

20 May 2021

Transparency register number: 270408511443-95

**France Invest's response to the Commission's targeted consultation
on the supervisory convergence and the Single Rule Book**

Established nearly 40 years ago, France Invest brings together venture capital, private equity, infrastructure and private debt teams based in France, as well as the associated professions which support them. Its membership currently counts 365 management firms and 180 associate members.

Venture capital and private equity support unlisted companies for a fixed period of time and provides them with the equity capital, through the acquisition of minority or majority stakes in their capital, needed to finance growth and transformation projects. It supports the creation of start-ups (venture capital), participates in the growth and transformation of many regional SMEs and mid-caps (growth capital) and contributes to the transfer of companies (replacement capital).

France Invest's members represent one of the main growth drivers for the French and European economy and support a significant portion of employment in France and Europe. In 2020, French private equity and infrastructure players invested €23.1 billion in 2,150 companies and infrastructure projects. They raised €23.5 billion from investors, a third of which at international level, which will be invested over the next 5 years. In addition to that, private debt players (structures financing companies and infrastructure projects) invested €8.1 billion in 209 transactions and raised €7.7 billion that will finance new transactions in the coming years. European companies, in particular start-ups and SMEs, are the main recipients of these investments. In 2019, companies backed by French venture capital and private equity created 56,000 jobs.

In particular, during the pandemic, the venture capital and private equity industry has demonstrated its adaptability, supporting existing portfolio companies as and when needed, while continuing to invest in new businesses that require capital and operational expertise to grow.

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

General comments

France Invest strongly supports the general objective to enhance regulatory and supervisory convergence across Member States. In our view, it is crucial to foster the development of an efficient market for investment solutions within the EU. We agree that “truly integrated and convergent supervision is needed to ensure a genuine level-playing field for all market players”¹. It is an essential condition for a well-functioning CMU. This will be particularly relevant in a post-Brexit world with multiple financial centres across the EU. It is also imperative to reinforce the attractiveness of the EU vis-à-vis international investors and ensure the legibility of European rules: the ESAs’ mandate should take into account the competitiveness of the EU supervisory and regulatory framework, and seek to avoid any duplication, inconsistencies and unnecessary compliance burden for financial institutions.

We would like to thank the European Commission for this consultation and take this opportunity to acknowledge the work completed by the ESAs, and in particular ESMA, over the last decade. Indeed, ESMA has contributed to safeguarding the stability of the EU’s financial system by enhancing the protection of investors and promoting stable and orderly financial markets. It has further developed the single rulebook for EU financial markets and promoted supervisory convergence. However, in our opinion, there remain some areas where the work of the ESAs could be improved.

It should be noted that the revised version of ESMA’s founding Regulation was published in the EU Official Journal on 27 December 2019 and became applicable as of 1 January 2020, with new direct supervisory powers on data service providers and benchmarks to start on 1 January 2022. Considering the short period of time since their implementation and the specific context of health crisis which has prevailed since the spring of 2020, it seems difficult at this stage to effectively and objectively assess the impacts of these recent changes to ESMA’s tasks and powers.

From a general standpoint, we believe that, rather than considering any new rules to add to the Single Rule Book or tasks or powers to be granted to ESMA, tools and powers should be fully used, and resources adequately assigned towards a proper enforcement of the existing European regulation.

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

	1	2	3	4	5	No opinion
The financial system as a whole				X		

¹ A Capital Markets Union for people and businesses-new action plan, European Commission

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.

Overall, we believe that **the ESAs have had a notable impact on the EU financial system, striving to reinforce its stability and improve the functioning of the internal market**. However, in our opinion, there remain some areas where their work could be improved.

From a general standpoint, we believe that, **rather than considering any new rules to add to the Single Rule Book or tasks or powers to be granted to ESMA, the tools currently at its disposal and the powers it is currently granted should be fully used, and resources adequately assigned towards a proper enforcement of the existing European regulation**.

Achievements and suggested improvements in relation to the development of the Single Rule Book

The ESAs have significantly contributed to the development of the Single Rule Book. Since their establishment, the ESAs have been facing a demanding and heavy regulatory agenda.

While they are generally perceived as having performed well, we believe that working under a significant time pressure and to very short deadlines for submission of draft technical standards has not only been a challenge for the ESAs but also for the stakeholders and has ultimately affected the quality of the work done. **We believe that consultations should be more systematic, and their process improved (in particular with extended periods for feedback).**

Achievements and suggested improvements in relation to supervision.

The ESAs have contributed to enhancing the quality and consistency of supervision in the EU, for instance through their Joint Committee and through the Supervisory Coordination Network set up by ESMA in 2017 to process authorisation requests in the context of the UK's withdrawal from the EU. They have produced a significant number of technical standards and developed tools such as guidance, recommendations and Q&As, to promote a common approach to the implementation of existing Directives and Regulations. These tools have generally been useful to ensure that EU legislation is interpreted consistently across Member States and that European passports function properly.

In particular, in the context of the pandemic, the ESAs have played a pivotal role in ensuring financial stability. For example, ESMA published opinions agreeing to the renewal of the emergency restrictions on short selling

taken by some NCAs and the ESAs issued a joint risk assessment report of the financial sector since the outbreak of the COVID-19 pandemic.

However, there remain a number of areas that could be further improved. Divergences prevail in the way fund managers are supervised. While our members welcome certain flexibility to reflect the diversity of local markets and conditions, **supervisory divergence, such as the interpretation of key definitions or the details required to meet annual reporting demands, raises costs** and thereby creates barriers for fund managers seeking to operate on a cross-border basis.

In addition, **ESMA's enforcement actions have mainly targeted entities under its direct supervision** i.e. credit rating agencies and trade repositories (ESMA will have new direct supervisory powers on data service providers and benchmarks on 1 January 2022).

Achievements and suggested improvements in relation to investor protection.

Overall, the activities of the ESAs have reinforced consumer and investor protection. ESMA has issued warnings and publications for investors and taken product intervention decisions.

However, we are concerned that the ESAs do not always fully take into account the diversity of the financial services industry while undertaking their work on investor protection. **Appropriate safeguards need to be put in place to ensure investor protection rules are drafted taking into account the specificities of the customers in each specific part of the financial services industry.**

Achievements and suggested improvements in relation to the role of the ESAs at international level.

We believe that it is crucial to ensure that the ESAs' work is consistent with standards set out by international bodies such as IOSCO, the IFRS Advisory Council and the Financial Stability Board. In this context, we think **it will be important to ensure a smooth articulation between the ESAs and the future authority on anti-money laundering.**

In particular, ESMA's international work has been particularly useful with regards equivalence assessments and the development and conclusion of cooperation agreements. We welcome ESMA's new tasks in relation to equivalence assessments of third-country regulatory and supervisory frameworks (equivalence decisions remaining in the hands of the Commission).

Achievements and suggested improvements in relation to technological innovation and sustainable finance in the activities of the ESAs.

We do support the requirement set out in the ESAs' Review legislative package for the ESAs to embed technological innovation and sustainable finance in their activities.

In addition, **we suggest that the ESAs take innovation and sustainability not only at the level of their regulatory and supervisory activities but also with regards their own activities.** For example, they should further develop their IT capabilities and use state of the art technologies (e.g. the ELTIF register could be updated in a more timely manner). Also, they should develop their actions in terms of sustainability (e.g. carbon footprint, recycling practices, diversity and inclusion strategy). The ESAs should be exemplary in both areas.

ESMA should improve its culture of engagement with stakeholders and supervised firms.

A continuous dialogue between supervisors and supervised entities is indeed at the core of effective and

efficient supervision, as it allows supervisors to understand better the issues faced by the entities they supervise. **Such interaction has been rather weak and should therefore be strengthened.**

As explained previously, we believe that **consultations should be more systematic, and their process improved** (in particular with extended periods for feedback).

Also, **the selection process applicable to candidates to stakeholder groups appears quite opaque** and we would like to understand why national associations are put aside from this process, whereas service providers, which may be in a situation of conflict of interests, are allowed to apply for such representative positions. In the end, the lack of direct contact may undermine the trust of supervised entities in their supervisors, in particular in a context of crisis.

More generally, **transparency on the decision making of the ESAs could be enhanced.** The ESAs should better explain the reasons why they decide to develop certain strategies or take certain policy orientations.

Another area for improvement relates to the understanding of the specificities of venture capital and private equity industry.

Investment in non-listed equity is very specific and it appears that most of the work of ESMA focuses mainly on investment in listed equity. In our opinion, the specificities of this sector should be further integrated in ESMA's work.

Moreover, **the ESAs should strive to understand the consequences of their actions on sectors outside their remit.** For example, EIOPA should take into account the consequences of its decisions on investment by insurers in venture capital and private equity funds.

- II. In your view, do the ESA(s)' mandate(s) cover all necessary tasks and powers to contribute to the stability and to the well-functioning of the financial system? If you think that there are elements which should be added or removed from the mandate, please provide a substantiated answer.

X YES

NO

In our opinion, ESMA has significantly contributed to reaching the objective of safeguarding the stability of the EU's financial system by enhancing the protection of investors and promoting stable and orderly financial markets. It has further developed the single rulebook for EU financial markets and promoted supervisory convergence.

In particular, in the context of the pandemic, the ESAs have played a significant role in ensuring financial stability. For example, ESMA published opinions agreeing to the renewal of the emergency restrictions on short selling taken by some NCAs and the ESAs issued a joint risk assessment report of the financial sector since the outbreak of the COVID-19 pandemic.

However, there remain some areas that could be further improved. Divergences prevail in the way fund managers are supervised. While our members welcome certain flexibility to reflect the diversity of local markets and conditions, supervisory divergence, such as the interpretation of key definitions or the details required to meet annual reporting demands, raises costs and thereby creates barriers for fund managers

seeking to operate on a cross-border basis.

In addition, ESMA's enforcement actions have mainly targeted entities under its direct supervision i.e. credit rating agencies and trade repositories (ESMA will have new direct supervisory powers on data service providers and benchmarks on 1 January 2022).

The revised version of ESMA's founding Regulation was published in the EU Official Journal on 27 December 2019 and became applicable as of 1 January 2020, with new direct supervisory powers on data service providers and benchmarks to start on 1 January 2022.

Considering the short period of time since their implementation and the specific context of pandemic which has prevailed since the spring of 2020, it seems difficult at this stage to effectively and objectively assess the impacts of these recent changes to ESMA's tasks and powers. It is too early to properly assess whether elements which should be added or removed from its mandate.

In the meantime, we suggest making full use of the existing tools and powers and adequately assigning resources towards a proper enforcement of the European regulation.

III. In your view, do the ESAs face any obstacles in delivering on their mandates? If the answer is yes, please explain what you consider to be the main obstacles.

☒ YES

☐ NO

ESMA should improve its culture of engagement with stakeholders and supervised firms.

A continuous dialogue between supervisors and supervised entities is indeed at the core of effective and efficient supervision, as it allows supervisors to understand better the issues faced by the entities they supervise. Such interaction has been rather weak and should therefore be strengthened.

As explained previously, we believe that consultations should be more systematic, and their process improved (in particular with extended periods for feedback).

Also, the selection process applicable to candidates to stakeholder groups appears quite opaque and we would like to understand why national associations are put aside from this process, whereas service providers, which may be in a situation of conflict of interests, are allowed to apply for such representative positions. In the end, the lack of direct contact may undermine the trust of supervised entities in their supervisors, in particular in a context of crisis.

More generally, transparency on the decision making of the ESAs could be enhanced. The ESAs should better explain the reasons why they decide to develop certain strategies or take certain policy orientations.

Another area for improvement relates to the understanding of the specificities of venture capital and private equity industry.

Investment in non-listed equity is very specific and it appears that most of the work of ESMA focuses mainly on investment in listed equity. In our opinion, the specificities of this sector should be further integrated in ESMA's work.

Moreover, the ESAs should strive to understand the consequences of their actions on sectors outside their remit. For example, EIOPA should take into account the consequences of its decisions on investment by insurers in venture capital and private equity funds.

The composition of the Board of ESMA should be revised.

In our view, another obstacle that ESMA faces in delivering its mandate relates to the composition of its Board. The Board of ESMA should be modified to ensure that it has a pan-European perspective and is able to take decisions more swiftly. It should become more independent with experts selected on their own merits, in line with the statutes of the Single Resolution Board. We believe that such a change would be much more important in further strengthening the role of ESMA than any increased supervisory convergence powers (which powers would in any case risk not being used effectively if the governance arrangements are not improved).

1. The supervisory convergence tasks of the ESAs

1.1. Common supervisory culture/supervisory convergence:

111. To what extent the ESAs do contribute to promoting a common supervisory culture and consistent supervisory practices? Please rate in a scale from 1 to 5 ("5" being the most significant contribution and "1" the less significant contribution). Please explain your answer and indicate if there are any areas for improvement.

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

As a preliminary remark, we would like to highlight that convergence is only required where pan-European issues truly exist, particularly as regards competition among players or the prevention of regulatory shopping. The key priority is the capacity of ecosystems and local markets to effectively finance businesses and allocate savings, in particular in a context of (post) health crisis. In this respect, **the principle of subsidiarity should fully play its role and the competence of national authorities should be recognised**. Indeed, we would like to stress the importance of NCAs in the day-to-day supervision of financial institutions. **NCAs have been developing an extensive knowledge and experience of market practices and products, enhancing their prominent role in the direct supervision of undertakings.**

In our opinion, the ESAs have significantly contributed to enhancing the quality and consistency of supervision in the EU. The ESAs have produced a significant number of technical standards and developed tools such as guidance, recommendations and Q&As, to promote a common approach to the implementation of existing Directives and Regulations. These tools have generally been useful to ensure that EU legislation is interpreted consistently across Member States and that European passports function properly. For example, ESMA issued opinions to address regulatory and supervisory arbitrage risks arising as a result of increased requests from financial market participants seeking to relocate in the EU27. Also, the Supervisory Coordination Network was set up by ESMA in 2017 to process authorisation requests in the context of the UK's withdrawal from the EU.

However, there remain many areas where supervisory convergence could be further improved. Indeed,

divergences prevail in the way fund managers are supervised. While our members welcome certain flexibility to reflect the diversity of local markets and conditions, supervisory divergence, such as the interpretation of key definitions or the details required to meet annual reporting demands, raises costs and thereby create barriers for fund managers seeking to operate on a cross-border basis.

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

	1	2	3	4	5	No opinion
Providing opinions to competent authorities				X		
Promoting bilateral and multilateral exchanges of information between competent authorities				X		
Contributing to developing high quality and uniform supervisory standards				X		
Contributing to developing high quality and uniform reporting standards				X		
Developing and reviewing the application of technical standards			X			
Contributing to the development of sectoral legislation by providing advice to the Commission				X		
Establishing (cross)sectoral training programmes		X				
Producing reports relating to their field of activities			X			
Conducting peer reviews between competent authorities			X			
Determining new Union strategic supervisory priorities			X			
Establishing coordination groups			X			
Developing Union supervisory handbooks		X				
Monitoring and assessing environmental, social and governance-related risks	X					
Adopting measures using emergency powers			X			
Investigating breaches of Union law	X					
Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)				X		

Mediating between competent authorities						X
Monitoring the work of supervisory and resolution colleges						X
Publishing on their website information relating to their field of activities				X		
Monitoring market developments				X		
(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						

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

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

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

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

In our opinion, Q&As can prove especially useful in terms of supervisory convergence.

We welcome the new process introduced by Article 16b, which in particular provides for public consultations. Indeed, we believe that **Q&As should be subject to an appropriate level of scrutiny and their adoption process should be fully transparent**. Indeed, even if not formally binding, they are applied by most regulatory authorities as if they were. Therefore, their effect often goes beyond a solely technical assessment. In fact, ESMA's interpretations and clarifications have the potential to produce significant impacts across the marketplace, comparable in many cases to those arising from the introduction of new primary legislation. In addition, a more transparent production of Q&As would ensure that smaller market participants are fully aware of any new guidance. We also welcome article 16b as an opportunity for the co-legislators to ensure that the content of the Q&As is in line with their political intention.

However, public consultations on Q&As may only be launched upon the decision of the Board of Supervisors following the request of three of its voting members. In our opinion, this should be more systematic.

Moreover, **market participants should be allowed to plan ahead and better manage the impacts any revised interpretations may have**. In other words, there should be more clarity over when the new interpretations contained in a Q&A document will become applicable (a month's notice would be an absolute minimum).

Last, we would like to take this opportunity to call for clarification of the legal status of the Q&As issued by ESMA. We call for **their non-binding nature should be officially recognized and imposed to NCAs** in the view of having a harmonized approach at European level. Indeed, as explained previously, some regulators systematically apply Q&As, hence making them de facto binding without any possibility of introducing any flexibility, even where justified, while other regulators consider them (rightly) as non-binding instruments. This is detrimental to Member States whose national regulator has a very prescriptive approach compared to others and lead to competition distortions within the Single Market.

115. 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 Please identify areas for improvement, please explain

☒ NO Please give reasons.

Public consultations on Q&As may only be launched upon the decision of the Board of Supervisors following the request of three of its voting members. In our opinion, this should be more systematic.

Moreover, market participants should be allowed to plan ahead and better manage the impacts any revised interpretations may have. In other words, there should be more clarity over when the new interpretations contained in a Q&A document will become applicable (a month's notice would be an absolute minimum).

No action letters

116. In the framework of the 2019 ESAs review. In your view, is the new

mechanism of no action letters (Article 9a of the ESMA/EIOPA Regulations and Article 9c EBA Regulation) fit for its intended purpose? Please justify your answer.

☒ YES

☐ NO

We warmly welcome the introduction of the new mechanism of no action letters in the ESAs Regulations. Indeed, such mechanism will allow them to adjust the implementation a rule and give comfort to market players. It will also contribute to ensuring a level playing field among the different Member States thanks to a decision made at European level. No action letters will for example allow to relieve market participants from applying specific obligations for a limited period of time and for justified reasons. They will also avoid imposing excessive burdens on market participants in case level 2 measures are published too close to the implementation date set out at level 1 e.g. permit market players to apply their NCAs' proposals until further clarification is reached at European level.

More generally, these new tools will allow the ESAs to develop a flexible and proportionate implementation of EU legislation, since they will largely improve its fine tuning, allowing for an easy evolution of ESAs' doctrine though preserving the initial indicative guidelines. However, to the extent of our knowledge, such mechanism has not yet been implemented in practice.

117. In the framework of the 2019 ESAs review. How does the new mechanism, in your view, compare with "no action letters" in other jurisdictions?
118. In the framework of the 2019 ESAs review. Could you provide examples where the use of no action letters would have been useful or could be useful in the future?

No action letters could avoid imposing excessive burdens on market participants in case level 2 measures are published too close to the implementation date set out at level 1 e.g. permit market players to apply their NCAs' proposals until further clarification is reached at European level.

1.2. Peer reviews

121. Please specify to what extent peer reviews organised by the ESAs have contributed to the convergence outcomes listed below.

Please distinguish between the situation before the 2019 review and afterwards. Please rate each outcome from 1 to 5, 1 standing for "less significant contribution" and 5 for "most significant contribution":

Situation before the 2019 ESAs review	1	2	3	4	5	No opinion
Convergence in the application of Union law						

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

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

Please explain your reasoning/give examples.

- 122 How do you assess the impact of each of the changes below introduced by 2019 ESAs review in the peer review process? Please rate each change from 1 to 5, 1 standing for "less effective" and 5 for "most effective"

	1	2	3	4	5	No opinion
Ad-hoc Peer Review Committees (PRC) composed of ESAs' and NCAs' staff and chaired by the ESA are responsible for preparing peer review reports and follow-ups.						
The peer review report is now adopted by written procedure on non-objection basis by the Board of Supervisors.						

Transparency provisions: if the PRC main findings differ from those published in the report, dissenting views should be transmitted to the three European Institutions.						
PRC findings may result in recommendations to NCAs under Article 16 of the ESAs Regulations that are now distinguished from guidelines, addressed to all NCAs. The use of this type of individual recommendations entails the application of the “comply or explain” mechanism and allows a close follow-up.						
Mandatory follow-up to peer reviews within two years after the adoption of the peer review report.						
The possibility to carry out additional peer reviews in case of urgency or unforeseen events (fast track peer reviews).						
The Management Board is consulted in order to maintain consistency with other peer reviews reports and to ensure a level playing field.						

Please explain your reasoning

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

☐ YES

☐ NO

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

☒ YES

☐ NO

In our opinion, **part of the peer review process could be made more open** to ensure that the ESAs are allowed to “name and shame” competent authorities that do not appropriately implement EU law.

1.3. Other tasks and powers

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

explain.

☐ YES

☐ NO

We are not against a centralization of reporting by the ESAs in respect to objectives on transparency and cost reduction. However, in our opinion, **NCA should remain the main source of information for the ESAs for supervisory and oversight matters and the natural access point of contact with market players.**

We would like to take this opportunity to warn against any replication or inconsistencies of reporting requirements between the ESAs and the NCAs and against imposing additional burdens for market players by introducing additional data collection exercises and reporting channels.

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

☐ YES

☐ NO

On 13 November 2020, ESMA identified costs and performance for retail investment products and market data quality as new Union Strategic Supervisory Priorities². NCAs will therefore have to incorporate these priorities into their supervisory work programmes. **It seems however too soon to assess the effectiveness of this new tool to ensure more focused convergence priorities and more coherent coordination.**

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

☐ YES

☒ NO

We believe that the tools currently at the disposal of the ESAs are sufficient. In fact, the ESAs' supervisory convergence powers have been significantly extended in practice since their inception and the move towards a Single Rule Book has naturally corresponded to an increase in the importance of non-binding advice issued by the ESAs.

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

² [esma71-99-1438_press_release_union_strategic_supervisory_priorities.pdf \(europa.eu\)](#)

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

135. What criteria would be the most relevant, in your view, for the ESAs to perform effectively their new task of fostering and monitoring supervisory independence of national competent authorities? Please rate the relevance of each criteria in a scale from 1 to 5 ("5" being the most relevant criteria rate and "1" less relevant criteria).

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

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

In our opinion, **one of the main obstacles that ESMA faces in delivering its mandate relates to the composition of its Board**. The Board of ESMA should be modified to ensure that it has a pan-European perspective and is able to take decisions more swiftly. It should become more independent with experts selected on their own merits, in line with the statutes of the Single Resolution Board. We believe that such a change would be much more important in further strengthening the role of ESMA than any increased supervisory convergence powers (which powers would in any case risk not being used effectively if the governance arrangements are not improved).

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

☐ YES

☒ NO

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

☐ YES

☐ NO

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

YES

X NO

Let us recall here that supervisory convergence at European level is relevant where rules are set at European level. Otherwise, **the principle of subsidiarity should fully play its role and the competence of national authorities should be recognised.**

Digital finance is a new additional area of competence for ESMA and the European body of rules is currently under progress in this domain. At this stage, we believe that there is no need to add any tools or tasks in order to enhance supervisory convergence towards digital finance.

1310. 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:

We believe that the tools currently at the disposal of the ESAs to develop new practical instruments have been sufficient to ensure they can act when necessary. In fact, the ESAs' supervisory convergence powers have been significantly extended in practice since their inception and the move towards a single rulebook has naturally corresponded to an increase in the importance of non-binding advice issued by the ESAs.

From a general standpoint, we believe that, **rather than considering any new rules to add to the Single Rule Book or tasks or powers to be granted to ESMA, tools and powers should be fully used, and resources adequately assigned towards a proper enforcement of the existing European regulation.**

Breach of Union law and dispute settlement

1311. Do you think that the ESAs' powers in relation to breaches of Union law (Article 17 ESAs' Regulations) and binding mediation (Article 19 ESAs' Regulations) are effective? Please explain your answer.

☐ YES

X NO

The ESAs' enforcement powers play an important role in ensuring high quality financial supervision across the EU and in tackling general deficiencies in national supervision. Our experience with the AIFMD and EuVECA legislation shows that improvements could be made within the existing framework. We have seen several cases of what we believe were breaches of Union law by national competent authorities, in particular when these

imposed additional requirements such as fees and charges on fund managers marketing their funds cross-border or forced fund managers to appoint a paying agent. These experiences only reinforce our view that the ESAs', and in particular ESMA's, enforcement powers remain highly relevant.

Our assumption is that **the ESAs would be able to tackle these issues within their existing powers, provided the existing process is made more efficient. In our opinion, such efficiency could be potentially achieved, by changes to the composition of the Board of Supervisors of the ESAs, and by bringing more transparency to their decision-making process.** For example, part of the peer review process could be made more open to ensure ESAs are allowed to "name and shame" competent authorities that do not appropriately implement EU law.

1312. Do you think that the use of the breach of Union law procedure by the ESAs is adequate? Please consider both before and after the 2019 ESAs' review and explain your answer.

Before 2019 ESAs' review

☒ YES

☐ NO

After 2019 ESAs' review

☒ YES

☐ NO

It appears that the breach of Union law procedure has not been put in practice yet.

From a general standpoint, we believe that, rather than considering any new rules to add to the Single Rule Book or tasks or powers to be granted to ESMA, tools and powers should be fully used, and resources adequately assigned towards a proper enforcement of the existing European regulation.

1313. Should there be other instruments available to the ESAs to address instances of non-application or incorrect application of Union law amounting to a breach ex-post? If the answer is yes, what would be those instruments?

☐ YES

☒ NO

From a general standpoint, we believe that, rather than considering any new rules to add to the Single Rule Book or tasks or powers to be granted to ESMA, tools and powers should be fully used, and resources adequately assigned towards a proper enforcement of the existing European regulation.

Our assumption is that ESAs would be able to tackle these issues within their existing powers, provided the existing process is made more efficient.

1314. Do you think that the new written non-objection procedure by the BoS

and the new independent panels for the decisions on breaches of Union law and dispute settlements introduced in the 2019 ESAs' review have improved these decision making processes? Please explain your answer.

☐ YES

☐ NO

1315. Do you think that the ESAs have always acted, where needed, under Article 17³ and Article 19⁴ of the ESAs' Regulations? If the answer is no, please give concrete examples where you consider that the ESAs should have taken relevant action under these Articles.

☐ YES

☒ NO

We have seen several cases of what we believe were breaches of Union law by national competent authorities, in particular when these imposed additional requirements such as fees and charges on fund managers marketing their funds cross-border or forced fund managers to appoint a paying agent.

1316. Could you provide concrete examples where the introduction of further binding mediation provisions in sectoral legislation would be useful?

1317. Why do you think the use of these ESAs' powers has been limited? Please explain how these processes could be improved.

In our opinion, the efficiency of ESMA's powers could be enhanced through changes to the composition of its Board of Supervisors, and by bringing more transparency to its decision-making process.

1.4. Emergency situations and response to COVID-19 crisis

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

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

142. Please rate in a scale from 1 to 5, the effectiveness of the ESAs' follow-up actions on the European Systemic Risk Board (ESRB) recommendations below in the context of the COVID-19 crisis. Please explain.

³ Breach of Union law

⁴ Settlement of disagreements between competent authorities in cross-border situations

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

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

☒ YES

☐ NO

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

☒ YES

☐ NO

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

☐ YES

☐ NO

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

1.5. Coordination function (Art 31 ESAs' Regulations)

151. Do you think the coordination role of the ESAs is effective? If you identify areas for improvement, please explain.

☒ YES

☐ NO

We believe that efficient and effective cooperation between European and national supervisory authorities is of utmost importance. In our view, the ESAs have contributed to enhancing the quality and consistency of supervision in the EU, for instance through their Joint Committee and through the Supervisory Coordination Network set up by ESMA in 2017 to process authorisation requests in the context of the UK's withdrawal from the EU.

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

☒ YES

☐ NO

As part of the AIFM Directive, our members are subject to several reporting requirements, in particular the obligation (as part of Annex IV of AIFMD), to provide documentation and information when marketing in another Member States. **A better coordination role for ESMA, and the creation of standardized templates for this information, could help alleviate the costs of producing similar but different documents across the EU.** This would simplify the life of the – often small - team of fund managers that have to produce these reports and ensure home and host authorities are better able to access information. **At the same time, templates should take into account as much as possible the diversity of industry practices – for example differences in size, complexity or risk of certain funds.**

More generally, from a fund management perspective and in the current supervisory context, we do not believe there are areas where data should be collected directly from market participants instead of national competent authorities. In any case, if the ESAs were to be empowered to collect information directly from market participants, this should not create an additional burden for market participants. For example, this should not lead to a fund manager being forced to provide similar types of information twice, both to the national authority and ESMA.

153. 2019 ESAs' review. Please rate the effectiveness, in your view, of the tools below in order to fulfil the new coordination role of the ESAs facilitating the entry into the market of actors or products relying on technological innovation. ("5" being the most effective and "1" the least effective tool)

	1	2	3	4	5	No opinion
exchange of information and best practices						
adopt guidelines						
adopt recommendations						

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

☐ YES

☐ NO

154. 2019 ESAs review. Do you think the new coordination groups (Article 45b of the ESAs Regulations) are effective tools to coordinate competent authorities regarding specific market developments? If the answer is yes, please provide examples where the new provision could be useful. If you identify room for improvement in this new provision, please explain.

☐ YES

☐ NO

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

☒ YES

☐ NO

We welcome the strengthening of the role of the ESAs with regards the delegation and outsourcing of activities to third country financial institutions. Indeed, it is essential to establish clear rules to limit and control the outsourcing and delegation of substantial and substantive activities in third countries.

However, it is of utmost importance that these controls do not lead to deterring genuine delegations to third countries which allow an efficient management of the assets.

1.6. Tasks related to consumer protection and financial activities.

161. What are, in your view, the ESAs' main achievements in the consumer and investor protection area?

The activities of ESMA have reinforced consumer and investor protection. ESMA has issued warnings and publications for investors and taken product intervention decisions.

However, we are concerned that ESMA does not always fully take into account the diversity of the financial

services industry while undertaking their work on investor protection. Appropriate safeguards need to be put in place to ensure investor protection rules are drafted taking into account the specificities of the customers in each part of the financial services industry.

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

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

163. 2019 ESAs review. The ESAs can now, where sectoral legislation enables them, use their product intervention powers for practices and products that cause consumer harm and after two prolongations of six months, an automatic one-year prolongation of the prohibition is possible (Article 9.5). In your view, are these powers effective for their intended purpose? Please explain your answer.

☐ YES

☐ NO

164. 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 Please specify which ones

☐ NO Please give reasons

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

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

166. 2019 ESAs review. Please rate the new ESAs' task to coordinate mystery shopping activities of competent authorities, if applicable, according to its relevance to promote consumer protection at EU level (1 standing for "less relevant" and 5 for "most relevant"). Please explain your answer and indicate whether you consider enhancing national competencies for conduct supervision may be beneficial for the overall coordination of mystery shopping activities.

In France, the AMF has been carrying out mystery shopping since 2011 to assess the conditions under which financial products are marketed, on the basis of the process of assessing of the "customer" profile and needs, as well as the advice provided.

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

167. 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?

Overall, we believe that the activities of the ESAs have reinforced consumer and investor protection. For instance, ESMA contributes to the practical alignment of the national approaches by issuing guidelines and opinions.

However, **in our view, proximity of local NCAs is key for a better protection of investors. Most consumer protection issues are country-specific.** For example, financial literacy, market experience, sensitivity to inflation, volatility, capital protection may vary considerably from one country to another.

At this stage in European integration, and with no proven pan-European issue, we see no reason for granting special powers to the ESAs in the area of consumer protection, providing that:

- national provisions do not unduly hinder the correct functioning of the wholesale market where it is pan-European;
- the lack of action by a national regulator has no serious consequences for the consumers of other Member States.

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

☐ YES

☒ NO

As explained previously, at this stage in European integration, and with no proven pan-European issue, we see no reason for granting special powers to the ESAs in the area of consumer protection, providing that:

- national provisions do not unduly hinder the correct functioning of the wholesale market where it is pan-European;
- the lack of action by a national regulator has no serious consequences for the consumers of other Member States.

1.7. International relations.

171. How do you assess the role and competences of each ESA in the field of international relations? Are there additional international fora in which the ESAs should be active? Please specify.

We believe that it is crucial to ensure that the ESAs' work is consistent with standards set out by international bodies such as IOSCO, the IFRS Advisory Council and the Financial Stability Board. In this context, we think it will be important to ensure a smooth articulation between the ESAs and the future authority on anti-money laundering.

In particular, ESMA's international work has been particularly useful with regards equivalence assessments and the development and conclusion of cooperation agreements. We welcome ESMA's new tasks in relation to equivalence assessments of third-country regulatory and supervisory frameworks (equivalence decisions remaining in the hands of the Commission).

172. 2019 ESAs' review. How do you assess the new ESAs' role in monitoring the regulatory and supervisory developments, enforcement practices and market developments in third countries for which equivalence decisions have been adopted by the Commission?

We welcome ESMA's additional monitoring powers. We would like to take this opportunity to reassert that the ultimate decision to make an equivalence determination should be left to the European Commission (with the appropriate involvement of the Council and Parliament). In particular, the power to revoke any equivalence decision should remain at the political level.

This being said, as the AIFMD third country passport has not been implemented yet, we do not yet have much experience of ESMA's role in monitoring and implementation work following a Commission equivalence decision.

173. 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 each of the ESAs? If you identify areas for improvement, please specify.

☒ YES

☐ NO

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

We support ESMA's work on developing and concluding cooperation agreements and on equivalence assessments and welcome that ESMA was granted additional monitoring powers in this respect.

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

181. Under Articles 17 (*breach of Union law*), 18 (*action in emergency situations*) and 19 (*settlement of disagreements between NCAs in cross-border situations/binding mediation*), in case a competent authority fails to ensure that a market participant or financial institution complies with requirements directly applicable to it, the ESAs have the power to investigate the alleged breach or non-application of Union law and, following a specified procedure and under certain conditions, adopt an individual decision towards the market participant or financial institution requiring it to comply with EU law. How do you assess the role of each ESA under these articles of the founding Regulations?
182. Do you see room for improvement in the way each ESA could ensure that competent authorities enforce more effectively EU rules towards market participants/financial institutions? Please explain your answer.
- ☐ YES
- ☐ NO
183. In your view, are the powers of the ESAs to enforce EU rules towards market participants/financial institutions under Articles 17, 18 and 19 ESAs Regulations well balanced, adequate and effective? Please substantiate your answer.
- ☐ YES
- ☐ NO
184. Do you think the respective roles of the ESAs and of the Commission are clearly defined in Article 17, 18 and 19 ESAs Regulations? Please substantiate your answer.
- ☐ YES
- ☐ NO
185. Do you think the use of sanctions laid down in the EU acquis by competent authorities in case of non-compliance of market participants/financial institutions with EU rules is, in practice, sufficiently dissuasive or disproportionate? If not, what role could sectoral legislation and each ESA

play in improving the situation? Please substantiate your answer and give examples.

☐ Sufficiently dissuasive

☐ Disproportionate

☐ Other, please explain

2. Governance of the ESAs.

2.1. General governance issues

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

☐ YES

X NO

We believe that functional independence of the ESAs is a prerequisite to their success. We agree that the governance structure of the ESAs should be further reformed to make them more independent of national supervisors.⁵

In addition, we believe that the Board of ESMA should have a greater pan-European perspective and able to take decisions more swiftly. We believe that the introduction of permanent members to the Board of ESMA and that a body composed of full-time members, appointed based on their skills and their knowledge of matters relevant to financial markets, would improve the functioning of ESMA.

This would ensure that ESMA is better able to take decisions with an EU perspective, independent from the national (or self) interests naturally defended by national competent authorities. This would help contribute to the consistent application of legally binding acts and prevent regulatory arbitrage, in line with the tasks and powers ESMA has been granted.

The inclusion of independent experts (provided they are not in a position of conflict of interests, for example when providing services to clients) could be regarded as contributing to good governance in any board structure. In order to ensure they are performing their duties well, these experts' appointments could be independently reviewed after a defined time period. Nominating permanent Board members would also allow the Board to more effectively settle disagreements between competent authorities, without forcing national competent authorities to be both judge and jury in these cases.

As national competent authorities will remain closely involved in the functioning of ESMA, we do not believe such a change would prevent ESMA from continuing to benefit from the expertise of national regulators.

212. 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

⁵ ECON report on CMU

must abstain from participating in the discussion and voting in relation to any items of the agenda for which they have an interest that might be considered prejudicial to their independence, improved the decision making process? Please explain your answer.

☒ YES

☐ NO

213. 2019 ESAs' review. Do you think the requirements in Articles 3 and 43a of the ESAs' Regulations are sufficient to ensure accountability and transparency? If you identify areas for improvement, please explain.

☐ YES

☐ NO

214. 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						
Set the agenda to be adopted by the Board and table items for decision						
Call a vote at any time						
Propose the composition of independent panels for breach of Union law investigations and dispute settlements.						
Propose the composition of peer review committees for peer reviews						
Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation						
Vote in the Board of Supervisors (except on matters that are decided on the basis of qualified majority voting)						
Other, please indicate						

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

☐ YES

☐ NO

2.2. Decision-making bodies and preparatory bodies

221. Does the current composition of the Board of Supervisors (BoS) and of the Management Board (MB) ensure that decisions are taken efficiently and independently? If you identify areas for improvement, please explain.

☐ YES

☒ NO

The ESAs Boards should have a pan-European perspective and able to take decisions swiftly. We believe that the introduction of permanent members to the ESAs Board and that a body composed of full-time members, appointed based on their skills and their knowledge of matters relevant to the Authority, would improve the functioning of the ESAs.

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

☐ YES

☐ NO

[Only for 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? Please explain.

☐ YES

☐ NO

223. Does the current allocation of tasks between the BoS and the MB ensure that the ESAs are run effectively and perform the tasks conferred on them? If you identify areas for improvement, please explain.

☐ YES

☐ NO

224. 2019 ESAs' review. To what extent the enhanced role of the Management

Board has improved the decision making process. Please rate each change from 1 to 5, 1 standing for "less significant improvement" and 5 for "most significant improvement". Please explain your answer.

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

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

☐ YES

☐ NO

226. 2019 ESAs' review. Do you think the written non-objection procedure for core convergence tools (breaches of Union law, dispute settlements and peer reviews) is effective for achieving its objective? Please substantiate your answer. If your answer is yes, please indicate if there should be more decisions taken under this procedure and in which areas.

☐ YES

☐ NO

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

☐ YES

☐ NO

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

☐ YES

☐ NO

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

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

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

☐ YES

☐ NO

2.3. Financing and resources.

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

☒ YES

☐ NO

The ESAs do need appropriate levels and types of resource and expertise to be able to properly perform their functions and to cope with the increasing number of their duties, such as drafting significant numbers of technical standards, providing technical input to the Commission, or monitoring and ensuring both consistency in implementation and enforcement across the EU. The ESAs also need adequate financing to

increase their human (competences) and IT (digital) resources.

In our view, **the best way to achieve this outcome remains for the ESAs to be mainly funded through an independent budget line in the General Budget of the EU.**

Any reallocation of powers between NCAs and ESAs should occur with a proportional reallocation of funding. However, this should not imply a cost increase for the industry. Contributions of the industry to their NCAs' funding would have to be taken into account in order to avoid duplicating the financial burden on the industry and financing the same supervisory activity twice.

In the absence of a direct supervision by the ESAs, **we do not see any reason to change the funding arrangement to a direct contribution from the industry.** Indeed, direct part- or full-funding of the ESAs by the industry would put into question the impartiality, objectivity and autonomy of the ESAs and raise conflict of interest issues. Also, the development of a contribution key would be difficult to determine and could create significant distortions between entities and sectors.

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

☐ YES

☒ NO

The ESAs have been entrusted with an increasingly heavy agenda including new fields of action e.g. sustainable finance & innovation and, as a consequence, they should be provided with the adequate resources. For example, the ESAs have been tasked with the preparation of many RTS in relation to the Taxonomy.

The ESAs also need adequate financing to increase their human (competences) and IT (digital) resources.

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

YES

☐ NO

2.4. Involvement and role of relevant stakeholders

241. In your view, are stakeholders sufficiently consulted or, on the contrary, are there too many consultations? Please explain your answer.

☐ YES

☒ NO

☐ Too many consultations

From a general standpoint, we believe that **ESMA should improve its culture of engagement with stakeholders and supervised firms.** A continuous dialogue between supervisors and supervised entities is indeed at the core of effective and efficient supervision, as it allows supervisors to understand better the issues

faced by the entities they supervise. **Such interaction has been rather weak and should therefore be strengthened.**

For instance, we suggest that the ESAs organize public consultations prior and after issuing Q&As. The strict minimum would be for ESAs to communicate in advance on the questions they intend to address at European level. Indeed, we believe there is an urgent need for increased transparency, particularly in cases when a large series of questions needs to be answered.

Beyond the mere number of consultations, what is relevant is the issues they cover and their form. Indeed, stakeholders should be given sufficient time to reflect on key topics in order to provide meaningful contributions. **Shortening consultation periods is definitely not acceptable.** Consultation papers should also avoid biased questions and allow for more detailed responses (it may prove difficult to nuance answers through a “tick the box” exercise).

The time allocated for consultation periods should be extended. Too strict implementation deadlines, along with a too tight consultation processes, have a negative impact on the quality of the analysis and feedback that can be provided by stakeholders. Appropriately longer consultation periods would also let ESMA benefit from more comprehensive, detailed and, consequently, more helpful input. Longer deadlines would also help the ESAs to make better use of their respective working groups, especially in cases where RTS, ITS, guidelines or Q&As require input from the expertise of different ESAs.

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

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

From a general standpoint, we believe that ESMA should improve its culture of engagement with stakeholders and supervised firms. A continuous dialogue between supervisors and supervised entities is indeed at the core of effective and efficient supervision, as it allows supervisors to understand better the issues faced by the entities they supervise. Such interaction has been rather weak and should therefore be strengthened.

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Beyond the mere number of consultations, what is relevant is the issues they cover and their form. Indeed, stakeholders should be given sufficient time to reflect on key topics in order to provide meaningful contributions. Shortening consultation periods is definitely not acceptable. Consultation papers should also avoid biased questions and allow for more detailed responses (it may prove difficult to nuance answers through a “tick the box” exercise).

The time allocated for consultation periods should be extended. Too strict implementation deadlines, along with a too tight consultation processes, have a negative impact on the quality of the analysis and feedback that can be provided by stakeholders. Appropriately longer consultation periods would also let ESMA benefit from more comprehensive, detailed and, consequently, more helpful input. Longer deadlines would also help the ESAs to make better use of their respective working groups, especially in cases where RTS, ITS, guidelines or Q&As require input from the expertise of different ESAs.

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

☐ YES

☒ NO

ESMA should improve its culture of engagement with stakeholders and supervised firms. A continuous dialogue between supervisors and supervised entities is indeed at the core of effective and efficient supervision, as it allows supervisors to understand better the issues faced by the entities they supervise. Such interaction has been rather weak and should therefore be strengthened.

For instance, **a clearer breakdown of ESMA's organigram could be presented to the public**, for the level of access to ESMA staff would mirror the one that is currently in place for the European Commission and other institutions. As explained previously, we believe that **consultations should be more systematic, and their process improved** (in particular with extended periods for feedback).

Also, **the selection process applicable to candidates to stakeholder groups appears quite opaque** and we would like to understand why national associations are put aside from this process, whereas service providers, which may be in a situation of conflict of interests, are allowed to apply for such representative positions. In the end, **the lack of direct contact may undermine the trust of supervised entities in their supervisors**, in particular in a context of crisis.

More generally, **transparency on the decision making of the ESAs could be enhanced**. The ESAs should better explain the reasons why they decide to develop certain strategies or take certain policy orientations.

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

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

EBA Banking Stakeholder Group						X
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We believe that **a better participation of the Stakeholder Groups in the decision-making process should be ensured**. This could for example be achieved by the regular attendance of the chairs and vice-chairs of the IRSG and OPSG to the Board of Supervisors' meetings. Moreover, **stakeholder groups should be able to ask the Commission to revoke guidelines or recommendations exceeding the powers granted to the ESAs**.

We would like to take this opportunity to propose to further enhance the composition and role of stakeholder groups and other committees where professional experts are invited to participate:

- The appointment of the members of these groups should be more transparent and competence should be the key criterion with diversity as an ancillary consideration. The appointment of members of Stakeholder Groups by the ESAs themselves may lead to conflicts of interests.
- We are also of the view that the ESAs' Stakeholder Groups should meet on a more frequent basis and establish, through agendas, scheduling and meeting minutes, more formal working conditions, so as to enable them to make a full and timely contribution to the Authority's work.

More generally, **the ESAs should be encouraged to develop a culture of dialogue with the Stakeholder Groups and the industry in general**. Indeed, a continuous dialogue between supervisors and supervised entities is at the core of effective and efficient supervision.

Moreover, **the selection process applicable to candidates to stakeholder groups appears quite opaque** and we would like to understand why national associations are put aside from this process, whereas service providers, which may be in a situation of conflict of interests, are allowed to apply for such representative positions. In the end, the lack of direct contact may undermine the trust of supervised entities in their supervisors, in particular in a context of crisis.

245. 2019 ESAs' review. Please assess the significance of the recent changes in the composition, selection, term of office and advice of the stakeholders groups (Article 37 ESAs Regulations)? Please rate each change from 1 to 5, 1 standing for "less significant" and 5 for "most significant". Please explain your answer.

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

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

☐ YES

☒ NO

The appointment of the members of these groups should be more transparent and competence should be the key criterion with diversity as an ancillary consideration. The appointment of members of Stakeholder Groups by the ESAs themselves may lead to conflicts of interests.

The selection process applicable to candidates to stakeholder groups appears quite opaque and we would like to understand why national associations are put aside from this process, whereas service providers, which may be in a situation of conflict of interests, are allowed to apply for such representative positions. In the end, the lack of direct contact may undermine the trust of supervised entities in their supervisors, in particular in a context of crisis.

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

☐ YES

☒ NO

We would like to propose to further enhance the composition and role of stakeholder groups and other committees where professional experts are invited to participate:

– The appointment of the members of these groups should be more transparent and competence should be the key criterion, with diversity, as an ancillary consideration. The appointment of members of Stakeholder Groups by the ESAs themselves may lead to conflicts of interests. The selection process applicable to candidates to stakeholder groups appears quite opaque and we would like to understand why national associations are put aside from this process, whereas service providers, which may be in a situation of conflict of interests, are allowed to apply for such representative positions. In the end, the lack of direct contact may undermine the trust of supervised entities in their supervisors, in particular in a context of crisis.

– We are also of the view that the ESAs' Stakeholder Groups should meet on a more frequent basis and establish, through agendas, scheduling and meeting minutes, more formal working conditions, so as to enable them to make a full and timely contribution to the Authority's work.

2.5. Joint bodies of the ESAs

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

	1	2	3	4	5	No opinion
Organisation						
Functioning and time limits						

One joint Board of Appeal for the 3 ESAs						
The composition of the BoA						

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

	1	2	3	4	5	No opinion
Functioning						
Working methods						
Ensuring cross-sectoral cooperation		X				
Ensuring consistent approaches						
Decision making process						
The legal structure (no legal personality)						

It is important to bear in mind that the work carried out by one of the ESAs might have an impact and set precedents for the work of the other ESAs on similar topics. For example: (a) the remuneration provisions of the AIFMD were lifted from CRDIII and ESMA was required to work closely with the EBA in preparing its guidelines on sound remuneration policies under the AIFMD; and (b) the definition of fixed overheads for the purposes of the own funds requirements applicable to alternative investment fund managers under the AIFMD is by cross-reference to CRD IV. In light of this, **there is much to gain from increasing synergies between the different authorities**, in order to ensure that rules which are drafted by one ESA are appropriately taken into account by others.

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

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

Securitisation						
European Forum of Financial Innovators						

3. Direct supervisory powers.

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

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

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						
Trade Repositories under EMIR						
Trade Repositories under SFTR						
Securitisation Repositories						

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.

From a general standpoint, we believe that the granting of new direct powers must remain limited to areas where the ESAs show proven value added or the need for a pan-European approach is justified. The principle of subsidiarity must fully apply. National and regional issues must be addressed first and foremost by local supervisory bodies with better knowledge of local specificities and the needs of issuers and investors, and with whom market participants are used to interacting.

For instance, most consumer protection issues are country-specific. At this stage in European integration, and with no proven pan-European issue, there is no reason for granting special powers to the ESAs in the area of consumer protection, providing that:

- national provisions do not unduly hinder the correct functioning of the wholesale market where it is pan-European;
- the lack of action by a national regulator has no serious consequences for the consumers of other Member States.

Conversely, we support the introduction of direct powers for ESMA to get more involved in the authorization and supervision of entities from non-EU countries which are active in the Union.

In any case, **we recommend against a direct supervision by ESMA of EUVECAs, EUSEFs and ELTIFs**: we believe that such a move would be well too premature and that for now NCAs should continue to supervise the investment funds and their management companies which are established in their jurisdiction.

- Indeed, a direct supervision of these funds would jeopardize the competitiveness of the funds industry for investors, by creating a more complex, cumbersome and expensive process.
- Second, from a legal standpoint, even if these types of funds are regulated by EU regulations, some large areas currently remain regulated by national law such as taxation, marketing rules and retail investors appeal dispositions and several key legal issues would still have to be addressed at national level.
- Third, proximity of local NCAs is key for a better protection of investors as financial literacy, market experience, sensitivity to inflation, volatility, capital protection, amongst others, may vary considerably from one country to another. ESMA already contributes to the practical alignment of the national approaches by issuing guidelines and opinions. Under the current legal framework, this approach appears to be the best option for achieving an incremental convergence of funds standards.
- Fourth, separating the authorization process between ESMA and the NCAs could only lead to longer delays and heavy administrative costs for the industry and for ESMA, which are not in the interest of European supervision. In particular, the recruitment by ESMA of additional staff, skilled and competent, knowledgeable in highly innovative and specialised sectors such as venture capital and capable of dealing in all languages in the EU, would lead to an immediate and significant increase in ESMA's budget. In addition, the required IT developments would lead to increased costs and delays – in this respect, we observe that the database listing all managers of qualifying ELTIFs with the qualifying ELTIFs that they market is still not available on ESMA's website.
- Finally, direct supervision would increase costs both at the level of the supervisors and within firms. Indeed, asset management firms would have to suffer dual circuits and procedures, for example depending on whether they are dealing with a EUSEF or a UCITS. The same duplication of costs is to be expected at the global level of supervision. As explained above, ESMA would have to recruit new additional staff and the cost impact would be immediate and significant. No economy on the NCAs' side could be expected due to the limited importance of those funds in their overall activity and the necessity for them to keep expertise at the national level as well. Conversely, ESMA could rely on the local NCAs to gain expertise, but this would mean delegation and simply add extra delays as well as – more limited - extra cost in the process without any gain.

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

☒ YES

☐ NO

We support the introduction of direct powers for ESMA to get more involved in the authorization and supervision of entities from non-EU countries which are active in the Union.

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

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

	1	2	3	4	5	No opinion
The quality of the analysis of market developments						
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs						
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						
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						
The broader cooperation between the ESRB and the ESAs within the ESFS						
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors						

B. QUESTIONS ON THE SINGLE RULEBOOK

5. The ESAs work towards achieving a rulebook

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

☐ YES If you have identified areas for improvement, please explain

☒ NO Please give reasons.

☐ Other

The technical standards and guidelines/recommendations developed by ESMA contributed to further harmonize the Single Rule Book, however not sufficiently, as there remain some differences in the way the Member States implement the rules.

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

☐ YES

☒ NO

☐ Other

We believe that **the development of draft technical standards is not efficient in view of the objective to ensure timely deliverables**. For example, Level 1 of the Disclosure Regulation became applicable despite Level 2 not being finalized. This creates a high level of uncertainty for market players.

In addition, the Commission should consider ways to make sure ESAs are more involved at the start of the legislative process. **Coherence and consistency between Level 1 and Level 2 is essential but not always delivered in practice**. While the Treaties rightly pose clear limits with respect to the role of supervisory authorities in the regulatory process, mechanisms could be found to improve this connection while retaining the legitimate distinction between the Level 1 and Level 2 processes and preserving the position and independence of the co-legislators. If the ESAs were well informed about Level 1 negotiations, they would have institutional understanding and memory of points that were debated by the European Commission, the European Parliament and the Council.

We realize that, since their establishment, the ESAs have been facing a demanding and heavy regulatory agenda. While they are generally perceived as having performed well, we believe that **working under a significant time pressure and to very short deadlines for submission of draft technical standards has not only been a challenge for the ESAs but also for the stakeholders and has ultimately affected the quality of the work**.

The time allocated for consultation periods should be extended. Too strict implementation deadlines, along with a too tight consultation processes, have a negative impact on the quality of the analysis and feedback that can be provided by stakeholders. Longer deadlines would also help the ESAs to make better use of their respective working groups, especially in cases where RTS, ITS, guidelines or Q&As require input from the expertise of different ESAs.

Appropriately longer consultation periods would also let the ESAs benefit from more comprehensive, detailed and, consequently, more helpful input. Simply reducing the number of implementing acts and replacing them with guidance and Q&A could – given the more limited stakeholder involvement that we see in their production – limit the amount of information at the ESAs' disposal and leading to a worse outcome.

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?

5.4. In particular, are stakeholders sufficiently consulted and any potential impacts sufficiently assessed? Please explain your answer. If you identify areas for

improvement, please indicate.

☐ YES

☒ NO

☐ Other

In our view, stakeholders should be given more time to respond to the ESAs' consultations. Also, **they should be able to approach the ESAs' staff** in order to have better insight of the proposals and provide more meaningful responses.

In addition, we believe that **better participation of the Stakeholder Groups in the decision-making process should be ensured**. This could for example be achieved by the regular attendance of the chairs and vice-chairs of the IRSG and OPSG to the Board of Supervisors' meetings.

The working programmes of the different stakeholder groups should be published ahead of their meetings, as this should ensure that stakeholders are provided with true transparency on the calendar and agenda of the meetings.

Also, **stakeholder groups should be able to ask the Commission to revoke guidelines or recommendations exceeding the powers granted to the ESAs**.

We would like to take this opportunity to propose to further enhance the composition and role of stakeholder groups and other committees where professional experts are invited to participate:

- The appointment of the members of these groups should be more transparent and competence should be the key criterion with diversity as an ancillary consideration. The appointment of members of Stakeholder Groups by the ESAs themselves may lead to conflicts of interests.
- We are also of the view that the ESAs' Stakeholder Groups should meet on a more frequent basis and establish, through agendas, scheduling and meeting minutes, more formal working conditions, so as to enable them to make a full and timely contribution to the Authority's work.
- More generally, as explained previously, the ESAs should be encouraged to develop a culture of dialogue with the Stakeholder Groups and the industry in general. Indeed, a continuous dialogue between supervisors and supervised entities is at the core of effective and efficient supervision.

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?

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 Please specify which ones

☐ NO Please give reasons.

[exclusively for ESMA] If you think of the Wirecard case as an example, how

could supervision be improved in the field of auditing and financial reporting?

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

☐ Other, please explain

☐ No improvements are needed.

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

☐ YES Please explain and specify how.

☐ NO Please give reasons.

5.8. Do you think that Directive 2004/109/EC (Transparency Directive) should require ESMA to annually report on the supervision and enforcement of financial and non-financial information in the EU on the basis of data provided by the national competent authorities regarding their supervisory and enforcement activities? Please explain your answer.

☐ YES

☐ NO

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

☐ YES Please explain and specify how.

☐ NO Please give reasons.

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

We believe that the work undertaken by ESMA regarding opinions and technical advice is extremely valuable.

In our view, **there is a need for a more appropriate and transparent process in cases where the European Commission does not accept the work undertaken by the ESAs**. In order to ensure consistency in the process, the Commission should provide a clear and full explanation of the reasons for its decision not to endorse or accept the output of the ESAs work, with appropriate analysis and evidence.

Moreover, **ESMA should increase its IT (digital) resources and human (competences)**. In particular, **ESMA needs to improve its understanding of the specificities of venture capital and private equity industry**. Investment in non-listed equity is very specific and it appears that most of the work of ESMA focuses mainly on investment in listed equity.

Furthermore, the ESAs should strive to understand the consequences of their actions on sectors outside their remit. For example, EIOPA should take into account the consequences of its decisions on investment by insurers in venture capital and private equity funds.

6. General questions on the single rulebook

6.1. Which are the areas where you would consider maximum harmonisation desirable or a higher degree of harmonisation than presently (rather than minimum harmonisation)?

Please give your reasons for each.

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

Sector:	Specific piece of legislation	Example of gold-plating	Please explain
Banking			
Insurance			
Asset management	AIFMD EuVECA Regulation	Venture capital and private equity fund managers have especially been concerned by fees and charges imposed by host authorities in the context of the AIFM Directive and the EuVECA Regulation. In a number of cases private equity firms are being asked to pay a fee not only in their home Member State, but also in the host jurisdiction in which they intend to market and seek to exercise their marketing passport	We believe that the imposition of these fees is contrary to the letter and spirit of the existing legislation, and should in our opinion be considered as a breach of EU law.

		rights.	
Market infrastructure (CCPs, CSDs)			
Market organisation (MiFID, MIFIR, MAR)			
Other			

6.3. Do you consider that the single rulebook needs to be further enhanced to reach the uniform application of Union law or rules implementing Union law and efficient convergent supervisory outcomes? Please explain your choice. Where appropriate, please support your response with examples.

☐ YES

☒ NO

The Single Rule Book has been significantly developed over the last decade and, overall, we do not see any need to further enhance it, except for streamlining it or taking into account some specific market evolutions (e.g. regarding sustainable or digital finance). Rather, we believe that focus should be placed on the implementation and enforcement of the existing rules.

6.4. Questions regarding the appropriate level of regulation.

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

YES

☒ NO

We support the ability for the Commission to withdraw guidelines or recommendations which exceed the ESAs' remit. Indeed, guidelines should be consistent with level 1 provisions and should not stand as substitute legislation: it is fundamental to avoid any blurring of the supervisory and regulatory boundaries and to maintain a clear distinction between what is technical, where the ESAs' contribution is welcome, and what is political, where the ESAs do not have a role. We believe that the opinion of two thirds of the members of the Stakeholder Groups is not the appropriate trigger for such a withdrawal process. Rather, in our opinion, a simple majority

vote would be more appropriate.

A further improvement we would like to propose is to grant a ‘right of action’ against supervisory guidelines to national authorities as well as to individual market participants and their representatives in case the relevant guidelines directly impact the latter. Such claims should be founded upon breach of EU law or disregard of the ESAs’ competences in relation to the guideline setting. We would also like to encourage the review, amendment and adjustment of guidelines as a standard and timely process.

642. 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

In our opinion, **it is essential that the different levels articulate properly, and that ESMA does not go beyond its remit and that NCAs do not “goldplate” the European rules.** Also, the appropriate timing of any new set of rules should be ensured. **We call for realistic timelines to be established for setting technical standards and revising adopted legislation.** Preparing proportionate and appropriate responses to often highly complex questions, including consultation with financial services stakeholders, rightly takes time. In addition, **measures must be given time to take effect before assessing their impact with a view to a potential revision.** Last, **the application of level 1 legislation – Regulations and Directives – should only be possible if the level 2 acts – required delegated and implementing acts – have been adopted and are readily applicable.** Moreover, **level 2 provisions should provide for a certain transition period (i.e at least 18 months) if they require market participants to proceed with significant organizational or technical changes.**

643. Which of the three levels and/or a combination thereof are more effective in building the single rulebook? (multiple choices allowed)

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

☐ 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)

As explained previously, we do not see any need to further enhance or tighten the Single Rule Book, except for streamlining it or taking into account some specific market evolutions (e.g. regarding sustainable or digital finance). Rather, we believe that focus should be placed on the implementation and enforcement of the existing rules.

- 6.6. In your view, what, if anything and considering legal limitations, should be

improved in terms of determining application dates and sequencing of level 1, level 2 and level 3?
Please explain

In our opinion, it is essential that the different levels articulate properly, and that ESMA does not go beyond its remit and that NCAs do not goldplate the European rules.

Also, the appropriate timing of any new set of rules should be ensured i.e. the publication of level 2 measures should take place as provided for in level 1 rules. At each stage of the rulemaking process, it should be ensured that sufficient time is allowed for stakeholders to contribute to the relevant consultations.

We call for realistic timelines to be established for setting technical standards and revising adopted legislation. Preparing proportionate and appropriate responses to often highly complex questions, including consultation with financial services stakeholders, rightly takes time. In addition, measures must be given time to take effect before assessing their impact with a view to a potential revision. Last, the application of level 1 legislation – Regulations and Directives – should only be possible if the level 2 acts – required delegated and implementing acts – have been adopted and are readily applicable. Moreover, level 2 provisions should provide for a certain transition period (i.e. at least 18 months) if they require market participants to proceed with significant organizational or technical changes.

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

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

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 Please specify which one

Sector:	Specific piece of legislation	Example	Please explain
Banking			
Insurance			
Asset management			
Market infrastructure (CCPs, CSDs)			
Market organisation (MiFID, MIFIR, MAR)			
Other			

☒ NO

Please specify which Directives you have in mind and explain your answers

Sector:	Specific piece of legislation	Example	Please explain
Banking			
Insurance			
Asset management	AIFMD		Fund industries and investment cultures are specific to each Member State.
Market infrastructure (CCPs, CSDs)			
Market organisation (MiFID, MIFIR, MAR)			
Other			

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 Please specify legislation and what these rules at level 2 should regulate

☒ NO

As explained previously, we do not see any need to further enhance or tighten the Single Rule Book, except for streamlining it or taking into account some specific market evolutions (e.g. regarding sustainable or digital finance). Rather, we believe that focus should be placed on the implementation and enforcement of the existing rules.

The level of granularity of the rules should be carefully assessed, as it will have direct - and potentially significant - impacts on IT costs (e.g. rules on non-financial disclosure). The level of detail should not be excessive and should not be counterproductive (e.g. PRIIPs).

Last, it should be taken into account the fact that **some rules may prove overly cumbersome when applied in a dematerialized context**. For instance, handwritten statements should no longer be required, as they are not adapted to remote relationships.

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?

As explained previously, we do not see any need to further enhance or tighten the Single Rule Book, except for streamlining it or taking into account some specific market evolutions (e.g. regarding sustainable or digital finance). Rather, we believe that focus should be placed on the implementation and enforcement of the existing rules.

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

Sector:	Specific piece of legislation	Legislative approach (omnibus vs targeted reviews)	Please explain
Banking			
Insurance			
Asset management			
Market infrastructure (CCPs, CSDs)			
Market organisation (MiFID, MIFIR, MAR)			
Other			

- ☐ In a targeted manner through individual sectoral reviews

For further information, please feel free to contact Carine Delfrayssi, European and Regulatory Affairs at France Invest, at c.delfrayssi@franceinvest.eu or +33(0)1 47 20 99 79.
