



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

CONSULTATION DOCUMENT

TARGETED CONSULTATION ON THE SUPERVISORY CONVERGENCE AND THE SINGLE RULE BOOK

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

Disclaimer

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

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

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

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

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

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

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

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONSULTATION QUESTIONS

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

- I. How do you assess the impact of each ESA’s activities on the aspects below? Please rate the ESAs impact on each aspect from 1 to 5, 1 standing for "less significant impact" and 5 for "most significant impact":

	1	2	3	4	5	No opinion
The financial system as a whole						
Financial stability						
The functioning of the internal market						
The quality and consistency of supervision						
The enforcement of EU rules on supervision						
Strengthening international supervisory coordination						
Consumer and investor protection						
Financial innovation						
Sustainable finance						

Please explain your answer

- II. In your view, do the ESA(s)’ mandate(s) cover all necessary tasks and powers to contribute to the stability and to the well-functioning of the financial system? If you think that there are elements which should be added or removed from the mandate, please provide a substantiated answer.

YES

NO

- III. In your view, do the ESAs face any obstacles in delivering on their mandates? If the answer is yes, please explain what you consider to be the main obstacles.

YES

NO

1. The supervisory convergence tasks of the ESAs

1.1. Common supervisory culture/supervisory convergence:

1.1.1. To what extent the ESAs do contribute to promoting a common supervisory culture and consistent supervisory practices? Please rate in a scale from 1 to 5 ("5" being the most significant contribution and "1" the less significant contribution). Please explain your answer and indicate if there are any areas for improvement.

	1	2	3	4	5	No opinion
Promote a common supervisory culture and consistent supervisory practices						

1.1.2. To what extent the following tasks undertaken by the ESA(s) have effectively contributed to building a common supervisory culture and consistent supervisory practices in the EU. Please rate each task from 1 to 5, 1 standing for "less significant contribution" and 5 for "most significant contribution":

	1	2	3	4	5	No opinion
Providing opinions to competent authorities						
Promoting bilateral and multilateral exchanges of information between competent authorities						
Contributing to developing high quality and uniform supervisory standards						
Contributing to developing high quality and uniform reporting standards						
Developing and reviewing the application of technical standards						
Contributing to the development of sectoral legislation by providing advice to the Commission						
Establishing (cross)sectoral training programmes						
Producing reports relating to their field of activities						
Conducting peer reviews between competent authorities						

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

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

1.1.3. One of the roles of the ESAs is to promote and facilitate the functioning of supervisory colleges, where established by sector legislation, and foster the consistency of the application of Union law among them. Please rate the ESAs' contribution to the objectives below from 1 to 5, 1 standing for "less significant contribution" and 5 for "most significant contribution". Please explain your reasoning.

	1	2	3	4	5	No opinion
Promote the effective and efficient functioning of colleges of supervisors						
Foster consistency in the application of Union law among colleges						
Promote converging supervisory practices among colleges.						

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

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

YES Please identify areas for improvement, please explain

NO Please give reasons.

1.2. No action letters

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

YES

NO

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

1.2.3. In the framework of the 2019 ESAs review. Could you provide examples where the use of no action letters would have been useful or could be useful in the future?

1.3. Peer reviews

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

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

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

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

Please explain your reasoning/give examples.

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

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

Please explain your reasoning

1.3.3. Do you think mandatory recurring peer reviews, covering also enforcement aspects, could be introduced in some sectoral legislation? If the answer is yes, please specify the piece of legislation and concrete provision under which mandatory peer reviews could be introduced.

YES

NO

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

YES

NO

1.4. Other tasks and powers

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

YES

NO

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

YES

NO

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

YES

NO

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

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

1.4.5. What criteria would be the most relevant, in your view, for the ESAs to perform effectively their new task of fostering and

monitoring supervisory independence of national competent authorities? Please rate the relevance of each criteria in a scale from 1 to 5 (“5” being the most relevant criteria rate and “1” less relevant criteria).

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

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

1.4.7. Do you consider that the ESAs ensure that enough information on their activities and on financial institutions is available? If not, what changes should be made in this area?

YES

NO

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

YES

NO

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

YES

NO

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

1.5. Breach of Union law and dispute settlement

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

YES

NO

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

Before 2019 ESAs' review

YES

NO

After 2019 ESAs' review

YES

NO

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

YES

NO

1.5.4. Do you think that the new written non-objection procedure by the BoS and the new independent panels for the decisions on

breaches of Union law and dispute settlements introduced in the 2019 ESAs' review have improved these decision making processes? Please explain your answer.

YES

NO

1.5.5. Do you think that the ESAs have always acted, where needed, under Article 17 and Article 19 of the ESAs' Regulations? If the answer is no, please give concrete examples where you consider that the ESAs should have taken relevant action under these Articles.

YES

NO

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

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

1.6. Emergency situations and response to COVID-19 crisis

1.6.1. Please rate the impact of the ESAs' response in the context of the COVID-19 crisis from 1 to 5, 1 standing for "less significant impact" and 5 for "very significant impact". Please explain your answer.

	1	2	3	4	5	No opinion
ESAs' response to the Covid-19 crisis						

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

	1	2	3	4	5	No

						opinion
Market illiquidity and implications for asset managers and insurers						
Impact of large scale downgrades of corporate bonds on markets and entities across the financial system						
System-wide restraints on dividend payments, share buybacks and other pay-outs						
Liquidity risks arising from margin calls						

1.6.3. Do you think the coordinating activities carried out by the ESAs have successfully contributed to address the challenges posed by the COVID-19 crisis? If the answer is yes, please explain. If the answer is no, please give examples.

YES

NO

1.6.4. Do you think that the ESAs have always acted effectively, where needed, in the context of the COVID-19 crisis? If the answer is no, please give concrete examples where you consider that the ESAs should have taken relevant action.

YES

NO

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

YES

NO

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

1.7. Coordination function (Art 31 ESAs' Regulations)

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

YES

NO

1.7.2. Do you see a need for greater coordination between the ESAs and/or with other EU and national authorities as regards developing data requirements, data collection and data sharing? If yes, please explain your answer and indicate what changes you propose.

YES

NO

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

	1	2	3	4	5	No opinion
exchange of information and best practices						
adopt guidelines						
adopt recommendations						

2019 ESAs review. [specific for ESMA]. Do you think ESMA's new coordination function (Article 31b ESMA Regulation) in relation to orders, transactions and activities that give rise to suspicions of market abuses and have cross-border implications for the integrity of financial markets or financial stability in the EU is an effective tool? If the answer is yes, please provide examples where this new function has been or could be useful. If the answer is no, please explain the reasons.

YES

NO

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

YES

NO

1.7.5. In your view, does the coordination function of the ESAs, ensuring that the competent authorities effectively supervise outsourcing, delegation and risk transfer arrangements in third countries, work in a satisfactory way? Please explain your answer. If your answer is no, please indicate how the coordination function of the ESAs should be adjusted.

YES

NO

1.8. Tasks related to consumer protection and financial activities.

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

1.8.2. Please assess the impact of the ESAs' work on analysis of consumer trends, reviewing market conduct, developing indicators, contributing to level playing field, financial literacy and follow up to work in this area. Please rate the ESAs impact on each item from 1 to 5, 1 standing for "less significant impact" and 5 for "most significant impact". Please explain:

	1	2	3	4	5	No opinion
analysis of consumer trends						
reviewing market conduct						
developing indicators						
contributing to a level playing field						

financial literacy						
follow up to work in this area						

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

YES

NO

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

YES Please specify which ones

NO Please give reasons

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

2019 ESAs' review. [specific for EBA]. Under the expanded scope of the competences as regards the consumer credit directive and the payment account directive, EBA will also be able to look at consumer issues across a range of activities, for example lending practices. How do you assess this change?

1.8.6. 2019 ESAs review. Please rate the new ESAs' task to coordinate mystery shopping activities of competent authorities, if applicable, according to its relevance to promote consumer protection at EU level (1 standing for "less relevant" and 5 for "most relevant"). Please explain your answer and indicate whether you consider enhancing national competencies for conduct supervision may be beneficial for the overall coordination of mystery shopping activities.

	1	2	3	4	5	No opinion
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1.8.7. What are, in your view, the main strengths and weaknesses of the current framework on consumer protection (Article 9 ESAs Regulations) and what would you suggest to address any possible shortcomings?

1.8.8. Are there areas for improvement in the toolkit of the ESAs when it comes to coordinating supervisors in the area of consumer protection? Please explain your answer.

YES

NO

1.9. International relations.

1.9.1. How do you assess the role and competences of each ESA in the field of international relations? Are there additional international fora in which the ESAs should be active? Please specify.

1.9.2. 2019 ESAs' review. How do you assess the new ESAs' role in monitoring the regulatory and supervisory developments, enforcement practices and market developments in third countries for which equivalence decisions have been adopted by the Commission?

1.9.3. Are the powers and competences in the field of international relations as set out in Article 33 of the ESAs' Regulations adequate in light of the tasks conferred on each of the ESAs? If you identify areas for improvement, please specify.

YES

NO

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

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

1.10.1. Under Articles 17 (*breach of Union law*), 18 (*action in emergency situations*) and 19 (*settlement of disagreements between*

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

1.10.2. Do you see room for improvement in the way each ESA could ensure that competent authorities enforce more effectively EU rules towards market participants/financial institutions? Please explain your answer.

YES

NO

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

YES

NO

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

YES

NO

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

Sufficiently dissuasive

Disproportionate

Other, please explain

2. Governance of the ESAs.

2.1. General governance issues

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

YES

NO

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

YES

NO

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

YES

NO

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

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

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

YES

NO

2.2. Decision-making bodies and preparatory bodies

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

YES

NO

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

YES

NO

[Only for EBA]. Does the current voting system that, for some decisions, requires additional simple majorities from competent authorities participating and not participating in the Banking Union ensure efficient and balanced decision making? Please explain.

YES

NO

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

YES

NO

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

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

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

YES

NO

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

YES

NO

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

YES

NO

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

YES

NO

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

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

(only for ESMA) Should there be a different governance in case of direct supervisory decisions in ESMA (for example, similar to the new governance for CCPs)? If the answer is yes, please indicate your suggestions for improvements and the expected benefits.

YES

NO

2.3. Financing and resources.

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

YES

NO

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

YES

NO

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

YES

NO

2.4. Involvement and role of relevant stakeholders

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

answer.

YES

NO

Too many consultations

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

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

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

YES

NO

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

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

2.4.5. 2019 ESAs' review. Please assess the significance of the recent changes in the composition, selection, term of office and advice of

the stakeholders groups (Article 37 ESAs Regulations)? Please rate each change from 1 to 5, 1 standing for "less significant" and 5 for "most significant". Please explain your answer.

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

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

YES

NO

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

YES

NO

2.5. Joint bodies of the ESAs

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

	1	2	3	4	5	No opinion
Organisation						
Functioning and time limits						

One joint Board of Appeal for the 3 ESAs						
The composition of the BoA						

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

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

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

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

3. Direct supervisory powers.

3.1. How do you assess ESMA's direct supervisory powers in the field of:

- Credit Rating Agencies
- Trade Repositories under EMIR
- Trade Repositories under SFTR
- Securitisation Repositories (STS)

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

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

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.

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

YES

NO

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

4.1. Please assess the aspects described below regarding the role of each ESA as regards systemic risk in a scale of 1 to 5 (1 lowest rate, 5 highest rate). If you identify room for improvement, please specify how this could be addressed.

	1	2	3	4	5	No opinion
The quality of the analysis of market developments						
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs						

The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk						
The cooperation within the European System of Financial Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing						
The broader cooperation between the ESRB and the ESAs within the ESFS						
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors						

B. QUESTIONS ON THE SINGLE RULEBOOK

5. The ESAs work towards achieving a rulebook

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

YES If you have identified areas for improvement, please explain

NO Please give reasons.

Other

5.2. Do you assess the procedure for the development of draft technical standards as foreseen in the ESAs Regulations effective and efficient in view of the objective to ensure high quality and timely deliverables? Please explain your answer. If you identify areas for improvement, please indicate.

YES

NO

Other

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?

5.4. In particular, are stakeholders sufficiently consulted and any potential impacts sufficiently assessed? Please explain your answer. If you identify areas for improvement, please indicate.

YES

NO

Other

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

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

YES Please specify which ones

NO Please give reasons.

[exclusively for ESMA] If you think of the Wirecard case as an example, how could supervision be improved in the field of auditing and financial reporting?

Including Regulation (EC) No 1606/2002 [IAS Regulation] and Directive 2013/34/EU [Accounting Directive] in Article 1(2) of the ESMA Regulation

Other, please explain

No improvements are needed.

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

YES Please explain and specify how.

NO Please give reasons.

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

YES

NO

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

YES Please explain and specify how.

NO Please give reasons.

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

6. General questions on the single rulebook

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

Please give your reasons for each

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

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

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

YES

NO

6.4. Questions regarding the appropriate level of regulation.

6.4.1. In your view, are there circumstances in existing EU legislation where level 1 is too granular, or for other reasons, would rather be preferable to have a mandate for level 2, or guidance at level 3? Please specify the area (and if possible, specific piece of legislation) and explain why (e.g. in order to have appropriate flexibility to adapt the specifics of the regulation in case of change of circumstances)?

YES

NO

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

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

6.5. Generally speaking, which level of regulation should be enhanced/tightened in order to ensure **uniform application** of the single rulebook? (multiple choices allowed). Please explain and substantiate with examples, where possible.

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

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

Please explain

6.7. Please indicate whether the following factors should be considered when deciding on the need for further harmonisation in rules (attribute 1 to 5 to each factor, 1 being the least important and 5 being the most important):

	1	2	3	4	5	No opinion
Strong interlinkages with areas of law which remain non-harmonised (e.g. CRIM-MAD and national criminal law)						
Broad discretion left to national authorities and frequent use of that discretion by these national authorities						
High level of gold plating by national rules						
High degree to which supervision of the same type of actors and/or activities render divergent outcomes across Member States						
All of the above						
None of the above						
Other aspects, if so which ones: Please provide concrete examples						

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

YES Please specify which one

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

NO Please specify which Directives you have in mind and explain your answers

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

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

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

NO

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

Across the board (e.g., via an Omnibus act which amends multiple sectoral acts at the same time)

Sector:	Specific piece of legislation	Legislative approach (omnibus vs targeted reviews)	Please explain
Banking			
Insurance			
Asset management			
Market infrastructure (CCPs, CSDs)			
Market organisation (MiFID, MIFIR, MAR)			
Other			

In a targeted manner through individual sectoral reviews