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## **Commission targeted consultation on supervisory convergence and the single rulebook**

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**Introductory Question:** About which ESA(s) will you be providing responses in this questionnaire? Please select the ESA that you know best. You can select one, two or the three ESAs. In case you choose more than one ESA you will be asked, in certain questions, to provide answers for each ESA.

~~About the European Banking Authority (EBA)~~

~~About the European Securities and Markets Authority (ESMA)~~

About the European Insurance and Occupational Pensions Authority (EIOPA)

## A. Questions for the assessment of the European supervisory authorities (ESAs) and the recent changes in their founding regulations.

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### General questions

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know- No opinion- Not applicable
The financial system as a whole				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 to question I on EIOPA:**

Since its establishment in 2011 in the aftermath of the financial crisis, FFA has been supportive of EIOPA's work in order to contribute to the stability and effectiveness of the financial system and to deliver positive outcome to ensure consumer protection across the EU.

However, on financial stability, we do not see insurers as potential sources of systemic risks, for reasons the industry has exposed several times (see also answer to question 3.3). Insurers have business models very different from the banking sector, they are not exposed to structural liquidity risk, they have an inverted business cycle and hold provisions to meet their liabilities.

Regarding the quality and consistency of supervision, FFA wants to highlight the issue of the failures of insurance undertakings acting under the principle of freedom of services, which revealed a default in the implementation of a consistent and qualitative supervision for cross-border activities.

Regarding customer protection, we see several limitations and contradictions in the way customer protection is supervised. For instance, there is maybe an exaggerated focus on price without looking at the broader picture of the services attached to an insurance contract. There is a streak towards too much standardisation of approaches which does not do justice to the different consumers, business models and products in Europe. There are different expectations of protection according to national or local cultures and environment. It is good that Europe be safe against abuses, but freedom of choice supported by a variety of products and insurers is key. Supervision must respect these differences and thus should refrain from standardising citizens into a single European consumer as seen from EIOPA.

ESAs have a prime role to play with respect to monitoring financial innovation and sustainable finance and responding to the EC's calls for advice in this space. However, the FFA considers that technical agencies such as EIOPA should refrain from trying to drive or orient market developments. Irrespective of the merits of recent EIOPA papers on impact underwriting or open insurance, those papers are illustrative of an advocacy role taken by EIOPA to set expectations in terms of "good" or "bad" market developments and ways to pursue insurance business. Whether this role on influencing the functioning of the insurance single market is part of EIOPA mandate needs clarification as it may raise accountability concerns. FFA considers that EIOPA is fully pursuing its mandate when it acts as a neutral and impartial referee with respect to the implementation of the European prudential regulation and national supervisory practices.

Finally, the FFA would like to highlight the importance of maintaining the regulatory and legislative hierarchy. Neither at European nor at national level should policies be taken by the ESAs which pre-

empt the ordinary political process. The FFA believes that regulatory initiatives should remain the sole power of Co-legislators. Excluding regulatory initiatives from the legislative procedure undermines the credibility of the process and of Co-legislators. The EIOPA initiative on Guidelines on Product Oversight and Governance ahead of the review of the Insurance Mediation Directive or the issuance of EIOPA ICT Guidelines ahead of DORA were illustrative in this respect. In addition to the limited legitimacy of regulation through the backdoor, their implementation is, usually, highly depending on the different mandates of competent authorities. Other than in an ordinary legislative procedure where the degree of harmonisation can be defined by Co-legislators, the implementation of EIOPA guidelines or (supervisory) statements depends on the individual mandates and powers of National Competent Authorities (NCAs). Instead of regulatory and supervisory convergence, fragmentation and an unlevel playing field can be the result, with national gold-plating or regulatory arbitration challenging fair competition across the single market.

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

Yes

No

~~Don't know / no opinion / not relevant~~

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

As the ESAs review is very recent and only applicable since early 2020, FFA believes that there is no need for new tasks and powers for EIOPA. Improvements in the field of cross-border supervision, to avoid failure of companies acting under freedom of services due to a default of consistent and qualitative supervision, are welcomed though. In this matter, the ESAs review was a step in the right direction in giving legal basis to collaboration platforms. We believe the ongoing Solvency II review will deepen the monitoring and the ability of supervisors to tackle potential issues arising from cross-border activities.

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

Yes

No

~~Don't know / no opinion / not relevant~~

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

The objective of convergence of supervisory practices is sometimes confused with a need for all NSAs to take identical actions. Indeed, convergence of supervisory practices by NSAs need to take also into accounts the specificities of market to avoid having different outcomes. The mandate of EIOPA should not be to replace local supervision in accordance with the subsidiarity principle but rather to foster good supervision by adequate guidance issuing, transparent monitoring and reporting. In this regard, we believe there is a need of improved training and adaptation of EIOPA to the different national and business models specificities.

Furthermore, gold-plating of rules (e.g. IDD) in one or several member states has led EIOPA to seek convergence by having all NSAs apply the same gold-plating. This leads to ever increasing levels of

operational burdens over and above those specified in the legal texts. For the record, IDD by being a minimal harmonisation directive led to goldplating.

## 1 The supervisory convergence tasks of the ESAs

### 1.1 Common supervisory culture/supervisory convergence

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

~~1- the less significant contribution~~

~~2~~

~~3~~

4

~~5- the most significant contribution~~

~~Don't know / no opinion / not relevant~~

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

It is important to recognise that supervisory convergence needs a common legal basis. Divergence in the fundamental rules cannot be compensated at supervisory level. A good example is the supervision of cross-border activities. The multiple failures of businesses acting under FOS in several Member States, especially in France, over the past years have highlighted real issues in that area. Cooperation upstream among NSAs is essential. The FFA strongly supports the harmonisation of control practices and believes that the level of control should be the same across Members States.

Another example could be the application of proportionality in Solvency II. To ensure a cultural change among NSAs, legal changes are needed to make it clear that NSAs are not only able to deviate from the detailed requirements and allow companies to make use of proportionality measures, but they also have an obligation to do so. Including some automaticity will also avoid that NSAs create a significant burden of proof that negate the benefits of proportionality. FFA has recommended such changes as part of the Solvency II review and while EIOPA's advice is a step in the right direction, their proposals need additional elements to work as intended.

Also, as highlighted in the response to the previous question, the FFA considers that EIOPA's role on policing supervisory divergences should also cover gold-plating practices and guidance. EIOPA's opinions, statements, guidelines, and advices are using the supervisory convergence argument only to align with the most conservative and tightest interpretations of the regulation. This bias has tended to materially increase the level of prudence and burden of Solvency II over time, at the detriment of the balance sought by the legislators in terms of proportionality.

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know- No opinion- Not applicable
Providing opinions to competent authorities		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						X

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

FFA strongly supports a common supervisory culture and consistent supervisory practices across the EU. FFA believes that the best way to achieve this objective is to establish common and harmonised rules at EU level with a certain level of control of NSAs organised at the level of EIOPA. For instance, with Freedom of services failures in France regarding construction insurance, we

believe that Solvency II rules (see art.148 of the Solvency II directive) have not been correctly applied by home country NSAs.

Furthermore, FFA would like to insist on the fact that the number and nature of different tools used by EIOPA (see the chart above): regulatory technical standards, opinions, reports, guidelines, recommendations, statements, etc., is confusing for insurance undertakings and further complicate the legal framework applicable to insurance activities. The role of the Discussion Papers, looking at general regulatory issues rather than supervisory stakes, is also raising questions. Regarding the legal nature of all these publications, EIOPA could publish an official document listing the different tools available and explaining for each tool the legal nature and the scope; see ACPR publication on transparency policy July 2011. Moreover, a reflexion could be held on a rationalisation of EIOPA's tools, this could help to increase efficiency of EIOPA's action.

Precisely, regarding guidelines we can note (for example see guidelines on cloud outsourcing see EIOPA-BoS-20-002 and guidelines on ICT see EIOPA-BoS-20/600) that guidelines are now addressed both to competent authorities to provide guidance on how insurance and reinsurance undertakings should apply the outsourcing requirements, and directly to undertakings. Even if it is compliant with art. 16 of EIOPA regulation, addressing guidelines directly to undertaking creates an impression that they are legally binding. This perception is reinforced by the fact that these guidelines include a date of application. Broadly speaking, use of guidelines by EIOPA should be limited and exceptional.

In general, guidelines are supposed to be level III according to the hierarchy of norms in EU law. But EIOPA Guidelines on ICT or Cloud have been adopted without any text at level I or II. Guidelines should not anticipate delegated regulation. For instance, regarding EIOPA Guidelines on ICT, they have been published whereas DORA is still under discussion and provide RTS prepared by EIOPA. It is essential that the hierarchy of measures is ensured and that the measures are build-upon each other and not developed in parallel. To safeguard the consistency and hierarchy of measures, the addition to Article 16 of EIOPA Regulation that "guidelines and recommendations shall not merely refer to, or reproduce, elements of legislative acts [or add new requirements/concepts]" (Article 16.2a EIOPA Regulation) is essential.

Regarding guidelines, translation delays are too long: for ex. Regarding EIOPA's guidelines on ICT, they have been published into national languages only 2 months before their entry into force...which is very short for our members to organize themselves in order to comply with them.

Furthermore, there are cases where EIOPA publishes opinion whereas there is no need to do so. For example, EIOPA published its opinion on the supervision of remuneration principles in the insurance and reinsurance sector, whereas the delegated Regulation (2015/35, art.275) was very precise on this issue; there was no need for EIOPA to precise other elements than those listed into the delegated Regulation. These opinions delivered to NCA did not always contribute to build a common supervisory culture and consistent supervisory practices because NCA are totally free to go beyond even if the opinion is very precise. Idem regarding Guidelines, NCA often go beyond the text, for ex. guidelines on Complaints Handling by Insurance Intermediaries (see EIOPA-BoS-13/164); despite a precise definition given in the Guidelines, the French supervisory authority (ACPR) has gone beyond the EIOPA's definition.

In addition, the FFA believes that the legitimacy and credibility of EIOPA is based in its ability it acts as a neutral and impartial referee with respect to the implementation of the European prudential regulation and national supervisory practices. Whether EIOPA has a more political advocacy role to drive and orient market developments and the functioning of the insurance internal market, e.g. on



digital innovation or sustainable insurance underwriting, within its mandate is questionable and needs clarification in EIOPA regulation.

To conclude, FFA insists on the fact that art. 1.6 of EIOPA Regulation (consolidated version) should be fully respected by EIOPA especially regarding the respect of legislative acts. EIOPA should focus on the common application of the rules rather than acting as a quasi-regulator and implementing new rules or tightening the regulatory framework.

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

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

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

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

Overall, FFA considers the colleges of supervisors to function well. Therefore, the role of EIOPA should focus on a consistent application of regulation and standards across colleges rather than individual colleges. Of course, where EIOPA considers divergence, non-application or arbitrary application of regulations and standards, it should raise such issues in its role as observer and participant in the colleges.

In addition, EIOPA can facilitate the proper exchange of information and cooperation in the colleges.

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

The new process for questions and answers (Q&A) gives a legal basis to a level 3 process which have been useful in the application of legislative acts including those of the Solvency II framework. The recent publication of a Q&A on IDD by EIOPA based on answer submitted by the Commission showed that the new process improved a bit the interaction between EIOPA and the Commission. However, the Q&A for IDD are coming relatively late as IDD is applicable since October 2018. More broadly the Q&A process do not reduce the burdensome of the compliance toward a new legislative act. Moreover, certain Q&A are not relevant and adapted on certain points and markets (eg. recent

EIOPA Q&A on POG). In any case, it should be clear that Q&A are not binding and should be indicative

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

**Please explain your answer to question 1.1.5:**

The new process for Q&A does not reduce the volume of the Q&A which is already high and add another layer to the complexity of the legislative framework.

## 1.2 No actions letters

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

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

No action letters should aim to give legal certainty to financial services providers in relation to operational challenges on the implementation of financial services regulation. As introduced by the [regulation 2019/2175](#), ESAs have only the possibility to issue non-binding recommendation to the Commission and NCAs on a specific legal provision instead of having the power to disable a legal provision. Therefore, FFA is of the opinion that to provide flexibility to financial market participant and to ensure financial stability, ESAs should be able to disapply specific EU legal provision as originally planned the European Parliament.

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

N/A

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

The use of no action letters could have been useful regarding the application of the disclosure regulation ([regulation 2019/2088](#)) to provide better legal certainty as the [letter](#) of the Commission sent to the ESAs on the application of the disclosure regulation sets a precedent by making applicable a level one text without having the level 2 published in the Official Journal of the EU. A no action letters on the application of the disclosure regulation would have provide financial market participants with more time for implementation.

### 1.3 Peer reviews

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

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

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know- No opinion- Not applicable
Convergence in the application of Union law				X		
Convergence in supervisory practice					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 harmonisation of Union rules			X			
Other						X

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

	1 (less significant contribution)	2 ((not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know- No opinion- Not applicable
Convergence in the application of Union law				X		
Convergence in supervisory practice					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 harmonisation of Union rules			X			
Other						X

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

Peer reviews are an important element of the work of EIOPA. It is too early to assess the effectiveness of the peer reviews as changed by the ESAs review. However, there is a subjective feeling that the peer reviews conducted after the ESAs review are more ambitious and provide more direct recommendations and best practices to NSAs. For instance, EIOPA has published on 8 December, 2020 an ambitious report from a peer review on cooperation between supervisory authorities in the EU on the supervision of cross-border activities of insurance undertakings. In this report EIOPA calls on NSAs to improve cooperation and transparency in the supervision of cross-border insurance activities.

The establishment of a peer review committee made up of EIOPA staff and supervisory authorities' staff seems to have had a positive impact. In addition, the ability for EIOPA and NSAs to consider dissenting views in the reports is important. The provision allowing EIOPA to conduct ad-hoc and follow-up peer reviews is also important. In order to ensure that peer reviews improve the supervisory consistency and convergence, the newly implemented mandate for EIOPA to include recommendations and the mandatory follow-up after two years can also play a significant role.

Yet we would like to comment and say that peer reviews in the concept should be very useful tools to investigate how legislation is indeed and practically implemented and foster convergence. It should also be a very useful way of taking stock of specific situations and gauging whether legislation

is fit for purpose or whether amendments/revisions/complements are needed. It should indeed work both ways that it can foster convergence and common approaches where suited and needed and precisely refrain from doing so where not appropriate to the situations, business models and risk profiles under supervision.

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

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know- No opinion- Not applicable
Ad-hoc Peer Review Committees (PRC) composed of ESAs' and NCAs' staff and chaired by the ESA are responsible for preparing peer review reports and follow-ups.				X		
The peer review report is now adopted by written procedure on non-objection basis by the BoS.				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					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 when answering question 1.3.2:**

As stated above in the answer to question 1.3.1, the new provisions and the increased degree of freedom for EIOPA had a positive impact on the quality of the peer reviews and the comparability of the contained information. Particularly, the adoption on a non-objection basis, the greater influence on and lead of the peer review committees by EIOPA seem to have had an impact. In addition, FFA considers the ability for EIOPA and NSAs to consider dissenting views in the reports important. The necessity to ensure consent might have limited the provision of critical views and diverging opinions. Finally, the provision allowing EIOPA for conducting ad-hoc and follow-up peer reviews is also important. Altogether, the new tools improve the framework for supervisory peer reviews.

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

Yes

No

~~Don't know / no opinion / not relevant~~

**Please explain your answer to question 1.3.3 for EIOPA:**

Regular peer reviews on the application of the principle of proportionality, on the supervision of cross border business or on legal market specificities (like special liability regime for long-term policies) could be introduced.

The principle of proportionality is a central element of Solvency II, but its importance in the enforcement of all regulations has been highlighted further with the creation of an advisory committee on proportionality by the recent ESAs review.

Additionally, the harmonisation of control practices and supervision of cross-border activities should be the same across Members States, whether business is done in the home market or in another market via FOS.

Regular peer reviews on such elements would be a valuable tool to ensure their effective and convergent application.

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

Yes

No

Don't know / no opinion / not relevant

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

A potential role for EIOPA stakeholder groups to suggest areas for peer reviews might be a good addition or a potential feedback/input mechanism for the multi-annual peer review programme might be beneficial.

**1.4 Other tasks and powers**

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

Yes

No

Don't know / no opinion / not relevant

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

Yes

No

Don't know / no opinion / not relevant

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

The first EU-wide supervisory priorities have been published by EIOPA in February 2021. It is, therefore too early to assess its impact yet. FFA believes that common supervisory priorities can be an important driver for supervisory convergence.

Having said that, fostering convergence is only useful where suited to the supervised activities. What is paramount is that legislation be fit for purpose and the framework should refrain from forcing common approaches where not appropriate to the business models and risk profiles under supervision and rather, in such situations, identify whether amendments/revisions/complements to the legislation are needed.

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

FFA believes that the tools at EIOPA's disposal are sufficient. Also considering that the new EIOPA regulation is only applicable since January 1<sup>st</sup>, 2020.

EIOPA's main and essential role is to ensure a consistent and sound application of the Solvency II framework at the level of NSAs. NSAs have acquired extensive knowledge and experience of market practices and products, thus strengthening their leading role in the direct supervision of insurance companies.

We call on European policymakers to take a cautious, pragmatic, and thoughtful approach to the expansion of EIOPA's tasks and powers, to avoid any unintended consequences that could lead to a lack of stability. Rather than considering new powers, existing tools and powers should be fully used and resources adequately allocated to the proper implementation of Solvency II.

Supervisory convergence could make enormous progress, within the remit of existing EIOPA's powers and tools, should EIOPA be less asymmetrical in pursuing its mandate. The FFA considers that EIOPA's role on policing supervisory divergences should also cover gold-plating practices and guidance. EIOPA's opinions, statements, guidelines, and advices are using the supervisory convergence argument only to align with the most conservative and tightest interpretations of the regulation. This bias has tended to materially increase the level of prudence and burden of Solvency II over time, at the detriment of the balance sought by the legislators in terms of proportionality.

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

~~1- Not significant at all~~

~~2- Rather not significant~~

~~3- Neutral~~

~~4- Rather significant~~

~~5- Very significant~~

**Don't know / no opinion / not relevant**

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

N/A



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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4(rather relevant)	5 (fully relevant)	Don't know- No opinion- Not applicable
Operational independence			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						X

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

FFA believes that the ESAs already are sufficiently operational and financially independent. In fact, it often appeared that the budgetary control mechanism as executed by the European Parliament seems to be the most effective tool for checks & balances for the authorities. Compliance and adherence with their mandates is an essential factor for the credibility of the ESAs, the financial accountability towards the EU institutions and the operational accountability towards the Board of Supervisors are important in this respect.

The ESA Regulations do not foresee decision-making by unanimity. Therefore, it is ensured that no single interest or group of minor interest can block the ESAs in their ability to fulfil its mandate. It is also important to avoid an “ivory tower” situation where EIOPA is able to ignore valid concerns of its members. The current governance system is a good balance between independence, collaboration and collective decision making.

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

National gold-plating and arbitrary implementation and application of the regulatory framework present the major threats.

Effective convergence should work both ways. Fostering convergence is only useful where suited to the supervised activities. What is paramount is that legislation be fit for purpose and the framework should refrain from forcing common approaches where not appropriate to the business models and risk profiles under supervision and rather, in such situations, identify whether amendments/revisions/complements to the legislation are needed.

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

**Yes**

~~No~~

~~Don't know / no opinion / not relevant~~

Please explain your answer to question 1.4.8:

Nevertheless, we feel progress needs to be made towards more transparency in the supervision of the NCAs.

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

**Yes**

~~No~~

~~Don't know / no opinion / not relevant~~

Please explain your answer to question 1.4.8:

FFA believes that the empowerment of EIOPA (and the ESRB) to assess systemic risk at an EU-wide basis and develop guidelines and recommendations as well drafted.

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

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

~~1- Least effective~~

**2- Rather not effective**

~~3- Neutral~~

~~4- Rather effective~~

~~5-Very effective~~

~~Don't know / no opinion / not relevant~~

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

The number of tools used by EIOPA should be streamlined and simplified to avoid complexifying the regulatory applicable framework.

It is important that supervisory practices are consistent across the EU to ensure a level playing field. Gold-plating by some NCAs and potential arbitrary decisions by others undermine fair competition and the functioning of the single market as well as the business models and product offering themselves.

A common supervisory culture, a consistent interpretation of the tasks and the mandate and a close cooperation across the EU can be essential in this respect. To achieve this high-level objective, EIOPA has developed different tools which can be grouped in three building blocks:

1/Common benchmarks: Guidelines and recommendations, opinions, Supervisory Handbook, Supervisory Statements, Questions and answers, Regular Reports on supervisory areas, Training and Events;

2/ Review of practices (thematic reviews, Peer reviews, Consistency projects);

3/ EIOPA's independent assessments (Bilateral engagement, Engagements with several NCAs).

**1.5 Breach of Union law and dispute settlement**

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

~~Yes~~

~~No~~

Don't know / no opinion / not relevant

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

Freedom of services failures have showed the weakness of the EU supervisory system. New EIOPA's power introduced by the ESAs review (see new art. 152bis on notification and art. 152.ter on cooperation platforms-see Directive 2019/2177) represent steps in the right direction but it is too early for giving an assessment of the efficiency of these measures.

Furthermore, FFA is not aware of any cases where EIOPA used its tools against breach of Union law at this stage. As stated above, FFA believes that the inconsistent implementation and application of Union law can be one of the main sources for an unlevel playing field and regulatory and supervisory inconsistencies. Gold-plating/arbitrary implementation and application of Union law should therefore be assessed by EIOPA for subject matters of its own mandate.

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

	Yes	No	N.A
Before 2019 ESAs' review			X
After 2019 ESAs' review			X

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

N/A

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

~~Yes~~

~~No~~

Don't know / no opinion / not relevant

**Please explain your answer to question 1.5.3:**

As stated above, FFA is not aware of any cases where EIOPA used its tools against breach of Union law at this stage.

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

~~Yes~~

~~No~~

Don't know / no opinion / not relevant

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

~~Yes~~

~~No~~

Don't know / no opinion / not relevant

**Please give concrete examples where you consider that EIOPA should have taken relevant action under these Articles:**

N/A

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

N/A

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

N/A

## 1.6 Emergency situations and response to Covid-19 crisis

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

~~1- the less significant impact~~

2

**3**

4

~~5- the most significant impact~~

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

FFA considers EIOPA's response to the Covid-19 crisis was not appropriate. While FFA welcomed EIOPA recommendation on supervisory flexibility regarding reporting deadlines issued in March 2020, EIOPA's call for a dividend ban in April 2020 was not relevant. Solvency II, already, empowers NSAs to enact dividend suspension if the Solvency Capital Requirement (SCR) is breached or when the distributions would lead to non-compliance. Furthermore, due to the differences of application of EIOPA political statement on dividends, it created a unlevel playing field between European market which hamper the insurance single market.

On liquidity, FFA would like to express its concerns regarding the monitoring of liquidity risks by EIOPA as the materialisation of liquidity risks is not an issue as recognised by EIOPA in a statement in June 2020. Liquidity risks are also already monitored by insurance firms within their ORSA.

In addition, despite EIOPA recommending at the outset of the crisis to reduce the operational burden on firms by postponing some reporting deadlines, the operational burden increased overall following additional requests in EIOPA statements and the lack of coordination of ad hoc data requests at local level.

Broadly speaking the intense activism of EIOPA during the peak of the covid-19 crisis was not needed as insurance undertakings have been able to weather the crisis. The solvency II framework

responded well in the sense that it was able to factor the different dimensions of the shock due to its risk based modular approach. A great deal of the crisis has been operational and the tools, governance and risk management in place in the insurance undertakings have ensured business continuity for salaried forces and business services to the clients.

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

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

**Please explain your answer to question 1.6.2:**

FFA would like to reiterate its answer on question 1.6.1 on extremely harmful impact of the statement on the ban of dividends and similar payments.

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

~~Yes~~

No

~~Don't know / no opinion / not relevant~~

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

Insurers took actions needed to ensure their ability to serve customers during the crisis and keep customers and staff safe. FFA does not believe that the activities carried-out by EIOPA have

successfully contributed to address the challenges of the Covid-19 crisis – see answers to questions 1.6.1 and 1.6.4.

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

~~Yes~~

No

~~Don't know / no opinion / not relevant~~

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

FFA believes that EIOPA's preliminary function should have been to coordinate between NSAs and to promote a consistent approach to the supervision of the insurance industry during this period.

First the operational burden increased overall following additional requests in EIOPA statements and the lack of coordination of ad hoc data requests at local level. This inflation of data requests and burden contrasted with EIOPA recommendation at the outset of the crisis to reduce the operational burden on firms by postponing some reporting deadlines.

EIOPA's statements on dividends also created confusion, frustration, and market fragmentation. EIOPA also undermined the credibility of Solvency II with those statements by not acting in line with the regulation it is mandated to apply.

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

Yes

~~No~~

~~Don't know / no opinion / not relevant~~

**Please explain your answer to question 1.6.5:**

The insurance sector has proven resilient, has highlighted by EIOPA. Therefore, the existing tool to declare an emergency situation has not been made use of yet. However, EIOPA and the industry had exchanges on the practical activation and there is no evidence that it would not be fit for purpose should the situation justify it.

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

N/A

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

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

~~Yes~~

No

~~Don't know / no opinion / not relevant~~

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

Before the ESAs review, freedom of services failures has demonstrated the weakness of the coordination role of EIOPA. It is too early to assess the effectiveness of the new provisions regarding supervision of cross-border business introduced by the ESAs review.

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

Yes

~~No~~

~~Don't know / no opinion / not relevant~~

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

It is always important to improve a better coordination at EU's level with all stakeholders, for example, with ENISA regarding data protection and cybersecurity especially when the future DORA will enter into force.

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

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know- No opinion- Not applicable
Exchange of information and best practices			X			
Adopt guidelines	X					
Adopt recommendations			X			



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

From the industry perspective, it is difficult to assess potential inefficiencies in the internal processes of EIOPA. However, the processes in place, and enhanced in the 2019 ESAs review, seem to facilitate the coordinative and convergence function of EIOPA.

In this regard, it would be beneficial to remind the necessity for the guidelines to take a “less is more” approach. Guidelines are often an “afterthought” of the regulation which are used by EIOPA as a quasi-regulatory standard. The fact that EIOPA is keen to convert many guidelines into the binding regulations in all its response to EC’s calls for advice is an evidence of this. While guidelines should help supervisory convergence, thus reducing the burden on firms, the contrary often happens: guidelines add to the compliance burden. In addition to the limited legitimacy of regulation through the backdoor, their implementation is, usually, highly depending on the different mandates of competent authorities. Other than in an ordinary legislative procedure where the degree of harmonisation can be defined by Co-legislators, the implementation of EIOPA guidelines or (supervisory) statements depends on the individual mandates and powers of National Competent Authorities (NCAs). Instead of regulatory and supervisory convergence, fragmentation and an unlevel playing field can be the result, with national gold-plating or regulatory arbitration challenging fair competition across the single market.

EIOPA should also refrain from issuing guidelines in areas where the legislators have indicated their intention to regulate. An example of this are EIOPA guidelines on ICT published end 2020 and for application by H2 2021, i.e. over the same timeline as DORA. This creates issues with the articulation of texts and unnecessary confusion.

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

Yes

No

Don't know / no opinion / not relevant

**Please provide examples where the new coordination groups could be useful/ please provide examples where the new coordination groups could be useful:**

These coordination groups could be effective tools to coordinate competent authorities; generally speaking, these coordination groups could focus on each national market legal specificities for ex. regarding liability rules and attached long-term insurance coverages.

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

Yes

No

Don't know / no opinion / not relevant

## **Please explain your answer to question 1.7.5 on EIOPA:**

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

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

FFA believes that EIOPA has a role to play in the area of information exchange and coordination between NSAs in the area of consumer protection. Assessing information from national markets and an EU-wide perspective for NSAs are the most important activities in EIOPA's consumer protection mandate. Consumer protection should not lead to the standardisation of product offers. Due respect must be paid to the diversity of products that respond to national specificities and practices and citizens choices, expectations, culture and habits.

EIOPA has played a role in the development and implementation of the EU retail financial services package. The outcome of these activities is mixed. The right balance between effective consumer protection and excessive regulatory burden will have to be found and the review of the package in 2022/2023 will be decisive for finding the right balance. The development and implementation of guidelines on product oversight & governance ahead of the legislative process on the review of the insurance mediation Directive (which led to the IDD), was pre-emptive and burdensome.

Yet consumer protection should not lead to the standardisation of product offers. Due respect must be paid to the diversity of products that respond to national specificities and practices and citizens choices, expectations, culture and habits.

FFA considers that through all the reports made, that EIOPA always use isolated and limited cases to draw generalities and conclusions giving the impression that the whole market does not work properly (eg. on CPI or Unit-linked in life insurance)". EIOPA should take into account that consumer protection is a local issue under NCAs supervision and not under EIOPA supervision"

It is critical that EIOPA adheres to the legislative process and focuses on the best, not the quickest, solutions to ensure outputs that are fit for purpose, effectively increasing insurance consumer protection and appropriately considering insurance specific features. To achieve these objectives, EIOPA will need to improve significantly the testing of its proposals on consumers and products in scope. We think that certain consumer testing are not made on the most appropriate scope in term of markets, like for PRIIPs or SFDR mock-ups. EIOPA should target the right markets to proceed consumer testing with more appropriate rules.

EIOPA's consumer trends reports is a valuable source for information and for the observation of market developments which might present threats or challenges to consumers. However, findings should always be contextualised and explained to provide a fair view and analysis of the developments. Moreover, positive consumer trends should also be reported to ensure a balanced overview of developments across markets. Furthermore, cultural and market differences as well as differences in consumer habits might set reasonable boundaries for the integrative process.

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know- No opinion- Not applicable
Analysis of consumer trends				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

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

As outlined in its answer to question 1.8.1, FFA believes that the most important contribution of EIOPA to a consistent consumer protection is the information collection, analysis and coordination between NCAs. Developing indicators for measuring the effectiveness of policy measures and identifying best practices can facilitate regulatory and supervisory level-playing field.

On consumer protection, it is important that a one-size-fits-all approach with the aim to streamline products and policies must not be the desired outcome.

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

~~Yes~~

~~No~~

Don't know / no opinion / not relevant

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

EIOPA did not use this power until now. However, EIOPA played an important role in supporting NCAs in the assessment of circumstances or practices potentially bearing challenges and threat to consumers.

Nonetheless, new powers of EIOPA under Article 9.5 of the EIOPA Regulation might be valuable where NCAs fail to deliver on their mandate and further action is required.

Harm to customers might not always be easy to define. In any case due respect must be paid to the diversity of products and subsidiarity should take place to account for national situations and practices and citizens choices, expectations, culture and habits.

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

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

EIOPA's powers to adopt acts of general application should remain exceptional and limited. Rather than broad empowerments, FFA considers concrete powers more appropriate. Notwithstanding the aforementioned, FFA believes that primary supervisory intervention must always come from the responsible NCAs (prudential or conduct).

EIOPA should only be empowered to act where NCAs fail to deliver on their mandate or in cases of fundamental disagreement, in the latter through its dispute resolution mandate. Broadly speaking, the matter of consumer protection must be always first considered as a local market issues and not as a European nor a transversal one. Thus, the contribution at EIOPA level should remain extremely limited.

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

No

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

~~1—irrelevant~~

~~2—rather irrelevant~~

~~3—neutral~~

**4 – rather relevant**

~~5—fully relevant~~

~~Don't know / no opinion / not relevant~~

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

FFA considers the new tasks of EIOPA to coordinate mystery shopping in accordance with Article 9.1 (f) as a significant addition to EIOPA's mandate on consumer protection. As indicated above, the mandate of EIOPA needs to be sufficiently described, and the changes made in the 2019 ESA-Review are an important step in this respect. However, mystery shopping is a matter of consumer protection which should be managed at national level and not at EIOPA level.

A coordinated approach to supervisory mystery shopping could strengthen awareness of emerging trends and problems across member states, coordination of assessment and of potential measures to address potential threats to consumers. However, differences and specificities across European markets, for example regarding local market and distribution structures, regulatory requirements, product features, as well as consumer behaviours, cultures and needs will have to be well considered.

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

The biggest strength of the current framework of Article 9 of the EIOPA Regulation is in its strong focus on a common and coordinate identification of potential challenges and threats to consumers across the single market. A potential weakness might appear in an overly broad interpretation of the mandate given to EIOPA under Article 9 of the EIOPA Regulation. The 2019 ESA-Review was a major improvement in this respect.

FFA believes that the framework of Article 9 EIOPA Regulation is fit for purpose and does not need further changes. Further empowerments and concrete mandates for EIOPA should be based on the specific regulatory requirements in sectoral regulation. Stronger adherence to the mandates of EIOPA and an increased attention to getting such mandates right during the review of the EU retail financial services package will be essential.

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

~~Yes~~

**No**

Don't know / no opinion / not relevant

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

EIOPA's powers and tasks provided by Article 9 are already very important. Moreover, NCAs also have a role to play and are in the best position to assess the risks relating to consumer protection in the light of the specificities and laws applicable on their national market

## 1.9 International relations

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

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

EIOPA plays a role in international fora and in particular in the International Association of Insurance Supervisor (IAIS) through which EIOPA contributes to the development of international standards. We acknowledge EIOPA's efforts in working towards global convergence and consistency of supervisory practices to boost the level playing field at global scale. EIOPA's contribution to international discussions is also key to promote the European regulatory and supervisory framework and the pioneering European work on critical issues as sustainability and data across the world.

It also seems important to stress that global discussions are paramount as the development of international standards might have a significant influence on the future of (insurance) regulation in Europe. To this extent, we believe that the scrutiny role of EU legislators with respect to EIOPA mandate and positions should be strengthened. EIOPA's accountability towards the European Parliament and the Council of the EU should be reinforced with respect to its contribution to the IAIS standards, in particular the ICS.

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

We support EIOPA's role in monitoring the regulatory and supervisory developments, enforcement practices and market developments in third countries for which equivalence decisions have been adopted by the Commission. EIOPA's support to European Commission when granting equivalence decisions to third country is indeed critical. EIOPA also plays a key role in ensuring that equivalence decisions are adjusted to evolving regulatory environments in order to maintain a level playing field across insurance markets. In that sense, EIOPA should actively monitor and assist the Commission in assessing potential regulatory and supervisory divergences in third countries.

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

FFA believes that article 33 gives a balanced mandate to EIOPA to fulfil its mission. The article 33 sets out a clear division of competences between the EU bodies and stresses that administrative arrangements made by EIOPA shall not create legal obligations in respect of the EU and its Member States. Such principle is fundamental in order to uphold and protect the European democratic process.

To this extent, it seems pivotal that EIOPA's mandate and positions in international fora are duly scrutinized by EU lawmakers. Indeed, the development of international standards, to which the EIOPA contributes through the IAIS, may have a significant influence on the future of (insurance) regulation in Europe. For instance, the development of the ICS may have strong implications for the Solvency II regime. It seems thus paramount to reinforce EIOPA's accountability towards the

European Parliament and the Council of the EU with respect to its contribution to international standards, in particular the ones developed by the IAIS as the ICS.

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

EIOPA engaging dialogues through administrative arrangements with third country authorities is a positive contribution to regulatory and supervisory cooperation. It is valuable to enhance mutual understanding, ease trade relations and promote level playing field between insurance markets. As stated in Article 33, such arrangements should not create legal obligations for the EU. The EIOPA mandate seems satisfactory.

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

**Question 1.10.1 EIOPA: 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 to investigate the alleged breach or non-application of Union law and, following a specified procedure and under certain conditions, adopt an individual decision towards the market participant or financial institution requiring it to comply with EU law.**

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

EIOPA should remain NCA's supervisor regarding the enforcement of EU rules. FFA believes that EIOPA's role in assessing and detecting breaches of Union Law is central with regards to the formation of the EU single market for insurance, and considers the basis which Article 17 of EIOPA Regulation provides as very accurate.

The interplay between EIOPA, the European Commission, NCAs is essential to ensure a credible system which provides for the necessary legal gravitas.

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

Yes

No

Don't know / no opinion / not relevant

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

Yes

No



~~Don't know / no opinion / not relevant~~

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

FFA believes that the provisions of Articles 17-19 of the EIOPA Regulation are well-balanced, adequate and effective. It is important to note that the primary addressee of EIOPA action under these provisions are not insurance undertakings, but NSAs. Only where NSAs fail to act/comply with Union law (Article 17.6 EIOPA Regulation), an opinion adopted by EIOPA (Article 18.4 EIOPA Regulation) or an EIOPA decision (Article 19.4 EIOPA Regulation), EIOPA measures might be directly applicable to financial institutions. FFA considers this provision as important. NSAs, which should generally be expected to respect Union law and EIOPA opinions and decisions, are in the position to apply the respective measures in a manner appropriate to the respective situation in its market. Consistent substance should always prevail consistent form in supervisory policy.

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

Yes

~~No~~

~~Don't know / no opinion / not relevant~~

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

FFA believes that an adequate distribution of roles between EIOPA and the European Commission is important to ensure the credibility of the regulatory framework. While EIOPA is in the position to assessing the technical nature and impact of potential breaches of Union Law, potential emergency situations and disagreement between NSAs, it is important that the legal, political and strategic nature is assessed at the right level.

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

Sufficiently dissuasive

~~Disproportionate~~

~~Other~~

~~Don't know/ no opinion / not relevant~~

## **2 Governance of the ESAs**

### **2.1 General governance issues**

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

Yes



No

~~Don't know / no opinion / not relevant~~

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

The system of governance, as slightly reviewed by the ESAs review, allows to ensure objectivity, independence and efficiency in their work and decision making. It is of the utmost importance that the board of supervisor remain at the centre of decision-making process to ensure it fulfils – but does not exceed – its mandate and uses existing powers effectively.

New voting regimes in the BoS (eg the written non-objection procedure or the exclusion of BoS members for decisions of vested interests) improved the system of governance of the body. While potential national interests influencing the decision-making within EIOPA can have a negative impact in this respect if we take the example of the approval of the RTS PRIIPs in February 2021, FFA believes that national interests are not only present in EIOPA's top-level decision-making, but throughout the process. Nonetheless, the agreement to EIOPA measures by NSAs (either by qualified or simple majority) ensures responsibility for the majority of NSAs for EIOPA decisions.

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

FFA believes that the measures foreseen by the 2019 ESAs review, particularly on peer reviews, voting rights in case of vested interests and the introduction of the written non-objection procedure, improved the governance of EIOPA.

The balance between independence of the management and control by its own bodies has also been improved.

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

Yes

No

~~Don't know / no opinion / not relevant~~

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

FFA believes that the ESAs' review excluding BoS members from discussions and decisions in relation to any items of the agenda for which they have an interest that might be considered prejudicial to their independence is important. The amendment fixed a flaw of the regulations establishing the ESAs. The practical impact of the provision cannot be easily assessed. However, it is an important prerequisite for the credibility of the Authorities that BoS members with potential conflicting interests abstain from discussions and decisions.

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

~~Yes~~

No

~~Don't know / no opinion / not relevant~~

As highlighted in the responses to questions 1.9.1 and 1.9.3, EIOPA's accountability with respect to its engagement at the IAIS level on international standard setting could be significantly improved.

Furthermore, Article 6 of the EIOPA regulation sets out the objective of EIOPA to protect the public interest by contributing to the effectiveness of the financial system for the Union economy, its citizens and businesses. Against this background, EIOPA must demonstrate the added value of its initiatives and its tools such as guideline, statement, opinion in relation to the EU priorities and the principles of subsidiarity and proportionality. The execution of EIOPA's tasks and powers must be done with all the required checks and balances and with the adequate transparency.

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know- No opinion- Not applicable
Request to the Board to establish internal committees for specific tasks				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						X

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

Among the new empowerments, FFA considers the ability to propose the composition of independent panels for breach of Union law investigations and dispute settlements and to propose the composition of independent panels for breach of Union law investigations and dispute settlements as most valuable.

In contrary, the powers for the Chair with regards to activities targeted at a specific financial institution as per Article 22.4 ESA Regulations should be carried-out in conjunction with the group of NSAs.

FFA highlights that the main decision body is and should remain the BoS, and concentration of powers in the hands of the chairperson should be avoided.

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

**Please explain your answer to question 2.1.5:**

As stated above, FFA highlights that the main decision body of EIOPA is and should remain the BoS. Concentration of powers in the hands of the chairperson or EIOPA staff needs to be avoided to ensure a right system of check and balance. In this regard, new provisions of the ESAs review gave new rights to the chairperson such as voting rights in the BoS and the power to set the BoS agenda which didn't help to ensure the accountability of the chairperson.

## 2.2 Decision-making bodies and preparatory bodies

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

**Yes**

~~No~~

~~Don't know / no opinion / not relevant~~

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

Yes

~~No~~

~~Don't know / no opinion / not relevant~~

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

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

N/A

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

Yes

~~No~~

~~Don't know / no opinion / not relevant~~

**Please explain your answer to question 2.2.3:**

As stated above, FFA reiterates that the main decision body is and should remain the BoS.

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4(significant impact)	5 (most significant impact)	Don't know- No opinion- Not applicable
The MB can give opinions on all matters to be decided by the Board of Supervisors				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			

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

Due to its composition as laid down in Article 45 EIOPA Regulation, the MB provide for a sub-set of BoS members. It can, therefore, be expected that the MB acts in the interest of the members as a whole. The MB can provide opinions on decisions taken by the BoS where it considers it necessary (Article 47.3a EIOPA Regulation) which might provide for the opportunity to express views not reflected in the BoS process due to procedural or governance provisions (the MB decides on a simple majority basis).

FFA questions the limit set to this provision. Article 47.3a excludes BoS decisions on matters subject to Article 30 EIOPA Regulation – peer review. However, particularly peer reviews assessing critical supervisory practices in one or more Member States might be subject to flawed decision-making in the BoS.

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

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

**Yes**

~~No~~

~~Don't know / no opinion / not relevant~~

Please explain your answer to question 2.2.6:

FFA considers the introduction of the written non-objection procedure for matters subject to Article 17, 19 and 30 EIOPA Regulation as a major improvement to ensure the credibility of the decision-making process and the ability of EIOPA to investigate and assess critical policies and activities by NSAs (and member states).

The newly introduced procedure, in conjunction with the provision of Article 42.3 EIOPA Regulation that members of the BoS (voting and non-voting and observers) and the chairperson must abstain from participating in the discussion of, and voting upon any item on which there might be interests which can be considered prejudicial to their independence, should enhance the independence of the decision-making of EIOPA on these fundamental issues.

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

Yes

No

~~Don't know / no opinion / not relevant~~

Please indicate if there should be more decisions taken under this procedure and in which areas:

N/A

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

Yes

No

~~Don't know / no opinion / not relevant~~

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know- No opinion- Not applicable
Standing committees and other permanent committees					X	

Other preparatory bodies (e.g. technical working groups)				X		
Committee on consumer protection and financial innovation				X		
Proportionality Committee				X		

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

FFA considers the standing structures of EIOPA to have the most impact on its day-to-day work. The specific committees and working bodies seem to provide some additional value, particularly where specific aspects or tasks have to be fulfilled, eg on regulatory reviews. However, objectives of those committee should be well prioritized and EIOPA should avoid multiplying its committees.

With regards to the Consumer Protection and Financial Innovation Committee, FFA believes that these can play an important role in facilitating an EU-wide and consistent approach if those objectives are clearly defined. Also, EIOPA's consumer trends report is a valuable assessment and benchmarking exercise for a consistent supervision across the Union. Particularly on Financial Innovation, FFA considers EIOPA's work to be important. The ongoing consultation on Open Insurance, for example, can help identifying measures to facilitate and regulate the insurance market of the future.

With regards to the Advisory Committee on Proportionality (ACP), FFA believes that it can have a crucial impact on EIOPA's/NSA's proportionate application of all pieces of regulation and on supervisory policy in the future. Based on developments in the ongoing review of Solvency II, FFA believes that the ACP will take a leading role to enhance the proportionate application of regulation and supervisory policy as provided in the EU Treaty more consistently rather than leaving it to NSAs. The annual report on proportionality that EIOPA has yet to develop (as an extension of the scope of the report on exemptions and limitations of reporting) should be a valuable tool in this respect.

## 2.3 Financing and resources

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

Yes

No

~~Don't know / no opinion / not relevant~~

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

Funding and financing arrangements needs to be maintained for EIOPA. As contrary to ESMA, EIOPA has no direct supervision task, it is coherent to maintain the current system of funding for EIOPA with a share from the EU budget and the rest indirectly through NCAs.

This approach is an important safeguard to ensure that there is no double-counting and no overlap in funding the same activity being carried-out by EIOPA and NSAs. NSAs are generally largely industry funded, and EIOPA's activities are either directed at NSAs or the legislative process and EU institutions. Therefore, it should be ensured that all funding of EIOPA which is not stemming from Union budget, is coming from/through NSAs. The NSAs need to provide for the right measures of checks and balances to ensure that EIOPA's budget is appropriate and that no duplication of tasks and activities occur. This two-stage approach is indispensable for an efficient system of supervision.

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

**Yes**

No

~~Don't know / no opinion / not relevant~~

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

The increase in EIOPA's resources is worrisome, especially in the area of support to the supervision of internal models. Indeed, the budget of EIOPA increased by 16% between 2020 and 2021 ( from 28,3 million euros to 32,8 million euros). While the ESAs review provided EIOPA with the power to help NSAs that request it in the approval process, EIOPA's activities in the area of internal models go far beyond this new task.

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

**Please explain your answer to question 2.3.3:**

No substantial changes have been made by the ESAs review regarding the budgetary process of the ESAs. FFA is of the opinion that the European Parliament should be given the role of adopting the ESAs single programming document to better scrutinise the activities of the ESAs.

## 2.4 Involvement and role of relevant stakeholders

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

**Yes**

No

~~Too many consultations~~



Don't know/ no opinion/ not relevant

**Please explain your answer to question 2.4.1:**

FFA notes a great improvement in EIOPA's transparency and efforts to involve stakeholders in its initiatives.

However, the industry reports that the number of requests for (data) input either from EIOPA directly or through the NSAs is excessive. The reduction of stakeholder involvement while maintaining the number of policies and activities must not be a solution in this respect.

Activities and policies must be based on sufficient evidence and all interested stakeholders must be heard during the process. It is already a challenge for a significant number of undertakings to participate in the relevant consultations and discussions. Representative bodies play a central role in supporting their members and providing stakeholder input. However, the high number of policy initiatives and activities carried-out by EIOPA require significant resources for stakeholders (individuals and representative bodies). The result is that the number of stakeholders which can provide input on the number of processes and in sufficient detailed is increasingly limited.

In conclusion, the answer to the question is not "less consultations", it is less and more targeted policies and extra-curricular activity by EIOPA. As highlighted in responses to questions 1.1.1, 1.1.2 and 1.7.3, avenues for implementing a "less is more" approach for EIOPA are:

- Focusing on its role of neutral and impartial referee, and refraining to engage in works meant to move the insurance market;
- Refraining from taking local gold-plating practices and guidance as an excuse to issue guidelines, opinions, and statements which only adds conservativeness and burden in the regime;
- Refraining to issue guidelines on areas where the legislators have indicated their intention to regulate.

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

	1 (lowest quality)	2	3	4	5 (highest quality)	Don't know- No opinion- Not applicable
General consultations launched by EIOPA				X		
Specific consultations when developing data collection requirements				X		

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

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

Yes

No

Don't know / no opinion / not relevant

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

FFA appreciates the accessibility of EIOPA staff and the efforts made by the Authority and its staff to provide feedback in an appropriate timeframe. The workshops, hearings and information sessions organised by EIOPA are very valuable, although in some cases, they seem to be a “tick-the-box” exercise.

At the same time, transparency on planned initiatives and decisions taken by EIOPA can be increased. The publication of the agendas and minutes of the BoS six weeks after the decision has been made, is of limited value. Furthermore, the information published is not sufficiently detailed. FFA would appreciate if the information is provided timely and in more detail. In addition, disclosure of information and decisions isn't the only issue since when the information is disclosed, it is often complicated to find it on EIOPA website. Indeed, the design of EIOPA website needs to be thoroughly improved to be more user-friendly.

In addition, EIOPA should provide a rolling list of activities and upcoming consultations to allow interested stakeholders to participate while managing resources. This remark is not only valid for the industry, as it would be also very valuable for less resourceful categories of stakeholders, eg consumer representatives.

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4(significant impact)	5 (most significant impact)	Don't know- No opinion- Not applicable
EIOPA Insurance & Reinsurance Stakeholder Group					X	
EIOPA Occupational Pensions Stakeholder Group				X		

ESMA Securities and Markets Stakeholder Group						X
EBA Banking Stakeholder Group						X

**Please explain your answer to question 2.4.4:**

FFA believes that the IRSG and the OPSG play significant roles for the work of EIOPA, in particularly the IRSG which is in the focus of many of the EIOPA policy initiatives. It has to be noted that the IRSG's mandate is difficult to be fulfilled on the sometimes very technical dimension of the subjects, its set-up and constitution.

It is important that the different members of the groups do not limit the ability of contributions. As per the nature of the topics, the impact of the subject matter on the different individuals in the stakeholder groups can vary significantly. The provision that one third of the members of a stakeholder groups can issue a statement of advice no agreement at group level is, therefore, an important prerequisite to ensure the functioning of the groups.

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4(significant impact)	5 (most significant impact)	Don't know- No opinion- Not applicable
Composition of stakeholders groups					x	
Selection of members				x		
Term of office			x			
A third of its members can issue a separate advice				x		

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

FFA believes that the amendments to the composition of the groups as laid down in Article 37.3 of EIOPA Regulation have been a significant improvement.

The balance between industry and the combined group of users / consumer representatives in the IRSG is an improvement.

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

Yes

No

Don't know / no opinion / not relevant

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

See the answer above to question 2.4.5.

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

Yes

No

Don't know / no opinion / not relevant

**Please explain your answer to question 2.4.7:**

The transparency of stakeholder groups' advices is valuable.

## 2.5 Joint bodies of the ESAs

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

	1 (least effective)	2 (not so effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know- No opinion- Not applicable
Organisation		X				
Functioning and time limits						X
One joint Board of Appeal for the 3 ESAs			X			
The composition of the BoA			X			

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

FFA is concerned that there are limitations for the ability to appeal against the decisions of an Authority 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 (Article 60.1 EIOPA Regulation).

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

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

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

FFA believes that the Joint Committee of the ESAs plays an important role for the exchange of information and coordination of cross-sectoral supervisory policy. Nonetheless, certain flaws and challenges emerged in the cooperation of the ESAs and particularly where there is diverging impact of policies on the different sectors (e.g. PRIIPs).

Indeed, businesses and products are indeed different between banking, insurance and asset management sectors. Therefore, it is important that the ESAs are operating as individual legal persons and that the Joint Committee remains as a coordinative group without an own legal personality

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know- No opinion- Not applicable
Consumer Protection and Financial Innovation			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			

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

### 3 Direct supervisory powers

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know- No opinion- Not applicable
Credit Rating Agencies						X
Trade Repositories under EMIR						X
Trade Repositories under SFTR						X
Securitisation Repositories (STS)						X

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

N/A

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know- No opinion- Not applicable
Credit Rating Agencies						X
Trade Repositories under EMIR						X
Trade Repositories under SFTR						X
Securitisation Repositories (STS)						X

**Please explain your answers to question 3.2:**

N/A

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

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

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

With regards to EIOPA's mandate and the regulation of the EU insurance market, FFA believes that there are no direct supervisory powers necessary. Contrary to the banking supervision which is centralised at the EU level for the biggest undertaking, the insurance market is not fundamentally systemic as liabilities are not immediately payable and liquidity risks are not present. Therefore it is not necessary to give direct supervisory tasks for EIOPA which should focus instead on fulfilling its current mandate, particularly with regards to the consistent application of the regulatory framework, supervisory convergence and effective coordination of NSAs.

Of specific nature is the supervision of critical third-party ICT service providers. As considered in EIOPA's guidelines on the use of cloud services, EIOPA's guidelines on ICT security and in the current European Commission proposal on the Digital Operational Resilience of the Financial Services Sector (DORA), centralised supervision of such service providers is important. The existing provisions on the outsourcing of critical functions and services to third parties and the foreseen oversight duties for the outsourcing undertakings might fall short where there is a significant imbalance of power between the contractual parties. Furthermore, the size and concentration of the markets for some of these services (e.g. cloud) could make a centralised supervisory assessment and certification efficient, avoiding repetitive procedures for outsourcing undertakings/users and supervisors alike. If the FFA is in favour of having a centralised supervisory system within the framework of DORA, the FFA does not support the recent EU Council's proposal on DORA to

designate EBA as the only supervisor for the oversight framework of critical ICT third party service providers.

Furthermore, regarding AML-CFT, the FFA is concerned by the future EU supervisory authority. FFA does not want EBA to be the exclusive AML supervisory authority for financial sector. The specificity of insurance in relation to EU AML regulation need to be taken into account.

EIOPA must remain the lead supervisor for the insurance sector even for trans-sectoral issues such as AML.

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

Yes

No

~~Don't know / no opinion / not relevant~~

**Please explain your answer to question 3.4:**

As stated above, FFA believes that the EU-wide and centralised supervision and certification of critical third-party ICT service providers (e.g. cloud service providers) would be desirable. EBA should not be the only lead for the oversight framework of critical ICT third-party service providers.

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

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

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

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

FFA is of the view that the cooperation between the ESRB and the ESAs as part of the ESFS functions well overall.

The recent experience during the COVID-19 crisis, however, highlighted a significant problem for the ESRB. For the insurance market, ESRB policies seem to replicate EIOPA policy decisions or to be driven by a banking-inspired mindset. The recommendation of the ESRB of May 2020 to ban dividends for both banks and insurers until January 1st 2021 didn't take into account the specificities of the insurance sector which showed its resilience during the Covid-19 crisis.

On more general policy areas, the ESRB acts to support the repetitive and highly questionable call of EIOPA for additional powers for the macroprudential supervision of the insurance market, i.e. liquidity tools and systemic risk measures as showed during the process leading to EIOPA technical advice on the Solvency II review. The highly interlinked governance of the ESFS threatens the independence of the ESRB from the ESAs.

## B. QUESTIONS ON THE SINGLE RULEBOOK

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### 5 The ESAs work towards achieving a rulebook

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

~~Yes~~

No

Other

~~Don't know / no opinion / not relevant~~

**Please explain your answer to question 5.1 for EIOPA:**

The recent opinion published on 15 April of the Advocate General of the CJEU on EBA guidelines regarding Product Oversight and governance arrangements for retail banking products showed that guidelines could be declared null when ESAs are exceeding their competences. While the final judgment of the CJEU on that case is not expected before end of 2021, this case is showing that soft law enacted by ESAs such guidelines must be limited.

The FFA reiterates its response to question III and 1.7.3 and the importance of maintaining the regulatory and legislative hierarchy. Neither at European nor at national level should policies be taken by the ESAs which pre-empt the ordinary political process. The FFA believes that regulatory initiatives should remain the sole power of Co-legislators. Excluding regulatory initiatives from the legislative procedure undermines the credibility of the process and of Co-legislators. The EIOPA initiative on Guidelines on Product Oversight and Governance ahead of the review of the Insurance Mediation Directive or the issuance of EIOPA ICT Guidelines ahead of DORA were illustrative in this respect. In addition to the limited legitimacy of regulation through the backdoor, their implementation is, usually, highly depending on the different mandates of competent authorities. Other than in an ordinary legislative procedure where the degree of harmonisation can be defined by Co-legislators, the implementation of EIOPA guidelines or (supervisory) statements depends on the individual mandates and powers of National Competent Authorities (NCAs). Instead of regulatory and supervisory convergence, fragmentation and an unlevel playing field can be the result, with national gold-plating or regulatory arbitration challenging fair competition across the single market.

It would be beneficial to remind the necessity for the guidelines to take a “less is more” approach. Guidelines are often an “afterthought” of the regulation which are used by EIOPA as a quasi-regulatory standard. The fact that EIOPA is keen to convert many guidelines into the binding regulations in all its response to EC’s calls for advice is an evidence of this. While guidelines should help supervisory convergence, thus reducing the burden on firms, the contrary often happens: guidelines add to the compliance burden.

EIOPA should also refrain from issuing guidelines in areas where the legislators have indicated their intention to regulate. An example of this are EIOPA guidelines on ICT published end 2020 and for application by H2 2021, i.e. over the same timeline as DORA. This creates issues with the articulation of texts and unnecessary confusion. Broadly speaking, soft law should always have an exceptional and indicative character in accordance with the hierarchy of European standards. Soft law must be avoided as much as possible in favour of hard law.

Finally, it is important that the guidelines and recommendations are regularly reviewed. A specific example are the EIOPA Guidelines on Basic Risk (EIOPA-BoS-14/172). The guidelines have been heavily criticised by stakeholders during their development. Since the application of the guidelines, some of the elementary concerns materialised as these guidelines fail to harmonise the interpretation and application rules, their core aim in accordance with paragraph 1.4 of these guidelines. Nonetheless, there is divergence among NCAs on what constitutes basis risk and how it should be quantified in the standard formula. The guidelines lead to inefficiencies in undertakings’ risk management: The exclusion of mitigation techniques from insurance companies’ risk management as they are limiting undertakings’ abilities to transfer insurance risks to reinsurers. In consequence, the guidelines hinder an efficient insurance market. These concerns have been highlighted from the

beginning and reiterated as part of the Solvency II Review – but EIOPA once again did not listen to the industry feedback in its final Advice.

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

~~Yes~~

~~No~~

**Other**

~~Don't know / no opinion / not relevant~~

**Please specify what you mean by 'other' in your answer to question 5.2:**

RTS ensure high quality rules because they are binding and improve the harmonization among member States. FFA believes that the process as foreseen in Article 290 TFEU and Article 10 EIOPA Regulation can ensure an effective and efficient process. However, with regard to the timetable, Regulatory Technical Standards (see art.10 to 15 EIOPA's regulation) could be problematic for financial entities when they are published one year after the entry into force of the Regulation or the Directive, for ex. DORA regulation and future RTS art. 14 as well as the RTS for the disclosure regulation. On the other hand, it is also the case with the RTS regarding the sustainable finance disclosure regulation which are not yet published at the official journal of the EU while the regulation is applicable since March 10.

**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? :**

FFA believes that it is an important prerequisite for the quality of technical standards (and other tools which are jointly developed) that the ESAs have to adopt the standards in unanimity. Each of the ESAs has a specific role and expertise to contribute to the process. The process can only run "smoothly" if the concerns and technical problems arising from the standards have been duly considered and appropriately addressed. Then, a blocking minority appears to be a safeguard in the end delivery. It is a last resort tool when a text is not suited to the issues of one sector and should be preserved.

The review of the PRIIPs RTS is a very negative example in this respect. While EIOPA BoS rejected the draft RTS in July 2020, political pressure was build-up to force the Authority into adopting the very same standard. EIOPA finally did so in February 2021.

FFA believes that this process is highly inappropriate and flawed. EIOPA BoS members refused to approve the RTS based on its inaccuracy for insurance products and the potential consumer threat which the implementation of the standard will cause. By pushing the standard through the EIOPA BoS without addressing the concerns of the EIOPA BoS the European Commission and the ESAs expose EU consumers to considerable risk caused by the provision inaccurate or misleading information and insurance undertakings to legal uncertainty. More than three quarters of the products in scope of the PRIIPs Regulation are insurance-based investment products (IBIPs). Nonetheless, have the concerns of the authorities in charge of the supervision of the marketing of these products been ignored.

Rather than further undermining the process of the joined development of technical standards by the ESAs in the interest of “smooth” process and at the expense of consumers and market credibility, the governance should be strengthened to ensure that concerns of each of the ESAs are appropriately addressed before the adoption of the technical standard by the European Commission. The PRIIPs RTS will do more harm than good and should be a warning example.

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

~~Yes~~

~~No~~

**Other**

~~Don't know / no opinion / not relevant~~

**Please specify what you mean by ‘other’ in your answer to question 5.4:**

The stakeholders are sufficiently consulted, but the potential impacts are not sufficiently assessed. In general, EIOPA adheres to the standards set out in its establishing regulation and what is understood as better regulation with regards to the development of RTS and Implementing Technical Standards (ITS), guidelines, recommendations etc. It is important to note that measures to improvement to the consultation and assessment process must not lead to a tick-the-box exercised. Providing feedback to consultation involves significant efforts from stakeholders. The assessment and feedback statement should reflect these efforts and provide an appropriate response to the aspects and concerns raised.

The EIOPA opinion on the 2020 review of Solvency II is a good example. The opinion was prepared based on excessive consultations on various options and additional proposals were requested. Stakeholders and EIOPA made significant efforts on these consultations. Despite the volume of the opinion (about 100 pages), its background analysis document (over 1000 pages) and its background “impact assessment” (almost 500 pages), FFA does not feel that the views of stakeholders have been sufficiently reflected, specifically with regards to the concerns raised about an alternative method for the extrapolation of the risk-free-rate term structure suggested by EIOPA and a reviewed calibration of the interest-rate sub-module. Rather than taking the concerns into account and testing the impact of alternative suggestions, EIOPA went ahead with its own flawed methodology.

Finally, the potential impacts that EIOPA’s standards and guidance should not be assessed in a narrow way and limited to supervisory objectives but should also encompass the broader objectives of the European Union. EIOPA should be able to demonstrate how their regulation, guideline, statement, opinion objectively contributes to deliver the priorities of the EU. This is a matter of accountability of EIOPA action before the EU legislators, the stakeholders and the wider public.

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

Since its establishment in 2010, EIOPA issued 44 guidelines, either by itself or jointly with the other ESAs.

Although not being binding in principle, they considerably add to the compliance burden in practice. Reasons advanced by EIOPA to issue guidelines are often shallow or hypothetical and concrete evidence of wrongdoings that the guidelines would prevent are missing. Guidelines are often more difficult to interpret than the binding legal text they try to explain. As a result, it is common to see that the guidelines themselves are interpreted differently from one supervisor to another, so negating the purpose of bringing convergence. In most instances, the matters addressed by the guidelines are either clearly covered by the Solvency II legislation or could have been simply addressed by more discussions/cooperation between the NCAs that raised the issue.

For the consistency of the single rulebook, it is essential that the hierarchy of measures is ensured and that the measures are build-upon each other and not developed in parallel. For ex. regarding EIOPA's Guidelines on ICT, they have been published whereas DORA is under discussion and which provide future RTS prepared by EIOPA. This situation is confusing for insurance undertakings and lead to legal uncertainty. To safeguard the consistency and hierarchy of measures, the addition to Article 16 EIOPA Regulation that "guidelines and recommendations shall not merely refer to, or reproduce, elements of legislative acts [or add new requirements/concepts]" (Article 16.2a EIOPA Regulation) is essential.

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

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

FFA believes that it is indispensable that the mandate of EIOPA (and the other ESAs) for the issuance of guidelines is clearly defined. Therefore, two steps are necessary: a) the definition of the legal acts under which EIOPA can be empowered to issue guidelines and b) the clear description of the mandate and empowerment for the specific guideline in this legal text. The preparatory guidelines under Solvency II or the pre-emptive guidelines on product oversight & governance ahead of the IMD review provide evidence that processes and mandates need to be clearly defined.

It is important that EIOPA does not become a quasi-regulator. EIOPA is a supervisory authority executing a predefined mandate and representing supervisory expertise and interest. Political and strategic decisions must not be subject to the mandate and the power of the Authority. Such decisions need to remain with co-legislators. In addition, it must be ensured that soft-law measures issued by EIOPA do not present any right of initiative neither explicitly nor implicitly triggering legislative processes.

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

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

~~Other~~

~~No improvements are needed~~

Don't know / no opinion / not relevant

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

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

~~Yes~~

No

~~Don't know / no opinion / not relevant~~

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

We agree with the current scope of the ESMA mandate e.g. enforcement of financial information and supervisory convergence in the consistent application of IFRS for listed entities on regulated markets. However, we are of the opinion that the mandate of ESMA should not be extended, in particular with a mandate to draft RTS on this topic. ESMA and National enforcers should neither assume the role of the standard setter nor an interpretative role. IFRS standard, and IFRS interpretations are within the responsibility of IASB. On the other side, the current process of IFRS endorsement at European level, put in place following the Maystadt report recommendations with a wide support from Member States, is satisfactory and we do not see any valid reason to modify it.

FFA believes that ESMA could undertake, as a later stage, further steps to further harmonize enforcement of non-financial information provided by issuers in the scope of the Transparency Directive when the reporting standard would have been issued. However we are of the opinion that first ESMA's role is to be supportive of the work undertaken by EFRAG which has the primary role regarding the harmonisation of non financial reporting as indicated by the European Commission. At a later stage a consistent level of enforcement could be an important element also in the context of the CMU 2.0-related initiatives of the Commission (e.g. establishment of ESAP).

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

~~Yes~~

No

~~Don't know / no opinion / not relevant~~

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

We believe that ESMA has a legitimacy to play a role, along with national enforcers, by regularly bringing to the attention of the stakeholders the key accounting issues that they encounter. ESMA already provides useful insight for all the related parties, including those who prepare financial statements and auditors, on the enforcement of financial information in the EU. We do not see any valid reason to enlarge the ESMA mandate on this topic.

At a later stage when sustainability reporting standard would have been issued ESMA could also play a role, along with national enforcers, by regularly bringing to the attention of the stakeholders



the key issues that they encounter on the enforcement of this standards. It could have a positive effect on the adoption of non-financial reporting by undertakings.

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

~~Yes~~

**No**

~~Don't know / no opinion / not relevant~~

We believe that the reform of the EU audit legislation with the establishment of the CEAOB (Committee of European Auditing Oversight Bodies) offers a well-designed and efficient framework.

We do not see any valid reason to extend the ESMA's mandate on this topic.

National competent audit authorities are closer to the audit market and as such may intervene more efficiently as they have a better and more direct knowledge of their markets.

Were ESMA to be granted the role of the EU audit supervisor, we believe this would create conflicts of interest between audit supervision and enforcement in the financial reporting area, and would lead to judge and jury in the same case.

FFA believes that legislations listed in Article 1 (2) of the ESMA's founding Regulation strikes the proper balance of what is important to ensure that ESMA can be effective when undertaking actions necessary from the European perspective; specifically as the Article 1 (3) of the ESMA's founding Regulation already provides a basis for ESMA being active in the field of corporate governance, 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). Hence, from FFA's perspective an enlargement of the scope does not seem to be urgently required.

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

FFA believes that the some of the opinions issued by EIOPA may provide value for the integration of the single market as well as regulatory and supervisory convergence. However, the variety of the opinions provided by the Authority is very wide. It further has to be assessed if the opinions are made in preparation of legislative activities, facilitate consistent supervisory practices or other aspects.

The variety might already be subject to the dilemma of opinions as a tool. In accordance with Article 16a of the EIOPA Regulation, EIOPA is invited to provide opinions "on all issues related to its area of competence". The different nature of the opinions leads to very different consequences for NSAs and undertakings. The most recent opinion by EIOPA on the review of the Solvency II Directive provides the technical advice from as requested by the European Commission in its Call for Advice from February 2019. This opinion does not have any immediate impact on NSAs or insurance undertakings. In contrast, EIOPA's opinion on the supervision of remuneration principles in the insurance and reinsurance sector aimed to provide "guidance to the supervisory authorities on how to challenge the application of certain principles [...]" (para. 2.4 of this Opinion) and thereby might have a substantial impact on NCAs policies and supervised undertakings.

In addition, the different tools are not easy to differentiate (see also our answers to question 1.1.2). The reason why consistent supervisory practices are, in one case, subject to an opinion, and in another subject to recommendations, as eg following the peer review on EIOPA's decision on the collaboration of the insurance supervisory authorities, is not sufficiently clear.

As referred to in the answer to question 2.4.1, the sheer amount of EIOPA activity challenges an appropriate stakeholder involvement. Additional extra-curricular activities should, therefore, be duly considered.

In addition, technical advice and opinions provided by the Authority must not form quasi-legislation or provide for the empowerment/force for NSAs to take regulatory action. One example is the review of the implementing technical standards (ITS) on reporting requirements under Solvency II. EIOPA has proposed substantial changes to the Quantitative Reporting Templates under Solvency II. In accordance with the Solvency II Directive, EIOPA is empowered to draft these ITS for adoption by the European Commission. Notwithstanding the outcome of the review of the Directive, EIOPA already started the review of the ITS. The insurance industry strongly believes that the review of the ITS as subordinated regulation to the Solvency II Directive should await and not pre-empt the result of the legislative procedure.

## 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:**

FFA believes that regulatory convergence and the further integration of the EU single market (for insurance) should be the key objectives for the European Commission for the upcoming regulatory reviews of the EU financial services regulation. In this respect the opportunity for national gold-plating and regulatory arbitrage can and should be limited in the interest of fair competition and consistent consumer protection in the EU.

**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?**

Banking

Insurance

Asset management

Market infrastructure (CCPs, CSDs)

Market organisation (MiFID, MiFIR, MAR)

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

The NIS directive and its transposition in France is creating an unlevel playing field at EU level between insurance undertakings as well as the AML directive and its transposition in France.

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



For the NIS directive even if the insurance sector was not identified at EU level as essential, French legislator decided to include it at French level during the implementation process. Regarding the AML directive ( 2015/849) the French legislator decided to include non-life insurance into the scope of the regulation even if EU directives only cover life insurance

EIOPA's Opinion on the Solvency II Review is based on an assessment of a long list of identified supervisory divergences. However, it appears that most divergences arise from gold-plating supervisory practices and not from a group of NCAs not adhering to the EU regulation. The Opinion on the Solvency II review is typical of the asymmetrical treatment of supervisory divergences, where convergence is always sought to be based on the most conservative practices. The Opinion is, in this regard, a tentative to have gold-plating supervisory practices recognised in the hard regulation.

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

**Yes**

No

Don't know / no opinion / not relevant

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

FFA believes that regulatory convergence is a fundamental prerequisite for the further efficient and convergent supervision across the EU single market. Common standards and a common supervisory culture need to be based on a common regulatory framework.

With regards to the measures enhancing the supervisory convergence, FFA believes that EIOPA should focus on the common application of the rules rather than acting as a quasi-regulator and implementing new rules or tightening the regulatory framework. Furthermore, when designing European law, the Commission should take into account the specific features of the insurance business model.

The identification of best practices, recommendations on the applications of the review, targeted peer reviews as well as timely and consequent follow-up where shortcomings and overregulation are identified should be the key targets for EIOPA's mission. The aim of EIOPA's ambition should be a common supervisory culture and a consistent application, avoiding gold-plating and supervisory arbitrage across member states.

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

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

~~Yes~~

**No**

**Please explain your answer to question 6.4.1 :**

We have witnessed co-legislators transferring responsibility to the European supervisory authorities (ESAs) for crucial technical elements at Levels 2 or 3. This has led to the ESAs becoming quasi-legislators, and the role of the co-legislators in the adoption of Level 2 measures lowered to either fully rejecting or accepting the text proposed by the ESAs and the Commission.

In addition, there are examples where the ESAs' actions have resulted in the blurring of the roles and responsibilities between themselves and legislators, such as by drafting Levels 2 and 3 measures that are not in full compliance with Level 1 or go beyond the Level 1 mandate.

As expressed above, there also cases where EIOPA publishes Guidelines (level III) without any levels I or II...see Cloud Guidelines and ICT Guidelines...even if these Guidelines are legally considered as "soft law", they are applied by national supervisor as a legal act with binding force (reinforced with a date of entry into force...)

Looking forward, priority should therefore be given to jointly reaching high-quality and technically sound legislation with no legal uncertainty. To this end, co-legislators need to fully play their role of brokering the political compromise, whilst respecting the advisory role of the ESAs. Hence, Level 1 legislation should limit the number of mandates for Level 2 to what is technically necessary, and the ESAs should adhere to the Level 1 text mandate.

However, as highlighted in Q5.1 already, the FFA has strong reservations vis-à-vis the Level 3 – Guidelines. The FFA believes that the hard regulation, made of a balance between principle-based regulation at level 1 and more rule-based regulation at level 2 where required to guarantee maximum harmonization, should be self-explanatory and therefore self-sufficient. The FFA has no evidence of the Level 3 making the level 1 and 2 easier to apply for the industry. On the contrary, although not being binding in principle, they considerably add to the compliance burden in practice. Reasons advanced by EIOPA to issue guidelines are often shallow or hypothetical and concrete evidence of wrongdoings that the guidelines prevent are missing. In reality, guidelines are often more difficult to interpret than the binding legal text they try to explain. As a result, it may well be that the guidelines themselves are interpreted differently from one supervisor to another, so negating the purpose of bringing convergence. In most instances, the matters addressed by the guidelines are either clearly covered by the Solvency II legislation or could have been simply addressed by more discussions/cooperation between the NCAs that raised the issue.

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

Yes

No

Don't know / no opinion / not relevant

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

Please see our answer to question 6.4.1. EU Regulations are the best way for building an EU single rulebook. The three-level mechanism complexify the framework applicable to financial actors.

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

Level 1 (legislation agreed by the co-legislators)

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

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

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

FFA believes that an adequate mix of measures is necessary. As stated above, regulatory convergence is the basis for a uniform single rulebook. Therefore, level 1 and level 2 must be self-explanatory and as a result self-sufficient. Also, the mandate for EIOPA to develop level 3 measures needs to be clearly defined as, at present, guidelines have not contributed to making the single rulebook more manageable or intelligible, quite the contrary.

As highlighted in Q5.1 in Q6.4.1 already, the FFA has strong reservations vis-à-vis the Level 3 – Guidelines. The FFA believes that the hard regulation, made of a balance between principle-based regulation at level 1 and more rule-based regulation at level 2 where required to guarantee maximum harmonization, should be self-explanatory and therefore self-sufficient. The FFA has no evidence of the Level 3 making the level 1 and 2 easier to apply for the industry. On the contrary, although not being binding in principle, they considerably add to the compliance burden in practice. Reasons advanced by EIOPA to issue guidelines are often shallow or hypothetical and concrete evidence of wrongdoings that the guidelines prevent are missing. In reality, guidelines are often more difficult to interpret than the binding legal text they try to explain. As a result, it may well be that the guidelines themselves are interpreted differently from one supervisor to another, so negating the purpose of bringing convergence. In most instances, the matters addressed by the guidelines are either clearly covered by the Solvency II legislation or could have been simply addressed by more discussions/cooperation between the NCAs that raised the issue.

The desire to create a uniform single rulebook must not undermine the legislative process or bring EIOPA into the position of a quasi-regulator filling regulatory gaps. Therefore, a consistent approach is necessary.

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

FFA is of the view that the hierarchy of the legislative process or the sequencing of measures is absolutely essential for creating a consistent single rulebook.

Deficiencies in the Lamfalussy process have created unnecessary compliance constraints for the industry, which is often left with insufficient time to implement the required changes in their processes. This has been because the time necessary for the development, adoption, translation and publication of the Level 2 texts that are crucial for proper implementation has rarely been taken into account when setting implementation deadlines.

It is crucial that the industry be provided with enough time to implement new legislation. It is therefore necessary to allocate a minimum of one year from the publication of the Level 2 texts in the Official Journal of the EU.

Similarly, Level 3 measures that are clarifying Level 1 and 2 texts and are therefore necessary for their proper implementation must be finalised a year before the texts they aim to clarify become applicable.

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

	1 (unimportant)	2 (rather not important)	3 (neutral)	4(rather important)	5 (fully important)	Don't know- No opinion- Not applicable
Strong interlinkages with areas of law which remain non-harmonised (e.g. CRIM-MAD and national criminal law)				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						X

**(if other aspects) Please specify to what other factors you refer and provide concrete examples:**

N/A

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

Yes

No

~~Don't know / no opinion / not relevant~~

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

~~Banking~~

Insurance

~~Asset management~~

~~Market infrastructure (CCPs, CSDs)~~

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

~~Other~~

**Insurance**

**Please identify the specific piece(s) of legislation at level 1 in the area of Insurance that should become more detailed and contain a higher degree of harmonization and explain:**

In the context of the Solvency II review, the industry is arguing for more harmonisation regarding the application of the principle of proportionality to allow for a harmonised application. While the directive explicitly mentions proportionality, some NSAs are of the view that the regulation does not allow them to deviate from specific requirements for reasons of proportionality.

As a matter of principle, it should be crystal clear that when a matter is not addressed at level 1, there is no hook to address it level 2 or level 3. This principle is key to preserve the hierarchy of norms, prevent regulatory or quasi-regulation inflation and maintain the sense of prudential regulation. The scope of prudential regulation, which is primarily about solvency, cannot be extended indefinitely to cover any emerging topic. However, the reality is that this basic principle has been nullified by years of extension of the quasi-regulation.

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

At the opposite, the insurance distribution directive (IDD) is a minimum harmonisation directive with member state options, and it is vital that the IDD remain so in the future. The IDD sets a minimum standard, but additional measures can be introduced at national level if deemed necessary. This allows the necessary flexibility to consider and accommodate differences in local market structures and consumer expectations. This is the correct way to regulate insurance markets, but it is inevitable that this approach leads to some divergent national practices. These differences in national rules should not be viewed as a barrier to cross-border business, as they stem from differences in national markets themselves.

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

~~Yes~~

No

~~Don't know / no opinion / not relevant~~

**Please explain your answer to question 6.9:**

As a matter of principle, it should be crystal clear that when a matter is not addressed at level 1, there is no hook to address it level 2 or level 3. This principle is key to preserve the hierarchy of norms, prevent regulatory or quasi-regulation inflation and maintain the sense of prudential regulation. The scope of prudential regulation, which is primarily about solvency, cannot be extended indefinitely to cover any emerging topic. However, the reality is that this basic principle has been nullified by years of extension of the quasi-regulation.

**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?**

~~Across the board (e.g., via an Omnibus act which amends multiple sectoral acts at the same time)~~

In a targeted manner through individual sectoral reviews

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

FFA believes that a targeted approach is more appropriate. While it agrees to the idea of setting the three ESAs up in parallel, the differences in their development justify a more tailored approach. Already during the 2019 ESA Review, the holistic approach taken created some confusion and limits.

In addition, products and markets across the financial services sector differ significantly and so does the state of regulatory integration. Therefore, a targeted approach is necessary. Nonetheless, these targeted approaches should have the common objective of further integration of the EU single market fostering fair competition and consistent consumer protection across the Union.

For the insurance industry the ongoing review of the prudential supervisory framework Solvency II is the perfect opportunity to drive regulatory and supervisory convergence further and to remove barriers to the single market. It needs to be ensured that a level-playing field will finally exist between market participants across the Union notwithstanding their business model or their location.