

CONSULTATION AFG'S RESPONSE

Supervisory convergence and the Single Rule Book

21 May 2021



The Association Française de la Gestion financière (AFG) represents and promotes the interests of third-party portfolio management professionals. It brings together all asset management players from the discretionary and collective portfolio management segments. These companies manage at end 2019 more than €4,000 billions in assets, i.e. a quarter of continental Europe's assets under management.

The AFG's remit:

- Representing the business, financial and corporate interests of members, the entities that they manage (collective investment schemes) and their customers. As a talking partner of the public authorities of France and the European Union, the AFG makes an active contribution to new regulations,
- Informing and supporting its members; the AFG provides members with support on legal, tax, accounting and technical matters,
- Leading debate and discussion within the industry on rules of conduct, the protection and economic role of investment, corporate governance, investor representation, performance measurement, changes in management techniques, research, training, etc.
- Promoting the French asset management industry to investors, issuers, politicians and the media in France and abroad. The AFG represents the French industry – a world leader – in European and international bodies. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA), of PensionsEurope and of the International Investment Funds Association (IIFA).

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Executive Summary

Ten years after it was set up, and despite tremendous efforts and committed staff, ESMA faces significant challenges:

- Confusions, conflicts and uncertainties too often arise between level 1 (legislation), level 2 (implementation) and level 3 (guidance) – while level 4 (quality check) seems still weak. Furthermore, ESMA cannot easily issue actual no-action letters by which it can suspend the application of specific EU rules in case the corresponding level-2 measures are not ready, or in case there is a conflict of rules at level 1.
- When developing level 2 measures, ESMA cannot duly process stakeholders' feedback or engage with them due to unrealistic deadlines set in level 1.
- National authorities do not always implement EU rules consistently, resulting in diverging treatment of market players and consumers depending on the Member States.
- Decision-making within ESMA can be very slow due to conflicting interests between national authorities.

From our perspective as the trade body for asset managers with pan-European and global operations, the French Asset Management Association (AFG) believes that ESMA and national authorities must embark on a transformative process that will bring our supervisory architecture where it can match the ambitions of Capital Markets Union:

- Firstly, due to Brexit and international challenges (including post-COVID recovery and ESG transition), the financing of Europe's economy must become more competitive. This will require stronger EU home-grown players and ecosystems that can compete on the global scene. Yet, unlike the UK Financial Competition Authority or the US Securities and Exchange Commission, ESMA's mandate does not include competitiveness – and looking at ESMA's deliverables over the past 10 years, EU competitiveness is clearly not part of its culture.
- Secondly, the transition to a low-carbon economy will require immense data sets to analyse all three E, S and G aspects across all economic activities. This will further strengthen the market power of non-EU data providers whose methodologies, market practices and analyses will determine when and where capital will go. Ultimately and unless action is taken, they will be in a position to dictate the shape of the Union's ESG transition. Yet, ESMA has got no powers at all to address this oligopoly, or even to question said methodologies and analyses. Against this background, ESMA's mandate should clearly include direct supervision of systemic third-country data providers.

Lastly, AFG supports having more visibility over upcoming ESMA deliverables and projects:

- SMEs make up the bulk of our membership (70% have of French asset managers have less than 20 employees) and struggle to keep with the very high pace of granular consultations in an ever-changing regulatory environment.
- ESMA launches data collection exercises through national authorities (eg CSA on costs in UCITS), without any consideration for ongoing or upcoming consultations and upcoming implementation deadlines. Big firms and small firms alike struggle to allocate resources properly.

CONSULTATION QUESTIONS

A. QUESTIONS FOR THE ASSESSMENT OF THE EUROPEAN SUPERVISORY AUTHORITIES (ESAs) AND THE RECENT CHANGES IN THEIR FOUNDING REGULATIONS.

- I. How do you assess the impact of each ESMA's activities on the aspects below? Please rate the ESAs impact on each aspect from 1 to 5, 1 standing for "less significant impact" and 5 for "most significant impact":

	1	2	3	4	5	No opinion
The financial system as a whole						X
Financial stability						X
The functioning of the internal market		X				
The quality and consistency of supervision		X				
The enforcement of EU rules on supervision		X				
Strengthening international supervisory coordination						X
Consumer and investor protection						X
Financial innovation						X
Sustainable finance						X

Please explain your answer

ESMA faces challenges due to the EU framework's persistently poor design:

- Confusions, conflicts and uncertainties too often arise between level 1 (legislation), level 2 (implementation) and level 3 (guidance) – while level 4 (quality check) seems still weak.
- Implementation deadlines set at level 1 frequently disregard the amount of work ESMA and the Joint Committee need to carry out to have a proper assessment of legal options and how to reconcile them with the ambitions of Capital Markets Union.
- National authorities do not always implement EU rules consistently, resulting in diverging treatment of market players and consumers depending on the Member States. For instance, ESMA's reports on UCITS sanctions in 2016 and 2017 show tremendous divergences between NCAs: 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.
- Decision-making within ESMA can be either very slow due to conflicting interests between national authorities, or overtaken by one national authority that aims to export its (at times) own ill-designed policy that might not be adapted to other EU countries and in the end we

might even wonder if it not also done so that other markets are not better off. For instance, ESMA's guidelines on performance fees in UCITS and certain AIFs were adopted in 2020 to the detriment of EU countries where asset managers were legally using performance fees in open ended vehicles (which was a way to decrease fixed fee and encourage true active management). It is our understanding that this exercise would have been done under the pressure from one particular Member State who had imposed market access restrictions to foreign players (thereby violating the principles of the Single Market). The interest of the client to have access to choice and thus to cheaper and competitive fee structures seems not to have been properly taken into account. To our knowledge, no workshop was organised to understand all the aspects of the issue, there was no impact assessment or mapping of different market practices by member states before and after the Guidelines.

- We regret that the ESMA Board often operates more as inter-governmental body, where national interests confront and final decisions reflect a balance of powers which does not always reflect the overall EU interest and policy objectives at play.

From this perspective, making ESMA fit for the future requires having a more efficient decision-making process that leads to more than just neutralising opposing forces within its Board and that takes into account market practices and all aspects of a complex technical and economic issue (eg reviewing decision-making rules). The competitiveness of the European markets and their European players as well as the preservation of client choice are aspects to be added, as they seem to still lack today.

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

☐ YES

☒ NO

Please explain your answer

Overall, we believe that ESMA has got all the necessary powers and tools to contribute to financial stability. If anything, ESMA should use all the ones it already has to their full potential, before a proper assessment can be made.

However, when it comes to the well-functioning of the financial system, we feel that ESMA's mandate is not fit to address the emerging, long-term challenges that the EU faces.

Firstly, due to Brexit and international challenges (including post-COVID recovery and ESG transition), the financing of Europe's economy must become more competitive. This requires treating market players and investors similarly across the Union, thanks to further supervisory convergence and consistent supervisory practices. In addition, Brexit means increased competition with other global financial centres through regulatory means. This will require stronger EU home-grown players and ecosystems that can compete on the global scene. Yet, unlike the UK Financial Competition Authority or the US Securities and Exchange Commission, ESMA's mandate does not include competitiveness – and looking at ESMA's deliverables over the past 10 years, EU competitiveness is clearly not part of its culture. In that sense, ESMA's mandate should clearly include competitiveness.

Secondly, the transition to a low-carbon economy will require immense data sets to analyse all three E, S and G aspects across all economic activities. This will further strengthen the market power of non-EU data providers whose methodologies, market practices and analyses will determine when and where capital will go. Ultimately and unless action is taken, they will be in a position to dictate the shape of the Union's ESG transition. Indeed, Europe has strong principles when it comes to ESG topics which are often at odds with the ones prevailing in other jurisdictions (e.g. double materiality approach in the EU Taxonomy does not exist in the Sustainability Accounting Standard Board (SASB) criteria, a U.S.-led framework for company disclosures). Yet, ESMA has got no powers at all to address this oligopoly, or even to question said methodologies and analyses. Against this background, ESMA's mandate should clearly include direct supervision of systemic third-country data providers.

If you think that there are elements which should be added or removed from the mandate, please provide a substantiated answer.

III. In your view, does ESMA face any obstacles in delivering on its mandate?

☒ YES

Please explain your answer

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- Implementation deadlines set at level 1 frequently disregard the amount of work ESMA and the Joint Committee need to carry out to have a proper assessment of legal options and how to reconcile them with the ambitions of Capital Markets Union.
- National authorities do not always implement EU rules consistently, resulting in diverging treatment of market players and consumers depending on the Member States. For instance, ESMA's reports on UCITS sanctions in 2016 and 2017 show tremendous divergences between NCAs: 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.
- Decision-making within ESMA can be either very slow due to conflicting interests between national authorities, or overtaken by one national authority that aims to export its (at times) own ill-designed policy that might not be adapted to other EU countries and in the end we might even wonder if it not also done so that other markets are not better off. For instance, ESMA's guidelines on performance fees in UCITS and certain AIFs were adopted in 2020 to the detriment of EU countries where asset managers were legally using performance fees in open ended vehicles (which was a way to decrease fixed fee and encourage true active management). It is our understanding that this exercise would have been done under the pressure from one particular Member State who had imposed market access restrictions to foreign players (thereby violating the principles of the Single Market). The interest of the client to have access to choice and thus to cheaper and competitive fee structures seems not to have been properly taken into account. To our knowledge, no workshop was organised to understand all the aspects of the issue, there was no impact assessment or mapping of different market practices by member states before and after the Guidelines.

- We regret that the ESMA Board often operates more as inter-governmental body, where national interests confront and final decisions reflect a balance of powers which does not always reflect the overall EU interest and policy objectives at play.

From this perspective, making ESMA fit for the future requires having a more efficient decision-making process that leads to more than just neutralising opposing forces within its Board and that takes into account market practices and all aspects of a complex technical and economic issue (eg reviewing decision-making rules). The competitiveness of the European markets and their European players as well as the preservation of client choice are aspects to be added, as they seem to still lack today.

1. The supervisory convergence tasks of the ESAs

1.1. Common supervisory culture/supervisory convergence:

- 1.1.1. To what extent does ESMA contribute to promoting a common supervisory culture and consistent supervisory practices? Please rate in a scale from 1 to 5 ("5" being the most significant contribution and "1" the less significant contribution).

	1	2	3	4	5	No opinion
Promote a common supervisory culture and consistent supervisory practices		X				

Please explain your answer

National authorities still have very different supervisory practices and cultures, resulting in diverging treatment of market players and consumers depending on the Member States. For instance, 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.

The recent Wirecard case shows that ESMA can go beyond the status quo.

- 1.1.2. To what extent the following tasks undertaken by ESMA have effectively contributed to building a common supervisory culture and consistent supervisory practices in the EU. Please rate each task from 1 to 5, 1 standing for "less significant contribution" and 5 for "most significant contribution":

	1	2	3	4	5	No opinion

Providing opinions to competent authorities					X
Promoting bilateral and multilateral exchanges of information between competent authorities					X
Contributing to developing high quality and uniform supervisory standards		X			
Contributing to developing high quality and uniform reporting standards	X				
Developing and reviewing the application of technical standards		X			
Contributing to the development of sectoral legislation by providing advice to the Commission					X
Establishing (cross)sectoral training programmes					X
Producing reports relating to their field of activities					X
Conducting peer reviews between competent authorities					X
Determining new Union strategic supervisory priorities					X
Establishing coordination groups					X
Developing Union supervisory handbooks					X
Monitoring and assessing environmental, social and governance-related risks					X
Adopting measures using emergency powers					X
Investigating breaches of Union law					X
Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)		X			
Mediating between competent authorities					X
Monitoring the work of supervisory and resolution colleges					X
Publishing on their website information relating to their field of activities					X
Monitoring market developments					X
Initiating and coordinating Union-wide stress tests of financial institutions					X

Developing guidelines and recommendations			X			
Developing Q&As			X			
Contributing to the establishment of a common Union financial data strategy						X
Providing supervisory statements						X
Other instruments and tools to promote supervisory convergence, please indicate						X

Please add any qualitative comments you may wish to explain your reasoning.

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

n.a.

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

n.a.

1.1.3. One of the roles of ESMA is to promote and facilitate the functioning of supervisory colleges, where established by sector legislation, and foster the consistency of the application of Union law among them. Please rate the ESMA contribution to the objectives below from 1 to 5, 1 standing for "less significant contribution" and 5 for "most significant contribution". Please explain your reasoning.

	1	2	3	4	5	No opinion
Promote the effective and efficient functioning of colleges of supervisors						X
Foster consistency in the application of Union law among colleges						X
Promote converging supervisory practices among colleges.						X

Please explain your answer

n.a.

- 1.1.4. In the framework of the 2019 ESAs review. How do you assess the new process for questions and answers (Article 16b)?

Please explain your answer

The 2019 review did not change anything: so far, ESMA has not put in practice the new processes for Q&A (eg public consultations on sensitive Q&A where outcomes are massive for market players) and the procedures that lead to the issuance of Q&A is still fully opaque.

- 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?

☒ **NO** Please give reasons.

The 2019 review did not change anything: so far, ESMA has not put in practice the new processes for Q&A (eg public consultations on sensitive Q&A where outcomes are massive for market players) and the procedures that lead to the issuance of Q&A is still fully opaque.

1.2. No action letters

- 1.2.1. In the framework of the 2019 ESAs review. In your view, is the new mechanism of no action letters (Article 9a of the ESMA/EIOPA Regulations and Article 9c EBA Regulation) fit for its intended purpose? Please justify your answer.

☒ **NO**

Please explain your answer

The 2019 review changed virtually nothing: after only one no-action letter on ESG benchmarks in 2020, ESMA reverted to using unregulated tools like the Public Statement on MiFID RTS 27 in 2021 (whose wording is similar to that of a no-action letter).

It is necessary to ease the process for ESMA to issue no-action letters by which it can suspend the application of specific EU rules in case the corresponding level-2 measures are not ready, or in case there is a conflict of rules at level 1.

- 1.2.2. In the framework of the 2019 ESAs review. How does the new mechanism, in your view, compare with “no action letters” in other jurisdictions?

n.a.

- 1.2.3. In the framework of the 2019 ESAs review. ESMA : Could you provide examples where the use of no action letters would have been useful or could be useful in the future?

n.a.

1.3. Peer reviews

- 1.3.1. Please specify to what extent peer reviews organised by the ESAs have contributed to the convergence outcomes listed below. Please distinguish between the situation before the 2019 review and afterwards. Please rate each outcome from 1 to 5, 1 standing for "less significant contribution" and 5 for "most significant contribution":

Situation before the 2019 ESAs review for ESMA	1	2	3	4	5	No opinion
Convergence in the application of Union law	X					
Convergence in supervisory practices	X					
More wide spread application of best practices developed by other competent authorities						X
Convergence in the enforcement of provisions adopted in the implementation of Union law						X
Further harmonization of Union rules						X
Other, please indicate						x

Situation after the 2019 ESAs review for ESMA	1	2	3	4	5	No opinion
Convergence in the application of Union law	X					
Convergence in supervisory practices	X					

More wide spread application of best practices developed by other competent authorities						X
Convergence in the enforcement of provisions adopted in the implementation of Union law						X
Further harmonization of Union rules						X
Other, please indicate						X

Please explain your reasoning/give examples.

n.a.

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? Please rate each change from 1 to 5, 1 standing for "less effective" and 5 for "most effective"

	1	2	3	4	5	No opinion
Ad-hoc Peer Review Committees (PRC) composed of ESAs' and NCAs' staff and chaired by the ESA are responsible for preparing peer review reports and follow-ups.						X
The peer review report is now adopted by written procedure on non-objection basis by the Board of Supervisors.						X
Transparency provisions: if the PRC main findings differ from those published in the report, dissenting views should be transmitted to the three European Institutions.						X
PRC findings may result in recommendations to NCAs under Article 16 of the ESAs Regulations that are now distinguished from guidelines, addressed to all NCAs. The use of this type of individual recommendations entails the application of the "comply or explain" mechanism and allows a close follow-up.						X

Mandatory follow-up to peer reviews within two years after the adoption of the peer review report.						X
The possibility to carry out additional peer reviews in case of urgency or unforeseen events (fast track peer reviews).						X
The Management Board is consulted in order to maintain consistency with other peer reviews reports and to ensure a level playing field.						X

Please explain your reasoning

n.a.

- 1.3.3. ESMA : Do you think mandatory recurring peer reviews, covering also enforcement aspects, could be introduced in some sectoral legislation? If the answer is yes, please specify the piece of legislation and concrete provision under which mandatory peer reviews could be introduced.

☒ **No opinion**

n.a.

- 1.3.4. Are there improvements that could be made to the peer review process? Please specify which ones.

☒ **No opinion**

n.a.

1.4. Other tasks and powers

- 1.4.1. ESMA : In your view, is the collection of information regime (Art 35 ESAs Regulations) effective? If you identify areas for improvement, please explain.

☒ **No opinion**

n.a.

- 1.4.2. In the framework of the 2019 ESAs review, in your view, are the new Union strategic supervisory priorities an effective tool to ensure more focused convergence priorities and more coherent coordination (Article 29a ESAs Regulations)? If you identify any areas for improvement, please explain.

☒ No opinion

n.a.

- 1.4.3. Do you think there is the need to amend or add a tool to the toolkit of the ESAs for achieving supervisory convergence? If yes, which ones.

☒ YES

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

Overall, we believe that ESMA has got all the necessary powers and tools to promote supervisory convergence. However, what truly matters now is that ESMA and national authorities must embark on a transformative process that will bring supervisory culture where it can match the ambitions of Capital Markets Union.

- 1.4.4. Please assess in a scale from 1 to 5 the significance of the new ESAs' task of fostering and monitoring the supervisory independence of national competent authorities ("5" being the highest rate and "1" the lowest rate). Please explain.

	1	2	3	4	5	No opinion
fostering and monitoring supervisory independence						X

n.a.

- 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? Please rate the relevance of each criteria in a scale from 1 to 5 ("5" being the most relevant criteria rate and "1" less relevant criteria).

	1	2	3	4	5	No opinion
operational independence						X
financial independence						X
appointment and dismissal of governing body						X
accountability and transparency						X
adequacy of powers and ability to apply them						X
other, please specify						

Please specify to what other criterion/a you refer :

n.a.

Please explain your answers to question 1.4.5:

n.a.

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

ESMA faces challenges due to the EU framework's persistently poor design:

- Confusions, conflicts and uncertainties too often arise between level 1 (legislation), level 2 (implementation) and level 3 (guidance) – while level 4 (quality check) seems still weak.
- Implementation deadlines set at level 1 frequently disregard the amount of work ESMA and the Joint Committee need to carry out to have a proper assessment of legal options and how to reconcile them with the ambitions of Capital Markets Union.
- National authorities do not always implement EU rules consistently, resulting in diverging treatment of market players and consumers depending on the Member States. For instance, ESMA's reports on UCITS sanctions in 2016 and 2017 show tremendous divergences between NCAs: 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.
- Decision-making within ESMA can be either very slow due to conflicting interests between national authorities, or overtaken by one national authority that aims to export its (at times) own ill-designed policy that might not be adapted to other EU countries and in the end we might even wonder if it not also done so that other markets are not better off. For instance, ESMA's guidelines on performance fees in UCITS and certain AIFs were adopted in 2020 to the detriment of EU countries where asset managers were legally using performance fees

in open ended vehicles (which was a way to decrease fixed fee and encourage true active management). It is our understanding that this exercise would have been done under the pressure from one particular Member State who had imposed market access restrictions to foreign players (thereby violating the principles of the Single Market). The interest of the client to have access to choice and thus to cheaper and competitive fee structures seems not to have been properly taken into account. To our knowledge, no workshop was organised to understand all the aspects of the issue, there was no impact assessment or mapping of different market practices by member states before and after the Guidelines.

- We regret that the ESMA Board often operates more as inter-governmental body, where national interests confront and final decisions reflect a balance of powers which does not always reflect the overall EU interest and policy objectives at play.

From this perspective, making ESMA fit for the future requires having a more efficient decision-making process that leads to more than just neutralising opposing forces within its Board and that takes into account market practices and all aspects of a complex technical and economic issue (eg reviewing decision-making rules). The competitiveness of the European markets and their European players as well as the preservation of client choice are aspects to be added, as they seem to still lack today.

- 1.4.7. ESMA : Do you consider that ESMA ensure that enough information on their activities and on financial institutions is available? If not, what changes should be made in this area?

☒ NO

(If no : Please specify what changes should be made in this area for ESMA)

ESMA's Work Programmes and Strategic Supervisory Priorities have been helpful to understand the overall direction of travel of ESMA's activities. However, as the trade body for over 650 firms in France, 70% of which have less than 20 employees, none of these documents can give firms the visibility they need to plan according to expected dates of issuance of ESMA deliverables and related compliance deadlines.

- 1.4.8. Do you consider that the purpose and outcome of inquiries under Article 22.4 is clear? If the answer is no, please indicate what role such inquiries should play.

☒ No opinion

n.a.

- 1.4.9. In your view, is there the need to add any tools or tasks in order to enhance supervisory convergence towards digital finance? If your answer is yes, please explain.

☒ YES

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

n.a.

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

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

n.a.

1.5. Breach of Union law and dispute settlement

- 1.5.1. Do you think that the ESAs' powers in relation to breaches of Union law (Article 17 ESAs' Regulations) and binding mediation (Article 19 ESAs' Regulations) are effective? Please explain your answer.

☒ No opinion

n.a.

- 1.5.2. Do you think that the use of the breach of Union law procedure by the ESAs is adequate? Please consider both before and after the 2019 ESAs' review and explain your answer.

Before 2019 ESAs' review

☒ No opinion

After 2019 ESAs' review

☒ No opinion

n.a.

1.5.3. Should there be other instruments available to the ESAs to address instances of non-application or incorrect application of Union law amounting to a breach ex-post? If the answer is yes, what would be those instruments?

☒ No opinion

n.a.

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

☒ No opinion

n.a.

1.5.5. ESMA : Do you think that the ESMA has always acted, where needed, under Article 17 and Article 19 of the ESAs' Regulations? If the answer is no, please give concrete examples where you consider that the ESAs should have taken relevant action under these Articles.

☒ No opinion

(If no : Please give concrete examples where you consider that ESMA should have taken relevant action under these Articles)

n.a.

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

n.a.

- 1.5.7. ESMA : Why do you think the use of these ESMA's powers has been limited? Please explain how these processes could be improved.

n.a.

1.6. Emergency situations and response to COVID-19 crisis

- 1.6.1. ESMA : Please rate the impact of the ESMA's response in the context of the COVID-19 crisis from 1 to 5, 1 standing for "less significant impact" and 5 for "very significant impact". Please explain your answer.

	1	2	3	4	5	No opinion
ESAs' response to the Covid-19 crisis			X			

ESMA's recommendations and decisions in 2020 were helpful to clarify regulatory expectations for authorities and businesses.

However, despite the obvious challenges to our businesses, ESMA (as well as the European Commission and the ESAs) kept laying the groundwork for regulatory changes in 2020 and beyond that significantly affected asset managers. These changes required:

- Dedicating heavily-pressured staff resources to respond to public consultations, although the deadlines were sometimes pushed back. While our industry is keen to contribute to EU policymaking, collecting input from our firms' top experts was becoming increasingly difficult because they must prioritise client servicing – and rightly so. This jeopardised quality input in the EU regulatory process and results in less anticipation of upcoming changes by firms.
- Preparing for increasing costs in various areas (eg compliance, IT, distribution, internal governance, operational risk) due to new initiatives or level-2 implementation, although the EU economy was set to contract by 7.5% in 2020.

This strong disconnect between the EU's unchanged regulatory pipeline and the new business context resulted in a significantly lower input by our SME firms in the consultation process, and yet the same expected costs to comply with the new rules.

- 1.6.2. Please rate in a scale from 1 to 5, the effectiveness of the ESAs' follow-up actions on the European Systemic Risk Board (ESRB)

recommendations below in the context of the COVID-19 crisis.
Please explain.

	1	2	3	4	5	No opinion
Market illiquidity and implications for asset managers and insurers			X			
Impact of large scale downgrades of corporate bonds on markets and entities across the financial system			X			
System-wide restraints on dividend payments, share buybacks and other pay-outs						X
Liquidity risks arising from margin calls			X			

Both macro and micro aspects are to be taken into account. Flexibility in liquidity risk management for asset managers is key to be able to adapt to market situations. Overloading risk managers with reporting to ESMA and NCAs at a moment in time where markets were complicated is also a parameter to be factored in by authorities as we have the same goal of portfolio and market protection.

1.6.3. Do you think the coordinating activities carried out by the ESMA have successfully contributed to address the challenges posed by the COVID-19 crisis? If the answer is yes, please explain. If the answer is no, please give examples.

☒ No opinion

n.a.

1.6.4. ESMA : Do you think that the ESMA have always acted effectively, where needed, in the context of the COVID-19 crisis? If the answer is no, please give concrete examples where you consider that the ESAs should have taken relevant action.

☒ No opinion

n.a.

1.6.5. Do you think Article 18.2 of the ESAs Regulation (declaration of an emergency situation) is fit for its intended purpose? Please explain your answer. If the answer is no please suggest potential changes.

☒ No opinion

n.a.

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

n.a.

1.7. Coordination function (Art 31 ESAs' Regulations)

- 1.7.1. ESMA : Do you think the coordination role of ESMA is effective? If you identify areas for improvement, please explain.

☒ No opinion

n.a.

- 1.7.2. ESMA : Do you see a need for greater coordination between ESMA and/or with other EU and national authorities as regards developing data requirements, data collection and data sharing? If yes, please explain your answer and indicate what changes you propose.

☒ YES

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

n.a.

- 1.7.3. 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. ("5" being the most effective and "1" the least effective tool)

	1	2	3	4	5	No opinion
exchange of information and best practices						X

adopt guidelines						X
adopt recommendations						X

n.a.

2019 ESAs review. [specific for ESMA]. Do you think ESMA's new coordination function (Article 31b ESMA Regulation) in relation to orders, transactions and activities that give rise to suspicions of market abuses and have cross-border implications for the integrity of financial markets or financial stability in the EU is an effective tool? If the answer is yes, please provide examples where this new function has been or could be useful. If the answer is no, please explain the reasons.

☒ No opinion

n.a.

1.7.4. 2019 ESAs review. Do you think the new coordination groups (Article 45b of the ESAs Regulations) are effective tools to coordinate competent authorities regarding specific market developments? If the answer is yes, please provide examples where the new provision could be useful. If you identify room for improvement in this new provision, please explain.

☒ No opinion

n.a.

1.7.5. ESMA : In your view, does the coordination function of ESMA, ensuring that the competent authorities effectively supervise outsourcing, delegation and risk transfer arrangements in third countries, work in a satisfactory way? Please explain your answer. If your answer is no, please indicate how the coordination function of the ESAs should be adjusted.

☒ No opinion

n.a.

1.8. Tasks related to consumer protection and financial activities.

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

n.a.

1.8.2. ESMA : Please assess the impact of ESMA's work on analysis of consumer trends, reviewing market conduct, developing indicators, contributing to level playing field, financial literacy and follow up to work in this area. Please rate the ESAs impact on each item from 1 to 5, 1 standing for "less significant impact" and 5 for "most significant impact". Please explain:

	1	2	3	4	5	No opinion
analysis of consumer trends						X
reviewing market conduct						X
developing indicators						X
contributing to a level playing field						X
financial literacy						X
follow up to work in this area						X

n.a.

1.8.3. 2019 ESAs review. The ESAs can now, where sectoral legislation enables them, use their product intervention powers for practices and products that cause consumer harm and after two prolongations of six months, an automatic one-year prolongation of the prohibition is possible (Article 9.5). In your view, are these powers effective for their intended purpose? Please explain your answer.

☒ No opinion

n.a.

- 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?

☒ No opinion

n.a.

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

n.a.

- 1.8.6. ESMA : 2019 ESAs review. Please rate the new ESMA's task to coordinate mystery shopping activities of competent authorities, if applicable, according to its relevance to promote consumer protection at EU level (1 standing for "less relevant" and 5 for "most relevant"). Please explain your answer and indicate whether you consider enhancing national competencies for conduct supervision may be beneficial for the overall coordination of mystery shopping activities.

	1	2	3	4	5	No opinion
EU-level coordination of mystery shopping						X

n.a.

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

n.a.

- 1.8.8. ESMA : Are there areas for improvement in the toolkit of ESMA when it comes to coordinating supervisors in the area of consumer protection? Please explain your answer.

☒ **No opinion**

n.a.

1.9. International relations.

1.9.1. ESMA : How do you assess the role and competences of ESMA in the field of international relations? Are there additional international fora in which ESMA should be active? Please specify.

n.a.

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

n.a.

1.9.3. ESMA : Are the powers and competences in the field of international relations as set out in Article 33 of the ESAs' Regulations adequate in light of the tasks conferred on ESMA? If you identify areas for improvement, please specify.

☒ **No opinion**

n.a.

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

n.a.

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

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

n.a.

- 1.10.2. ESMA : Do you see room for improvement in the way ESMA could ensure that competent authorities enforce more effectively EU rules towards market participants/financial institutions? Please explain your answer.

☒ **No opinion**

n.a.

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

☒ **No opinion**

n.a.

- 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? Please substantiate your answer.

☒ **No opinion**

n.a.

- 1.10.5. Do you think the use of sanctions laid down in the EU acquis by competent authorities in case of non-compliance of market

participants/financial institutions with EU rules is, in practice, sufficiently dissuasive or disproportionate? If not, what role could sectoral legislation and each ESA play in improving the situation? Please substantiate your answer and give examples.

☒ **Other**

(Please specify what you mean by 'other' in your answer to question 1.10.5 for ESMA)

National authorities do not implement EU rules consistently, resulting in diverging treatment of market players and consumers depending on the Member States. For instance, 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.

2. Governance of the ESAs.

2.1. General governance issues

2.1.1. Does the ESAs' governance allow them to ensure objectivity, independence and efficiency in their work/decision making? Please explain. If you consider that there should be differences in governance between different types of tasks, please indicate.

☒ **No opinion**

n.a.

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

n.a.

2.1.2. 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? Please explain your answer.

☒ **No opinion**

n.a.

2.1.3. 2019 ESAs' review. Do you think the requirements in Articles 3 and 43a of the ESAs' Regulations are sufficient to ensure accountability and transparency? If you identify areas for improvement, please explain.

☒ **No opinion**

n.a.

2.1.4. 2019 ESAs' review. To what extent the recent enhancements in the role of Chairperson improve the decision making process? Please rate each change from 1 to 5, 1 standing for "less significant improvement" and 5 for "most significant improvement". Please explain your answer.

	1	2	3	4	5	No opinion
Request to the Board to establish internal committees for specific tasks						X
Set the agenda to be adopted by the Board and table items for decision						X
Call a vote at any time						X
Propose the composition of independent panels for breach of Union law investigations and dispute settlements.						X
Propose the composition of peer review committees for peer reviews						X

Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation						X
Vote in the Board of Supervisors (except on matters that are decided on the basis of qualified majority voting)						X
Other, please indicate						X

n.a.

2.1.5. Should the role of the Chairperson be strengthened in other areas? If so, in which areas (please substantiate).

☒ **No opinion**

n.a.

2.2. Decision-making bodies and preparatory bodies

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? If you identify areas for improvement, please explain.

☒ **No opinion**

n.a.

2.2.2. Do the current voting modalities (e.g. simple majority, qualified majority...) of the BoS ensure efficient decision making? Please explain. If the answer is no please indicate how voting modalities could be streamlined.

☒ **No opinion**

n.a.

2.2.3. Does the current allocation of tasks between the BoS and the MB ensure that the ESAs are run effectively and perform the tasks

conferred on them? If you identify areas for improvement, please explain.

☒ **No opinion**

n.a.

2.2.4. 2019 ESAs' review. To what extent the enhanced role of the Management Board has improved the decision making process. Please rate each change from 1 to 5, 1 standing for "less significant improvement" and 5 for "most significant improvement". Please explain your answer.

	1	2	3	4	5	No opinion
The MB can give opinions on all matters to be decided by the Board of Supervisors.						X
The MB ensures the consistent use of a methodology for all peer reviews conducted						X
The MB proposes a peer review work plan every two years.						X
The MB can set up coordination groups on its own initiative						X

n.a.

2.2.5. Should the role of the Management Board be strengthened in other areas? If so, in which areas (please substantiate).

☒ **No opinion**

n.a.

2.2.6. 2019 ESAs' review. Do you think the written non-objection procedure for core convergence tools (breaches of Union law, dispute settlements and peer reviews) is effective for achieving its objective? Please substantiate your answer. If your answer is yes, please indicate if there should be more decisions taken under this procedure and in which areas.

☒ **No opinion**

n.a.

2.2.7. Do you think ad hoc committees composed of staff of the ESAs and members from the competent authorities (e.g. peer review committees) are effective tools to improve the decision making process? If your answer is yes, please indicate if there should be more decisions taken under this procedure and in which areas.

☒ No opinion

n.a.

2.2.8. Do you think the functioning of preparatory/supporting bodies of the ESAs (e.g. technical working groups, standing committees, task forces etc.) is effective and efficient? If you identify any shortcomings please specify how these could be addressed.

☒ No opinion

n.a.

2.2.9. Please assess the impact of the work undertaken by preparatory/supporting bodies of the ESAs (e.g. technical working groups, standing committees, task forces etc.) on the ESAs' overall work and achievements. Please rate the impact from 1 to 5, 1 standing for "less significant impact" and 5 for "most significant impact": If you identify any shortcomings please specify how these could be addressed.

	1	2	3	4	5	No opinion
Standing committees and other permanent committees						X
Other preparatory bodies (e.g. technical working groups)						X
Committee on consumer protection and financial innovation						X
Proportionality Committee						X

n.a.

(only for ESMA) Should there be a different governance in case of direct supervisory decisions in ESMA (for example, similar to the new governance for CCPs)? If the answer is yes, please indicate your suggestions for improvements and the expected benefits.

☒ **No opinion**

n.a.

2.3. Financing and resources.

2.3.1. Do you consider the provisions on financing and resources for the general activities of the ESAs appropriate to ensure sufficiently funded and well-staffed ESAs taking into account budgetary constraints at both EU level and the level of Member States? Please explain your answer. If the answer is no, please indicate what other sources of finance could be considered.

☒ **YES**

The provision on the financing of ESMA are appropriate. The current system with a 40% contribution by the general budget of the European Union and a 60% contribution by NCAs, largely funded by industry in most countries, is well-balanced and should not be changed. In the absence of direct supervision from ESMA, there is no reason to change the funding arrangement to a direct (full or partial) contribution from the industry.

2.3.2. Do you think that the ESAs have sufficient resources to perform their tasks? Please explain.

☒ **YES**

Current ESMA tasks do not call for changing its funding arrangements. ESMA must first show better results, especially in terms of supervisory convergence and capital market efficiency.

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

☒ **No opinion**

n.a.

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? Please explain your answer.

☒ **NO**

Our experience is mixed.

SMEs make up the bulk of our membership (70% have of French asset managers have less than 20 employees) and struggle to keep with the very high pace of granular consultations in an ever-changing regulatory environment.

Our 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. Also, ESMA does not seek frequent, direct and meaningful engagement with stakeholders and instead relies on a very administrative process that does not enable ESMA staff to realise what is at stake from a business point of view, especially in terms of proportionality.

Despite our commitment to contribute, ESMA does not provide a clear schedule for upcoming consultations, and we are not consulted on important level-3 (eg Q&A) that affects significantly our business model.

Furthermore, ESMA launches data collection exercises through national authorities (eg CSA on costs in UCITS), without any consideration for ongoing or upcoming consultations and upcoming implementation deadlines. Big firms and small firms alike struggle to allocate resources properly.

2.4.2. Please assess in a scale from 1 to 5 the quality, in your view, of the consultations launched by the ESAs (5 standing for the highest quality). Please explain your answer.

	1	2	3	4	5	No opinion
General consultations launched by the ESAs						X

Specific consultations when developing data collection requirements						X
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Our experience is mixed.

SMEs make up the bulk of our membership (70% have of French asset managers have less than 20 employees) and struggle to keep with the very high pace of granular consultations in an ever-changing regulatory environment.

Most of our consultation responses have little impact on ESMA's work because of the timing pressure that ESMA is under due to unrealistic deadlines set in level-1 legislation. Also, ESMA does not seek direct engagement with stakeholders and instead relies on a very administrative process that does not enable ESMA staff to realise what is at stake from a business point of view, especially in terms of proportionality.

Despite our commitment to contribute, ESMA does not provide a clear schedule for upcoming consultations, and we are not consulted on important level-3 (eg Q&A) that affects significantly our business model.

Furthermore, ESMA launches data collection exercises through national authorities (eg CSA on costs in UCITS), without any consideration for ongoing or upcoming consultations and upcoming implementation deadlines. Big firms and small firms alike struggle to allocate resources properly.

2.4.3. Are the ESAs sufficiently transparent and accessible for stakeholders to ensure effective and efficient interaction? Please explain your answer.

☒ NO

ESMA does not seek direct engagement with stakeholders and instead relies on a very administrative process that does not enable ESMA staff to realise what is at stake from a business point of view, especially in terms of proportionality.

There is not sufficient information about upcoming ESMA activities that would enable firms to allocate resources properly, and to seek interaction with ESMA accordingly.

2.4.4. Please rate in a scale from 1 to 5 the impact of stakeholders groups within the ESAs on the overall work and achievements of the ESAs (1 standing for "less significant impact" and 5 for "very significant impact"). Please explain your answer.

	1	2	3	4	5	No opinion
EIOPA Insurance & Reinsurance Stakeholder Group						X

EIOPA Occupational Pensions Stakeholder Group						X
ESMA Securities and Markets Stakeholder Group			X			
EBA Banking Stakeholder Group						X

The stakeholders' groups' opinions should be further factored in the ESA's work by consulting them on all ESAs texts, including Q&As, before they are published or put up to consultation.

2.4.5. 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)? Please rate each change from 1 to 5, 1 standing for "less significant" and 5 for "most significant". Please explain your answer.

	1	2	3	4	5	No opinion
Composition of stakeholders groups						X
Selection of members						X
Term of office						X
A third of its members can issue a separate advice						X

n.a.

2.4.6. Does the composition of stakeholders groups ensure a sufficiently balanced representation of stakeholders in the relevant sectors? Please explain your answer.

☒ YES

n.a.

2.4.7. In your experience, are the ESAs' stakeholders groups sufficiently accessible and transparent in their work? If the answer is no, please indicate the areas where the transparency could be improved.

☒ YES

n.a.

2.5. Joint bodies of the ESAs

2.5.1. Please assess the aspects described below regarding the Board of Appeal (BoA) of the ESAs. Please rate the effectiveness of each aspect from 1 to 5 (1 least effective, 5 most effective). If you identify areas for improvement, please explain.

	1	2	3	4	5	No opinion
Organisation						X
Functioning and time limits						X
One joint Board of Appeal for the 3 ESAs						X
The composition of the BoA						X

n.a.

2.5.2. Please assess the aspects described below regarding the Joint Committee of the ESAs. Please rate the effectiveness of each aspect from 1 to 5 (1 least effective, 5 most effective). If you identify areas for improvement, please explain.

	1	2	3	4	5	No opinion
Functioning						X
Working methods						X
Ensuring cross-sectoral cooperation						X
Ensuring consistent approaches						X

Decision making process						X
The legal structure (no legal personality)						X

n.a.

2.5.3. Please assess the work of the Joint Committee of the ESAs in the areas below. Please rate each area from 1 to 5 (1 least significant contribution, 5 most significant contribution). If you identify areas for improvement, please explain.

	1	2	3	4	5	No opinion
Consumer Protection and Financial Innovation						X
Coordination and cooperation for bi-annual Joint Risk Reports, published in spring and autumn						X
Financial Conglomerates						X
Securitisation						X
European Forum of Financial Innovators						X

n.a.

3. Direct supervisory powers.

3.1. How do you assess ESMA's direct supervisory powers in the field of:

- Credit Rating Agencies
- Trade Repositories under EMIR
- Trade Repositories under SFTR
- Securitisation Repositories (STS)

n.a.

3.2. Please assess ESMA's performance as a direct supervisor of the entities referred to in question 3.1 in a scale of 1 to 5 (1 lowest rate, 5 highest rate). If you identify areas for improvement please explain.

	1	2	3	4	5	No opinion
Credit Rating Agencies						X
Trade Repositories under EMIR						X
Trade Repositories under SFTR						X
Securitisation Repositories						X

n.a.

3.3. How do you envisage the future scope of direct supervisory powers of ESMA or any other ESA? What principles should govern the decision to grant direct supervision to the ESAs? If you see room for improvement, please provide evidence where you see weaknesses of the current set-up.

n.a.

3.4. Have you identified any areas where supervision at EU level should be considered? If your answer is yes, please explain.

☒ YES

(Please explain your answer to question 3.4)

The transition to a low-carbon economy will require immense data sets to analyse all three E, S and G aspects across all economic activities. This will further strengthen the market power of non-EU data providers whose methodologies, market practices and analyses will determine when and where capital will go. Ultimately, they will dictate the shape of the Union's ESG transition. Yet, ESMA has got no powers at all to address this oligopoly, or even to question said methodologies and analyses. In that sense, ESMA's mandate should clearly include direct supervision of systemic third-country data providers.

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

4.1. Please assess the aspects described below regarding the role of ESMA as regards systemic risk in a scale of 1 to 5 (1 lowest rate, 5 highest rate). If you identify room for improvement, please specify how this could be addressed.

	1	2	3	4	5	No opinion
The quality of the analysis of market developments			x			
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs			x			
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk			x			
The cooperation within the European System of Financial Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing			x			
The broader cooperation between the ESRB and the ESAs within the ESFS			x			
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors			x			

ESMA should continue to bear in mind the fiduciary duty of asset managers to their clients. The systemic risk aspects, including stress tests calibrations, should be better proportionate to be appropriate to the asset managers type of business and not overemphasize doom outliers scenarios that will negatively revert back to the day to day utility of financing the real economy through funds' and mandates' portfolios.

B. QUESTIONS ON THE SINGLE RULEBOOK

5. The ESAs work towards achieving a rulebook

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

☒ NO

Confusions, conflicts and uncertainties too often arise between level 1 (legislation), level 2 (implementation) and level 3 (guidance) – while level 4 (quality check) is weak.

Despite technical standards and guidelines, national authorities do not implement EU rules consistently, resulting in diverging treatment of market players and consumers depending on the Member States. What truly matters now is that ESMA and national authorities must embark on a transformative process that will bring supervisory culture where it can match the ambitions of Capital Markets Union.

- 5.2. Do you assess the procedure for the development of draft technical standards as foreseen in the ESAs Regulations effective and efficient in view of the objective to ensure high quality and timely deliverables? Please explain your answer. If you identify areas for improvement, please indicate.

☒ NO

Our 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. Also, ESMA does not seek frequent, direct and meaningful engagement with stakeholders and instead relies on a very administrative process that does not enable ESMA staff to realise what is at stake from a business point of view, especially in terms of proportionality.

- 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?

n.a.

- 5.4. In particular, are stakeholders sufficiently consulted and any potential

impacts sufficiently assessed? Please explain your answer. If you identify areas for improvement, please indicate.

☒ **NO**

Our 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. Also, ESMA does not seek frequent, direct and meaningful engagement with stakeholders and instead relies on a very administrative process that does not enable ESMA staff to realise what is at stake from a business point of view, especially in terms of proportionality.

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

n.a.

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?

☒ **NO**

ESMA should only issue guidelines required to implement level-1 and where it has got a mandate to do so.

[exclusively for ESMA] If you think of the Wirecard case as an example, how could supervision be improved in the field of auditing and financial reporting?

☒ **No opinion**

n.a.

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.

☒ **No opinion**

n.a.

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? Please explain your answer.

☒ **No opinion**

n.a.

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)?

☒ **No opinion**

n.a.

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

Our 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. Also, ESMA does not seek frequent, direct and meaningful engagement with stakeholders and instead relies on a very administrative process that does not enable ESMA staff to realise what is at stake from a business point of view, especially in terms of proportionality.

6. General questions on the single rulebook

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

n.a.

6.2. Which are the areas where you consider that national rules going beyond the minimum requirements of a Directive (known as “goldplating”) are particularly detrimental to a Single Market? Please identify the relevant sectoral legislation, examples of gold plating and give reasons for each.

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

n.a.

Please provide examples of gold plating in the area of **Asset management** and explain:

n.a.

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.

☒ **No opinion**

n.a.

6.4. Questions regarding the appropriate level of regulation.

6.4.1. In your view, are there circumstances in existing EU legislation where level 1 is too granular, or for other reasons, would rather be preferable to have a mandate for level 2, or guidance at level 3? Please specify the area (and if possible, specific piece of legislation) and explain why (e.g. in order to have appropriate flexibility to adapt the specifics of the regulation in case of change of circumstances)?

☒ YES

Please specify the area (and if possible, specific piece of legislation) and explain why (e.g. in order to have appropriate flexibility to adapt the specifics of the regulation in case of change of circumstances)

Confusions, conflicts and uncertainties too often arise between level 1 (legislation), level 2 (implementation) and level 3 (guidance) – while level 4 (quality check) is weak.

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

☒ No opinion

n.a.

6.5. Generally speaking, which level of regulation should be enhanced/tightened in order to ensure **uniform application** of the single rulebook? (multiple choices allowed). Please explain and substantiate with examples, where possible.

☒ No opinion

n.a.

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

Level 1 should foresee more time to develop level 2, and it should not be applied unless level 2 is ready.

6.7. Please indicate whether the following factors should be considered when deciding on the need for further harmonisation in rules (attribute 1 to 5 to each factor, 1 being the least important and 5 being the most important):

	1	2	3	4	5	No opinion
Strong interlinkages with areas of law which remain non-harmonised (e.g. CRIM-MAD and national criminal law)						X
Broad discretion left to national authorities and frequent use of that discretion by these national authorities						X
High level of gold plating by national rules						X
High degree to which supervision of the same type of actors and/or activities render divergent outcomes across Member States						X
All of the above						X
None of the above						X
Other aspects, if so which ones: Please provide concrete examples						X

Please specify to what other factors you refer and provide concrete examples :

n.a.

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?

☒ **No opinion**

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?

☒ **No opinion**

n.a.

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?

☒ **No opinion**

n.a.