

## EC CONSULTATION

### TARGETED CONSULTATION ON THE SUPERVISORY CONVERGENCE AND THE SINGLE RULE BOOK

#### AMAFI answer

**Association française des marchés financiers (AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. AMAFI members consist of investment firms and credit institutions (French, European and global firms), operating in and/or from France (corporate and investment banks (CIBs), brokers-dealers, exchanges, and private banks). AMAFI is deeply involved in all regulatory matters that concern financial instruments (MiFID, PRIIPs, intervention measures and product bans, AMF framework on product complexity, etc.). As far as financial products are concerned, we mostly represent all issuers/manufacturers of products (CIBs) and, through our private bank members, distributors as well. AMAFI has more than 150 members operating in equities and fixed-income and interest rate products, as well as commodities, derivatives and structured products for both professional and retail clients.

AMAFI welcomes the opportunity to respond to the European Commission's consultation (hereafter the CP) on the Supervisory Convergence and the Single Rule Book.

Before answering to the specific questions in the CP, AMAFI would like to highlight the following general comments.

## GENERAL COMMENTS

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The sanitary crisis and Brexit have underlined the necessity for the Union to develop and strengthen its open strategic autonomy globally, and especially in the financial area. In this context, the relaunching and the deepening of the CMU project has a central role to play to increase the competitiveness of EU financial markets in a new post-Brexit ecosystem<sup>1</sup>.

The main objectives should be to enable EU markets to further contribute (i) to the economic recovery at national and European levels and (ii) to the financing challenges the Union is facing, in relation to the mitigation of climate change, the ageing of the population and the development of EU champions in strategic fields such as digital and sustainable finance.

In this context, AMAFI considers the establishment of a fully integrated CMU could only take place if ESMA becomes a true pan-European supervisor. It is crucial to have a responsive supervisor that can adapt quickly to the constant evolution of how markets operate.

In a nutshell, AMAFI's proposed reforms would aim at establishing:

- (i) **An explicit consideration for the need to ensure the competitiveness of the Union's financial markets;**
- (ii) **A more transparent and efficient decision making-process;**
- (iii) **A deeply rooted supervisor in industry's operational/technical issues;**
- (iv) **A capacity to act quickly in a flexible and pragmatic way.**

With regards to the issue of supervisory convergence, we consider it is critical to make the distinction between the interdealer market at international level which does not require any harmonisation, the wholesale market for which further integration at EU level is of the utmost importance and finally local/regional markets whose specificities need to be preserved.

While AMAFI welcomes the European Commission's (EC) consultation on the Supervisory Convergence and the Single Rule Book, it considers its scope too broad and as such might not lead to the necessary targeted reforms. Therefore, AMAFI has only provided answers to issues it considers essential to achieve the above highlighted reforms.

We have summarized below the main comments provided by AMAFI in the CP with regards to reforms we consider essential for ESMA to become a true pan-European supervisor:

- **Including the competitiveness of EU's financial markets in ESMA's mandate;**
- **Improving the efficiency of ESMA's supervisory convergence tools:**
  - Q&As should systematically be subject to a public consultation even though it would reduce the speed and flexibility of their elaboration that could be improved by making the EC's contribution not mandatory.
  - No action letter, ESMA's power should tend towards those of the SEC/CFTC under the condition that issuing such letter is taken in close collaboration with NCAs and the industry. To ensure NCAs will act in a harmonized way no action letters should come with an assumed agreement by NCAs to de-prioritise their enforcement actions related to the targeted rule, unless they explicitly and officially express their refusal to do so.

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<sup>1</sup> For further details please see AMAFI-CEPS report on Completing Capital Markets Union, [link](#)

- **Reforming ESMA's governance:**
  - Board of Supervisors (BoS) decision making, despite the heterogeneity of financial markets across the Union, decisions taken by the BoS should presuppose that their technicality is sufficiently understood and that Member States' own interests do not interfere.
  - Creation of a new Executive Board composed of independent members with greater responsibilities than the existing Management Board. The objective is to bring additional expertise and to limit national bias.
  - Improving Standing Committees impact on ESMA's work, they should be better organised *i.e.* they should meet on a regular basis and produce written contributions including reports on topical issues for which the industry's expertise would be valued and complete ESMA's work.
  - Recruitment of ESMA's staff, in order to increase ESMA's knowledge of industry concerns one should elaborate dedicated recruitment schemes to facilitate not only the secondment / transfer of staff from NCAs to ESMA but also to establish a certain turn-over with the industry, while maintaining compliance with high standards in terms of management of conflicts of interests.
- **Considering an extension of the scope of ESMA's direct supervisory powers**, while a lot of efforts has been made to increase supervisory convergence with so far limited results, most AMAFI members consider that once ESMA's governance would have been successfully reformed, further direct supervisory powers should be considered. Effective direct supervision by ESMA over entities which have pan European activities (*e.g.* CCPs, TVs, CSDs) is an important factor in achieving the objective of integrated markets in the EU which is central in the CMU context<sup>2</sup>.

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<sup>2</sup> Some AMAFI members do not support this approach.

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

**Question 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			
Financial stability			X			
The functioning of the internal market			X			
The quality and consistency of supervision		X				
The enforcement of EU rules on supervision		X				
Strengthening international supervisory coordination						X
Consumer and investor protection			X			
Financial innovation						X
Sustainable finance						X

**Question II - 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.**

- ☐ YES  
☒ NO

The Commission's action plan related to "a Capital Markets Union for people and businesses" rightly insists on the need to ensure the global competitiveness of the EU economy globally, and of EU financial markets specifically. This appears all the more critical as Brexit has permanently changed the competitive landscape for financial markets in Europe.

With this in mind, we believe that the objectives set for ESMA by the article 1.5 of Regulation 1095/2010 should be modified: alongside the contribution to "ensuring the integrity, transparency, efficiency and orderly functioning of financial markets" and to "enhancing customer and investor protection", ESMA's mandate should include "ensuring the attractiveness of the Union's financial markets and the competitiveness of their players". It should be noted that such inclusion would simply mirror the objectives assigned to the FCA in the UK and to the CFTC in the US.

**Question 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

We consider that the main obstacle that goes against ESMA's ability to deliver on its mandate is directly linked to its governance which needs an in-depth reform. It is key to ensure that ESMA's work better takes into account the industry's core concerns and operational issues. We further elaborate on our reasoning and proposed reforms in the dedicated section of this consultation.

We also consider the efficiency of ESMA's supervisory convergence tools should be improved and in particular Q&As and no-action letter. We provide detailed answers in the dedicated section of this consultation.

Another important issue revolves around the fact that ESMA does not perform sufficient cost and benefit analysis in the work it performs which contribute to the elaboration of level 1 texts but also for level 2 and level 3. Therefore, we call for a systematic cost and benefit analysis to be undertaken and accompany each piece of regulatory work undertaken by ESMA. They should include an assessment of the impact of the proposed text vis-à-vis each of ESMA's policy objectives (e.g. market integrity, financial stability).

We would also suggest the need to better articulate level 1 and level 2 texts. More precisely, level 1 text should leave more time for ESMA to work on its technical standards (at least 6 to 12 months) and also to let enough time to the industry to implement new pieces of legislations.

## 1. The supervisory convergence tasks of the ESAs

### ➤ 1.1. Common supervisory culture/supervisory convergence:

**Question 1.1.1 - 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			

Please find in the dedicated section of the consultation our comments to improve supervisory convergence tools (e.g. Q&As and no action letter).

**Question 1.1.2 - 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						
(Only the EBA) Monitoring of own funds and eligible liabilities instruments issued by institutions						
Initiating and coordinating Union-wide stress tests of financial institutions						X
Developing guidelines and recommendations			X			
Developing Q&As		X				
Contributing to the establishment of a common Union financial data strategy						X
Providing supervisory statements		X				
Other instruments and tools to promote supervisory convergence, please indicate						X

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

**Question 1.1.3 - 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

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

We have strong reservations with regards to the new process for questions and answers.

Although they are legally non-binding, Q&As play a critical role in the convergence of supervisory practices across the Union and have been increasingly used by ESMA. In light of their importance, we consider their elaboration should be reviewed to be made more inclusive.

Indeed, the current process does not ensure that Q&As are based on a sufficient dialogue between the supervisor and the entity supervised, which is key to ensure they share the same understanding of the legislation. Typically, we believe that such an important Q&A like the recent one on inducement under MiFID 2 should have been discussed between ESMA and stakeholders.

As a consequence, we consider that Q&As should systematically be subject to a public consultation even though it would de facto reduce the speed and flexibility of their elaboration which could be improved by making the EC's contribution not mandatory.

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

- ☐ YES Please identify areas for improvement, please explain  
☒ NO, Please give reasons

For reasons highlighted in the previous question, we believe the new process for Q&As should be improved to promote supervisory convergence.

➤ **1.2. No action letters**

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

- ☐ YES  
☒ NO

Currently, ESMA is extremely far from the prerogatives of the SEC or of the CFTC which are intended to provide a commitment to suspend a legal provision. ESMA's power should tend towards those of its US peers under the condition that the decision of issuing a no action letter is taken in close collaboration with the industry and NCAs.

Another issue revolves around the fact that, under the current mechanism, no-action letters are not fully reliable for the financial industry, as they do not guarantee that the NCAs will act in a harmonized way and that market participants will be relieved from their obligations. We hence consider that no-action letters should come with an assumed agreement by NCAs to de-prioritise their enforcement actions related to the targeted rule, unless they explicitly and officially express their refusal to do so.

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

Please see our comments to the previous question.

**Question 1.2.3 - 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?**

With regards to the MiFID II quick fix, we consider ESMA should have issued a no action letter for the suspension of the RTS 27 to clarify NCAs' interpretation.



➤ **1.3. Peer reviews**

**Question 1.3.1 - Please specify to what extent peer reviews organised by the ESAs have contributed to the convergence outcomes listed below.**

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

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

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

Please explain your reasoning/give examples.

In principle we consider peer reviews useful to encourage supervisory convergence and as a means to improve the relationship between the NCA and the supervised entities as well as to ensure NCAs perform adequately. In practice we hear very little about ESMA's work and therefore find it difficult to assess their efficiency and ESMA's role in the process.

**Question 1.3.2 - How do you assess the impact of each of the changes below introduced by 2019 ESAs review in the peer review process? Please rate each change from 1 to 5, 1 standing for "less effective" and 5 for "most effective"**

	1	2	3	4	5	No opinion
Ad-hoc Peer Review Committees (PRC) composed of ESAs' and NCAs' staff and chaired by the ESA are responsible for preparing peer review reports and follow-ups.						X
The peer review report is now adopted by written procedure on non-objection basis by the Board of Supervisors.						X
Transparency provisions: if the PRC main findings differ from those published in the report, dissenting views should be transmitted to the three European Institutions.						X
PRC findings may result in recommendations to NCAs under Article 16 of the ESAs Regulations that are now distinguished from guidelines, addressed to all NCAs. The use of this type of individual recommendations entails the application of the "comply or explain" mechanism and allows a close follow-up.						X
Mandatory follow-up to peer reviews within two years after the adoption of the peer review report.						X
The possibility to carry out additional peer reviews in case of urgency or unforeseen events (fast track peer reviews).						X
The Management Board is consulted in order to maintain consistency with other peer reviews reports and to ensure a level playing field.						X

Please explain your reasoning

**Question 1.3.3 - 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

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

- ☐ YES  
☐ NO

➤ **1.4. Other tasks and powers**

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

- ☐ YES  
☐ NO

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

- ☐ YES  
☐ NO

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

- ☒ YES  
☐ NO

Please see answers provided to questions 1.1.4 and 1.2.

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

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

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

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

**Question 1.4.7 - 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

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

- ☐ YES  
☐ NO

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

- ☐ YES  
☐ NO

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

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

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

- ☐ YES  
☐ NO

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

Before 2019 ESAs' review

- ☐ YES  
☐ NO

After 2019 ESAs' review

- ☐ YES  
☐ NO

In principle we consider this tool as a useful means for ESMA to put pressure on NCAs to avoid triggering the procedure. In practice it is difficult to assess its efficiency.

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

- ☐ YES  
☐ NO

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

- ☐ YES  
☐ NO

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

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

N/A

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

N/A

➤ **1.6. Emergency situations and response to COVID-19 crisis**

**Question 1.6.1 - 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			

With regards to the Short Selling Regulation, we would like to underline that while the Regulation allows each NCA to take discretionary action, we welcomed ESMA's intervention in March 2020 in order to harmonize national measures.

However, with regards to record keeping and working from home communications, we noticed some differences between ESMA's communications and NCAs which contributed to create legal uncertainty.

**Question 1.6.2 - Please rate in a scale from 1 to 5, the effectiveness of the ESAs' follow-up actions on the European Systemic Risk Board (ESRB) recommendations below in the context of the COVID-19 crisis. Please explain.**

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

**Question 1.6.3 - 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

We consider the coordinating activities carried out by ESMA was not entirely successful. Please see our answer to the previous question.

**Question 1.6.4 - 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

Please see our answer to question 1.6.1.

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

☐ YES

☐ NO

N/A

**Question 1.6.6 - In case you identified areas for improvement in the ESAs' powers in emergency situations, do you have any suggestions on how to address them? 1.7. Coordination function (Art 31 ESAs' Regulations)**

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

☐ YES

☐ NO

**Question 1.7.2 - 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

**Question 1.7.3 - 2019 ESAs' review. Please rate the effectiveness, in your view, of the tools below in order to fulfil the new coordination role of the ESAs facilitating the entry into the market of actors or products relying on technological innovation. ("5" being the most effective and "1" the least effective tool)**

	1	2	3	4	5	No opinion
Exchange of information and best practices						X
Adopt guidelines						X
Adopt recommendations						X

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

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

- ☐ YES  
☐ NO

**Question 1.7.5 - 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

➤ **1.8. Tasks related to consumer protection and financial activities.**

**Question 1.8.1 - What are, in your view, the ESAs' main achievements in the consumer and investor protection area?**

N/A



**Question 1.8.2 - 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						X
Contributing to a level playing field						X
Financial literacy						X
Follow up to work in this area						X

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

- ☐ YES  
☐ NO

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

- ☐ YES, Please specify which ones  
☐ NO, Please give reasons

**Question 1.8.5 - 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?

**Question 1.8.6 - 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.**

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

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

N/A

**Question 1.8.8 - 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

➤ **1.9. International relations.**

**Question 1.9.1 - 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.**

N/A

**Question 1.9.2 - 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?**

N/A

**Question 1.9.3 - 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

**Question 1.9.4 - 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?**

N/A

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

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

N/A

Question 1.10.2 - 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

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

- ☐ YES
- ☐ NO

Question 1.10.4 - Do you think the respective roles of the ESAs and of the Commission are clearly defined in Article 17, 18 and 19 ESAs Regulations? Please substantiate your answer.

- ☐ YES
- ☐ NO

Question 1.10.5 - Do you think the use of sanctions laid down in the EU acquis by competent authorities in case of non-compliance of market participants/financial institutions with EU rules is, in practice, sufficiently dissuasive or disproportionate? If not, what role could sectoral legislation and each ESA play in improving the situation? Please substantiate your answer and give examples.

- ☐ Sufficiently dissuasive
- ☐ Disproportionate
- ☐ Other, please explain

## 2. Governance of the ESAs.

### ➤ 2.1. General governance issues

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

☐ YES

☒ NO

Overall, we consider the decision-making process should be more transparent and with more direct concertation with the industry to ensure operational views are sufficiently taken on board when taking decisions.

Looking at the Standing committees and stakeholder groups representativeness, while we consider the Securities and Markets Stakeholders Group (SMSG) rather well structured and useful in light of the reports it produces, we are more sceptical with regards to the impact of the discussions taking place in Standing Committees (SC). We consider these groups have an important role to play in providing the necessary expertise to ensure industry's core concerns are properly assessed and taken into consideration. They should therefore be better organised that is to say they should meet on a regular basis and produce written contributions including reports on topical issues for which the industry's expertise would be valued and complete ESMA's staff knowledge.

A more efficient dialogue with the industry appears also critical to improve the quality of ESMA/ESAs' Joint Committee work as recently illustrated by the adoption of the amended PRIIPs RTS. We regret the impossibility for the industry to contribute in a constructive manner to the drafting process and the lack of transparency in the decision-making process.

Considering the recruitment of ESMA's staff, in order to increase ESMA's knowledge of industry concerns one should elaborate dedicated recruitment schemes to facilitate not only the secondment / transfer of staff from NCAs to ESMA but also to establish a certain turn-over with the industry, while maintaining compliance with high standards in terms of management of conflicts of interests.

We have highlighted below our comments on the voting modalities of the BoS and on the necessity to create a new Executive Board with independent members in the dedicated section below.

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

☐ YES

☐ NO

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

☐ YES

☐ NO

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

	1	2	3	4	5	No opinion
Request to the Board to establish internal committees for specific tasks						X
Set the agenda to be adopted by the Board and table items for decision						X
Call a vote at any time						X
Propose the composition of independent panels for breach of Union law investigations and dispute settlements.						X
Propose the composition of peer review committees for peer reviews						X
Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation						X
Vote in the Board of Supervisors (except on matters that are decided on the basis of qualified majority voting)						X
Other, please indicate						X

**Question 2.1.5 - 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**

**Question 2.2.1 - Does the current composition of the Board of Supervisors (BoS) and of the Management Board (MB) ensure that decisions are taken efficiently and independently? If you identify areas for improvement, please explain.**

- ☐ YES  
☒ NO

To strengthen the efficiency and independence of the BoS and of the MB, tasks and responsibilities should be transferred to other bodies.

In particular, we call on the creation of a new Executive Board which would be composed of independent members and would have greater responsibilities than the existing Management Board which mainly revolves around the development and implementation of a multi-annual Work Programme together with budget and staff matters. The objective of having independent members with pan-European experience is to bring additional expertise and to limit national bias.

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

- ☐ YES  
☒ NO

The CMU makes ESMA's role particularly critical at a time when the achievement of an integrated market is becoming vital to enable the EU to meet the funding challenges it faces. It is therefore essential that ESMA has a decision-making process which ensures that the full extent of this challenge is taken into account: at the level of the Board of Supervisors (BOS), it presupposes on the one hand, the technicality of certain decisions is sufficiently understood and, on the other hand, that a Member State's own interests do not interfere in this process.

More specifically, we consider that while the simple majority vote as the most "democratic" approach, we consider it does not appropriately reflect the importance of financial markets across Member States and the various degrees of expertise associated. While qualified majority votes would represent a better alternative, we believe new voting modalities should be considered to reflect the heterogeneous weight of the financial services industry in the Union.

We also consider that similarly to simple majority vote where abstention does not count as approval or as objection, this should also apply to all types of vote at the BoS level.

[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

**Question 2.2.3 - Does the current allocation of tasks between the BoS and the MB ensure that the ESAs are run effectively and perform the tasks conferred on them? If you identify areas for improvement, please explain.**

- ☐ YES  
☐ NO

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

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

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

- ☐ YES  
☐ NO

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

- ☐ YES  
☐ NO

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

- ☐ YES  
☐ NO

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

- ☐ YES  
☐ NO

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

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

(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.**

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

- ☐ YES  
☐ NO

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

- ☐ YES  
☐ NO



**Question 2.3.3 - 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**

**Question 2.4.1 - 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

As explained previously, we consider Q&As should systematically be subject to a public consultation. More generally, we consider ESMA is not sufficiently connected with industry's operational and technical issues and as such we call on closer cooperation with industry representatives especially through existing Standing Committees. Please refer to question 2.1.1 for further comments on proposed reforms regarding Standing Committees.

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

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

Beyond the quality of the consultations, we believe it is important to look at the way ESMA uses the answers it receives to support its recommendations/final advises.

To ensure answers received to the consultations are used in the most constructive and efficient way we would propose the following approach:

- The elaboration of a qualitative assessment and quantitative analysis should be systematically provided. They should highlight for each question the number of respondents for each category of respondent together with the proportion of answers which support or is against ESMA's proposal;
- A detailed overview of the alternative approaches submitted by the respondents to ESMA's proposal which would provide sufficient details with regards to understand their reasoning and objectives and where it is possible why they have been rejected by ESMA.

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

- ☐ YES  
☒ NO

Generally speaking, we consider ESMA staff is rather open to meetings with the industry but nevertheless that they should have much more regular interactions.

On certain topics we are under the impression that one could not stress the interaction as efficient. A topical example would be ESMA's proposed reforms for the transparency regime for non-equity where ESMA's staff had already decided on its approach no matter the content of the industry's feedback.

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

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

**Question 2.4.5 - 2019 ESAs' review. Please assess the significance of the recent changes in the composition, selection, term of office and advice of the stakeholders groups (Article 37 ESAs Regulations)? Please rate each change from 1 to 5, 1 standing for "less significant" and 5 for "most significant". Please explain your answer.**

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

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

- ☒ YES  
☐ NO

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

- ☐ YES  
☐ NO

➤ **2.5. Joint bodies of the ESAs**

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

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

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

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

This assessment is based on the recent PRIIPS revised RTS as explained in question 2.1.

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

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

### 3. Direct supervisory powers.

**Question 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)

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

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

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

While a lot of efforts has been made to increase supervisory convergence with so far limited results, most AMAFI members consider that once ESMA's governance would have been successfully reformed, further direct supervisory powers should be considered. Effective direct supervision by ESMA over entities which have pan European activities (e.g. CCPs, TVIs, CSDs) is an important factor in achieving the objective of integrated markets in the EU which is central in the CMU context\*.

This could facilitate the building up of ESMA's expertise in dealing directly with the above proposed entities. It would also be consistent with the pan-European footprint of such entities and would avoid the bias that could affect national supervision, especially as the players of a given category may be prone to concentrate in a given member state. This is all the more important since, as a direct consequence of Brexit, we can already observe the advent of a multipolar financial market ecosystem where, to the exception of Paris and Frankfurt, financial places across Europe are specializing in certain activities.

*\*Some AMAFI members do not support this approach.*

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

- ☒ YES  
☐ NO

Please refer to the answer given to the previous question.

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

**Question 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						X
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs						X
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk						X
The cooperation within the European System of Financial Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing						X
The broader cooperation between the ESRB and the ESAs within the ESFS						X
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors						X

## B. QUESTIONS ON THE SINGLE RULEBOOK

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### 5. The ESAs work towards achieving a rulebook

**Question 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

**Question 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

**Question 5.3 - When several ESAs need to amend joint technical standards (e.g. PRIIPs RTS) and there is a blocking minority at the Board of Supervisors of one of the ESAs, what would you propose as solution to ensure that the amendment process runs smoothly?**

N/A

**Question 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

We believe that not only stakeholders are not sufficiently consulted ahead and during the drafting process for instance and as highlighted previously with regards to Q&As but also that the potential impact especially on the competitiveness of EU actors of revised technical standards is not sufficiently assessed and that it should be done in a more transparent manner. A cost and benefit analysis should be undertaken systematically.

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

N/A

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

- ☐ YES, 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.

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

- ☐ YES, Please specify which ones
- ☐ NO, Please give reasons

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

- ☐ YES
- ☐ NO

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

- ☐ YES, Please explain and specify how
- ☐ NO, Please give reasons

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

N/A

## 6. General questions on the single rulebook

**Question 6.1 - Which are the areas where you would consider maximum harmonisation desirable or a higher degree of harmonisation than presently (rather than minimum harmonisation)? Please give your reasons for each**

N/A

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

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

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

- ☐ YES  
☐ NO

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

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



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

- ☐ YES  
☐ NO

**Question 6.4.3 - Which of the three levels and/or a combination thereof are more effective in building the single rulebook? (multiple choices allowed)**

N/A

**Question 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)

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

N/A

**Question 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						

None of the above						
Other aspects, if so which ones. Please provide concrete examples						

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

☐ 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			
Market Infrastructure (CCPs, CSDs)			
Market organisation (MiFID, MIFIR, MAR)			
Other			

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

- ☐ YES, Please specify legislation and what these rules at level 2 should regulate  
☐ NO

**Question 6.10 - Against the objective of establishing the single rulebook for financial services, how would you increase the degree of harmonisation of EU financial legislation?**

- ☐ 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