

# Targeted consultation on supervisory convergence and the single rulebook

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

Fields marked with \* are mandatory.

### Introduction

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

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

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

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

Without well-developed and integrated capital markets, there can be no economic prosperity. And without supervision, capital markets could not contribute to economic prosperity. Supervision is an essential condition for a well-functioning CMU. This will be particularly relevant in a post-Brexit world with multiple financial centres across the EU. Gradual progress towards more integrated capital markets supervision will be indispensable.

It is essential for people and firms to have confidence in the financial system and also for the providers of financial services to operate in a stable and fair environment. Supervision should ensure that divergences in outcomes of supervisory practices in Member States do not undermine confidence, stability, investor protection and fairness in the

Single Market. The three European Supervisory Authorities (ESAs) are mandated to ensure the convergence of supervisory practices among the national competent authorities (Within the [banking union](#), the [single supervisory mechanism](#) ensures uniform supervision of banks. For banking resolution, the [single resolution board](#) is directly responsible for resolution planning and decisions for all significant banks and cross-border ones). In addition, the [European Securities Markets Authority](#), is responsible for direct supervision of some market activities and market operators. However, supervisory convergence reaches its limits where the national rules that supervisors have to apply and enforce differ between Member States or where the common European rules leave room for interpretation or too much discretion to Member States for its transposition, application and enforcement. The ambition for a European single rulebook therefore seeks to reduce differences between national laws and to provide more detailed rules where it is important for stability and fairness in the Single Market. Taken together, supervisory convergence and the single rulebook provide the framework for effective and efficient supervision.

The input to this consultation, which seeks to take stock of what has been achieved so far, will feed into the preparation of the report required by the CMU action plan which will cover the review required under the ESAs founding Regulations as well (Article 81 of the [ESAs founding Regulations](#) requires the Commission to review the functioning of the ESAs every 3 years, and next time by end 2021). This consultation seeks targeted views on certain aspects related to the 2019 ESAs review (The ESAs founding regulations were amended in 2019. These recent legislative changes entered into force in January 2020: [Regulation \(EU\) 2019/2175](#), which reviews the powers, governance and funding of the ESAs, [EBA Regulation consolidated version of 1 January 2020](#), [EIOPA Regulation consolidated version of 1 January 2020](#), and [ESMA Regulation consolidated version of 1 January 2020](#)) and contributes to a wider debate on supervisory convergence and the single rulebook.

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

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**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-esas-review@ec.europa.eu](mailto:fisma-esas-review@ec.europa.eu).

More information on

- [this consultation](#)
- [the consultation document](#)
- [the European system of financial supervision](#)
- [the protection of personal data regime for this consultation](#)

## About you

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\* Language of my contribution

- Bulgarian
- Croatian
- Czech

- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\* First name

Urban

\* Surname

Funered

\* Email (this won't be published)

urban@svpm.se

\* Are you a member of an ESA Stakeholder Group?

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

\* Organisation name

*255 character(s) maximum*

Swedish Securities Markets Association

\* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

7777147632-40

\* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Djibouti
- Dominica
- Libya
- Liechtenstein
- Saint Martin
- Saint Pierre and Miquelon

- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname

- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine

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|--|----------------------------------|---|--|
| <input type="radio"/> China                            | <input type="radio"/> Israel     | <input type="radio"/> Papua New Guinea                            | <input type="radio"/> United Arab Emirates                 |
| <input type="radio"/> Christmas Island                 | <input type="radio"/> Italy      | <input type="radio"/> Paraguay                                    | <input type="radio"/> United Kingdom                       |
| <input type="radio"/> Clipperton                       | <input type="radio"/> Jamaica    | <input type="radio"/> Peru  | <input type="radio"/> United States                        |
| <input type="radio"/> Cocos (Keeling) Islands          | <input type="radio"/> Japan      | <input type="radio"/> Philippines                                 | <input type="radio"/> United States Minor Outlying Islands |
| <input type="radio"/> Colombia                         | <input type="radio"/> Jersey     | <input type="radio"/> Pitcairn Islands                            | <input type="radio"/> Uruguay                              |
| <input type="radio"/> Comoros                          | <input type="radio"/> Jordan     | <input type="radio"/> Poland                                      | <input type="radio"/> US Virgin Islands                    |
| <input type="radio"/> Congo                            | <input type="radio"/> Kazakhstan | <input type="radio"/> Portugal                                    | <input type="radio"/> Uzbekistan                           |
| <input type="radio"/> Cook Islands                     | <input type="radio"/> Kenya      | <input type="radio"/> Puerto Rico                                 | <input type="radio"/> Vanuatu                              |
| <input type="radio"/> Costa Rica                       | <input type="radio"/> Kiribati   | <input type="radio"/> Qatar                                       | <input type="radio"/> Vatican City                         |
| <input type="radio"/> Côte d'Ivoire                    | <input type="radio"/> Kosovo     | <input type="radio"/> Réunion                                     | <input type="radio"/> Venezuela                            |
| <input type="radio"/> Croatia                          | <input type="radio"/> Kuwait     | <input type="radio"/> Romania                                     | <input type="radio"/> Vietnam                              |
| <input type="radio"/> Cuba                             | <input type="radio"/> Kyrgyzstan | <input type="radio"/> Russia                                      | <input type="radio"/> Wallis and Futuna                    |
| <input type="radio"/> Curaçao                          | <input type="radio"/> Laos       | <input type="radio"/> Rwanda                                      | <input type="radio"/> Western Sahara                       |
| <input type="radio"/> Cyprus                           | <input type="radio"/> Latvia     | <input type="radio"/> Saint Barthélemy                            | <input type="radio"/> Yemen                                |
| <input type="radio"/> Czechia                          | <input type="radio"/> Lebanon    | <input type="radio"/> Saint Helena Ascension and Tristan da Cunha | <input type="radio"/> Zambia                               |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho    | <input type="radio"/> Saint Kitts and Nevis                       | <input type="radio"/> Zimbabwe                             |
| <input type="radio"/> Denmark                          | <input type="radio"/> Liberia    | <input type="radio"/> Saint Lucia                                 |  |

\* Field of activity or sector (if applicable):

- Accounting
- Auditing
- Banking
- Credit rating agencies

- Insurance
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Social entrepreneurship
- Other
- Not applicable

The Commission will publish all contributions to this consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, ‘business association’, ‘consumer association’, ‘EU citizen’) country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

### \* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

#### **Anonymous**

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

#### **Public**

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

## ESA(s) you want to focus on

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## 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

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Please click on next to respond to the questions.

#### General questions

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

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

## Please explain your answer to question I on ESMA:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Swedish Securities Markets Association (SSMA) considers that ESMA in a relatively short period of time (10 years) has established itself as a professional pan-European supervisor. As such it has by supporting collaboration between National Competent Authorities (NCAs) and exercising direct supervision in specific areas had a positive impact on the functioning of the internal market.

The SSMA would like to highlight the role of ESMA when it comes to improving the quality and consistency of financial supervision across the EU, promote consumer and investor protection, and coordinate work in financial innovation and sustainable finance. ESMA also has an important role to play as the European discussion partner in international supervisory coordination, a role that is important e.g. in the field of sustainability.

SSMA would however like to point out the potential risk that ESMA may lean too much on market participants with influential pan-European trade associations. An example of this is a tendency e.g. when it comes to issues relating to market data and a European Consolidated Tape to rely more on data from regulated markets, having a pan-European trade association with significant resources, than input from other market participants that are more regional and local with less resources at pan-European level. It is from this perspective essential, as is also pointed out elsewhere, that ESMA is provided with sufficient resources to carry out more analysis on its own, without having to rely on input from industry associations and/or external consultants.

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## 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

## 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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has recently received new tasks and powers through the ESA Review, and we should not open up a full debate (again) on the allocation of tasks and mandates between the central and national level. SSMA does however see a need for clarifying or adding to the rules regarding No Action Letters so that such letters can in future be used instead of "no priority" statements. Recent examples where No Action Letters would have been useful include RTS 27 and SFTR, where not all rules were in place at Level 2 when Level 1 entered into force.

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## 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

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA considers that overly stringent confidentiality rules and/or administrative routines hampers the exchange of information between ESMA, NCAs and Market Participants. While certain information must obviously remain confidential, information about process and at times also on substance that is presently kept confidential should be possible to make available without risk. Examples of this includes ESMA's and NCAs work with Q&A:S as well as with consultations and surveys.

If market participants were provided with more information about this work, they would be able to provide useful input. It also seems like NCA's take different positions on whether they can disclose information, on process as well as substance, leading to a situation where some market participants may have a better insight into developments than others. SSMA would in this regard generally like to see more information from ESMA about processes and substance.

Recognizing that ESMA is also subject to strict rules in this regard, the SSMA would propose that the importance of dialogue with and provision of information to those affected by ESMA's rulemaking is further emphasised at Level 1, and that processes are added to this effect.

SSMA considers that information from ESMA is often presented in a good way, but there are examples where reports seem to have been based on flawed or incomplete information. This may possibly at least to some extent depend on ESMA lacking sufficient internal analytical resources, meaning that it has to rely on external consultants. Against this background, we would support ESMA having more internal resources to do more of the analysis itself, but also so that it can check reports and information provided by external parties.

## 1. The supervisory convergence tasks of the ESAs

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### 1.1 Common supervisory culture/supervisory convergence

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**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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<br>(less significant contribution) | 2<br>(not so significant contribution) | 3<br>(neutral)        | 4<br>(significant contribution)  | 5<br>(most significant contribution) | Don't know -<br>No opinion -<br>Not applicable |
|---|--------------------------------------|--|-----------------------|----------------------------------|--------------------------------------|--|
| Providing opinions to competent authorities   | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>                | <input checked="" type="radio"/>               |
| Promoting bilateral and multilateral exchanges of information between competent authorities   | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>                | <input checked="" type="radio"/>               |
| Contributing to developing high quality and uniform supervisory standards                     | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>                | <input checked="" type="radio"/>               |
| Contributing to developing high quality and uniform reporting standards                       | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>                | <input checked="" type="radio"/>               |
| Developing and reviewing the application of technical standards                               | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>                | <input checked="" type="radio"/>               |
| Contributing to the development of sectoral legislation by providing advice to the Commission | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                | <input type="radio"/>                          |
| Establishing (cross)sectoral training programmes  | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>                | <input checked="" type="radio"/>               |
| Producing reports relating to their field of activities                                       | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                | <input type="radio"/>                          |
| Conducting peer reviews between competent authorities   | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                | <input type="radio"/>                          |

|  |                       |                       |                       |                                  |                       |                                  |
|--|-----------------------|-----------------------|-----------------------|----------------------------------|-----------------------|----------------------------------|
| Determining new Union strategic supervisory priorities                                       | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Establishing coordination groups   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| Developing Union supervisory handbooks   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Monitoring and assessing environmental, social and governance-related risks                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| Adopting measures using emergency powers   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| Investigating breaches of Union law  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Mediating between competent authorities  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| Monitoring the work of supervisory and resolution colleges                                   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| Publishing on their website information relating to their field of activities                | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Monitoring market developments   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Initiating and coordinating Union-wide stress tests of financial institutions                | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| Developing guidelines and recommendations  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Developing Q&As  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
|  |                       |                       |                       |                                  |                       |                                  |

|   |                       |                       |                       |                                  |                       |                                  |
|---|-----------------------|-----------------------|-----------------------|----------------------------------|-----------------------|----------------------------------|
| Contributing to the establishment of a common Union financial data strategy | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Providing supervisory statements  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| Other instruments and tools to promote supervisory convergence              | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |



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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that ESMA in a relatively short period of time (10 years) has established itself as a professional pan-European supervisor. As such it has by supporting collaboration between NCAs and exercising direct supervision in specific areas had a positive impact on the functioning of the internal market. The SSMA would like to highlight the role of ESMA when it comes to improving the quality and consistency of financial supervision across the EU, promote consumer and investor protection, and coordinate work in financial innovation and sustainable finance. ESMA also has an important role to play as the European discussion partner in international supervisory coordination, a role that is important e.g. in the field of sustainability.

SSMA would however like to point out the potential risk that ESMA may lean too much on market participants with influential pan-European trade associations. An example of this is a tendency e.g. when it comes to issues relating to market data and a European Consolidated Tape rely more on data from regulated markets, having a pan-European trade association with significant resources, than input from other market participants that are more regional and local with less resources at pan-European level.

Against this background, it is essential, as is also pointed out elsewhere, that ESMA is provided with sufficient resources to carry out more analysis on its own, without having to rely on input from industry associations and/or external consultants.

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**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<br>(less significant contribution) | 2<br>(not so significant contribution) | 3<br>(neutral)        | 4<br>(significant contribution) | 5<br>(most significant contribution) | Don't know -<br>No opinion -<br>Not applicable |
|--|--------------------------------------|--|-----------------------|---------------------------------|--------------------------------------|--|
| Promote the effective and efficient functioning of colleges of supervisors | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input type="radio"/>           | <input type="radio"/>                | <input checked="" type="radio"/>               |
| Foster consistency in the application of Union law among colleges          | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input type="radio"/>           | <input type="radio"/>                | <input checked="" type="radio"/>               |
| Promote converging supervisory practices among colleges                    | <input type="radio"/>                | <input type="radio"/>                  | <input type="radio"/> | <input type="radio"/>           | <input type="radio"/>                | <input checked="" type="radio"/>               |

## Please explain your reasoning when answering question 1.1.3 on ESMA:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## 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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While the new Q&A process has only been in place for a short time, the SSMA considers that more could be done to make the procedure more transparent and efficient. As noted elsewhere the SSMA would also like to stress the importance of ESMA and NCAs being able to discuss draft Q&As directly with market participants, in order both make it possible for practitioners to feed into the process and to prepare them for such Q&As. On a more practical level, it should also be noted that it is not always clear what changes are made to Q&As, meaning that legal and compliance officers and other parties involved in the practical implementation of Q&As with market participants have to spend time on finding out where updates or changes have been made.

It should also be kept in mind that while changes made may be minor, some changes may in practice take substantial resources and time to implement, meaning that time for such implementation much be provided.

### 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

## Please explain your answer to question 1.1.5:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While the new Q&A process has only been in place for a short time, the SSMA considers that more could be done to make the procedure more transparent and efficient. As noted elsewhere the SSMA would also like to stress the importance of ESMA and NCAs being able to discuss draft Q&As directly with market participants, in order both make it possible for practitioners to feed into the process and to prepare them for such Q&As. On a more practical level, it should also be noted that it is not always clear what changes are made to Q&As, meaning that legal and compliance officers and other parties involved in the practical implementation of Q&As with market participants have to spend time on finding out where updates or changes have been

made.

It should also be kept in mind that while changes made may be minor, some changes may in practice take substantial resources and time to implement, meaning that time for such implementation much be provided.

## 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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA supports having a mechanism like the No Actionletters used by certain non-EU financial authorities, notably in the US. Such possibility could give financial markets in the EU some needed flexibility when firms are faced with implementation challenges and cannot reasonably comply with the rules on the day of application.

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The present tool does not give ESMA the same powers as e.g. the CFTC in the US. Please also see comments elsewhere in this response. Instead, ESMA does at present have to rely on "no priority" statements which are much weaker as it does not give sufficient comfort to market participants, as NCAs may elect not to follow the advice of ESMA.

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

US style No Action letters would have been useful e.g. in relation to RTS 27 and SFTR, where not all rules were in place at Level 2 when Level 1 entered into force.

## 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 ESMA:**

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

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

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

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.



**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<br>(least effective) | 2<br>(rather not effective) | 3<br>(neutral)        | 4<br>(rather effective) | 5<br>(most effective) | Don't know -<br>No opinion -<br>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.   | <input type="radio"/>  | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| The peer review report is now adopted by written procedure on non-objection basis by the BoS.  | <input type="radio"/>  | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| Transparency provisions: if the PRC main findings differ from those published in the report, dissenting views should be transmitted to the three European Institutions.  | <input type="radio"/>  | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| 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. | <input type="radio"/>  | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| Mandatory follow-up to peer reviews within two years after the adoption of the peer review report.   | <input type="radio"/>  | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| The possibility to carry out additional peer reviews in case of urgency or unforeseen events (fast track peer reviews).  | <input type="radio"/>  | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
|  |                        |                             |                       |                         |                       |  |

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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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**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

**Please explain your answer to question 1.3.3 for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has a general mandate to conduct Peer Reviews in areas where it finds this to be useful. While Peer reviews can be useful, a prime example being Wirecard, they require significant resources. In order for ESMA to be able to prioritize between tasks, and in order for it not to be influenced by politics outside of its own remit, it should be left to ESMA to decide where and when Peer Reviews should be undertaken. It is important that ESMA make the result of Peer Reviews public.

**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

**1.4 Other tasks and powers**

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**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

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that it is valuable that ESMA regularly assess and decide on areas where its resources and skills are best put to work. In this context it is valuable that ESMA regularly assess and agree on such areas, and that this is then taken into account by NCAs when deciding their national supervisory strategies. The decisions, together with information about the reasoning behind the priorities, should be communicated to market participants.

---

**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

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

NCAs may have different status depending e.g. on the constitutional set-up in Member States. As it is important that financial supervision is not influenced by political motives, with lessons learnt from Wirecard, ESMA has an important role to play in fostering and monitoring the supervisory independence of national competent authorities.

**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<br>(irrelevant)     | 2<br>(rather not relevant) | 3<br>(neutral)        | 4<br>(rather relevant)           | 5<br>(fully relevant) | Don't know -<br>No opinion -<br>Not applicable |
|--|-----------------------|----------------------------|-----------------------|----------------------------------|-----------------------|--|
| Operational independence                     | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                          |
| Financial independence                       | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                          |
| Appointment and dismissal of governing body  | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                          |
| Accountability and transparency              | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                          |
| Adequacy of powers and ability to apply them | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                          |
| Other  | <input type="radio"/> | <input type="radio"/>      | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>                          |

**Please explain your answers to question 1.4.5:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Capital markets in Europe come in different sizes and forms and while supervisory convergence is important in many areas, such convergence should be subject to a proportionality and subsidiarity test. Capital markets in the EU are at different stages of development and often also have their focus on different parts of the markets. As an example, the Nordic markets have a focus on and significant experience when it comes to SMEs, Luxembourg and Ireland have a special focus on investment funds, and Paris has a significant role in the field of asset management. ESMA should in those areas not take over the role of NCAs but should rather build on and support local expertise and make sure that such expertise is promoted and shared. When discussing remaining obstacles, it is important to take as a starting point that not all supervision should be at pan-European level but may be better carried out at regional or local level.

---

**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

**Please specify what changes should be made in this area for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA generally provides good information and arranges excellent conferences, webinars and roundtable discussions, but it is at times difficult to get access due to restrictions when it comes to participation. It is important that wherever possible such events are filmed and made available on the ESMA website, and that the conclusions of such events are made public.

**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

**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

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has an important role to play at European level when it comes to Digital Finance, but the role of supervisors should be developed over time as new rules are developed in collaboration with relevant stakeholders.

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.



## 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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**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 | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| After 2019 ESAs' review  | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

**Please explain your answer to question 1.5.2 for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**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

---

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

---

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

**Please explain your answer to question 1.6.2:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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**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

---

**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

**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

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

**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

**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<br>(least effective) | 2<br>(rather not effective) | 3<br>(neutral)        | 4<br>(rather effective) | 5<br>(most effective) | Don't know -<br>No opinion -<br>Not applicable |
|--|------------------------|-----------------------------|-----------------------|-------------------------|-----------------------|--|
| Exchange of information and best practices | <input type="radio"/>  | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| Adopt guidelines                           | <input type="radio"/>  | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| Adopt recommendations                      | <input type="radio"/>  | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |

**Please explain your reasoning when answering question 1.7.3:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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

**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

---

**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

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



---

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has to some extent and in accordance with its mandate carried out consumer testing on new rules. However, such tests have due to time and resource constraints been limited in scope. ESMA considers it to be important that consumer testing is in future carried out on a more extensive scale, to make sure that information requirements are reasonable and provide an outcome that is of value to consumers/retail customers. At present, there is in many areas a risk of "information overload" where information that is not useful has to be provided, often at a substantial cost to market participants.

**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<br>(less significant impact) | 2<br>(not so significant impact) | 3<br>(neutral)        | 4<br>(significant impact) | 5<br>(most significant impact) | Don't know -<br>No opinion -<br>Not applicable |
|---------------------------------------|--------------------------------|----------------------------------|-----------------------|---------------------------|--------------------------------|--|
| Analysis of consumer trends           | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Reviewing market conduct              | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Developing indicators                 | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Contributing to a level playing field | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Financial literacy                    | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Follow up to work in this area        | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |

**Please explain your answer to question 1.8.2 for ESMA:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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

---

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**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

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## **1.9 International relations**

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

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has proven to be a competent actor in the relations with the UK as well as other non-EU actors.

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**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**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

---

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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.

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.



**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

---

**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

## **2. Governance of the ESAs**

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### **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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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 1.2.2:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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

**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<br>(less significant impact) | 2<br>(not so significant impact) | 3<br>(neutral)        | 4<br>(significant impact) | 5<br>(most significant impact) | Don't know -<br>No opinion -<br>Not applicable |
|---|--------------------------------|----------------------------------|-----------------------|---------------------------|--------------------------------|--|
| Request to the Board to establish internal committees for specific tasks  | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Set the agenda to be adopted by the Board and table items for decision  | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Call a vote at any time   | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Propose the composition of independent panels for breach of Union law investigations and dispute settlements                | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Propose the composition of peer review committees for peer reviews  | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Vote in the Board of Supervisors (except on matters that are decided on the basis of qualified majority voting)             | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Other   | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |

**Please explain your answers to question 2.1.4:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

**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

**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

**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

**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<br>(less significant impact) | 2<br>(not so significant impact) | 3<br>(neutral)        | 4<br>(significant impact) | 5<br>(most significant impact) | Don't know -<br>No opinion -<br>Not applicable |
|---|--------------------------------|----------------------------------|-----------------------|---------------------------|--------------------------------|--|
| The MB can give opinions on all matters to be decided by the Board of Supervisors | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| The MB ensures the consistent use of a methodology for all peer reviews conducted | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| The MB proposes a peer review work plan every two years.                          | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| The MB can set up coordination groups on its own initiative                       | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |

**Please explain your answers to question 2.2.4:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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

**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

**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

**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

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**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<br>(less significant impact) | 2<br>(not so significant impact) | 3<br>(neutral)                   | 4<br>(significant impact) | 5<br>(most significant impact) | Don't know -<br>No opinion -<br>Not applicable |
|---|--------------------------------|----------------------------------|----------------------------------|---------------------------|--------------------------------|--|
| Standing committees and other permanent committees        | <input type="radio"/>          | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input type="radio"/>                          |
| Other preparatory bodies (e.g. technical working groups)  | <input type="radio"/>          | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input type="radio"/>                          |
| Committee on consumer protection and financial innovation | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Proportionality Committee                                 | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |



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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Standing committees and other preparatory bodies play an important role in a European financial regulation context, providing a sounding board and giving market participants the possibility to provide input to ESMA. However, some bodies do not meet sufficiently often, may not always be provided with material in such time that they can prepare input (members may also be subject to confidentiality rules making discussions difficult) and it is not always clear what effects (if any) statements e.g. by the SMSG and CWGs have on the actions of ESMA.

**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

**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

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## 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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA does not have any objections to the number of consultations but want to stress that it is essential that stakeholders are properly consulted when new rules are being developed or existing rules are being changed. SSMA responds to a significant number of ESMA consultations and has noted that it is at times not clear from the heading of the consultation or the description thereof what areas or questions consultations cover. This is a challenge and it is important that the area and topics covered by a consultation is made clear, as it is a risk that not all relevant stakeholders may respond where consultations covers two or more different areas or questions.

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

|   | 1<br>(lowest<br>quality) | 2                     | 3                                | 4                     | 5<br>(highest<br>quality) | Don't<br>know -<br>No<br>opinion -<br>Not<br>applicable |
|---|--------------------------|-----------------------|----------------------------------|-----------------------|---------------------------|---|
| General consultations launched by ESMA                              | <input type="radio"/>    | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>                                   |
| Specific consultations when developing data collection requirements | <input type="radio"/>    | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>                                   |

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While consultations are generally of quite good standard, there have been instances where the data underlying consultations seem to have been flawed. As a result, questions or assumptions run the risk of being biased. As this may be because of e.g. influencing activities of influential pan-European industry associations or actors, or the use of consultants that does not have sufficient knowledge of the industry, it is important that ESMA has sufficient resources to carry out its own analysis and has the skills required internally to manage external influencers and consultants retained by ESMA.

---

### 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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that overly stringent confidentiality rules and/or administrative routines hampers the exchange of information between ESMA, NCAs and market participants. While certain information must obviously remain confidential, e.g. work with Q&A:S and the dialogue between ESMA, NCAs and market participants in connection with consultations, surveys and regular meetings in working/expert groups would benefit from increased transparency. SSMA considers that information from ESMA is often presented in a good way, but at times reports seem to be based on flawed or incomplete information, not least when ESMA

has to rely on external consultants. Against this background, ESMA should have more internal resources to do more of the analysis itself, but also to check reports and information provided by external consultants.

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

|   | 1<br>(less significant impact) | 2<br>(not so significant impact) | 3<br>(neutral)        | 4<br>(significant impact) | 5<br>(most significant impact)   | Don't know -<br>No opinion -<br>Not applicable |
|---|--------------------------------|----------------------------------|-----------------------|---------------------------|----------------------------------|--|
| EIOPA Insurance & Reinsurance Stakeholder Group | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>            | <input checked="" type="radio"/>               |
| EIOPA Occupational Pensions Stakeholder Group   | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>            | <input checked="" type="radio"/>               |
| ESMA Securities and Markets Stakeholder Group   | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input checked="" type="radio"/> | <input type="radio"/>                          |
| EBA Banking Stakeholder Group                   | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>            | <input checked="" type="radio"/>               |

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The ESMA Securities and Markets Stakeholder Group, with a membership representing representatives from the industry and consumer side as well as academics is a valuable stakeholder group, which is regularly consulted by ESMA.

**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<br>(less significant impact) | 2<br>(not so significant impact) | 3<br>(neutral)                   | 4<br>(significant impact) | 5<br>(most significant impact)   | Don't know -<br>No opinion -<br>Not applicable |
|--|--------------------------------|----------------------------------|----------------------------------|---------------------------|----------------------------------|--|
| Composition of stakeholders groups                 | <input type="radio"/>          | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>     | <input type="radio"/>            | <input type="radio"/>                          |
| Selection of members                               | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>     | <input checked="" type="radio"/> | <input type="radio"/>                          |
| Term of office                                     | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>     | <input checked="" type="radio"/> | <input type="radio"/>                          |
| A third of its members can issue a separate advice | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>     | <input checked="" type="radio"/> | <input type="radio"/>                          |

### **Please explain your answers to question 2.4.5:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA considers that while the SMSG has a good and overall balanced composition, the group would benefit from additional academics being added to the group, in addition to existing members, as they both provide excellent input and have an important role to play as rapporteurs where market participants have opposite positions. Considering the limited number of pan-European consumer group associations, we would also support including additional relevant and knowledgeable national consumer associations.

### **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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA considers that while the SMSG has a good and overall balanced composition, the group would benefit from additional (added to the present group) academics as they both provide excellent input and have an important role to play rapporteurs where market participants have opposite positions. Considering the limited number of pan-European consumer group associations, we would support also including additional relevant and knowledgeable national consumer associations.

### **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

## **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<br>(least effective) | 2<br>(not so effective) | 3<br>(neutral)        | 4<br>(rather effective) | 5<br>(most effective) | Don't know -<br>No opinion -<br>Not applicable |
|--|------------------------|-------------------------|-----------------------|-------------------------|-----------------------|--|
| Organisation                             | <input type="radio"/>  | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| Functioning and time limits              | <input type="radio"/>  | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| One joint Board of Appeal for the 3 ESAs | <input type="radio"/>  | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| The composition of the BoA               | <input type="radio"/>  | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

|  | 1<br>(least effective) | 2<br>(not so effective) | 3<br>(neutral)        | 4<br>(rather effective) | 5<br>(most effective) | Don't know -<br>No opinion -<br>Not applicable |
|--|------------------------|-------------------------|-----------------------|-------------------------|-----------------------|--|
| Functioning                                | <input type="radio"/>  | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| Working methods                            | <input type="radio"/>  | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| Ensuring cross-sectoral cooperation        | <input type="radio"/>  | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| Ensuring consistent approaches             | <input type="radio"/>  | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| Decision making process                    | <input type="radio"/>  | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |
| The legal structure (no legal personality) | <input type="radio"/>  | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/>   | <input type="radio"/> | <input checked="" type="radio"/>               |

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

|   | 1<br>(less significant impact) | 2<br>(not so significant impact) | 3<br>(neutral)        | 4<br>(significant impact) | 5<br>(most significant impact) | Don't know -<br>No opinion -<br>Not applicable |
|---|--------------------------------|----------------------------------|-----------------------|---------------------------|--------------------------------|--|
| Consumer Protection and Financial Innovation  | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Coordination and cooperation for bi-annual Joint Risk Reports, published in spring and autumn | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Financial Conglomerates   | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| Securitisation  | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |
| European Forum of Financial Innovators  | <input type="radio"/>          | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>     | <input type="radio"/>          | <input checked="" type="radio"/>               |

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

### 3. Direct supervisory powers

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

|                                   | 1<br>(lowest rate)    | 2                     | 3                     | 4                     | 5<br>(highest rate)   | Don't know -<br>No opinion -<br>Not applicable |
|-----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|--|
| Credit Rating Agencies            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/>               |
| Trade Repositories under EMIR     | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/>               |
| Trade Repositories under SFTR     | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/>               |
| Securitisation Repositories (STS) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/>               |

**Please explain your answers to question 3.1:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

|                                   | 1<br>(lowest rate)    | 2                     | 3                     | 4                     | 5<br>(highest rate)   | Don't know -<br>No opinion -<br>Not applicable |
|-----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|--|
| Credit Rating Agencies            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/>               |
| Trade Repositories under EMIR     | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/>               |
| Trade Repositories under SFTR     | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/>               |
| Securitisation Repositories (STS) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/>               |

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA considers that a starting point for any proposal for shifting powers from national level to European level should be preceded by careful consultations and impact assessments that show a clear benefit of such change. The most important factor must be European financial markets' capacity to effectively finance businesses and allocate savings. In this respect, the principles of subsidiarity and proportionality should be respected.

In the opinion of the SSMA, the rationale for centralizing powers should be that ESMA can solve something that NCAs cannot solve or that ESMA can solve it more efficiently or in a more coordinated and consistent manner than the NCAs.

Effective supervision should as a starting point be exercised close to the respective market, taking national market conditions and features into account. This includes, of course, national civil law. It is important to note that national financial markets in the EU and their national supervisory structures, for good reasons, are quite different. As regards direct powers of the ESAs, such powers should be limited to areas where there is a proven value and justification for a European approach.

National regulatory issues must be addressed first and foremost by national supervisory authorities who have better knowledge of local markets and the need of issuers and investors and with whom market participants are used to interacting. A well-functioning integrated supervision in the EU is a prerequisite for a stable financial market capable of effectively financing businesses and allocate savings.

It is therefore important that ESMA is given the opportunity and sufficient power to coordinate and streamline the supervision of the single market. This being said, careful consideration must precede any new measures, so that well-functioning national systems and local competences are not abandoned without further analysis.

### 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

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

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

|  | 1<br>(lowest rate)    | 2                     | 3                     | 4                     | 5<br>(highest rate)   | Don't know<br>No opinion<br>Not applicable |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|--|
| The quality of the analysis of market developments | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/>           |
| The quality of the stress test and                 |                       |                       |                       |                       |                       |  |



|  |                       |                       |                       |                       |                       |                                  |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------------|
| transparency exercises that were initiated and coordinated by the ESAs   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| 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                      | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| 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 | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| The broader cooperation between the ESRB and the ESAs within the ESFS  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## B. Questions on the single rulebook

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Please click on next to respond to the questions.

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

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**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

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA:s rulemaking on Level 2 and 3 has significantly contributed to the Single Rulebook. Whether it has contributed sufficiently is a relative question, as ESMA can only work within the mandate provided at Level 1.

**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

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that overly stringent confidentiality rules and/or administrative routines hampers the exchange of information between ESMA, NCAs and Market Participants. While certain information must obviously remain confidential, e.g. work with Q&As and the dialogue between ESMA, NCAs and market participants in connection with consultations, surveys and regular meetings in working/expert groups would benefit from increased transparency.

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSMA considers that overly stringent confidentiality rules and/or administrative routines hampers the exchange of information between ESMA, NCAs and Market Participants. While certain information must obviously remain confidential, e.g. work with Q&As and the dialogue between ESMA, NCAs and market participants in connection with consultations, surveys and regular meetings in working/expert groups would benefit from increased transparency.

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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

**Please explain your answer to question 5.6:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA considers that a starting point for any proposal for shifting powers from national level to European level should be preceded by careful consultations and impact assessments that shows a clear benefit of such change. The most important factor must be European financial markets' capacity to effectively finance businesses and allocate savings. In this respect, the principles of subsidiarity and proportionality should be respected. In the opinion of the SSMA, the rationale for centralizing powers should be that ESMA can solve something that NCAs cannot solve or that ESMA can solve it more efficiently or in a more coordinated and consistent manner than the NCAs.

Effective supervision should as a starting point be exercised close to the respective market, taking national market conditions and features into account. This includes, of course, national civil law. It is important to note that national financial markets in the EU and their national supervisory structures, for good reasons, are quite different. As regards direct powers of the ESAs, such powers should be limited to areas where there is a proven value and justification for a European approach. National regulatory issues must be addressed first and foremost by national supervisory authorities who have better knowledge of local markets and the need

of issuers and investors and with whom market participants are used to interacting.

A well-functioning integrated supervision in the EU is a prerequisite for a stable financial market capable of effectively financing businesses and allocating savings. It is therefore important that ESMA is given the opportunity and sufficient power to coordinate and streamline the supervision of the single market. This being said careful consideration must precede any new measures, so that well-functioning national systems and local competences are not abandoned without further analysis.

**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

**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

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In order for sustainability information to be of value it must be provided in a format that is structured, harmonised and machine readable. ESMA has an important role to play in drafting standards for setting the standards and monitoring compliance with such rules, which should be drafted in close collaboration with market participants and other relevant stakeholders.

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**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

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## **6. General questions on the single rulebook**

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**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA covers several sectors, ranging from credit ratings to investment firms, as well as a large number of market participants, large and small. Markets are also in different stages of development. EU also has some regional financial centers that are well developed generally or in certain areas, while other market are still developing. Other sectors and markets may be more harmonised across markets, or may be of a cross-border nature like for CRAs. Against this background, the "one size fits all" approach is not always the right one. This means that while one area would work best with a mere framework at EU level, with more flexibility left to member states and national competent authorities, there may be other areas where more harmonisation could be useful. It is also important that consumer protection is considered and prioritized, so that well developed markets can hinder cross-border actors and activities that act to the detriment of consumers.

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

Please select as many answers as you like

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

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

- 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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA considers that a starting point for any proposal for shifting powers from national level to European level should be preceded by careful consultations and impact assessments that shows a clear benefit of such change. The most important factor must be European financial markets' capacity to effectively finance

businesses and allocate savings. In this respect, the principles of subsidiarity and proportionality should be respected. In the opinion of the SSMA, the rationale for centralizing powers should be that ESMA can solve something that NCAs cannot solve or that ESMA can solve it more efficiently or in a more coordinated and consistent manner than the NCAs.

Effective supervision should as a starting point be exercised close to the respective market, taking national market conditions and features into account. This includes, of course, national civil law. It is important to note that national financial markets in the EU and their national supervisory structures, for good reasons, are quite different. As regards direct powers of the ESAs, such powers should be limited to areas where there is a proven value and justification for a European approach. National regulatory issues must be addressed first and foremost by national supervisory authorities who have better knowledge of local markets and the need of issuers and investors and with whom market participants are used to interacting.

A well-functioning integrated supervision in the EU is a prerequisite for a stable financial market capable of effectively financing businesses and allocate savings. It is therefore important that ESMA is given the opportunity and sufficient power to coordinate and streamline the supervision of the single market. This being said careful consideration must precede any new measures, so that well-functioning national systems and local competences are not abandoned without further analysis.

## 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

**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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In connection with the upcoming reviews of e.g. MiFID/MiFIR it is important to analyse if the balance between levels 1 - 3 are right, taking into account developments in markets and experiences with the regulatory framework up until now.

**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

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

Please select as many answers as you like

- 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*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA covers several sectors, ranging from credit rating agencies to investment firms, as well as a large number of market participants, large and small. European financial and securities markets are also in different stages of development. We have some regional financial centres that are well developed generally or in certain areas, while other market are still developing. Some sectors and markets may also be more harmonised across markets, or may even be of a cross-border nature like CRAs. Against this background, the "one size fits all" approach is not always the right one. This means that while one area may work best with a mere framework at EU level, with more flexibility left to member states and national competent authorities, there may be other areas where more harmonisation could be useful. It is also important that consumer protection is considered and prioritized, so that well developed markets can stop cross-border actors and activities that do not meet sufficient standards or may even be detrimental to consumers. In connection with the upcoming reviews of e.g. MiFID/MiFIR it is important to analyse and where necessary adjust the balance between levels 1 - 3, taking into account developments in markets and experiences with the regulatory framework up until now.

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

Please select as many answers as you like

- Level 1 (legislation agreed by the co-legislators)
- Level 2 (e.g. delegated acts and technical standards)
- Level 3 ('comply or explain guidance' by ESAs)

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

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In addition to having a well-developed transparent rulemaking process it is key that new and revised rules have realistic implementation deadlines. The EU's legislators must always ensure that there is sufficient time to prepare the level 2 and 3 texts, as well as sufficient time between the finalization of level 2 and 3 texts and the date when they enter into force. It should be considered if dynamic implementation dates can be used that would be subject to the timing of finalizing level 2 and 3 measures and their implementation. Too short implementation deadlines lead to unsatisfactory implementation processes and entail heavy and expensive administrative burdens as well as the risk of distortion of competition.

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

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

**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

**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

**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?

Please select as many answers as you like

- Across the board (e.g., via an Omnibus act which amends multiple sectoral acts at the same time)
- In a targeted manner through individual sectoral reviews

## Additional information

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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.**

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

## Useful links

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[More on the European system of financial supervision \(https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/european-system-financial-supervision\\_en\)](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/european-system-financial-supervision_en)

[Specific privacy statement \(https://ec.europa.eu/info/files/2021-esas-review-specific-privacy-statement\\_en\)](https://ec.europa.eu/info/files/2021-esas-review-specific-privacy-statement_en)

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

## Contact

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