

Consultation on the Review of the European System of Financial Supervision

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You are invited to comment on the views reflected in this paper. These views are only an indication of the approach the Commission may take and are not a final policy position nor do they constitute a formal proposal by the European Commission.

This consultation is open until **31 July 2013**. The Commission will publish all responses received on its website unless confidentiality is especially requested. You may respond in any of the EU official languages.

Public consultation ESFS review

Introduction

In 2010, in response to the financial crisis which exposed important failures in financial supervision, EU established the European System of Financial Supervision (ESFS), composed of

- three European Supervisory Authorities (ESAs):
 - the **European Banking Authority** (EBA),
 - the **European Insurance and Occupational Pensions Authority** (EIOPA),
 - the **European Securities and Markets Authority** (ESMA),
- the **European Systemic Risk Board** (ESRB); and
- the competent national authorities of the Member States.

The ESAs were established with the objectives to contribute to:

- (i) improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision,
- (ii) protecting depositors, investors, policyholders, consumers and other beneficiaries,
- (iii) ensuring the integrity, efficiency and orderly functioning of financial markets,
- (iv) safeguarding the stability of the financial system,
- (v) strengthening international supervisory coordination.

In order to meet these objectives, each ESA is required to contribute to ensuring the coherent, efficient and effective application of the relevant Union law.

ESRB was created as the EU body in charge of macro-prudential oversight. Essentially, its role is to contribute to the prevention and mitigation of systemic risks to EU's financial stability by means of *ex ante* warnings and recommendations.

The ESFS regulations provide for a review by the Commission of the European Systemic Risk Board (ESRB) by 17 December 2013 and the European Supervisory Authorities (ESAs) by 2 January 2014 and for regular reviews thereafter.

Article 81 of the ESA Regulations says that the Commission shall publish a general report on the experience acquired as a result of the operation of the Authorities and procedures laid down in these Regulations. This report shall be forwarded to the European Parliament and to the Council, together with any accompanying proposals, as appropriate.

Article 20 of the ESRB Regulation (1092/2010) says that the European Parliament and the Council shall examine the Regulation on the basis of a report from the Commission and, after having received an opinion from the ECB and the ESAs, shall determine whether the mission and organisation of the ESRB need to be reviewed. They shall, in particular, review the modalities for the designation or election of the Chair of the ESRB.

A similar review clause is included in Article 8 of the second ESRB Regulation (1096/2012), which defines the modalities of the ECB's support to the ESRB.

When carrying out the review of the ESFS, the Commission takes into account that the necessary legislation is not yet fully in place. Therefore the review is without prejudice to ongoing work on various relevant legislative proposals put forward by the Commission which are currently under negotiation (e.g. proposal on bank recovery and resolution, MIFID, etc.) by the European Parliament and the Council.

The review will also address the potential impacts of the creation of a single supervisory mechanism (SSM) on the ESAs, ESRB and the ESFS given the core role attributed to the ECB and will assess whether this necessitates further adaptations to the legal framework underpinning the ESFS.

In the context of the review the Commission also takes into account the principles set out in the Common Approach of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of July 2012, which aims at making the set of existing EU agencies more coherent by improving their governance, efficiency and accountability.

The responses to this consultation will provide important information on the effectiveness and efficiency of the ESAs and the ESRB within the ESFS and on the ESFS as a whole and will support the Commission to prepare the relevant reports.

The public consultation is organised into five sections:

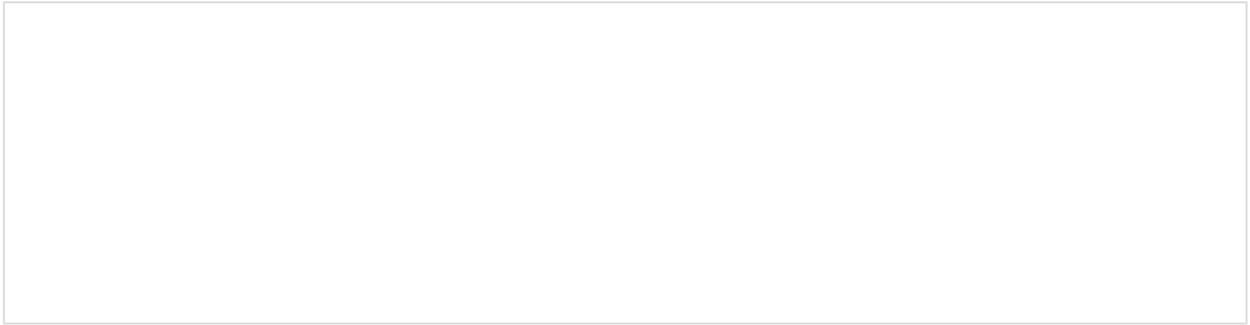
- I. ESAs (Effectiveness and efficiency of the ESAs, Governance)
- II. ESRB (mandate and experience with systemic risks; institutional framework and governance of ESRB; access to data; external relations and communication)
- III. Cooperation and interaction between the ESAs (micro level) and ESRB (macro level)
- IV. Structure of ESFS
- V. Miscellanea

Questions marked with an asterisk * require an answer to be given.

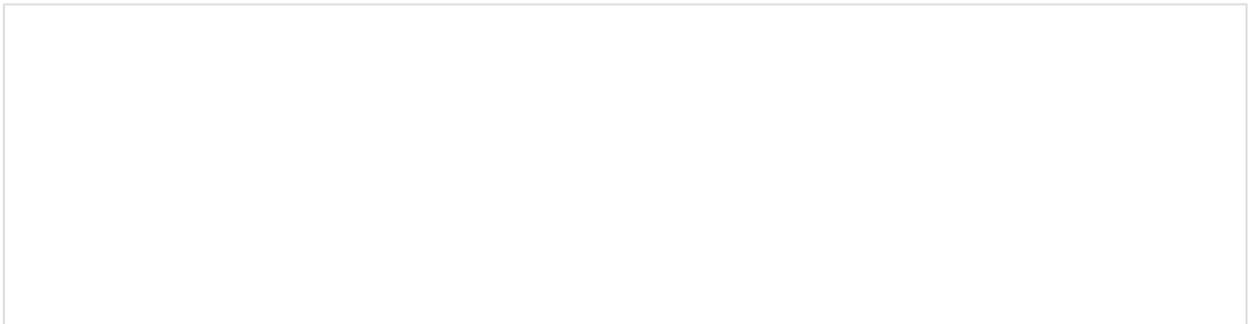
1. The European Supervisory Authorities (ESAs)

1.1. Effectiveness and efficiency of the ESAs in accomplishing their tasks

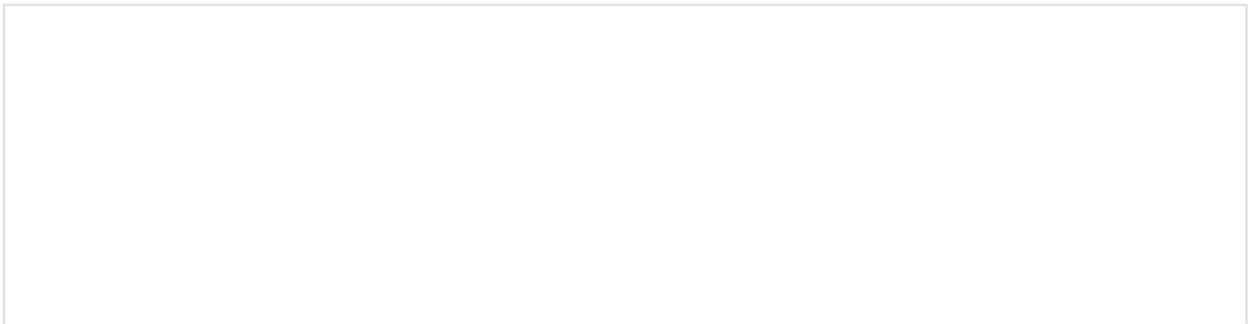
1.1.a. How do you assess the impact of the creation of the ESAs on the financial system in general and on (i) financial stability, (ii) the functioning of the internal market, (iii) the quality and consistency of supervision, and (iv) consumer and investor protection in particular?



1.1.b. Do the ESAs' mandates cover all necessary tasks and powers to contribute to the stability and effectiveness of the financial system? Are there elements which should be added or removed from the mandate? Please explain?



1.1.c. In your view, do the ESAs face any obstacles in meeting their mandates? If yes, what do you consider to be the main obstacles? Please explain.



1.1.1. Work towards achieving a single rulebook - regulatory activities

1.1.1.a. Do you consider that the technical standards and guidelines/recommendations developed by the ESAs have contributed to further harmonise a core set of standards in the area of supervision (the single rulebook)? If you have identified shortcomings, please specify how these could be addressed.

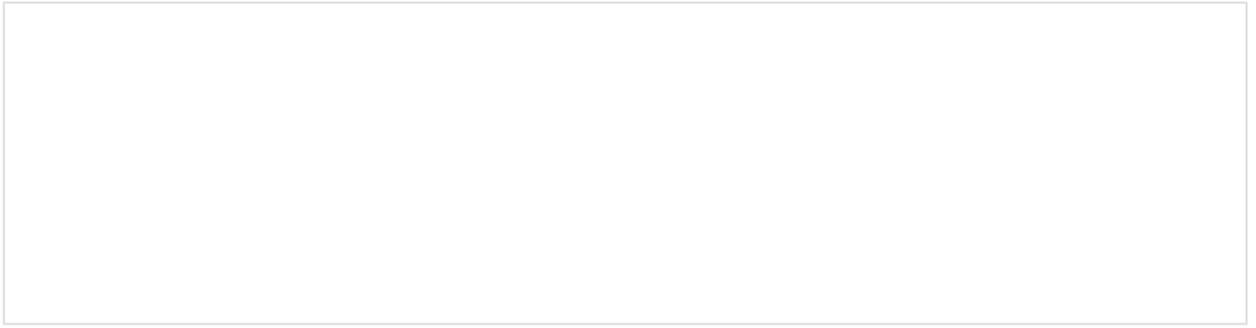
1.1.1.b. What is your assessment of the work undertaken by the ESAs as regards providing opinions (e.g. technical advice) to the EU institutions?

1.1.2. Common supervisory culture/convergence of supervisory practices

1.1.2.a. In your view, did the ESAs contribute to promoting a supervisory culture and convergence of supervisory practices? If you have identified shortcomings how could these be addressed?

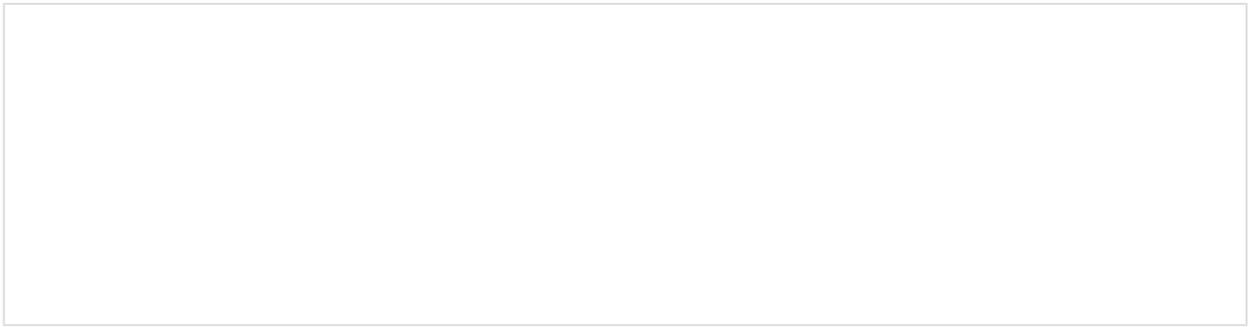
1.1.3. Consistent application of EU law

1.1.3.a. In your view, do the procedures on breaches of EU law (Article 17 ESAs Regulations) and binding mediation (Article 19 ESAs Regulations) ensure the consistent application of EU law? If you have identified shortcomings how could these be addressed?



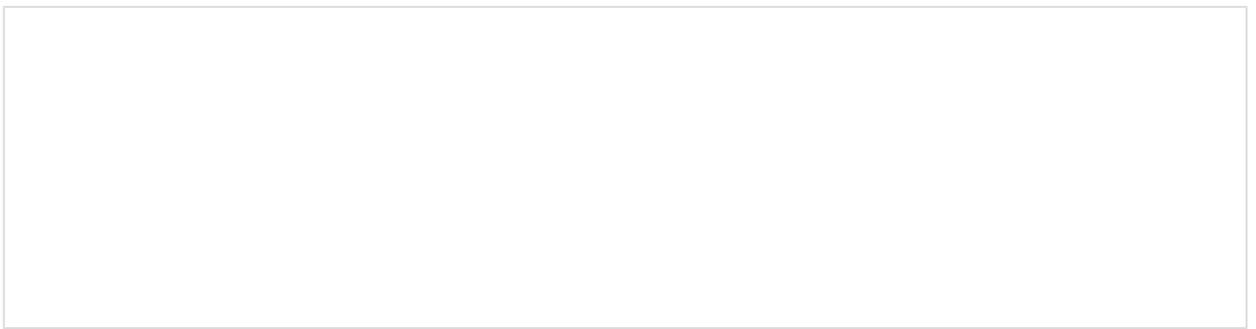
1.1.4. Emergency situations

1.1.4.a. Do you consider the ESAs' role in emergency situations appropriate? Please explain.



1.1.5. Coordination function (Art 31 ESAs Regulations)

1.1.5.a. Do you think that the coordination role of the ESAs is appropriate? If you have identified shortcomings, please specify how these could be addressed.



1.1.5.b. In your experience, to what extent have coordination activities carried out by the ESAs contributed to promoting a coordinated EU response to adverse market conditions? Please explain.

1.1.6. Tasks related to consumer protection and financial activities

1.1.6.a. How do you assess the role and achievements by the ESAs in the field of consumer protection? Please specify the main achievements by each ESA.

1.1.6.b. Are you aware of the warnings that were issued by the ESAs so far? If yes, please specify which ones and whether they have contributed to improve consumer protection or any other objective of the ESAs.

1.1.6.c. What are 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?

1.1.7. Direct supervisory powers

1.1.7.a. How do you assess ESMA's direct supervisory powers? If you have identified shortcomings, please specify how these could be addressed.

1.1.7.b. How do you assess ESMA's performance for the registration and supervision of credit rating agencies (CRAs)?

1.1.7.c. Do you consider that further responsibilities of direct supervision should be entrusted on one or more of the ESAs, particularly with regard to institutions or infrastructures of pan-European reach? Please explain.

1.2. Governance of the ESAs

1.2.1. General governance issues

1.2.1.a. Are the governance requirements sufficient to ensure impartiality, objectivity and autonomy of the ESAs?

1.2.1.b. How do you assess the accountability requirements? If you have identified shortcomings, please specify how these could be addressed.

1.2.2. Decision-making bodies and voting modalities

1.2.2.a. Does the current composition of the Board of Supervisors (BoS) ensure that it acts efficiently? If you have identified shortcomings, please specify how these could be addressed.

1.2.2.b. Does the composition of the Management Board ensure that the ESAs are run effectively and perform the tasks conferred on them? If you have identified shortcomings, please specify how these could be addressed.

1.2.2.c. Does the mandate of the Management Board ensure that the ESAs are run effectively and perform the tasks conferred on them? If you have identified shortcomings, please specify how these could be addressed.

1.2.3. Financing and resources

1.2.3.a. How do you assess the arrangements on financing and resources? If you have identified shortcomings, please specify how these could be addressed.

1.2.4. Involvement and role of relevant stakeholders

1.2.4.a. How would you assess the impact of the relevant stakeholder groups within the ESAs on the overall work and achievements of the ESAs?

1.2.4.b. Are you satisfied with the quality and timeliness of consultations carried out by the ESAs?

1.2.4.c. Are you satisfied with the appointment procedures for the stakeholder groups?

1.2.4.d. In your experience, does the composition of stakeholder groups ensure a sufficiently balanced representation of stakeholders in the relevant sectors? If not, which areas appear to be insufficiently/overly represented?

1.2.4.e. Is the work undertaken by the stakeholder groups sufficiently transparent? Do you see areas where the approach towards transparency needs to be revisited?

1.2.4.f. In your experience, are the ESAs, and in particular the ESAs stakeholder groups, sufficiently accessible for stakeholders not directly represented in these stakeholder groups?

1.2.5. Joint bodies of the ESAs

1.2.5.a. How do you assess the functioning of the Board of Appeal (BoA)?
If you have identified shortcomings, please specify how these could be addressed.

1.2.5.b. What is your assessment of having one joined BoA for all ESAs as compared to a dedicated BoA for each ESA respectively?

1.2.5.c. How do you assess the functioning of the Joint Committee (JC)?
If you have identified shortcomings, please specify how these could be addressed.

1.2.5.d. Does the JC ensure cross-sectoral cooperation and consistent approaches between the three ESAs? If you have identified shortcomings, please specify how these could be addressed.

2. ESRB

2.1. ESRB's mandate and experience

2.1.1. Risk identification and prioritisation

2.1.1.a. What are your views on the ESRB mandate? If you think it should be amended please specify how.

2.1.1.b. What are your views on the definition of systemic risk, as provided by the ESRB Regulation? If you think it should be amended, please specify how.

2.1.1.c. Do you think that the ESRB has developed a sufficiently preventive and forward-looking approach? Please comment on the successes and shortcomings and how they could be, respectively strengthened or addressed.

2.1.1.d. What aspects of EU financial stability should be addressed by the ESRB as a priority?

2.1.1.e. What is your assessment of the ESRB's coordination with other economic or financial policy areas or economic governance procedures, for example on macroeconomic imbalances?

2.1.1.f. Please outline and comment on the areas in which the ESRB has been most effective.

2.1.1.g. Should the ESRB specific mandate be adapted in light of the Single Supervisory Mechanism? If yes, how?

2.1.2. Timeliness and appropriateness of warnings and recommendations

2.1.2.a. What are your views on the powers conferred to the ESRB by the ESRB Regulation (i.e. the power to issue warnings and recommendations)? Are they sufficient? Please explain. What are your views on the use the ESRB has made of these powers in practice?

2.1.2.b. What is your assessment of the ESRB's public recommendations in terms of content and timeliness? What is their impact on the direct addressees, and indirectly on the relevant market/market participants? If you identify any potential improvements, please specify how these could be delivered.

2.1.2.c. Did the recommendations adequately address the relevant policy makers in alerting them to, and advising them on, the necessary measures for risk mitigation?

2.1.2.d. Were the recommendations specific enough and did they address the main specific risks that could be identified in the period under review? If not, where would you identify the shortcomings and how could these be improved?

2.1.3. Implementation of warnings and recommendations

2.1.3.a. How do you assess the non-binding character of warnings and recommendations? Could such tools be strengthened? If yes, please specify how.

2.1.3.b. What is your assessment of the 'act or explain' mechanism chosen by the Regulation? If you identify any room for improvement please specify how this could be addressed.

2.1.3.c. What impact did public recommendations have on the market or public in general? Please outline your experience.

2.2. Institutional framework and governance of ESRB

2.2.1. General governance issues

2.2.1.1. Key principles for good governance

2.2.1.1.a. Do the regulations provide ESRB with the right structures to follow the good governance model in terms of openness, participation, accountability, effectiveness and coherence and to promote a common supervisory culture? Please explain your answer.

2.2.1.1.b. Has ESRB contributed to establishing a common macro-prudential policy framework and convergence of macro-prudential supervisory practices within EU? Please explain your answer.

2.2.1.1.c. Has the ESRB acted as an impartial body in the interests of EU as a whole? Please explain your answer.

2.2.1.2. Accountability and transparency

2.2.1.2.a. Are the ESRB's accountability and reporting obligations, (including the frequency), to the European Parliament and the Council sufficient and transparent enough? If not, please explain how they should be improved.

2.2.1.2.b. What is your assessment of the nature of these public hearings?

2.2.2. Decision-making bodies and voting arrangements

2.2.2.1. Voting arrangements for the designation or election of the Chair of the ESRB

2.2.2.1.a. What are your views on the fact that the President of the ECB is by rule the Chair of the ESRB? If you think this rule should be amended, please specify how the ESRB Chair should be appointed. For example, should it be defined in the Regulation or should she/he be appointed by an EU institution or the ESRB itself? If by an EU institution, by which one and how?

2.2.2.1.b. Do the governance arrangements ensure that the Chair carries out his tasks with sufficient independence? If not, please specify where there is room for improvement and how this could be addressed.

2.2.2.2. Composition, mandate and functioning of the General Board

2.2.2.2.a. What is your assessment of the composition, size and mandate of the General Board? If you identify any shortcomings please specify how these could be addressed.

2.2.2.2.b. What is your assessment of the relative representation of central banks on the General Board?

2.2.2.2.c. What is your assessment of the participation of the European Supervisory Authorities (EBA, EIOPA, ESMA)?

2.2.2.2.d. What is your assessment of the presence of non-voting members at General Board meetings?

2.2.2.3. Internal organisation

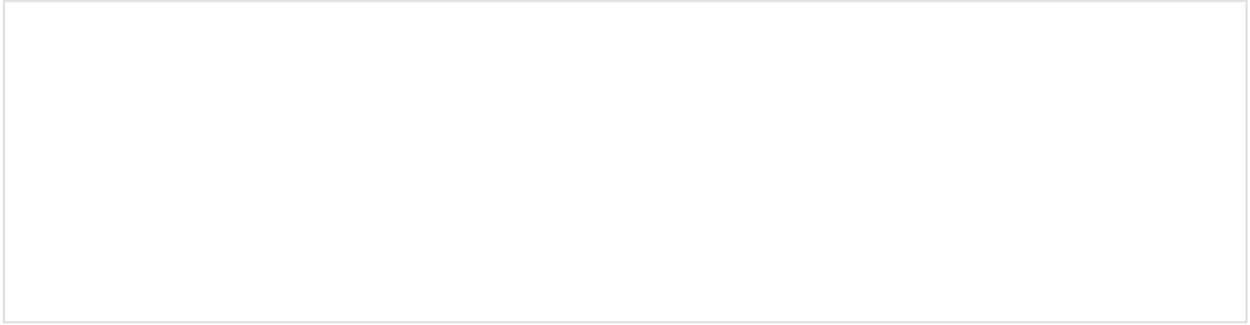
2.2.2.3.a. What is your assessment of the supporting activities of the ECB to the ESRB, according to the relevant regulation (Council Regulation 1096/2010)? What are the key advantages and disadvantages of this set-up? If you identify any room for improvement, please specify how this could be addressed.

2.3. Access to data

2.3.a. In your view, has the ESRB had adequate access to relevant data and financial information for the fulfilment of its mandate?

2.3.b. For the analysis of systemic risk, what is the balance needed between, on the one hand, data in summary or aggregate form and, on the other hand, firm-specific data?

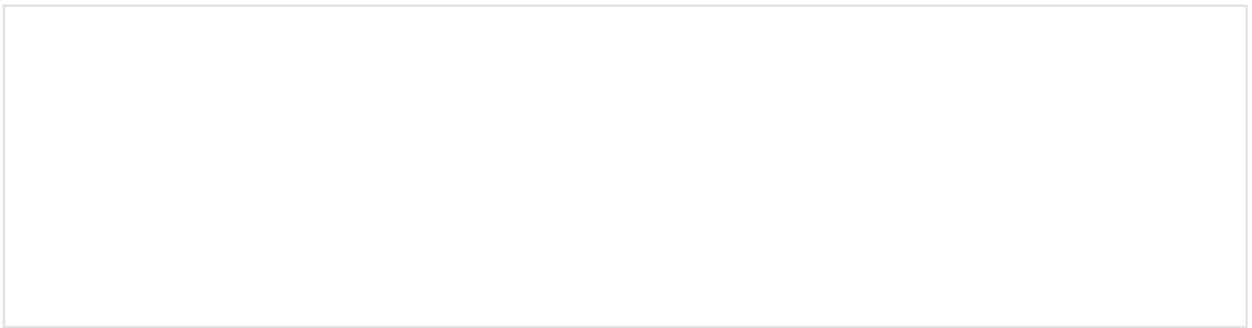
2.3.c. How do you assess the data access procedures foreseen in the ESRB Regulation? If you identify any room for improvement, please specify how this could be addressed.



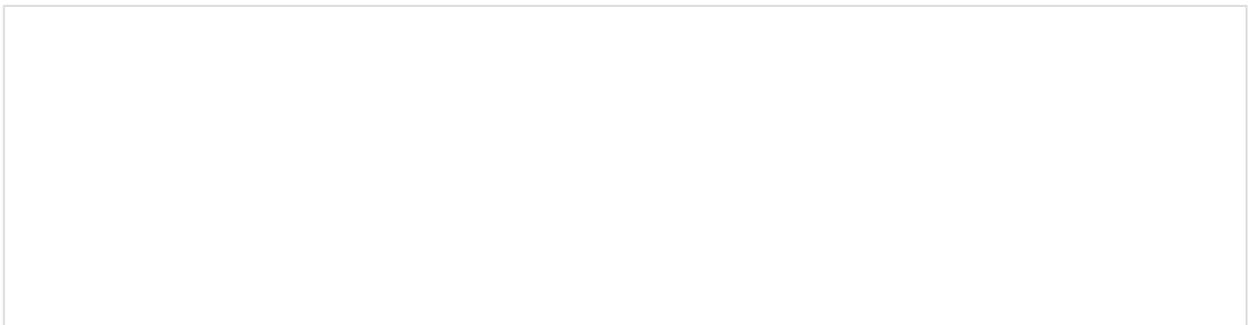
2.4. ESRB external relations and communication

2.4.1. Positioning of ESRB as an authoritative policy institution focused on monitoring and preventing systemic risks

2.4.1.a. What is your assessment of ESRB communications?



2.4.1.b. What is your assessment of the ESRB's reputation as the body responsible for identifying and helping to mitigate systemic risk?



2.4.2. Interaction with other international bodies (e.g. G20/FSB)

2.4.2.a. What is your assessment of the ESRB interactions with the International Monetary Fund (IMF); the Financial Stability Board (FSB); the G20 Group; macro-prudential authorities in any other relevant non-EU countries? If you identify any room for improvement, please specify how this could be addressed.

3. Cooperation and interaction between the ESAs (micro level) and ESRB (macro level)

3.1. Assessment of market developments

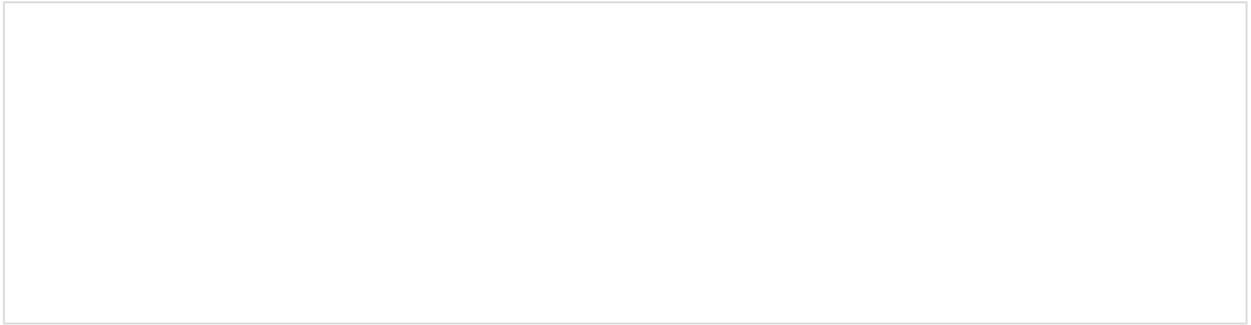
3.1.a. What is your assessment of the past stress test exercises that were initiated and coordinated by EIOPA and EBA? If you have identified any shortcomings, please specify how these could be addressed.

3.1.b. Did the stress tests and EBA's recapitalization exercise contribute to increase confidence in the stability of the financial system and increase the resilience of financial institutions? Please explain.

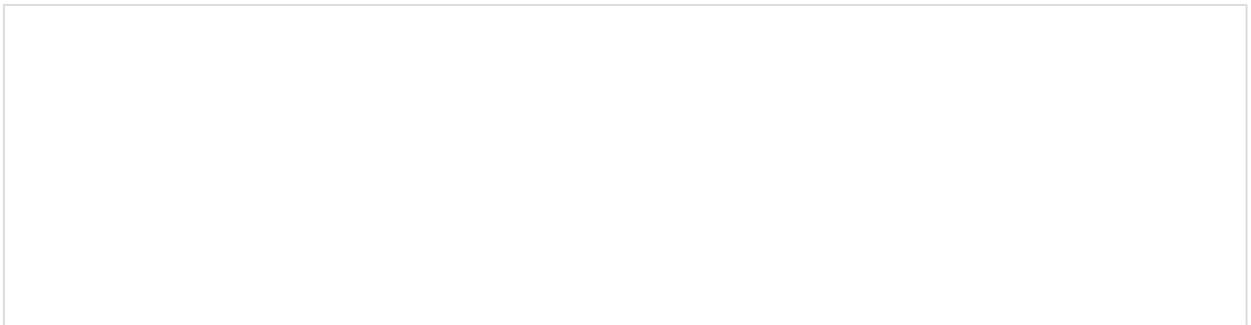
3.2. Aspects of macro-micro interaction

3.2.a. What is your assessment of the cooperation between ESRB and the ESAs?

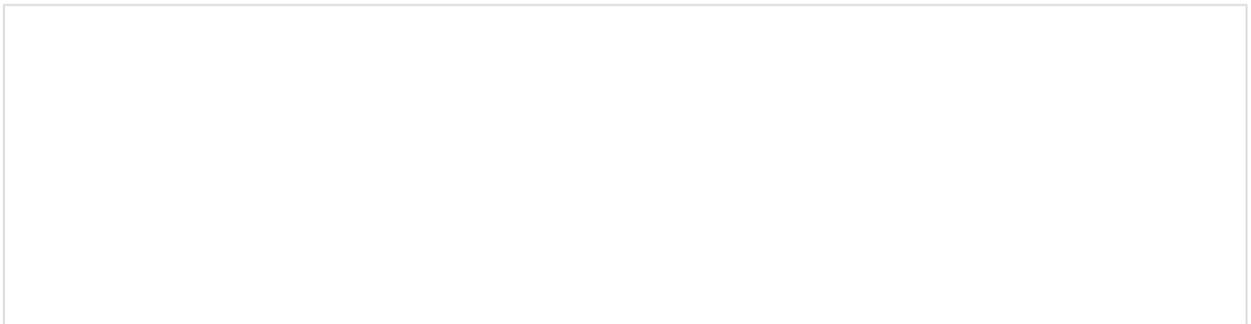
In which areas has cooperation been successful? If you identify room for improvement, please specify how this could be addressed.



3.2.b. What is your assessment of the ESAs' follow-up actions on the ESRB recommendations? Please explain.

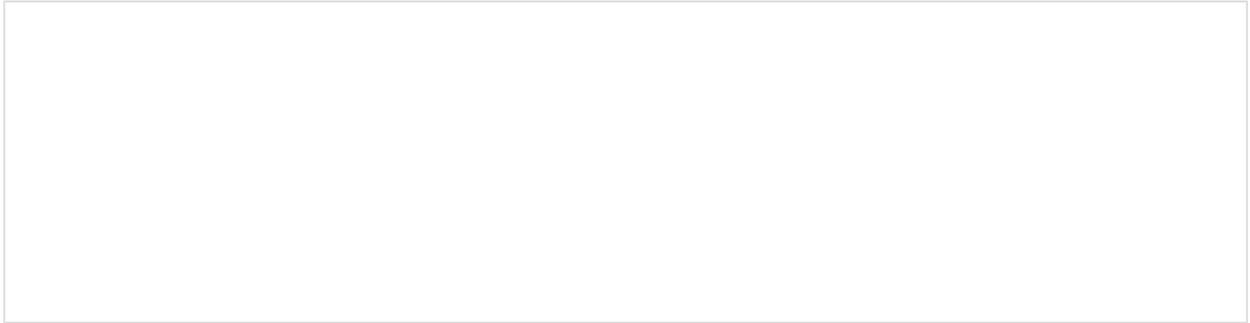


3.2.c. Has ESRB contributed to the work of the ESAs by bringing a macro-prudential perspective into micro-prudential activities? If so, please comment on key successes and/or shortcomings.

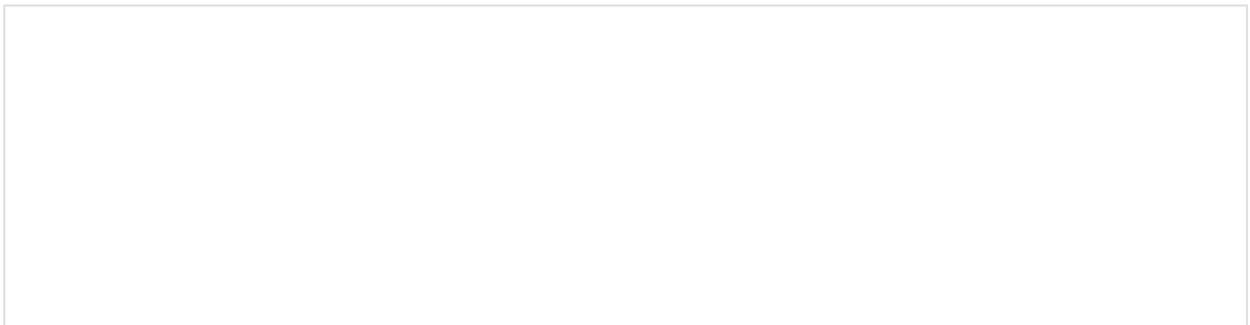


4. Structure of the ESFS

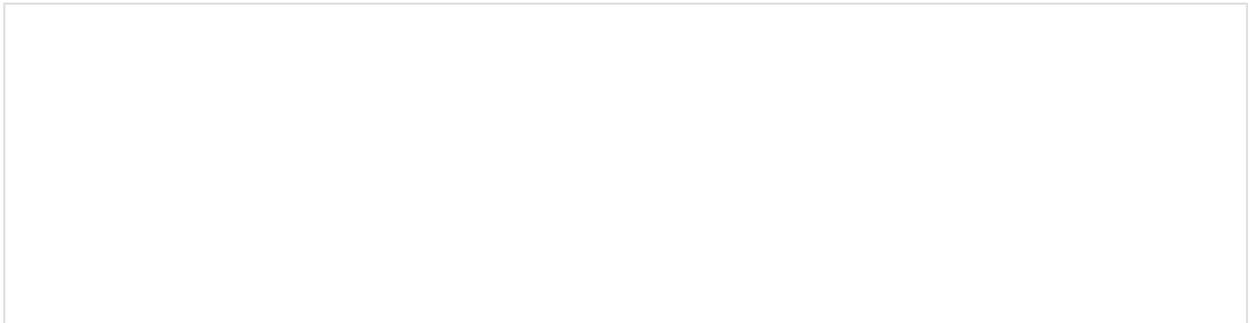
4.a. What is your assessment of the structure of the ESFS?



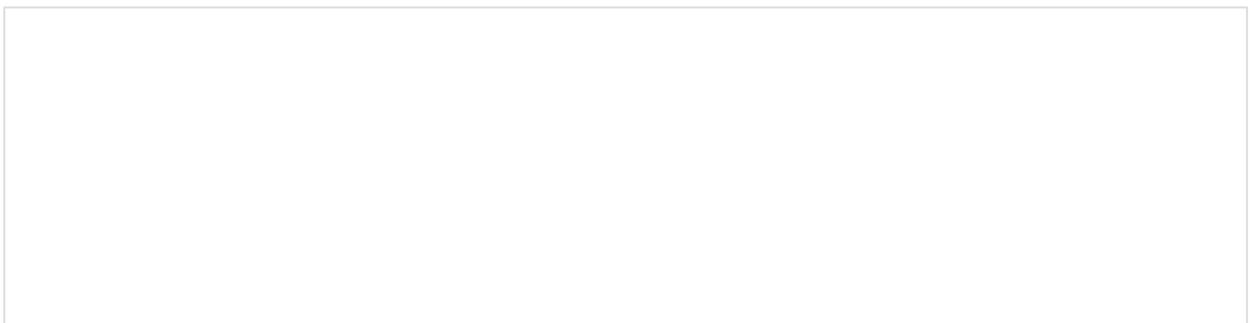
4.b. Does the structure of the ESFS facilitate the identification, monitoring and mitigation of systemic risk in the EU financial sector? Please explain.



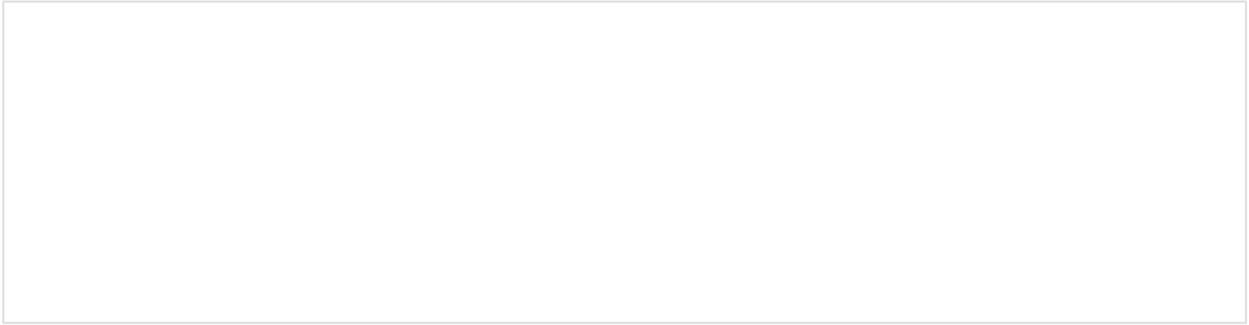
4.c. Do you consider that the ESFS can be further simplified in order to tangibly enhance coherence between the ESAs and the ESRB? Please explain and add concrete suggestions, where possible.



4.d. Do you consider that the structure of the ESFS, in particular the roles of EBA and ESRB, will need to be revisited in light of the establishment of the Single Supervisory Mechanism (SSM) and the new role of the ECB within the ESFS? Please explain and add concrete suggestions, where possible. How should synergies in terms of supervision within ESFS including ECB be exploited? Please explain.



4.e. From your experience, do you think that the ESAs and ESRB attract a sufficient number of diverse and excellent staff? If not, why not? If you identify room for improvement, please specify how this could be addressed.



5. Miscellanea

5.a. Do you have any other comment on the effectiveness and efficiency of the ESAs and ESRB within ESFS and on ESFS in general? Please indicate whether the Commission may contact you for further details on the information submitted, if required.

