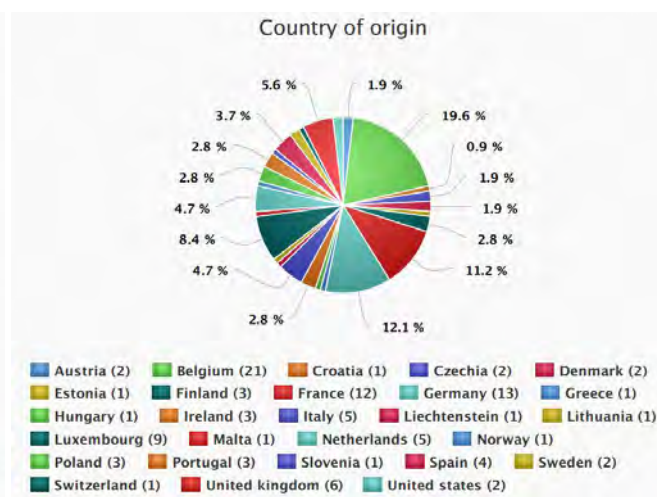


Table 2: Country of origin of respondents



Among the companies and business associations responding, most indicated the following as their main field of activity: investment management (18 respondents), banking (17 respondents), insurance (12 respondents), market infrastructure (7 respondents), pension provision (5 respondents), accounting and auditing (4 respondents) and credit rating agencies (1 respondent). Within the group public authorities, 28 are supervisory authorities that are members of at least one of the ESAs. Respondents could specify for which ESAs they were providing responses: 82 respondents replied for ESMA, 49 respondents for EIOPA and 46 respondents for EBA.

3. Summary of responses per thematic section

The consultation consisted of 116 questions divided into two main chapters, covering six thematic sections.

- A. Assessment of the ESAs and the recent changes in their founding Regulations
 1. The supervisory convergence tasks of the ESAs
 2. Governance of the ESAs.
 3. Direct supervisory powers.
 4. The role of the ESAs as regards systemic risk
- B. The single rulebook
 1. The ESAs work towards achieving a single rulebook
 2. General questions on the Single Rulebook

The summary report provides detailed results of the consultation for each question and a factual overview of the contributions received. Any positions expressed in this feedback statement reflect the

contributions received and not the position of the European Commission and its services. Unless indicated otherwise, any qualification of data (e.g. the majority of respondents) does not include those respondents who did not provide an answer. We always refer to the majority of those respondents who actually expressed a view. The Commission would like to thank the 107 respondents for their contributions.

A. Assessment of the ESAs and the recent changes in their founding Regulations.

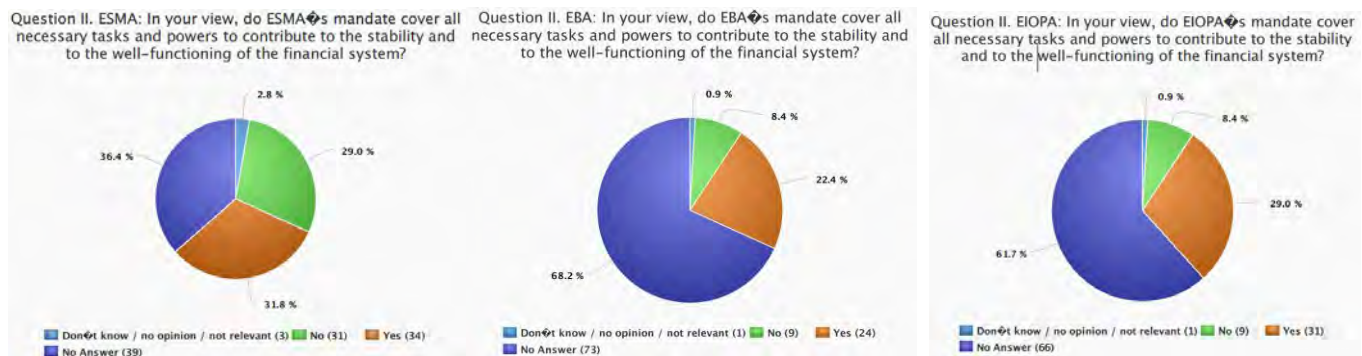
General questions (Q1 – Q3)

Q1 – Impact of each ESA’s activities on: (i) the financial system as a whole; (ii) financial stability; (iii) the functioning of the internal market; (iv) the quality and consistency of supervision; (v) the enforcement of EU rules on supervision; (vi) strengthening international supervisory coordination; (vii) consumer and investor protection; (viii) financial innovation and (ix) sustainable finance.

Respondents assessed positively the impact of the ESAs on most of the aspects included in this question. For example, respondents assessed the impact of the ESAs as significant or most significant on the following aspects: the financial system as a whole, financial stability, the functioning of the internal market, the quality and consistency of supervision, strengthening international supervisory coordination, consumer and investor protection and sustainable finance. However, respondents assessed the impact of the ESAs on financial innovation in the lower categories (neutral or not so significant). The impact of the ESMA on enforcement of EU rules on supervision was assessed as neutral or not so significant.

Many respondents observed that it is too soon to evaluate the 2019 changes and to consider further changes given the short period of time since the implementation of the last amendments and the extraordinary events caused by COVID-19 that have occupied the ESAs during the last 18 months. A number of respondents observed that proportionality should be an important principle in the activities of the ESAs and that national market specificities should be taken into account. Some respondents highlighted the impact of the ESAs in relation to consumer and investor protection, while two respondents observed that consumer protection should not be in the focus of the ESAs activities as consumer protection falls under the primary responsibility of the Member State’s consumer protection authorities. A few respondents observed that divergences prevail in the way fund managers are supervised. A significant number of respondents observed that EIOPA should refrain from any attempt to drive developments in the insurance market and that the co-legislators should remain in the driving seat of regulatory initiatives.

Q2 –Scope of the existing mandates of the ESA’s



More than 70% of the respondents consider that EBA and EIOPA’s mandates cover all necessary tasks and powers to contribute to the stability and well-functioning of the financial system. However, in the case of ESMA, respondents are divided equally between those that consider that ESMA have all necessary powers and those who do not.

Most respondents from the public authority group consider that the ESAs’ mandates cover all necessary tasks and powers. Six NCAs replied that the ESAs do not have all necessary tasks and powers. These stakeholders observed that:

- The ESAs should have better tools to address supervision of cross-border activities and home-host issues.
- More direct supervision powers should be given to ESMA (e.g. cross border activities, new activities) and the IAS Regulation and Accounting directive should be include in its remit
- The ESAs should have a real power to issue No Action Letters.
- EIOPA should have a stronger role in the approval process and supervision of internal models in the insurance sector.

Most industry respondents think that the EBA and EIOPA have all the necessary tasks and powers. However, respondents from the industry are split evenly about the need to reinforce ESMA’s powers. A recurrent comment from the industry is that the ESAs mandates should include the promotion of the attractiveness/ competitiveness of EU financial markets since it has been an explicit role of major supervisory agencies in other jurisdictions for years (the Commodity Futures Trading Commission (CFTC), the UK Financial Conduct Authority (FCA), the US Securities and Exchange Commission (SEC), ...). Respondents from the industry also suggest:

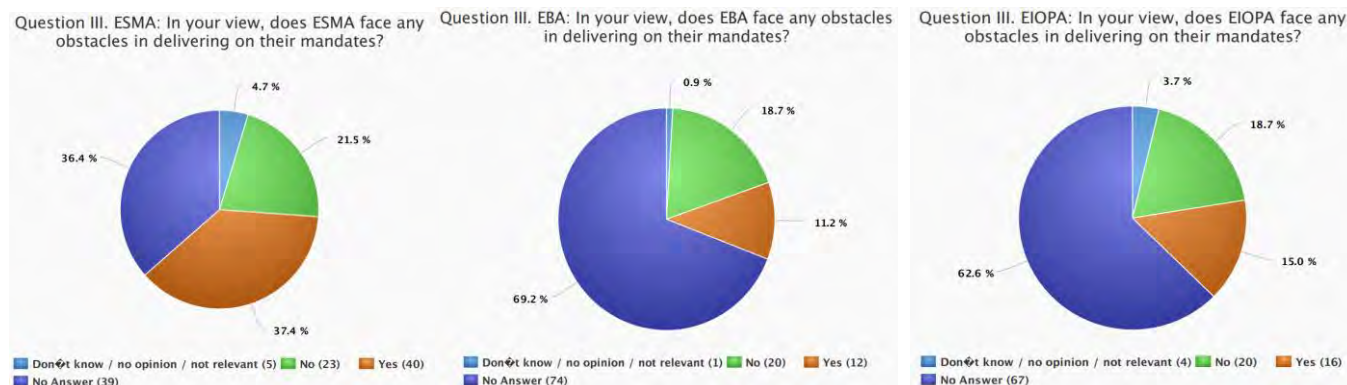
- Strengthen the ability of the ESAs to collect supervisory/enforcement information.
- Give the power to supervise non-financial/ESG rating agencies to ESMA.
- Move the power of supervision of trading venues from the NCAs to ESMA [NB that other areas for direct supervision were mentioned by respondents in response to questions in section 3]
- Strengthen the power to activate the breach of Union law process.

One respondent from the category research institute suggests:

- Possibility to report to the Commission where differences in the national transposition or application of Union acts hamper the functioning of the single market or cause detriment for consumers.
- Power to coordinate stances of NCAs, which participate in international standard setting bodies.
- Power to issue guidelines, recommendations and Q&As should not be limited to the legal acts mentioned in Article 1 para 2 excluding para 3
- Power to conduct mystery shopping exercises itself instead of mere coordination of NCAs

- Power to collect information related to complaints submitted to NCAs and to develop standards for the handling of complaints by NCAs.
- Power to develop standards for the supervision of conduct of business

Q3 –Obstacles in delivering on their mandates?



A majority of respondents, both from the industry and from the public authorities group, consider that EBA and EIOPA do not face any obstacles in delivering their mandates. However, a majority of industry respondents consider that ESMA faces obstacles in delivering its mandate while a slim majority of public authorities (11 vs 9) is of the opposite view.

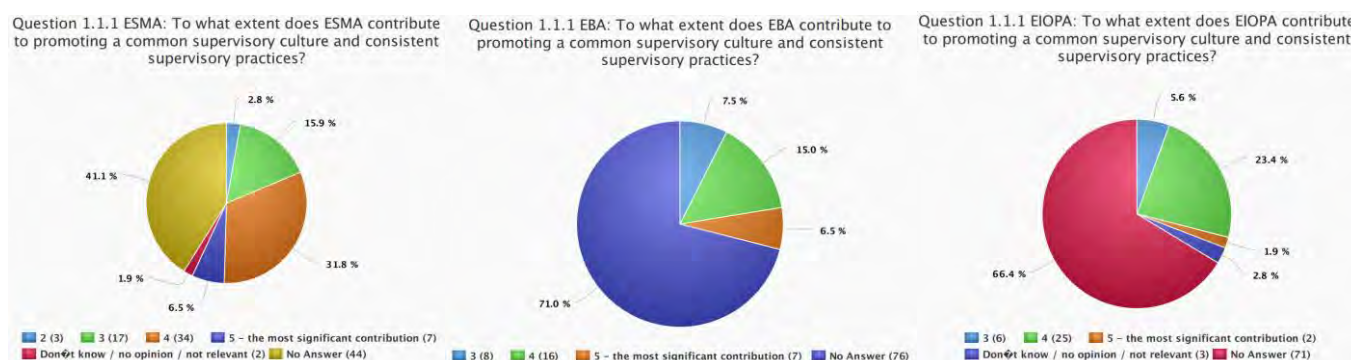
Respondents who are of the view that the ESAs face obstacles in delivering their mandates observed that:

- Unrealistic or overly ambitious timing of delivery of technical standards set out in the level 1 regulation combined with the amount of work strains the limited resources available at the ESAs and the NCAs.
- The ESAs suffer from an inflation of regulatory tasks due to the continuous amount of regulatory work stemming from reviews of existing legislation as well as new regulation, which puts a strain on the existing resources.
- Political discussions should be tackled at level 1 and not be moved to level 2, which is supposed to be technical.
- The governance structure of the ESAs should be made more independent of national supervisors so the ESAs are free of political interference in their day-to-day decision-making processes and are able to take decision more swiftly.
- A cost benefit analysis should be systematically carried out for each draft technical standard, guideline and recommendation proposed.
- The competitiveness of the European markets should be added to the ESAs' mandate.
- The concept of emergency and the procedures that lead to its recognition should be further clarified.
- There is a limit to supervisory convergence due to its resource intensiveness and the limitation of NCAs resources. Instead, more powers of direct supervision should be given to ESMA.

1. The supervisory convergence tasks of the ESAs

1.1. Common supervisory culture/supervisory convergence

Q 1.1.1. Contribution of the ESAs to promoting a common supervisory culture and consistent supervisory practices (“5” being the most significant contribution and “1” the less significant contribution).



The questions had a low response rate, but of those who answered, the vast majority of respondents, both from the industry and from the public authorities group, rated very positively the extent the ESAs contribute to promoting a common supervisory culture and consistent supervisory practices.

Respondents provided some examples of the role that the ESAs can play in building a common supervisory culture among NCAs. For example, ESMA’s Common Supervisory Action on Undertakings for Collective Investment in Transferable Securities (UCITS) liquidity management, the Supervisory Coordination Network, the Senior Supervisors Forum, ESMA’s risk based approach towards supervisory convergence (i.e. the Heatmap), EIOPA’s promotion of bilateral and multilateral exchanges of information (e.g. Cross-Border Notification project), EBA’s annual plan and report on supervisory convergence and its supervisory review and evaluation process (SREP) Guidelines were mentioned in this context.

Respondents nevertheless mentioned some areas for improvement:

- Certain supervisory approaches differ, for example on licensing, qualifying holdings, and managers' fit and proper procedures, making it easier to enter the market in some countries, which creates supervisory arbitrage.
- The impact of diverging supervisory practices tends to be particularly significant in areas where there is a move towards high-levels of EU regulatory harmonisation, underpinning cross-border business.
- There is an absence of a real power for EU authorities to issue no action letters, as it exists in other jurisdictions.
- There should be a regular possibility for supervised entities to report cases of supervisory inconsistencies.
- The ESAs should strive to achieve a more risk-based approach to their tasks since NCAs have to allocate significant resources to the work in the ESAs.
- Supervisory convergence does not mean erasing any divergences across Member States, which in most cases reflect national specificities and practical local market requirements.
- The issue is often not a deficiency in the rules but rather a lack of transparency around how those rules are applied in practice across the EU.

- Supervisory convergence needs a common regulatory basis since divergence in the rules cannot be compensated at supervisory level.
- ESMA's reports on UCITS sanctions in 2016 and 2017 show that the French regulator's fines amounted to over 90% of all sanctions by national regulators, while over 50% of Member States did not sanction any entity.
- ESMA's level of engagement with regard to supervisory convergence is not harmonised across ESMA's Standing Committees (i.e. regular discussion of real supervisory cases in dedicated Working Groups such as the Investment Management Standing Committee's Operational Working Group (IMSC OWG)).
- Divergences prevail in the way fund managers are supervised. ESMA should support greater harmonisation of NCAs' authorisation process for funds. Additional powers for ESMA should be considered for the development of a pan-European marketing regime for cross-border retail funds and an EU-wide database of investment products should be created.
- ESMA could improve the outcome on real cases discussions maintaining an up-to-date record of such outcome across all Standing Committees.
- Shortcomings in terms of incomplete data or inaccurate values have been observed in relation to the functioning of ESMA databases.
- Supervisory convergence is less important in the area of occupational pensions as the Institutions for Occupational Retirement Provision (IORP) II Directive only has a minimum of harmonisation of prudential rules at the European level.
- EIOPA's role on policing supervisory divergences should also cover gold-plating practices and guidance.

Question 1.1.2. Impact of the ESAs in fostering a common supervisory culture and consistent supervisory practices

Respondents assessed rather positively the contribution of most of the tasks included in this question to building a common supervisory culture. For the three ESAs the highest ranking tasks were: contributing to developing high quality reporting standards, developing technical standards, contributing to developing sectorial legislation by providing advice to the Commission, coordinating actions of Competent Authorities in emergency situations (e.g. COVID-19 crisis), developing guidelines and recommendations and Q&As. The task of coordinating Union-wide stress tests of financial institutions was also ranked as significant or most significant contribution for the EBA.

The majority of respondents ranked some tasks in the lower categories (either not so significant or neutral contribution):

- For EBA, investigating breaches of Union law and adopting measures in emergency situations
- For ESMA, developing Union supervisory handbooks, monitoring and assessing ESG related risks and mediating between NCAs
- For EIOPA, investigating breaches of Union law and monitoring the work of supervisory and resolution colleges.

Respondents highlighted the effectiveness of other, informal instruments to promote supervisory convergence developed by ESMA such as:

- Common Supervisory Actions.
- The Supervisors Coordination Network (senior supervisors exchanged views on the relocation applications in the context of the Brexit)
- The Senior Supervisors Forum (senior supervisors exchange views on the main risks they face),
- The Heatmap (identification of common risks to promote a risk-based approach to supervisory convergence)
- Discussion of real supervisory cases
- Supervisory briefings

In their qualitative comments, public authorities observed that:

- The ESAs' response to Brexit and to the COVID-19 crisis showed their ability to coordinate the action of EU authorities. The ESAs' statements throughout the COVID-19 crisis were timely and important from both a supervisory and supervised entity.
- Opinions have been very useful since they can provide a quick response. Their weak point is that sometimes they are too generic and lack enforcement. A possible step forward could be to require NCAs to report whether they are going to comply with them.
- Establishing cross-sectoral training programmes has been hitherto underused and should be further employed.
- There is no need of rigid definitions and inclusion of all supervisory convergence tools in the legislation since it would be counterproductive to the development and adjustment to the needs of the NCAs and ESAs.
- Union strategic supervisory priorities should be identified before NCAs decide their national supervisory work plans.
- The ESAs should be careful not to go beyond promoting supervisory convergence by introducing new substantive provisions to existing Union legislation.
- There is still plenty of room for improvement with regard to the standardization of the reporting (e.g. in the field of UCITS).
- It would be important to update EIOPA's supervisory handbook, since most of the chapters were developed before Solvency II entry into force or in its early years.
- It is desirable that ESMA increases its efforts to issue more reports in the area of investor protection.

Other respondents observed that:

- It is important to take the aspect of proportionality into account so small, non-complex and medium-sized institutions are not be overloaded by red tape.
- Collecting supervisory data is a pre-requisite for many other supervisory activities such as monitoring market developments or intervening in case of emergency. NCAs should thus remain competent for gathering data while sharing the data they collect with the ESAs.
- Reporting questions should be clarified by implementing technical standards (ITS) or by guidelines but not through opinions as they leave it up to the NCAs to incorporate the opinion into their supervisory practices.
- EIOPA's collaboration platforms (Art 152b of Solvency II) have proven to be very helpful for cross-border supervisory issues.
- Union Supervisory Handbooks should be public like in other important jurisdictions.
- A rationalisation of EIOPA's convergence tools pursuant to Article 29 could help to increase efficiency of EIOPA's action. Particularly to clarify the legal base and avoid confusion between denominations such as "supervisory statements", "EIOPA statement" or "supervisory expectation". National supervisory authorities (NSAs) should also be more transparent as to whether or not they choose to follow the guidance provided in these non-binding tools.

Question 1.1.3 Functioning of supervisory colleges

Most respondents did not answer the questions or had no opinion. Of those who answered the majority assessed positively the contribution of EBA and ESMA to promote and facilitate the functioning of supervisory colleges and foster the consistency of the application of Union law among them. However, these tasks were ranked in the lower categories (less significant, not so significant or neutral contribution) for EIOPA.

Respondents observed that:

- The issue of lack of application of Union law if it is not resolved within the college should be addressed through the specific remedies designed for such purpose.
- The ESAs' soft powers within supervisory colleges should be supported by enforcement powers.
- Colleges have been so efficient due to the participation and interaction of NCA representatives.

- ESMA's role to foster convergence in CCPs has been significantly strengthened in EMIR 2.2. ESMA's has received additional resources, which are combined with new powers requiring, e.g. that all opinions and recommendations adopted by colleges should be discussed by the Supervisory Committee.
- ESMA could promote colleges beyond the ones foreseen in the EU law. For example, largest investment firms and or asset managers, with more significant cross-border activities within the EU, could benefit from being supervised through a college, subject to a MoU.
- In order to increase the efficiency of the colleges, EIOPA may evaluate the agenda items included by default as some of these items do not add much value.

Question 1.1.4 - 2019 ESAs review. New process for questions and answers (Article 16b)

More than 70 respondents replied to this question. A large majority groups see room from improvement in the new Q&As process. Respondents from the industry observed that:

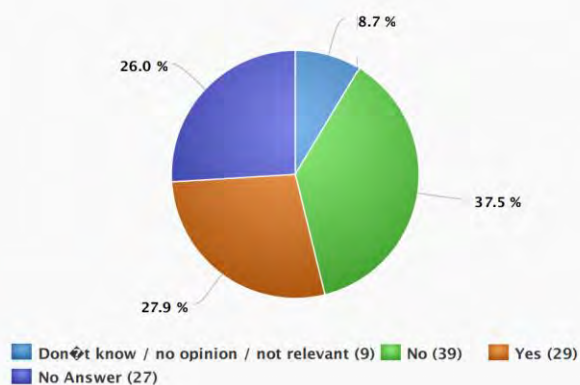
- Stakeholders should be systematically involved in the process through consultations especially in case of technical matters that can have a significant impact on the existing operational processes.
- The process should be more transparent and efficient. For example, many Q&As are being developed following discussions among NCAs or questions received by some NCAs, not directly by the ESAs. These questions remain unknown for the interested stakeholders until the final Q&As are published. Reasons for rejecting questions should be provided. Changes made to Q&As should be made clear. More transparency should be devoted to identify NCAs which do not follow Q&As.
- The process is cumbersome and slow. Often the industry receive the responses after crucial commercial decisions on the implementation of the rules had to be taken and the industry may incur in additional costs in complying with the answer if this requires changes to already in-place procedures born by different interpretations.
- There is room for improvement in the functionalities of the web-based tool allowing the industry to submit its questions. Respondents mentioned, among others: capacity to follow-up on the status of a question, greater visibility for questions in the pipeline, streamline the options to submit a question, remove obsolete and duplicates files and add the possibility to exchange views with the asker.
- It is crucial that Q&As do not go beyond the legal texts and remain technical given the quasi binding nature of Q&As that have significant implications on market participants.
- Transition periods to implement changes and comply with the new Q&As should be introduced and the impacted firms should be notified by the authority prior the publication of the Q&A.

A number of respondents from the industry welcomed improvements in the new system such as the two-step approach that allows stakeholders to choose who to address their questions to (either the relevant ESA or their NCA), the clarification that the answers are non-binding and the increased legal clarity.

Most respondents from the public authorities observed that the new process has become less efficient and slower due to the difficulty to distinguish which questions should be answered by the ESAs and which should be passed to the Commission since each answer is to a greater or lesser extent an interpretation of Union law. They further argue that the lengthy process could undermine the objectives pursued via this tool since it is important to provide submitters with timely feedback, also to avoid the emergence of divergent or fragmented practices in the case of new regulations that comes into force.

Question 1.1.5 Efficiency of the Q&A process

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?



The majority of respondents who replied to this question (39 vs 29 respondents) consider that the new process for questions and answers does not allow for an efficient process for answering questions.

Within the public authorities, a narrow majority think the new rules allow for an efficient process. However, even within this group most respondents see room for improvement. Public authorities observed that:

- Timeliness is an issue. The process is inefficient and slow and the Commission takes an inordinately long time to deal with questions.

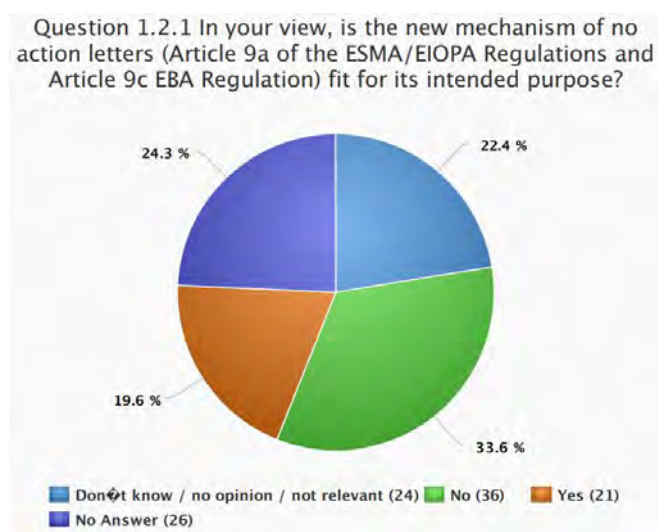
- There are coordination issues between the European Commission and the ESAs since it is difficult to distinguish what constitutes interpretation of Union law and should be passed to the Commission for an answer.
- The Commission should only be involved when responding implies an interpretation of the level 1 legal text.
- There is a need to implement tools to be able to search and identify Q&As more easily and to provide market participants with an overview – similar to compliance tables for guidelines –informing on the degree to which each NCA adheres to the approach developed in each Q&A.
- The process should be made more transparent by introducing consultations.

A clear majority amongst the industry respondents (22 vs 11) consider that the new process is not efficient. Their comments included:

- Q&As should only be used to address technical issues but not to set new rules or make policy choices.
- Stakeholders should be systematically involved in the process through consultation. Some respondents are skeptical about the new mechanism set out in Article 16.b.4 for consultations.
- There should be greater visibility around the status of questions under consideration, with indicative timelines of when they may be reviewed and addressed, or if they have been rejected or passed on to the Commission.
- There should be a greater predictability as to when Q&As are updated.
- Improvements were suggested for the web-based tool for the submission of Q&As mainly for ESMA and EIOPA (possibility to indicate that questions concern more than one piece of legislation; possibility to exchange views with ESMA by e-mail if more information is needed; possibility to follow-up on the status of a question; introduce a search function; sort out files adequately by themes and eliminate obsoletes or duplicates for EIOPA; include information about the date of receipt of the question and the date that an answer was published; make clear what changes are made to Q&As ...)
- The volume of Q&A should be reduced.
- Timeliness of the answers has deteriorated after the Q&A changes introduced in 2019
- The impacted firms should be notified by the authority prior the publication of the Q&A to allow market participants sufficient time to adapt their operations and technology.
- Improve the transparency of the process by specifying where the questions originated from and what stakeholders were consulted as well as the process followed prior to their publication.

1.2. No action letters

Question 1.2.1 - 2019 ESAs review. Are “no action letters” fit for their intended purpose?



The majority (36 vs 21) of respondents consider that the new mechanism of no action letters introduced by the 2019 ESAs review is not fit for its intended purpose. Many respondents (69) gave their qualitative comments for this question and most of them argued that the current legal basis should be improved to ensure that the new mechanism is fit for its intended purpose.

Respondents from the **public authorities** group observed that:

- The very restrictive conditions for the use of no action letters in the ESAs regulations make very difficult their

use. Instead of no action letters the ESAs continue using “deprioritisation statements” not to prioritize any supervisory or enforcement actions against participants in relation to a given requirement. This practice is confusing and inappropriate.

- Apart from the title, the relevant Articles do not refer to the issuance of letters, or of any commitment to temporarily suspend EU law.
- Due to the non-binding nature of these no-action letters, clarity on legal consequences and reliability for market participants is limited and there is no guarantee that NCAs will act in a harmonised way.
- ESMA only once made use of the no action letter so far, despite the turmoil on the capital markets caused by the COVID-19 pandemic during the last year.
- No action letters should allow to suspend the application of certain rules whenever it is not possible or they could have a negative/harmful impact, under certain conditions and subject to the objection of the co-legislators.
- “Real” no action letters could offer EU players a level playing field with their competitors across the world.
- It should be the ESAs responsibility to decide when the conditions for an “exceptional situation” are fulfilled.
- It is therefore essential to provide clarity in the ESAs Regulations regarding the possibility for the ESAs not to enforce articles but also to enable NCAs not to apply those articles based on the no action letter.

Respondents from the **industry** made the following comments:

- These should not be tools, which are deployed at the last moment to prevent imminent disruption (e.g. ESMA published a no action letter on 29 April for the new ESG disclosure obligations under the amended EU Benchmark Regulation that applied from 30 April 2020). It is key that no-action tools are adopted in a timely manner.
- No action letters in their current form consist of non-binding opinions to the Commission and NCAs, which is extremely far from the prerogatives of the SEC or the CFTC in similar situations, and are not fully reliable for the financial industry, as they do not guarantee that the NCAs will act in a harmonised way.
- No-action letters should come with an assumed agreement by each NCA to de-prioritise its enforcement actions related to the targeted rule, unless it explicitly expresses its refusal.
- The mechanism does not incentivise the ESAs to use the tool and this is why the ESAs have continued to use “deprioritisation of enforcement” statements instead of no action letters.

- The ESAs should be able to disapply a specific EU legal provision as originally planned the European Parliament. Despite the EU co-legislators' will to include no-action letters into the revised ESMA toolkit, the final text only confirms a lengthy and impractical process.
- At the end of the lengthy process, the legislative provisions that are subject to an ESAs no-action letter continue to apply to EU NCAs and market participants, and there is no guarantee that EU NCAs will not sanction market participants for failing to comply with EU law.
- A recurring problem in EU law is that level 1 foresees a specific date decoupled from when level 2 will enter into application. This problem can be solved by adopting level 1 with an entry into application depending on the adoption of the level 2.
- The EBA should have had the power to adapt more effectively to COVID-19 by issuing a no action letter on the Strong Customer Authentication implementation.
- A proper no-action letter that allows to suspend for a time-limited 9-months period the application of delegated acts would be legally feasible through a fast track procedure that maintains the institutional balance in the EU treaties. For example, the ESAs could prepare a "suspensory technical standard" to be adopted by the Commission to which the co-legislators would have 15 days to object.
- The requirement for the ESAs to provide the Commission with an opinion on any action they consider appropriate in the form of a legal proposal for a new act as requested for in Art. 9a of the amended ESAs regulations is considered disproportionate if the purpose is that of providing market participants with timely legal certainty.

Question 1.2.2 -2019 ESAs review. Comparison with "no action letters" in other jurisdictions

Out of the 42 respondents who replied to this question, 18 are from public authorities and 24 represent businesses. Respondents pointed out that "no action letters", most notably in the US, are a commitment on the part of the regulator not to enforce market participant non-compliance with the provisions of US federal law, SEC rules, regulations or orders as opposed to the ESAs "no action letters" that consist of non-binding opinions to the Commission and NCAs. Other respondents observed that they do not have experience with other jurisdictions.

One respondent from the **public authorities** group observed that "no action letters" that the SEC (US) is empowered to issue have the following characteristics:

- They are adopted by a Department of the SEC following a market participant request;
- In his letter to the SEC, the financial market participant requests not to be subject to the enforcement of specific rules due to the described circumstances;
- The SEC Division staff write the SEC no-action letters and they are not binding on the SEC itself.
- The no-action letter only states that the Division Staff would not recommend action based on the facts and circumstances presented in the letter
- If another financial market participant is in the same situation, the SEC allows him to reply in the "no action letter" already issued

Respondents from the **industry** pointed out to relevant features of forbearance mechanisms in other jurisdictions:

- In the US, staff at the SEC and CFTC may provide written relief or guidance on US regulation in the form of a no-action or interpretative letter. A requester may seek a no-action letter from staff in the relevant division of the SEC/CFTC where it seeks assurance that the staff will not recommend an enforcement action against it based on the facts and representations described in the request.
- No action letters are simply acts of staff, distinct from the Commission. As such, they do not require a vote by commissioners to approve the letter. This has the benefit of enabling staff to respond quickly. No-action letters bind only the staff of the division that issued the letter and do not bind the SEC/CFTC itself.

- The SEC and CFTC's authority does not depend upon confirmation or other measures to be taken by other bodies.
- Both the SEC and CFTC can also issue exemptive letters, where permitted by law. In such cases, the relevant law would permit the regulator to exempt an entity from the requirements of the law if the regulator considers it to be in the public interest. The key difference from no-action relief is that exemptive relief binds both the staff and the SEC/CFTC itself.
- SEC/CFTC no-action letters are time-limited relief, may be withdrawn at any time, may be addressed to a single entity and not necessarily to all market operators and cannot be relied upon by third parties.
- The Monetary Authority of Singapore (MAS) can grant staggered compliance with the coming into force of certain statutory obligations on the basis that such a change would require substantial investment in technology or modification of existing operational processes. These letters do not have the force of law and they do not bind the MAS or the Public Prosecutor from instituting proceedings subsequently.

Question 1.2.3 - 2019 ESAs review. Situations where the use of no action letters would have been useful or could be useful in the future

A significant number of respondents referred to the only example of a no-action letter adopted by ESMA on 29 April 2020 in relation to the entry into application of the new sustainability-related disclosures for benchmarks before the level 2 measures were adopted. One respondent argued that ESMA's first no-action letter revealed significant shortcomings: on the one hand, market participants are not able to be confident that NCAs will follow it and on the other hand, the fact that the European Commission expressed opposition to the use of the no action letter tool, referring to the lack of justification and legal proposal as requested for in article 9a of the ESMA Regulation.

Respondents also mentioned that the use of no action letters would have been useful in the context of the pandemic and Brexit for addressing some specific issues arisen in the practical application of the EU rules regarding the operation of secondary markets (for instance, on the shares and derivatives trading obligations). However, respondents still recognised that good outcomes have been achieved with other tools such as statements.

Other examples mentioned had a deficiency in a particular provision or an urgent need to postpone the application of a particular provision. Respondents argue that due to the current design of the mechanism for no action letters, there has been an overuse of supervisory statements and that true no-action letters would have been clearer and provided more legal certainty for NCAs and market participants. Examples included :

- The application of variation margin requirements to non-centrally cleared derivatives as of 1st March 2017. The EU financial market participants were put at a competitive disadvantage compared to third-country peers because it was impossible in the EU to postpone the date of application of the requirement to post variation margins (originally a G20 commitment), while most third-country jurisdictions had used regulatory forbearance tools to grant their industry an extra 6 months to prepare for the new rule.
- The delay of the entry into force of the Markets in Financial Instruments Regulation (MiFIR) provisions on non-discriminatory access for Exchange Traded Derivatives.
- In the context of the implementation of the Packaged Retail and Insurance Based Investment Products (PRIIPs) Regulation, PRIIPs manufacturers were unable to simultaneously comply with the PRIIPs level 2 and provide investors with fair and reliable information.
- In the context of the second Capital Requirements Regulation (CRR2), the mandatory substitution approach in the large exposures regime applicable as from 28 June 2021 despite the fact that a large number of interpretation questions essential to the implementation of the regulation by banks have not been clarified.
- In the context of Markets in Financial Instruments Directive (MiFID II), the amendment to the tick size regime for third country instruments traded in the EU. After 3 January 2018, sharp falls in trading in such non-EU shares

were observed because the minimum tick size on the non-EU trading venues was smaller than in the EU, so the EU venues could not offer competitive pricing, and allow for best execution. ESMA was engaged in amending the relevant regulatory technical standards (RTS) to fix the issue, but could not act quickly enough to stop liquidity from shifting away from EU venues.

- The Capital Markets Recovery Package amended MiFID II to limit the application of the position limits regime to significant derivatives contracts. However, this amendment needs to be transposed by Member States, and therefore, will only be applicable by mid-February 2022. Since this amendment was introduced in order to foster the EU's recovery from the crisis caused by the COVID-19 pandemic, the possibility to issue a no action letter allowing NCAs not to enforce the position limits regime to non-significant derivative contracts could have speeded up the effects of this measure.
- In 2018, the exemption from the clearing obligation for certain pension scheme arrangements expired. The co-legislators were going to extend this exemption. However, the extension could not be approved before the exemption expired. Therefore, since there was a clear intention from the co-legislator to extend this exemption, until it could be approved it would have been useful to have a no action letter which would have permitted ESMA and NCAs not to enforce the clearing obligation on the pension scheme arrangements which benefited from said exemption.
- Diverging timelines of entry into application of Investment Firm Regulation (IFR) and the fourth Capital Requirements Directive (CRDV) which meant that implementation would have been necessary although it was clear that certain provisions would be superseded only a few months later.
- In the context of the Capital Markets Recovery Package, ESMA published a Supervisory Statement highlighting that it expected NCAs not to prioritise supervisory actions towards execution venues relating to the obligation to publish the RTS 27 reports (obligation of execution venues to publish data related to the quality of execution of transactions in their venues).

1.3. Peer reviews

Question 1.3.1. Contribution of peer reviews to the convergence outcomes before the 2019 review and afterwards.

Only few respondents answered the questions. Of those, respondents for EBA and EIOPA assess the contribution of peer reviews to convergence in the application of Union law, convergence in supervisory practices and dissemination of best practices as significant or very significant. The contribution of peer reviews to convergence in enforcement and to further harmonisation of EU law are assessed as neutral or not so significant. Respondents for ESMA only assess the contribution of peer reviews to disseminating best practices as very significant while the contribution of peer reviews to other aspects is assessed as neutral or not so significant. Regarding the comparison between the situation before and after the 2019 ESAs review, there is a significant increase in the number of respondents who do not give an opinion, which is consistent with comments that it is too early to assess the situation after the 2019 ESAs review.

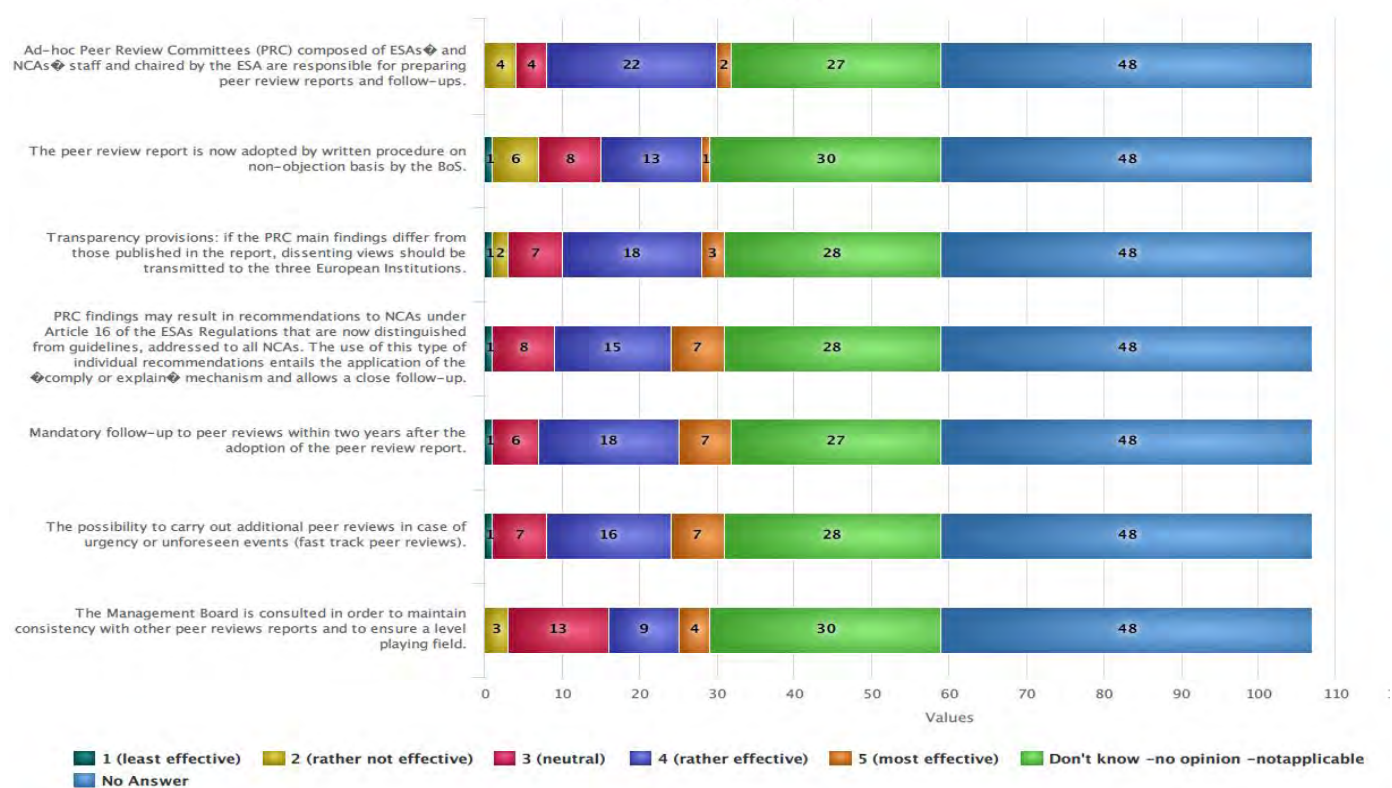
Public authorities consider peer reviews as an effective convergence tool and platform for sharing best practices. However, most respondents argue that there is too little experience to assess the recent changes and that the full effect on the convergence outcomes will only be available in two years. A number of respondents observed that peer reviews require a significant amount of resources, that they should be clearly focused on specific issues and avoid overly broad assignments and that mandatory peer reviews reduce the capacity to conduct targeted peer reviews when needed. Some respondents see room for improvement in the process. These respondents observed that the methodology should be clear and consistently applied, that the designation of the members of the peer review committees should be more

transparent, that the two-years period for the follow-up is too short and that the opportunities for NCAs to amend their initial self-assessment after being able to benchmark against other jurisdictions should be reduced. One respondent observed that peer reviews are particularly beneficial for new processes especially where a process has optional sections while another respondent took the opposite view since there is always a learning curve. One respondent is of the view that peer reviews are not an enforcement tool since enforcement of Union law is for the Commission. A couple of respondents highlighted that the Wirecard fast-track peer review has enabled effective enforcement of EU-law and evidenced the need for improvements in regulation.

Not many respondents from the **industry** commented on this question and most replied that they consider it an effective convergence tool but it is too early to assess the recent changes. A couple of respondents observed that peer reviews provide comparability amongst different jurisdictions and that they should be used more for those topics that require supervisory convergence such as MiFID/MiFIR market structure models. Some respondents observed that the new process is expected to bring improvements in terms of supervisory convergence and that follow-ups are very important. One respondent highlighted the important contribution to supervisory convergence of EIOPA’s recent peer review on “EIOPA’s Decision on the collaboration of the insurance supervisory authorities”. One respondent from the pension sector sees less need for convergence in the application of Union law for IORPs since the legal and supervisory framework in which they operate is diverse. One respondent observed that peer reviews should not encourage a stricter application of requirements by highlighting national “best practice” that are actually gold plating.

Question 1.3.2 Impact of the 2019 ESAs review in the peer review process.

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?

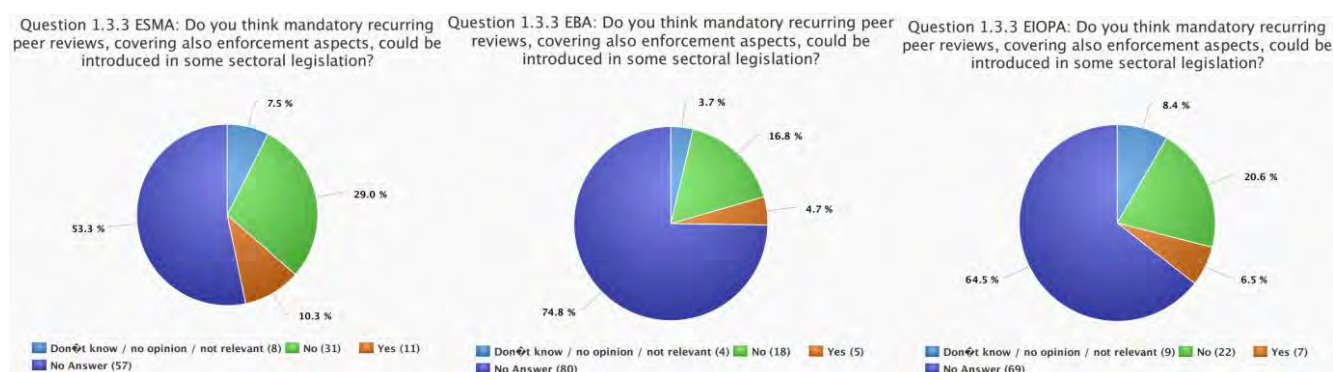


The majority of respondents assess the impact of the changes as rather effective or most effective. The new ad-hoc Peer Review Committees were assessed by 24 respondents as rather or most effective, followed, in descending order, by the mandatory follow-ups (25), fast track peer reviews (23), individual recommendations (22), transparency provisions (21), written procedure (14) and the role of the Management Board (13).

Most **public authorities** observed that it is too early to evaluate the changes but that they should have a positive impact in the peer review process. Two public authorities observed that the possibility to adopt individual recommendations as a result of a peer review gives more weight to recommendations to individual NCAs since the application of the “comply or explain” mechanism allows a close follow-up. Three public authorities observed that the Wirecard case has proven that the possibility to carry out fast track peer reviews is very useful as it allows limiting the focus on a specific issue or jurisdiction while another public authority observed that peer reviews are not the right tools to assess issues that have arisen as a matter of urgency. Two public authorities strongly support the new mandatory and time-bound follow-ups since they allow keeping track of the actions undertaken and contribute to obtain better outcomes while two public authorities are of the view that mandatory follow up constrain significantly the ESAs ability to plan their activities and that the two-years’ period is too short for NCAs. Two public authorities support the adoption of the peer review report by written non-objection procedure as long as it does not prevent a discussion in the Board. One public authority particularly welcomes the new provision according to which the Authority shall submit an opinion to the Commission where it considers that further harmonisation of Union rules would be necessary. One respondent is of the view that the increasing role of the ESA’s staff conducting the initial assessment increases the independence of the peer review process. On a less positive note, one public authority considers that the new “transparency provision” is highly problematic since the Board of Supervisors, as the highest decision-making body of the ESAs, can be effectively bypassed by the submission of dissenting views directly to the EU institutions. The same public authority considers that the reverse voting requirement (simple majority to object) in a written procedure makes it impossible for Member States to achieve enough votes to object to the outcomes of the review even where there may be good reason for doing so. Another public authority observed that the designation process of the members of a Peer Review Committee lacks transparency and that the reasons for not admitting a proposed member remain unclear.

Most respondents from the **industry** observed that it is too early to assess the recent changes. Some respondents observed that changes such the written procedure, the peer review committee, ad-hoc peer reviews and mandatory follow ups had a positive impact.

Question 1.3.3 Mandatory recurring peer reviews.



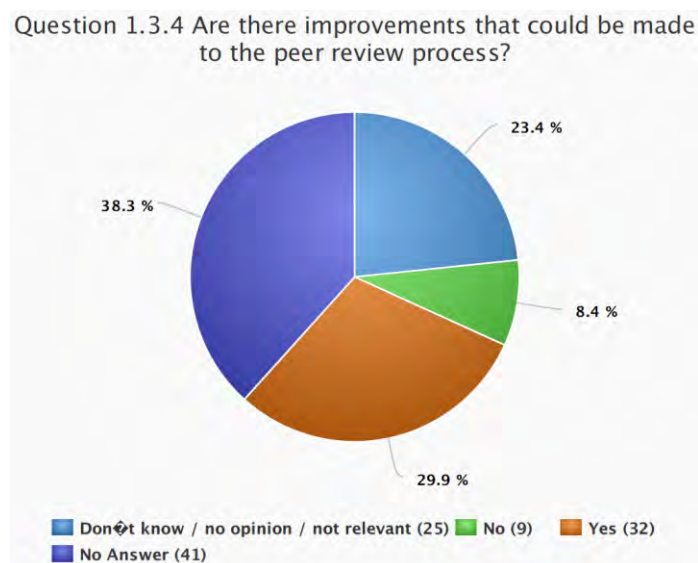
The vast majority of respondents do not support the introduction of mandatory peer reviews in sector legislation. Only one out of every four respondents support the introduction of mandatory peer reviews. Regarding **public authorities** only three supported the introduction of mandatory peer reviews for ESMA.

Eight public authorities **who do not support mandatory peer reviews** argue that the current system is sufficiently broad and flexible and that mandatory peer reviews would limit the ability of the ESAs to conduct discretionary peer reviews on the topics they consider important. One public authority does not support ESMA carrying out peer reviews covering enforcement aspects, as sanctioning regimes are closely linked to specificities of national law. This public authority is of the view that it would be of interest to conduct mappings of the use of sanctions in various Member States, to provide a

comparative view that today does not exist. Ten industry respondents argued that mandatory reviews may not actually focus on areas of concern and consume resources in areas where convergence is already satisfactory. Two respondents from the industry proposed to launch a mandatory ad-hoc peer review upon request of a certain number of Board members. One respondent prefers common supervisory actions (CSAs) to peer reviews since CSAs are narrower in scope and force NCAs to conduct supervisory activities. One NGO observed that the application of sanctions should be included in peer reviews since there is a great variability in the sanctions imposed by NCAs as evidenced in numerous ESAs reports.

The three public authorities **who support mandatory peer reviews** observed that they could be introduced in areas where there is a stronger cross-border impact and a high contagion risk; in the field of asset management (i.e. UCITS and Alternative Investment Fund Managers Directive (AIMFD) rules) and that they should be limited to those areas with potential significant systemic risks. Two industry respondents proposed a regular peer review on the application of the principle of proportionality while another respondent proposed regular peer reviews on the supervision of cross border business. One respondent from the industry observed that mandatory peer reviews are particularly significant in areas where there is a move towards high-levels of EU regulatory harmonisation, underpinning cross-border business and competition, for example in secondary trading. One consumer organization proposed to introduce a mandatory peer review under MiFID II regarding the quality enhancement rules for acceptable inducements under MiFID II since supervision and enforcement of these rules diverges significantly between EU Member States.

Question 1.3.4 Potential improvements to the peer review process



Most respondents think that the peer review process could be improved.

Public authorities observed that:

- Peer reviews are very demanding on NCAs resources including questionnaires, follow-ups, on-site visits that fall on the same supervisory staff.
- Procedural rules should be reinforced to ensure the identification clear benchmarks for the assessment and the proportionality of requests for information.
- Proper coverage of all NCAs by peer reviews should be ensured.
- The follow up process should strengthened by granting the ESAs proper enforcement measures to ensure a convergent approach.

- The findings and recommendations should be published, including the on-site reports.
- The influence of NCAs throughout the review should be reduced.
- The Management Board is not in a position to cover the tasks assigned by the new ESAs Regulations regarding peer reviews and a dedicated forum made up of representatives of NCAs should be set up.
- The selection of Peer Review Committee members should be more transparent.
- The written procedure, the reporting of dissenting views to the EU institutions and the timing requirement for follow-ups should be removed.

Respondents from the **industry** observed that:

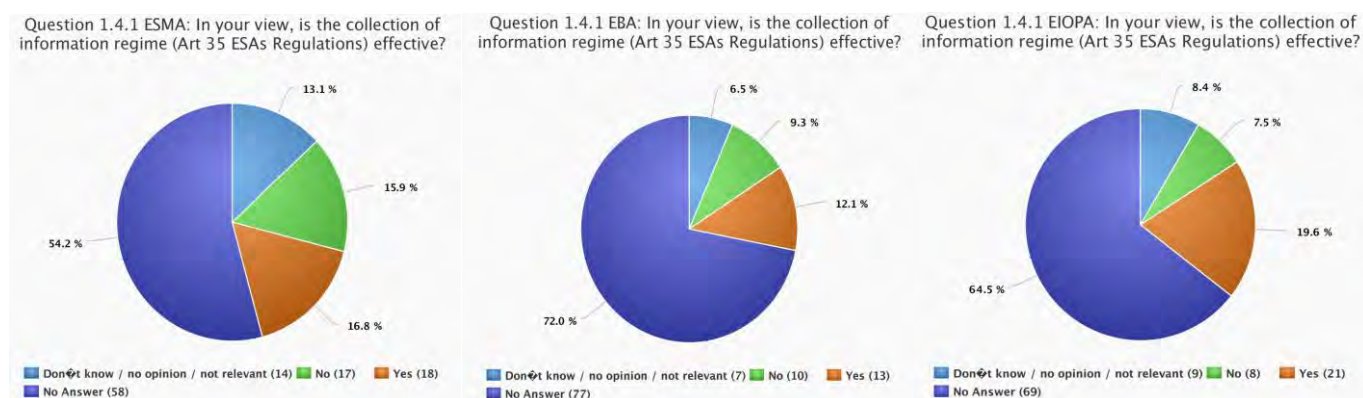
- Stakeholders should be able to provide their input when conducting peer reviews and the ESAs stakeholder groups could provide feedback in the context of the peer review program.
- The findings of peer reviews should be fully disclosed to improve NCAs' incentive to align with the peer reviews recommendations.

- The number of peer reviews should increase while ensuring sufficient resources to conduct these reviews.
- Follow-up and corrective actions should be taken when needed and NCAs should have an obligation to adapt their national framework when necessary.

An **NGO** observed that peer reviews should be made more independent, that the number of peer reviews should be increased and that they should cover more cross-sectoral topics in the financial industry.

1.4. Other tasks and powers

Question 1.4.1. Effectiveness of the collection of information regime (Art 35 ESAs Regulations).



The majority of respondents consider effective the collection of information regime (Art. 35 ESAs Regulation). Respondents pointed out that Article 35 ESAs Regulations is not the only way to obtain information from the NCAs. It only represents a further possibility - in addition to sector legislation - to obtain information. There are differences in the assessment per ESA. For ESMA only a slight majority (18 vs 17) respondents consider effective the collection of information regime while for EIOPA a vast majority (21 vs 8) of respondents consider it effective.

Regarding areas for improvement, **public authorities** observed that:

- The ESAs should explain how they are using the information submitted by the NCAs given the impact these data requests have on NCA resources. In this respect, an obligation should be introduced for the ESAs to present a plan right at the beginning of each year, describing what they intend to analyse with all the data and what results are derived from the data to support the NCAs in their operational work.
- There is support for a more centralised approach to collecting supervisory data.
- The reporting requirements imposed on national resolution authorities might be excessive and there is a need to revise the approach to ensure appropriate cost-benefit balance.

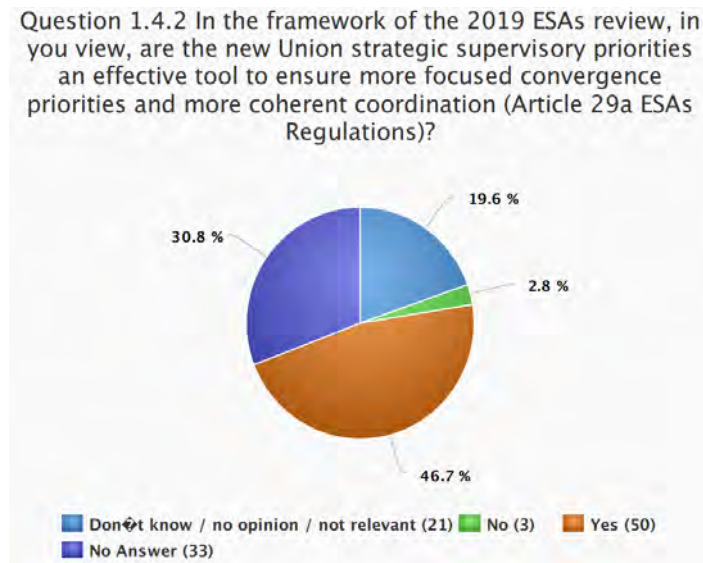
Respondents from the **industry** observed that:

- The reporting burden for banks, in particular for the small and less-complex institutions, is too high and there is a need for a more harmonised and integrated approach to data collection between different authorities (ESAs, NCAs, the Single Resolution Board (SRB) etc.) to avoid double reporting.
- A clear explanation should be provided to firms why additional information is required.
- NCAs should remain the main source of information for the ESAs for supervisory and oversight matters and the natural access point of contact with market players since the right to directly request information from financial market participants is generally only granted to the competent authority having direct supervisory powers over the respective market participant.
- Article 35 plays a huge role in the context of reporting duties that entails an enormous workload for IORPs.

- There is a lot of information collected, with a lack of proportionality in many instances.

An NGO observed that 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.

Question 1.4.2 - 2019 ESAs review. Effectiveness of the new Union strategic supervisory priorities (Article 29a ESAs Regulations).

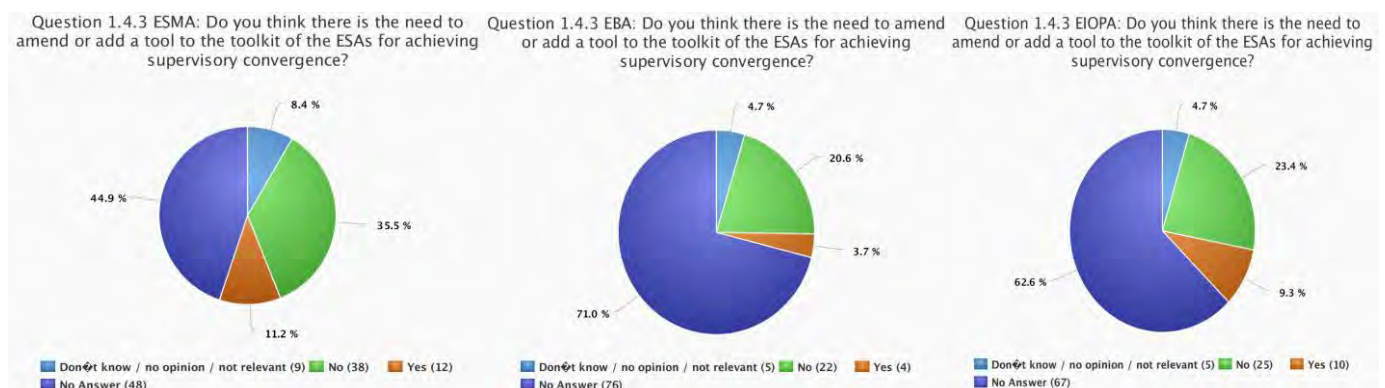


A vast majority of respondents (50 vs 3) consider that the new Union strategic supervisory priorities (USSPs) are an effective tool to ensure more focused convergence priorities. A significant number of respondents both from the public authorities and from the industry groups agree that the USSPs can be an important driver for supervisory convergence but it is too early to assess.

A few public authorities observed that EU strategic priorities could prove to be problematic for an individual Member State as it is difficult to define priorities that are important for all Member States including small Member States. These respondents further argued that the implementation of Article 29a might force NCAs to

operate in areas that may not be the NCA's own choice in the context of limited resources. A few respondents from the industry expressed similar concerns and observed that NCAs should be able to prioritise issues that matter most in their home market and that strategic priorities should refrain from forcing common approaches to business models and risk profiles where this is not appropriate. Regarding areas for improvement, public authorities mentioned further alignment among the ESAs in its processes leading up to the USSPs, the priorities must be decided early enough for the national supervisory authorities to take them into account and the importance of the follow-up work. An NGO proposed to allow more than two supervisory priorities and to make the annual definition of priorities mandatory. A public authority would support the possibility of the ESAs to adopt measures in the event that national competent authorities do not comply.

Question 1.4.3 Potential need to amend or add a tool to the toolkit of the ESAs for achieving supervisory convergence.



The majority of respondents do not think there is the need to amend or add a tool to the toolkit of the ESAs for achieving supervisory convergence. These respondents observed that after the 2019 ESA Review, the ESAs have the appropriate mandate and tools to pursue supervisory convergence and that existing tools have not been used to their full potential. There are no significant differences between the replies for the three ESAs or public authorities' replies vs replies from the industry.

Public authorities who see the need to amend the toolkit of the ESAs observed that:

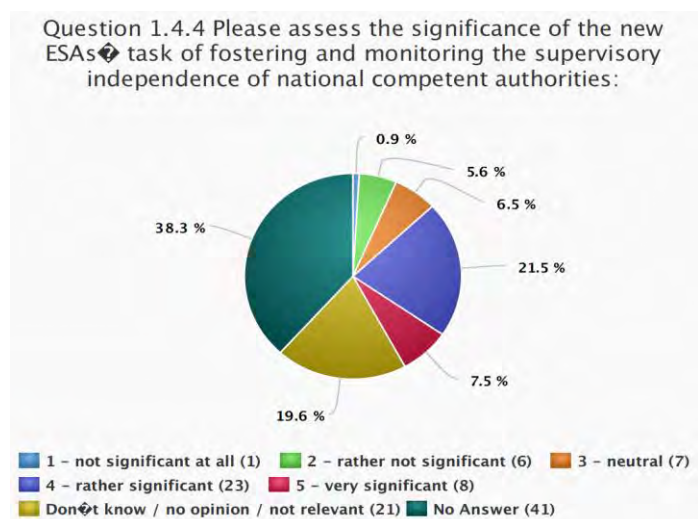
- The power to issue “No Action Letters” should be changed to have real utility.
- Common supervisory actions (similar to those at ESMA) could be added to the toolkit of the other ESAs
- The concept of “emergency” and the procedures for the use of binding powers should be changed to allow for an efficient use by the ESAs,
- The ESAs could share more best practice regarding national authorities' supervisory activities.

One respondent from the **industry** observed that the new “No Action Letters” have not delivered material benefits to market participants compared to tools that were already available. Another respondent from the industry sees the need to define clearly additional tools based on Article 29 that have become common over the past months and years (e.g. supervisory statements and guidance). This respondent is concerned that EIOPA acted as a quasi-regulator by an increasing use of such tools. Another respondent proposed a public report that lists specific cases of supervisory divergence. Another respondent sees the issuance of non-binding opinions on proposed transparency waivers under MIFID II/MiFIR as an important part of delivering supervisory convergence and proposes to extend the use such opinions to other parts of market structure, not least market models under MiFID II / MiFIR.

One **individual** observed that the ESAs’ toolkit is very broad and that the ESAs should be required to detail their toolkit in a more disciplined manner, including the legal base and the rationale for choosing a particular instrument or tool. This respondent is specifically concerned about the formulation of Article 29.2 and article 31, which allow both for a multitude of tools (e.g. EIOPA refers to Article 29.2 when issuing a supervisory statement while ESMA referred to Art 31(2) in a recent public statement).

An **NGO** proposes strengthening the role and powers of the Joint Committee to improve the collaboration amongst the ESAs in cross sector areas such as sustainable finance, technological innovation, outsourcing and delegation arrangements and supervision of mixed holdings.

Question 1.4.4 2019 ESAs review. Significance of the new ESAs’ task of fostering and monitoring the supervisory independence of national competent authorities.



Thirty-one respondents assess the new ESAs’ task of fostering and monitoring the supervisory independence of NCAs as rather significant or very significant as opposed to seven respondents who consider the new task as not significant. A majority of public authorities (13) also consider the new task as rather or very significant vs 6 respondents who consider it not significant.

Respondents gave their reasons why they consider rather significant the new task. **Public authorities** observed that it allows for an expert assessment by an entity that is knowledgeable of the functions carried out by NCAs, that

independence is a pre-condition to develop an effective supervision and that it can enhance harmonisation in the area of supervisory independence and provide useful insights when comparing the state of supervisory independence across the EU. Respondents from the **industry** argued that it is paramount to ensure the legitimacy and credibility of the supervisory process. Other respondents observed that it is too soon to assess the significance of the new ESAs task.

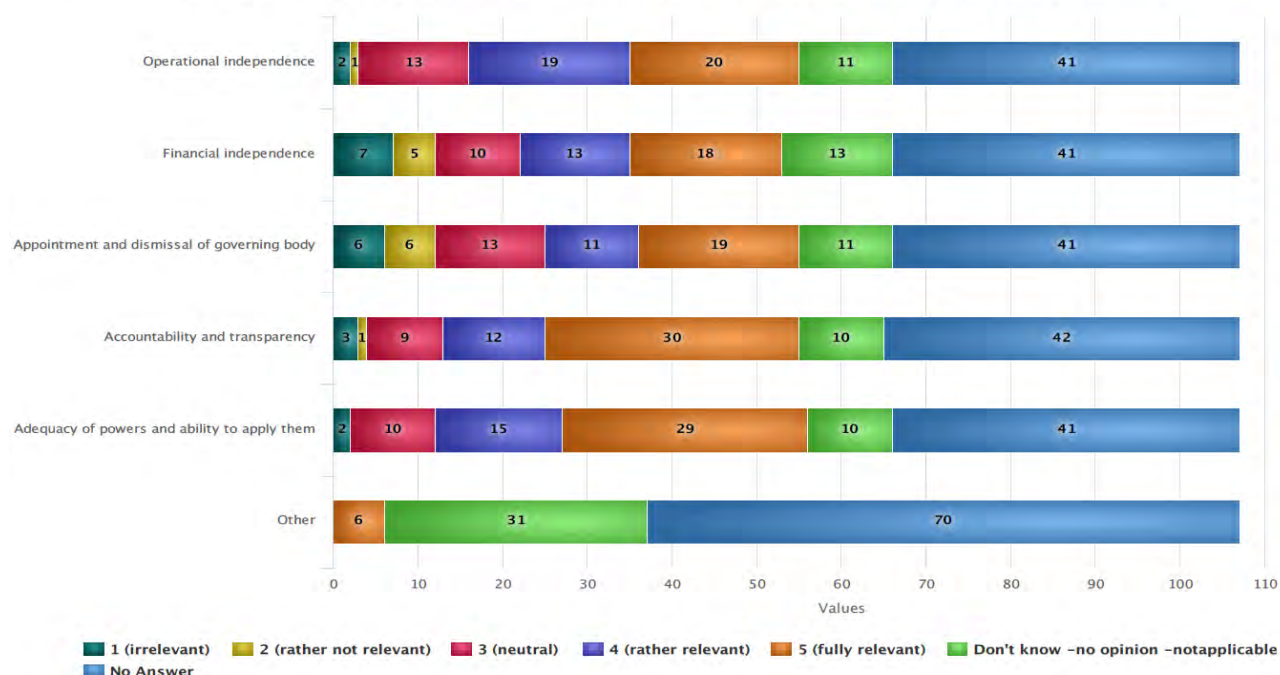
A number of **public authorities** are skeptical about the new task. These respondents argued that the independence of supervisors is often already assessed by a number of other organisations (e.g.: IMF, the International Organization of Securities Commissions (IOSCO)), that each national competent authority is responsible for fostering and monitoring its own supervisory independence as well and that the ESAs cannot actually influence or change issues of independence at national level. Other public authorities argue that specificities of each Member State’s constitutional regime and legal institutional framework must be taken into account and that it is very important for the ESAs to establish a relevant target level of independence that is clear and achievable.

Respondents from the **industry** observed that it is important that the ESAs find the right balance between convergence and independence and that the set-up and legal establishment of supervisory authorities differs significantly across Member States. Two respondents from the industry observed that ESMA’s report in the context of the Wirecard case has had an impact in the reorganisation of banking supervision in Germany.

One **NGO** observed that the NCAs play a crucial role in achieving the consistency of the Union law application across the EU and that it is very important to make sure that NCAs are sufficiently independent from political influence, have the necessary resources and appropriate governance structures. This respondent further argues that the ESAs assess NCA independence only through peer reviews and that effective enforcement tools should be given to ESAs to fulfill this task

Question 1.4.5 Relevance of criteria to perform effectively the new ESAs’ task of fostering and monitoring supervisory independence of national competent authorities.

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?



A vast majority of respondents consider all five criteria as rather relevant or fully relevant. The criteria “adequacy of powers and ability to apply them” was assessed by forty-four respondents as rather or fully relevant followed by

“accountability and transparency” (42 respondents), “operational independence” (39 respondents), “financial independence” (31 respondents) and “appointment and dismissal of governing body” (30 respondents). One public authority observed that all principles are well accepted and it does not seem advisable to focus only on a small subset of such elements since they are interconnected while another observed that the principle of proportionality and national specificities should be taken into account. Another public authority observed that financial and operational independence are crucial since NCAs must be allowed to hire staff freely and decide on the salary level of their employees.

Question 1.4.6 Main remaining obstacle(s) to allow for a more effective supervisory convergence.

A number of **public authorities** mentioned specificities of local markets and different legal environments (e.g. civil, commercial and company law) as the main remaining obstacles to allow for more supervisory convergence. In this respect, unclear EU law where the ESAs need to fill the gaps, changing legislation even before new acts are applied, overregulation and national discretion in less harmonised areas are also seen as obstacles for more supervisory convergence. One respondent believes that the enforcement/sanctioning regime is one of the main remaining obstacles for more effective convergence and that the objective should be that NCAs impose similar sanctions in the event of similar breaches of EU legislation. One public authority sees room for improvement in the area of supervisory independence and would welcome the development of criteria to evaluate the degree of independence of national authorities. One public authority proposed to enhance the effectiveness of peer reviews by making a split between ‘independent reviews’ (focused on detecting and addressing shortcomings in national supervision) and ‘peer learning’ reviews. One public authority considers that more supervisory convergence in the area of I.T. security and governance, cyber risk, cyber underwriting and outsourcing would be beneficial and that a common data-driven supervisory approach and an EU-wide coordinated approach to data collection for supervisory purposes would be required. One respondent proposed a better exchange of views and best practices between supervisory authorities while another perceives a need for more real-life case discussions, preferably on a mandatory basis. One respondent argued that supervisory convergence is very demanding on resources and that it would be more efficient to empower ESMA with more direct supervisory powers. Other public authorities observed that a more effective supervisory convergence could be achieved if the ESAs made better use of their convergence tools (e.g. coordination groups, supervisory colleges, peer reviews) and that the ESAs have the appropriate mandate and tools.

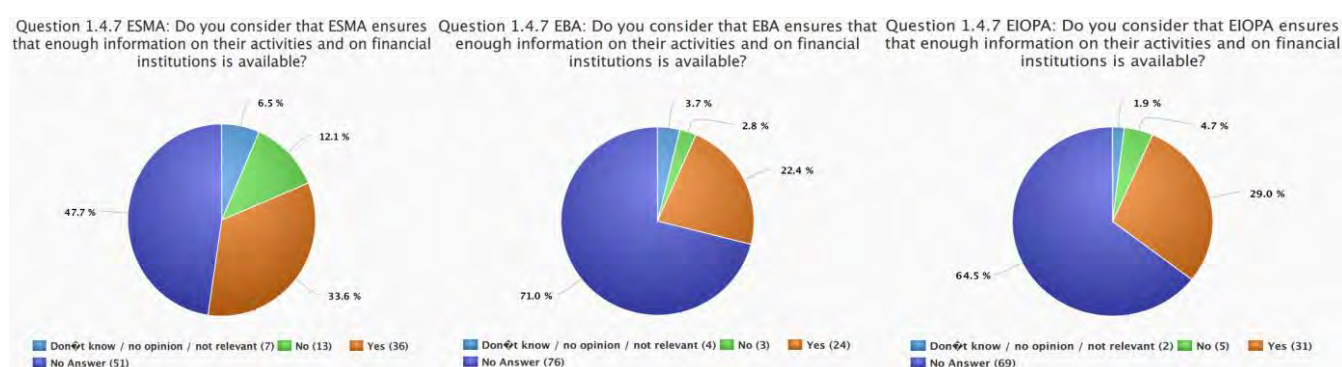
As far as the **industry** is concerned, a significant number of respondents observed that there are no specific obstacles for more effective supervisory convergence and that the ESAs convergence tools have been strengthened recently while another group of respondents sees obstacles to more supervisory convergence. For some respondents, gold plating and regulatory arbitrage are the main obstacles. Some respondents observed that enforcement is the area where convergence is the lowest. Some respondents observed that supervisory convergence cannot be truly achieved as long as certain domains such as company law, fiscal law and criminal law still pertain to national level. Other respondents observed that convergence should be subject to a proportionality and subsidiarity test, that supervisory convergence should respect the diversity in business models as well as of local market traditions and that many supervisory activities are better carried out at local level.

A number of respondents from the industry are concerned with the design of the decision-making process within ESMA due to conflicting interests between national authorities. These respondents argue that ESMA should become more independent and that its governance should be modified to ensure that it has a pan-European perspective. One respondent sees a need to establish a “single reporting rulebook for transactions executed outside of trading venues in the EU” in form of mandatory Guidelines for EU investment firms. One respondent proposed the development of a pan-European marketing regime for cross-border retail funds to address divergence in host Member State approaches and complete the single market in retail investment funds and the creation of an EU-wide database of investment products that would enable fund managers to submit a single filing to obtain the marketing passport. One respondent observed

shortcomings in relation to the functioning of ESMA databases such as Financial Instruments Reference Data System (FIRDS) while another proposed to extend non-binding opinions to other parts of market structure under MiFID II. Two respondents see less need of supervisory convergence in the area of occupational pensions as the IORP II Directive is not a full harmonization Directive. Two respondents observed that the role of EBA in the area of resolution should be reinforced. These respondents further explained that the EBA should develop uniform rules and criteria for the identification of impediments to resolvability and that all decisions of the resolution authorities (SRB and local ones) should be subject to external control by the EBA.

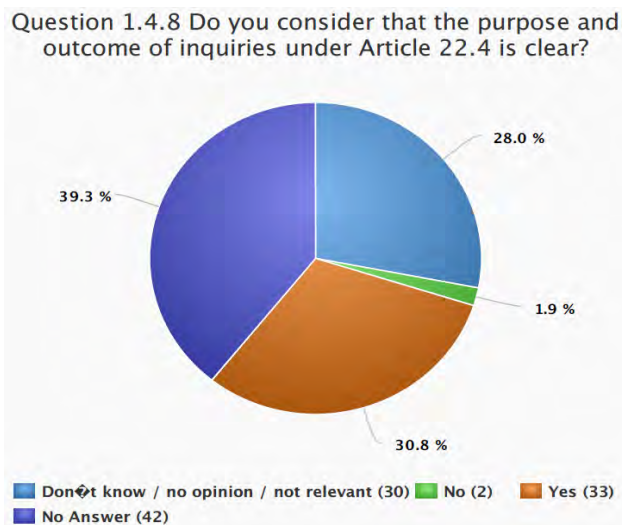
One **consumer organization** sees the need to create an EU supervisory authority dedicated only to consumer issues, as the consumer protection mandates of the existing ESAs have been treated as a marginal issue so far.

Question 1.4.7 Information on ESAs' activities and on financial institutions



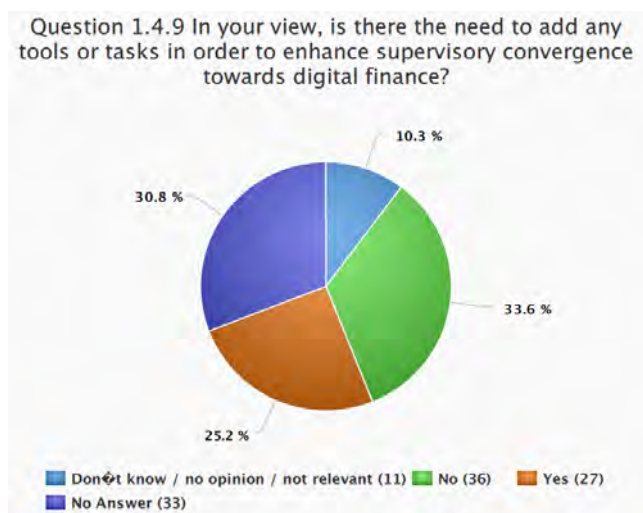
The majority of respondents consider that the ESAs ensure that enough information on their activities and on financial institutions is available. Most respondents who consider that the information provided by the ESAs is not enough (i.e. 13 for ESMA, 5 for EIOPA and 3 for EBA) are from the industry group. These respondents observed that the Annual Work Programmes do not provide much detail in terms of timing of listed actions, that the information published on ESMA's website about supervisory convergence is very light, that the transparency of the Q&A procedures could be significantly improved and that more disclosure about the work of the stakeholder groups would be welcome. In this respect, one respondent observed that ESMA could publish a Regulatory Initiatives Grid (i.e. the regulatory pipeline so that stakeholders can plan for the timing of the initiatives) similar to what is now published on a six-monthly basis by UK regulatory institutions. One respondent sees room for improvement in making the information available to the public in general. One respondent observed that the transparency on the decision making of the ESAs could be enhanced. One respondent observed that it is difficult to get access to conferences, webinars and roundtable discussions due to restrictions and that wherever possible recordings should be made available on the ESMA website. Two respondents observed that the EBA should provide more information and reports on the situation of financial institutions. Respondents see room for improvement in the minutes of the EIOPA Board of Supervisors (BoS) (i.e. arguments and the different point of views), in the register of licensed undertakings under article 25a SII, in the transparency in the supervision of the NCAs and in information on IORPs. A consumer organisation observed that the limited scope of the Annual Statistical Reports of cost and performance (retail investment products, insurance based investment products and personal pension products) reveal that ESMA and EIOPA do not have all the necessary information to adequately supervise these markets.

Question 1.4.8 Inquiries under Article 22.4.



The vast majority of respondents consider that the purpose and outcome of inquiries under Article 22.4 is clear. One public authority noted that this article has been applied once, in the case of withholding tax reclaim schemes and that the power may trigger in practice a more thorough “assessment of potential threats”. One public authority observed that the European Systemic Risk Board (ESRB) is in a better position for this task. Another public authority is unsure of the added value of the new process for inquiries under Article 22.4. This respondent further explained that Article 22.4 was a flexible provision that allowed the ESAs to conduct either targeted or broader inquiries into areas of particular interest with the aim of collecting evidence for coming work and that the recent amendments to the system have added more procedural steps.

Question 1.4.9 Potential need to add any tools or tasks in order to enhance supervisory convergence towards digital finance.



Overall a majority of respondents do not see a need to add any tools or tasks in order to enhance supervisory convergence towards digital finance. However, a thin majority (14 vs 12) of respondents from the **public authorities** group see the need to enhance supervisory convergence tools in digital finance. These respondents observed that:

- Digital finance requires new skills, new supervision tools and resources. In this respect, the development and use of common Sup-tech and Reg-tech tools and training of the NCAs staff provided by the ESAs would be particularly useful.
- There is a need to better coordinate the supervision of financial activities with authorities in charge of data protection, consumer protection, network security and competition.

Respondents proposed an enhanced role of the Joint Committee, cooperation platforms for cross-border oversight or tools for holistic financial supervision on platforms under the Financial Conglomerates Directive (FICOD).

- A convergence roadmap at the EU level should be developed, listing top risks/problems identified by NCAs and per sector and the ESAs should be able to issue genuine "no action letters" to temporarily suspend, in exceptional circumstances, legislation that proves inappropriate or impractical.

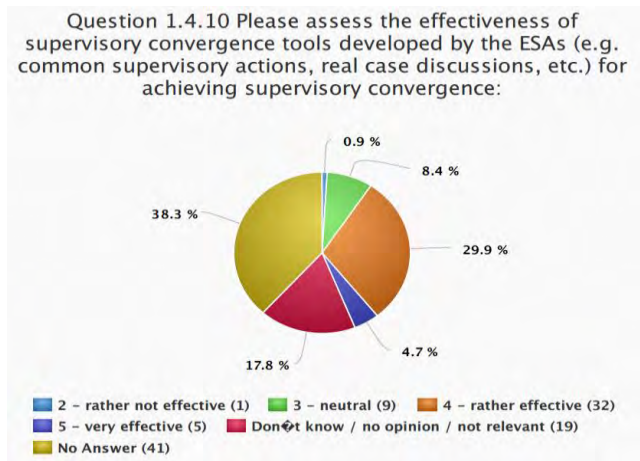
- Discussions on “real life cases” are needed.
- Anti-forum shopping principles (similar to provisions set out in the revised Payments Services Directive (PSD2) (Recital 36 and Article 11(3)). Recital 36 of PSD2) should be clearly included in regulations applicable to financial instruments (MiFID 2) and crypto-assets (MiCA).
- The provision of cross-border services and client onboarding/know-your-client (KYC) are areas that need to be addressed.

Respondents from the **industry** observed that:

- There is a need to strengthen cross-sectoral and cross-disciplinary cooperation between financial supervisors and data privacy and cyber security supervisors and the supervisory responsibility across borders should be clearly assigned.
- The role of the ESAs to drive supervisory convergence must be a more central objective in current and future proposals on digital finance and there should be more joint documents (e.g. joint statement or co-signed guidelines/recommendations) in order to limit divergences.
- Clarifications by the legislator and/or supervisory bodies would be helpful for asset management so that digital assets can be included in business activities while maintaining legal certainty.
- The testing of new products must be backed by a legal basis in the relevant level 1 text. This respondent further argues that the sandbox approach carries a risk of undermining the level playing field and that sandboxes should only be considered in liaison with the definition of very clear selection criteria.

An **NGO** observed that in order to ensure that new digital financial service providers and products are handled consistently across the three sectors, the tasks of the Joint Committee of the ESAs should be expanded to include specifically technological innovation in finance and digital finance.

Question 1.4.10 – Informal supervisory convergence tools developed by the ESAs



A vast majority of respondents (37 vs 10) assess the effectiveness of supervisory convergence tools developed by the ESAs as effective or very effective. Most **public authorities** observed that CSAs and real case discussions are very effective for achieving supervisory convergence and some are in favor of using them more intensively. However, a few respondents drew the attention to the resources implications of CSAs while another respondent observed that confidentiality is of utmost importance regarding supervisory case discussions and that the provision of cases should be left to the discretion of contributing NCAs. Other public authorities see room for improvement in the design of CSAs. These respondents argue

that objectives need to be clearly defined at the onset, that a common methodology should be ensured, that it is very important to conduct follow-up actions and more generally that CSAs would benefit from more detailed procedural rules. One respondent proposed to create an information repository of supervisory cases available to be consulted by NCAs. One respondent observed that training courses where national competent authorities share their expertise and experiences should also be promoted more intensively. One respondent criticised the very wide scope of some CSAs (e.g. CSAs on UCITs liquidity risk management) as it is inconsistent with a risk based approach. One respondent observed that the focus should be on refining existing tools and align them across the ESAs in order to simplify the range of tools and increase transparency and comparability of the tools. One respondent observed that EIOPA could share more data and benchmarks with NCA’s on cross border activities of insurance undertakings. One respondent observed that EBA’s

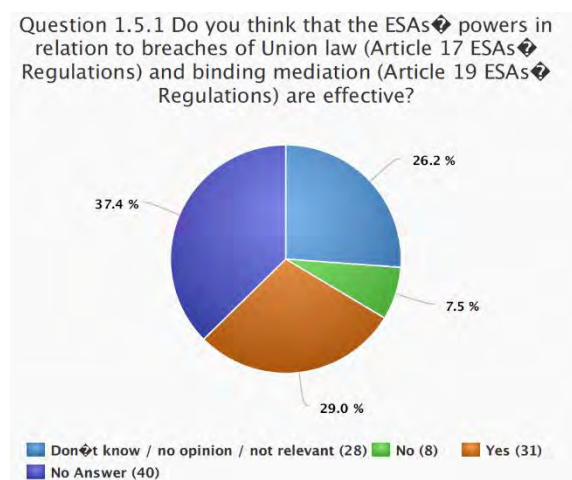
external communications via statements throughout the COVID-19 crisis and ESMA's Supervisory Coordination Network in the context of Brexit have greatly contributed to building a common supervisory culture among NCAs.

As far as the **industry** is concerned, a number of respondents consider that CSAs are effective supervisory convergence tools. However, some respondents commented on the CSA on costs and fees on UCITs recently launched by ESMA. These respondents argue that despite the objective of having a common approach, there have been many divergences in the way NCAs have submitted the corresponding questionnaire at national level (e.g. in terms of investment funds in the scope, the timeline applied and the questionnaire sent to asset managers). Other respondents would like to see more transparency in the results of CSAs. Some respondents observed that the toolkit developed by EIOPA seems large and may bring additional complexity.

An **NGO** observed that real case discussions have proven to be most useful and should be increasingly used in the future. This respondent further argues that lack of enforcement powers and deficiencies in ESAs governance hamper the actual effectiveness of the convergence tools.

1.5. Breach of Union law and dispute settlement.

Question 1.5.1. Effectiveness of ESAs' powers in relation to breaches of Union law (Article 17 ESAs Regulations) and binding mediation (Article 19 ESAs Regulations).



The vast majority of respondents (31 vs 8) consider effective the ESAs' powers in relation to breaches of Union law and binding mediation. Only two respondents from the public authority group consider that these ESAs powers are not effective.

Respondents from the **public authorities** group observed that:

- Both powers can be viewed as effective deterrent and last-resort mechanisms, therefore strengthening the Single Market while maintaining appropriate safeguards.
- Dialogue between ESMA and NCAs is the best way to solve any outstanding issues. The current process, under which the adoption of an individual decision by ESMA is a measure of last

resort which can only be taken after the Commission has adopted a formal opinion, is effective.

- The regulation should provide other tools for situations where a breach of Union law procedure is not to be applied.
- Breach of Union Law (BUL) procedures are often seen as punitive instruments whereas it should be an instrument to rectify a situation instead.

Some respondents from the industry observed that:

- With more countries joining the Single Supervisory Mechanism (SSM) (since October 2020), the potential veto powers of "non-participating" Member States are enhanced and it is now easier for few NCAs from non-participating Member States (not representing the biggest financial markets in EU) to block decisions.
- Reports on the use of sanctions under the UCITS and AIFMD that seem to point towards different enforcement levels across the EU and ESMA should better monitor enforcement by NCAs in the asset management sector.

- Mandatory mediation and breach of law procedures may be applied jointly as divergent views will often reveal violations of EU law by a disputant. In the first step, the ESAs act as mediators. Failing an agreement between the concerned competent authorities, the ESAs may deliver a binding decision requiring them to take specific action (Article 19.3).

A couple of respondents (a **NGO and a research institute**) pointed out that there is a conflict of interest inherent in the ESAs' governance, whereby crucial decisions are taken by the Board of Supervisors, that prevents the ESAs from using these powers.

Question 1.5.2 Use of the breach of Union law procedure by the ESAs both before and after the 2019 ESAs' review.

Only a few respondents replied to the question. The majority of respondents think that the use of the breach of Union law procedure by the ESAs is adequate. There are no significant differences between the three ESAs. There is a slight decrease in the number of respondents who reply no after the 2019 ESAs review without a parallel increase in the number of respondents who replied yes. This might indicate that these respondents consider that the 2019 ESAs review changes either have improved this process or not enough time has passed to assess the changes. Most respondents to this question come from the public authorities group.

Respondents from the **public authorities** group observed that:

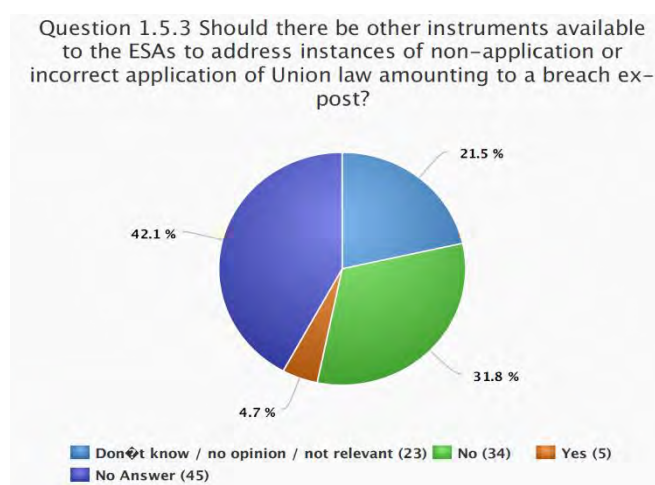
- It is too early to evaluate the post-2019 process and more time needs to elapse before a more mature view can be arrived at.
- The new powers (e.g. the power of the ESAs to request information directly, via a duly justified and reasoned request, from other competent authorities; the transparent communication towards the requester on how the ESAs intend to proceed with the case) are welcome.
- The breach of Union law procedure by the ESAs should only be used to address ongoing cases where breach of Union law still exists while past breaches of Union law should be addressed by the Commission.
- Some flaws have been observed in the past (under the pre 2019 ESA review) on how breach of Union law have been conducted. It is very important to ensure that NCAs remain informed of all steps of the process, that NCAs are granted sufficient time to respond and that sufficient attention is put into aspects of communication to the public.
- ESMA has hardly activated its powers in connection with any possible breach of Union Law. In this regard, a careful initiation of investigations for such purposes could increase the deterrent effect of the Breach of Union law process.

Respondents from the **industry** observed that:

- Too little time has passed since the last ESA review and the new procedure has not been put in practice yet.
- The breach of Union law is a useful means for the ESAs to put pressure on NCAs to avoid triggering the procedure.
- Changes to Art 18 (3) in ESA's review brought more clarity, celerity and efficiency than before 2019.
- Despite the considerable number of requests received by EIOPA, most cases are rejected on the grounds of non-admissibility and only few formal proceedings are launched and settled before adopting a decision against competent authorities or financial institutions.

Two respondents (an **NGO and a consumer organisation**) also observed that the new provisions have entered into force in January 2020 and that it is premature to assess the use of this procedure in the post ESAs' review period.

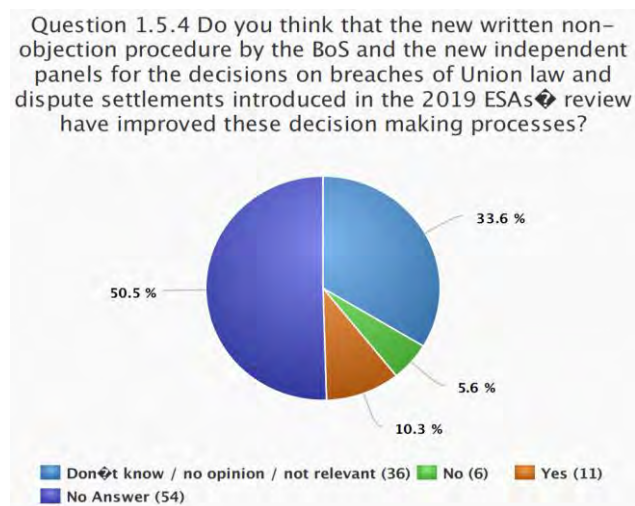
Question 1.5.3 Other potential instruments to address instances of non-application or incorrect application of Union law amounting to a breach ex-post.



The vast majority of respondents (34 vs 5) consider that existing instruments are sufficient to address instances of non-application or incorrect application of Union law amounting to a breach ex-post. A few respondents from the **public authorities** group observed that a less intrusive approach to address minor infringements and an additional instrument to inquiry whether application leads to effective supervision could be introduced. Another public authority observed that there is a need to strengthen the powers of EIOPA in the context of collaboration platforms (Article 152 b) of Solvency II). This respondent further explained that for this purpose, it could be useful to provide the EIOPA with the power to issue binding recommendations to take certain

measures or actions towards the concerned supervisory authorities. However, the majority (16 vs 5) of respondents from the public authority group observed that the current instruments are sufficient and that with regard to correct application of EU law the EU Commission as well as national courts and the European Court of Justice play key-roles.

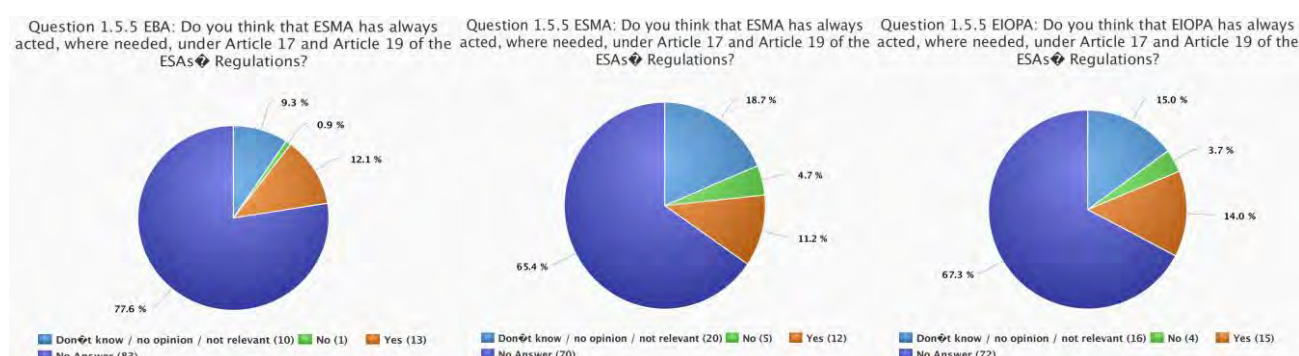
Question 1.5.4 New written non-objection procedure by the Board of Supervisors (BoS) and new independent panels for the decisions on breach of Union law and dispute settlements introduced in the 2019 ESAs' review.



The majority of respondents consider that the written non-objection procedure and the independent panels introduced by the 2019 ESAs' review have improved the decision making process for the decisions on breach of Union law and dispute settlements. However, eleven respondents for the **public authority** group are of the view that the Commission has not yet gained enough experience to assess these new procedures. Three public authorities observed that see the 2019 ESAs' review changes make the decision-making quicker, mitigate the risk of conflicts of interests and bring an element of impartiality and transparency to the procedure. However, three public authorities are of the view that decision on the breach of Union law should always be made in physical Board meetings to

ensure adequate deliberations. These respondents further argue that the reverse no-objection procedure reduces and undermines the role of the BoS in the decision-making process and removes de facto the possibility of NCAs to question the decision at hand. Another respondent is concerned with the effective protection of NCA's rights under the new independent panels and sees the need to create additional safeguards in order to ensure that NCAs which are party to a "disagreement" are not deprived of the possibility to provide their views. A few respondents from the **industry** consider that it is too early to evaluate the new procedures.

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



A majority of respondents consider that the ESAs have always acted, where needed, under Article 17 and Article 19 of the ESAs' Regulations. A few respondents gave concrete examples where they consider that the ESAs should have taken action. For example, a **research institute** observed that the EBA did not initiate a breach of Union law procedure against the German supervisor, BaFin, regarding Greensill Bank and Wirecard Bank and ESMA did not act against BaFin regarding Wirecard AG. Two respondents from the **industry** believe there were breaches of Union law by national competent authorities when these imposed additional requirements such as fees and charges on fund managers marketing their funds cross-border or forced fund managers to appoint a paying agent. Another respondent from the industry observed that no decision have been taken against competent authorities or financial institutions despite the number of cases of inadequate supervision that became public in context of insurers operating on a cross-border basis. A **public authority** observed that a complex case of an undertaking operating cross-border (posing serious consumer protection concerns and solvency issues) was discussed at length at EIOPA level and despite the evidence of the serious concerns posed by the undertaking, the discussions have not yet led to the adoption of measures by EIOPA.

Question 1.5.6 Examples where the introduction of further binding mediation provisions in sectoral legislation would be useful.

Mainly respondents from the **public authority** group replied to this question. Nine public authorities do not see merit in adding further binding mediation while four public authorities took the opposite view. One public authority observed that binding mediation seems useful in the context of home/host supervision and whenever national competent authorities do not agree to cooperate or exchange information while another public authority observed that attention should be paid to the identification of potential areas where for binding mediation when introducing new legislations or revising the ones already in force. Regarding concrete examples, one public authority mentioned the distribution of complex investment products, such as contracts for differences (CFDs), and another mentioned that EIOPA should be provided with powers for binding mediation in relation to approval of internal models. Three respondents from the **industry** expressed their doubts that binding mediation in the case of the IORP II Directive is desirable or needed.

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

Mainly respondents from the **public authorities** group replied to this question. The majority of respondents consider that the use of these ESAs' powers has been adequate since these powers carry a high-impact and may generally be regarded as a last resort. These respondents argued that the NCAs seek to resolve issues and disputes between themselves or with the assistance of the ESAs without using mediation. Another respondent further argued that the strength of the ESAs is rather the gathering of national supervisors to discuss risks and coordinate measures and that this role is difficult to combine with a role of controlling and overriding national supervisory authority's decisions. Two

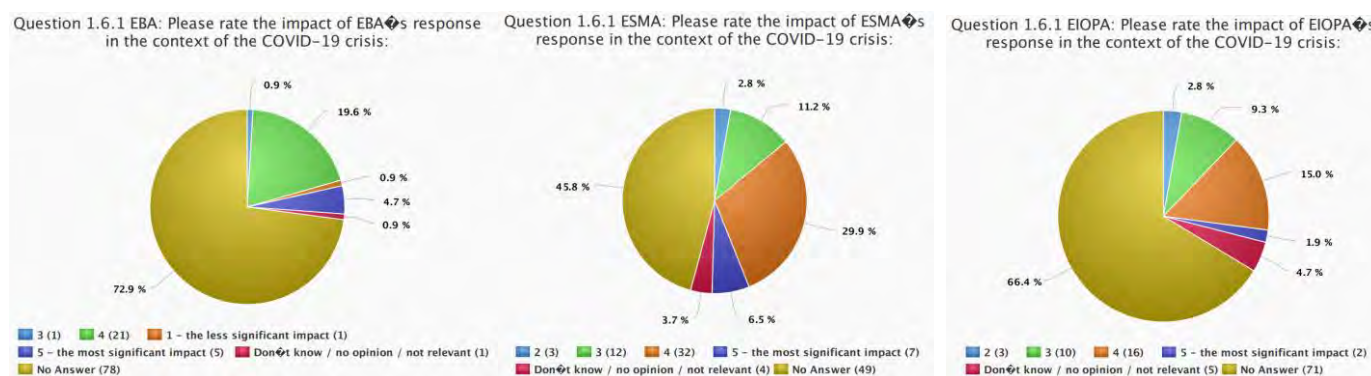
respondents (one public authority and a research institute) see the inherent conflict of interest in the ESAs' governance as the reason why the use of these ESAs' powers has been limited. Three **industry** respondents propose to improve these processes through governance changes and by bringing more transparency to the decision-making process.

One public authority observed that the following improvements could be made in Article 17 (BUL):

- The Chair/panel should be able to request NCAs to provide information, and if it is not provided, to request it directly from market participants.
- Transparency of the votes of the members of the Board of Supervisors.
- The ESAs should be able to address a decision to NCAs and not just a recommendation.
- BUL could be extended to the areas mentioned in Article 1.3.

1.6. Emergency situations and response to COVID-19 crisis

Question 1.6.1. Impact of the ESAs' response in the context of the COVID-19 crisis.



A majority of respondents consider that EBA, ESMA and EIOPA had a significant or most significant impact in the context of the COVID-19 crisis. However, respondents considered that EIOPA had slightly lower impact as compared to EBA and ESMA.

Most respondents from the public authorities responded that EBA, ESMA and EIPA had a significant impact in the context of the COVID-19 crisis. Most public authorities considered that the ESAs responded swiftly and appropriately in response to the COVID-19 crisis. Most responding authorities appreciated the swift reaction and the increased data-gathering, market monitoring and coordination between NCAs and that the ESAs provided guidance to market participants. The ESAs served as a platform to exchange information on market developments. However, a few NCAs considered some of the reporting requirements put in place were not necessary as Member States have different levels of development of their financial sector and reporting on some financial products and risks might not be relevant. There was also a comment that the ESAs should leave sufficient time to allow market participants to apply ESA guidelines issued during the crisis.

Most industry respondents considered that EBA had significant positive impact on COVID-19 response. The EBA Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis, first published in April 2020 were positively received by a majority of industry stakeholders. These respondents further argued that the EBA Guidelines on moratoria were a fast and comprehensive reaction on dealing with the challenges of the crisis, which fostered a level playing field and the internal market. One industry stakeholder considered that other

measures, such as legislative measures and the European Central Bank (ECB) action had a more significant impact on COVID-19 response in the banking sector.

Most industry stakeholders considered that ESMA had a significant or medium significant positive impact on the response to the COVID-19 crisis. A majority of stakeholders welcomed the coordination role that ESMA has played during the COVID-19 pandemic and the guidance and flexibility provided to market participants. A number of stakeholders voiced concerns as regard to the use of Short-Selling Bans by some competent authorities. ESMA did not take action to generalise an EU-wide ban on short-selling. This non-action on short-selling was regarded positive by a few industry stakeholders and public authorities.

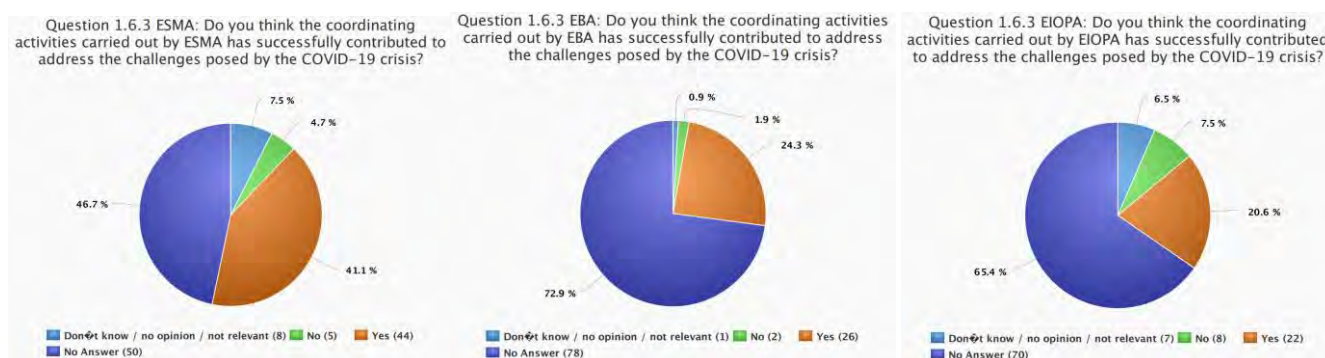
A majority of public authorities were of view that EIOPA had a positive impact on the COVID-19 response. A few industry stakeholders mainly from the pensions industry welcomed the EIOPA's efforts to reduce the administrative burden of reporting requirements on IORPs. Insurance associations were rather critical towards EIOPA's active COVID-19 response (for example as regards out-payment of dividends) and considered that the Solvency II framework was sufficient to deal with the challenges of the pandemic.

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

- *Market illiquidity and implications for asset managers and insurers*
- *Impact of large scale downgrades of corporate bonds on markets and entities across the financial system*
- *System-wide restraints on dividend payments, share buybacks and other pay-outs*
- *Liquidity risks arising from margin calls*

Only few stakeholders answered this question and a majority did not answer or did not voice an opinion. Generally speaking, most respondents consider ESAs follow-up actions to ESRB recommendations neutral or rather effective. Only a few respondents consider ESRB follow-up actions most effective. Very few respondents consider ESRB action least effective or not effective. Most public authorities consider ESA's actions effective or most effective and most industry stakeholders did not respond to this question. In general, stakeholders do not make a strong distinction between the effectiveness of the different ESRB recommendations for follow-up actions.

Question 1.6.3 Contribution of coordinating activities carried out by the ESAs to address the challenges posed by the COVID-19 crisis.

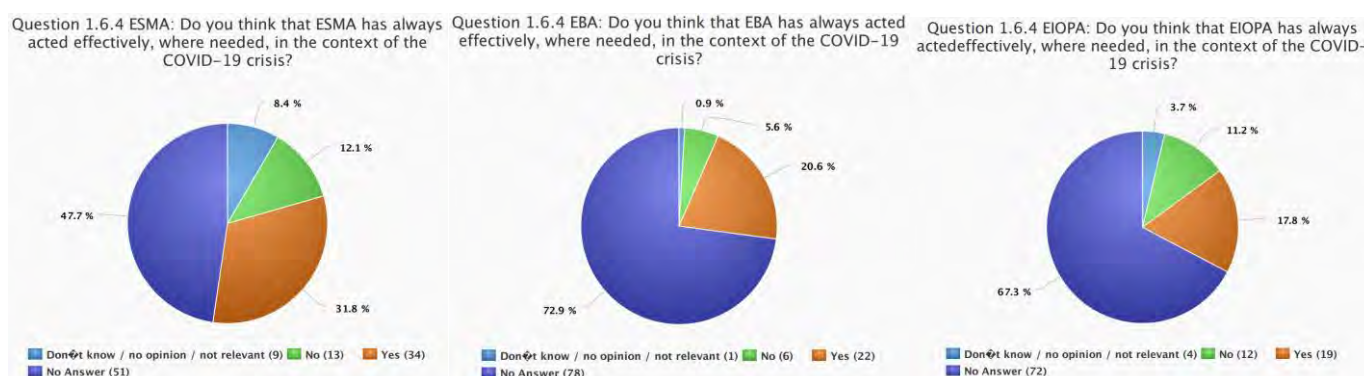


Stakeholders answering the question considered that coordinating activities of EBA, ESMA and EIOPA successfully contributed to the challenges posed by the COVID-19 crisis. Only very few considered that they did not contribute to address the challenges posed COVID-19 crisis. Most positive responses were received for the work undertaken by ESMA

compared to EBA and EIOPA. In terms of negative responses, EIOPA received most negative responses compared to ESMA and EBA. A large majority did not respond to this question.

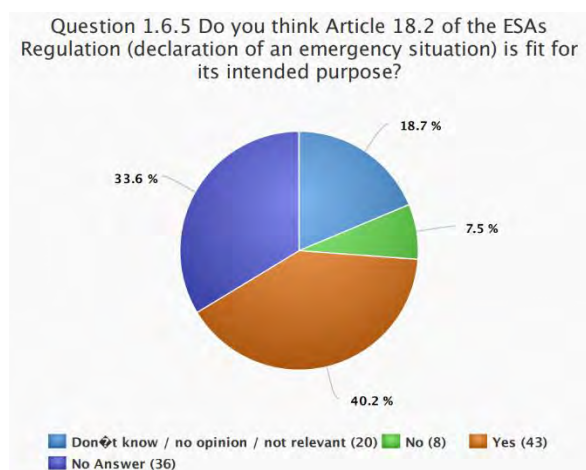
In terms of stakeholder distribution, all public authorities answering this question responded positively. Public authorities considered highly valuable, the information sharing between the ESAs and competent authorities, the exchange of experiences, and the issuance of statements providing guidance to market participants. Industry stakeholders were broadly positive with regard to the coordination function of the ESAs as part of the COVID-19 response. A few pointed to statements facilitating various regulatory flexibilities and guidelines on the treatment of public and private moratoria on loans granted to banks' customers.

Question 1.6.4 Effectiveness of ESAs actions in the context of the COVID-19 crisis.



Only very few stakeholders responded to this question and a majority, mainly industry stakeholders did not respond. A majority of respondents, mainly public authorities, considered that the ESAs responded effectively and where needed in the COVID-19 crisis. Only very few (mainly industry associations) considered that they did not. Respondents were slightly more critical as regards EIOPA, as some industry stakeholders considered that Solvency II Framework is sufficient risk based to cope with the COVID-19 crisis and did not require additional action from EIOPA. As regards ESMA, one of the comments from public authorities is that some instruments are not available in all Member States (for example short selling) and that sometimes, unnecessary additional coordination activities were created. One competent authority, considered that introducing an EU-wide ban on short selling in response to the COVID-19 crisis was not feasible, even if there was some coordination on some aspects of short selling.

Question 1.6.5 Article 18.2 of the ESAs Regulation (declaration of an emergency situation).



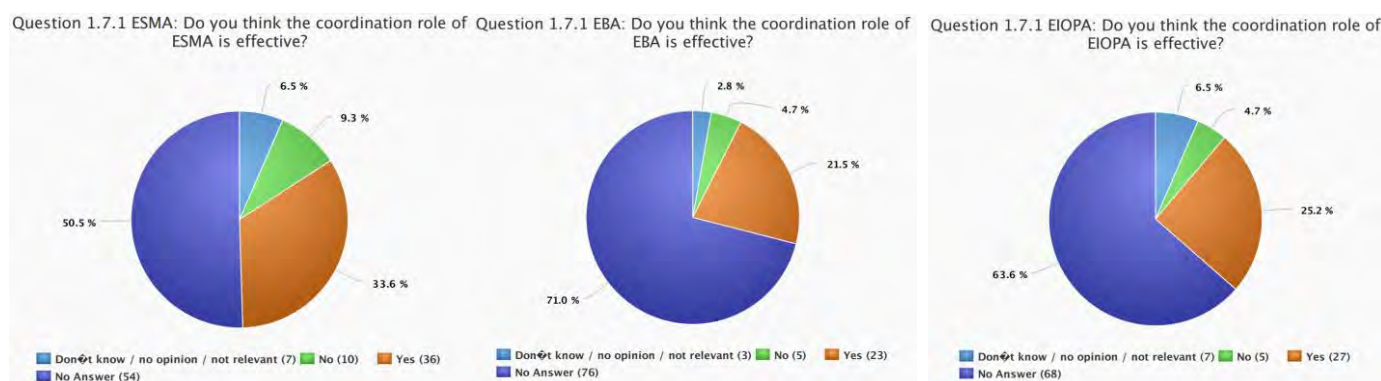
A majority of respondents, mainly public authorities, considered that Article 18.2 of the ESAs regulation (declaration of an emergency situation) is fit for purpose. Only a few financial market supervisors considered the powers not fit for purpose. There is some divergence among a few financial markets supervisors on the need to use Article 18.2 in the current COVID-19 Crisis. Most industry stakeholders and business associations considered that Article 18.2 is fit for purpose. One consumer association was positive towards Article 18.2, and another negative.

Question 1.6.6 Potential areas for improvement in the ESAs' powers in emergency situations

A number of public authorities considered that the COVID-19 crisis demonstrated the need to review article 18.2 in particular to clarify and make it easier to trigger and suggested to review the scope of ESMA's power of action and the situations that Article 18.2 could cover. One supervisory authority suggested that ESMA's powers should be restricted to those areas where ESMA already has supervisory competence and expertise. However, a few supervisory authorities were of view that ESMA could have a broad scope of powers to respond to emergency situations. One industry stakeholder considered that the ESAs should possess all necessary emergency intervention powers. However, any changes to the emergency intervention powers for a coordinated crisis response should be precisely specified in the legislation to ensure legal certainty. One consumer association considered that the current procedure for declaring an emergency is burdensome and could be improved.

1.7. Coordination function (Art 31 ESAs Regulations)

1.7.1. Coordination role of the ESAs.



A minority of respondents replied to this question with a higher number for ESMA (28 for EBA, 47 for ESMA and 32 EIOPA), mainly public authorities. Among the respondents there is a large majority pointing out that the three ESAs coordination role is effective. All public authorities and half of the industry replied that EBA role is effective, while one public authority, half of the respondents from the industry, one NGO and a consumer association pointed out that ESMA's and EIOPA's coordination role is not effective.

Regarding **EBA**, among the areas for improvement only a minority of business and an NGO replied identifying the following:

- need for greater coordination role for data reporting in order to reduce complexity and duplication;
- enhance regulatory harmonisation to guarantee the homogeneous application of EU law, to avoid gold plating and to ensure a level playing field;
- need for more coordination with NCAs in the areas related to cross-border provision of financial products and services;

Regarding **ESMA**, few respondents, equally divided among the categories (public authorities, NGO, business association and companies), provided details on their replies pointing out:

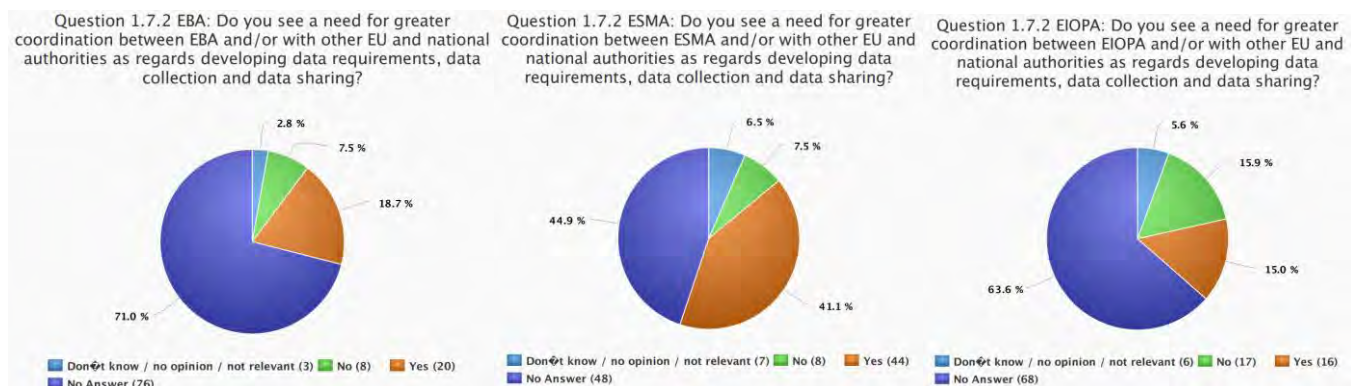
- coordination improved after the ESAs review but national discretions remain high;
- ESMA should not be involved in issues that can be resolved bilaterally between NCAs

- information exchanged between ESMA and each NCA should be available also to other NCAs
- need for more coordination with NCAs in the areas related to cross-border provision of financial products and services;
- more powers and resources should be granted.

Regarding **EIOPA**, the following points have been raised:

- need for more coordination with NCAs in the areas related to cross-border provision of financial products and services;
- specificities of the insurance sector to be better taken into account in the ESA’s joint work.

1.7.2 Need for greater coordination between the ESAs and/or with other EU and national authorities as regards developing data requirements, data collection and data sharing.



A minority of respondents replied to this question for EBA and EIOPA with a higher number for ESMA (28 for EBA, 52 for ESMA and 33 EIOPA). Among the respondents, there is a large majority pointing out that there should be more coordination for EBA and ESMA. Positive replies are much higher for ESMA than EBA (44 ESMA vs 20 EBA) with both authorities having the same number of negative replies (8) on their respective question. As far as EIOPA is concerned there is a slight majority of negative replies (17 vs 16).

Among all the respondents one common trend for the three authorities is the importance to enhance coordination, avoid duplication, reduce compliance costs and complexity and streamline the existing processes. The importance of ESG and cyber risks has also been pointed out. An NGO considered that the three ESAs should have stronger enforcement powers and access to supervisory and reporting information obtained by NCAs. A consumer association stressed the importance to ensure cooperation with data protection authorities.

Regarding **EBA**, stakeholders stressed the need:

- to streamline process and have greater coordination as regards developing data requirements, data collection, and data sharing in particular between EBA, SSM/ECB and ESRB and resolution authorities;
- take into account work carried out at national level;
- further coordination to reduce complexity and harmonise definitions;

Regarding **ESMA**, public authorities’ feedback converged on the following aspects:

- ESMA should have a more active role in data quality control (i.e. providing a common platform or IT solutions for all authorities);
- increase the ability to collect supervisory/enforcement information;
- better coordination on data use and data analysis

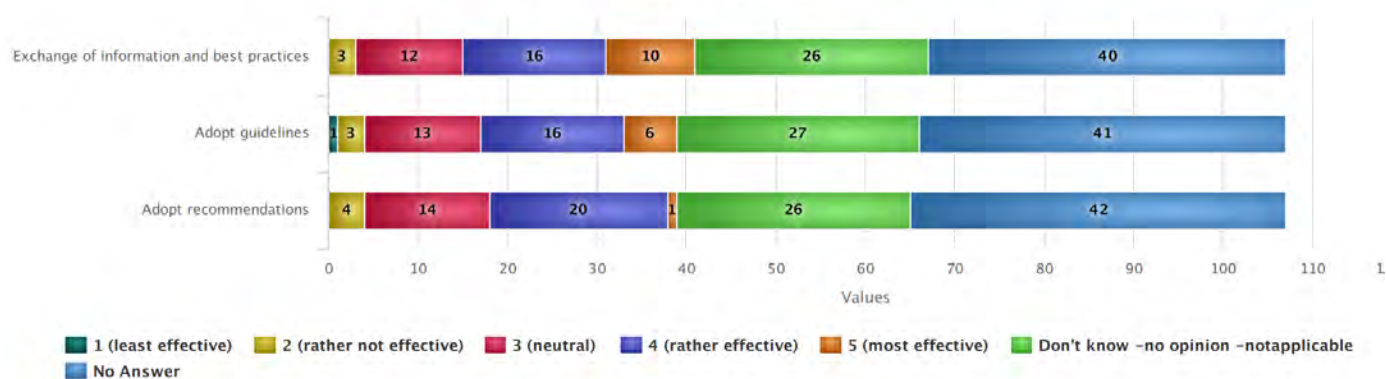
The industry highlighted:

- support for a single regulatory reporting mechanism, to be accessed also by NCAs, in particular for asset managers;
- greater coordination as regards the use of common reporting formats and templates also to avoid discrepancies between Member States.

Regarding **EIOPA**, the need for more coordination with NCAs was raised.

1.7.3 2019 ESAs' review. Effectiveness of the tools below to fulfil the new coordination role of the ESAs facilitating the entry into the market of actors or products relying on technological innovation:

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:

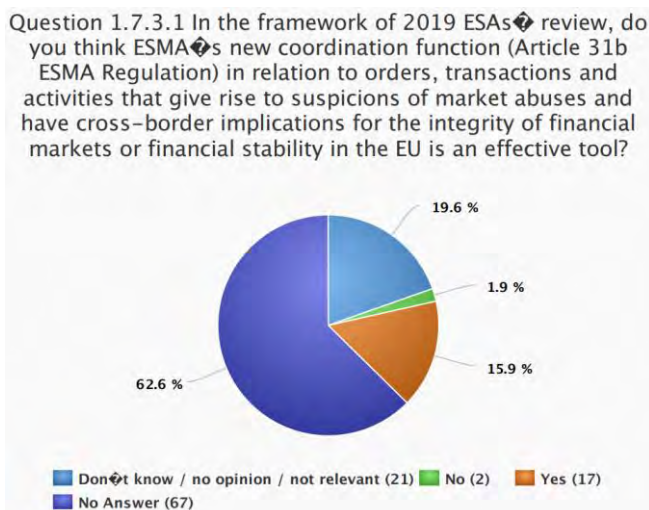


Only a 1/3 of respondents replied to this question. Negative opinions (least effective, rather not effective) are a small minority (4 replies per each entry). Among these respondents there is only one “least effective” answer relating to the adoption of Guidelines. One third of the respondents, with business being the majority, have a neutral opinion of the tools introduced with the ESA review. The majority of respondents assess the effectiveness positively (either rather effective or most effective) with public authorities being the most positive.

Many of the respondents pointed out to the fact that these tools have been in place for little time and this does not allow a proper assessment. Few public authorities pointed out to the importance of the exchange of information and best practices in the field of technological developments.

Regarding EIOPA, few respondents from the industry pointed out to the fact that EIOPA should not issue Guidelines in areas where legislators have the intention to regulate and that Guidelines should not be a substitute of a binding instrument.

1.7.3.1 2019 ESAs' review. 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.

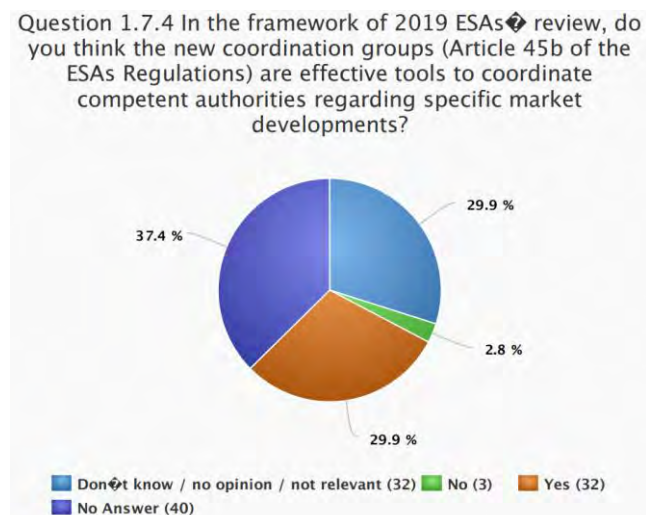


Few respondents (20) replied to this question with a vast majority providing a positive opinion (18). Among the respondents both industry and authorities assessed positively the new coordination function. Only a public authority and an NGO had negative opinion.

Many of the respondents, both from authorities and industry, pointed out to the fact that these tools have been in place for little time and not many practical experience has been gained. However, they stressed the importance of the tool in particular for cases where there is cross-border dimension.

Few authorities also stressed the importance to foster the exchange of data in order to allow better cooperation and detection of cases.

1.7.4 2019 ESAs' review. Effectiveness of new coordination groups (Article 45b of the ESAs Regulations) to coordinate competent authorities regarding specific market developments.



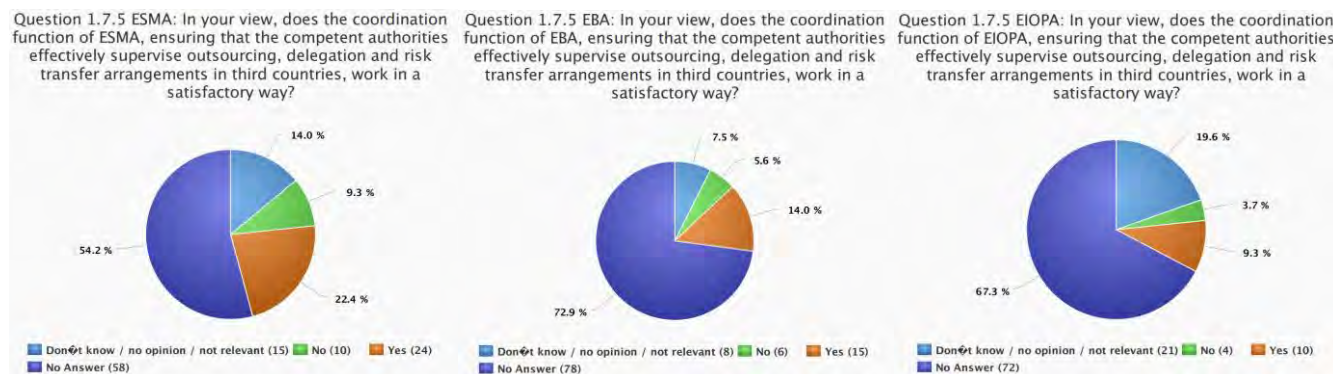
A third of the respondents (35) replied to this question with a vast majority providing a positive opinion (32). Among the respondents both industry and authorities assessed positively the new coordination function. Only two public authorities and a business association had negative opinion.

Many of the respondents, both from authorities and industry, pointed out to the fact that these tools have been in place for little time and not many practical experience has been gained. However, they stressed the importance of the tool in

particular for investor protection, enforcement of market structure rules, financial innovation and sustainable finance.

Few respondents highlighted the positive experience gained during the recent COVID-19 crisis. Two authorities questioned the added value of such groups since coordination was already carried out in the context of the BoS.

1.7.5 Coordination function of the ESAs, ensuring that the competent authorities effectively supervise outsourcing, delegation and risk transfer arrangements in third countries.



A minority of respondents replied to this question with a higher number for ESMA and a much lower for EIOPA (21 for EBA, 34 for ESMA and 14 EIOPA). Public authorities are the main respondents followed by industry.

Among the respondents there is a majority pointing out that the three ESAs' coordination function works in a satisfactory way. Negative views came mostly from industry.

Many respondents, both from industry and public authorities, highlighted that the current framework is fit for purpose and do not see the need for any further adjustments.

Regarding **EBA's** guidelines on outsourcing, views from industry diverge with some respondents highlighting the importance of the tool in particular for outsourcing agreements in third countries and others complaining about the too descriptive requirements. In addition, few respondents from the industry called to extend the mandate of the EBA to further outsourcing topics and to reduce national discretionary powers that go beyond the requirements laid down in the EBA Guidelines on outsourcing.

Regarding **ESMA**, few respondents mostly from industry pointed out to the following aspects:

- The opportunity for ESMA to develop common templates and approaches for the authorisation and supervision of EU supervised entities;
- Strengthening the peer review system;
- Have a deeper dialogue between NCAs and include industry more;
- Stronger role for the delegation and outsourcing of activities to third country financial institutions.

1.8. Tasks related to consumer protection and financial activities.

Question 1.8.1: ESAs main achievements in the consumer and investor protection area.

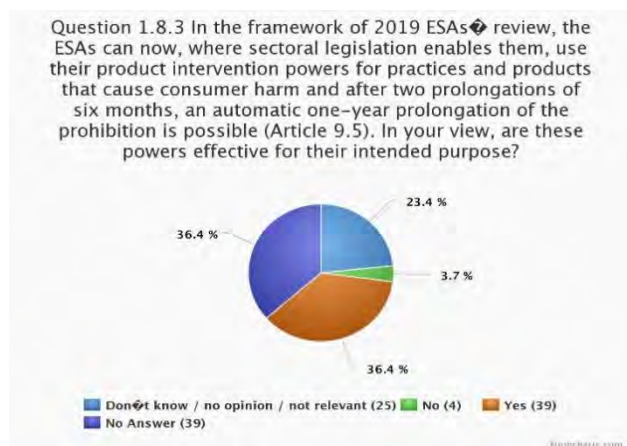
In general, a majority of stakeholders is positive as regards the achievements of the ESAs in the field of consumer and investor protection. Both a majority of public authorities and industry stakeholders consider that the ESAs have an important role to play. In particular, they focus on fostering convergence in supervisory practices in the field of consumer and investor protection, enhancing collaboration between NCAs, developing guidelines and technical standards, conducting consumer trends reports and warnings.

However, a minority of stakeholders consider that ESAs powers are not well positioned to intervene in the area consumer/investor issues as these are often a local matter. Some industry stakeholders consider that any actions (eg. warnings, consumer trends reports) should be better framed and that ESAs should also explain positive consumer trends (and not only negative trends or risks for consumers/investors).

Question 1.8.2 ESAs 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.

Most public authorities consider that the contribution of the ESAs is significant in analysing consumer trends, reviewing market conduct and contribute to level playing fields at EU level. They consider that work on financial literacy could be further expanded. Industry stakeholders responding to this questions are mostly positive on the contribution to creating a level playing field and reviewing market conduct. However, they consider importance should be given to the fact that consumer issues are often local and that this work should not lead to harmonising products at EU level. One consumer organisation considered that the work of the ESAs in certain fields (contributing to a level playing field, financial literacy) has been hampered by their limited powers.

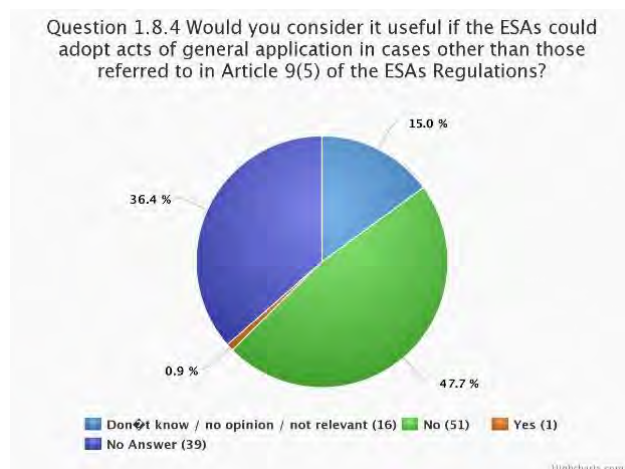
Question 1.8.3 -2019 ESAs' review. ESAs product intervention powers (Article 9.5).



In general, all stakeholders consider the current product intervention powers effective and fit for purpose. Nevertheless, a number of public authorities are of view that more experience is needed to make a full evaluation of these powers. One authority requested to extend the powers to allow the adoption of permanent measures (so not limited in time). Industry stakeholders are positive with the powers, which allow ESAs to take action in case of potential consumer or investor harm. However, such powers should be used as last resort, proportionate and limited in time. Consumers associations are positive with regard to the current powers and request the ESAs to make use of them in case they observe risks of

consumer or investor detriment.

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?



A majority of respondents (47%) oppose to allow the ESAs to adopt acts of general application. Public authorities and industry associations broadly oppose this measure. Most respondents consider that acts of general application should remain the prerogative of national legislators or national competent authorities, which are better positioned to adopt general acts tailored to their jurisdictions. Many respondents consider that current powers are sufficient and should remain exceptional and limited. Only one consumer association is in favour of allowing ESAs to adopt acts of general application. Other respondents had no opinion (15%) or did not respond to this question (36,4%).

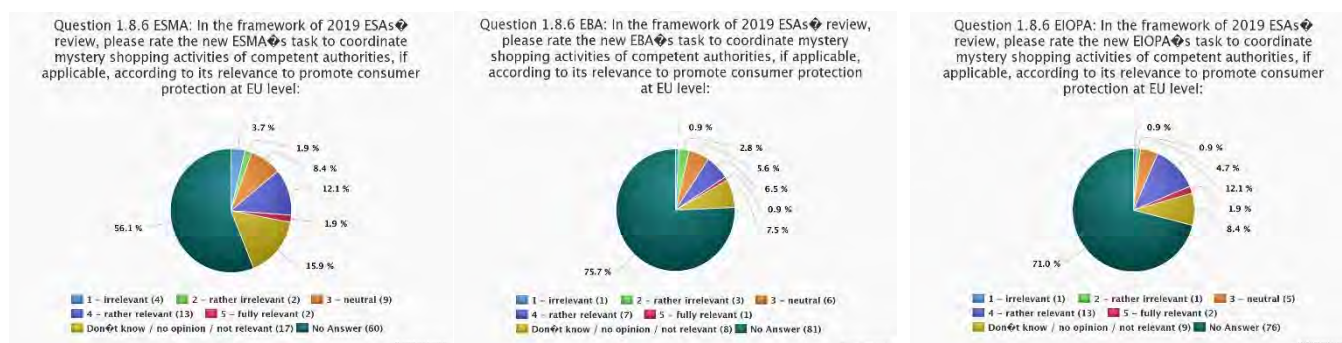
1.8.5. Possible areas where enabling the use of the product intervention powers in sectoral legislation would be useful

In general, stakeholders are divided about the possibility for providing more product intervention powers in sector legislation to the ESAs. Most public authorities do not consider additional product intervention powers needed. Suggestions were made by public authorities to extend powers to cover crypto assets, consumer lending, asset managers (which are currently outside MiFIR product intervention powers). A wide range of industry stakeholders consider the current product intervention powers of the ESAs sufficient and do not see the need for any extension. One consumer association considered that intervention powers should be possible for any products provided that there are risks of related to customer protection, orderly functioning and integrity of financial markets or financial stability.

1.8.5.1 EBA: 2019 ESAs' review- EBA's expanded scope of the competences as regards the consumer credit directive and the payment account directive.

In general, most stakeholders are positive towards the expanded scope of the EBA as regards the consumer credit directive and the payment accounts directive and EBA's powers regarding consumer issues. Most public authorities consider it an important improvement to provide more powers to EBA to address the issue of consumer protection and make reference to cross border payment service providers and creditworthiness assessments for consumer lending. It could also contribute to promote supervisory convergence. Most industry stakeholders are positive towards the expanded scope of EBA related to the consumer credit directive and the payments account directive. Consumer organisations are supportive to the expanded competence in consumer protection and continue to support a strong consumer protection mandate for a cross-sectoral single European supervisor. They propose to strengthen the cooperation between ESAs, ESAs and NCAs on consumer protection and conduct of business rules to ensure fair treatment of financial services users across the EU.

1.8.6 2019 ESAs' review. New ESA's task to coordinate mystery shopping activities of competent authorities and its relevance to promote consumer protection at EU level.

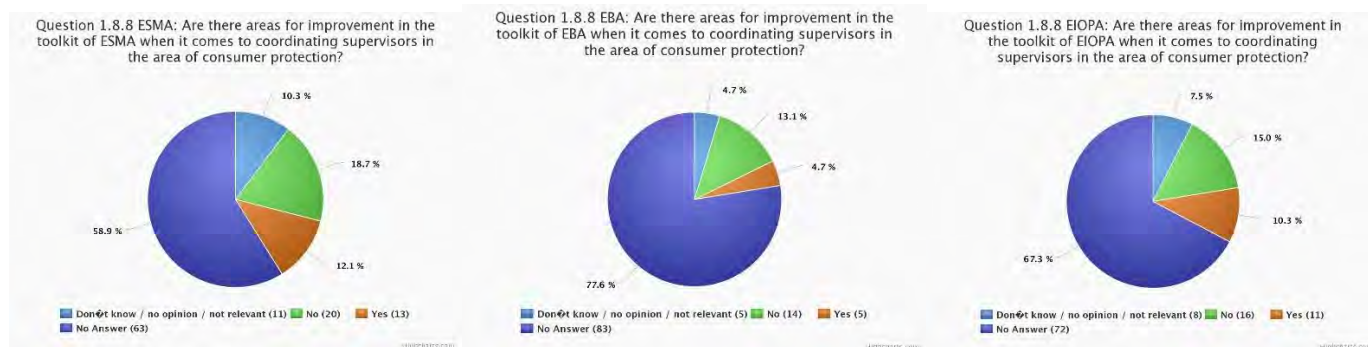


Only a very limited number of stakeholders responded to this question. Responses from public authorities were neutral or positive. Consumer associations are in general very positive with the ESAs role in coordinating and promoting consumer protection at EU level. They point to the ESAs reports on this matter, which contribute to a more harmonised approach on consumer protection across the EU. One consumer association requests that the European Supervisory Authorities should be given the powers to conduct mystery shopping exercises themselves (without the coordination of NCAs), rather than merely have the powers to coordinate such activities with competent authorities. Industry respondents are largely neutral or did not respond to this question. A few public authorities and industry stakeholders underlined some difficulties as consumer protection remains largely national competence and as some competent authorities in financial services do not have competence or a mandate to conduct mystery shopping. They consider that the lack of mandate in mystery shopping can be blocking factor for the ESAs to coordinate this work.

Question 1.8.7 Strengths and weaknesses of the current framework on consumer protection (Article 9 ESAs Regulations) and suggestions to address potential shortcomings.

Overall, a large majority of stakeholders is positive with regard the consumer protection framework and a number of stakeholders consider that the ESA's mandate has been strengthened since the last ESAs review. The main strengths highlighted are the publication of consumer warnings and statements, as these communications provide clear and timely communications to consumers about risks in current markets. As regards weaknesses, some stakeholders consider that consumer and investor protection regulation must focus on ensuring fair and efficient market access for all clients who wish to engage in investment activities. In addition, consumer and investor protection regulation should ensure that professionals possess the necessary tools to provide the clients with services and products that are aligned with their expectations. A number of stakeholders consider as weakness the lack of understanding of retail consumer issues, which might differ across Member States. A number of stakeholders highlighted the issue of cross-border services, where there are not always sufficient and updated data, making consumer protection supervision more difficult, especially for the host supervisor. One solution would be to enhance supervisory coordination for cross-border activities. As a way forward, some stakeholders suggest to enhance the common supervisory culture to improve convergence.

Question 1.8.8 Areas for improvement in the toolkit regarding coordinating supervisors in the area of consumer protection.



A majority of stakeholders, mainly business associations did not answer this question or have no opinion. Public authorities are mixed on the need for improvements of the ESAs toolkits on supervisory convergence. Nevertheless, a number of public authorities are of view that more effective coordination powers are required for supervision of cross-border services. Suggestions to improve the ESAs toolkit include: the creation a working group for home/host exchange of information, complete existing registers of cross border services, harmonise supervisory reporting between home/host authorities, and appoint dedicated contact persons for cross-border activities. One industry respondent considered that EIOPA could expand the coordination of information exchange in cases of cross-border service provision. One consumer organisation suggested that the ESAs obtain powers to conduct mystery shopping.

1.9. International relations

1.9.1 Role and competences of the ESAs in the field of international relations.

A minority of respondents replied to this question with a higher number for ESMA and a lower for EIOPA. Respondents are equally divided between public authorities and industry. One academic, an anonymous and one NGO provided their views as well.

Among the respondents, a large majority stressed the importance of the ESA work at international level to ensure coordination. Many respondents, both from public authority and industry, believe that ESAs are adequately represented at international level. However, few respondents highlighted that ESA should be more involved in international fora and should become full member of the respective international organisations and bodies (the Basel Committee on Banking Supervision - BCBS, the International Organisation of Securities Commissions – IOSCO, the Organisation for Economic Co-operation and Development – OECD, the International Association of Insurance Supervisors - IAIS, etc).

Regarding **EBA**, main views both from industry and public authorities pointed out to the following issues:

- EBA participation in Basel committee? is crucial to ensure coordination and consistency;
- EBA shall pursue a regular dialogue and constructive cooperation on an equal footing with competent regulatory and supervisory authorities of third countries ;

Regarding **ESMA**, respondents pointed out to the following aspects:

- Welcome cooperation with IOSCO, Financial Stability Board (FSB) and ESRB (both industry and public authorities);
- Praise ESMA's role in the IOSCO Administrative Arrangement for transfer of personal data (public authorities);
- Stress the importance of ESMA role in a post-Brexit environment (both industry and public authorities);
- ESMA role in international fora to be balanced due to its position vis-à-vis EU NCAs;
- Focus should be given to bilateral relations with those third countries whose financial sector is more interlinked with the EU.

Few respondents from the industry pointed out to the need to ensure EIOPA's accountability towards EU legislators with respect to its contribution to the IAIS standards.

1.9.2 2019 ESAs' review. New ESAs' 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.

A minority of respondents replied to this question with a higher number for ESMA and a lower for EIOPA and EBA. Respondents are equally divided between public authorities and industry.

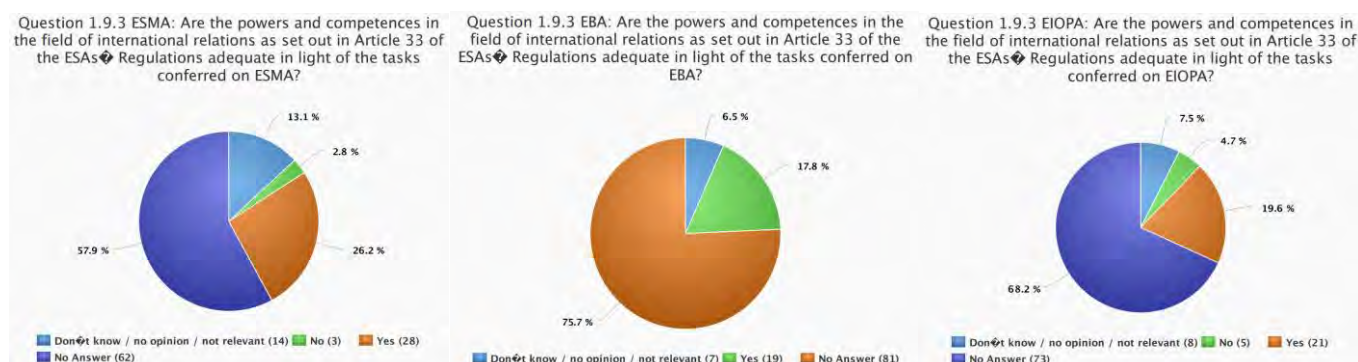
Among the respondents, there is a large majority, equally divided between public authorities and industry, that welcome the improvements and the new role the three ESAs have been given. At the same time, many stressed that too little time has passed since the introduction of these changes and a complete assessment cannot be carried out.

Few industry respondents pointed out to the lack of transparency, the politicised nature of the equivalence assessment and the lack of standard and uniform benchmarks for the assessment.

Regarding **EBA**, few industry respondents pointed out to the following issues:

- Need to put in place a general mechanism to reassess the equivalence of third country legislations each time substantial changes are adopted in the EU legislation;
- Methodology used to assess equivalence is too rigid and narrow, in particular not taking into account the impact on the local third country financial system through EU banks' subsidiaries.

1.9.3 Powers and competences in the field of international relations, as set out in Article 33 of the ESAs' Regulations, in light of the tasks conferred on the ESAs.



A minority of respondents replied to this question with a higher number for ESMA (31) and EIOPA (26) and a lower for EBA (19). Respondents from public authorities are of a higher number than those from industry.

Among the respondents there is a vast majority considering that the powers and competences of the three ESAs under Art. 33 are adequate. In particular, no respondent considered that EBA's powers and competences are not adequate, and very few respondents (3 for ESMA and 5 for EIOPA) had a negative opinion on ESMA and EIOPA.

Regarding **ESMA**, one authority asked for stronger coordination role by ESMA in the definition of cooperation agreements between NCAs and third countries.

Regarding **EIOPA**, few industry respondents pointed out to the following issues:

- Importance to keep clear division of competences and that administrative arrangements made by EIOPA shall not create legal obligations for the EU and its Member States.
- The role of EIOPA at the International Association of Insurance Supervisors level should be governed by Art.33 so to provide for accountability requirements with respect to EIOPA engagement in setting international standards.

1.9.4 Role of the ESAs in the development of model administrative arrangements between national competent authorities and third-country authorities.

A minority of respondents replied to this question with a higher number for ESMA and a lower for EBA and EIOPA. Respondents from public authorities are of a higher number than those from industry.

Among the respondents there is a vast majority considering that the role of the ESAs in the development of model administrative arrangements between national competent authorities and third-country authorities is adequate and no adjustments are needed. Two public authorities stressed that ESA's role should not impede NCAs' ability to conclude arrangements or to introduce provisions in such arrangements to take into account of national specificities. Another authority pointed out that the ESAs should not engage in developing model agreements with third country authorities apart from authorities from European Economic Area (EEA) states or the UK. Only one authority considered that the role should be further specified. Finally another authority stressed the importance to take into account GDPR compliance in these arrangements.

1.10. Role of the ESAs as enforcement actors/enforcers.

1.10.1. ESAs' role 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).

A minority of respondents replied to this question (17 for EBA, 27 for ESMA and EIOPA), mainly public authorities. Out of the responses, the replies are almost equally divided between three positions: (i) ESAs enforcement powers are important, (ii) they are adequate or (iii) there is not enough experience with the relevant procedures to assess these powers. For ESMA half of the respondents indicate that there is not enough experience to assess the specific powers. Public authorities mainly reply that the ESAs' enforcement powers are adequate, or that there is not enough experience.

Only a minority of respondents mention shortcomings in relation to enforcement powers. In general, comments refer to problems linked to the governance structure, to resources or to the binding nature of the ESAs' recommendations. Two public authorities mention that emergency powers could be clarified, another one considers that the ESAs should not strive to "push" enforcement actions given local specificities.

In relation to ESMA, a few industry representatives consider that ESMA's enforcement powers are not strong enough. As far as EIOPA is concerned, three industry associations advocate for an enhanced information exchange between home and host NSAs in the context of Article 19 on mediation.

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



Only a minority of respondents replied to this question (27 for EBA, 51 for ESMA and 36 for EIOPA), mainly public authorities.

Out of the responses referring to the EBA and EIOPA, the majority considers that there is no room for improvement for the ESAs' role to ensure effective enforcement of EU rules towards market participants. The overall majority of public authorities and of business associations consider that there is no need for improvement. Only few public authorities are of the opinion that the effectiveness of enforcement could be improved.

For ESMA, the yes and no replies are balanced (19-19), with two thirds of replying public authorities considering that there is no need for improving the enforcement of EU rules. A minority of industry associations shares that view, whereas the majority of the business associations, as well as NGOs are of the opinion that ESMA's enforcement powers could be improved.

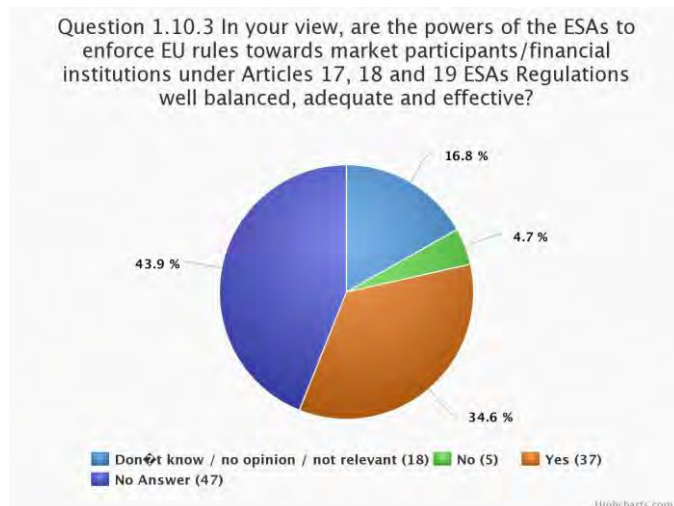
Respondents who see room for improvement of the enforcement of EU rules mainly call for more consistency in supervision through a more effective application of existing tools (existing networks, reporting of sanctions, fast track peer reviews, exchange of best practices). Only few respondents from the industry see a need for new tools or changes in legislation, for instance:

- moving from directives to more regulations, where appropriate;
- a possibility for supervised entities to report cases of supervisory inconsistencies;

In addition to breach of Union procedures that aims at the application of Union law, one public authority calls for an additional instrument to identify whether application of a specific Union law indeed leads to effective supervision, which does not necessarily have to be a given Respondents who do not consider that enforcement of EU rules needs to be

improved, stress that it is mainly the role of NCAs to enforce EU rules, given their expertise and knowledge of the local markets.

Question 1.10.3 Powers of the ESAs to enforce EU rules towards market participants/financial institutions under Articles 17, 18 and 19 ESAs Regulations.



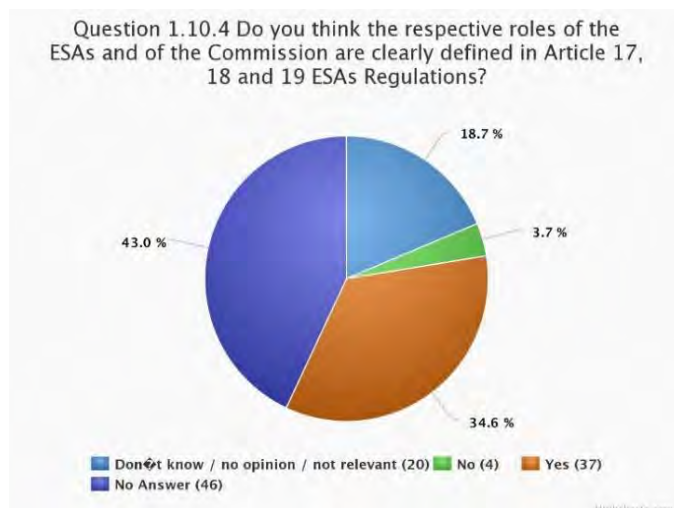
About 60% did not express an opinion on this question. The overwhelming majority of respondents (88%) consider that the ESAs' powers are adequate, balanced and effective. All but one responding public authorities reply yes to this question, whereas the industry's replies are almost equally divided between yes and no opinion.

A few positive replies mention that, nonetheless, the use of Art. 18 (emergency powers) could be clarified. Some respondents indicate that the powers are adequate, but that there are shortcomings regarding the effective use of these powers.

Amongst those who consider that the powers are not adequate the following comments were made:

- One respondent from academia considers that the ESAs should have more direct powers.
- An NGO considers that the effective use of these powers is hampered due to reasons linked to governance, resources and lack of binding nature .

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?

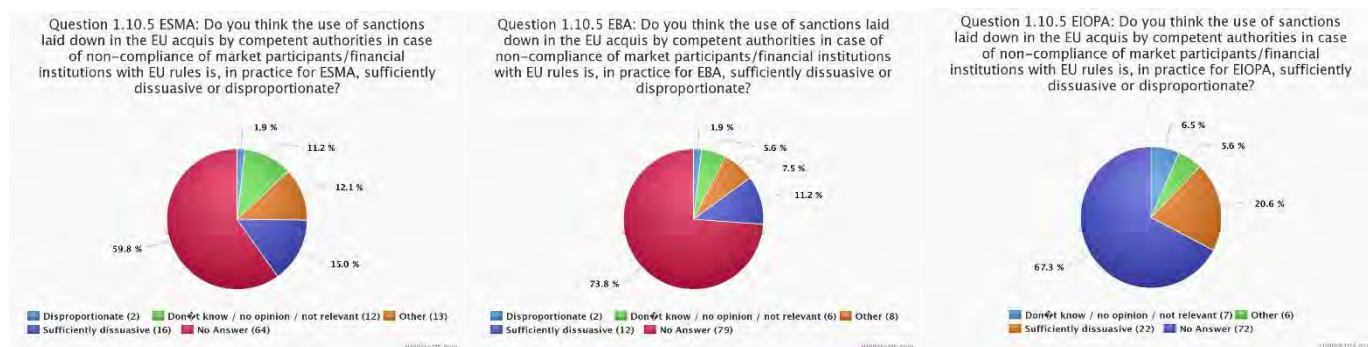


The overwhelming majority of respondents (90%) consider that the respective roles of the ESAs and of the Commission are clearly defined in Article 17, 18 and 19 ESAs Regulations, amongst them the overwhelming majority of replying public authorities and business associations. Only two public authorities and one business association consider that the roles are not clearly defined.

A few positive replies mention that the use of Art. 18 (emergency powers) could be clarified. Few respondents consider that more granular rules would be beneficial for the interaction of the different levels. Two public authorities consider that there is a very delicate balance in

the definition of the respective roles of the ESAs and of the Commission in Articles 17, 18 and 19 and that it is important to avoid any uncertainty as regards the prerogatives of EU institutions as laid down by the Treaties..

Question 1.10.5 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.



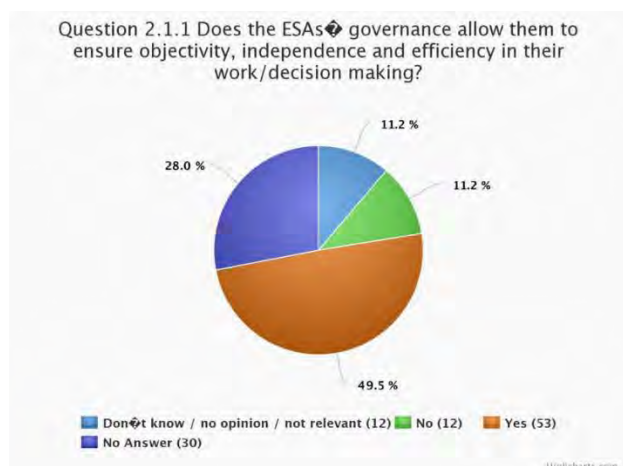
Only 25 to 30% of participants replied to this question. The overall majority of respondents considers that sanctions are sufficiently dissuasive. Only two respondents for EBA and ESMA think that sanctions are disproportionate. A significant part of respondents replies 'other'.

The main comments from these respondents pertain to the divergence of sanctions throughout sectors and Member States and the role of the ESAs to create more consistency through existing tools (peer reviews, coordination and information). Views are divided regarding the need for further legislative harmonisation, for example of the list of breaches, the amount of sanctions or procedural aspects.

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?



80 % of the respondents agree that the ESA governance ensures objectivity, independence and efficiency, 20% disagree. While many public authorities agree, there is also a number of them who see the need for improvement. They suggest enhancing the efficiency by having a body more independent of NCAs decide on the core convergence tools (BUL, mediation, peer reviews) or by having a leaner governance for ESMA decisions in the field of direct supervision. With respect to ensuring sufficient independence, a few authorities request to revisit the governance of resolution related decisions within EBA. Furthermore, some were of the view that to enhance the efficiency the BoS should concentrate more on strategic issues, while agendas of the BoS are currently overflowing with rather specific and detailed topics. Moreover, the governance of the Joint Committee was criticised as too cumbersome. A majority of respondents from industry and all consumer and academia representatives saw the need for further enhancing the independence of the deciding bodies of the ESAs. These respondents considered the current decision making of the ESAs to be too much influenced by national interests. Many industry stakeholders also complained about a lack of transparency.

Question 2.1.1.1 Should there be differences in governance between different types of tasks?

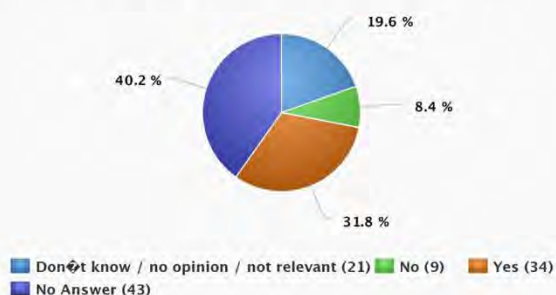
Only a few respondents have elaborated on this question: There are mainly three tasks where respondents would see merit in a differing governance for different type of tasks:

First, some see need for improvement of the governance relating to resolution issues within EBA where Resolution Committee (ResCo) decisions should no longer hinge on consent from the BoS, but resolution tasks and prudential tasks should be fully separated. Several respondents also plead for a different governance for ESMA in case of direct supervision: instead of submitting all issues to BoS for decisions they suggest to entrust an independent Management Board (MB) or a committee similar to the CCP Supervisory Committee with these decisions or to make more use of the

delegation powers to relieve the BoS from day-to-day supervisory decisions. Finally, there are a few voices that suggest empowering a more independent MB instead of the BoS to decide on core convergence tools like BUL.

Question 2.1.2- 2019 ESAs’ review. 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.

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?



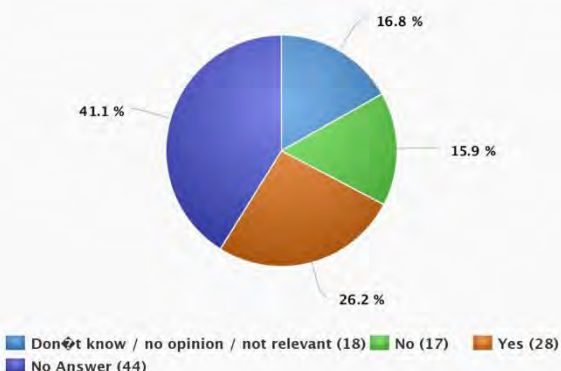
Three quarters of the respondents agree with the notion that the amendments have improved the decision making process, one quarter disagree. Looking specifically on public authorities, more than half (55%) agree that the amendments have improved the decision making process, one fifth disagrees and one quarter has no opinion.

Those who had doubts mainly criticise that the new rule has led to the exclusion of members from discussion and decision on the basis of institutional conflict of interest which they find problematic in view of the ESAs being member driven organisations. However, all industry respondents agree with this new rule and stress that this is normal practice in business. They agree with those authorities in favor of the new procedure that this increases the credibility of decision making. Some respondents are overall positive, but point out that there is not yet enough experience whether this actually has improved the decision making process.

Some respondents are overall positive, but point out that there is not yet enough experience whether this actually has improved the decision making process.

Question 2.1.3 2019 ESAs’ review. Requirements in Articles 3 and 43a of the ESAs’ Regulation regarding accountability and transparency.

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?



One quarter of the respondents agree that Articles 3 and 43a as amended by the ESA review ensure sufficient accountability and transparency of the ESAs, 16% disagree, while almost 60% of the respondents have no opinion. Focusing on the responding public authorities, only 20% of them have no opinion, 60% of them support the statement, 20% disagree. Focusing on the responses from private sector stakeholders (business associations/companies), the picture is reverse: Two thirds of the them disagree, one third agrees.

There is some acknowledgement that the amended articles 3 and 43a have improved accountability of the

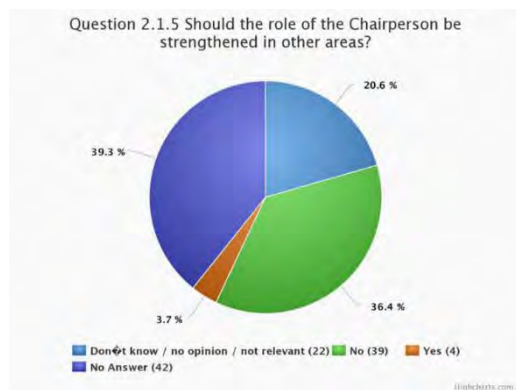
ESAs, but not enough to overcome the perceived weakness of the governance of the ESAs as NCA driven authorities. Some also stress that the articles are mainly about accountability and transparency vis-à-vis the European Parliament, while accountability and transparency needs to be understood in a wider sense also vis-à-vis other institutions and

market participants. Particularly non-authority respondents suggest a number of improvements, first and foremost a publication of the votes in the BoS. Generally, more transparency is requested, including the publication of calendar of upcoming meetings and specifically on the EIOPA activities in the international bodies.

Question 2.1.4 2019 ESAs’ review. Enhancements on the role of the Chairperson.

Only one quarter of the respondents took a stance, the clear majority of them assuming that the amended competences of the Chairperson across the board have a significant impact on the decision making process. Looking specifically at public authorities, a few of them see already a positive impact on the decision making process, while some more public authorities said that it is too early to fully assess whether and how the enhancements of the role of the Chairperson has improved the decision making. A number of public authorities and industry representatives alike stressed in a more general way that the ESAs should remain member-driven and that the agenda of the ESAs should be set by the BoS.

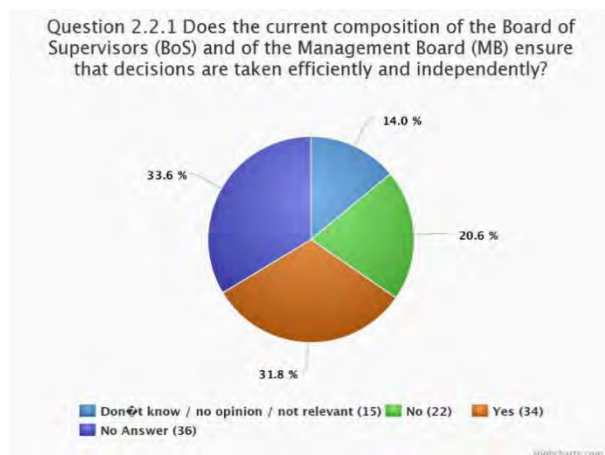
Question 2.1.5. Should the role of the Chairperson be strengthened in other areas?



The overwhelming majority of respondents are against strengthening the role of the Chairperson further. Of the few supporting that idea, two suggested that the vote of the Chairperson should also be extended to matters that are decided with a qualified majority.

2.2. Decision-making bodies and preparatory bodies

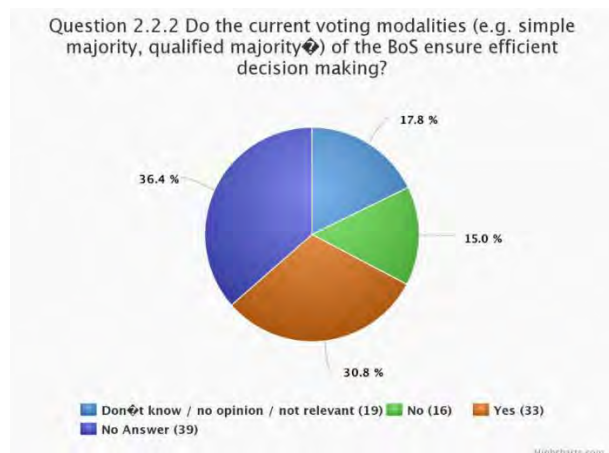
Question 2.2.1 Does the current composition of the Board of Supervisors (BoS) and of the Management Board (MB) ensure that decisions are taken efficiently and independently?



A slight majority of respondents (ca 60%) agrees, ca 40% disagree that the current composition of the BoS and the MB ensure efficient and independent decisions.

All respondents of academia and some stakeholders from public authorities and industry alike think that due to the composition of the bodies of NCA representatives national interests prevail too much in the decision-making. They suggest changing the composition (and tasks) of the MB, so that it would consist partly or completely of independent highly qualified individuals (similar to SSM).

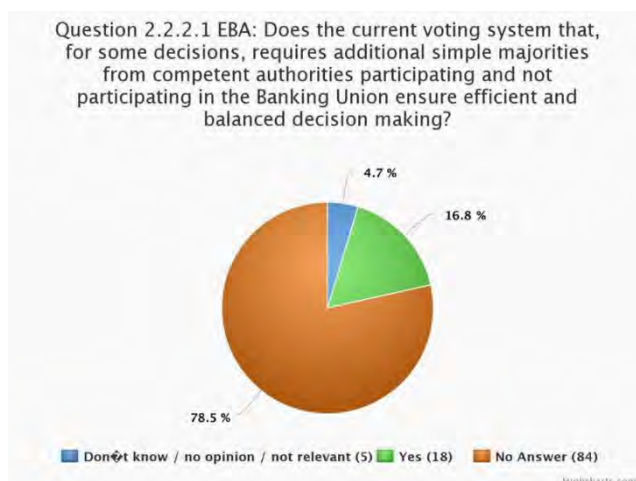
Question 2.2.2 Do the current voting modalities (e.g. simple majority, qualified majority...) of the BoS ensure efficient decision making?



Two thirds of the respondents agree, one third disagrees that the current voting modalities ensure efficient decision-making.

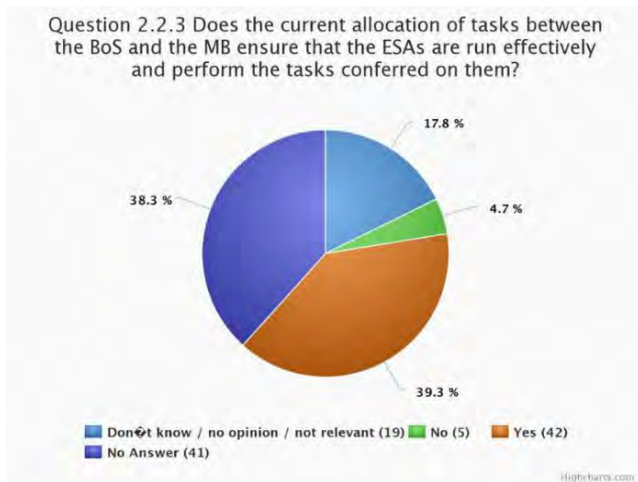
A number of stakeholders particularly from one big Member State suggested that voting in BoS should take place in all instances on the basis of a qualified majority and that the market size and the degree of how much a Member State would be affected by the decision should have influence on the weight of the vote of individual NCA representatives. Support for more qualified majority votes also came from other bigger Member States, while some other Member States suggested to move generally or at least of more decisions to a 'one man one vote' principle for all kind of decisions. A number of stakeholders were in favour of disregard abstentions in all cases, i.e. not to count them as abstention or approval.

Question 2.2.2.1 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?



More than three quarters of the respondents agree that the current double majority requirements for EBA should be kept in the interest of balanced decision-making, less than ¼ disagrees pointing at the over-proportionate weight that is given to NCAs from Member States not participating in the Banking Union (BU). Keeping the double majority requirement is supported also by public authorities from Member States participating in the BU and respondents from academia.

Question 2.2.3 Allocation of tasks between the BoS and the MB.

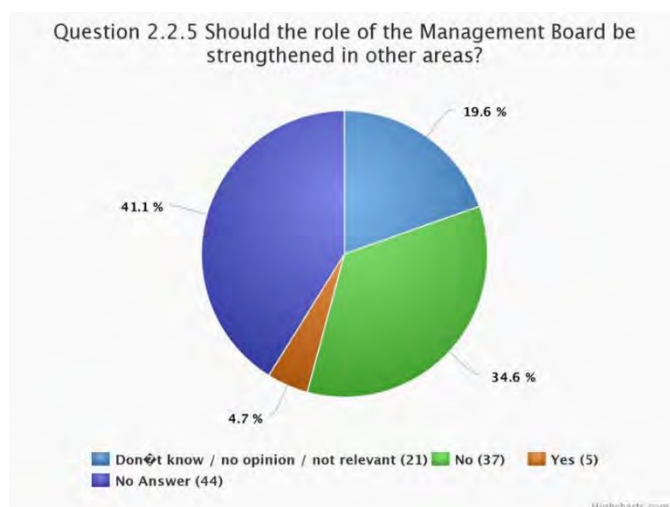


In their vast majority (almost 90%) respondents confirm that the current allocation of tasks between the BoS and the MB help to run the ESAs effectively. The few critical voices (around 10%) stress that the current governance of the ESAs promotes too much the national interests and call for a MB with (at least some) independent members that should be entrusted with decision making on core convergence tools like binding mediation or even for all kind of decisions, while the BoS should develop more into a supervisory body.

Question 2.2.4 2019 ESA's review. Enhanced role of the MB.

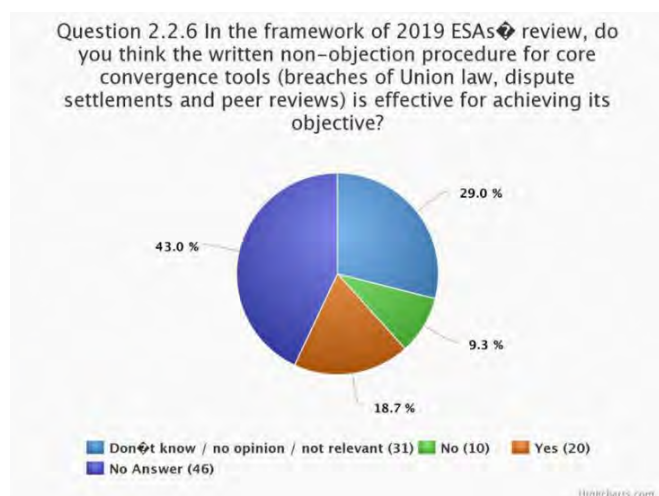
A predominant number of respondents thinks it is too early to assess the full effect the enhanced role of the MB since many processes have only very recently been implemented. A majority consider the enhanced role of the MB in the peer review process and (to a lesser degree) the newly introduced possibility to give opinions on all matters the BoS decides on as an improvement. Among the respondents giving an opinion there was a majority that do not consider the new power of the MB to request setting up coordination groups an improvement, arguing that such a decision should be reserved for the BoS and should be based on input from all NCAs.

Question 2.2.5 Should the role of the MB be strengthened in other areas?



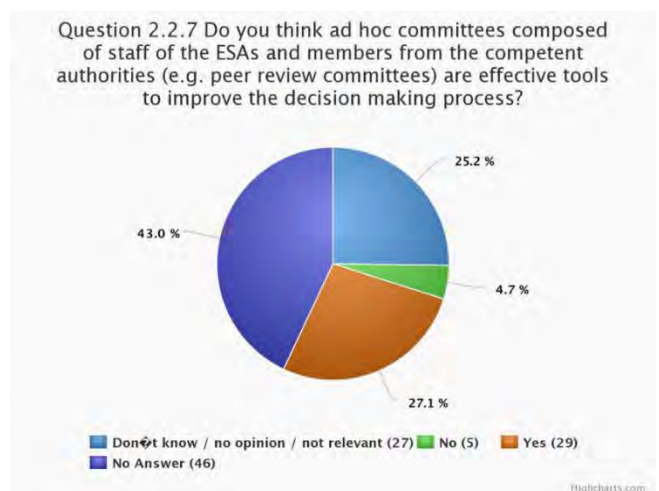
The broad majority (90%) of respondents were against strengthening the MB in other areas. The few who are open to strengthening the MB suggest entrusting the MB with appraising the CCP supervisory committee or, in case of ESMA, playing a stronger role in direct supervision. Going beyond the question, two supervisors suggest that a separate body with independent members and not the MB in its current composition should be in charge of core convergence decisions like the breach of union law decisions or (binding) mediation.

Question 2.2.6 2019 ESAs' review. Written non-objection procedure for core convergence tools (breaches of Union law, dispute settlements and peer reviews).



Two thirds of the respondents think the newly introduced written non-objection procedure is effective, one third thinks otherwise. Particularly a number of industry stakeholders called the introduction a major improvement for the decision-making. A few respondents said it was too early to assess the effect fully. Some public authorities were against expanding its use beyond the core convergence tools, claiming that the procedure would not allow sufficient discussions and adequate deliberations before decision-making; instead they promoted simple majority voting in the BoS.

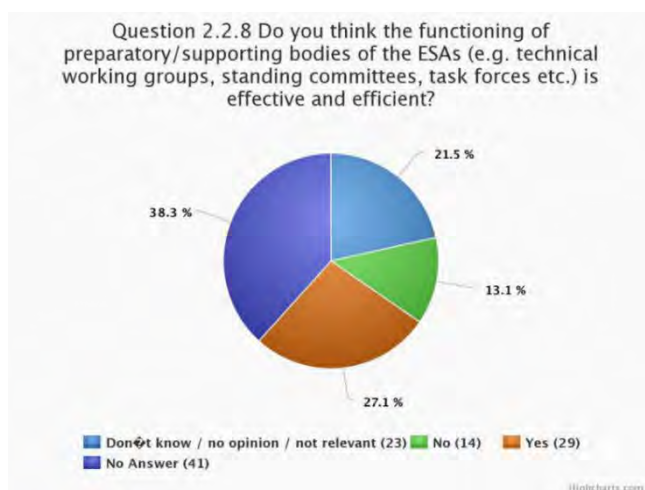
Question 2.2.7 Effectiveness of ad hoc committees composed of staff of the ESAs and members from the competent authorities (e.g. peer review committees) to improve the decision making process.



Most respondents consider ad hoc committees composed of staff from the ESAs and the NCAs effective. For more efficiency, one NCA suggests that participating in and chairing peer reviews should become a full-time task for the respective staff commissioned to the ad-hoc committee. Particularly public authorities stress that the balanced composition of ad hoc committees like peer review committees is good and important and that the composition process of ad-hoc committees needs to be transparent. While one NCA considers that such ad-hoc committees could in principle be used also in other instances, other NCAs point at the delicate balance between ad-hoc committees and the standing committees and therefore think that the ad-hoc

committees should be set up only in exceptional cases e.g. for very complex tasks.

Question 2.2.8 Functioning of preparatory/supporting bodies of the ESAs (e.g. technical working groups, standing committees, task forces etc.).



Two thirds of the respondents agree that the supporting bodies of the ESAs are efficient and effective, one third disagrees. Some respondents considered the supporting bodies effective, not always efficient and suggested some improvements, e.g. more exchange on best practices, splitting up existing standing committees that are in the meanwhile overwhelmed, having more targeted working groups, (better) coordination among standing committees and allowing sufficient time to prepare well. A few also complained about ESA staff sometimes pushing certain issues in standing committees or acting in a very legalistic way. With regard to the stakeholder groups, several stakeholders felt that the group they belonged to was under-represented. In addition, more transparency towards and more influence for stakeholder groups was requested.

Question 2.2.9 Impact of the work undertaken by preparatory/supporting bodies of the ESAs (e.g. technical working groups, standing committees, task forces etc.).

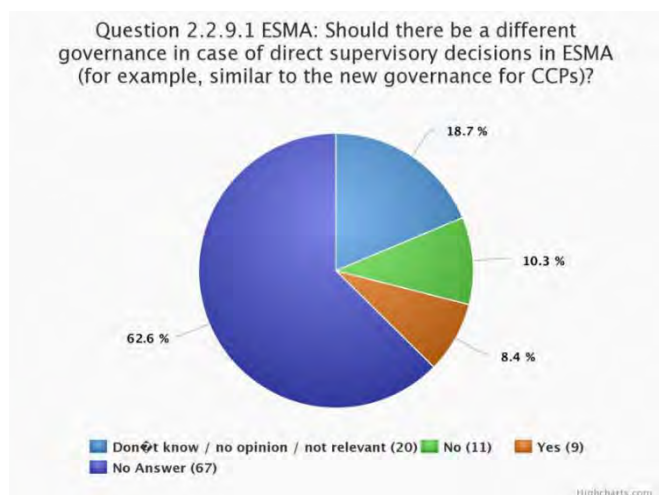
Across all ESAs, a clear majority of respondents thinks that the work of standing committees, other permanent committees and technical working groups has a significant or most significant impact. Views are more diverse when it comes to the newly established Committee on Consumer Protection and Financial Innovation and the Proportionality Committee: in case of ESMA both committees are considered to have no significant impact, in case of EBA respondents think that the proportionality committee has no significant impact, while in case of EIOPA still a majority thinks that these new committees have significant or most significant impact.

Overall, the work of the preparatory bodies is considered effective and efficient. A number of respondents however point at the tight timetable and deadlines these bodies are operating under and the vast amount of documents they have to deal with, which might negatively impact the output of preparatory bodies. One authority also complained

about the attitude of ESA staff who was perceived as sometimes behaving as ‘supervisor of the supervisors’ in the preparatory bodies.

Respondents mentioned that the time was too short to assess the functioning of the Proportionality Committees and the Committees on Consumer Protection and Financial Innovation which both have been newly established in the wake of the ESA review.

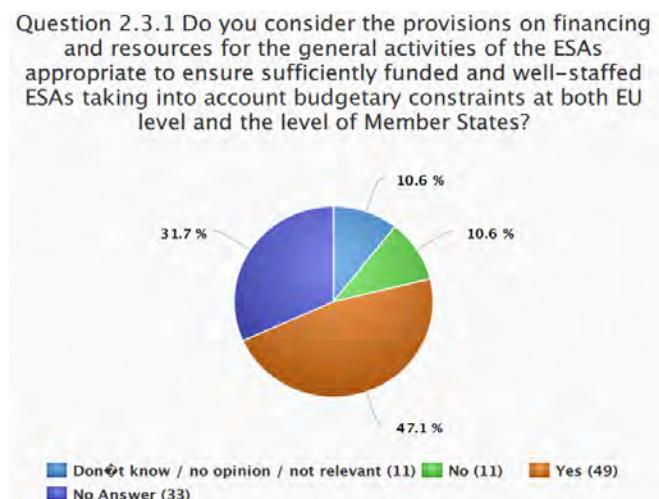
Question 2.2.9.1 Should there be a different governance in case of direct supervisory decisions in ESMA (for example, similar to the new governance for CCPs)?



A similar number of respondents spoke in favour or against a different governance for ESMA decisions in case of direct supervision. Suggestions for improvements were mainly provided by public authorities: They included ideas like making use of the delegation power to the Chairperson or internal committees (while leaving the overall responsibility of the BoS untouched), setting up a similar structure as for CCP Supervisory Board or setting up a specific supervisory committee with representatives from all or some ‘engaged’ NCAs.

2.3. Financing and resources

Question 2.3.1 Appropriateness of the provisions on financing and resources to ensure sufficiently funded and well-staffed ESAs taking into account budgetary constraints at both EU level and the level of Member States.



A vast majority of respondents consider that the provisions on financing are appropriate. Within the public authorities group, 79% consider appropriate the provisions on financing while this ratio increases to 87% within respondents from the industry.

Public authorities who consider adequate the provisions on financing observed that the ESAs seem to have less constraints to grow than the NCAs and that the current split 40/60 is adequate. They further argued that it is important that the ESA prioritize their activities and that the fact the ESAs work relate to greater extent to a public function justifies that the funding is mainly based on public

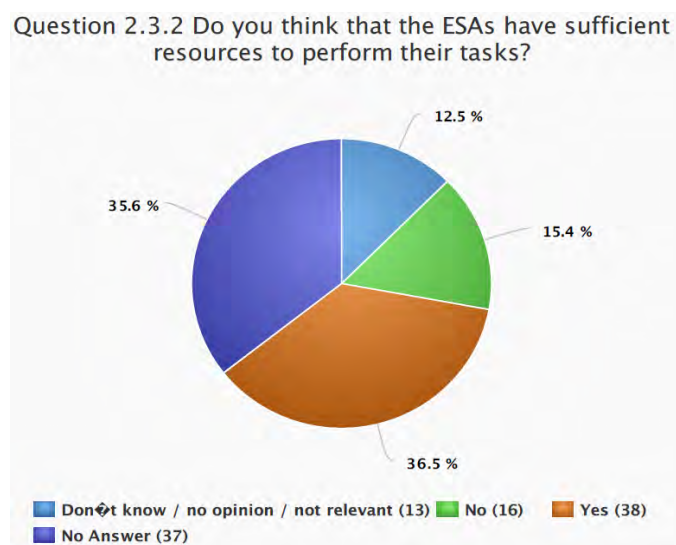
contributions. Public authorities of the opposite view mentioned that the portion of financing from the EU budget could

be increased, that contributions to the ESAs can create difficulties for the smaller NCAs and that the budget and the structure of financing should remain closely aligned with governance, in particular as regards voting modalities.

Respondents from the **industry** who consider adequate the current funding structure observed that tasks of a regulatory nature must be funded by the EU budget since regulatory responsibilities stem from a delegation of powers from the EP and the Council. Respondents within this group explained that supervisory convergence tasks must be funded by the NCAs since they directly benefit from the convergence work and supervision is the primary responsibility of the State. They argued that the current funding model empowers the European budgetary authority to exert budgetary control over the ESAs for the part of their budget financed from the general EU budget and thereby ensures that the ESAs can be held accountable. They further argued that the 60% contribution by NCAs is largely funded by industry in most countries, that full-funding of the ESAs by the industry would raise conflict of interest issues and that changes in funding sources would have to result in a re-distribution of both contributions and voting-rights. A significant number of respondents within this group are nevertheless of the view that the EU contribution to the ESAs budget could be increased in view of the substantial workload of the ESAs dedicated to regulatory rather than supervisory functions. A respondent from the industry taking the opposite view (the current funding structure is not adequate) mentioned long overdue in Q&As responses or delays in the equivalence process with third countries for prudential purposes as examples that the current funding structure is not adequate.

A **research institute and an NGO** observed that the ESAs funding could come from contributions by indirectly supervised entities replacing the current contributions from the NCAs.

Question 2.3.2 Sufficiency of ESAs 'resources to perform their tasks.



A large majority of respondents to this question considers that the ESAs have sufficient resources to perform their tasks. Within the public authorities group, 70% consider that the ESAs have sufficient resources while this ratio increases to 80% within respondents from the industry.

Public authorities who consider that the ESAs have sufficient resources observed that they do not see any obstacle to the ESAs performing their tasks, that centralised European Supervision can require additional resources at Member State level as it happened with the introduction of the SSM and that a tougher prioritisation according to the budget available should be pursued. Public authorities of the opposite view mentioned

constraints on monitoring the activities of third countries, on the developing of databases as a centralized hub (e.g. the European Single Access Point (ESAP)) and in the areas of anti-money laundering (AML), the Markets on crypto assets regulation (MiCA) and the Digital Operational Resilience Regulation (DORA). This latter group of public authorities proposed as a solution to increase the share of EU funding, multi-year funding and to consider allowing for cross subsidisation.

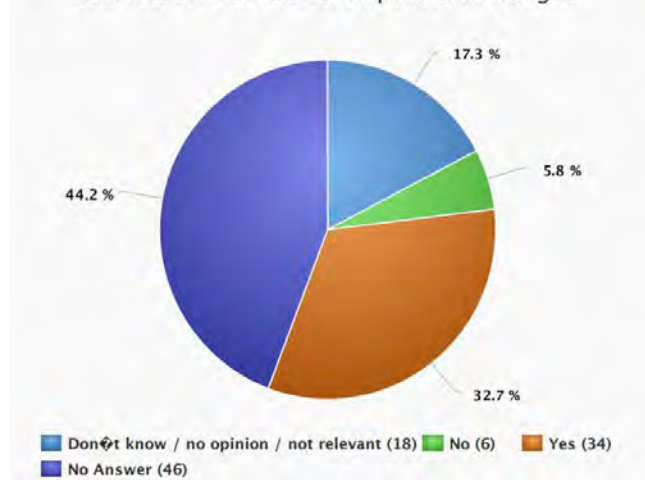
Some respondents from the **industry** who considers that the ESAs have sufficient resources observed that the ESAs should focus on efficiency and that the most active Member State in financial services (UK) left which should ease the pressure on resources. A number of respondents from the industry were particularly concerned about the increase in EIOPA's resources in the area of internal models since, according to them, EIOPA's activities in this area go beyond its new task of providing help to NCAs that request it in the approval process. Some respondents from the industry taking

the opposite view see resources constraints in the area of sustainable finance, innovation, tasks related to international relations.

A **research institute** observed that the increase in financial and human resources over the last years did not keep up with the increase in tasks and new threats to the financial system. One respondent from the **NGO group** observed that the budgets and employee numbers of three ESAs are dwarfed when comparing with those of the major EU NCAs like BaFin, the French ACPR, the Italian CONSOB, foreign supervisors like the UK FCA and PRA, as well as the supervisory budget of the ECB.

Question 2.3.3 Checks and balances for how the ESAs spend their budget.

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



The vast majority (34 vs 6) of respondents to this question consider that there are enough checks and balances for how the ESAs spend their budget. All respondents within the public authorities group consider that there are enough checks and balances.

Public authorities observed that checks and balances are audited every year, that the control system works well, that the ESAs are transparent in the management of their budget and that the Management Board and the Board of Supervisors can follow the evolution of the budget throughout the year.

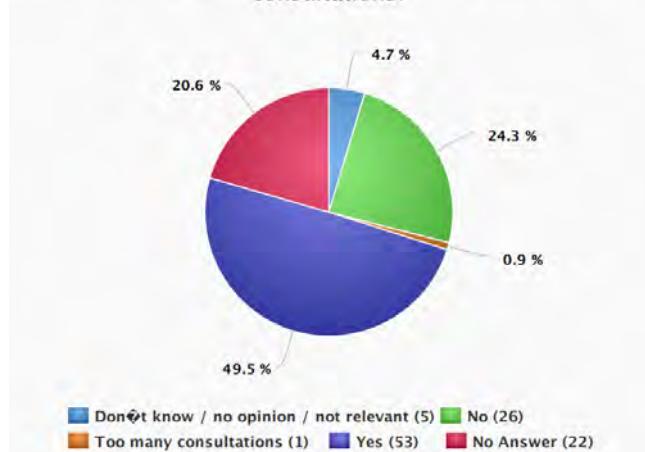
Respondents from the **industry** who consider that there are not checks and balances argue that the European Parliament should be given the role of adopting the ESAs single

programming document to better scrutinise the activities of the ESAs and that audit committees with representatives from supervised entities should be introduced. One respondent considers that EIOPA should carry cost benefits analysis before starting to work on new opinions and guidance for IORPs.

2.4. Involvement and role of relevant stakeholders

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

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



More than two thirds (80) of respondents replied to this question. The largest category of respondents come from industry followed by public authorities.

A large majority of respondents (53) expressed a positive opinion considering that stakeholders are sufficiently consulted. A minority (26) is of the opposite view. Only one respondent considered that there are too many consultations. The majority of public authorities and few industry

respondents considered that the current framework works well and stakeholders are sufficiently consulted.

Many respondents from the industry underlined two major issues that are interlinked: the too short time given to provide feedback and that eventually does not provide for an adequate consultation of all stakeholders. Industry also stressed the need to carry out consultation on all Level 2 and Level 3 measures, including on Q&As.

Few public authorities underlined the importance to consult stakeholders' group together with carrying out public consultation. In the context, however, they pointed out that authorities should be informed.

Regarding **EBA**, few respondents from industry and authorities pointed out that:

- More transparency should be favoured;
- A swifter communication channel between industry and EBA could be envisaged in some instances;
- Not all impacted stakeholders are always invited;
- Consultation should also take place in case of Joint Committee work.

Regarding **ESMA**, the following issues have been raised:

- Responses from stakeholders (in some cases representing the majority) are not always taken into account and no feedback is provided;
- More agile and less administrative communication channels should be pursued (i.e. hearings, direct dialogues with firms and not only with associations);
- The too little time given to provide feedback;
- All Standing Committees should have regular meeting with stakeholders;
- Less punctual and more broader in scope consultations should be carried out (i.e. on the direction of travel and not only on the final details).

Regarding **EIOPA**, industry respondents plead for less and more targeted consultations.

2.4.2 Please assess the quality, in your view, of the consultations launched by the ESAs (General consultations launched and Specific consultations when developing data collection requirements).

Around one third of respondents replied to this question with a higher number of respondents for ESMA. The largest category of respondents comes from industry followed by public authorities.

No respondents provided a negative opinion (poor quality) and the majority of respondents considered general and specific consultations of good or high quality.

Many respondents, mainly from the industry, underlined the timing issue: deadlines set by the ESAs are often too short or are carried out during summer period not allowing to gather appropriate feedback. At the same time, a few recognised that the deadlines stem from Level one not leaving too much margin to the authorities.

Few industry respondents highlighted that some improvements would be highly appreciated, particularly in reporting requirements: possibility to reuse existing terminology harmonisation of the language and have a more forward looking planning in coordination with NCAs. Few industry respondents highlighted that together with the qualitative assessment

a quantitative analysis should be provided and that the alternatives proposed by respondents should be listed too with an explanations of the reasons why these were not retained.

An authority complained about the high number of surveys and questionnaires addressed to NCAs.

A trade union pointed out that most consultations launched by the ESAs do not take into account the employee perspective nor seek to solicit it.

Regarding **EBA**, few respondents from industry and authorities pointed out that:

- The impact analysis should consider impacts on specific activities, customers, markets and financial stability.

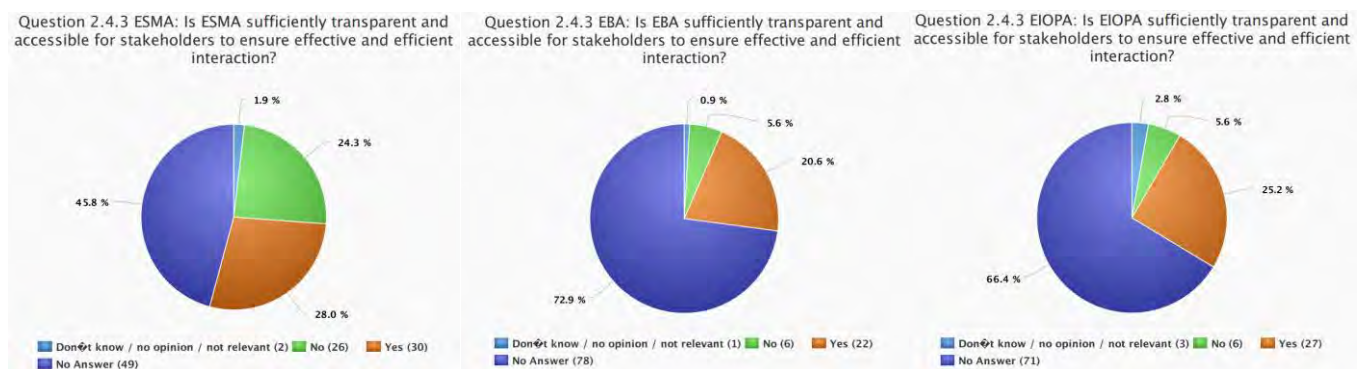
Regarding **ESMA**, the following issues have been raised, mostly from the industry:

- ESMA should improve its culture of engagement with stakeholders and supervised firms;
- Hearings and/or roundtables should be organized to present the proposals;
- In some instances, consultations are too narrow, technical and only tick the box exercise;
- Progress should be made in providing feedback as these are not always present and in the integration of the contributions in ESMA’s decision process;
- A holistic approach should be adopted when addressing the same issue in the context of different consultation papers.

Regarding **EIOPA**, few industry respondents pointed out the following:

- Some consultations are considered oriented, which are difficult for the industry to respond, especially where they favour unwanted solutions.
- Better clarity is needed in order to respond to the questions and covering the aspects that are of the most importance.

2.4.3 Transparency and accessibility of the ESAs to ensure effective and efficient interaction



Around one third of respondents replied to this question for EBA (28) and EIOPA (33) while half of the respondents replied to ESMA’s question (56). The largest category of respondents come from industry followed by public authorities. Respondents include also contribution from Trade Unions and NGOs.

A large majority of respondents considered that EBA (22) and EIOPA (27) are sufficiently transparent and accessible for stakeholders. On the contrary, the majority is much more reduced in the case of ESMA (30 vs 26).

Many respondents, mainly from the industry, underlined that ESAs should significantly intensify their interaction with the industry. In particular, they highlighted the importance of soft consultation which would consist of and include broader ongoing informal dialogue with the industry.

While an authority and a few respondents from the industry advocated for more transparency and accessibility, an NGO considered that the current status quo is satisfactory.

Regarding **EBA**, few respondents from industry welcome the roundtables and EBA’s bilateral engagements with stakeholders.

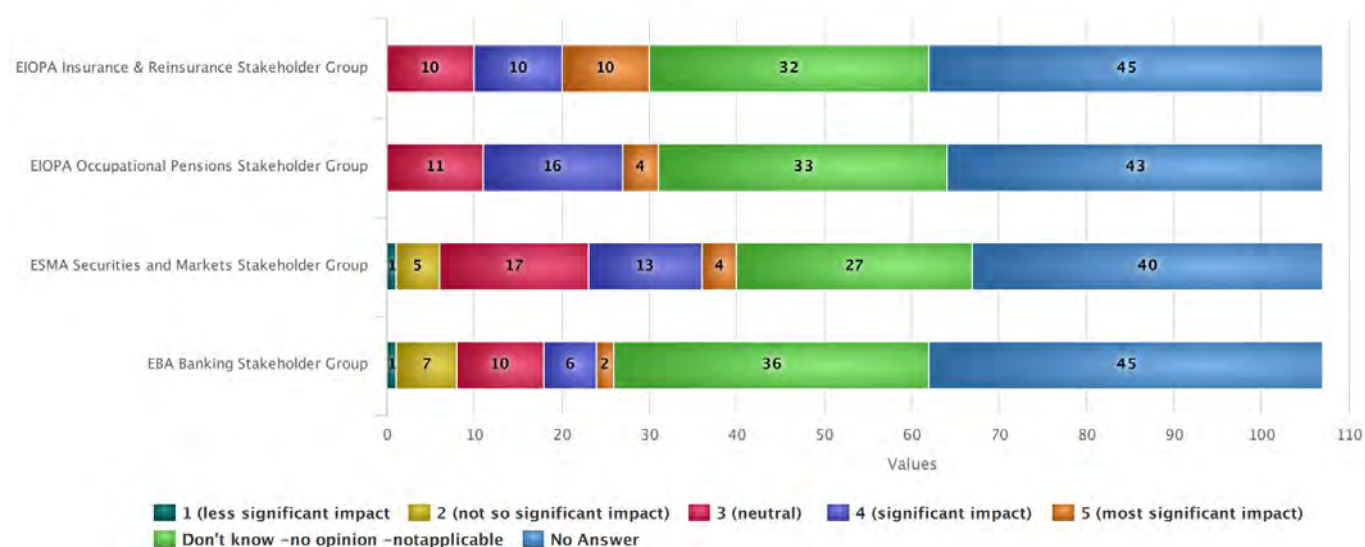
Regarding **ESMA**, the following issues have been raised, mostly from the industry:

- Consultations should not be limited to members of the stakeholders groups;
- The absence of regular meetings with Consultative Working Groups by some ESMA Standing Committee has been a strong limitation;
- Transparency should be greatly improved both on process and on accessibility;
- Creation of a dedicated ESMA communication channel where particular categories of firms (in particular those from third countries) can turn to and discuss the issues they experience;
- ESMA should organise on a periodic basis roundtable discussions on latest market practices and latest market developments to foster interactions and dialogue.

Regarding **EIOPA**, a few industry respondents pointed out that they appreciate the accessibility of EIOPA staff and possibility to provide feedback while others considered that transparency should be improved.

2.4.4 Impact of stakeholders groups within the ESAs on the overall work and achievements of the ESAs.

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



Less than one third of respondents replied to this question for the EBA Banking Stakeholder Group (EBA BSG) (26) and the EIOPA Insurance & Reinsurance Stakeholder Group (30) and EIOPA Occupational Pension Stakeholder Group (31) with a higher number for the ESMA Securities and Markets Stakeholder Group (ESMA SMSG) (40). The largest category of respondents come from public authorities followed by industry. Respondents include also contribution from Trade

Unions and NGOs. The majority of respondents considered that the Stakeholder Groups have a neutral or a significant impact on the overall work and achievements of the ESAs. Only a couple of respondents retained that the Groups have a most significant impact or on the contrary, they have a less significant or not so significant impact.

Few respondents, mainly from the industry, advocated for a stronger and wider role of the Stakeholders' Groups within the ESAs' policy-making activities. A few authorities stressed the good work and the valuable inputs the groups regularly provide. An industry representative called for more transparency in the selection and appointment process of the members of these groups. And another asked that members of these groups should have the possibility to get feedback from experts in their own organisations.

A Trade Union complained that the composition of the groups are not balanced enough to represent all stakeholders, stressing that representatives of employees and consumers are underrepresented

Regarding **EBA BSG**, an authority highlighted that the impact of the BSG could be improved by making it part of EBA's process to develop policy.

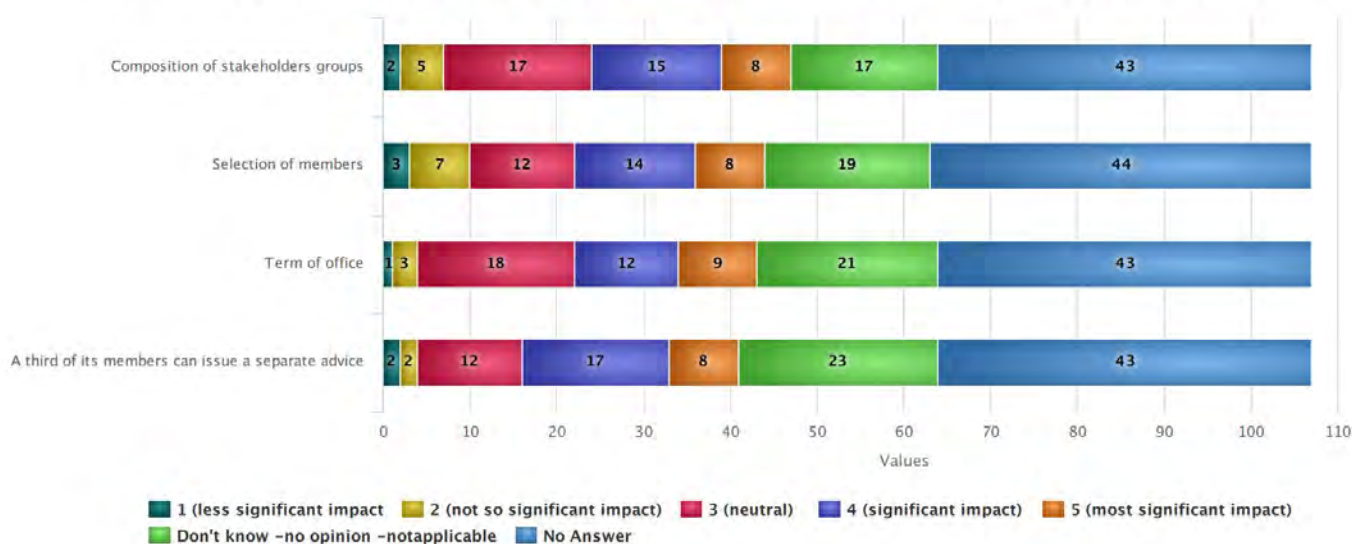
Regarding **ESMA SMSG**, few industry respondents stressed the added value and good work carried out.

Regarding **EIOPA groups**, a few industry respondents pointed out the following issues:

- IRSG's mandate is difficult to be fulfilled given the technical dimension of the subjects.
- Strong support to the fact that EIOPA has a separate stakeholder group on occupational pensions.
- Welcome recent EIOPA's initiatives to enhance the communication with the groups.

2.4.5 2019 ESAs' review. Recent changes in the composition, selection, term of office and advice of the stakeholders groups (Article 37 ESAs Regulations)

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)?



Less than one third of respondents replied to this question. The largest category of respondents come from public authorities followed by industry. Respondents include also contributions from Trade Unions and NGOs.

The majority of respondents considered that the recent changes have a neutral or a significant impact in the composition, selection, term of office and advice of the stakeholders groups. Only a few respondents retained that the changes have a most significant impact and even lower number considered they have a less significant or not so significant impact.

Few respondents, both from the industry and from the public authorities, considered that too little time has passed to allow a proper assessment on the changes.

A majority of respondents from the industry and few authorities supported both the changes in terms of composition that allow for a better and wider representation from stakeholders, and the increase in the term of office so that the groups can ensure continuity in work. Views on the composition differed:

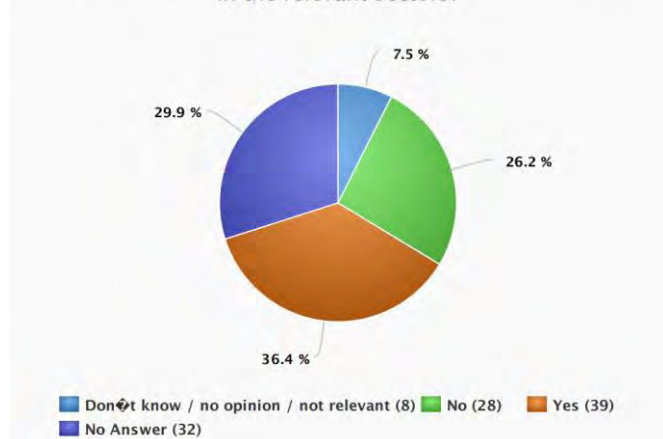
- An authority, a Trade Union, few NGOs and academic complained about the changes that have tightened the selection criteria for non-industry representatives.
- Few respondents stressed that there is too much emphasis on academics and industry representatives, and too little from NGOs and professionals associations.
- Few respondents from industry and public authorities stressed the composition of the ESMA stakeholders group does not reflect the wide range of industries offered by the securities market.
- Finally, a few respondents from the industry considered that geographical representation requirements are not fit for IORPs since IORPS have a significant role in occupational pensions in only a few Member States.

On the one-third requirement, an NGO and a Trade Union considered it to be a discrimination against all non-industry representatives. They proposed that each stakeholder group should cast a separate vote.

A few respondents from the industry highlighted the lack of transparency and flexibility in balancing representation, composition and selection of different interest groups.

2.4.6 Composition of stakeholders groups.

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



More than half of the respondents (67) replied to this question. The largest category of respondents come from industry followed by public authorities. Respondents include also Consumer Associations, Trade Unions and NGOs.

A majority of respondents both from authorities and industry (39 vs 28) considered that the composition of stakeholders groups ensure a sufficiently balanced representation of stakeholders in the relevant sectors.

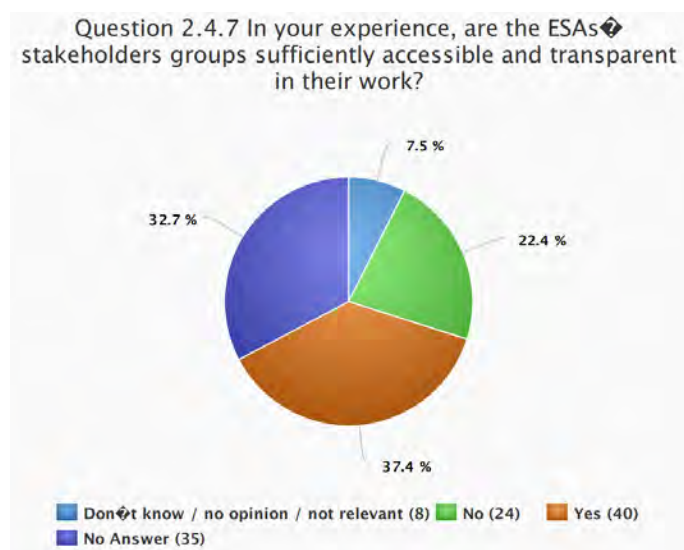
However, many respondents from the industry highlighted that:

- the rules on the composition of stakeholders do not ensure a sufficiently balanced representation;
- the appointment of the members of these groups should be more transparent;
- competence should be the key criterion with geographic diversity only as an ancillary consideration;
- ESAs need to take into consideration the different market segments inside the same categories as a few complained that certain segments (i.e. asset managers) are not well (or at all) represented.

On the contrary, respondents from Trade Unions, Consumers Associations and Academia stressed that there is a high number of industry representatives on the various stakeholder groups of the ESAs. Respondents pointed out that industry representatives usually have access to supporting staff and resources which consumer representatives do not, leading to unbalanced inputs in the advice that is prepared by the stakeholder groups. An NGO also pointed out to the different wording in Article 37(2b) of EIOPA Regulation compared to EBA and ESMA Regulations.

An industry representative highlighted the importance of the role of the Chair to ensure inclusive exchange of views, build trust among members, and reach consensus.

2.4.7 ESAs' stakeholders groups accessibility and transparency in their work.



More than half of the respondents (64) replied to this question. The largest category of respondents come from industry followed by public authorities. Respondents include also Consumer Associations, Trade Unions and NGOs.

A majority of respondents both from authorities and industry (40 vs 24) considered ESAs' stakeholders groups sufficiently accessible and transparent in their work.

Among the areas where transparency could be improved respondents, mainly from industry, pointed out that:

- The agendas of their meetings could be made public;
- Communication at an earlier stage and public perception should be improved;

- Access to the group in a bilateral and informal way;
- Secrecy level too high.

2.5. Joint bodies of the ESAs

Question 2.5.1 Board of Appeal (BoA) of the ESAs.

The majority of respondents assess all aspects regarding the Board of Appeal of the ESAs either as rather effective or as most effective as opposed to neutral and not so effective assessments.

Five respondents from the public authorities group observed that they have positive experience with the BoA and are not aware of any shortcomings. Five respondents from the **industry** observed that there are limitations for the ability to appeal against the decisions of the ESAs based on the prerequisite that the decision has to be addressed to the appealing person, or the appeal has to be against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person. These respondents further argue that a right of appeal should be granted to representative bodies proving that they represent a material group of natural or legal persons for which the provisions of Article 60.1 apply.

Question 2.5.2 Joint Committee (JC) of the ESAs

Respondents are rather positive about the Joint Committee (JC). Without including neutral views, a large majority of respondents have positive views (i.e. "rather effective" or "most effective") across all aspects of the JC compared to those who have negative views (i.e. "least effective" or "not so effective"). Respondents are particularly positive about the functioning of the JC and its role ensuring cross-sectoral cooperation and consistent approaches. Respondents are less positive about the decision-making process but still respondents who assess the decision-making process as rather or most effective are more than those who assess the decision making process as least effective or not so effective.

However, respondents identified some areas for improvement. **Public authorities** observed that:

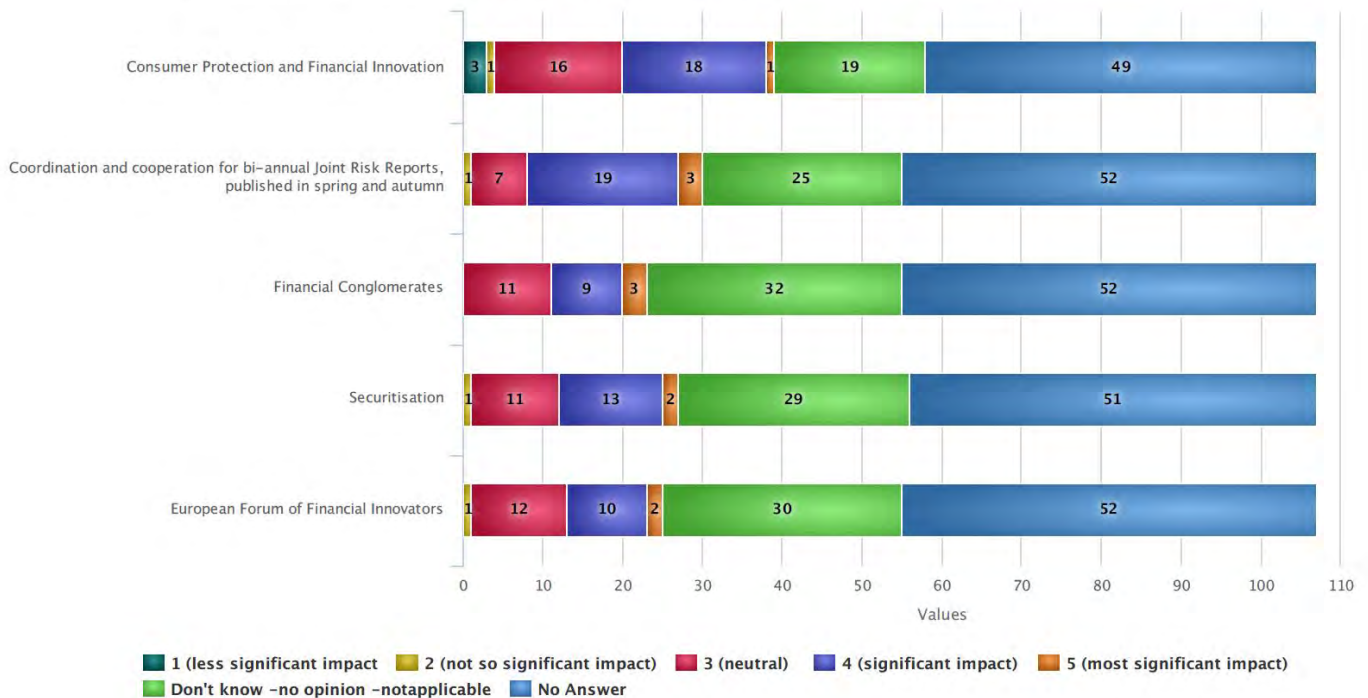
- The JC needs more resources.
- The JC is generally not used to the full extent in cases where the ESAs have a common mandate (e.g. mystery shopping, supervisory independence, action in emergency situations).
- The JC is not subject to proper transparency in its work. For example, minutes are not mentioned in the regulation, documents to be adopted by the JC should be received sooner by the members of the Board of Supervisors of each ESA and there have instances where decisions taken by the JC have disregarded or side-stepped the work and consensus reached at the level of sub-committees.
- The work of the JC could be extended to cover other areas such as cyber risk since European financial institutions are exposed to the same nature of risks, which requires a coordinated response from the ESAs.

A number of respondents from the **industry** observed that the JC pays insufficient attention to the idiosyncrasies of different sectors, that investment products, insurance products and occupational pensions are fundamentally different products and that a one-size-fits-all approach consumer protection rules is undesirable. These respondents further argued that it is important that the ESAs are operating as individual legal persons and that the JC remains as a coordinative group without an own legal personality. Another respondent took the opposite view and observed that it is crucial to reduce supervisory differences that exist for products and services from the securities markets or the insurance industry in order to ensure both uniform consumer protection. One respondent observed that when a mandate is given to the three ESAs to produce joint level 2 legislation, the process can be delayed and not achieve the desired results in good time (e.g. joint draft RTS on Initial Margin Model validation).

An **NGO** observed a need for stronger coordination in the areas of sustainable finance, technological innovation and digital finance, outsourcing and delegation arrangements and supervision of mixed holdings and suggested streamlining the JC governance in order to make the coordination and decision-making process more efficient.

Question 2.5.3 Work of the Joint Committee of the ESAs in the areas below.

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

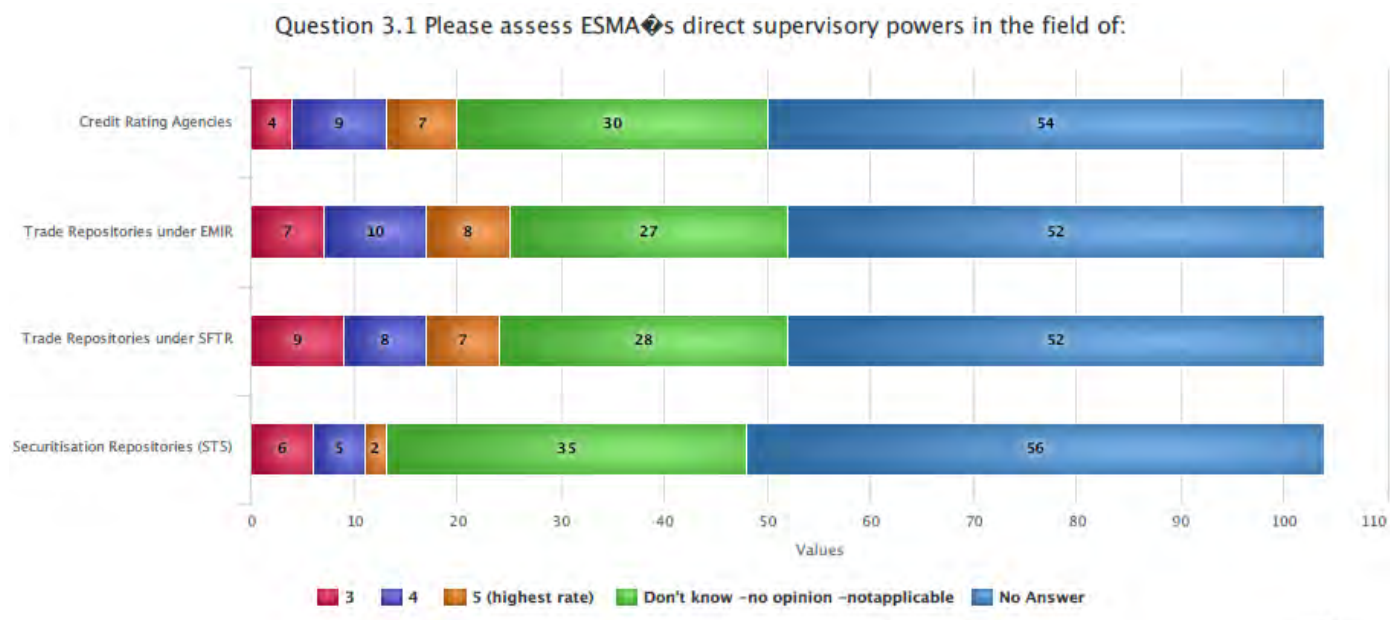


Respondents are rather positive about the work of the JC in the five areas and gave most ratings in the two highest categories (i.e. significant impact or most significant impact). Respondents gave more highest ratings to the areas of coordination for bi-annual Joint Risk Reports, consumer protection and financial innovation and securitisation.

Public authorities observed that there is room for improvement regarding the European Forum of Financial Innovators in terms of concrete deliverables about trends in innovation facilitators and facilitating cross-border initiatives. Another area for improvement is the area of consumer protection where the role and prominence of the JC could be strengthened. Respondents from the **industry** pointed out that, in the area of financial conglomerates, there should be more attention to the differences in insurance-led or banking-led conglomerates since not all conglomerates are the same. These respondents further argued that the dominant sector results in the regime applied at holding level which results in different approaches because the fundamental principles of the underlying regimes are different. One respondent advocated for a more active role of the JC in the emerging risks stemming from the new financial value chains and from the potential emergence of BigTech conglomerates. Another respondent from the industry identified a need for greater policy coordination among EU authorities in the securitisation area.

3. Direct supervisory powers.

Question 3.1 ESMA's direct supervisory powers in the field of Credit Rating Agencies, Trade Repositories under EMIR, Trade Repositories under SFTR and Securitization Repositories.



The assessment of ESMA's direct supervisory powers in the field of Credit Rating Agencies (CRAs), Trade Repositories (TRs) under the Regulation on OTC derivatives, CCPs and TRs (EMIR) and the Securities Financing Transactions Regulation (SFTR) and Securitisation repositories is quite positive with the majority of respondents assessing them in the two highest rates. There are no significant differences between the assessment of public authorities and the assessment of the industry.

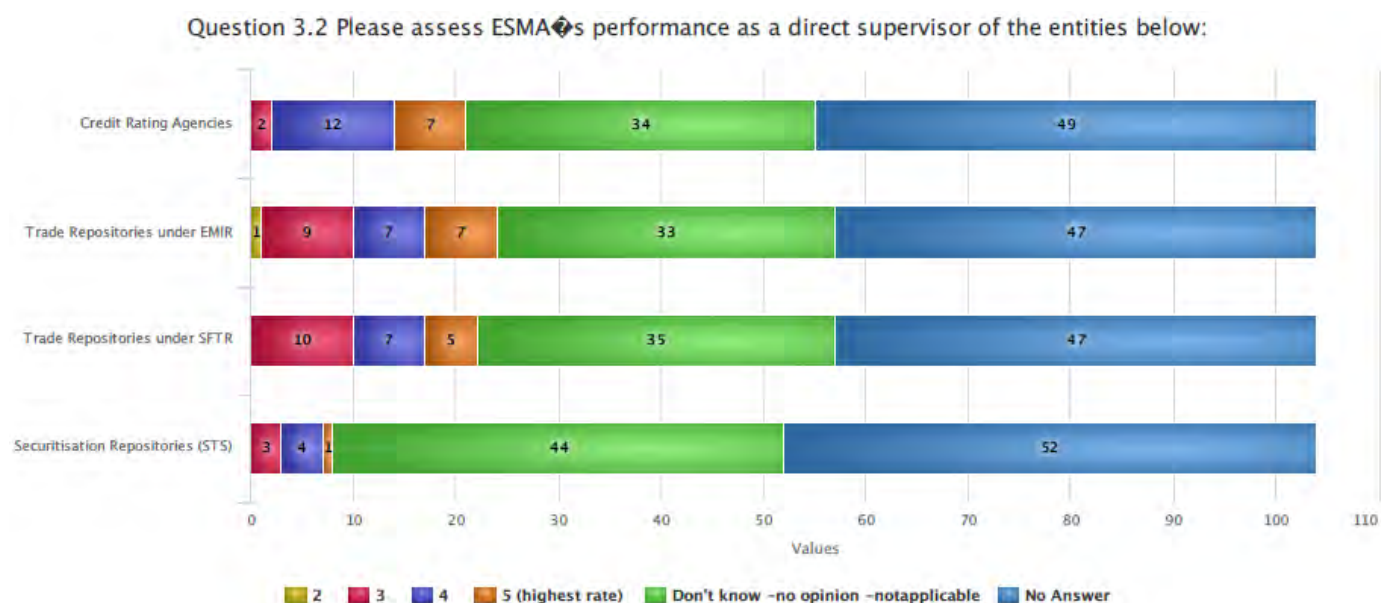
Regarding areas for improvement, **public authorities** observed that:

- Data quality for trade repositories would be enhanced if the processing of identified issues would be faster.
- The interaction between ESMA, NCAs and the trade repositories as well as the reporting entities connected to the trade repositories could be closer.
- A technical committee for TRs similar to the one created for CRAs would improve the transparency from ESMA towards NCAs on the supervision of TRs.
- Consideration should be given to an enhanced / more effective transparency on methodologies and further progress could be made to clarify the scope of ESMA's ex post supervision on methodologies.

From the viewpoint of the **industry**, the following areas for improvement could be considered:

- Advance information of regulatory changes or the application of new technical requirements.
- There have been few cases where the enforcement of some EMIR rules could have been stricter and more timely.
- Introduce regular structured bilateral meetings between the supervisor and the supervised entity.
- The Interactive Single Rulebook (ISRB) already covers level 2, Level 3 incl. Guidelines, Opinions and Q&As issued by ESMA. However, given that directly supervised entities such as trade repositories are exposed to additional ESMA technical specifications and Business Requirement Documents (BRDs) and statements, their inclusion in ISRB would be welcomed.

Question 3.2 ESMA's performance as a direct supervisor of Credit Rating Agencies, Trade Repositories under EMIR, Trade Repositories under SFTR and Securitization Repositories.



The assessment of ESMA's performance as direct supervisor of Credit Rating Agencies and Trade Repositories under EMIR and SFTR is quite positive with the majority of respondents assessing them in the two highest rates. There are no significant differences between the assessment of public authorities and the assessment of the industry.

Regarding areas for improvement, **public authorities** observed that:

- Since both counterparties of a transaction have reporting obligations and they can send the reports to different trade repositories, the pairing and matching of the reports still need improvements. This could be solved by guidelines and the supervision of the implementation of guidelines by the trade repositories.
- The communication between trade repositories, reporting counterparties, ESMA and NCAs could be improved.
- Remove different approaches or practices (including the contractual and onboarding arrangements for NCAs) which give rise to different levels of services and quality of the information provided to the NCAs.

Regarding areas for improvement, respondents from the **industry** observed that:

- It should be clear at any one time whether ESMA engages with firms in a supervisory, policy or enforcement capacity.
- Recommendation to review periodically the "Guidelines on periodic information and notification of material changes to be submitted to ESMA by Trade Repositories" to decrease the number of periodic reporting items that not add significant value to the risk assessment.
- The timing of informing TRs on upcoming legislative and technical requirements that are technically sensitive is very important.

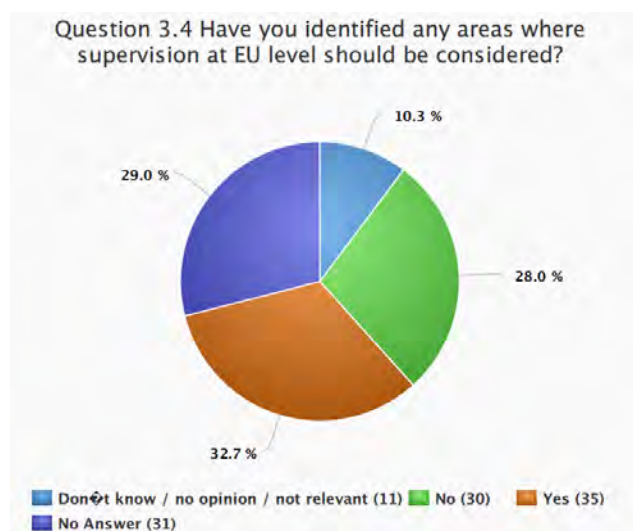
Question 3.3 Future scope of direct supervisory powers of ESMA or any other ESAs and principles that should govern the decision to grant direct supervision to the ESAs.

More than 60 respondents replied to this question. Eleven respondents from the **public authority group** do not see the need for further centralisation of supervision powers in the ESAs. These respondents argued that it is too early to assess the need for further centralization, that the current set-up seems largely appropriate, that the ESAs have been set up as

member-driven organizations with the objective of furthering supervisory convergence among NCAs and that the principles of subsidiarity and proportionality should be respected. One respondent further argued that centralisation would pose a risk of decreasing the efficiency of administrative processes due to the detailed knowledge of Member States that would be required at ESAs level and that resources at EU level would be needed. Nine respondents from the public authorities group observed that the decision to confer supervision powers to the ESAs should be based on evidence and clear criteria. These respondents proposed the following criteria for centralisation of supervision: (i) a small number of entities with systemic relevance for the EU capital markets; (ii) significant cross-border activity that cannot be adequately addressed by NCAs; (iii) existence of significant divergent approaches among NCAs; (iv) efficiency gains; (v) limited overlap with national company or insolvency laws; (vi) third country entities with the intention of acting in the entire EU; (vii) entities regulated by EU Regulations (not Directives). One public authority observed that supervisory convergence is reaching its limits due to resources constraints at both the EU and NCAs level. This respondent further argues that it is time that the EU acknowledges this trend and considers shifting to a centralised supervision for significant entities with a strong cross-border dimension such as EU CCPs, central securities depositories (CSDs) or market operators. Third-country entities with access to the EU single market as a consequence of a third-country regime set out in EU law and newly regulated activities, professions or type of products which were previously unregulated (e.g. providers of non-financial data, ratings and services, public offers of crypto-assets in the EU) would also be candidates for centralised supervision for this public authority.

Most **respondents from the industry** (21) consider that the current division of responsibilities between the ESAs and NCAs is satisfactory and that the principal supervisors in most capital markets areas should continue to be NCAs given their greater proximity and local knowledge. These respondents argue that it is prudent to evaluate how the new round of supervisory powers for ESMA works in practice before considering additional supervision at EU level and that as long as there are fragmented national legal frameworks (e.g. taxation, insolvency law, securities law) a lot needs to stay within NCAs remit. Thirteen respondents from the industry suggested areas for direct supervision at the EU level: public offers of crypto-assets, crypto-asset services providers, ESG services providers and proxy advisory firms, supervision of entities from non-EU countries, entities which have pan European activities (e.g. CCPs, trading venues (TVs), CSDs) and AML/CFT supervision. Seven respondents observed that EIOPA’s mandate should not be enlarged since the insurance market is not fundamentally systemic as liabilities are not immediately payable and liquidity risks are not present and that the supervision of an insurance group should not be separated from the national group supervision in the country in which the group is headquartered. Four respondents argued against supervision of European Venture Capital Funds (EuVECAs), European Social Entrepreneurship Funds (EuSEFs) and European Long-term Investment Funds (ELTIFs) by ESMA to avoid fragmentation between the supervision of some investment funds and their management companies.

Question 3.4 Potential areas where supervision at EU level should be considered.



A small majority of respondents to this question identifies areas where supervision at EU level should be considered. There are no significant differences in the distribution of responses between the public authorities and the industry groups.

A number of respondents from the **public authorities group** identified ESG rating agencies, ESG data providers and Sustainability-related Service Providers (SSPs) as potential areas for supervision at EU level. These respondents argued that transparency on ESG rating methodology is a specific concern since the demand for ESG data and services is surging among investors and asset managers while SSPs remain largely

unregulated giving cause for concern around the lack of transparency on their methodologies, risks of conflicts of interests, governance and internal control requirements. A few respondents identified the area of digital finance for supervision at EU level in particular third party ICT service providers, significant asset-referenced tokens and significant e-money tokens. Other respondents mentioned pan-European market infrastructures such as CCPs, TVs and CSDs as well as third country TVs and CSDs. Data collection and quality requirements were also mentioned as a potential area for more centralization. One respondent observed that a central role of ESMA could be envisaged in the collection and processing of suspicious transactions and order reports (STORs) of a cross-border relevance. Another respondent suggested that all benchmark administrators could be considered for central supervision.

Respondents from the **industry** identified ESG ratings and ESG data providers for potential supervision at the EU level given that transition to a low-carbon economy will require immense data sets to analyse all three E, S and G factors across all economic activities. Centralised EU-supervision of cloud- and ICT-service providers were also mentioned by a significant number of respondents from this group. A few respondents mentioned other areas for potential central supervision such as pan-European market infrastructures (CCPs, CSD, TVs), non-EU CSDs and TVs, a future consolidated tape for equities and bonds, the ESAP (if not operated by ESMA itself), market data providers and external verifiers of the EU green bonds.

A **NGO** observed that ESMA's direct supervision could include CCPs, CSDs, payment systems, big audit companies, as well as Pan-European products such as Pan-European Pension Product (PEPP), ELTIFs etc. This respondent further supports the enhancement of EIOPA's powers in the area of supervision and approval of internal models. A **research institute** observed that all financial firms of systemic importance doing cross-border business should be supervised at EU level. A **consumer organization** argued that there is an overall demand for greater transparency about the methodologies for sustainability-related rating providers and that supervision of ESG ratings should be supervised at the EU level.

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

4.1. *Assessment of the aspects described below regarding the role of each ESA as regards systemic risk.*

In general, mainly public authorities have a positive stance on the role of ESAs as regards systemic risk. The cooperation and coordination of systemic risk functions has generally improved and there is good cooperation between ESAs and ESRB on stress testing.

Respondents observed that:

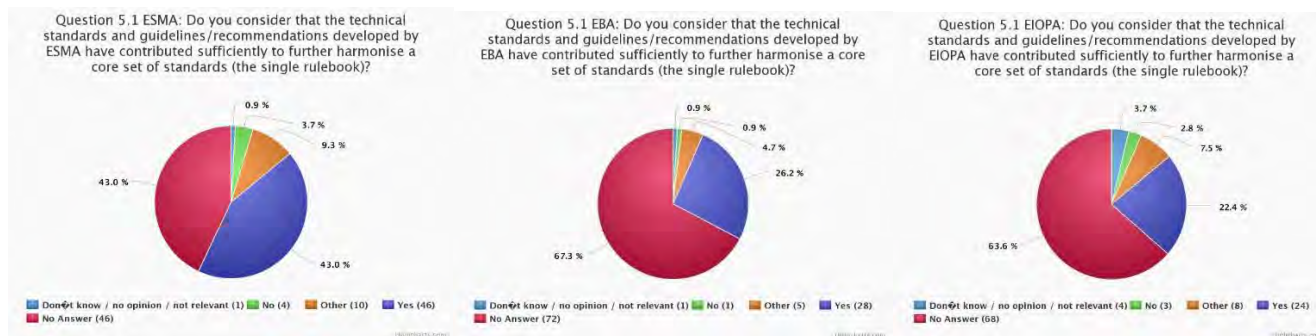
- The cooperation between the ESRB and the ESAs as part of the ESFS functions well. Nevertheless, a few stakeholders observed that interaction across the ESRB and the ESAs could be deepened and that the coordination within the ESAs could be strengthened.
- The stress testing process coordinated by the ESAs could be further streamlined. A few stakeholders explained that the level of details in stress test reporting is demanding for competent authorities and the supervised entities due to the quality assurance process. The ESAs could assess how the Quality Assurance Process could be more risk based. Some industry stakeholders also raised concerns as regards the communication of the results of the stress test, as the nuances of the report are sometimes lost in the press release.
- More work among ESAs, ESRB and NCAs is necessary to develop "available and high quality" indicators on systemic risk.

- The main objective for the ESAs is to ensure that the EU financial sectors are significantly better at withstanding a financial crisis than it was during the last financial crisis. To the extent that it does not conflict with financial stability, the ESAs could also aim to enhance efficiency through harmonising rules and convergence of supervisory practices.
- Industry stakeholders also request that specificities of each industry (banking, asset management insurance) are well taken into account in the work on systemic risk.

B. The Single Rulebook

5. The ESAs work towards achieving a single rulebook

5.1 *Contribution of technical standards and guidelines/recommendations developed by each ESA to further harmonise a core set of standards (the single rulebook).*

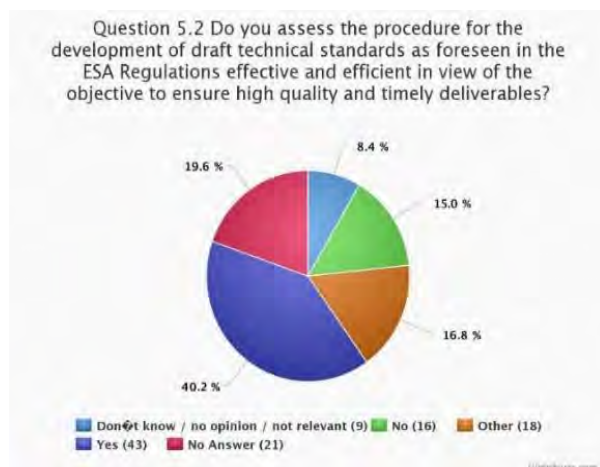


The overall majority of respondents considers that technical standards, guidelines and recommendations have sufficiently contributed to harmonise a single rulebook, with no significant difference between replies from the industry and public authorities.

The main comments (from public authorities and industry alike) point to the following risks and possible improvements:

- level 1 texts should define clearly the scope of technical standards and guidelines and the ESAs should not exceed their legal mandate and introduce substantive rules through the backdoor.
- In line with the principle of proportionality, overregulation and excessively granular rules should be avoided, as they leave no flexibility for national supervisors to take into account the local situation.
- Guidelines and recommendations should be regularly reviewed.
- Better consistency between legislation, level 2 rules and guidelines, also in interaction with national rules/guidelines and cross-sectoral should be ensured, including a consistent terminology/ definitions across sectors.

Question 5.2 *Procedure for the development of draft technical standards in view of the objective to ensure high quality and timely deliverables.*



The majority of respondents believe that the procedure for the development of technical standards is effective and efficient. Whereas only one public authority considers that the procedure is not efficient, the replies of the industry are more balanced with 18 Yes and 13 No replies.

The main issues raised concern the timeline of the procedure, in particular unrealistic timelines in level 1 texts. This can lead to too short public consultations and stakeholder feedback not adequately taken into account, or to level 1 texts entering into force before the level 2 rules are available. Some respondents highlight that the preparation of joint RTSs is particular lengthy.

Some industry representatives ask for more transparency with regard to the timelines and regular reviews of RTSs.

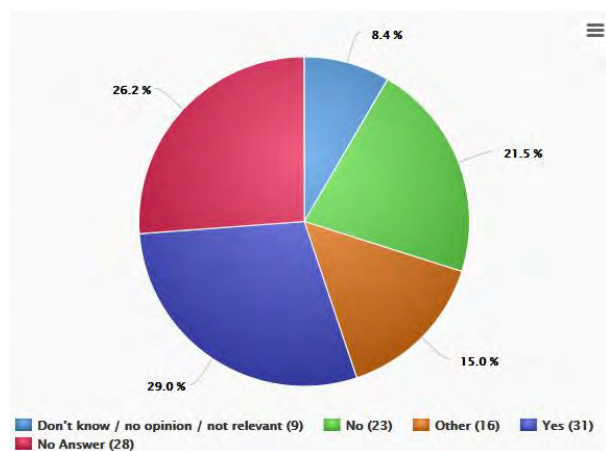
Respondents make mainly reference to RTSs under the Sustainable Finance Disclosure Regulation (SFDR), PRIIPs and EMIR to illustrate the problems.

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?

22 public authorities replied to this question as well as 21 representatives of the industry. The insurance industry unanimously highlights the importance of respecting a blocking minority as part of democratic decision-making, about half of the public authorities do not consider that changes to the procedure are needed.

Several public authorities make suggestions to improve the process, amongst others: more internal discussions before submission of draft RTSs to the BoS, changes to the voting system (simple majority or plenary vote), publication of votes, a conciliation procedure or a mechanism to escalate the decision to the Commission.

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



Respondents who replied to the question are split. The large majority of public authorities think that stakeholders are sufficiently consulted and any potential impacts sufficiently assessed while the industry is much more critical.

Among the **industry**, aside from those who do not feel they are sufficiently consulted, several respondents feel that they are sufficiently consulted but that their feedback is not sufficiently taken into account or that the exercise should not be a simple tick the box exercise. Some point to a lack of feedback on how stakeholder input is taken into consideration or how choices are made, especially when these choices run counter to stakeholder's views. Several respondents from the industry feel that impacts are not sufficiently assessed. In particular, some point to insufficient consideration of potential unintended impacts of rules and a lack of quantified cost/benefit analyses.

Public authorities are mostly positive about stakeholder consultation and assessment of impacts. One pointed out that the number of consultations is such that only the largest organisations (often industry associations or largest players) are able to monitor the roll out of new consultations and coordinate responses. It also thinks that there is not enough external consultation during the Q&A procedure and that there is a lack of transparency of the decision-making process.

Respondents made the following suggestions for improvement:

- Have a real dialogue rather than the general current methodology which is a reaction to feedback; organise hearings systematically as well as regular industry roundtable;
- adapt the ESAs web-based tool to allow for unsolicited feedbacks by stakeholders on topical issues;
- ESAs to interact with market participants directly in addition to interacting via trade associations;
- Leave sufficient time for consultation;

- Extend the formal consultation process to Q&As;
- Allow market participants sufficient time to adapt their operations and technology when/before Q&As are published;
- Strengthen the role of stakeholder groups;
- Add visibility and predictability of new consultations such as through a centralized webpage consolidating all consultations and providing advanced notice and anticipated schedules for upcoming consultations, pre-defined publication dates (ex/ 3 times per year), enhanced standardization of consultation forms (types and number of questions);
- Explain each rule-making decision, especially decisions that run counter to the views expressed by a majority of respondents;
- Involve a broader range of stakeholders;
- Improve the thoroughness of the impact analysis and data gathering exercise, including an analysis of the costs for small and mid-cap companies and how the proportionality criteria has been applied to them; mandate specific analysis to independent stakeholders and research institutes.

Question 5.5 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.

45 respondents answered this question, with similar numbers for public authorities and the industry.

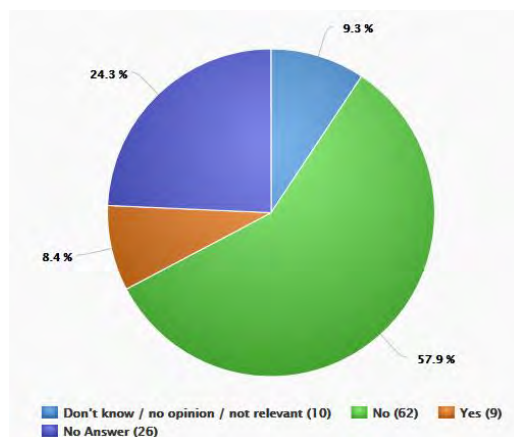
Among public authorities, the most frequently quoted examples were:

- Guidelines on the assessment of the suitability of members of the management body and key function holders (4)
- Guidelines on Enforcement of Financial Information (3)
- Guidelines on product governance, on UCITS liquidity stress tests, on the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors, guidelines related to COVID-19

From the industry, respondents mentioned:

- Guidelines on product governance (4)
- Peer review of the EIOPA decision on the collaboration of NCAs and guidelines related to AIFMD (3)
- Guidelines on knowledge and expertise assessment, on appropriateness assessment (2)

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?



A large majority of respondents do not consider it useful that 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.

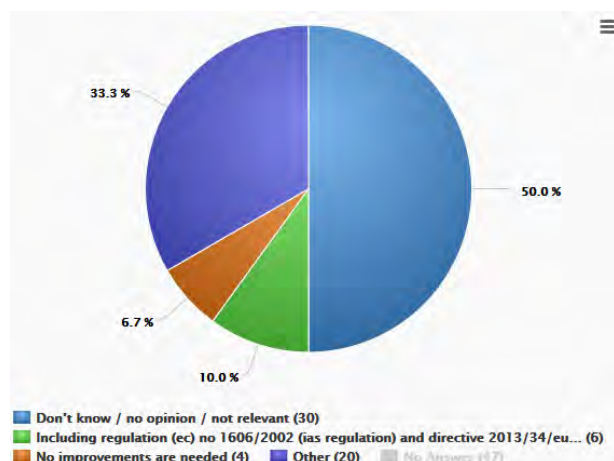
This trend is very pronounced in the industry, with only one respondent voicing the opinion that it would be useful. Some argue that it could potentially divert the ESAs' attention from their core tasks, that it could lead to additional layer of complexity for market participants, which would increase the risk of inconsistencies and legal uncertainty, or that it could interfere with the competences of other EU bodies or institutions. One respondent explains that as guidance assists market participants to better understand their compliance obligations, it is of less value to participants if the guidance is not clearly tied to existing legislation. Finally, some respondents voice the opinion that guidelines have become in practice binding and that the ESAs must not become quasi EU-regulators.

The picture is slightly more nuanced for public authorities. Among the majority that opposes the suggestion, one argues that it may lead to a lack of predictability and may undermine the cooperative spirit between the various authorities involved in financial market supervision. Another thinks that it may pose additional challenges to the smaller setups in smaller jurisdictions. Some argue that the ESA regulations already give sufficient leeway to adopt guidelines in areas not directly falling under the legislation listed in Article 1(2). Another thinks that such guidelines should be strictly restricted to limited cases: to help preparing for the implementation of a future EU regulation, or to face emergency situations such as the COVID-19 crisis.

The few that replied yes to the question suggested the following areas where the ESAs could issue guidelines:

- Guidelines related to investor protection, orderly markets or financial stability issues. E.g.: takeovers, credit derivatives, clearing and settlement.
- Shadow banking
- Financial reporting and auditing or all of article 1(3) of the ESA regulations
- The motor insurance directive, consumer protection cooperation regulation and, in the future, DORA and MiCA

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?



Few respondents voiced an opinion on how to improve supervision in light of the Wirecard case (30 out of 107). Among public authorities, the same number of respondents (4) are in favour and explicitly oppose the inclusion of the IAS and Accounting directives to ESMA's remit. While warning that investigation into the Wirecard case was still ongoing at the time of the consultation, public authorities made many suggestions to improve supervision. The most mentioned areas for improvements are:

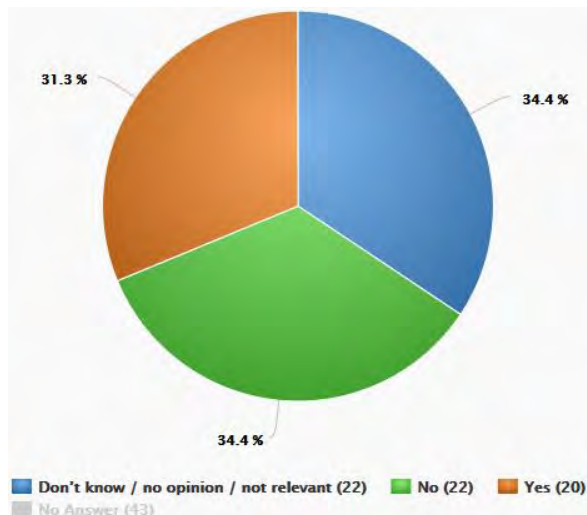
- Transparency on audits and on supervision, including outcomes from inspections and investigations;
- Harmonisation between Member States, both in the area of supervision and in rules which are applicable to audits, auditors/audit firms and audit clients;
- Competences and resources given to individual NCAs and to the Committee of European Audit Oversight Bodies (CEAOB);

Nearly of third of the industry respondents think that no improvement is necessary. Two organisations suggest introducing an obligation to cooperate between market and audit supervisory authorities, and with the law enforcement authorities. Other suggestions include strengthening information and intervention rights of supervisors vis-à-vis capital market companies, greater independence and stricter civil liability for auditors, disclosing all material activities and transactions within a group and using a Legal Entity Identifier (LEI) for all companies belonging to a group.

Two members of the civil society replied. They support adding the IAS and Accounting directives to ESMA's remit and gave a detailed list of suggestions to improve supervision. They include:

- Stronger enforcement of financial reporting standards by NCAs with a clear definition of roles and responsibilities;
- Stronger powers (in particular, investigative powers), supervisory and operational independence of the relevant competent authorities;
- Improvements in the handling of warnings with respect to financial fraud coming from whistleblowers and other sources such as media;
- Strengthening of supervisory oversight of audit companies:
 - Stronger cooperation between NCAs for the purposes of information/expertise sharing and supervision of cross-border activities;
 - 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.

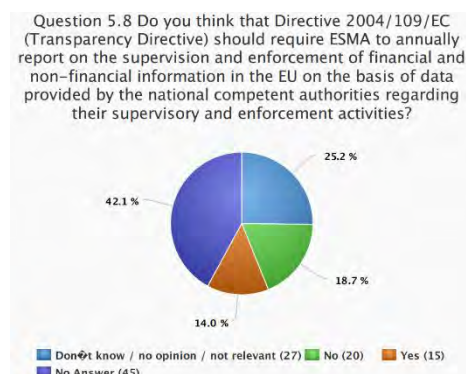
Question 5.7 Do you think that the role of ESMA with regard to Directive 2004/109/EC (Transparency Directive) could be strengthened? For example, by including a mandate for ESMA to draft RTS in order to further harmonize enforcement of financial (and non-financial) information.



The views are equally split on this question. This is the case for public authorities. On one hand, some point to significant divergences in the transposition of the directive; drafting RTS would promote supervisory convergence amongst NCAs and send the market a strong signal. On the other hand, some public authorities think that the current guidelines are sufficient. Two thirds of the industry respondents who expressed an opinion are against strengthening the role of ESMA regarding the Transparency Directive. Some think that ESMA and National enforcers should not assume the role of the standard setter or an interpretative role. One argues that NCAs are in a better position to intervene efficiently on enforcement as they have a better and more direct knowledge of their markets. On the opposing side, a respondent favours a stronger role of ESMA because it believes that some Member States have ‘gold-plated’ certain aspects of the directive.

Respondents that are part of the civil society and who voiced an opinion are in favour of strengthening the role of ESMA.

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?



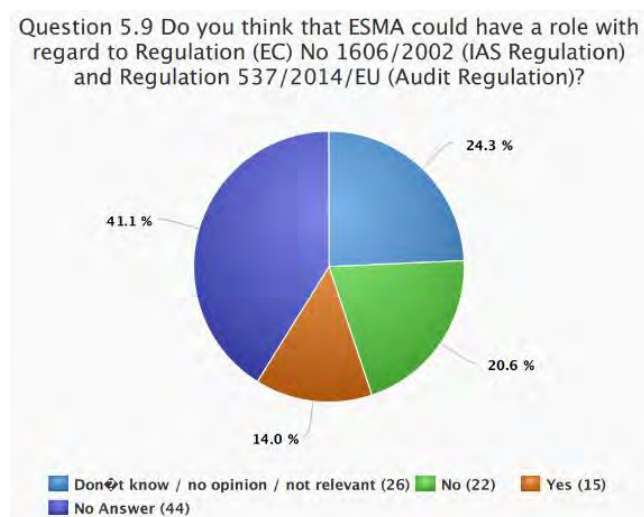
The views are equally split among **public authorities**. Public authorities who are in favour of introducing reporting requirements in the Transparency Directive (TD) observed that transparency is key in ensuring a well-functioning supervision and enforcement of financial and non-financial information. One public authority argue that since the TD does not set harmonized supervisory competences in the field of non-financial information in corporate documents other than the management reports, the lack of harmonisation of NCAs should be addressed at EU level. Public authorities who replied “no” argue that ESMA already publishes an annual report on

supervision and enforcement of financial information "Report on enforcement and regulatory activities of European enforcers" in the area of the TD and do not see added value in further public disclosure.

The majority (11 vs 3) of the **industry respondents** who expressed an opinion are not in favour of introducing reporting requirements in the TD on the supervision and enforcement of financial and non-financial information in the EU. These respondents argue that it would create an additional reporting burden for NCAs without real added value and that ESMA already provides useful insight for all the related parties. Another industry respondent proposes instead to carry out a peer review on the compliance with the ESMA Guidelines on Enforcement of Financial Information at regular intervals and publish the reports. An industry respondent who replied "yes" considers that an obligatory annual report of ESMA on the supervision and enforcement of financial and non-financial information would be a useful contribution to enhance transparency and consistency.

Respondents that are part of the **civil society** and who voiced an opinion are in favour of introducing reporting requirements in the TD on the supervision and enforcement of financial and non-financial information.

Question 5.9 Do you think that ESMA could have a role with regard to Directive 2006/43/EC (Audit Directive) and Regulation 537/2014/EU (Audit Regulation)?



The views are equally split among **public authorities**. Only public authorities who consider that ESMA should not have a role with regard to the Audit Directive and Regulation (AD/AR) made comments. These public authorities observed that ESMA already plays an important role under the AD/AR as it is a member (without voting rights), chairs the CEAOB sub-group on adequacy and equivalence and has the possibility to present its position on every issue discussed by the Committee. They argue that ESMA has no sufficient expertise in the audit area and that the competence of the CEAOB members exceeds that of ESMA (ESMA focuses on capital markets, whereas audit oversight also covers the area of non-Public Interest Entity audits). They further argue that it would be preferable to improve coordination with the existing ESAs

and to consider improving the CEAOB capacity and legal competences. One public authority observed that the oversight did not function for Wirecard due to structure/unclear division of responsibilities and lack of independence and that however this assumption cannot be extended to other member states' oversights. Another public authority observed that it is premature to assess the effectiveness of the AD/AR since they been applied for only 5 years and that in the vast majority of Member States the national audit oversight authorities are stand-alone bodies, having no links with the financial supervision authorities.

The vast majority (11 vs 1) of the **industry respondents** who expressed an opinion consider that ESMA should not have a role with regard to the AD/AR. These respondents observed that ESMA already plays a role, that the knowledge of the legal environment in the Member States is essential for ensuring audit quality and that the EU audit legislation with the establishment of the CEAOB offers a well-designed and efficient framework. They argue that if ESMA were granted the role of the EU audit supervisor it would create conflicts of interest between audit supervision and enforcement in the financial reporting area. They further argue that Article 1 (3) of the ESMA's founding Regulation already provides a basis for ESMA being active in the field of auditing and financial reporting, provided that such actions are necessary to ensure the effective and consistent application of those acts listed in Article 1 (2). One respondent points out that the key issue regarding audit is the concentration of the audit market with side effects such as the influence of the largest international firms on the interpretation and implementation of the IFRS.

One respondent who is part of the **civil society** is not in favour of ESMA having a role with regard to the AD/AR since these regulations include national options and in some Member States the application of these regulations has gone beyond capital markets participants. For example in BE, the IAS standards are also made applicable for non-listed insurance groups such as mutuals and cooperatives.

Question 5.10 Assessment of the work undertaken by the ESAs regarding opinions and technical advice.

19 respondents gave an assessment of the **EBA's** work, a majority of which are public authorities (11). Their sentiment is overwhelmingly positive.

Public authorities underline the quality of the work undertaken in relation to the development of opinions and technical advice. One public authority notes that though EBA provide reliable, high-quality opinions and technical advice in a timely manner, the quality suffers from too tight timelines in rare cases.

Respondents from the industry are also positive. One of them noted the quality of the work carried on Basel III and suggest to improve transparency by providing insight into the actual capital shortfall banks will face to meet market expectations not just the required minimum capital.

One trade union claims that the ESAs have sometimes assumed a broad scope, especially regarding guidelines.

38 respondents gave an assessment of **ESMA's** work, a majority of which are from the industry (20). Their sentiment is mostly positive.

All public authorities who replied to the question assess positively the technical advice and opinions provided by ESMA, several insisting on its high quality. Two respondents note that there are sometimes difficulties to deliver technical advice on time due mainly to unrealistic deadlines set in primary acts. Another finds that though they assess ESMA's work positively, the procedure where a large number of opinions are issued for one regulation can sometimes be confusing for market players.

Most respondents from the industry who replied to the question also assess ESMA's work positively. In particular, one finds that ESMA effectively responded to the challenges created by the COVID-19 crisis, providing pragmatic solutions in terms of guidance and forbearance, and ensuring market participants were given some additional time and flexibility across a range of issues. Respondents raise the following points:

- Three respondents find that there should be a more transparent process in cases where the Commission does not accept the work undertaken by the ESAs; the Commission should detail its reasons when it does not to endorse or accept the output of the ESAs work.
- Two organisations find that their consultation responses are not well taken into account in ESMA's work because of the timing pressure that ESMA is under due to unrealistic deadlines set in level-1 legislation. They would also like to see deeper engagement with stakeholders.
- Another respondent thinks that ESMA should increase its IT (digital) and human resources (competences); in particular that it should improve its understanding of the venture capital and private equity industry.

One trade union claims that the ESAs have sometimes assumed a broad scope, especially regarding guidelines.

26 respondents gave an assessment of **EIOPA's** work regarding opinions and technical advice: 13 from the industry, 12 public authorities and one EU citizen.

Most public authorities who replied to the question assess positively EIOPA's work, several noting its high quality. One public authority notes that there are sometimes difficulties to deliver technical advice on time due mainly to unrealistic deadlines. Another public authority points out that the amount of work undertaken by EIOPA is too much for NCAs' staff and means that only NCAs with sufficient resources can effectively contribute. Finally one public authority thinks that

the peculiar features of the insurance sector should be taken into consideration in a more appropriate way when drafting joint opinions, technical advice, RTS and guidelines.

Many of the respondents from the industry who replied to the question note the good quality of EIOPA's work. However about half of them think EIOPA's activity is too much, preventing appropriate stakeholder involvement. They also feel that part of the work to ensure an EU-wide and consistent approach should be subject to the legislative process rather than being carried out by EIOPA. Respondents argue that it has mostly added complexity or that supervisory convergence is not needed in the field of pensions. Another respondent also feel that the opinions of EIOPA should still be more in line with the industry practice.

An EU citizen rates EIOPA's work positively, welcoming in particular the first pilot dashboard which depicts the insurance protection gap for natural catastrophes. This respondent thinks that EIOPA should focus on the most important areas (Solvency II, Insurance Distribution Directive (IDD) and IORP II) to avoid being overburdened.

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.

Respondents have split views as regards the need to further harmonise certain areas of the financial markets regulation. Indeed, some respondents from both the public sector (33%) and the industry (35%) would see merit in further harmonising specific areas such as UCITs, MiFID II/MiFIR, Solvency II etc. while other respondents (28%) from the public sector and the industry (21%) would rather favour a minimum harmonisation approach. 39% of respondents from the public sector and 44% of the industry have not expressed an opinion.

Public authorities: Overall, respondents were split between favouring and opposing further harmonisation. Indeed, some respondents emphasized the need for maximum harmonisation at level 1, notably in the area of asset management, where a number of primary acts establish frameworks for investment products that benefit from an EU passport (Money Market Funds (MMF), ELTIF, EuVECA, EuSEF, UCITS). According to some respondents, the transposition of a directive into national laws is prone to creating divergences, hence they would favour using regulations instead of directives, when needed as a tool for conversion. Some respondents stressed that options in EU acts whereby Member States may decide whether to opt for a particular regime may represent barriers to harmonisation in the European Union, thus creating potential forum shopping decisions for market players. In addition, some respondents argued that higher harmonisation for the supervisory approval of the use of Solvency II internal models and its ongoing assessment would be useful, so that the SCR can be calculated using models. On the other hand, other respondents would favour minimum harmonisation.

For some respondents from the **industry**, a maximum degree of harmonisation in certain areas is critical to underpinning the supervisory convergence. The impact of diverging supervisory practices tends to be particularly significant in areas where there is a move towards EU regulatory harmonisation, underpinning cross-border business and competition. On the other hand, other respondents would favour minimum harmonisation.

An NGO emphasized that some areas require significantly stronger harmonisation of EU law application and convergence of national implementing standards.

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 identify the relevant sectoral legislation, examples of gold plating and give reasons for each.

Respondents consider that market organisation (MiFID, MIFIR, MAR), asset management and insurance are the relevant areas where national rules is going beyond the minimum requirements of a Directive (known as “gold-plating”), and are hence particularly detrimental to a Single Market. However, no clear picture emerged as to why “gold-plating” was a particular concern for those areas, and a majority of respondents did not express any opinion.

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? Please explain your choice. Where appropriate, please support your response with examples.

Respondents have split views as regards the need for the single rulebook to be further enhanced to reach the uniform application of Union law or rules implementing Union law and efficient convergent supervisory outcomes. Among the respondents, 31% of the public authorities group and 25% of the industry group have expressed a positive answer. However, some respondents consider that the single rulebook is sufficient and should not be further enhanced.

Public authorities. Some respondents would see benefit in strengthening the existing tools or providing for new ones that can effectively address and solve problematic cases of cross-border. These respondents would see merit in: (i) encouraging the continuous exchange of relevant information between home and host during the on-going supervision phase; (ii) improving reporting on cross-border activities from the undertakings to the host Authority; and (iii) providing for the possibility for the host Authority to request a joint inspection with the home Authority in certain cases. Some respondents would support a more holistic approach of the single rulebook, with for example a unique rule book for all three sectors (financial, banking, insurance), leaving to the L2 and L3 the definition of more precise rules in order to cater for the peculiarities of the sectors/entities/products.

For some respondents from the **industry** a higher degree of harmonisation in certain areas is critical to underpinning the supervisory convergence. The impact of diverging supervisory practices tends to be felt particularly in areas where the single rulebook is more advanced, underpinning cross-border business and competition. However, according to other respondents the single rulebook does not need to be further enhanced.

Question 6.4.1 Are there circumstances in EU legislation where level 1 is too granular, or for other reasons, it would rather be preferable to have a mandate for level 2, or guidance at level 3?

Respondents have split views as regards circumstances in existing EU legislation where level 1 is too granular, or it would rather be preferable to have a mandate for level 2, or guidance at level 3, for other reasons. Among the respondents, 31% of the public authorities group and 26% of the industry group find sometimes-level 1 too granular. However, there are also respondents who consider that there are no such circumstances where the existing level 1 is too granular.

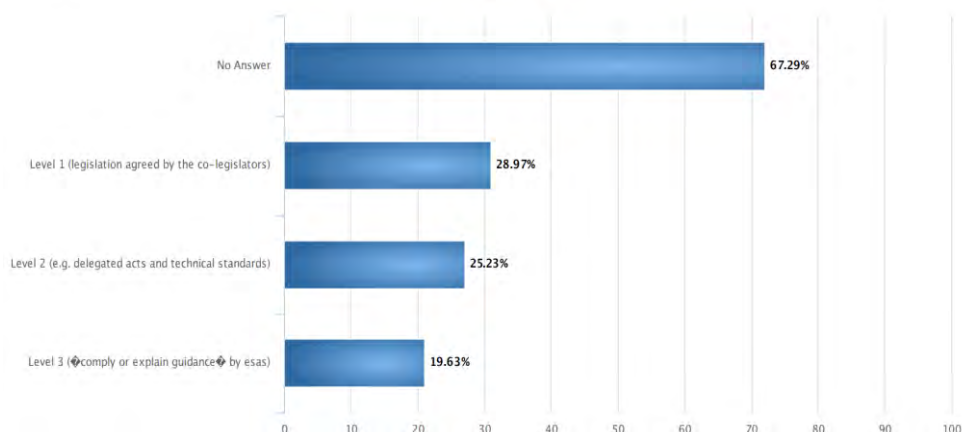
Public authorities. Some respondents consider level 1 as being too granular, some stressed that the MiFID II/MIFIR package where level 1 is quite dense and detailed. Some respondents emphasized that a highly detailed level 1 legislation would allow for less flexibility and hence less adapted to national specificities. The ESAs should ensure that all

level 2 provisions are systematically and rigorously founded on a mandate in level 1. Indeed, for some respondents there can sometimes be excessive granularity at level 1; the PRIIPs Regulation is an example. As a rule, for some respondents, it is preferable to have as much certainty at level 1 and when delegating to level 2 and 3, there should be a clear and well-framed mandate for the ESAs and/or Commission. Unfortunately, there are many examples of politically important issues that are delegated to regulators at level 2.

For some respondents from the **industry**, level 1 texts should be as granular and clear as necessary to frame the requirements in Levels 2 and 3. Key requirements should not be decided at level 2 or Level 3. Level 2 should rather be used to provide technical details such as calibrating thresholds. Some respondents stressed that sometimes level 1 does not provide for a clear mandate to clarify a concept or definition in level 2. Hence, it can give rise to divergent interpretations or to legislation not being applied as intended by the legislator. According to some respondents, the legislator should ensure that legislation includes mandates to clarify and resolve potential issues in level 2 so that the single rulebook is applied in an equal manner.

Question 6.4.2 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?

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

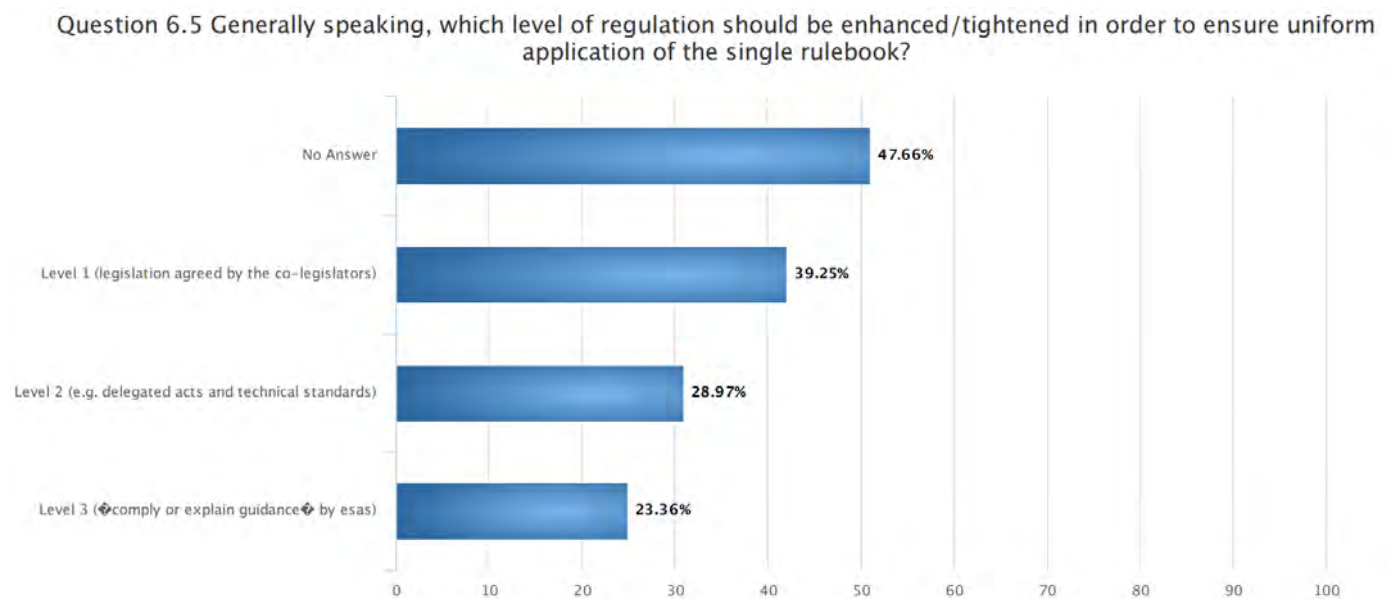


A majority of respondents would find merit in reducing divergences in rules at level 1, as well as rules regarding delegated acts (regulatory technical standards) or implementation at level 2, and/or level 3 to further enhance the single rulebook. Among the respondents, 53% of the public authorities group and 44% of the industry group are in favour of reducing divergence at level 1 as well as rules at level 2 and/or at level 3. A vast majority thinks all three levels contribute to the building of the single rulebook.

Public authorities. Most respondents consider that all three levels contribute to the building of the single rulebook, however, depending on the area, one or several levels will be simultaneously effective in building a single rulebook. Some respondents stressed that level 1 should grant limited, and specified, mandates to levels 2 and 3 to guarantee the consistency between the three levels and to concentrate the regulatory options in the co-legislators level.

For most respondents from the **industry** the three levels contribute to the building of the single rulebook, each with their own specific purposes. However, the adoption of too prescriptive rules may be problematic, especially when a minimum flexibility is needed to take into consideration specificities of some products / players and national ones. According to some respondents, when needed, the level 3 legislation can provide additional granularity and clarity on some specific aspects.

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



Some respondents (39%) considers that level 1 should be enhanced/tightened to ensure a uniform application of the single rulebook. However, 29% and 23% of respondents would also see benefit in enhancing/tightening Levels 2 and 3, respectively. Among the respondents, 41% of the public authorities group and 38% of the industry group would favour enhancement at level 1. The overall majority of respondents did not express an opinion.

Public authorities. A thin majority of respondents would encourage the ESAs to focus on better readability and simplicity when drafting prudential norms. According to most public authorities, all three levels of regulation require tightening, as it does not make sense to single out one Level over the others. Depending on the area, one or several levels will be simultaneously essential to reach the objective of uniform application. While other respondents stressed that a uniform application of the rules may be achieved by enhancing/tightening level 2, since it deals with specific parts of the regime that benefit from a more detailed approach. Some also believe that Level 3 regulations should be in certain cases tightened in order to ensure uniform application of the single rulebook.

A vast majority of respondents from the **industry** stressed that all three Levels were equally contributing to building the single rulebook. However, some respondents emphasized the importance of increasing the use of regulations rather than directives at level 1 as it would overall enhance convergence. According to some respondents, level 1 is effective in setting standards and should therefore be sufficiently granular and clear, given the primacy of EU legislation over level 2 and Level 3 acts. Hence, level 1 should therefore include clear mandates for clarifications for concepts and definitions on the subsequent Levels. For some respondents, Level 3 should more granular, include concrete illustrations, and should be subject to public consultation and a more transparent process.

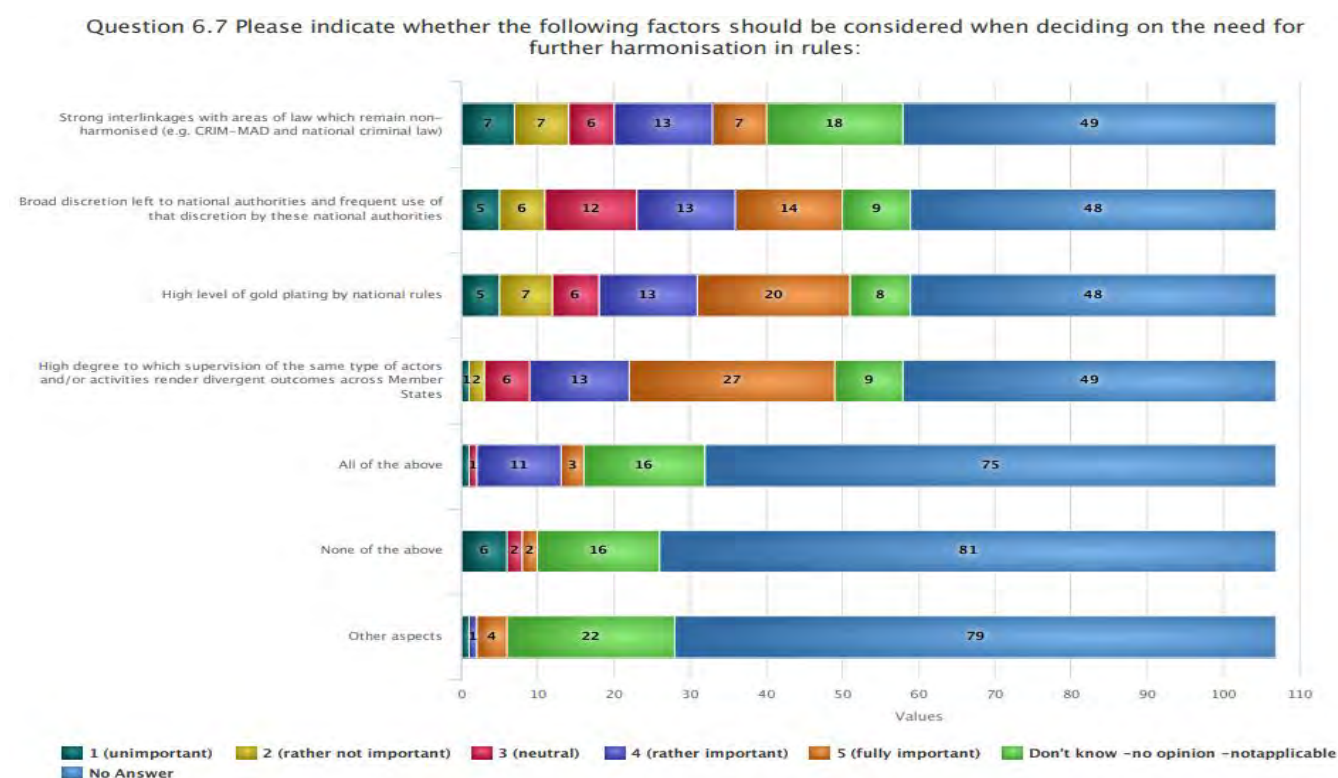
An **NGO** emphasized the importance of increasing the use of Regulations rather than Directives at level 1, as it will help promoting convergence of rules and application by Member States/NCA's.

Question 6.6 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?

Nearly all of the 66 respondents, public authorities and industry alike, who replied to this question saw room for improvement and considered the issue a significant one. The main point of criticism was the sequencing between level 1 and level 2 measures, with a number of respondents also asking that level 1 enter into application only following a grace period of e.g. half a year once level 2 was finalised so that industry could adapt procedures. Also, the problem was considered particularly acute for new EU regulation in areas not previously harmonised, as well as for cross-cutting legislation concerning more than one industry sector; sustainable finance was singled out as a case in point.

This is a sensitive area for all stakeholder groups (save for NGOs) and one where the EU process is subject to substantial criticism. The wish was expressed that level 2 should be agreed immediately following level 1 and to this end, the ESAs should start their work before the level 1 text had been agreed definitely.

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



Supervisory divergence received the strongest support amongst the reasons for stricter harmonisation. Most respondents had specific views and did not use the “all of the above” or “none of the above” options. Another criterion mentioned was the materiality of risks to be prevented by more harmonised rules, yet other ones were rules for products which are distributed under an EU passport or areas where information sharing was important, such as AML. One respondent underlined the need for a cost-benefit-analysis with regard to the costs of further harmonisation for small market participants.

Nearly no comments on specific other suggestions, but two respondents mentioned other areas of the law of significance in the Capital Markets Union (CMU) context:

- One public authority mentioned insolvency and fiscal national laws, in connection with harmonising rules in the areas of the company law, financial reporting, SMEs, post-trading.
- Another respondent highlighted the importance for the proper functioning of securities markets and the completion of the single market to make progress in criminal law, insolvency law and the tax system governing the different financial instruments and services provided.

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?

Overall, respondents were split nearly evenly between favouring and opposing more stringent harmonisation, with two-thirds of public authorities in favour of tighter harmonisation, but a slight majority (55%) of industry respondents against. Respondents in favour of a higher degree of harmonisation are more numerous regarding the asset management and market organisation (MIFID, MIFIR, MAR) sectors than other areas.

Respondents who see merit in tighter harmonization mentioned the following examples:

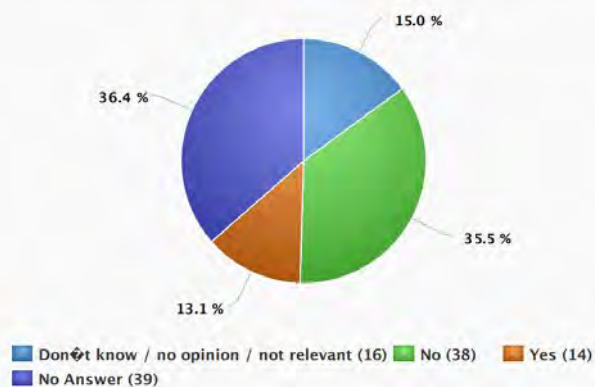
- For Banking: CRR/CRD; Banking Union as such; third country branch regimes for both banks and investment firms (CRR/CRD, MiFIR/D, IFR/D); regulation of exposure to shadow banking should be level 1.
- For Insurance: Solvency II (5 respondents, all from industry). 2 of those respondents expressed identical remarks mentioning that the principle of proportionality should be harmonised at level 1.
- For Asset Management no specific examples were identified.
- For Market Infrastructure, one respondent identified EMIR/CSDR and named derivatives trading obligation and CCP trading.
- For Market Organisation: secondary trading, share and derivatives trading obligations and assessment of market abuse.
- For "Other", respondents identified anti-money laundering (e.g. customer due diligence) and the Shareholder Rights Directive.

Respondents who do not see merit in tighter harmonization observed that:

- For Insurance, two respondents named Solvency II and two industry stakeholders underlined the need for the IDD to remain at minimum harmonisation.
- For Asset Management, two respondents named the AIFMD, since the asset management sector was considered very specific to each Member State.
- For market organisation, two respondents specified that MiFID II was just right as regards the level of harmonisation.
- Two respondents underlined their preference for principles-based legislation.

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

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?



Around one fifth of **total respondents** and one fourth of public authorities respectively are in favour of using existing mandates to promulgate additional/more detailed rules at level 2, but less than one fifth of industry respondents (18%, same level as no opinion for this group). A majority (55%) of total respondents oppose this (58% for public authorities, and 65% for industry). No NGO expressed an opinion.

Respondents observed that:

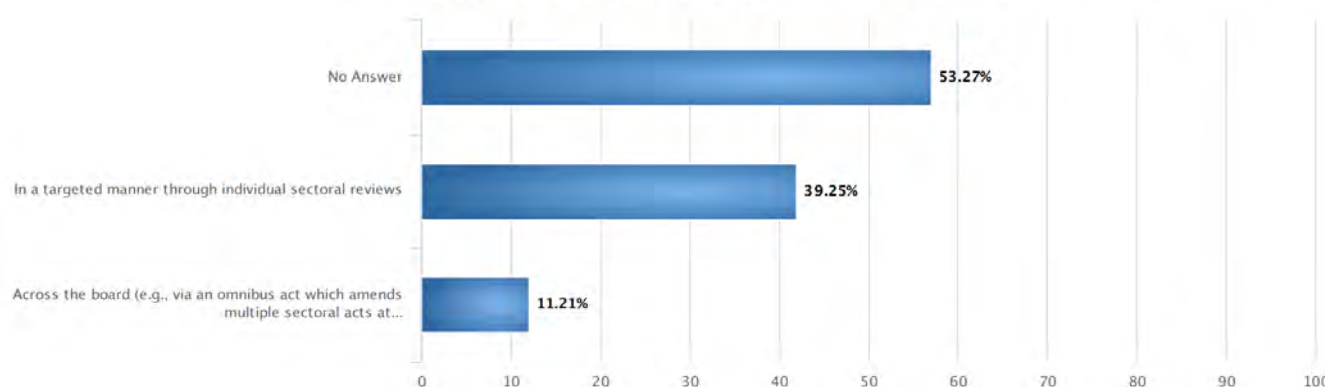
- For UCITS and AIFMD, ESMA should have a mandate for risk analysis on a country-by-country basis.
- Thresholds and other figures should always be included in level 2 because they need to be adapted more

frequently.

- For the Market Abuse Regulation (MAR), there should be level 2 rules about the conditions for delaying publication of inside information (comment not entirely clear since speaking of “public information”).
- For MiFID, more detailed rules at level 2 would be desirable with regard to information on costs and charges under MiFID II or delegation/outsourcing in each area/sector.

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?

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?



Public authorities preferred, at a rate of 60:40, targeted harmonization over an across the board approach. A vast majority of respondents from the **industry** preferred targeted harmonisation (with just 8% in favour of across-the-board harmonisation), and respondents qualifying as “others” were split 50:50.

When asked about specific pieces of legislation, one public authority named the Transparency Directive as in need of a targeted review, whereas 1 respondent identifying as “other” named MiFID, UCITS, AIFMD, and IORP because horizontal

rules would increase the competitiveness of the EU asset management sector. A business organisation used a different field to mention PRIIPs.

A broad majority of respondents who made comments in this specific section underlined the need for a tailor-made, targeted approach for each sector in order to take into account differences between industries and between the three ESAs, with one industry respondent underlining their different developments over time. However, it was not always crystal clear whether respondents saw a need to target each sector/industry separately or more specifically each piece of legislation.

Some respondents asked for more granularity at level 1 as a means to achieve greater harmonisation unmatched by level 2, in their view. Others used this question to underline that they saw no need for further harmonisation, in particular as regards asset management.