

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

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.

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.

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

* 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

Luxembourg Capital Markets Association

* Surname

LuxCMA

* Email (this won't be published)

info@luxcma.lu

* Are you a member of an ESA Stakeholder Group?

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

* Organisation name

255 character(s) maximum

LuxCMA - Luxembourg Capital 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.

N/A

* Country of origin

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

- Afghanistan
- Djibouti
- Libya
- Saint Martin
- Åland Islands
- Dominica
- Liechtenstein
- 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

* Please specify your activity field(s) or sector(s):

Not-for profit association representing the common interests of all stakeholders of the primary capital markets industry in Luxembourg

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

* 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

Please click on next to respond to the questions.

General questions

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
The financial system as a whole	<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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The enforcement of EU rules on supervision	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strengthening international supervisory coordination	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input 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.

LuxCMA believes that ESMA's mandate and administrative powers, that have just been strengthened through the 2019 ESA Review, are adequate to fulfil its key role of promoting supervisory convergence.

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

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

1. The supervisory convergence tasks of the ESAs

1.1 Common supervisory culture/supervisory convergence

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.

ESMA could make more use of its administrative powers to effectively promote a common supervisory culture and consistent supervisory practices, without receiving further administrative powers. However, the national authorities should play a primary role in supervision, as their proximity to actors in their jurisdictions enables them to supervise them more efficiently.

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Providing opinions to competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promoting bilateral and multilateral exchanges of information between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to developing high quality and uniform supervisory standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to developing high quality and uniform reporting standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing and reviewing the application of technical standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Determining new Union strategic supervisory priorities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adopting measures using emergency powers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring the work of supervisory and resolution colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Providing supervisory statements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input 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 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.

ESMA could make more use of its administrative powers to effectively promote a common supervisory culture and consistent supervisory practices, without receiving further administrative powers. Its powers are appropriate for its mandate and have not yet been used to their full potential. Additional powers are antithetic to the current system of supervision. In this system, the national authorities play a primary role in supervision, as their proximity to actors in their jurisdictions enables them to exercise superior supervisory competence, while ESMA's strength lies in the promotion of supervisory convergence and consistency across the Union. Additional powers, especially direct intervention powers, would decrease the supervisory efficiency and ultimately affect the competitiveness of European public capital markets.

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

Please rate ESMA's contribution to the objectives below:

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Promote the effective and efficient functioning of colleges of supervisors	<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.

LuxCMA believes that ESMA is generally responsive to input from stakeholders and often provides feedback when preparing its Level 3 clarifications. As the new process has entered into force only recently, it is too early to conduct a granular assessment of its features. Generally speaking, LuxCMA does observe that ESMA can improve the publication of answers to questions. In particular, the answers can be published more swiftly such that they are useful for market participants seeking to adapt to rapid developments in the public capital markets. The answers could also provide a more granular analysis, for example by providing more of the supervisors' interpretation rather than sticking to a concise replication of level 1 and level 2 texts.

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 identify areas for improvement and 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.

See answer to previous question

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.

LuxCMA believes that the new mechanism is fit for its intended purpose, but could be improved. No action letters are an efficient tool to effectuate targeted intervention in response to situations where regulation may excessively burden market participants to deal with specific challenges, provided that:

1. they are limited in scope and time,
2. their applicability is carefully defined, and
3. they can be overruled by the European Commission or the co-legislators.

Ideally, the mechanism in Article 9a (3) should be amended to reflect these constraints.

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.

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.

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 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Convergence in supervisory practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>
Further harmonisation of Union rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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"/>

Situation after the 2019 ESAs review for ESMA:

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Convergence in supervisory practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>
Further harmonisation of Union rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Ad-hoc Peer Review Committees (PRC) composed of ESAs' and NCAs' staff and chaired by the ESA are responsible for preparing peer review reports and follow-ups.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 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 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 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 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.

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

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

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.

Yes, these priorities are an effective tool to achieve these ends, provided that convergence does not become unification or maximum harmonisation of supervision. The industry can benefit from closer and more coherent cooperation between the ESAs and the NCAs, but NCAs must enjoy enough discretion to operate a supervisory regime that is tailored to the unique features of their jurisdiction.

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.

The task of fostering and monitoring the supervisory independence is rather significant; it is important that ESMA finds the right balance between convergence and independence (see response to 1.4.2).

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

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

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.

ESMA has the appropriate mandate and tools to pursue supervisory convergence which have just been strengthened through the 2019 ESA Review. See response 1.4.10

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

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

Please indicate what role such inquiries should play:

5000 character(s) maximum

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

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

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.

The effectiveness of these tools is rather significant and is testimony to the fact that ESMA has the right tools to achieve supervisory convergence.

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 type="radio"/>
After 2019 ESAs' review	<input type="radio"/>	<input type="radio"/>	<input 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.

ESMA's swift and timely response alleviated the challenges faced by market participants to comply with the regulations and highlights the importance and effectiveness of such targeted intervention to deal with market-wide exogenous economic shocks.

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

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Market illiquidity and implications for asset managers and insurers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>
Liquidity risks arising from margin calls	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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.

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

Please explain your answer to question 1.6.3 for ESMA:

5000 character(s) maximum

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

Yes, these coordinating activities have successfully contributed to addressing the challenges, since it is likely that they led to a certain degree of convergence in the responses of supervisors.

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

Please explain your answer to question 1.6.5:

5000 character(s) maximum

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

Yes the Article is fit for purpose. The coordination mechanism involving the Council and the authorities fosters coordinated action while allowing authorities to thoroughly assess the situation before implementing measures in their jurisdictions.

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)

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

The three tools are very effective to facilitate the entry into the market of actors or products relying on technological innovation, as they have a significant impact on the actions of NCAs. Recent examples of ESMA's work are its clarifications regarding robot-advisors and distributed ledger technology-based tokens.

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

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

5000 character(s) maximum

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

Yes, an example of an area where the tool has been useful is the cross-border offerings of tokens which qualify as financial instruments under MiFID II.

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

Please explain your answer to question 1.7.5 on ESMA:

5000 character(s) maximum

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

ESMA's coordination functions in a satisfactory way. By way of illustration, its guidelines on outsourcing to cloud computing service providers have impacted how competent authorities supervise outsourcing. There is no need for adjustments of the function: the toolkit at its disposal is sufficiently broad, as Article 31 of the ESAs Regulations provides general mandate and a non-exhaustive list of possible tools.

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's main achievements in this area are its warnings to consumers/retail investors in respect of initial coin offerings and tokens, and its product intervention measures in respect of contracts for differences and binary options. In its warnings, ESMA combines a clear overview of the regulations with a message of caution that encourages consumers to adopt a critical approach to investment opportunities, which ultimately promotes sound investment choices and orderly trading. With its intervention measures, it has prevented trading by those retail investors that do not understand these products at all. At the same time, it should be highlighted that product intervention should be a very calibrated exercise, to avoid undue interference in markets involving informed investors.

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

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

Yes, these powers are effective and fit for purpose. With these powers, ESMA can ban the distribution of the relevant product to consumers for a period of two years, which is long enough for the market to pivot away from the product or for legislators to take more constructive action.

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

Please explain your answer to question 1.8.4:

5000 character(s) maximum

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

It is important that ESMA's powers are commensurate to its role as an executive authority with subsidiary competence in supervision. Acts of general application should remain the prerogative of legislators or national competent authorities, which are better positioned to adopt general acts tailored to their jurisdictions.

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.

The main strength of the current framework is its multi-faceted nature. Article 9 provides ESMA with a comprehensive set of effective tools to achieve supervisory convergence and directly impact the behaviour of consumers and market actors. If ESMA would make full use of these tools, it would certainly achieve the objectives of its mandate. We would therefore suggest that ESMA use these tools more intensively.

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

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.

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.

LuxCMA welcomes ESMA’s new role and would welcome ESMA to actively assert this role. In particular, ESMA should share its insights with NCAs, as it would benefit the NCAs’ supervisory activities. More generally, the information derived from active monitoring by ESMA ultimately improves the quality of the Commission’s equivalence decisions and assessments. We would also recommend that ESMA follow the principle of ‘open strategic autonomy’ when evaluating the developments and formulating recommendations to the Commission.

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.

ESMA's role in the development of these model administrative arrangements is substantial and sufficiently delineated; as such, there is no need for further specification. NCAs should retain some leeway to set up arrangements that are tailored to the markets under their supervision.

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.

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.

ESMA's powers are well balanced, adequate and effective to fulfil its function in the mechanisms under Article 17, 18 and 19.

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.

The powers of ESMA under these rules are well-balanced, adequate and effective. Its powers are balanced, as evaluation from another EU authority or the respective national competent is required. For example, ESMA can escalate an issue to the Commission when necessary. The rules are adequate and effective to achieve the ends pursued.

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.

Yes, the roles of ESMA and the Commission are clearly defined.

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

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 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Request to the Board to establish internal committees for specific tasks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
Call a vote at any time	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 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 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 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 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 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
The MB can give opinions on all matters to be decided by the Board of Supervisors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 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 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

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Standing committees and other permanent committees	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>
Proportionality Committee	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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.

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.

LuxCMA believes that stakeholders are sufficiently consulted in the process of ESMA's regulatory technical standards and guidelines and generally considers the consultation process beneficial to the formulation of effective regulation.

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

							Don't know -
--	--	--	--	--	--	--	--------------

	1 (lowest quality)	2	3	4	5 (highest quality)	No opinion - Not applicable
General consultations launched by ESMA	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Specific consultations when developing data collection requirements	<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 2.4.2 for ESMA:

5000 character(s) maximum

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

LuxCMA believes that stakeholders are sufficiently consulted in the process of ESMA’s regulatory technical standards and guidelines and generally considers the consultation process beneficial to the formulation of effective regulation.

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.

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

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

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Composition of stakeholders groups	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>
Term of office	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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.

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.

The rules on the composition of stakeholders do not ensure a sufficiently balanced representation. Rather than a fixed number of members, the number of group members should be flexible to consider the number and variety of stakeholders depending on the issue (e.g. professional advisors, trading venues).

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

Please indicate the areas where the transparency could be improved:

5000 character(s) maximum

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

We would welcome more transparency on the functioning of the meetings, in particularly regarding the agendas and protocols.

2.5 Joint bodies of the ESAs

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

	1 (least effective)	2 (not so effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Functioning and time limits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
The composition of the BoA	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 (least effective)	2 (not so effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Functioning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Working methods	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring cross-sectoral cooperation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring consistent approaches	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Decision making process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The legal structure (no legal personality)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Consumer Protection and Financial Innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
Financial Conglomerates	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Securitisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
European Forum of Financial Innovators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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

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

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

It is important to properly evaluate the effectiveness of the most recent changes to ESMA's supervisory powers before considering new changes to their scope. In any case, we strongly oppose extending the scope of direct supervisory powers.

We reiterate that NCAs are better positioned to directly supervise securities markets, due to their proximity to the actors and understanding of the jurisdiction. For this reason, when the activities are cross-border in nature, cooperation between NCAs should be favoured. We want to stress the principles of subsidiarity and proportionality that form the foundation of ESMA's supervisory competence. Those guiding principles warrant that direct supervisory powers should only be granted if it is impossible to achieve the aims of the Capital Markets Union otherwise, and the current framework already covers those circumstances. Rather than relying on direct supervision, ESMA should make optimal use of its powers to improve supervisory convergence and a level playing field of effective supervision across the Union.

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 (lowest rate)	2	3	4	5 (highest rate)	Don't know No opinion Not applica
The quality of the analysis of market developments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>

<p>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</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>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</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>The broader cooperation between the ESRB and the ESAs within the ESFS</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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

Please click on next to respond to the questions.

5. The ESAs work towards achieving a rulebook

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

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

5000 character(s) maximum

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

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

Please explain your answer to question 5.2:

5000 character(s) maximum

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

Overall, the procedure for the development of draft technical standards is effective and efficient. ESMA frequently holds open public consultations on draft regulatory technical standards, and generally allows stakeholders sufficient time to respond. In its consultations, ESMA generally clearly explains the regulatory framework and its reasons for the proposed rule, fostering robust feedback that ultimately benefits the quality of the deliverables.

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 explain 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.

In general, stakeholders are sufficiently consulted, but the depth of the assessment of current market conditions and potential impacts can be further improved.

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.

Given the influence of ESMA's guidelines over the administrative practices of NCAs, its guidelines should be restricted to matters falling in the scope of its mandate as set out in EU legislation and should certainly not be issued if they are not necessary for effective and consistent application of the relevant legislation.

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 your answer to question 5.7:

5000 character(s) maximum

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

The recent issues with Wirecard in Germany are not emblematic of a general lack of supervisory oversight; overall, the TD has worked well. Additional RTS with respect to enforcement do not seem necessary with respect to the Transparency Directive.

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.

ESMA should not be required to fulfil this additional role; see previous answer. It would create an additional reporting burden for NCAs without real added value.

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

Please explain your answer to question 5.9:

5000 character(s) maximum

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

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.

We are of the view that ESMA's opinions and technical advice generally provide clear and useful observations that are welcomed by market actors.

6. General questions on the single rulebook

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

Please give your reasons for each:

5000 character(s) maximum

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

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.

ESMA's single rulebook does not need to be further enhanced to reach uniform application and efficient convergent supervisory outcomes. The rulebook is only one of several measures at ESMA's disposal to achieve these ends and its current presentation and framework already optimally contribute to said ends.

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

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 6.5 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)

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

5000 character(s) maximum

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

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.

It is important to ensure that the application dates and sequencing of acts allow market actors a reasonable amount of time to reform business models and operations for compliance purposes in a cost-effective manner.

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

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

Please select the legislative sector(s) of the specific piece(s) of legislation you have in mind:

Please select as many answers as you like

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

Market organisation (MiFID, MIFIR, MAR)

Please identify the specific piece(s) of legislation you have in mind in this /these other area(s) and explain:

5000 character(s) maximum

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

MiFID II/MiFIR: The division between directly applicable rules in MiFIR and rules that must be transposed in MiFID II, is adequate for the pursued objectives and the rules are sufficiently granular.

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

5000 character(s) maximum

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

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

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

5000 character(s) maximum

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

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can

upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.

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