

## Targeted consultation on supervisory convergence and the single rulebook

### General questions

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

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

**Please explain your answer to question I on EBA:**

ESBG welcomes and supports the Commissions continued work towards enhanced harmonization of EU rules and supervisory convergence to ensure a level playing field for banks operating in the same market. As a general remark we believe it is still too early to evaluate many of the aspects in the consultation as many of the changes have been made fairly recently and their functioning has not been properly tested in practice, e.g. the joint bodies of the ESAs, direct supervisory powers etc.

Specifically, the enforcement of EU rules on supervision is not in the competence of the EBA.

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

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

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

**YES**

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

In our view, the current system of securities supervision, which is based not only on EBA but also on the national competent authorities (NCAs), should generally remain in place because it is best suited to deal with the different market structures of the Member States. The NCAs have a sound knowledge of the particularities of the respective national financial markets and, therefore, the necessary supervisory expertise. The 2019 ESA review provided meaningful and sufficient adjustments to EBA's mandate and we currently see no need for further additional elements.

Nevertheless, we have identified a political obstacle affecting all ESAs' mandates (not only EBA's one). Policy makers at EU level are under pressure to finalise some Regulations and Directives and consequently, they leave some political questions to level 2 in an attempt to overcome political deadlocks encountered in the European Parliament or the Council (legislative proposals from the sustainable finance action plan are a good example of this problem). This situation poses serious challenges for ESA's work, which face the challenge to fill the political void, that is not its remit as

substantial questions need to be tackled on Level 1. The challenge is aggravated by the fact that in those instances, ESAs are left with unclear legal terms used in the level 1 text. This is why we demand from policy makers to better assume their political mandate in order to better guide ESA's to fulfill their mandates.

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

**YES**

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

In our view, the current system of securities supervision, which is based not only on ESMA but also on the national competent authorities (NCAs), should generally remain in place because it is best suited to deal with the different market structures of the Member States. The NCAs are the competent supervisory authorities in the field of securities regulation and investor protection issues. They have a sound knowledge of the particularities of the respective national financial markets and, therefore, the necessary supervisory expertise. The 2019 ESA review provided meaningful and sufficient adjustments to ESMA's mandate and we currently see no need for further additional elements.

First of all, it is absolutely crucial that Q&As of the ESMA comply with level 1 and level 2 texts of the European legislator and do not go beyond them. Q&A by ESMA, which have a great impact in practice, should generally be consulted. This would allow identifying potential problems in the practical handling of Q&A at an early stage. The current provision in article 16b of regulation 1095/2010 is too cumbersome. In addition, some Q&A are not comprehensible in themselves and need further explanation. In some cases, setting implementation periods might be sensible.

We also think that ESMA's "Public Statements" provided helpful information and needed clarity in relation to market structure topics (e.g. recently with respect to the application of the temporary suspension of the obligation to publish RTS 27 reports due to the MiFID Quick Fix, Brexit-related aspects, supervisory priorities with regard to reporting under SFTR in light of the COVID-19 pandemic, etc.) and should be also issued in the future in this regard.

Finally, we have identified a political obstacle affecting all ESAs' mandates (not only ESMA's one). Policy makers at EU level are under pressure to finalise some Regulations and Directives and consequently, they leave some political questions to level 2 in an attempt to overcome political deadlocks encountered in the European Parliament or the Council. This situation poses serious challenges for ESA's work, which face the challenge to fill the political void, that is not its remit as substantial questions need to be tackled on Level 1 (legislative proposals from the sustainable finance action plan are a good example of this problema). The challenge is aggravated by the fact that in those instances, ESAs are left with unclear legal terms used in the level 1 text. This is why we demand from policy makers to better assume their political mandate in order to better guide ESA's to fulfill their mandates.

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

NO

We believe that for all the ESA's the major issue is the lack of appropriate balance between Level 1 and Level 2 legislation. Over the years, we have observed a significant increase of provisions being delegated to level 2 in many dossiers. This tendency creates regulatory uncertainty for institutions, ESAs and NCAs and moreover this is against better regulation principles adopted by the Commission. The co legislators should be engaged to adopt all crucial political issues at level 1 (see our answer to previous question). The delegation of power must be clear, precise and detailed and may only aim to supplement certain non-substantive elements of the legislative acts.

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

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## 1. The supervisory convergence tasks of the ESAs

### 1.1 Common supervisory culture/supervisory convergence

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

5 - the most significant contribution

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

EBA is contributing significantly to promoting a common supervisory culture and consistent supervisory practices through their detailed regulatory and implementing technical standards, various guidelines and Q&A. Whether the work of the EBA could have been more effective or contributed to this *to a larger degree* is a question of cost vs benefits. There is always room for improvement. On the other hand this is likely to be a matter of available resources and prioritization of tasks. We are not in a position to have an opinion on whether or not the EBA could have prioritized differently.

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

## 5 - the most significant contribution

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

First of all, it is absolutely crucial that Q&As of the ESMA comply with level 1 and level 2 texts of the European legislator and do not go beyond them. Q&A by ESMA have a great impact in practice. Therefore, they should generally be consulted. This would allow identifying potential problems in the practical handling of Q&A at an early stage. The current provision for the consultation of Q&A in article 16b of regulation 1095/2010 is too cumbersome (three NCAs have to support the consultation). In addition, some Q&A are not comprehensible in themselves and need further explanation. In some cases, setting implementation periods might be sensible.

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

	1	2	3	4	5	No opinion
Providing opinions to competent authorities				X		
Promoting bilateral and multilateral exchanges of information between competent authorities				X		
Contributing to developing high quality and uniform supervisory standards				X		
Contributing to developing high quality and uniform reporting standards				X		
Developing and reviewing the application of technical standards				X		
Contributing to the development of sectoral legislation by providing advice to the Commission				X		
Establishing (cross)sectoral training programmes						X
Producing reports relating to their field of activities				X		
Conducting peer reviews between competent authorities			X			
Determining new Union strategic supervisory priorities				X		

Establishing coordination groups						X
Developing Union supervisory handbooks				X		
Monitoring and assessing environmental, social and governance-related risks					X	
Adopting measures using emergency powers				X		
Investigating breaches of Union law				X		
Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)				X		
Mediating between competent authorities						X
Monitoring the work of supervisory and resolution colleges						X
Publishing on their website information relating to their field of activities					X	
Monitoring market developments					X	
(Only for the EBA) Monitoring liquidity risks in financial institutions					X	
(Only the EBA) Monitoring of own funds and eligible liabilities instruments issued by institutions					X	
Initiating and coordinating Union-wide stress tests of financial institutions					X	
Developing guidelines and recommendations					X	
Developing Q&As					X	
Contributing to the establishment of a common Union financial data strategy						X
Providing supervisory statements					X	
Other instruments and tools to promote supervisory convergence, please indicate						X

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

#### Concerns about ESAs overstepping their mandates:

- Unfortunately, we have the impression, that in some cases the EBA oversteps its mandate (see Loan origination GLs and the introduction of ESG-factors within the creditworthiness assessments)
- More coordination between ECB and EBA would improve supervisory convergence and consistency for all market participants – this would even lower costs (for financial institutions AND supervisory authorities) and avoid unnecessary overlaps of requirements

As member of the European Banking Industry Committee (EBIC) we raised already at previous occasions the following concerns:

Product oversight and governance arrangements for retail banking products (POG): Those guidelines are based on Art. 16 [Regulation (EU) n. 1093/2010 (EBA)]. This means that the authorities are active in the area of retail banking without prior mandate resulting, for instance, from a directive. However, the guidelines on POG regulate the life circle of retail banking products in greatest detail. Above all, these EBA draft guidelines are not convincing in view of the principle of proportionality. Retail banking products of rather low complexity such as savings deposits, payment accounts, payment services or payment instruments which predominantly cover basic needs have been regulated in great detail and in a uniform manner. The POG guidelines do not consider the mainly very low level of complexity of retail banking products.

- See Court of Justice of the European Union PRESS RELEASE No 64/21: “The Advocate General proposes that the Court should find that the Guidelines on product oversight and governance arrangements for retail banking products should be declared invalid in so far as **the EBA has acted outside the powers bestowed upon it by Regulation No 1093/2010**“

Deposit Guarantee Scheme Directive (DGSD): The EBA Guidelines for Cooperation Agreements are not backed by a DGSD mandate. Instead, the DGSD explicitly states that the EBA may issue opinions and may be referred to if there is a dispute between designated authorities or DGSs about the interpretation of an agreement. There is good reasoning for the level 1 text to restrict the EBA in its level of involvement: since the DGSs can neither influence the content nor the contractual parties of the agreement, there is no factual basis for the EBA to establish an obligation to enter into the multilateral framework (MFA).

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

	1	2	3	4	5	No opinion
Providing opinions to competent authorities					X	
Promoting bilateral and multilateral exchanges of information between competent authorities						X
Contributing to developing high quality and uniform supervisory standards					X	

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



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

The NCAs are the competent supervisory authorities in the field of securities regulation and investor protection issues. They have a sound knowledge of the particularities of the respective national financial markets and, therefore, the necessary supervisory expertise. Therefore, we think that the granularity of ESMA's publications often goes beyond what is necessary to create common supervisory standards.

However, ESMA's "Public Statements" provided helpful information and needed clarity in relation to market structure topics (e.g. recently with respect to the application of the temporary suspension of the obligation to publish RTS 27 reports due to the MiFID Quick Fix; Brexit-related aspects, supervisory priorities with regard to reporting under SFTR in light of the COVID-19 pandemic, etc.) and should be also issued in the future in this regard. In some cases, setting implementation periods might be sensible.

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

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

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

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

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

Promote converging supervisory practices among colleges.						X
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#### **Question 1.1.4 How do you assess the new process for questions and answers (Article 16b)?**

From our point of view it is too early to properly assess at this point of time. We appreciate that the new Q&A tool, inter alia, gives an overview of all new questions received by ESMA and pending publication, but the list of new questions available online does not allow to assess in which direction the question and answer might go. Thus, the practical benefit of the new tool is limited.

Furthermore, Q&A by ESMA have a great impact in practice. Therefore, they should generally be consulted. This would allow identifying potential problems in the practical handling of Q&A at an early stage. The current provision for the consultation of Q&A in article 16b of regulation 1095/2010 is too cumbersome (three NCAs have to support the consultation). Finally, it is absolutely crucial that Q&As of the ESMA comply with level 1 and level 2 texts of the European legislator and do not go beyond them.

#### **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?**

**NO**

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

It takes time for the EBA to respond. In certain cases this can have a material effect on the banks e.g. if the question is relating to an interpretation of regulation made by NCAs affecting the competition environment.

When it comes to the possibility foreseen in article 16b paragraph 4 to consult Q&A, we think that the process is not practical in its current form. So far, as far as ESMA and EBA is concerned, no Q&A has been consulted (to our knowledge). Q&A by ESMA have a great impact in practice. Therefore, they should generally be consulted. This would allow identifying potential problems in the practical handling of Q&A at an early stage. The current provision for the launching of a consultation of Q&A in article 16b of regulation 1095/2010 is too cumbersome. The necessity to align three voting members of the Board of Supervisors (BoS) in order to consult a new Q&A is too burdensome. The mechanism should be simplified.

## **1.2 No action letters**

### **In the framework of the 2019 ESAs review:**

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

**NO**

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

The mechanism of no action letters is in principle welcome. While we have not seen many no-action letters, besides ESMA's no-action letter on ESG disclosure requirements under the Benchmark Regulation, we believe that the instrument is not helpful the way it is designed.

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

EU Taxonomy Regulation: although the bank were requested to disclose their ESG strategy & ESG Disclosure Regulation due to the fact that the development of L2-texts is very much delayed. Actually, in every area where the application deadlines have been set by L1 texts very ambitiously and subsequently, it turns out that the development of L2-tests need much more time than foreseen at L1. No action letters would provide market participants with the necessary and needed legal certainty.

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

Article 46 para. 2 of the MiFID II delegated regulation raises some practical problems in situations when a client who neither has an email address nor an internet access wants to place an order via telephone. This may also be the case where a client who has an email address or an internet access nevertheless insists on placing an order via telephone without delaying the transaction to consult costs and charges information provided on a durable medium. Indeed, for transactions where time is of the essence, it may not be in the best interest of the client to delay the transaction so that the client can consult the costs and charges information provided by the firm on a durable medium. ESMA remedied this situation by issuing a Q&A. In our opinion, a no action letter would have been a suitable means in this case.

### 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:**

<b>Situation before the 2019 ESAs review for EBA</b>	1	2	3	4	5	No opinion
Convergence in the application of Union law					X	
Convergence in supervisory practices			X			
More wide spread application of best practices developed by other competent authorities	X					

Convergence in the enforcement of provisions adopted in the implementation of Union law						X
Further harmonization of Union rules			X			
Other, please indicate						X

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

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

We do not have enough insight into the peer review process to make any concrete remarks, but in general we believe that peer reviews contribute to increased harmonization through knowledge sharing and easier detection of deviations from a common practice. Whether or not more should be done in this area should be based on a cost-benefit analysis to avoid unnecessary increases in supervisory costs.

<b>Situation before the 2019 ESAs review for ESMA:</b>	1	2	3	4	5	No opinion
Convergence in the application of Union law						X
Convergence in supervisory practices						X

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

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

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

YES

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

Don't know / no opinion / not relevant

#### *1.4 Other tasks and powers*

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

NO

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

Direct information requests by EBA contradict the fact that NCAs are better fit to monitor their national markets.

It is our view that the reporting burden for banks, in particular for the small and less-complex institutions, is too high, both in terms of costs and administrative burden. Banks are faced with various reporting requirements stemming from different authorities both from the EU side and from national authorities, some of which are regular and some ad hoc i.e. accounting, reporting relating to NFRD, pillar 3, COREP, FINREP, reporting to the DGS, stress test exercises, regular reporting required by NCAs, ad hoc data collection exercises both from the EBA and NCAs. There is a need for a more harmonized and integrated approach to data collection between different authorities (ESAs, NCAs, SRB etc.) to avoid double reporting. Reporting requirements from NAs should to the largest extent possible be aligned with common requirements from EU authorities. It is important that definitions and level of granularity is consistent, e.g. definitions in accounting and prudential regulations should preferably be aligned.

we welcome recent initiatives from the EBA in this area, i.e. the discussion paper on integrated reporting, the cost of compliance exercise and the consultation paper on Pillar 3 reporting on ESG-risks where the EBA has strived to align the draft technical standards with ESG disclosures under the EU taxonomy.

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

NO

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

Direct information requests by ESMA contradict the fact that NCAs are better fit to monitor their national markets.

**Question 1.4.2 In the framework of the 2019 ESAs review, in you 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

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

In our opinion, the new tool of strategic supervisory priorities is in general effective in order to achieve supervisory convergence.

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

NO

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

NO

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

In our view, ESMA already has a wide range of tools in order to achieve supervisory convergence. The existing “tool kit” is very comprehensive and we do not see any need for additional tools.

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

4 - Rather significant

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

Fostering and monitoring the NCAs independence is in our view important to ensure harmonized supervisory practices across the EU including accounting for national differences in a harmonized way.

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

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

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

Avoiding overlaps in work with other authorities, particularly with the ECB

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

We do not see any obstacle for an effective supervisory convergence. Well-functioning national (approval) procedures should remain on national level. Utilize know how and staff in competent national authorities as it would minimize administrative burden and costs.

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

YES

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

YES

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

YES

**Please explain your answer to question 1.4.8:**

Current ESA's tasks are already sufficient and there is no need for additional adjustments in terms of the extension of their powers.

**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?**

NO

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

First, it is necessary that there establishes a far-reaching and effective supervisory regulation regarding to digital finance. Currently fails a legal framework which legalizes the use of such tools or tasks. Furthermore, there is a need for clarification which concrete tasks of supervision should be taken in this regard. We believe that EBA is trying very hard to have more convergence in respect of digital finance. However, some member states do not take part in such activities very actively.

**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:**

4 - Rather effective

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



We think that common supervisory actions (CSAs) are in principle a good tool in order to achieve an overview of the different practices in different member states. However, from the perspective of market participants, it is not transparent what ESMA “makes” of the results of CSAs. For example, in its guidelines on appropriateness that were recently consulted, ESMA mentions that it comprises the results of the CSA on appropriateness in 2019. However, to market participants it remains unclear which findings of ESMA in the CSA eventually led to the draft of the appropriateness guidelines. We would appreciate if the results were made public in a way that market participants can identify which (national) market practice, which national supervisory practice or which national particularity lead to the findings and to the actions of ESMA following the CSA.

### 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?**

Don’t know / no opinion / not relevant

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

EBA	Yes	No	N.A.
Before 2019 ESAs’ review			X
After 2019 ESAs’ review	X		

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

ESMA	Yes	No	N.A.
Before 2019 ESAs’ review			X
After 2019 ESAs’ review			X

**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?**

NO

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

YES

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

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

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

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

From our viewpoint the ESAs' response to the COVID-19-crisis was timely and appropriate. To ensure predictability it could possibly have been beneficial if the EU law included a legal basis for the ESAs authorities and responsibilities in these types of situations.

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

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

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

It is positive that ESMA provided a quick response in the investor protection area in relation to the recording of telephone conversations in the context of securities transactions (public statement COVID-19: Clarification of issues related to the application of MiFID II requirements on the recording of telephone conversations). In addition, we fully appreciate and support ESMA's relief measures in other market-related areas such as best execution or transparency calculations which provided certainty for market participants. We also have a positive impression of the cooperation of ESMA and the EU Commission during the crisis, for instance with respect to the amendments to the bilateral margin requirements under EMIR.

**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	2	3	4	5	No opinion
Market illiquidity and implications for asset managers and insurers						X
Impact of large scale downgrades of corporate bonds on markets and entities across the financial system						X

System-wide restraints on dividend payments, share buybacks and other pay-outs	X					
Liquidity risks arising from margin calls						X

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

YES

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

YES

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

Please see our answer to 1.6.1 above

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

YES

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

YES

**Please explain your answer to question 1.6.4 for ESMA:**

Please see our answer to 1.6.1 above

**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

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

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

YES

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

Don't know / no opinion / not relevant

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

Yes

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

We would like to refer to the EBA Discussion Paper (8.1.2 Data access and data sharing on page 125) and the corresponding explanations - in our view these adequately encompass the argumentation and meaningfulness of a cooperation model between the supervisory authorities - it is important that this also applies analogously to ESMA/EIPOA.

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

YES

It must be ensured that the EBA only approaches institutions with its own data requirements in extreme cases. Further coordination and alignment should be sought to reduce redundancy and harmonise definitions. The approach outlined by the EBA in its report on the feasibility study shows that this matter is under consideration.

### 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	2	3	4	5	No opinion
exchange of information and best practices						X
adopt guidelines						X
adopt recommendations						X

**Question 1.7.3.1** In the framework of 2019 ESAs' review, do you think ESMA's new coordination function (Article 31b ESMA Regulation) in relation to orders, transactions and activities that give rise to suspicions of market abuses and have cross-border implications for the integrity of financial markets or financial stability in the EU is an effective tool?

YES

**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?

Don't know / no opinion / not relevant

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

NO

**Please explain your answer to question 1.7.5 on EBA:**

There was already an explosion of content with the development of the EBA GL on Outsourcing (CEBS GL = 11 paragraphs. EBA GL = 119 paragraphs). The EBA GL contains a vastly excessive number of descriptive requirements, which is disproportionate and also makes harmonisation more difficult.

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

NO

**Please explain your answer to question 1.7.5 on ESMA:**

ESMA has published its GL on Outsourcing to Cloud Service Providers one year after the EBA GL on Outsourcing. The contents of the ESMA GL only refer to a small part of outsourcing, namely outsourcing to cloud service providers. It is incomprehensible why the scope is significantly reduced compared to the EBA GL. In addition, ESMA has not taken over the content from EBA GL in many places, but has created new content and definitions. These new contents and definitions in turn lead to an increase in complexity with regard to the regulations on outsourcing. The intentions of ESMA are not comprehensible from the perspective of the banking industry. Since ESMA GL on Outsourcing to Cloud Service Providers is still in the process of being implemented in national regulations, no statement can be made on ESMA's coordination function.

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

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

Consumer Protection Days: The “Joint ESAs Consumer Protection Day” by the “Joint Committee” is a very welcomed initiative. The initiative raises awareness for consumer protection issues in the financial services area. We also appreciate that this initiative also contributes to the goal of strengthening cooperation and ensuring cross-sectoral consistency between the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA). The power to warn about or even ban products in case of (potential) threats to consumers; e.g. EBA warning on virtual currencies/crypto assets

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

It is very positive that ESMA clarifies in Q 28 of its Q&A on investor protection that in the case of orders placed via telephone, the cost information can in some situations be provided orally over the phone prior to the transaction and on a durable medium after the transaction (thus avoiding the transaction to be delayed).

Consumer Protection Days: The “Joint ESAs Consumer Protection Day” by the “Joint Committee” is a very welcomed initiative. The initiative raises awareness for consumer protection issues in the financial services area. We also appreciate that this initiative also contributes to the goal of strengthening cooperation and ensuring cross-sectoral consistency between the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA).

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

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

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

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

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

YES

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

Product intervention is a very powerful supervisory instrument which, however, should only be used as a last resort and with a clearly defined scope. The new timeframes which were introduced in the 2019 review do provide legal certainty in case a product intervention measure is issued by ESMA, so, in our view, the powers are even more effective for their intended purpose. Prior to this, there was uncertainty in the market e.g. as to how often respective measures could be prolonged.

**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?**

NO

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

ESMA's product intervention powers are already a very strong instrument. There is no need for additional intervention powers.

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

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

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

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

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

In our view, mystery shopping is a disproportionate intervention into banks' integrity. For example, in Germany, the fulfilment of supervisory requirements is already reviewed extensively (e.g. by securities auditors). Effective supervision should be ensured in all member states, however this task should be left to NCAs. This also applies with regard to mystery shopping.

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

It is questionable whether ESMA – being a supervisory authority – is qualified to make political decisions. ESMA should focus on insufficient implementation of European law.

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

NO



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

NO

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

ESMA's toolkit is already very comprehensive (e.g. peer reviews, common supervisory actions). We therefore do not see any need to extend these powers.

### *1.9 International relations*

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

The EBA shall pursue a regular dialogue and constructive cooperation on an equal footing with competent regulatory and supervisory authorities of all relevant third countries, notably including relevant authorities of the United States and United Kingdom. Administrative arrangements with supervisory authorities, international organisations or administrations in third countries shall be concluded to strengthen international supervisory coordination and establish consistent, efficient and effective supervisory practices to the benefit of the EU internal market and market participants.

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

The ESMA shall pursue a regular dialogue and constructive cooperation on an equal footing with competent regulatory and supervisory authorities of all relevant third countries, notably including relevant authorities of the United States and United Kingdom. Administrative arrangements with supervisory authorities, international organisations or administrations in third countries shall be concluded to strengthen international supervisory coordination and establish consistent, efficient and effective supervisory practices to the benefit of the EU internal market and market participants.

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

The European Union's equivalence regime has been a focus of discussion in the recent past. Some main points of criticism are the overly politicized nature of equivalence determinations; the lack of a standardized, transparent EU framework; the limited areas covered by equivalence; and the lack of a uniform benchmark.

With regard to the Association of German Banks that has put forward recommendations regarding the EU's equivalence regime in a position paper published on 28 February 2020. While the recommendations in the position paper have mainly been addressed to the European Commission, the EBA can also contribute to the improvement of the system. In particular, the EBA can contribute

to the establishment of a more objective decision-making mechanism and consistent principles for the assessment of third-country equivalence; the EBA can play a pivotal role in exploring further areas to expand the scope of the current equivalence regime; and the EBA can increase the transparency of its own processes as regards monitoring the regulatory and supervisory developments, enforcement practices and market developments in third countries. This shall, in turn, contribute to an increased transparency of granting and withdrawing equivalence, thus establishing a more predictable and reliable system as a whole.

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

The European Union's equivalence regime has been a focus of discussion in the recent past. Some main points of criticism are the overly politicized nature of equivalence determinations; the lack of a standardized, transparent EU framework; the limited areas covered by equivalence; and the lack of a uniform benchmark. While the recommendations in the position paper have mainly been addressed to the European Commission, the ESMA can also contribute to the improvement of the system. In particular, the ESMA can contribute to the establishment of a more objective decision-making mechanism and consistent principles for the assessment of third-country equivalence; the ESMA can play a pivotal role in exploring further areas to expand the scope of the current equivalence regime; and the ESMA can increase the transparency of its own processes as regards monitoring the regulatory and supervisory developments, enforcement practices and market developments in third countries. This shall, in turn, contribute to an increased transparency of granting and withdrawing equivalence, thus establishing a more predictable and reliable system as a whole.

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

YES

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

YES

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

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

NO

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

NO

**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

**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

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

Other

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

The question is unclear. Use of sanctions is sufficiently dissuasive and furthermore in certain cases disproportionately high compared to the infringement.

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

Other

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

The question is unclear. Use of sanctions is sufficiently dissuasive and furthermore in certain cases disproportionately high compared to the infringement.

## **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

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

In principle, the ESA's governance allows them to ensure an objective, independent and efficient decision making. However, there is still room for improvement. For example, with regard to the appointment of the ESMA Stakeholder Group, representation of the different pillars of the banking system (cooperative, private and public) should be factored in. This means, that representatives of all pillars of the banking system should be considered - as is already the case with the EBA Stakeholder Group.

**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?**

NO

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

EBA should ensure that conflict of interests are properly identified, managed and disclosed.

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

	1	2	3	4	5	No opinion
Request to the Board to establish internal committees for specific tasks						x
Set the agenda to be adopted by the Board and table items for decision						x
Call a vote at any time						x
Propose the composition of independent panels for breach of Union law investigations and dispute settlements.						x
Propose the composition of peer review committees for peer reviews						x
Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation						x

Vote in the Board of Supervisors (except on matters that are decided on the basis of qualified majority voting)						x
Other, please indicate						x

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

NO

## *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

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

YES

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

YES

**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

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

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

NO

**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

**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?**

Don't know / no opinion / not relevant

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

YES

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

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

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

So far, the outcome of the work of the Proportionality Committee is not satisfactory or at least not transparently communicated. Therefore, in our opinion it is too early to make a proper assessment of the efficiency/work of some of these groups.

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

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

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

In our opinion it is too early to make a proper assessment of the efficiency/work of some of these groups.

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

Don't know / no opinion / not relevant

### 2.3 Financing and resources

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

YES

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

While the financial crisis may have created political pressure to make financial entities contribute more heavily to their regulation and supervision, there are strong reasons in favour of a significant public EU contribution to ESA funding:

1. The ESA's responsibilities are overwhelmingly of regulatory nature. Without the ESAs, their respective tasks would largely have to be carried out by the European Commission itself and under the European Parliament's and the European Council's scrutiny.
2. The currently exercised control by the European Commission, the European Parliament and the European Council over the ESAs' budgets has proven to be beneficial to maintaining budgetary discipline, while a transition to a fee-based financing could induce significant expansions of the ESAs budgets.



3. The adaption of a funding model based on fees by market participants would constitute a discrimination against actors in other sectors as it would be in stark contrast to the general practice in regulation and supervision.
4. In many cases, financial entities are already contributing to ESA budgets via their NCA contributions. However, national funding models differ considerably across the EU.
5. Introducing additional ESA fees on top of these funding models would only exacerbate the existing distortions.

In summary, we strongly advocate to maintain the current composition of ESA funding to ensure budgetary discipline and consistency with other sectors. In the past, the Legal Service of the European Council has also come to the conclusion that there is no legal basis for industry fees. It has also criticized the fact that there is no provision for a sufficiently proportionate calculation method, which has not been addressed so far.

Finally, the sufficient amount of resources necessary for the ESAs to conduct their activities in an appropriate manner must be carefully assessed against the cost burden this entails for the banks. At least one should strive for avoiding situations where the ESAs and the NCAs conduct the same tasks e.g. conducting similar analyses, writing guidelines relating to the same issues etc.

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

YES

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

NO

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

Budgetary control needs to be improved considerably by introducing audit committees with representatives from supervised entities (at least with non-voting rights).

## **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?**

NO

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

Since 2020, there have been numerous instances where ESAs have finalized selected Level 2 and Level 3 regulation without visibly involving stakeholders. While it is understandable that the Covid pandemic

has required swift regulatory action in some cases, we strongly suggest to adequately involve stakeholders or their representatives as widely as possible. In our view, stakeholders are not always sufficiently involved.

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

	1	2	3	4	5	No opinion
General consultations launched by the ESAs			X			
Specific consultations when developing data collection requirements			X			

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

In general we appreciate the quality of the EBA's consultations. In our view, the level of engagement of the EBA with stakeholders is good, as it allows the EBA to get valuable insights into different national approaches / systems and practices, which should be considered when drafting technical standards and guidelines. This is especially important in cases where national systems differ.

Additionally, we would like to point out a few areas where some improvement would be highly appreciated (particularly in reporting):

- Existing terms should be used for certain existing topics, regardless of whether those terms stem from regulatory or accounting sources (no new terms)
- Future planning of reporting requirements should be based on a forward-looking roadmap based on a common and coordinated approach between the banking sector and European and local authorities.
- Harmonization of the "regulatory language": different structure of the requirements, different approaches to consultations and different formulations often lead to interpretations / discussions. We therefore suggest not just introducing a data model based on a common "data language", but also the introduction of a single "regulatory language" for all reporting obligations, as defined by various competent authorities.

	1	2	3	4	5	No opinion

General consultations launched by the ESAs			X			
Specific consultations when developing data collection requirements						X

**Question  
2.4.2  
ESMA:  
Please  
assess**

**the quality, in your view, of the consultations launched by ESMA:**

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

It is positive that consultations by ESMA on new guidelines provide useful background information. Moreover, the final report often contains useful explanations and an analysis of the most important remarks by stakeholders.

In general we appreciate the quality of the ESMA's consultations. In our view, the engagement of the ESMA with stakeholders is good, as it allows ESMA to get valuable insights into different national approaches / systems and practices, which should be considered when drafting technical standards and guidelines. This is especially important in cases where national systems differ.

Additionally, we would like to point out a few areas where some improvement would be highly appreciated (particularly in reporting):

- Existing terms should be used for certain existing topics, regardless of whether those terms stem from regulatory or accounting sources (no new terms)
- Future planning of reporting requirements should be based on a forward-looking roadmap based on a common and coordinated approach between the banking sector and European and local authorities.
- Harmonization of the "regulatory language": different structure of the requirements, different approaches to consultations and different formulations often lead to interpretations / discussions. We therefore suggest not just introducing a data model based on a common "data language", but also the introduction of a single "regulatory language" for all reporting obligations, as defined by various competent authorities.

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

YES

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

NO

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

There is still room for improvement when it comes to transparency of ESMA. This concerns, inter alia, level 3 measures such as Q&A which have a great impact on the practice of securities business in the member states. Therefore, it is crucial that Q&As of ESMA comply with level 1 and level 2 texts of the European legislator and do not go beyond them. We also think that the launching of the consultation process with regard to Q&A (article 16b) is too burdensome and should be simplified (cf. above).

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

	1	2	3	4	5	No opinion
EIOPA Insurance & Reinsurance Stakeholder Group						X
EIOPA Occupational Pensions Stakeholder Group						X
ESMA Securities and Markets Stakeholder Group				X		
EBA Banking Stakeholder Group		X				

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

The ESMA Securities and Markets Stakeholder Group comprises inter alia practitioners from different member states who can reflect the particularities of national markets. This contributes a great deal to the quality of ESMA's work.

**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	2	3	4	5	No opinion
Composition of stakeholders groups						X

Selection of members						X
Term of office						X
A third of its members can issue a separate advice						X

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

NO

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

With regard to the appointment of the ESMA Stakeholder Group, representation of the different pillars of the banking system (cooperative, private and public) should be factored in. This means, that representatives of all pillars of the banking system should be considered.

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

NO

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

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

	1	2	3	4	5	No opinion

Functioning				X		
Working methods				X		
Ensuring cross-sectoral cooperation				X		
Ensuring consistent approaches				X		
Decision making process				X		
The legal structure (no legal personality)			X			

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

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

### 3. Direct supervisory powers

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

	1	2	3	4	5	No opinion
Credit Rating Agencies						X

Trade Repositories under EMIR			X			
Trade Repositories under SFTR			X			
Securitisation Repositories						X

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

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

**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:**

In our view, the current system of securities supervision, which is based not only on ESMA but also on the national competent authorities (NCAs), should generally remain in place because it is best suited to deal with the different market structures of the Member States. The NCAs are the competent supervisory authorities in the field of securities regulation and investor protection issues. They have a sound knowledge of the particularities of the respective national financial markets and, therefore, the necessary supervisory expertise. Therefore, we think that the current system is well balanced. Direct supervisory powers can only be appropriate if there is a pan-European dimension of the activity or service. This was the case, for instance, with respect to the supervision of administrators of critical benchmarks. Where this pan-European dimension is non-existent, we are clearly against any changes of the existing set-up.

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

NO

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

A transfer of additional direct supervisory responsibilities to ESMA or EBA would contradict the principle of subsidiarity. The national supervisory authorities are familiar with their respective national market conditions and the business models on which these are based, but also the crucial interaction with civil law. In this respect, they have the supervisory competencies that ESMA lacks.

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

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

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

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

In our opinion it would be beneficial to consider implementing a more common European approach to assessing the level of systemic risk across the different member states to ensure that the systemic risk buffer is set in a harmonized way.

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



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

## 5. The ESAs work towards achieving a rulebook

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

YES

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

The work conducted by the EBA in this area has most certainly contributed to increased harmonization of the single rule book.. In some areas the very detailed level 2 and 3 rules developed by the EBA is not necessarily sufficiently accounting for national differences e.g. the guidelines for loan origination and monitoring.

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

YES

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

YES

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

In our opinion the procedure for the development of draft technical standards is efficient and effective, however, timely delivery is not always guaranteed.

**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?**

The easiest way would be a flexible entry into force of changes on level 1 (e.g. expiry of exception for funds under the PRIIPs regulation which is linked to a final level 1 legal act). RTS must be supported by all ESAs and within their BoS. There must a mechanism in order to solve conflicts in a sensible way.

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

NO

**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?**

The guidelines on product governance have led to a largely uniform target market in the European market.

**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?**

NO

**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?**

No improvements are needed.

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

For the Audit Directive and Audit Regulation a supervisory structure already exists that coordinates the uniform, EU-wide procedure for the supervision of auditors. This should be retained. In order to achieve an improvement, however, an obligation under EU law would have to be ensured on the cooperation between market and auditor supervisory authorities, as well as a cooperation between the supervisory authorities and the law enforcement authorities. Since the essential fundamentals for this are based on a Directive, these would also have to be drawn up on the basis of a Directive.

International Financial Reporting Standards (IFRSs) are developed and interpreted by bodies made up of recognised international experts (IASB, IFRS IC) with extensive input from all stakeholders. There is a tried and tested procedure for adopting the standards into European Community law, which involves all significant political bodies (European Commission, European Parliament, European Council). As globally comparable financial reporting standards, we believe that the IFRSs should, as far as possible, be applied unchanged – i.e. as published by the IASB – worldwide. We take a highly critical view of European amendments to these standards. We oppose ESMA having the power to further interpret the standards, since this would increase the risk of European discrepancies. With regard to the European Accounting Directive, legislative power lies with the European lawmakers. Responsibility for transposition of the requirements is held at national level by the Member States. If ESMA had a right of interpretation, this would encroach on both European and national legislative powers. We therefore oppose ESMA having such rights. Overall, the existing processes for developing and interpreting IFRSs and the Accounting Directive have been tried and tested over many years; they are recognised and appropriate. We therefore see no need for modification.

**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:**

No

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

With the aim of achieving further harmonisation in Europe, ESMA already has various working groups on corporate reporting. In addition, the ESMA Guidelines on Enforcement of Financial Information must be applied by the national enforcement bodies. The revised guidelines will enter into force in early 2022.

The European Enforcers Coordination Sessions (EECS) remain a cornerstone of European cooperation. The EECS represent a permanent discussion platform for national enforcement institutions and ESMA regarding IFRS application issues with cross-border significance.

We do not therefore believe it is necessary to extend ESMA's mandate.

In any case, the transparency of the decisions of the ESMA and the enforcers that are coordinated by ESMA, should be improved, because the decisions and their transparency with regard to decision-making are currently inadequate.

**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?**

NO

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

NO

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

The established consultation process for RTS is positive. However, RTS should not include stipulations that were not consulted.

## 6. General questions on the single rulebook

**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?**

- ☒ **X Banking**
- ☐ Insurance
- ☐ Asset management
- ☐ Market infrastructure (CCPs, CSDs)
- ☒ **X Market organisation (MiFID, MIFIR, MAR)**
- ☐ Other

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

CRR, BRRD, CRD. In general, in the area of setting capital requirements national rules going beyond the minimum requirements is detrimental as this has large consequences for the competition environment of the different market players.

**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?**

**No**

The single rulebook has made a significant contribution to harmonising banking regulation. Broadly speaking, the application of Union law is sufficiently consistent and there is adequate convergence of supervisory practices. However, in the context of a uniform single financial market that needs to keep pace with the international financial markets, more work is required to remove obstacles to cross-border transactions, without losing sight of specific national circumstances.

This includes not only avoiding gold-plating at national level, but also establishing cross-border capital and liquidity waivers or greater consolidation of reporting requirements, for example. Particularly with regard to new regulatory fields, for example crypto assets, consideration should be given to a uniform European approach from the outset.

We also believe that at a certain point it seems that more text does not create more clarity, but it opens up more questions, which demand more text, and so on and so on. Therefore, another question is imposed: how to reach a maximum of convergence, i.e. a maximum of aligned views on existing regulation? The answer to that in our experience is not necessarily by producing more text / legislation, but concentrating on the underlying purpose, meaning that the policy makers should be much more focused on this aspect of policy making (the underlying purpose of the topic/policy). Because: if the purpose is clear, then the interpretation of a rule is clear, production of additional text should be stopped/reduced. This question is rather high level and it is therefore quite difficult to provide a direct answer.

#### **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?**

**NO**

**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

**Question 6.4.2.1 Which of the three levels and/or a combination thereof are more effective in building 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 6.4.2 and 6.4.2.1:**

Level 1 provides the legal framework. Level 2 and 3 should not go beyond level 1. Level 3 should not go beyond level 2.

**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)

**Please explain your answer to question 6.5:**

Level 1 provides the legal framework. Level 2 and 3 should not go beyond level 1. Level 3 should not go beyond level 2.

**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?**

Start of implementation periods: as a general rule, the date when the new requirements become applicable is defined in the Level I requirements, although Level II measures are subsequently enacted. This fixed definition leads to problems if there are delays in publishing the Level II requirements, with the result that the applicability of MiFID II/MiFIR and the PRIIPs Regulation had to be temporarily deferred. This led to considerable additional costs at the institutions, for example because implementation projects had to be prolonged. Therefore, the implementation period should only start running once all the more detailed requirements for which Level I contains an authorisation have been published.

Need for implementation periods also for interpretations: The legal requirements do not contain any implementation periods for Level III measures (guidelines, Q&A), although implementing them often involves considerable effort and expense (including IT modifications). Going forward, reasonable

implementation periods should therefore be provided for interpretations as well to enable the institutions to ensure appropriate implementation.

**Cost-benefit-analysis:** Cost-benefit-analyses are often abstract, i.e. the added value for clients is often not substantiated by the legislator. Therefore, the legislator should conduct a concrete cost-benefit-analysis before each legislative procedure showing that the envisaged project brings added value for clients. We would welcome cost-benefit-analysis not only by legislators, but also by ESAs.

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

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

**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?**

NO

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

The quality of legislation is important not its granularity. We very much support the idea of principal based regulation.

**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?**

NO

**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?**

- In a targeted manner through individual sectoral reviews

**Please identify the specific piece of legislation in the area of Market organisation for which you would increase the degree of harmonisation of EU financial legislation and explain:**

PRIIPs

**Please specify to what other legislative area(s) you refer:**

Implementation showed that no overarching approach can be found for all products (certificates, OTC-derivatives, insurance investment products and funds).