



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

CONSULTATION DOCUMENT

TARGETED CONSULTATION

ON THE SUPERVISORY CONVERGENCE AND THE SINGLE RULE BOOK

Taking stock of the framework for supervising European capital markets, banks, insurers
and pension funds

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

You are invited to reply **by 21 May 2021** at the latest to the **online questionnaire** available on the following webpage:

https://ec.europa.eu/info/publications/finance-consultations-2021-esas-review_en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published unless respondents indicate otherwise in the online questionnaire.

Responses authorised for publication will be published on the following webpage:
https://ec.europa.eu/info/publications/finance-consultations-2021-esas-review_en

INTRODUCTION

There has been considerable progress on both supervisory convergence and the single rulebook since the three [European Supervisory Authorities \(ESAs\)](#) were created in 2011. Nevertheless, both require continued and appropriately targeted efforts to make further progress. In this context, the Commission's capital markets union (CMU)¹ action plan published on 24 September 2020 includes the following action:

CMU action plan - Action 16: *The Commission will work towards an enhanced single rulebook for capital markets by assessing the need for further harmonisation of EU rules and monitoring progress towards supervisory convergence. It will take stock of what has been achieved in Q4 2021 and consider proposing measures for stronger supervisory coordination or direct supervision by the European Supervisory Authorities.*

The Commission will also carefully assess the implications of the Wirecard case for the regulation and supervision of EU capital markets and act to address any shortcomings that are identified in the EU legal framework.

The [CMU](#) is the EU's plan to create a truly single market for capital across the EU. It aims to get investment and savings flowing to the companies and projects that need them across all Member States, benefitting citizens, investors and companies, regardless of where they are located. The CMU provides new sources of funding for businesses, helps increase options for savers and makes the economy more resilient.

Without well-developed and integrated capital markets, there can be no economic prosperity. And without supervision, capital markets could not contribute to economic prosperity. Supervision 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. Gradual progress towards more integrated capital markets supervision will be indispensable.

It is essential for people and firms to have confidence in the financial system and also for the providers of financial services to operate in a stable and fair environment. Supervision should ensure that divergences in outcomes of supervisory practices in Member States do not undermine confidence, stability, investor protection and fairness in the Single Market. The three European Supervisory Authorities (ESAs) are mandated to ensure the convergence of supervisory practices among the national competent authorities². In addition, the [European Securities Markets Authority](#), is responsible for direct supervision of some market activities and market operators. However, supervisory convergence reaches its limits where the national rules that supervisors have to apply and enforce differ between Member States or where the common European rules leave room for interpretation or too much discretion to Member States for its transposition, application and enforcement. The ambition for a European single rulebook therefore seeks to reduce differences between national laws and to provide more detailed rules where it is important for stability and fairness in the single market. Taken together,

¹ The EP adopted an own initiative report on further development of the CMU on 8 October and the Council adopted its conclusions on the Commission's CMU AP on 3 December 2020.

² Within the [banking union](#), the [single supervisory mechanism](#) ensures uniform supervision of banks. For banking resolution, the [single resolution board](#) is directly responsible for resolution planning and decisions for all significant banks and cross-border ones.

supervisory convergence and the single rulebook provide the framework for effective and efficient supervision.

The input to this consultation, which seeks to take stock of what has been achieved so far, will feed into the preparation of the report required by the CMU action plan which will cover the review³ required under the ESAs founding Regulations as well. This consultation seeks targeted views on certain aspects related to the 2019 ESAs review⁴ and contributes to a wider debate on supervisory convergence and the single rulebook.

Please note that not all questions are relevant for all stakeholders and that you are not expected to reply to each question. Please indicate the ESA for which the reply is intended.

³ Article 81 of the [ESAs founding Regulations](#) requires the Commission to review the functioning of the ESAs every 3 years, and next time by end 2021.

⁴ The ESAs founding Regulations were amended in 2019. These recent legislative changes entered into force in January 2020 ([Regulation \(EU\) 2019/2175, which reviews the powers, governance and funding of the ESAs.](#))

- [EBA Regulation consolidated version 01/01/2020](#)
- [EIOPA Regulation consolidated version 01/01/2020](#)
- [ESMA Regulation consolidated version 01/01/2020](#)

CONSULTATION QUESTIONS

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

- I. How do you assess the impact of each 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		

Please explain your answer

We see the EBA as being sufficiently (or sometimes too much) visible and active in the areas mentioned and contributing to the achievement of the objectives to a (more than) sufficient extent. No need for a further expansion of activities is therefore seen in general.

With reference to cell n.7 on consumer and investor protection we would highlight that the mandate of the ESAs to perform their tasks in this area is limited for good reasons. This topic should not be in the focus of their supervisory activities as consumer protection falls under the primary responsibility of the Member State's consumer protection authorities. In any case, the EBA should not add obligations to Level 1 regulation through guidelines.

- 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

From a general perspective, we see that the elements comprised in the ESAs' mandates already contain all necessary tasks and powers to contribute to the stability and to the well-functioning of the financial system. At the same time, in some very specific areas there is room to include some additional competences, especially with regard to ESMA's direct supervisory powers in the area of ESG services providers.

With regard to the ESAs' mandates to implement technical standards and guidelines (level 2 and level 3 regulation respectively), it is of the utmost importance that, when exercising a mandate, the ESAs do not exceed their legal power, which is based on the relevant level I texts. This is even more urgent given the vast amount of often far-reaching mandates embedded in the legal banking supervisory framework. The risk reduction measures package from 2019 alone provided around 100 (!) new mandates under CRR II/CRD IV/BRRD II for the EBA.

To summarise, we would highlight the following:

- the tasks of the ESAs are sufficient and their budgets should remain stable;
- the level 2 regulation should be limited to genuinely technical matters, in order to preserve an adequate level of political accountability;
- the powers to issue guidelines should continue to be based on a specified delegation of powers in individual articles of the relevant EU legislation and applied moderately.

At the same time, we believe that EBA could play a more decisive role in supervisory coordination and especially in the area of resolution planning, to ensure increased transparency and accountability of the process and decisions of resolution authorities. We elaborate further on this under Q 1.4.6.

With regard to ESMA, we would support an extension of its direct supervisory powers in the following fields:

- ESG services providers: There is a need in particular for more transparency on the methodologies used by the rating providers and for homogenization of analysis criteria by ESG rating agencies. This would contribute to reducing financial institutions' reliance on ESG agencies. It is also an opportunity to support the rise of EU actors on that market.
- Significant benchmarks: Regulation imposes to FMPs the use of significant benchmarks. This has allowed benchmarks administrators to significantly increase their costs of access, which has been detrimental for both FMPs and clients. The role of ESMA would be, at least, to monitor the respect of a fair, reasonable, transparent and non-discrimination principle, as it is already the case for critical benchmarks (art.22, benchmark 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

From a general point of view, we notice that the European Commission is increasingly delegating the core of its legislation to ESAs via level 2 and 3 measures. As a matter of consequences, the ESAs suffer from an inflation of regulatory tasks which have led to 1) a lack of consideration for consultation responses from the industry, 2) timing and deadlines issues and 3) sometimes excess in exercising their mandates.

1. The supervisory convergence tasks of the ESAs

1.1. Common supervisory culture/supervisory convergence:

- 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	

We see that the EBA adequately contributes to the achievement of joint, consistent and uniform supervisory practice. We do not see any need for expanding responsibilities further.

- 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			X		
(Only the EBA) Monitoring of own funds and eligible liabilities instruments issued by institutions			X		
Initiating and coordinating Union-wide stress tests of financial institutions				X	
Developing guidelines and recommendations			X		
Developing Q&As			X		
Contributing to the establishment of a common Union financial data strategy					X

Providing supervisory statements				X		
Other instruments and tools to promote supervisory convergence, please indicate						X

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

The EBA in particular contributed considerably in the “Europeanization” process, i.e. in the creation of a European/common supervisory culture. However, we would also note that a common supervisory culture and consistent practices, while desirable, may also have a side effect in increasing pressure to homologation across business models.

With regard to EBA, we do not think that any further instruments / tools are required. The existing mechanisms instead appear to be sufficient in every respect. A uniform supervisory practice has to develop successively or organically and should not be unnecessarily complicated by further review tools without a necessarily recognizable predominant benefit. The EBA should be given more time and one should further assess whether the Authority can perform its tasks with the “tools” that are already available. If necessary, consideration should be given to optimizing or streamlining the various instruments.

In particular, it is important to consistently take the aspect of proportionality into account in order to safeguard the biodiversity of the banking market. Particularly small, non-complex and medium-sized institutions must not be overloaded by red tape and the particularities of cooperative banks have to be adequately reflected. The recent (2020) setting up of Advisory Committee on Proportionality could be an important first step forward in this direction, even if its actual capacity (and therefore the number of projects consulted by it) should be enhanced and its work be made more transparent.

With specific regard to “Developing Q&As”, the establishment of a Q&A process is considered necessary in principle and the establishment of such a process is therefore welcome. However, the process operated via the EBA remains insufficient for users in a number of respects: 1) it sometimes takes several years to answer implementation questions. Shorter response time is urgently needed. 2) After publication of changes to the underlying regulations (e.g. CRR II 2019/876) it again took about 2 years for existing Q&As to be reviewed for continued validity, or to be adapted to the changed requirements. E.g., the EBA published a list of revised Q&As on liquidity risks on March 30 2021, after the underlying CRR II was already published on May 20, 2019.

- 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

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

The Q&A process adjusted under Art. 16b EBA-Regulation can be seen as an improvement compared to the past. We particularly welcome the clarification in Article 16(2) EBA Regulation according to which the answers by the authority in the course of the Q&A process shall be non-binding. At the same time, a number of improvements are needed.

As it was the case at inception, we believe that also unanswered or rejected Q&As should be published, the latter at least for a certain period to increase transparency.

For overall effectiveness, the speed with which questions are answered is particularly important. In 2020, many Q&As were open and many Q&As had not yet been adapted to the updated regulations. The EBA recently made up for this (as of 30.3.2021), which welcome. However, it remains to be seen how quickly new Q&As will be answered in the future.

We welcome the EBA proposal on its website as to how Q&A answers could be integrated e.g. into CRR. The discussions should consider how this could also be done for relevant delegated regulations, e.g. regarding the LCR (2015/61 and 2018/1620). In this context, we would propose that when Q&As are updated due to amended / updated underlying regulations, the most recent regulation is indicated in the EBA Q&A response. See also our answers above 1.1.2 on this issue.

Furthermore, while we support the aim of fostering supervisory convergence via the ESAs Q&As, some issues remain that prevent achieving the goal and require action in the upcoming review:

- The ESAs should not cover legal fields in their Q&As that are not in their scope according to the respective Regulation. For example, the EBA should refrain from addressing civil or corporate law issues in a Q&As. It should focus on banking regulation as intended by the legislator.
- It needs to be ensured that ESAs do not overstep their mandates and Q&As strictly comply with the provisions of the Level 1 texts on which they are based. Furthermore, it is crucial to have legal certainty and to avoid that Level 1 legislation is “corrected” or that “add-ons” are created.
- We believe that some form of interaction with the industry when responding to a Q&A is needed, with an appropriate consultation process. The increasing importance of supervisory convergence and growing impact of Q&As should also be acknowledged by an opportunity for institutions to comment. We would suggest that draft Q&As should at least be systematically submitted for consultation to the ESAs’ stakeholders groups before their publication.

It should also be considered that given the lack of a procedure to raise objection against published Q&As, Authorities should in principle be obliged to conduct a cost-benefit analysis in the future. Published Q&As in former times have proved to be burdensome which is why, where appropriate, it makes sense to take the expenses arising from Q&As into account or even to request advice from the respective Stakeholder Group (e.g. for EBA the BSG referred to in Article 37 as per Art. 16 (a)(2)). This would lead to consider whether the issue should rather be treated in guidelines or if Q&As are sufficient. Where the Authority does not conduct a cost-benefit-analysis or does not request advice from the Banking Stakeholder Group, the Authority shall provide reasons (explain).

We would also propose that the Authority issues an opinion to the Commission if a majority of the

relevant ESAs' Stakeholder Group considered that the ESAs have exceeded their competences when issuing Q&As, in which case the Commission may require the relevant ESA to withdraw the Q&A.

We believe that overall a consistency effort is needed from the ESAs and the Commission to have only a limited set of valid Q&As outstanding at any moment, that are coherent with the most recent relevant regulatory text. As the legislative framework is reviewed regularly, also Q&As should have a clear life cycle: after legislative revisions there should be an explicit review process for Q&As. Q&As that are still relevant in light of new texts should be confirmed while others should be discarded.

Finally, it would be appropriate to set an indicative implementation timeline before “complying” with Q&As – which we recall, remain a non-binding instrument. Timing is a relevant feature when technical arrangements must be made for proper implementation.

1.15. 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.

In (too) many cases it takes very long until the final answer is published (e.g. more than one year in some cases). Hence, there's definitely room for improvement.

Moreover, in many cases, not all aspects are adequately addressed in the questions as these are often posed by the submitter from a very specific perspective with a very individual case in mind. Publication of the questions before they are answered would give market participants potentially affected by the issues raised in the same Q&A the opportunity to introduce meaningful additions and further aspects for consideration into the answering process.

1.2. No action letters

1.21. 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

It should be noted that no action letters have only recently been implemented in the ESAs' legal framework, which became applicable on 1 January 2020. While EBA has not used yet the tool, also ESMA has only made limited recourse to it. At present, there is simply not enough experience to provide feedback on this.

Therefore, we did not notice improvement in the process of no-action letter.

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

jurisdictions?

See above.

- 1.23. 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?

Regarding the EBA, an area where a “no action letter” would make sense is the mandatory substitution approach in large exposures introduced under CRR II and soon to apply. In certain Member States there are unanswered questions in terms of practical solutions and supervisory understanding, some have been placed with the Commission but not yet answered. A technical implementation before answering these questions or after answering these questions at short notice by June 28, 2021 is not possible therefore a “no action letter” would be of help for institutions.

1.3. Peer reviews

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

According to Article 30 EBA Regulation, the authority shall periodically conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency and effectiveness in supervisory outcomes. Hence, this question is mainly addressed to the NCAs.

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

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

Please explain your reasoning/give examples.

Considering that the new framework regulation has not been in place for long and that the EBA's activities in the past year have rather focused on crisis-related issues due to the ongoing pandemic, it is too early to make an assessment.

- 132 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

Considering that the new framework regulation has not been in place for long and that the EBA's activities in the past year have rather focused on crisis-related issues due to the ongoing pandemic, it is too early to make an assessment.

133. 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

The new framework regulation has not been in place for long, so it is too early to introduce further new changes/improvements. We do not see the need to introduce mandatory recurring peer review.

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

☐ YES

☐ NO

1.4. Other tasks and powers

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

☐ YES

☐ NO

Pursuant to Article 35 EBA Regulation, at the request of the authority the NCAs shall provide EBA with all the necessary information to carry out the duties assigned to it by the EBA Regulation, provided that they have legal access to the relevant information and that the request for information is necessary in relation to the nature of the duty in question. We believe that this question is therefore mainly addressed to the NCAs.

142. 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

The publication of the Union strategic supervisory priorities (at least every three years) has just been implemented in the ESAs' legal framework in 2019 applicable from 1 January 2020. Considering that the new framework regulation has not been in place for long and that the EBA's activities have rather focused on crisis-related issues due to the ongoing pandemic, it is too early to make an assessment.

143. 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

Considering that the new framework regulation has not been in place for long and that the EBA's activities have rather focused in the past year on crisis-related issues due to the ongoing pandemic, it is too early to make an assessment. It would be wise to wait for more practical experience on the new toolkit before hastily amending it.

At this stage, it rather appears that no further instruments / tools are required. On the contrary, the existing mechanisms appear to be sufficient. The uniform supervisory practice has to develop successively or organically and should not be unnecessarily complicated by further review tools without a recognizable predominant benefit. The EBA should be given more time and one should first wait and see whether the authorities can do their job with the "tools" that are already available to them. If necessary, consideration should be given to optimizing or streamlining the existing instruments.

In particular, it is important to consistently take the aspect of proportionality into account in order not to overload banks, and particularly small, non-complex and medium-sized institutions.

At the same time, we believe that EBA could play a more decisive role in supervisory coordination and especially in the area of resolution planning, to ensure increased transparency and accountability of the process and decisions of resolution authorities. We elaborate further on this under Q 1.4.6.

144. 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			

The ESMA report on the "Wirecard" case has shown that the reference to a possibly insufficient political independence of the supervisory authority in the context of the discussions about a reorganization of banking supervision in Germany has met with a response. In this respect, the relevant comments from the ESAs seem to have at least some effect.

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

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

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

Generally, we would not see any specific obstacle. The EBA can ensure supervisory convergence to a sufficient extent. It must be taken into account that convergence does not mean that this must be achieved at the highest level in the sense of “best practice”. Compliance with good practice must already be sufficient. In addition, a uniform data dictionary (see discussion paper on integrated reporting system) would increase the convergence between national and European reporting requirements.

More effective supervisory convergence should imply enhancement in the coordination among all supervisory authorities in the Union. Particularly, unnecessary duplication of supervisory authorities’ activities should be avoided. As anticipated in other questions, resolution is an area that could see a reinforced role for EBA.

The transparency of EBA’s decisions such as in the binding mediation (between resolution authorities) needs to be adapted to the needs of the market participants, i.e. increased transparency of the information shared and consulted with the institutions (being subject to the resolution plan) to the best extent possible. In this context we see room for improvement regarding the following points:

- Clear and uniform rules for the identification of impediments to resolvability should be worked-out by the EBA. Currently, the respective decisions are left strongly to the discretion of the respective resolution authority (SRB and local ones) and are not always comprehensibly understandable for the affected institutions.
- Uniform EU-wide systems & rules for identifying the impediments to resolvability should be created in order to ensure a level playing field.
- Criteria need to be specified to determine when an impediment to resolution exactly exists and a clear justification consistently across jurisdictions and countries must be provided.
- The resolution plan should be made fully accessible to the institutions in scope of the resolution plan. The fact that the institutions concerned are not given a detailed insight is a significant disadvantage, as they have no way of checking the accuracy of the data contained therein. This would also lead to an improvement in the content of the resolution plans.
- In general, it would make sense to strengthen the EBA vis-à-vis resolution authorities such as the SRB in order to ensure external control, so that all decisions of the resolution authorities (SRB and local ones) can be reviewed by EBA and, if necessary, amended.

Finally, while the details are yet to be seen, in the AML area the introduction of a Supervisory authority at EU level could contribute to avoid parallel supervisory structures – including different regulatory approaches – loss of information and finally duplications of costs.

147. 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

The extent of information provided by the ESAs to the credit institutions seems appropriate and sufficient. However, all legal texts should contain guidance on how the principle of proportionality should be applied by the competent authorities.

148. 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

149. 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

First, it is necessary to establish a comprehensive and effective supervisory and regulatory framework on digital finance. Currently, there is a clear lack of a legal framework which could embed the use of such tools or tasks. Furthermore, there is a need for clarification as to which concrete tasks supervision could entail in this regard.

1410. 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:

No opinion – primarily addressed to the NCAs.

1.5. Breach of Union law and dispute settlement

151. 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

The comprehensive changes of Article 17 and 19 became applicable only since 1 January 2020. It's too early to issue a final opinion on their effectiveness. The European legislator would be well-advised to wait for more practical experience instead of hastily amending both Articles (again).

152. 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

See above answer to 1.5.1

153. 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

154. 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

See above answer to 1.5.1

155. 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

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

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

1.6. Emergency situations and response to COVID-19 crisis

- 1.61. 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		

The EBA has provided comprehensive advice and specified / facilitated the understanding of the most important and relevant banking supervisory issues. However, the specific processing by national supervisory authorities has been often more understandable and took into account the peculiarities of the national markets. The fact that large parts of the statements were only made available in English is unsatisfactory.

From a general point of view, we would nevertheless stress the good responsiveness of ESAs in the context of the Covid 19 crisis. The ECB and EBA deployed sensible mitigation measures to support the industry, especially via additional delays given to reporting obligations. However:

- ESMA could have done more with liquidity management tools via ensuring better coordination between NCAs;
- We have experienced a huge amount of reporting requests from EBA and ECB during this period. Many requests were redundant, probably because of a lack of coordination between the two authorities.

The EBA guidelines on legal and private moratoria in light of the Covid-19 crisis were only published at the beginning of April 2020 and therefore rather late in relation to the outbreak of the first wave of the pandemic. By then, many banks had already had to find their own solutions or had classified loans as forbearance. The establishment of moratoria delayed the deferral process even further. In addition, the process for creating the notification was very time-consuming and too complex (see items 17 and 19 of the EBA / GL / 2020/02 and items 17 (bis) of the EBA / GL / 2020/15). A less burdensome approach would have been appropriate. In addition, the possibility of deferring up to 9 months by applying the reactivated guidelines (EBA/GL/2020/15) was severely restricted, as previous deferral agreements that fell under a payment relief initiative had to be taken into account. As a result, the intended cushioning of the effects of the second wave could not be achieved. Here, pragmatic solutions with a significantly longer period would have been necessary, especially since the crisis continues.

However, it should also be appreciated the flexibility of EBA in extending the application period of the EBA guidelines from April 2020 by EBA/GL/2020/08.

- 1.62 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

- 1.63. 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

The EBA has provided comprehensive advice and specified / facilitated the understanding of the most important and relevant banking supervisory issues. For example, the EBA guidelines on the pragmatic 2020 SREP and on payment moratoria constituted a prudent release and support for the institutions to combat the crisis.

However, the specific processing by national supervisory authorities has been often more understandable and took into account the peculiarities of the national markets. The fact that large parts of the statements were only made available in English is unsatisfactory.

Unfortunately, no relief was granted as to the consideration of promotional loans in the asset encumbrance report. As this product is intended by the state to promote the economy, it is used extensively by institutions. This in turn leads to an increase in the quota, especially at smaller institutions, and – if the 15% threshold is exceeded – to expanded reporting requirements during the pandemic.

- 1.64. 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

The restrictions on dividend payments should be a very exceptional measure against the background of an unpredictable severe economic crisis. The EBA should ensure that the remaining measures taken by Competent Authorities are not extended beyond the current horizon of 30 September 2021 at the

latest.

Furthermore, we have seen that legal opinions concluded that undifferentiated restrictions on dividend payments can even have a negative effect on the equity of regional institutions.

The ESAs Delegated Acts under the SFDR (EU/2019/2088) were published in February 2021 though the SFDR entered into force already in March 2021. This was too late and caused legal uncertainty among financial market participants.

From a general point of view, we would nevertheless stress the good responsiveness of ESAs in the context of the Covid 19 crisis. The ECB and EBA deployed sensible mitigation measures to support the industry, especially via additional delays given to reporting obligations. However:

- ESMA could have done more with liquidity management tools via ensuring better coordination between NCAs;
- We have experienced a huge amount of reporting requests from EBA and ECB during this period. Many requests were redundant, probably because of a lack of coordination between the two authorities.

1.65. 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

1.66. 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)

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

☐ YES

☐ NO

It is highly relevant that all supervisory authorities can exchange data that has already been reported once by an institution in order to avoid double reporting obligations for the institutions concerned. Even the EBA (in its consultation on an integrated reporting system) admits that the current decentralised way of defining the reporting requirements and collecting data at EU level is (too) complex and leads to inefficiencies in the reporting process (such as data duplications).

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

Please see answer above on the necessary exchange of data between all supervisory authorities.

1.73. 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

The new framework for the ESAs has been in place for just a year in which work rather focused on tackling the effects of the crisis. Therefore, it is not possible to properly assess the question.

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

The new framework for the ESAs has been in place for just a year in which work rather focused on tackling the effects of the crisis. Therefore, it is not possible to properly assess the question.

1.74. 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

Based on Article 45 EBA-Regulation the Management Board may set up coordination groups on its own initiative or upon the request of a competent authority on defined topics for which there may be a need to coordinate having regard to specific market developments. Hence, this question is mainly addressed to the supervisors involved.

1.75. 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

The EBA-Guidelines on Outsourcing (EBA/GL/2019/02) ensure a much more effective supervision of outsourcing arrangements in third countries than ever before. Regarding these guidelines institutions and payment institutions should take appropriate steps to ensure that service providers act in a manner consistent with their values and code of conduct. In particular, with regard to service providers located in third countries and, if applicable, their sub-contractors, institutions and payment institutions should be satisfied that the service provider acts in an ethical and socially responsible manner and adheres to international standards on human rights (e.g. the European Convention on Human Rights), environmental protection and appropriate working conditions, including the prohibition of child labour. The implementation of the EBA guidelines on outsourcing ensures that the competent authority establishes an effective controlling mechanism in this regard especially in relation to the requirements on outsourcing agreements in third countries.

Currently, there is no need for any further adjustments.

1.8. Tasks related to consumer protection and financial activities.

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

Please see our answer to section A.I. (page 5). The mandate of the ESAs to perform their tasks related to consumer protection is limited for good reasons. This topic should not be in the focus of their supervisory activities as consumer protection falls under the primary responsibility of the Member States' consumer protection authorities. Hence, acts that have heavily reached into the area of consumer protection (such as the EBA Guidelines on loan origination and monitoring) were heavily discussed among the affected stakeholders as they introduce many obligations on top of Level 1 regulation. There is currently a case pending at the European Court of Justice regarding the excess of powers in the context of the Guidelines on product oversight and governance arrangements for retail banking

products.

- 1.82. 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			

- 1.83. 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

At the same time product intervention powers should not lead to an undesirable excess of power by the ESAs.

- 1.84. 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

The ESAs remit lies in the oversight of compliance and application of Union Law. We oppose more powers for the ESAs, at least as long as there is no adequate voice for the stakeholders (banks), which is mandatory in the legislative procedures under Union law (cf. Art. 294 TFEU).

ESAs should rather set measures in order to steer against adverse developments (within their scope as foreseen in Art 1.2) that jeopardise the financial markets.

- 1.85. 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?

The new framework for the ESAs has been in place for just a year in which work rather focused on tackling the effects of the crisis. Therefore, at a general level it is not possible to properly assess the question.

However, we consider the change as problematic as long as there is no adequate consultation of the stakeholders who have to apply the measures of the ESAs.

- 1.86. 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

The new framework for the ESAs has been in place for just a year in which work rather focused on tackling the effects of the crisis. Therefore, it is not possible to properly assess the question.

- 1.87. 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?

With regard to the existing framework for consumer protection, we do not see any need for an extension of the EBA's powers. Consumer protection is a joint responsibility of the EU (regarding legislation) and the Member States (regarding national regulation and supervision). For this reason, the principle of subsidiarity must be observed. In general, it should be noted that the ESAs already have a large number of competences in the area of consumer and investor protection. The ESAs also often neglect the

specificities of national markets.

Furthermore, both the European legislator and the ESAs should orient themselves as closely as possible to the experiences and needs of market participants and rely on their expertise in structuring the customer-bank relationship. For example, the quality of the information should be in the foreground, not the quantity. “Too much” information usually means that the content is no longer perceived. An “all-round carefree package” for consumers cannot be reconciled with the rightly accepted model of the responsible consumer and with dynamic and growth-oriented market development.

At the same time we see that a clear weakness lies in the inadequate involvement of credit institutions. If they shall be encouraged to act more in the interests of consumer protection, they themselves must be more allowed to be involved in the process.

1.88 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.

1.91. 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.

1.92 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?

The new framework for the ESAs has been in place for just a year in which work rather focused on tackling the effects of the crisis. Therefore, it is not possible to properly assess the question.

1.93. 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

The new framework for the ESAs has been in place for just a year in which work rather focused on tackling the effects of the crisis. Therefore, it is not possible to properly assess the question.

- 1.94. 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?

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

1.101. 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?

1.102. 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

With particular reference to the EBA, we consider the existing regulations to be sufficient.

1.103. 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

With particular reference to the EBA, we consider the existing regulations to be sufficient.

1.104. 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

1.105. 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

We consider the current framework on sanctions to be sufficient.

2. Governance of the ESAs.

2.1. General governance issues

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

☐ YES

☐ NO

In general, very little time has passed between the changes introduced after the 2019 ESA review and this review which makes it difficult to measure the effects of the changes made.

Certainly, efforts have been made governance wise to allow the ESAs to ensure objectivity, independence and efficiency in their work/decision making but there is still room for improvement.

We consider that effective governance results from clarity of purpose and clarity in the nature and purpose of the mandating / legislative process involving the ESAs. Consistency between the work of the legislator, the regulator and the supervisor is key to good governance. We recognise that there are often fine lines involved; however when the ESAs initiate any activity without sufficient clarity from the legislator as to the limits of their mandate this is seen as very problematic from a legal perspective

Additionally, the decision-making processes in the ESAs are too lengthy. This is due to the large number of member states and reflects the different backgrounds.

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

Too little time has passed since the last ESA review and the work was too focused on the pandemic to be able to properly assess the question.

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

Too little time has passed since the last ESA review and the work was too focused on the pandemic to be able to properly assess the question.

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						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						

Too little time has passed since the last ESA review and the work was too focused on the pandemic to be able to properly assess the question.

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

☐ YES

☐ NO

Too little time has passed since the last ESA review and in general work has been too focused on the pandemic to be able to properly assess the question.

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

EACB would be in favour of a greater inclusion of the industry and consumers into the decision making process of the BoS. The current composition of the BoS does not help in getting rid of conflicts of interest (i.e. Danske Bank case) and in taking decisions based on operational realities. This could take the form of opening the BoS to experts that can bow on relevant experience in the industry, as is the case of some national supervisory bodies.

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

Too little time has passed since the last ESA review and in general work has been too focused on the pandemic to be able to properly assess the question.

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

Too little time has passed since the last ESA review and in general work has been too focused on the pandemic to be able to properly assess the question.

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

Too little time has passed since the last ESA review and the work was too focused on the pandemic to be able to properly assess the question.

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						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

Too little time has passed since the last ESA review and the work was too focused on the pandemic to be able to properly assess the question

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 current financial and human resources of the ESAs are sufficient and should be used in an economical way.

We consider the current funding or funding sources of the ESAs through contributions from NCAs and grants from the Union budget to be sufficient. This funding is also justified because, without the ESAs, their tasks would be carried out by the European Commission and / or the European legislator. The current funding mechanism also appears appropriate for reasons of budgetary discipline of the ESAs.

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

☐ YES

☐ NO

See answer above. EBA has 208 employees (as per January 2021) and a budget of EUR 54 million (as at 31 December 2019). This high number of employees and the substantial financial means are more than appropriate to fulfil all the tasks properly.

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

The EACB highly appreciates the fact that the ESAs organise consultations and hearings with a view to involve the different stakeholders in ESAs' proposals. Having said that:

- We note that consultations are not systematically organised, and that it depends on the topic or on the legal vehicle. We regret, for instance, that no consultation is held before EBA's reporting requests.
- To ensure a certain quality of the responses a sufficiently long consultation period is of utmost importance, avoiding the Summer break.
- The processes between the consultation and the final papers could be more transparent, for example with regard to the decision-making processes, reasons for a decision and related discussions. We feel that a more democratic debate would be necessary. Here, market participants are still too often dependent on voluntary discussions with/information from national supervisory authorities, which differ in the individual member states.
- With regard to public consultations and hearings, it should also be noted that the willingness to pay attention to the comments of market participants varies greatly depending on the topic and the employees involved. Further guidelines for employees should increase the consistency and quality here. More generally, the incentive for stakeholders to put serious efforts in providing thorough input to consultations reduces if the input is then felt to not be considered by the ESAs.
- Public consultation is not always the most agile way of communicating with stakeholders. We would for example be in favour of a more agile communication channel between industry and EBA, especially when it comes to reporting obligations. Many operational questions arise from those obligations, but it remains barely impossible to have answers in an acceptable timeframe. This problem could be solve by one of the following option:
 - Having a single point of entry within EBA which would be in charge of collecting industry questions;
 - Having a dedicated department within EBA in charge of dispatching questions to relevant technical department;
 - At least, introducing a roadmap with possibility to comment before the application of reporting obligations.

Finally, we would be in favour of systematically consulting stakeholders before the publication of Q&As.

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			

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

☐ YES

☒ NO

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				

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

Too little time has passed since the last ESA review and the work was too focused on the pandemic to be able to properly assess the question

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 relationship between representatives, who for their part are the direct addressees of supervisory regulations, and representatives of groups that are at best indirectly affected (science, consumers), seems capable of optimization. For example, we think there should be more representatives for banks in such stakeholder composition.

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

There is hardly any public perception of the work of the Stakeholder Group here. It is hardly recognizable to what extent the evaluations, comments and advice from the stakeholder groups are actually taken into account. There is practically no public response to the work of the stakeholder groups.

2.5. Joint bodies of the ESAs

25.1. 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

25.2. 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		

25.3. 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.

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

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.

ESMA

We would support an extension of direct supervisory powers of ESMA in the following fields:

- ESG services providers: There is a need in particular for more transparency on the methodologies used by the rating providers and for homogenization of analysis criteria by ESG rating agencies. This would contribute to reducing financial institutions' reliance on ESG agencies. It is also an opportunity to support the rise of EU actors on that market.
- Significant benchmarks: The EU Benchmarks regulation imposes the use of significant benchmarks on financial market participants (FMPs). This has allowed benchmarks administrators to significantly increase their costs of access, which has been detrimental for both FMPs and clients. The role of ESMA would be, at least, to monitor the respect of the "fair, reasonable, transparent and non-discrimination basis" principle, as is already the case for critical benchmarks (Article 22, EU Benchmarks Regulation).

EBA

Regarding the EBA, we see no need for direct supervisory powers. Banking prudential powers are exercised by the ECB and the NCAs. A further division of supervisory powers would be counterproductive and non-expedient.

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

☐ YES

☐ NO

Further to our answer to question 3.3 and while the details are yet to be seen, the introduction of a Supervisory authority at EU level in the AML area could contribute to avoiding parallel supervisory structures – including different regulatory approaches – loss of information and finally duplications of costs.

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						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-						X

supervisors						
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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**

While at a general level the construction of the single rule book has certainly led to a harmonised set of rules for EU institutions, we believe that some nuance is needed.

A key differentiation has to be made between technical standards (Level 2) and guidelines (Level 3), and for those between guidelines explicitly mandated under Level 1 legislation and ESAs' own initiatives.

Technical standards due to their nature of regulation clearly achieve the highest degree of harmonisation, since as such they only stem from specific mandates in Level 1 legislation, and it is essential that the line between policy/strategic decisions and technical ones is not blurred.

With respect to Guidelines in particular, the use of these instruments has increased significantly and the tendency of the ESAs to act thereby without explicit legislative mandate, or to overstep their mandates is even more problematic. Moreover, it needs to be ensured that the ESAs strictly comply with the provisions of the Level 1 texts on which they are based and do not add to it. It is of utmost importance that the hierarchy between Level 1, Level 2 and Level 3 is fully respected by all EU authorities involved. It is equally crucial to have legal certainty and to avoid that Level 1 legislation is "corrected" or that "add-ons" are created by Level 3 measures. Guidelines are only supposed to "assist with interpretation", clarify and harmonise the application of EU law. This raises the importance of proper control and review mechanisms to ensure consistency with legislative intentions.

We consider that the reasoned advice process introduced by the regulation reforming the ESAs (article 60a) is a positive step forward (Any natural or legal person may send reasoned advice to the Commission if that person is of the opinion that the Authority has exceeded its competence, including by failing to respect the principle of proportionality referred to in Article 1(5), when acting under Articles 16 and 16b, and that is of direct and individual concern to that person). However, we believe a time limit for reply by the Commission and a possibility of appealing against the Commission's decision should be introduced in the process in order to improve it and to make it really useful.

In addition, we would like to draw the ESAs' attention to the conclusions (press release) of Michal Bobek, an advocate general to the European Court of Justice (ECJ), in Case C-911/19 *Fédération bancaire française (FBF) v Autorité de contrôle prudentiel et de résolution (ACPR)*. In the conclusions issued on 15 April 2021, he proposes that the ECJ should rule on the validity of guidelines despite their nature of non-binding EU acts (soft law acts). He also proposes that the Court should find that the EBA Guidelines on product oversight and governance arrangements for retail banking products should be

declared invalid in so far as the EBA has acted outside the powers bestowed upon it by Regulation No 1093/2010.

- 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

Our members have noted many timing issues between Level 1 and Level 2 measures, recently occurring from the ESAs' mandated work. On several occasions, the Level 1 measures remained applicable despite the absence of Level 2 provisions expected to be released by the authorities (e.g. SFDR, Securitisation regulation). We also note that in some cases the ESAs do not take into account the industry's operational constraints related to the implementation of Level 2 measures. This has been particularly the case with the recent draft PRIIPs RTS which gives approximately 4 months to companies for applying its provisions. However, this has also happened on the prudential side. We thus believe that banking supervisory law, not least because of democratic considerations, as well as securities markets legislation, should be set by the European Commission at Level 1 (agreed by the co-legislators) to the greatest extent possible – not by the ESAs on the basis of Level 2 technical standards. The European Commission must not transfer its tasks primarily based on the TFEU to the ESAs.

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

The establishment of a Conciliation Committee analogous to Art. 294 TFEU as well as deadlines for the decision would be useful to ensure a smooth amendment process.

- 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

Interest representatives and market participants are already consulted. However, obvious indications are sometimes not taken up or the scope of the mandate following level 1 is exceeded with limited possibility of recourse. The multiple consultations with limited response time and often input being disregarded to a large extent, makes the exercise look more like a tick-the-box approach. To ensure a certain quality of the responses, we advocate for a sufficiently long consultation period, avoiding the Summer break. The involvement of the industry should also be considered and in this context, public hearings of the ESAs are highly appreciated (such as for example the EBA public hearing on its consultation on the Pillar 3 disclosure of ESG risks). We have also observed that in the French ACPR college of supervisors there are also some representatives as “experts from the field”, e.g. retired from the private sector, and a similar governance could be considered by the ESAs – of course there is a due process as to conflict of interest/accountability. The possibility of re-strengthening the role of the EBA/ESMA stakeholder groups for the specific case of guidelines (possibility to ask Commission to withdraw guidelines) should also be investigated. Similar proposals, but with more specific principles with regards to the ESA’s stakeholder engagement, are also included in our answer to question 2.4.1.

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.

The central task of the EU financial supervisory authorities is to promote the uniform application of EU law in the member states. In the past, however, the issuance of guidelines and recommendations has reached such an extent that, in fact, it amounts to setting rules. The European supervisory authorities should concentrate their activities on checking the uniform implementation of the supervisory law adopted by the EU legislator in the Member States. Guidelines should therefore only be used restrictively.

In order not to undermine the principle of the primacy of law which would lead to the ESAs expanding their range of tasks independently, the ESAs should therefore only be able to adopt guidelines within the framework prescribed by law. This would also help contribute towards the uniform application of the EU law, as opposed to the effect of confusion. In this context, the lack of legal control by the ESAs compared to NCAs must be considered, so that those affected by guidelines would find it difficult to defend themselves against their factual binding effect.

[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.

We would like to point out the audit system of decentralised banking sectors. Cooperative Auditing Associations contribute to financial stability and economic prosperity due to the following reasons.

- The Statutory Audit of the financial statement according to ISA and of the management's performance is a core function.
- Cooperative Auditing Associations are not limited to financial audit but have to extend their work on governance, organisation and functioning of their members.
- Cooperative Auditing Associations are part of public oversight and form an integral pillar of the sectoral early warning systems contributing to the stability of their members.
- Over decades of Cooperative Auditing has contributed to the stability of the economic development of the cooperative banking sector in Member States.

Cooperative Auditing Associations are also independent. For example, in Austria the cooperative must not choose the auditor; the auditor is chosen by the cooperative association. The auditors have an unlimited employment contract which can only be terminated by the audit association due to special reasons (eg quality of work performed by the auditor), and are not bound by instructions of the cooperative or of the cooperative association.

Cooperative banks' audit goes far beyond the conventional annual audit and guarantee that a cooperative bank does not become insolvent. The professional reputation of cooperative audit is the main reason why cooperative banks have been so successful for decades in Member States. Cooperative banks themselves are small and medium-sized banks with a focus on small and medium-sized undertakings. Inappropriate burdens and regulations on cooperative banks' audit associations can jeopardise the existence of cooperative banks' audit and as a consequence can have an impact on the well-financed SME industry in Member States.

The proved audit systems of decentralised sectors are characterized by the principle of permanent statutory mandate and member audits which would be jeopardised by mandatory rotation (Art 17 Regulation No 537/2014 on specific requirements regarding statutory audit of public-interest entities, Audit Regulation) as discussed currently with regards to the Wirecard case.

Therefore, the abovementioned Audit Regulation has implemented the following special exemption clause for cooperative banks' audit that should maintain unchanged:

Article 2(3) Audit Regulation: This provision states that the Member States may decide that the Audit Regulation or certain provisions of it shall not apply to cooperative (and savings) banks which are required under national provisions to be a member of a non-profit-making auditing entity.

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.

By amending the Transparency Directive, the EU Commission mandated ESMA in Article 1, paragraph 3, of Directive 2013/50/EU to draft a regulatory technical standard for making financial statement information available in a uniform electronic format throughout the EU as of January 1, 2020. There have been various consultations and field tests. If there is a stakeholder consultation, we can imagine such an approach in other areas as well.

☐

☐ **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**

We see a danger of the obligation to publish sensitive data.

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?

EBA

With regards to the EBA, the work has been carried out to a sufficient extent and does not require any expansion.

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

We consider the degree of harmonization to be adequate.

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	CRR/CRD, BRRD	Large exposures, loans to managers and other related parties, corporate governance.	
		When CCD was	

	CCD and MCD	<p>first published, there was not yet an MCD in some Member States such as Austria, which then decided to apply the CCD rules also on mortgage loans. When MCD was finally published, banks had to re-adapt all their forms (ESIS, SECCL..) which was costly.</p> <p>Article 25 MCD entitles the creditor to fair and objective compensation, where justified, for possible costs directly linked to the early repayment. Some Member States like Austria, capped this compensation fee detrimentally for the creditor's side in their national implementing act (Hypthekar und Immobilienkreditgesetz HIKrG) during transposition of the MCD. Such a cap was not foreseen in MCD.</p>	
Insurance			
Asset management			
Market infrastructure (CCPs, CSDs)			

Market organisation (MiFID, MIFIR, MAR)	MiFID	The implementation of Article 25 MiFID through the “Austrian Securities Supervision Act 2018” (Wertpapieraufsichtsgesetz 2018 - WAG 2018) brought stricter requirements in Austria. Concretely the FMA (Austrian NCA) obliged investment advisors via Circular 02/2017 under Section 3 point 37 to educate themselves continuously on a yearly basis for at least 15 hours.	
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

There is a broadly sufficient uniform application of Union law and convergent supervisory practices. Therefore, a further enhancement of the single rulebook is not desirable as this approach does not (appropriately) consider national specificities and the principle of proportionality.

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

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

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

Please see our answers to questions 5.1, 5.2. and 6.5.

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)

All essential points should be regulated directly by the Level 1 legislature itself and not be left to the lower levels.

- 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

We would like to emphasise the need for realistic application dates that do not overburden the institutions concerned, nor lead to confusion to clients who will also have to process the various changes. Sufficient time must be granted for institutions to be able to comply/align with the new (and often) complex legal requirements. Consideration of the sequencing of Level 1, Level 2 and Level 3 regulation but also the interaction of the other pieces of legislation of the same level, is also important as it prevents operational risks.

- 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				X		
High level of gold plating by national rules			X			
High degree to which supervision of the same type of actors and/or activities render divergent outcomes across Member States						
All of the above						

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)	MiFID II	MiFID II is a very broad Level I framework, with countless empowerments for Level II and Level III legal acts. For the next market infrastructure review (MiFIR), it would be desirable to have more specifications already at Level I. Alternatively, more transposition time would be required, as we have to adapt our technical systems to the new requirements. Therefore, in our view transposition	

		periods should not begin to run before all Level II and III acts have been finalised.	
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			

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

We consider the previous scope and level of detail at Level 2 to be sufficient or already too detailed. In addition, banking supervisory law should be set by the European legislator at Level I (legislation agreed by the co-legislators) to the greatest possible extent and not by the ESAs on the basis of level 2 texts (technical standards). The European legislator must not transfer its tasks to the ESAs.

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

We advocate for more content in Level I legislation, and if needed, regulations instead of directives.