

BVI¹ response to the Targeted consultation on supervisory convergence and the single rulebook

ESA(s) you want to focus on

About which ESA(s) will you be providing responses in this questionnaire?

Please select the ESA that you know best. You can select one, two or the three ESAs. In case you choose more than one ESA you will be asked, in certain questions, to provide answers for each ESA.

at least 1 choice(s)

- About the European Banking Authority (EBA)
- About the European Securities and Markets Authority (ESMA)
- About the European Insurance and Occupational Pensions Authority (EIOPA)

A. Questions for the assessment of the European Supervisory Authorities (ESAs) and the recent changes in their founding Regulations

General questions

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know -No opinion -Not applicable
The financial system as a whole						
Financial stability						
The functioning of the internal market						
The quality and						

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 112 members manage assets more than EUR 3.8 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.



consistency of supervision						
The enforcement of EU rules on supervision						
Strengthening international supervisory coordination						
Consumer and investor protection						
Financial innovation						
Sustainable finance						

Please explain your answer to question I on EBA:

5000 character(s) maximum

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know -No opinion -Not applicable
The financial system as a whole				x		
Financial stability				x		
The functioning of the internal market				x		
The quality and consistency of supervision				x		
The enforcement of EU rules on supervision			x			
Strengthening international supervisory coordination		x				



Consumer and investor protection				X		
Financial innovation				X		
Sustainable finance				X		

Please explain your answer to question I on ESMA:

5000 character(s) maximum

ESMA’s activities on risk analyses (such as ESMA economic report stress simulation for investment funds, annual statistical report EU alternative investment funds, annual report on EMIR penalties and supervisory measures, report on trends, risks and vulnerabilities including risk dashboard) are very valuable. Important decisions for the supervisory authorities can be derived from the results. They provide an important insight for the assessment of financial stability.
 The Level 3 measures such as guidelines, Q&As and opinions provide for consistent understanding and implementation of the EU regulatory frameworks, in particular MiFID II, UCITS Directive and AIFMD, and thus, effectively contribute to investor protection.

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know -No opinion -Not applicable
The financial system as a whole						
Financial stability						
The functioning of the internal market						
The quality and consistency of supervision						
The enforcement of EU rules on supervision						
Strengthening international supervisory coordination						
Consumer and investor protection						
Financial innovation						



Sustainable finance						
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Please explain your answer to question I on EIOPA:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you think that there are elements which should be added or removed from EBA's mandate, please provide a substantiated answer:

5000 character(s) maximum

See answer to question below.

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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you think that there are elements which should be added or removed from ESMA's mandate, please provide a substantiated answer:

5000 character(s) maximum

We believe that the ESAs lack an important element in their mandate which concerns the competitiveness of the European financial industry.

On a global level, the European financial industry is operating in an extremely competitive environment. EU fund providers for instance are contending with their peers from non-EU jurisdictions for investment opportunities as well as for investors. This challenge remains virtually unrecognised in current EU regulation which largely focuses on consumer protection and systemic risk. Neither the European Commission nor the ESAs as representatives of the executive branch have a mandate to consider the competitiveness of the domestic industry as a factor in performing their duties. This has resulted in massive over-regulation for the European asset management industry which has to dedicate enormous resources to compliance with this regulation.

Other jurisdictions, such as the United States, also take investor protection and systemic resilience into account. However, they have complemented these legitimate political objectives with a third one: Fostering the global competitiveness of the domestic financial industry. In doing so, they give the relevant industries more financial leeway to cut costs and to invest more money in forward looking aspects of business such as artificial intelligence, big data and other technological developments, which



in turn strengthens their competitiveness at the global level. We believe it is essential that the EU also enshrines this third objective in its regulatory framework.

We therefore recommend the following measures:

- The “scope of action” of the ESAs, as laid down in the founding Regulations (EU) 1093, 1094 and 1095/2010, shall be amended by adding as the need to strengthen the global competitiveness of the relevant industry as an additional objective. Assets under management, employment numbers and revenue could serve as criteria to determine the competitiveness of the European sector.
- The EU voice in international standard-setting organisations, such as FSB and IOSCO, should be strengthened; key European interests should be pursued more vigorously.
- Allow the ESAs to issue time-limited ‘no action letters’ to avoid situations of practical impossibility for financial actors to apply new regulation (see also specific section on this topic further below).

On a more specific note we suggest ESMA to be empowered to directly supervise third-country data providers. Especially systemic data providers need be properly supervised.

In addition, we would welcome ESMA to be in charge of the European Single Access Point (ESAP) to be created shortly, especially (and as soon as possible) in relation of ESG data.

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

- Yes
- No
- Don’t know / no opinion / not relevant

No: If you think that there are elements which should be added or removed from EIOPA's mandate, please provide a substantiated answer:

5000 character(s) maximum

See answer to question above.

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

- Yes
- No
- Don’t know / no opinion / not relevant

Yes: Please explain what you consider to be the main obstacles for EBA:

5000 character(s) maximum



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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain what you consider to be the main obstacles for ESMA:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

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

5000 character(s) maximum



1. The supervisory convergence tasks of the ESAs

1.1 Common supervisory culture/supervisory convergence

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

- 1 - the less significant contribution
- 2
- 3
- 4
- 5 - the most significant contribution
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

- 1 - the less significant contribution
- 2
- 3
- 4
- 5 - the most significant contribution
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

- 1 - the less significant contribution
- 2
- 3
- 4
- 5 - the most significant contribution
- Don't know / no opinion / not relevant



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

5000 character(s) maximum

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Providing opinions to competent authorities						
Promoting bilateral and multilateral exchanges of information between competent authorities						
Contributing to developing high quality and uniform supervisory standards						
Contributing to developing high quality and uniform reporting standards						
Developing and reviewing the application of technical standards						
Contributing to the development of sectoral legislation by providing advice to the Commission						
Establishing (cross)sectoral training programmes						
Producing reports relating to their field of activities						
Conducting peer reviews between competent authorities						
Determining new Union strategic supervisory priorities						
Establishing coordination groups						
Developing Union supervisory handbooks						
Monitoring and assessing environmental, social and governance-related risks						



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

Please add any qualitative comments you may wish to explain your reasoning when answering question 1.1.2 on EBA:
5000 character(s) maximum

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
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Providing opinions to competent authorities		X				
Promoting bilateral and multilateral exchanges of information between competent authorities						
Contributing to developing high quality and uniform supervisory standards						
Contributing to developing high quality and uniform reporting standards		X				
Developing and reviewing the application of technical standards						
Contributing to the development of sectoral legislation by providing advice to the Commission						
Establishing (cross)sectoral training programmes						
Producing reports relating to their field of activities						
Conducting peer reviews between competent authorities						
Determining new Union strategic supervisory priorities						
Establishing coordination groups				X		
Developing Union supervisory handbooks						
Monitoring and assessing environmental, social and governance-related risks			X			
Adopting measures using emergency powers						
Investigating breaches of Union law						
Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)						
Mediating between competent authorities						
Monitoring the work of supervisory and resolution colleges						
Publishing on their website information relating to their field of activities					X	
Monitoring market developments						



Monitoring liquidity risks in financial institutions	X					
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						
Developing Q&As						
Contributing to the establishment of a common Union financial data strategy						
Providing supervisory statements						
Other instruments and tools to promote supervisory convergence						

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

5000 character(s) maximum

Opinions are useful tools for communicating legislative interpretations, but not very helpful for full convergence of supervisory standards as long as they leave it up to the NCAs to incorporate the opinion into their supervisory practice. In particular, ESMA published in October 2013 an opinion with additional reporting requirements (opinion on collection of information for the effective monitoring of systemic risk under Article 24(5), first sub-paragraph, of the AIFMD, ESMA/2013/1340). In this opinion ESMA requires a detailed set of additional information that NCAs could obtain from AIFMs to report on a periodic basis. This leads to the situation that some NCAs require AIFMs to report these additional data while others do not. Regarding cross border activities of AIFMs, this leads to different standards and the need for internal control systems and check lists in which country such additional reports are not required to deliver. As the consequence, different reports provided by the AIFMs complicate the assessment of the data by ESMA. In this case, an opinion was not the right instrument to ensure consistent supervisory practice. Therefore, reporting questions should be clarified by ITS or by guidelines.

Monitoring and assessing environmental, social and governance-related risks should not be qualified as a stand-alone task of ESMA. There is a need for a common understanding that ESG-related risks are not a separate risk type, but rather a specific sub-set of other relevant financial risks. They may have a material impact on all the existing financial risk types (such as market, liquidity, counterparty and other relevant risks) as a factor that contributes to their materiality. Therefore, it is much more important to monitor and assess all relevant financial risks.

Monitoring liquidity risks in financial institutions (or asset managers) as well as monitoring of own funds and eligible liabilities instruments issued by institutions (asset managers) should rather be placed with the national supervisors in considering specific market conditions and business models. However, risk analyses with impact on the whole financial market could lead to better understanding and identifying potential risks.

Initiating and coordinating Union-wide stress tests of financial institutions is not a task undertaken by ESMA because the companies under supervision are not required (like banks or insurance undertakings) to conduct stress tests in this regard.



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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Notapplicable
Providing opinions to competent authorities						
Promoting bilateral and multilateral exchanges of information between competent authorities						
Contributing to developing high quality and uniform supervisory standards						
Contributing to developing high quality and uniform reporting standards						
Developing and reviewing the application of technical standards						
Contributing to the development of sectoral legislation by providing advice to the Commission						
Establishing (cross)sectoral training programmes						
Producing reports relating to their field of activities						
Conducting peer reviews between competent authorities						
Determining new Union strategic supervisory priorities						
Establishing coordination groups						
Developing Union supervisory handbooks						
Monitoring and assessing environmental, social and governance-related risks						
Adopting measures using emergency powers						
Investigating breaches of Union law						
Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)						
Mediating between competent authorities						



Monitoring the work of supervisory and resolution colleges						
Publishing on their website information relating to their field of activities						
Monitoring market developments						
Monitoring liquidity risks in financial institutions						
Monitoring of own funds and eligible liabilities instruments issued by institutions						
Initiating and coordinating Union-wide stress tests of financial institutions						
Developing guidelines and recommendations						
Developing Q&As						
Contributing to the establishment of a common Union financial data strategy						
Providing supervisory statements						
Other instruments and tools to promote supervisory convergence						

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

5000 character(s) maximum

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

Please rate EBA’s contribution to the objectives below:

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



Promote converging supervisory practices among colleges						
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Please explain your reasoning when answering question 1.1.3 on EBA:
5000 character(s) maximum

Question 1.1.3 ESMA: One of the roles of ESMA 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 ESMA’s contribution to the objectives below:

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

Please explain your reasoning when answering question 1.1.3 on ESMA:
5000 character(s) maximum

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

Please rate EIOPA’s contribution to the objectives below:

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



Promote converging supervisory practices among colleges						
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Please explain your reasoning when answering question 1.1.3 on EIOPA:

5000 character(s) maximum

In the framework of the 2019 ESAs review:

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

5000 character(s) maximum

We welcome that the adoption of questions and answers as an important tool for fostering supervisory convergence is now subject to a formal process to be followed by the ESAs. For market participants, it is particularly relevant that the Q&A process is more transparent and involves publication of incoming questions. It is however regrettable that the transparency obligation under Art. 16b (2) does not cover all questions, but only those submitted to the ESAs. Many Q&As, however, are being developed following discussions among NCAs or questions received by some NCAs, not directly by the ESAs. In these cases, the publication duty does not apply and discussions at the ESA level remain unknown to the interested parties until publication of the final Q&As.

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

- Yes
- No
- Don't know / no opinion / not relevant

If yes: Please identify areas for improvement and explain your answer to question 1.1.5 /

If no: Please explain your answer to question 1.1.5

5000 character(s) maximum

Yes, we think that the new process allows for an efficient mode for answering questions and promoting supervisory convergence. Nonetheless, it would be very helpful if the transparency obligation under Art. 16b (2) were extended to all questions being currently processed by the ESAs, regardless of whether these questions have been directly submitted to the authority. By this means, affected or interested market participants would be able to feed their views and arguments into the pending discussions which should further widen the argumentative base and thus, strengthen the quality of the final answers.



1.2 No action letters

In the framework of the 2019 ESAs review:

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

- Yes
 No
 Don't know / no opinion / not relevant

Please explain your answer to question 1.2.1:

5000 character(s) maximum

Market experience with the new mechanism of no action letters foreseen under the ESA Regulations is so far fairly limited. In the securities sector, we have seen only one example dated 29 April 2020 relating to ESG disclosure requirements for benchmark administrators under the EU Benchmarks Regulation. In this case, ESMA as the competent EU authority stated that the absence of the delegated acts necessary to supplement the new disclosure requirements means there are “legitimate doubts concerning the legal consequences of the Benchmarks Regulation” and that until the delegated acts apply, competent authorities “should not prioritise any supervisory or enforcement action” in relation to the disclosure requirements.

From the perspective of a regulated financial institution, there is little to differentiate a no-action letter issued by an ESA from the traditional forbearance statements that were issued by the ESAs prior to the amendment of the ESAs’ founding regulations and which continue to be issued. In particular, because of the non-binding nature of a no-action letter, there is no guarantee that NCAs will act in a harmonised way, NCAs are not relieved of their obligation to enforce EU law and market participants are not relieved of their obligation to comply with directly applicable EU law. The usefulness of no action letters would be substantially increased if the ESAs were vested with binding powers to temporarily suspend the application of specific EU regulatory requirements in certain limited cases (cf. our answer to Q 1.2.3 below).

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

5000 character(s) maximum

A comparison should be drawn especially with “no action letters” issued by the US authorities with regard to administrative provisions relevant for the US securities markets. In fact, the European asset management industry has been directly impacted by the US “no action” mechanism in the context of the Volcker Rule, where the three competent US banking agencies issued several consecutive “no action letters” in order to avoid unintended extraterritorial effects of the US rule on foreign investment funds. The “no action letters” were published as interim measures that allowed the agencies to seek for a proper regulatory solution, consult it with the market and introduce the necessary changes to the administrative provisions under the Volcker Rule. While not disapplying the Volcker Rule per se, the “no action letters” announced that the agencies’ staff “would not propose to take action” against the relevant market participants due to the non-application of the Volcker Rule during the period specified in the letter. By taking these actions, the US agencies effectively helped to avoid detriments to the business of EU asset manager with relationships to the US.

“No action letters” issued by US agencies have assumed a considerable degree of importance for the application of the US federal securities law. While they seem to lack a clear statutory foundation, they are firmly established as comprehensive secondary source to guide market participants in their conduct of business. According to our understanding, many courts accept “no action letter” authority as definitive interpretations of the federal securities statutes. In comparison to the EU mechanism, they are



much more flexible in their application and the agencies' authority does not depend upon confirmation or other measures to be taken by other bodies. This enables the US authorities to react swiftly to any new situation in which application of certain rules falling under their remit may i.e. go against the legitimate interests of stakeholders, creates unintended consequences or is in direct conflict with other pieces of law.

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

5000 character(s) maximum

The usefulness of no action letters would be increased by extending the respective competence of the ESAs. In particular, it would be extremely helpful for the markets if the ESAs were vested with binding powers to temporarily suspend the application of specific EU regulatory requirements in case of significant issues with regard to either conflicting EU rules, undesirable legal consequences or practical difficulties in application in line with Art. 9c (1) of the EBA Regulation.

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

5000 character(s) maximum

The usefulness of no action letters would be increased by extending the respective competence of the ESAs. In particular, it would be extremely helpful for the markets if the ESAs were vested with binding powers to temporarily suspend the application of specific EU regulatory requirements in case of significant issues with regard to either conflicting EU rules, undesirable legal consequences or practical difficulties in application in line with Art. 9a (1) of the ESMA Regulation.

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

5000 character(s) maximum

The usefulness of no action letters would be increased by extending the respective competence of the ESAs. In particular, it would be extremely helpful for the markets if the ESAs were vested with binding powers to temporarily suspend the application of specific EU regulatory requirements in case of significant issues with regard to either conflicting EU rules, undesirable legal consequences or practical difficulties in application in line with Art. 9a (1) of the EIOPA Regulation.

1.3 Peer reviews

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

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

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

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



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

Please specify what you mean by other:

5000 character(s) maximum

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law						
Convergence in supervisory practices						
More wide spread application of best practices developed by other competent authorities						
Convergence in the enforcement of provisions adopted in the implementation of Union law						
Further harmonisation of Union rules						
Other						

Please specify what you mean by other:

5000 character(s) maximum

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

5000 character(s) maximum



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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law						
Convergence in supervisory practices						
More wide spread application of best practices developed by other competent authorities						
Convergence in the enforcement of provisions adopted in the implementation of Union law						
Further harmonisation of Union rules						
Other						

Please specify what you mean by other:

5000 character(s) maximum

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law						
Convergence in supervisory practices						
More wide spread application of best practices developed by other competent authorities						
Convergence in the enforcement of provisions adopted in the implementation of Union law						
Further harmonisation of Union rules						
Other						

Please specify what you mean by other:

5000 character(s) maximum



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

5000 character(s) maximum

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law						
Convergence in supervisory practices						
More wide spread application of best practices developed by other competent authorities						
Convergence in the enforcement of provisions adopted in the implementation of Union law						
Further harmonisation of Union rules						
Other						

Please specify what you mean by other:

5000 character(s) maximum

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law						
Convergence in supervisory practices						
More wide spread application of best practices developed by other competent authorities						
Convergence in the enforcement of provisions adopted in the implementation of Union law						
Further harmonisation of Union rules						



Other						
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Please specify what you mean by other:

5000 character(s) maximum

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

5000 character(s) maximum

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

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Ad-hoc Peer Review Committees (PRC) composed of ESAs' and NCAs' staff and chaired by the ESA are responsible for preparing peer review reports and follow-ups.						
The peer review report is now adopted by written procedure on non-objection basis by the BoS.						
Transparency provisions: if the PRC main findings differ from those published in the report, dissenting views should be transmitted to the three European Institutions.						
PRC findings may result in recommendations to NCAs under Article 16 of the ESAs Regulations that are now distinguished from guidelines, addressed to all NCAs. The use of this type of individual recommendations entails the application of the "comply or explain" mechanism and allows a close follow-up.						
Mandatory follow-up to peer reviews within two years after the adoption of the peer review report.						



The possibility to carry out additional peer reviews in case of urgency or unforeseen events (fast track peer reviews).						
The Management Board is consulted in order to maintain consistency with other peer reviews reports and to ensure a level playing field.						

Please explain your reasoning when answering question 1.3.2:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

If yes: Please specify the piece of legislation and concrete provision under which mandatory peer reviews could be introduced for EBA/

If no: Please explain your answer to question 1.3.3 for EBA

5000 character(s) maximum

Given that the peer review mechanism is time and resource-intensive and generally takes several months to be completed, we advise against establishing a mechanistic approach that would involve mandatory recurring peer reviews in certain areas of legislation. The available resources at both the ESA and NCA levels can be much more effectively channelled into ad-hoc peer reviews on regulatory aspects that require increased attention e.g. due to their relevance in terms of standard-setting or apparent divergences in national implementation.

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

- Yes
- No
- Don't know / no opinion / not relevant

If yes: Please specify the piece of legislation and concrete provision under which mandatory peer reviews could be introduced for ESMA /

If no: Please explain your answer to question 1.3.3 for ESMA

5000 character(s) maximum

Given that the peer review mechanism is time and resource-intensive and generally takes several months to be completed, we advise against establishing a mechanistic approach that would involve mandatory recurring peer reviews in certain areas of legislation. The available resources at both the ESA and NCA level can be much more effectively channelled into ad-hoc peer reviews on regulatory aspects that require increased attention e.g. due to their relevance in terms of standard-setting or apparent divergences in national implementation.



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

- Yes
- No
- Don't know / no opinion / not relevant

If yes: Please specify the piece of legislation and concrete provision under which mandatory peer reviews could be introduced for EIOPA /

If no: Please explain your answer to question 1.3.3 for EIOPA

5000 character(s) maximum

Given that the peer review mechanism is time and resource-intensive and generally takes several months to be completed, we advise against establishing a mechanistic approach that would involve mandatory recurring peer reviews in certain areas of legislation. The available resources at both the ESA and NCA level can be much more effectively channelled into ad-hoc peer reviews on regulatory aspects that require increased attention e.g. due to their relevance in terms of standard-setting or apparent divergences in national implementation.

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

- Yes
- No
- Don't know / no opinion / not relevant

If yes: Please specify which improvements could be made to the peer review process /

If no: Please explain your answer to question 1.3.4:

5000 character(s) maximum

1.4 Other tasks and powers

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

- Yes
- No
- Don't know / no opinion / not relevant

If no: If you identify areas for improvement for EBA, please explain:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant



If no: If you identify areas for improvement for ESMA, please explain:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

If no: If you identify areas for improvement for EIOPA, please explain:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

If you identify any areas for improvement, please explain:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant



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

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

- 1 - Not significant at all
- 2 - Rather not significant
- 3 - Neutral
- 4 - Rather significant
- 5 - Very significant
- Don't know / no opinion / not relevant

Please explain your answer to question 1.4.4:

5000 character(s) maximum

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	Don't know - No opinion - Not applicable
Operational independence						
Financial independence						
Appointment and dismissal of governing body						
Accountability and transparency						



Adequacy of powers and ability to apply them						
Other						

Please specify to what other criterion/a you refer:

5000 character(s) maximum

Please explain your answers to question 1.4.5:

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: Please specify what changes should be made in this area for EBA:

5000 character(s) maximum



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

- Yes
- No
- Don't know / no opinion / not relevant

No: Please specify what changes should be made in this area for ESMA:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: Please specify what changes should be made in this area for EIOPA:5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please indicate what role such inquiries should play /

No: Please explain your answer to question 1.4.8:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

In principle, Europe is on the right track when emphasizing that regulatory approaches should be designed technology-neutral. With regard to concepts of decentralised finance, however, fundamental questions would have to be answered as to whether the existing distribution of roles in the financial market with its intermediaries and clearly delineated functions and designated central parties is still necessary if technical progress, e.g. through DLT/blockchain, provides an at least comparable level of



protection when conducting and settling a financial transaction. Further, in the space of digital assets, the MICA regulation is ground-breaking by directing a regulatory wasteland into orderly channels. The amendments to the MiFID for digital financial instruments are also planned, although technical standards may still be required here, especially when hybrid digital assets cannot be subsumed under the old definitions. Clarifications by the legislator and/or supervisory bodies would be helpful for asset management so that, on the one hand, digital assets can be included in business activities and, at the same time, the necessary legal certainty in dealing with tokenised assets and the relevant supervisory practice is maintained.

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

- 1 - Least effective
- 2 - Rather not effective
- 3 - Neutral
- 4 - Rather effective
- 5 - Very effective
- Don't know / no opinion / not relevant

Please explain your answer to question 1.4.10:

5000 character(s) maximum

1.5 Breach of Union law and dispute settlement

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 1.5.1:

5000 character(s) maximum

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

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

Please explain your answer to question 1.5.2 for EBA:

5000 character(s) maximum



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

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

Please explain your answer to question 1.5.2 for ESMA:

5000 character(s) maximum

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

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

Please explain your answer to question 1.5.2 for EIOPA:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain what those other instruments would be /

No: Please explain your answer to question 1.5.3:

5000 character(s) maximum

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

- Yes
- No



Don't know / no opinion / not relevant

Please explain your answer to question 1.5.4:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: Please give concrete examples where you consider that EBA should have taken relevant action under these Articles:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: Please give concrete examples where you consider that ESMA should have taken relevant action under these Articles:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: Please give concrete examples where you consider that EIOPA should have taken relevant action under these Articles:

5000 character(s) maximum

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

5000 character(s) maximum



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

5000 character(s) maximum

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

5000 character(s) maximum

Question 1.5.7 EBA: Why do you think the use of these EBA's powers has been limited?

Please explain how these processes could be improved:

5000 character(s) maximum

Question 1.5.7 ESMA: Why do you think the use of these ESMA's powers has been limited?

Please explain how these processes could be improved:

5000 character(s) maximum

Question 1.5.7 EIOPA: Why do you think the use of these EIOPA's powers has been limited?

Please explain how these processes could be improved:

5000 character(s) maximum

1.6 Emergency situations and response to COVID-19 crisis

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

- 1 - the less significant impact
- 2
- 3
- 4
- 5 - the most significant impac



Don't know / no opinion / not relevant

Please explain your answer to question 1.6.1 for EBA:

5000 character(s) maximum

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

- 1 - the less significant impact
- 2
- 3
- 4
- 5 - the most significant impact
- Don't know / no opinion / not relevant

Please explain your answer to question 1.6.1 for ESMA:

5000 character(s) maximum

During the crisis, we were able to identify many measures taken by ESMA that were conducted in context with, but not always necessarily related to, the crisis. In particular, the number of detailed questionnaires based on the common supervisory action with NCAs (such as the quality of the AIFMD reporting, compliance with liquidity requirements of the UCITS Directive) have resulted in a tremendous workload which had to be provided under difficult conditions (market volatility and working from home) by the companies. This also applies to the questionnaire based on the ESRB recommendation regarding market illiquidity and implications for asset managers. In that context, we do not see merit in establishing a (new) template for NCAs to report relevant and timely data to ESMA during the period of the stressed market conditions. Stressed market conditions are not foreseeable and are therefore not included in supervisory reporting. Data provided during the previous crisis would be not relevant for the next crisis. Standard reporting would bring less value than a reporting that is tailored to the actual event. In an exceptional situation it would be up to NCAs to ask for more information that would be relevant for assessing the situation in their individual markets.

However, the statements made by ESMA during the crisis (such as on corporate disclosure, business continuity planning, risk management of asset managers) as well as the analyses and evaluations in the aftermath of the crisis were very helpful. The outcome of these analyses would still be more valuable if they were also prepared on a country-by-country basis.

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

- 1 - the less significant impact
- 2
- 3
- 4
- 5 - the most significant impact
- Don't know / no opinion / not relevant

Please explain your answer to question 1.6.1 for EIOPA:

5000 character(s) maximum



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

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

Please explain your answer to question 1.6.2:

5000 character(s) maximum

We refer to our answer to Q 1.6.1. Irrespective of the effort involved in the additional queries, ESMA's analyses resulting from the ESRB recommendations have identified many areas for action to be taken for potential next crises. The cooperation between the ESRB and the supervisor has proven valuable here. However, the outcome of these analyses would be more valuable if they were also prepared on a country-by-country basis.

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain your answer to question 1.6.3 for EBA /

No: Please give examples of situations where the coordinating activities carried out by EBA did not successfully contribute to address the COVID-19 challenges:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain your answer to question 1.6.3 for ESMA /



No: Please give examples of situations where the coordinating activities carried out by ESMA did not successfully contribute to address the COVID-19 challenges:

5000 character(s) maximum

We also welcome the intensified coordination between ESMA and the NCAs during the crisis. This will help to improve supervision and to respond to exceptional circumstances in future.

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain your answer to question 1.6.3 for EIOPA /

No: Please give examples of situations where the coordinating activities carried out by EIOPA did not successfully contribute to address the COVID-19 challenges:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: Please give concrete examples where you consider that EBA should have taken relevant action:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: Please give concrete examples where you consider that ESMA should have taken relevant action:

5000 character(s) maximum

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

- Yes



- No
- Don't know / no opinion / not relevant

No: Please give concrete examples where you consider that EIOPA should have taken relevant action:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain your answer to question 1.6.5 /

No: Please suggest potential changes to Article 18.2 of the ESAs Regulation:

5000 character(s) maximum

The practical test is still pending, but we have no reason to doubt the effectiveness and appropriateness of the Article 18(2) procedure.

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

5000 character(s) maximum

1.7 Coordination function (Art 31 ESAs' Regulations)

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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you identify areas for improvement for the coordination role of EBA, please explain:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you identify areas for improvement for the coordination role of ESMA, please explain:

5000 character(s) maximum



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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you identify areas for improvement for the coordination role of EIOPA, please explain:
5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: If you do see a need for greater coordination for EBA, please explain your answer to question 1.7.2 and indicate what changes you propose:
5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: If you do see a need for greater coordination for ESMA, please explain your answer to question 1.7.2 and indicate what changes you propose:
5000 character(s) maximum

Financial stability supervisors need to operationalise their macro-prudential toolkit. We see the need for further improvements in information and data sharing between all financial stability bodies such as ESMA, ESRB, ECB, national central banks and national competent authorities. This requires a single regulatory reporting mechanism which will reduce operational effort and burden for asset managers as well as supervisory authorities. For a common understanding of financial stability risks and in order to avoid excessive burdens for cross border activities of asset managers, the main challenge is to agree at least on harmonised data reporting and exchange standards between the industry and supervisory bodies.

The AIFMD reporting as an aggregated and consolidated reporting standard is appropriate to fulfil its purpose of monitoring systemic risks of AIFs. Nevertheless, we see overlaps with other reports such as transaction reporting under EMIR, MIFIR and SFTR, central bank reporting for statistical purposes on



funds as well as the regulatory fund reports for money market funds and the various national UCITS reports. A general overhaul of fund reporting towards mere raw data delivery can meet the demands of supervisors for more granular data to monitor systemic risks in the long run. However, this requires a fundamental overhaul of all fund reporting. For a short-term solution, this demand can be ensured through a new, yet to be defined data exchange between supervisory authorities that already have granular data (e.g. via central banks or EMIR/MiFIR transaction reporting) and maintaining the aggregated and consolidated data collection approach. We therefore propose only minimal changes in the short run to improve AIFMD reporting. In any case, we oppose to setting up a completely new UCITS reporting different from the AIFMD reporting because this will lead to further fragmentation of investment fund reports. The removal of regulatory obstacles which hinder the efficient functioning of the capital markets should be considered an overarching priority.

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

- Yes
- No
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

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

Please explain your reasoning when answering question 1.7.3:

5000 character(s) maximum

We would welcome a cross-sector dialogue not only among the ESAs, but also with the respective supervised entities, in particular, related to processes which affect all market participants. We are aware of a practice that one of the ESAs starts to discuss an issue only with the market participants which are under its own supervision and establishes guidelines or recommendations. The other ESAs then follow suit at a later stage, copying the conclusions of one authority, so there is no longer any opportunity to participate or contribute to the basic discussion (e.g. ESAs' guidelines on cloud-outsourcing).

Question 1.7.3.1 In the framework of 2019 ESAs' review, do you think ESMA's new coordination function (Article 31b ESMA Regulation) in relation to orders, transactions and activities that give rise to suspicions of market abuses and have cross-border



implications for the integrity of financial markets or financial stability in the EU is an effective tool?

- Yes
 No
 Don't know / no opinion / not relevant

Yes: Please provide examples where ESMA's new coordination function has been or could be useful /

No: Please explain why you do not think ESMA's new coordination function is an effective tool?

5000 character(s) maximum

~~Competent authorities should be able to cooperate and share information with each other, including an exchange of information across the EU, to achieve a better supervision of market practices.~~

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

- Yes
 No
 Don't know / no opinion / not relevant

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

No: If you identify room for improvement in the new coordination groups, please explain:

5000 character(s) maximum

Example: cross-sector reporting and data sharing

The jumble of different data standards and formats in the reporting system represents an enormous burden for the asset management industry and for the competent authorities, both operationally and financially. It also hampers efficient supervision in the analysis of systemic risks in financial markets. There is therefore an urgent need to reduce the current excessive reporting obligations and administrative burdens on fund companies to a reasonable level. The key obstacle to achieving this vision is that the current sector-specific supervisory reporting requirements do not reflect a harmonised long-term vision and need to simplify the transactions-related reporting. The reporting requirements are interconnected because supervised entities such as banks or insurance companies or pension funds often invest in investment funds. Both CRR and Solvency II Directive require banks and insurance undertakings which invest in investment funds to look through into the risks and assets of the investment funds for the purposes of their own capital requirements and internal risk assessments. These Directives require delivery of data and further support services by investment fund management companies about risks assessments and asset data of investment funds in completely different ways and which are also not consistent with the reports which must be provided by the assets managers to their own authorities. Therefore, there is a need for analysis in order to understand and report the risks of investment funds in the same way, irrespective of who is invested in the investment fund.

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

- Yes
 No
 Don't know / no opinion / not relevant



Yes: Please explain your answer to question 1.7.5 on EBA /

No: Please indicate how the coordination function of EBA should be adjusted:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain your answer to question 1.7.5 on ESMA /

No: Please indicate how the coordination function of ESMA should be adjusted:

5000 character(s) maximum

In general, we welcome the new coordination function of ESMA. The latest activities were focused on emerging supervisory convergence risks with respect to the treatment of authorisation requests by NCAs in the context of the UK's withdrawal from the EU. ESMA has set up a coordination model that facilitated discussions and allowed supervisors to reach practical common supervisory solutions. These solutions have complemented the guidance provided by ESMA through other convergence tools such as supervisory briefings or Q&As.

However, we would like to suggest that the work of the coordination function would be more transparent to the supervised entities. Open discussions or workshops with all market participants (not limited to supervisors) based on case studies would be helpful to better understand concerns of competent authorities.

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain your answer to question 1.7.5 on EIOPA /

No: Please indicate how the coordination function of EIOPA should be adjusted:

5000 character(s) maximum

1.8. Tasks related to consumer protection and financial activities

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

5000 character(s) maximum



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

5000 character(s) maximum

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

5000 character(s) maximum

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Analysis of consumer trends						
Reviewing market conduct						
Developing indicators						
Contributing to a level playing field						
Financial literacy						
Follow up to work in this area						

Please explain your answer to question 1.8.2 for EBA:

5000 character(s) maximum

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

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



Contributing to a level playing field				X		
Financial literacy			X			
Follow up to work in this area						X

Please explain your answer to question 1.8.2 for ESMA:

5000 character(s) maximum

Guidelines (e.g. Guidelines on certain aspects of the MiFID II suitability requirements) published by ESMA as well as Q&As (e.g. Q&A on the implementation of investor protection topics under the Market in Financial Instruments Directive and Regulation (MiFID II/ MiFIR)) can help to reach a common understanding and foster a level playing field within the EU as within in the national markets. We welcome this in general. It is in the interest of both investment firms and clients to make financial services more comparable.

On the other hand, ESMA sometimes tries to use guidelines or Q&As in order to tighten legal requirements enshrined in Levels 1 or 2. The “Consultation on Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements” (ESMA35-36-2159) serves as a topical example (see BVI’s response). It is not a duty of ESMA to expand regulatory requirements but to give guidance for understanding for Level 1 and 2.

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Analysis of consumer trends						
Reviewing market conduct						
Developing indicators						
Contributing to a level playing field						
Financial literacy						
Follow up to work in this area						

Please explain your answer to question 1.8.2 for EIOPA:

5000 character(s) maximum

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

In your view, are these powers effective for their intended purpose?

Yes



- No
- Don't know / no opinion / not relevant

Please explain your answer to question 1.8.3:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please specify in what other cases the ESAs could adopt acts of general application / No: Please explain your answer to question 1.8.4:

5000 character(s) maximum

We think that in the context of distribution, ESAs' interventions in the market should be limited. The requirements in Art. 9 (5) are clear and define situations in which an intervention is considered **proportional**. A prohibition should be the last resort and limited:

- to potentially very significant financial damages to customers,
- to the threatening of the orderly functioning and integrity of financial markets or
- the stability of the whole or part of the financial system in the Union.

This is already set out in Art. 9 (5).

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

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum



Question 1.8.5.1 EBA: In the framework of 2019 ESAs' review, 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?

5000 character(s) maximum

We consider this change to be helpful in order to gain a comprehensive overview of the market practices and to bring the attention to potential abuses. In particular the possibility of monitoring innovative financial services (Art. 8 (1) (f)) could be useful in reacting to new trends. This is not only important for investor protection but could also be seen as a chance for investors to take part in the financial market in different ways and making use of financial services.

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

- 1 - irrelevant
- 2 - rather irrelevant
- 3 - neutral
- 4 - rather relevant
- 5 - fully relevant
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

- 1 - irrelevant
- 2 - rather irrelevant
- 3 - neutral
- 4 - rather relevant
- 5 - fully relevant
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

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



- 1 - irrelevant
- 2 - rather irrelevant
- 3 - neutral
- 4 - rather relevant
- 5 - fully relevant
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

Question 1.8.7 EBA: 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?

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 1.8.8 for EBA:

5000 character(s) maximum



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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 1.8.8 for ESMA:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 1.8.8 for EIOPA:

5000 character(s) maximum

1.9 International relations

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

Are there additional international fora in which EBA should be active?

5000 character(s) maximum

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

Are there additional international fora in which ESMA should be active?

5000 character(s) maximum

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

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

5000 character(s) maximum



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

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you identify areas for improvement for EBA, please specify:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you identify areas for improvement for ESMA, please specify:

5000 character(s) maximum



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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you identify areas for improvement for EIOPA, please specify:

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

1.10 The role of the ESAs as enforcement actors/enforcers

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.

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

5000 character(s) maximum



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

5000 character(s) maximum

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

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 1.10.2 for EBA:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 1.10.2 for ESMA:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 1.10.2 for EIOPA:



5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 1.10.3:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 1.10.4:

5000 character(s) maximum

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

- Sufficiently dissuasive
- Disproportionate
- Other
- Don't know / no opinion / not relevant

Disproportionate: What role could sectoral legislation and EBA play in improving the situation?

Please substantiate your answer and give examples /

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

5000 character(s) maximum

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



- Sufficiently dissuasive
- Disproportionate
- Other
- Don't know / no opinion / not relevant

Disproportionate: What role could sectoral legislation and ESMA play in improving the situation? Please substantiate your answer and give examples /

Other: Please specify what your mean by 'other' in your answer to question 1.10.5 for ESMA:
5000 character(s) maximum

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

- Sufficiently dissuasive
- Disproportionate
- Other
- Don't know / no opinion / not relevant

Disproportionate: What role could sectoral legislation and EIOPA play in improving the situation? Please substantiate your answer and give examples/

Other: Please specify what your mean by 'other' in your answer to question 1.10.5 for EIOPA:
5000 character(s) maximum

2. Governance of the ESAs

2.1 General governance issues

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 2.1.1:

5000 character(s) maximum

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

5000 character(s) maximum



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

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain your answer to question 2.1.2:

5000 character(s) maximum

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

- Yes
- No
- Don’t know / no opinion / not relevant

No: If you identify areas for improvement, please explain:

5000 character(s) maximum

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Request to the Board to establish internal committees for specific tasks						
Set the agenda to be adopted by the Board and table items for decision						
Call a vote at any time						
Propose the composition of independent panels for breach of Union law investigations and dispute settlements						
Propose the composition of peer review committees for peer reviews						



Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation						
Vote in the Board of Supervisors (except on matters that are decided on the basis of qualified majority voting)						
Other						

Please specify what your mean by 'other' in your answer to question 2.1.4:

5000 character(s) maximum

Please explain your answers to question 2.1.4:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please specify in which area(s) the role of the Chairperson should be strengthened:

5000 character(s) maximum

2.2 Decision-making bodies and preparatory bodies

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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you identify areas for improvement, please explain:

5000 character(s) maximum

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



- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain your answer to question 2.2.2 /

No: Please explain your answer to question 2.2.2 and indicate how voting modalities could be streamlined:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 2.2.2.1:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you identify areas for improvement, please explain:

5000 character(s) maximum

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
The MB can give opinions on all matters to be decided by the Board of Supervisors						
The MB ensures the consistent use of a methodology for all peer reviews conducted						
The MB proposes a peer review work plan every two years.						



The MB can set up coordination groups on its own initiative						
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Please explain your answers to question 2.2.4:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: In which other areas should the role of the Management Board be strengthened? Please substantiate you answer:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please indicate if there should be more decisions taken under this procedure and in which areas. Please substantiate your answer /

No: Please explain your answer to question 2.2.6:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

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

5000 character(s) maximum



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

- Yes
- No
- Don't know / no opinion / not relevant

No: If you identify any shortcomings please specify how these could be addressed:

5000 character(s) maximum

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Standing committees and other permanent committees						
Other preparatory bodies (e.g. technical working groups)						
Committee on consumer protection and financial innovation						
Proportionality Committee						

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

5000 character(s) maximum

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Standing committees and other permanent committees						
Other preparatory bodies (e.g. technical working groups)						
Committee on consumer protection and financial innovation						



Proportionality Committee						
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If you identify any shortcomings for ESMA please specify how these could be addressed:
5000 character(s) maximum

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Standing committees and other permanent committees						
Other preparatory bodies (e.g. technical working groups)						
Committee on consumer protection and financial innovation						
Proportionality Committee						

If you identify any shortcomings for EIOPA please specify how these could be addressed:
5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please indicate your suggestions for improvements and the expected benefits:
5000 character(s) maximum

2.3 Financing and resources

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

- Yes
- No



Don't know / no opinion / not relevant

Yes: Please explain your answer to question 2.3.1 /

No: Please indicate what other sources of finance could be considered:

5000 character(s) maximum

In general, we welcome a mixed financing system whereby contributions from financial market participants are considered only one among several elements of the ESAs' financing. The German fund industry is already contributing to ESMA's budget by indirect levies paid from the budget of BaFin and we indeed see the case for such levies being consistently assigned to market participants across the Union.

A fair financing system should be based on a clear and reasonable allocation of the financing burden among the relevant stakeholders. This means a balancing contribution from the Union which shall be subject to a ceiling of 40 percent as discussed in the past would not be commensurate in view of the substantial workload of the ESAs dedicated to regulatory rather than supervisory functions. Specifically, in working on technical advice to delegated acts, RTS or ITS drafts the ESAs actually perform tasks that are generally assigned to the European Commission under Articles 290 and 291 of the TFEU and thus must be financed from the EU budget. The same applies for any actions undertaken within the ESAs' remit of preventing and mitigating financial stability risk in the EU in collaboration with the ESRB. Moreover, by retaining a material financing stake from the EU budget as well as its approval by the European Parliament and the Council, the EU institutions would have the power to prioritise the ESAs' tasks and to exercise influence over future activities by the ESAs. Proportional EU funding would thus help to ensure that national interests do not prevail over the ESAs' commitment to European interests and furthering the Single Market.

Furthermore, a new funding model foreseeing only a balancing contribution from the EU budget would be detrimental to the ESAs' budgetary discipline. Introduction of a fully industry funded system makes adherence to a strict budgetary discipline more difficult. While in general financing stakeholders should be represented in the authority or body in charge of the budgetary control, it proves intrinsically difficult for market participants to control the budget of authorities responsible for their supervision. On the other hand, EU institutions would have no genuine interest in enforcing budgetary discipline upon the ESAs if financial contribution from the EU budget is negligible with basically the entire financing burden being shouldered by market participants. In Germany, BaFin's budget increased significantly after the change to full industry funding was put into place in 2002.

Overall, we are therefore in favour of retaining a significant contribution from the EU budget that should be fixed at a minimum of 40 percent.

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

Yes

No

Don't know / no opinion / not relevant

Please explain your answer to question 2.3.2:

5000 character(s) maximum

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

Yes



- No
- Don't know / no opinion / not relevant

Please explain your answer to question 2.3.3:

5000 character(s) maximum

~~- Hinweis auf EP Discharge Berichte?~~

2.4 Involvement and role of relevant stakeholders

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

- Yes
- No
- Too many consultations
- Don't know / no opinion / not relevant

Please explain your answer to question 2.4.1:

5000 character(s) maximum

~~-genug Konsultationen.~~
~~-Deadlines ab und an arg knapp (?)~~

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

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

Please explain your answer to question 2.4.2 for EBA:

5000 character(s) maximum

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

	1 (lowest quality)	2	3	4	5 (highest quality)	Don't know - No opinion - Not applicable
General consultations launched by ESMA				<u>X</u>		



Specific consultations when developing data collection requirements						
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Please explain your answer to question 2.4.2 for ESMA:

5000 character(s) maximum

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

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

Please explain your answer to question 2.4.2 for EIOPA:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 2.4.3 for EBA:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 2.4.3 for ESMA:

5000 character(s) maximum

More transparency regarding responsible ESMA staff would be welcome. It is often unclear who is dealing with what topics.



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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 2.4.3 for EIOPA:

5000 character(s) maximum

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

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

Please explain your answers to question 2.4.4:

5000 character(s) maximum

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

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

Please explain your answers to question 2.4.5:

5000 character(s) maximum



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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 2.4.6:
5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

No: Please indicate the areas where the transparency could be improved:
5000 character(s) maximum

2.5 Joint bodies of the ESAs

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

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

If you identify areas for improvement, please explain:
5000 character(s) maximum

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

	1	2	3 (neutral)	4	5	Don't know - No opinion -



	(least effective)	(not so effective)		(rather effective)	(most effective)	Not applicable
Functioning						
Working methods						
Ensuring cross-sectoral cooperation						
Ensuring consistent approaches						
Decision making process						
The legal structure (no legal personality)						

If you identify areas for improvement, please explain:

5000 character(s) maximum

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Consumer Protection and Financial Innovation				X		
Coordination and cooperation for bi-annual Joint Risk Reports, published in spring and autumn						
Financial Conglomerates						
Securitisation						
European Forum of Financial Innovators						

If you identify areas for improvement, please explain:

5000 character(s) maximum

3. Direct supervisory powers

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

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



Securitisation Repositories (STS)						
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Please explain your answers to question 3.1:

5000 character(s) maximum

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

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

If you identify areas for improvement, please explain:

5000 character(s) maximum

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

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

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

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain your answer to question 3.4:

5000 character(s) maximum

Supervision of market data providers should be improved to address concentration risks and dependencies arising from activities of third-party providers whose failure could have a significant impact on the financial market. This involves activities of market data providers such as index providers, credit rating agencies or other market data providers which are not supervised or covered by MiFID II



as data reporting service providers and conclude transactions on a large scale with supervised financial market participants. Without secure access to their data and services, operational resilience of financial services in general and in specific cases also financial stability is at risk. Therefore, operational resilience needs to be defined widely, encompassing not only risks in relation to the use of network and information systems, but also market data distributors and all kind of contractual disputes, including all other types of intentional or non-intentional events, with these providers.

The specific challenge here is that large data providers in particular are not willing to adapt the contracts. It is often impossible for market participants to negotiate such obligations in contracts with data providers. This pertains especially to those from third countries. For the past 20 years it has been virtually impossible for asset managers, banks and insurance companies to make adjustments to contracts with large index, rating and cloud service providers such as Bloomberg and Refinitiv as the latter do not allow any provisions that deviate or go beyond their own terms and conditions. The current DORA contract-based approach simply results in less enforcement as contract-based DORA obligations can be enforced only by civil law courts adjudicating on a contract dispute between an EU financial entity and an ICT third-party provider in or outside the EU. As many ICT providers are based in third countries, e.g. the US, the DORA related provisions in the ICT contract may never be enforced at all, as legal action is too expensive vs the value of the contract. For example, a rating data feed from a US rating agency could be priced at USD 20,000 p.a. These kind of CRA contracts would usually also provide for application of US law. The legal costs in the US are simply too high to sue for such a small contract value. Therefore, these providers should be directly obliged to implement certain contract contents. Addressing this only unilaterally with the supervised financial entities would create a certain market pressure in the future, but in individual cases it can still prevent providers from responding to requests for changes from smaller market participants. This can lead to competitive disadvantages, precisely because no other providers are available to switch to.

4. The role of the ESAs as regards systemic risk

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know - No opinion - Not applicable
The quality of the analysis of market developments						
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs						
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk						
The cooperation within the European System of Financial Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing						



The broader cooperation between the ESRB and the ESAs within the ESFS						
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors						

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

5000 character(s) maximum

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know - No opinion - Not applicable
The quality of the analysis of market developments					X	
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs				X		
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk					X	
The cooperation within the European System of Financial Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing				X		
The broader cooperation between the ESRB and the ESAs within the ESFS					X	
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors			X			

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

5000 character(s) maximum

One of the key objectives of the EU framework in the financial sector is to enable supervisors to appreciate and mitigate potential systemic risk building up in financial markets from different sources. For example, we welcome the latest ESMA analysis of investment funds, confirming that the fund



industry is resilient and able to absorb economic shocks. We also welcome that ESMA has already started establishing guidance to address risks and to identify the effect of macro-systemic shocks affecting the economy as a whole. However, financial stability supervisors need to operationalise their macro-prudential toolkit. We see the need for further improvements in information and data sharing between all financial stability bodies such as ESMA, ESRB, ECB, national central banks and national competent authorities.

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know - No opinion - Not applicable
The quality of the analysis of market developments						
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs						
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk						
The cooperation within the European System of Financial Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing						
The broader cooperation between the ESRB and the ESAs within the ESFS						
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors						

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

5000 character(s) maximum

B. Questions on the single rulebook



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

- Yes
- No
- Other
- Don't know / no opinion / not relevant

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

No: Please explain your answer to question 5.1 for EBA /

Other: Please specify what your mean by 'other' in your answer to question 5.1 for EBA:

5000 character(s) maximum

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

- Yes
- No
- Other
- Don't know / no opinion / not relevant

Yes: If you have identified areas for improvement for ESMA, please explain/

No: Please explain your answer to question 5.1 for ESMA /

Other: Please specify what your mean by 'other' in your answer to question 5.1 for ESMA:

5000 character(s) maximum

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

- Yes
- No
- Other
- Don't know / no opinion / not relevant

Yes: If you have identified areas for improvement for EIOPA, please explain/

No: Please explain your answer to question 5.1 for EIOPA /

Other: Please specify what your mean by 'other' in your answer to question 5.1 for EIOPA:

5000 character(s) maximum

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

- Yes



- No
- Other
- Don't know / no opinion / not relevant

Yes: Please explain your answer to question 5.2 /

No: If you have identified areas for improvement, please explain /

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

5000 character(s) maximum

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

5000 character(s) maximum

We believe that the current process requiring adoption at the Board of Supervisors of each ESA provides for appropriate checks and balances.

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

- Yes
- No
- Other
- Don't know / no opinion / not relevant

Yes: Please explain your answer to question 5.4 /

No: If you have identified areas for improvement, please explain /

Other: Please specify what your mean by 'other' in your answer to question 5.4:

5000 character(s) maximum

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

5000 character(s) maximum

According to our experience, national supervisory practices are being thoroughly scrutinised against all guidelines, recommendations and Q&As issued by the ESAs. In Germany, implementation of supervisory guidelines sometimes even results in adaptations of the legislative framework and thus, requires actions by national legislators.

Question 5.6 Would you consider it useful if the ESAs could adopt guidelines in areas that do not fall under the scope of legislation listed in Article 1 (2) of the ESAs founding



Regulations and are not necessary to ensure the effective and consistent application of that legislation?

- Yes
 No
 Don't know / no opinion / not relevant

Yes: Please specify in which areas it would be useful for the ESAs to adopt such guidelines/

No: Please explain your answer to question 5.6:

5000 character(s) maximum

In the interest of both legal certainty and the democratic legitimation of the ESAs' actions, we consider it extremely important that their functional competences are unambiguously and conclusively defined on the level of the founding regulations.

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

- Including [Regulation \(EC\) No 1606/2002 \(IAS Regulation\)](#) and [Directive 2013/34/EU \(Accounting Directive\)](#) in Article 1(2) of the ESMA Regulation
 Other
 No improvements are needed
 Don't know / no opinion / not relevant

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

5000 character(s) maximum

From the perspective of the institutional investor, an important component is the improvement of the balance sheet control procedure. Its effectiveness must not depend on the degree of voluntary participation of the controlled company. In this context, the strengthened information and intervention rights of supervisors vis-à-vis capital market companies are a decisive factor.

We also consider measures relating to auditors, in particular greater independence and stricter civil liability, to be sensible and suitable for improving the quality of audits without going beyond the legitimate objective. From an investor perspective, we do not consider any further measures to be necessary in this context.

However, part of the problem at Wirecard was obviously the numerous company formations in Asia and non-transparent or possibly even fictitious transactions between these group companies. In particular, legal obligations would be helpful

- that a Legal Entity Identifier (LEI) must be applied for and used for all companies belonging to the and used for all group companies, as the European Systemic Risk Board recently did for EU companies and those conducting financial transactions within the EU;

- that all material activities and transactions within the group (e.g., company formations, acquisitions and sales, and lending) must be disclosed in financial reports (quarterly reports).

The existing disclosure requirements are obviously inadequate to provide the money laundering transparency register with more meaningful information.

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

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

- Yes



- No
- Don't know / no opinion / not relevant

Yes: Please explain how the role of ESMA with regard to the Transparency Directive could be strengthened/

No: Please explain your answer to question 5.7:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 5.8:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Please explain what role could ESMA have with regard to the IAS Regulation could be strengthened /

No: Please explain your answer to question 5.9:

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum



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

5000 character(s) maximum

6. General questions on the single rulebook

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

Please give your reasons for each:

5000 character(s) maximum

We are convinced that rules for distribution of insurance-based investment products under IDD should follow the same maximum harmonisation approach as deemed appropriate for distribution rules in the securities sector under MiFID II. The last three years of experience with the functioning of the both regimes have shown that even MiFID II does not provide for a full convergence of market practices with regard to e.g. cost disclosures or suitability/appropriateness testing and that further work by ESMA e.g. by conducting common supervisory actions is needed for effective alignment of standards in terms of business conduct.

With a view to the pending retail distribution review, standards for conduct of business as regards distribution of insurance-based investment products should be to the extent possible aligned with the MiFID II regime in order to avoid regulatory arbitrage across sectors and provide for high level of investor protection regardless of the product wrapper in which an investment is being sold. It is particularly important to ensure that the rules on cost disclosure and the advice process in general under both MiFID II and IDD is subject to the same strict commitment to investors' interests and the potential for bias in the advice process is duly minimised.

Question 6.2 Which are the areas where you consider that national rules going beyond the minimum requirements of a Directive (known as "gold-plating") are particularly detrimental to a single market?

(Multiple Choice possible)

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

Banking

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

5000 character(s) maximum



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

5000 character(s) maximum

Insurance

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

5000 character(s) maximum

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

5000 character(s) maximum

Asset management

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

5000 character(s) maximum

Please provide examples of gold plating in the area of Asset management and explain:

5000 character(s) maximum

Market infrastructure (CCPs, CSDs)

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

5000 character(s) maximum

Please provide examples of gold plating in the area of Market infrastructure and explain:



5000 character(s) maximum

Market organisation (MiFID, MIFIR, MAR)

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

5000 character(s) maximum

Please provide examples of gold plating in the area of Market organisation and explain:

5000 character(s) maximum

Other

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

5000 character(s) maximum

Shareholders Rights Directive II

Please identify the relevant sectoral legislation in this/these other area(s) for which national rules going beyond its minimum requirements and explain:

5000 character(s) maximum

Please provide examples of gold plating in the area of this/these other area(s) and explain:

5000 character(s) maximum

The following obstacles still hinder effective engagement by institutional investors:

- Lack of a common understanding of "acting in concert": The provisions under the EU Takeover Bid Directive relating to "acting in concert" have been implemented and interpreted differently at the national level. The German implementation, for instance, "gold-plates" the EU rules since it encompasses not only shareholders' cooperation on matters related to the execution of voting rights, but any kind of interaction with a view of influencing the entrepreneurial direction of an investee company. Moreover, the clarification of the concept of "acting in concert" by means of the "White List" published by ESMA (ESMA 31-65-682), which is very helpful in general, does not remedy the German situation, since the implementing national law takes prevalence both in BaFin's supervisory practice and before the courts. Given that incorrect notifications of significant voting rights (based on an erroneous understanding of "acting in concert") can lead to the loss of not only voting rights, but also entitlements to dividends and subscriptions, investors need to be very cautious when coordinating on matters



concerning German portfolio companies.

- In some Member States, there is still the requirement to provide for a notarial certification of the shareholder status, sometimes including a certified translation. Others require a certified power of attorney for the exercise of voting rights. Examples include Poland, Hungary, Latvia, Estonia and Lithuania. In such circumstances, cross-border execution of voting rights is effectively not possible.

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

- Yes
- No
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

6.4 Questions regarding the appropriate level of regulation

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: 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):

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

Yes: Question 6.4.2.1 Which of the three levels and/or a combination thereof are more effective in building the single rulebook?

(Multiple Choice 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)



Please explain your answer to question 6.4.2 and 6.4.2.1:

5000 character(s) maximum

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

(Multiple Choice 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)

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

5000 character(s) maximum

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

5000 character(s) maximum

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

	1 (unimportant)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (fully important)	Don't know - No opinion - Not applicable
Strong interlinkages with areas of law which remain non-harmonised (e.g. CRIM-MAD and national criminal law)						
Broad discretion left to national authorities and frequent use of that discretion by these national authorities						
High level of gold plating by national rules						
High degree to which supervision of the same type of actors and/or activities render divergent outcomes across Member States						
All of the above						
None of the above						
Other aspects						



Other: Please specify to what other factors you refer and provide concrete examples:

5000 character(s) maximum

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

- Yes
- No
- Don’t know / no opinion / not relevant

Yes: Please specify in which legislative sector(s) should EU legislative acts at level 1 become more detailed and contain a higher degree of harmonisation /

No: Please select the legislative sector(s) of the specific piece(s) of legislation you have in mind:

(Multiple Choice possible)

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

Banking

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

No: Please identify the specific piece(s) of legislation you have in mind in the area of banking and explain:

5000 character(s) maximum

Yes/No: Please provide examples in the area of banking and explain:

5000 character(s) maximum

Insurance

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

No: Please identify the specific piece(s) of legislation you have in mind in the area of Insurance and explain:

5000 character(s) maximum



Yes/ No: Please provide examples in the area of Insurance and explain:
5000 character(s) maximum

Asset management

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

No: Please identify the specific piece(s) of legislation you have in mind in the area of Asset management and explain:
5000 character(s) maximum

Yes/No: Please provide examples in the area of Asset management and explain:
5000 character(s) maximum

Market infrastructure (CCPs, CSDs)

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

No: Please identify the specific piece(s) of legislation you have in mind in the area of Market infrastructure and explain:
5000 character(s) maximum

Yes/No: Please provide examples in the area of Market infrastructure and explain:
5000 character(s) maximum

Market organisation (MiFID, MIFIR, MAR)



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

No: Please identify the specific piece(s) of legislation you have in mind in this/these other area(s) and explain:

5000 character(s) maximum

Yes/No: Please provide examples in the area of Market organisation and explain:

5000 character(s) maximum

Other

Yes/No: Please specify to what other legislative area(s) you refer:

5000 character(s) maximum

Yes/No: Please identify the specific piece(s) of legislation at level 1 in this/these other area(s) that should become more detailed and contain a higher degree of harmonisation and explain:

5000 character(s) maximum

Yes/No: Please provide examples in this/these other area(s) and explain:

5000 character(s) maximum

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

- Yes
- No
- Don't know / no opinion / not relevant

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

5000 character(s) maximum

AIFMD and UCITS Directive: ESMA has no legal mandate to conduct risk analysis on a country-by-country basis. However, this would be necessary to create transparency and to initiate any supervisory measures in a more targeted manner.



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

(Multiple Choice possible)

- Across the board (e.g., via an Omnibus act which amends multiple sectoral acts at the same time)
- No In a targeted manner through individual sectoral reviews

Across the board: Please select the legislative sector(s) in which you would increase the degree of harmonisation of EU financial legislation:

(Multiple Choice possible)

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

Banking

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

5000 character(s) maximum

Please explain the legislative approach (omnibus vs targeted reviews) in the area of banking:

5000 character(s) maximum

Insurance

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

5000 character(s) maximum

Please explain the legislative approach (omnibus vs targeted reviews) in the area of Insurance:

5000 character(s) maximum

Asset management



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

5000 character(s) maximum

Please explain the legislative approach (omnibus vs targeted reviews) in the area of Asset management:

5000 character(s) maximum

Market infrastructure (CCPs, CSDs)

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

5000 character(s) maximum

Please explain the legislative approach (omnibus vs targeted reviews) in the area of Market infrastructure:

5000 character(s) maximum

Market organisation (MiFID, MIFIR, MAR)

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

5000 character(s) maximum

Please explain the legislative approach (omnibus vs targeted reviews) in the area of Market organisation:

5000 character(s) maximum

Other



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

5000 character(s) maximum

Please identify the specific piece of legislation in this/these other area(s) for which you would increase the degree of harmonisation of EU financial legislation and explain:

5000 character(s) maximum

Please explain the legislative approach (omnibus vs targeted reviews) in this/these other area(s):

5000 character(s) maximum

In a targeted manner through individual sectoral reviews

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

5000 character(s) maximum

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.