

# Targeted consultation on supervisory convergence and the single rulebook

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

Fields marked with \* are mandatory.

### Introduction

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

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

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

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

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

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

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

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

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

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

More information on

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

## About you

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\* Language of my contribution

- Bulgarian
- Croatian
- Czech

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

\* I am giving my contribution as

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

\* First name

Viktoría

\* Surname

HACKENBERG

\* Email (this won't be published)

Viktoría.Hackenberg@deutsche-boerse.com

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

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

\* Organisation name

*255 character(s) maximum*

Deutsche Börse Group (DBG)

\* 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.

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\* 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

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

### \* Contribution publication privacy settings

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

#### **Anonymous**

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

#### **Public**

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

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

## ESA(s) you want to focus on

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

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

*at least 1 choice(s)*

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

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

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Please click on next to respond to the questions.

#### General questions

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

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

**Please explain your answer to question I on EBA:**

*5000 character(s) maximum*

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

**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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Financial stability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The functioning of the internal market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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.

Generally, DBG has an overall positive view of the activities carried out by ESMA, from the several perspectives its activities impact the different DBG entities. Importantly, ensuring convergence is key to contribute to a well-functioning financial system in the Union, and was the very reason for creating the ESAs. ESMA has the appropriate mandate and tools to pursue supervisory convergence which have just been strengthened through the 2019 ESA Review. Please also see our response to question 1.1.1.

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

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

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

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

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

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

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

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

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

*5000 character(s) maximum*

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

Please see our response to question I as well as questions 1.1.1 and 3.2.

## 1. The supervisory convergence tasks of the ESAs

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### 1.1 Common supervisory culture/supervisory convergence

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

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

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

*5000 character(s) maximum*

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

ESMA and EBA have a role to play in achieving such convergence towards the NCAs and RCAs particularly to ensure consistent and efficient (i.e. non-duplicative) supervision of CSDs. Perhaps it would be helpful to have ESMA and/or EBA participating as observer(s) with other RCAs to support supervisory convergence. An enhancement of the cooperation and dialogue between the NCA and the host Member State would also be a viable way forward. The host member should rely on the NCA (as it is the basis of the passporting).

#### 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.

Convergence is the key pillar of ESMA's tasks and the reason for the authority's creation in the first place. However, ESMA has not yet fully delivered on this key function, where divergent supervisory views and practices by NCAs prevail. A concrete example relates to CSDR passporting provisions (Art. 23(2) CSDR). The CSDR will only be able to unleash its full potential when the provision of cross-border servicing is fully realized, including a review of NCAs' interpretation and practices with a view to ensuring convergence and truly harmonizing approaches. We consider in this regard that some discretion by NCAs should remain, and that in parallel ESMA needs to focus on ensuring that legislation is implemented as intended by the legislator - its existing powers in this regard have recently been strengthened through the 2019 ESA Review (i.e. peer reviews, Breach of Union Law, settlement of disagreements, common supervisory handbook, EU-wide supervisory priorities).

As alluded to above, in our response to the consultation on the review of the regulation on improving securities settlement in the European Union and on central securities depositories (the CSDR consultation), we have reiterated the need for ESMA to play a role in achieving convergence and suggested ways in how this could be done. For instance, with regard to the Art. 23 CSDR process, the problem lies rather in some in the domestic interpretation/gold-plating of rules and not on a lack of cooperation amongst NCAs. Further complexity has been brought in, e.g. the actual application of Art. 23 CSDR, whereby multiple authorizations have to be sought from NCAs authorities before issuance in foreign governing law can be granted.

Standardization and harmonization are key to unlock the efficiency on a European level to issuers and all stakeholders of issuance processes. ESMA has a role to play in achieving convergence in the cross-border application of regulations such as the CSDR the same way throughout the EU as required by the CMU. Even in the event of the establishment of a college for the establishment of a CSD passport, NCAs around the table would not be able to counter diverging national laws nor the NCA requirement to open a CSD branch to issue equities or the tax benefit for securities issued with via the national CSD.

Furthermore, as outlined to in our responses to questions 1.1.1, 1.4.6 and 3.2, we also see room for improvement in relation to the tools that authorities manage and which serve as coordination tools between authorities. Financial market regulation has installed a quantitative regulatory and supervisory approach which heavily depends on data consistency and availability. Yet, enormous shortcomings in terms of incomplete data or inaccurate values have been observed, e.g. in relation to the functioning of ESMA databases such as FIRDS (Financial Instruments Reference Data System), or the register of MiFID II/MiFIR Trading venues/Systematic internalisers/Data Reporting Service providers, CCPs lists or the benchmark register, or various MiFID related data work such as on SIs, impairing data quality and liquidity of EU capital markets.

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Providing opinions to competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 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 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 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
Establishing (cross)sectoral training programmes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Producing reports relating to their field of activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conducting peer reviews between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



Determining new Union strategic supervisory priorities	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
Developing Union supervisory handbooks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring and assessing environmental, social and governance-related risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adopting measures using emergency powers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediating between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring the work of supervisory and resolution colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Publishing on their website information relating to their field of activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring market developments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring liquidity risks in financial institutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring of own funds and eligible liabilities instruments issued by institutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>

Developing guidelines and recommendations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing Q&As	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
Providing supervisory statements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 EBA:**

*5000 character(s) maximum*

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

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

	1 (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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Producing reports relating to their field of activities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conducting peer reviews between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Determining new Union strategic supervisory priorities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Establishing coordination groups	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing Union supervisory handbooks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring and assessing environmental, social and governance-related risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adopting measures using emergency powers	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investigating breaches of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Publishing on their website information relating to their field of activities	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring market developments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Please specify to what other instruments and tools to promote supervisory convergence you refer:**

*5000 character(s) maximum*

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

Regarding other tools to promote supervisory convergence, please see our response to section 1.2 on no action letters.

**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.

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

**Please rate EBA's contribution to the objectives below:**

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Promote the effective and efficient functioning of colleges of supervisors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
Promote converging supervisory practices among colleges	<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 1.1.3 on EBA:**

*5000 character(s) maximum*

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

-----

**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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Foster consistency in the application of Union law among colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promote converging supervisory practices among colleges	<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 1.1.3 on ESMA:

*5000 character(s) maximum*

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

From a clearing perspective, where colleges have been established with the introduction of EMIR, we believe the college structure has contributed to fostering the consistency of the application of the Union Law well. Nonetheless some divergence in the application remained in some areas. Against that background we appreciate the changes introduced by EMIR Review as for example the adaptations to the college structure as well as clarification of ESMA's mandate in this regard. Effectiveness of these adaptations with regards to improving consistency remains to be assessed at a later stage given that the changes have just become effective.

Further, even in the event of the establishment of a college for the establishment of a CSD passport, NCAs around the table would not be able to counter diverging national laws nor the NCA requirement to open a CSD branch to issue equities or the tax benefit for securities issued with via the national CSD. However, as mentioned in our response to the CSDR consultation, as supervised entities, we are not in a position to voice views on how authorities should supervise us; furthermore, the process of NCA and RCA cooperation defined by the CSDR has not been fully tested as yet to determine whether a move to colleges or another solution would be preferred. We note however in this regard that the system of colleges introduced by other EU legislations has not been one free of criticism and inefficiencies.

ESMA has a role to play in achieving convergence in the application of the CSDR cross-border requirements the same way throughout the EU as required by the CMU.

### 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.

DBG's experiences of the ESA's work in respect of providing Level 3 clarifications via the Q&A tool have been mixed. We welcome the fact that the ESAs are generally open to stakeholder input and, where possible, provide helpful guidance on the application of the relevant legislation.

The strengthened and formalized process for Q&As is thus welcome by DBG as it provides further transparency. We appreciate in particular the provisions to conduct open public consultations and web-based tool listing submitted questions. However, ESMA/EBA should seek to improve the timeliness and the detail of the answers they provide via the Q&A tool. In our experience, answers have sometimes been provided (or ultimately rejected) only after a prolonged period of time and have not always been helpful in the sense that they merely repeat the text of the law. We think that the ESAs should take a more accentuated role also when it comes to questions that relate to the interpretation of law and consider that Article 16b of the ESMA/EBA regulation provides the right framework to achieve this.

## 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.

Please see our answer to the 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.

Even though ESMA had issued regulatory forbearance statements before officially being granted the power to issue no action letters, DBG welcomes the introduction of the no action letters as they provide an important tool for circumstances when the application of a legislative act or Level 2 measure would raise significant issues. The ESAs may issue non-binding recommendations to NCAs not to take supervisory action or to suggest amendments to EU law in exceptional circumstances where the application of a specific act may lead to significant issues.

There have been examples of practical difficulties in implementing regulation due, for example, to a lack of clarity leading to operational challenges, conflicting rules or delays in the Level 2 and 3 legislation. Also, in the context of the onset of the COVID-19 pandemic, regulators rightly recognized the challenges for businesses in implementing comprehensive legislation within the foreseen timeframes and offered no action and forbearance statements, illustrating the need for mechanisms where the ESAs can temporarily commit not to enforce financial market participants' non-compliance with specific provisions of Union law.

As alluded to in our response to question 1.2.2 other jurisdictions like the US have installed the no action tool where it has proved its effectiveness.

## 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.

Indeed, some jurisdictions have introduced no-action letters.

The US has introduced this tool for situations where staff at the respective regulator has decided not to recommend enforcement action for what may otherwise be considered non-compliance with a specific regulatory requirement. In the US for example staff at the SEC and CFTC may provide written relief or guidance on US regulation, usually in response to a request, in the form of a no-action or interpretative letter. A requester may seek a no-action letter from staff in the relevant division of the SEC/CFTC where it seeks assurance that the staff will not recommend an enforcement action against it based on the facts and representations described in the request. Such requests often pertain to regulations where ambiguities exist or where there may be unintended consequences for certain entities. Based on an assessment, the SEC /CFTC could recommend not to take enforcement action in case of non-compliance towards the requester. This letter cannot automatically be relied upon by other parties unless the authorities decide otherwise. No-action letters may be withdrawn at any time. Importantly, no-action letters bind only the staff of the division that issued the letter and do not bind the SEC/CFTC itself.

Note that both the SEC and CFTC can also issue exemptive letters, where permitted by law. In such cases, the relevant law would permit the regulator to exempt an entity from the requirements of the law if the regulator considers it to be in the public interest. The key difference from no-action relief is that exemptive relief binds both the staff and the SEC/CFTC itself.

In Singapore, there is no codified “no action letter mechanism” available under the key financial statutes. However, the Monetary Authority of Singapore (“MAS”) can grant staggered compliance with the coming into force of certain statutory obligations on the basis that such a change would require substantial investment in technology or modification of existing operational processes. Alternatively, the relevant statutes do allow for the MAS to exercise its regulatory discretion to waive compliance with certain requirements or to exempt compliance with the relevant obligations, on a case by case basis.

In comparison, the ESAs may issue non-binding recommendations to NCAs not to take supervisory action in exceptional circumstances where the application of a specific act may lead to significant issues . In case of concerns about the functioning of markets, the ESAs may also provide forbearance statements in relation to Art. 31 of the ESA Regulations.

DBG finds the existing no action letter tool adequate having regard to similar powers of other regulators abroad, and that it ties well into the existing distribution of powers between the Commission, ESMA and the NCAs.

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

*5000 character(s) maximum*

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.

In the context of the Covid-19 pandemic, regulators rightly recognized the challenges for businesses in implementing comprehensive legislation within the foreseen timeframes and offered no action and forbearance statements, illustrating the need for mechanisms where the ESAs can temporarily commit not to enforce financial market participants' non-compliance with specific provisions of Union law. We have, however, noted that ESMA has issued only a very limited number of no action letters since the 2019 ESA Review entered into force compared to forbearance statements to ensure coordinated approaches among NCAs, in particular during the Covid-19 pandemic. The no action letter and forbearance statements provided by ESMA in particular during the Covid-19 pandemic have been helpful in most cases.

One example of a helpful no action letter was the ESMA statement in April 2020 regarding disclosure requirements relating to sustainability-related disclosures for benchmarks. This was published since, while Level 1 was becoming applicable on 30 April, the Delegated Act (setting out the detailed requirements on how to apply the legislation) had still not been published at the time of publication of the no action letter, which was 29 April. In this instance, ESMA rightly recognized that administrators need clarity on how to apply requirements and that the absence of the Delegated Act gave rise to significant issues due to legitimate doubts on the legal consequences and proper application of the requirements.

As Brexit as well as the Covid-19 pandemic have changed the global realities in which the EU finds itself, we strongly welcomed that ESMA provided a forbearance statement on MiFIR open access provisions for Exchange Traded Derivatives (ETDs) last summer and importantly the prolongation of the ETD exemptions until July this year. Nevertheless, we strongly support the Commission's intention to review Art. 35 and 36 MiFIR as part of this year's broad review of the legislation, taking into consideration the negative impact of the provisions on the EU ETDs markets to preserve the EU's financial stability and to ensure its competitiveness at global level. In this context, we would also welcome if ESMA and NCAs would consider taking action under the form of a forbearance or no action relief until the matter has been reviewed by the co-legislators.

Another very helpful example of a forbearance statement was about the SFTR postponement issued on 19 March 2020, i.e. soon when Covid-19 crisis started. We appreciated that following feedback from the market due to some prevailing unclarity ESMA has even issued a revised statement on 26 March 2021

The forbearance statement in March 2021 to provide legal clarity about the application of MiFID quick fix provisions was highly appreciated by DBG – the implementation timeline provides a 12 months transition period but due to the fact that the quick fix was meant to provide short-term relief amidst the crisis, ESMA's statement on the application of the revised position limits regime which has a similar effect like a no action letter helped to bridge the gap and provide legal certainty.

Further, regarding the application of the recently agreed MiFID quick fix to provide urgent relief in response to the Covid-19 crisis, ESMA's most recent forbearance in relation to RTS27 Best Execution is most welcome as it provides helpful guidance and certainty to the market until the entry into force of the amendments to MiFID II are transposed on national level.

However, we have also noted that ESMA provided a delay of the tick size regime for systematic internalisers (SIs) under MiFIR and the IFR as a response to the Covid-19 pandemic. To ensure a level playing field amongst trading venues and SIs the application of the tick size regime is an important element. Hence, in a case like this, we would appreciate that ESMA takes the importance of achieving a level playing field more into consideration when taking a decision to delay especially when there has been sufficient time to make all necessary adjustments beforehand.

### 1.3 Peer reviews

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

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

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

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

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

*5000 character(s) maximum*

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

**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.

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

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

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

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

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

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

**1.4 Other tasks and powers**

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

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



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

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

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

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

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

*5000 character(s) maximum*

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

DBG appreciates enhanced coordination between the ESAs as well as between the ESAs and the NCAs for fostering consistent supervisory approaches. Nonetheless, setting strategic targets and priorities in context of the strategic supervisory plan should not lead to de facto binding standards for NCAs, but should rather leave enough flexibility for national best practices and particularities (no "one size fits all" approach).

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

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

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

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

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

*5000 character(s) maximum*

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

The existing powers have recently been strengthened through the 2019 ESA Review (i.e. no action letter, peer reviews, Breach of Union Law, settlement of disagreements, common supervisory handbook, EU-wide supervisory priorities) and appear comprehensive and complete. Nevertheless, the review clause of the no-action letter could be deleted from the current Level 1 text to provide for a permanent tool.

**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.

**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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial independence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Appointment and dismissal of governing body	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Accountability and transparency	<input type="radio"/>	<input type="radio"/>	<input 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 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.

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

*5000 character(s) maximum*

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.

Please see our answer to questions I and III and questions 1.1.1, 1.7.2 and 3.2. Generally, ESMA has the appropriate mandate and tools to pursue supervisory convergence. These tools have just been strengthened through the 2019 ESA Review. It remains to be assessed at a later stage whether the tools led to the intended outcome. Considering that the cooperation between the competent authorities and ESMA generally works fine, it seems like the adequate approach to take one step at a time in order to avoid decisions that lead to a deterioration of the current setup.

Focus should now be on fully delivering on the convergence mandate using the existing tools. In this regard, we would take the opportunity to reiterate the messages voiced in our response to the CSDR consultation regarding harmonization across NCAs and Member States.

Another area for improvement that we have identified in this context regards the ESMA databases and registers to ensure accurate data.

Generally, DBG highly appreciates ESMA’s work on data quality in the context of pre- and post-trade transparency under MiFID II/MiFIR. In this context, we would see additional value for supervisory convergence across the EU which could result in the establishment of a “single reporting rulebook for transactions executed outside of trading venues in the EU” in form of mandatory Guidelines for EU

investment firms. In order to achieve correct off-venue reporting – which would highly contribute to data quality – it is of essence that clear rules, and reporting scenarios are being established in detail, understood by the reporting parties and applied and finally being enforced. Different interpretations of regulatory requirements may lead to reporting inconsistencies and may result in incorrect data overall. ESMA already has provided additional guidance in their Q&As on MiFID II and MiFIR transparency topics, which we deem to be very helpful. Still we would see additional room for the application of EU wide applicable Guidelines, to be developed in more detail by involving all NCAs as well as the industry via public consultations. We therefore would see merit in relevant Q&As to be turned into Guidelines for investment firms and SIs at member state level, enriched with clear trade reporting scenarios, including correct flagging of transactions.

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

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

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

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

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

*5000 character(s) maximum*

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

We appreciate the publication of ESMA's annual work program. However, we would welcome more information on the timing of listed actions. For example, ESMA's requests for information and data should be published. The requests should have sufficient lead time to allow accurate and detailed responses, i.e. three months.

**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.

Please also see our response to section 1.8 when it comes to ESMA's product intervention powers generally and our response to question 1.10.2 on payment for order flow.

**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.

Please also see our responses to questions 1.1.1 and 1.4.6.

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

	Yes	No	N.A.
Before 2019 ESAs' review	<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 EBA:**

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

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

---

**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 EBA: 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 1.5.6 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 EBA: Why do you think the use of these EBA's powers has been limited?**

**Please explain how these processes could be improved:**

*5000 character(s) maximum*

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

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

**Please explain your answer to question 1.6.1 for EBA:**

*5000 character(s) maximum*

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

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.

Generally, the G20 reforms have born their fruits and our financial markets are more stable and resilient than 12 years ago. Despite unprecedented market volatility, exchange organizations and financial market infrastructures have functioned well during the COVID-19 pandemic and helped ensuring well-functioning price formation and risk management procedures. Also, EU and national regulators and supervisors responded swiftly to the crisis and reprioritized their work programs to provide extraordinary measures. The coordination by ESMA of NCA action allowed market operators to focus on ensuring that markets continued to function in an orderly and transparent manner despite the extreme trading conditions triggered by the COVID-19 crisis thus ensuring financial stability. We believe ESMA has done a good job responding to the crisis. Further, in the aftermath of the crisis, ESMA has provided helpful analysis of market developments and trends to inform the industry and policy makers.

In the following we would like to comment on several ESMA crisis response examples.

As mentioned in our response to section 1.2, we have welcomed that regulators rightly recognized the challenges for businesses in implementing comprehensive legislation within the foreseen timeframes and offered no action and forbearance statements. Thus, we have welcomed the ESMA forbearance statements in context of the SFTR postponement issued on 19 March 2020, i.e. soon when COVID-19 crisis had started; and that following feedback from the market due to some prevailing unclarities ESMA has issued a revised statement on 26 March 2020. Also, in the context of open access provisions for ETDs under MiFIR we strongly welcomed the ESMA forbearance statement to prevent financial stability risks, while we were concerned of the delay of the application of the tick size regime for SIs under MiFIR and the IFR and the settlement discipline regime under the CSDR. Further, during the crisis we would have welcomed regular roundtables under EMIR and SFTR with Trade Repositories as in previous years, however, we welcome ESMA's initiative to have them online in 2021 to discuss upcoming changes in Level 1, 2 or 3

As outlined in our response to the recent CSDR review consultation by the European Commission, we have not seen the need for a delay of the Settlement Discipline Regime (SDR) under the CSDR as a response to the COVID-19 pandemic. Statistical evidence on the COVID-19 crisis impact on settlement efficiency from ESMA shows the spikes in failures to deliver in March 2020, in line with increased trading activity in the midst of the COVID-19 crisis. On the contrary to industry concerns, ESMA reports that "most settlement fails were resolved between one and five days after the intended settlement date" (see page 24, ESMA report on trends, risks and vulnerabilities, No. 2/2020). Considering the extension periods outlined in the SDR, the vast majority of failed settlements would likely not enter the mandatory buy-in. This shows that current extension

periods are calibrated accurately and seem to be fit-for-purpose even in a crisis scenario with increased levels of settlement fails. Any call that the SDR regime would have caused further stress on the financial system in the COVID-19 crisis is not supported by the evidence given. We have also conducted an analysis based on real trade data provided by medium/large-sized financial institutions. Our results are in line with the ESMA report It also shows that there is a need for a mandatory buy-in regime. The potentially negative impact of the SDR should not be overestimated considering the lack of data evidence. It rather should be embraced as an enabler to tackle operational process deficiencies.

**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 checked="" 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 checked="" 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 checked="" type="radio"/>
Liquidity risks arising from margin calls	<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 1.6.2:**

*5000 character(s) maximum*

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

We are fully supportive of the approach to draw lessons learned out of turbulent market times to further improve robustness of the financial system as a whole. Taking a look at how CCPs have performed margin calls in the turbulence triggered by the COVID-19 situation, we want to emphasize that it was proven that the system as a whole showed to be well functioning and very robust. Thus, adding perspectives to the stress scenarios of the regular stress tests is certainly a good recommendation. At the same time decisions taken changing the current setup should always ensure to be an improvement of the current setup.

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

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

---

**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.

The coordination by ESMA of NCA action allowed market operators to focus on ensuring that markets continued to function in an orderly and transparent manner despite the extreme trading conditions triggered by the COVID-19 crisis thus ensuring financial stability.  
Please also see our response to question 1.6.1.

---

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

- Yes
- No

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

**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.

DBG believes that ESMA should have all the powers it needs to ensure coordination and convergence in events that require urgent response. However, any potential emergency intervention powers for a coordinated crisis response must be precisely stipulated in the legislation to ensure legal certainty.

**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.

DBG believes that ESMA should have all the powers its needs to ensure coordination and convergence in events that require urgent response. However, any potential emergency intervention powers for a coordinated crisis response must be precisely stipulated in the legislation to ensure legal certainty.

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

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

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

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

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

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

*5000 character(s) maximum*

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

DBG is of the opinion that coordination between the authorities on all levels becomes increasingly important. However, we would also highlight the need for increased efficiency in contrast to adding more complexity. For example, establishing new bodies/networks within authorities with new reporting lines would not be beneficial, if they ultimately slowed down the time for coordination. Further, in order to avoid double-reporting, we would recommend more streamlined reporting processes as well as the re-use of data, where it is appropriate and within the mandate of authorities.

---

**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



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

*5000 character(s) maximum*

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

The coordination role of ESMA has been strengthened through the 2019 ESA Review. DBG believes ESMA has effective tools at hand.

In fact, DBG is of the opinion that coordination between the authorities on all levels becomes increasingly important. However, we would also highlight the need for increased efficiency in contrast to adding more complexity. For example, establishing new bodies/networks within authorities with new reporting lines would not be beneficial, if they ultimately slowed down the time for coordination. Further, in order to avoid double-reporting, we would recommend more streamlined reporting processes as well as the re-use of data, where it is appropriate and within the mandate of authorities.

As alluded to above, we would welcome a publicly available timeline on ESMA's requests for information and data, which should be in line with other ESA's requests. Those requests should have sufficient lead time for response.

Further, as outlined to in our responses to questions 1.1.1 and 3.2, we also see room for improvement in relation to the tools that authorities manage and which serve as coordination tools between authorities. As financial market regulation has installed a quantitative regulatory and supervisory approach which heavily depends on data consistency and availability, we are concerned about shortcomings in terms of incomplete data or inaccurate values in ESMA registers and databases, such as FIRDS or the register of MiFID II/MiFIR Trading venues/Systematic internalisers/Data Reporting Service providers, CCPs lists or the benchmark register.

Nevertheless, we welcome the new role of ESMA to take into account ESG factors in their monitoring and coordination work. When it comes to sustainable finance in general, the ESAs have showed their ability to coordinate amongst each other and leverage expertise via their joint consultations and reports with accompanying RTSs on sustainability topics (such as Taxonomy, SFDR etc.). DBG believes coordination between the ESAs and NCAs is key when it comes to sustainable finance going forward, in order to avoid a patchwork of different labels and standards. As the Sustainable Finance regulatory landscape is becoming increasingly complex, we also see an important role for the ESAs in guiding financial markets participants and issuers on how to implement some of the proposed measures, in this regard we have highly appreciated practical examples and mock-ups provided on disclosure rules etc. and would appreciate further work in this regard.

We would also like to highlight that we see a coordination role for ESMA when it comes to the European Single Access Point (ESAP). We would support the CMU High-Level Forum report's recommendation on a hybrid structure, whereby public information is submitted only once by companies at national level (to OAMs /NCAs in the first step, and potentially to other authorities/bodies in the future) and then being centrally collected, aggregated and disclosed by ESMA (and by the relevant authority for any potential information beyond ESMA's remit) at EU level via system specifications provided by ESMA. In view of fostering supervisory convergence and genuinely integrated capital markets, we consider that ESMA should be entrusted with the supervision and maintenance of the ESAP. However, reporting requirements should remain under the supervision of respective NCAs.

**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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Adopt guidelines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Adopt recommendations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

*5000 character(s) maximum*

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

As the new convergence competences of the ESAs in relation to facilitating the entry into the market in relation to technological innovation just kicked in in early 2020 we have so far no practical experience with this and hence are not able to comment on this question.

**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.

In our opinion the established framework to request data on an ad-hoc basis where suspicion of market abuse exists is suitable and sufficient for achieving the intention of the law. So far, there were not any potential shortcomings or deficiencies of the existing regime identified; rather, the exchange of information between NCAs according to the rules and procedures of the existing regime actually facilitated the detection of market abuse also in a cross-border context. Against this background, we would warn against any establishment of a regular reporting mechanism as we do not see any benefits, but rather a large burden for both NCAs and trading venues in terms of adapting their IT-infrastructures, with little to no improvement on monitoring efforts. We are concerned that broad and continuous data reports might distort the picture, and would rather impair, than improve the monitoring efforts of the competent authorities. We believe that the established framework of having ad-hoc requests on a subset of data in specific cases of market abuse suspicion has proven its efficiency and does not need to be modified.

**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

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

*5000 character(s) maximum*

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

Please also see our response to question 1.7.1.

---

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

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

**Please explain your answer to question 1.7.5 on EBA:**

*5000 character(s) maximum*

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

From DBG's point of view, the ESAs fulfill their coordination role effectively and sufficiently. For example, the guidelines of EBA and ESMA on cloud-outsourcing seem to have a positive harmonizing effect on the NCA's activities in this regard.

However, as the set-up will most likely change due to DORA with regard to critical ICT-service providers, like CSPs, the right balance needs to be ensured when it comes to outsourcing: effective control of third-country service providers must be possible, while the usage of third-country service providers should not be too burdensome for EU firms.

---

**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.

From DBG's point of view, the ESAs fulfill their coordination role effectively and sufficiently. For example, the guidelines of EBA and ESMA on cloud-outsourcing seem to have a positive harmonizing effect on the NCA's activities in this regard.

However, as the set-up will most likely change due to DORA with regard to critical ICT-service providers, like CSPs, the right balance needs to be ensured when it comes to outsourcing: effective control of third-country service providers must be possible, while the usage of third-country service providers should not be too burdensome for EU firms.

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

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

*5000 character(s) maximum*

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

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### 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.

EU financial regulation has rightly set investor protection as one of its most important political objectives. DBG supports increased investor protection across sectoral legislation and actively promotes investors' access to capital markets and broad spectrum of investment possibilities. Thus, we are of the view that proportionality is key and that rules should not become overly prescriptive in order not to create any disincentives for retail participation in capital markets.

In this context, authorities might want to take into consideration to take a cautious approach as regards product intervention mechanisms.

DBG fully shares ESMA's objective of safeguarding investor protection and agree that some product intervention measures at European level might occasionally be necessary for specific products. For instance, we support ESMA's product intervention measures on binary options and contracts for difference (CFDs).

These products are not suitable for retail clients and the measures serve to promote investor protection. Product intervention measures should always be proportionate and appropriate, as is the case with ESMA's measures on the above-mentioned instruments. We therefore support that ESMA explicitly excluded turbos from the product intervention measures on the provision of CFDs and binary options in 2018, as these are predominantly traded on regulated markets or MTFs with associated levels of trade transparency, strict trading rules and independent market surveillance.

Generally, the investor protection regime should not work as a market entry barrier for new products and assets catering for retail investors' needs as well as for professional investors' needs (e.g. exchange traded derivatives in relation to risk management and hedging purposes). Where investor protection concerns do arise, they rather result from misconduct and/or overly burdensome provisions.

Against this background, we argue to take a prudent and nuanced approach when it comes to assessing the need to take supervisory action against certain products. As an important principle, the well-conceived and highly integrated safeguards and organizational requirements for regulated trading venues as established by MiFID II should be considered as a differentiating factor. When designing and implementing the MiFID II regulatory framework, policy makers and supervisors rightly acknowledged the beneficial contribution that these regulated trading venues bring to markets – not only but in particular for those asset classes that are at early stages of their product lifecycle and hence their readiness to be shifted from OTC to central infrastructures, like trading venues and CCPs, based on the G20 commitment in 2009. Allowing products to be transferred from opaque to transparent environment makes them available for trading in a secure, transparent and well-established exchange environment. These undisputed achievements of MiFID II to enhance the safety, integrity and supervision of trading in a regulated environment should be leveraged and further enhanced for any investor protection measures as well. A CFD in the OTC space, vulnerable to fraudulent players should not be mixed in the same category with products that might resemble similar product features but are embedded in a robust regulatory/ legal, functional and technical environment offering utmost investor protection.

Finally, we would like to highlight the very essential contribution to investor protection by market operators as well as financial market infrastructures in times of market stress. They organize fair and transparent markets to finance businesses and offer investment opportunities available to investors, delivering highest levels of investor protection. They provide for a resilient environment for investors, issuers and market members enabling them to fulfil their needs with arrangements that protect investors. Especially in the unprecedented Covid-19 crisis, continued trading on trading venues allows for loss-mitigation measures and risk management by investors. The controls and numerous safety mechanisms installed by trading venues, such as circuit-breakers, in place are working normally and with the necessary flexibility to meet markets' demand.

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

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

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

*5000 character(s) maximum*

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



-----

**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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reviewing market conduct	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing indicators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to a level playing field	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial literacy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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.

Please also see our response to question 1.8.1. DBG fully shares ESMA's objective of safeguarding investor protection and appreciate that ESMA's investor protection mandate has recently been strengthened through the 2019 ESA Review. Nevertheless, we argue to take a prudent and nuanced approach when it comes to assessing the need to take supervisory action against certain products. As an important principle, the well-conceived and highly integrated safeguards and organizational requirements for regulated trading venues as established by MiFID II should be considered as a differentiating factor as regulated markets or MTFs ensure high levels of trade transparency, strict trading rules and independent market surveillance. We therefore think that a regular assessment if a prolongation of an investor protection intervention is required would be beneficial.

**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.

Please also see our response question 1.8.1. DBG fully shares ESMA's objective of safeguarding investor protection and appreciate that ESMA's consumer and investor protection mandate has recently been strengthened through the 2019 ESA Review. We believe that the current scope of Art. 9(5) of the ESMA Regulation is sufficient for ESMA to fulfil its mandate.

Generally, we argue to take a prudent and nuanced approach when it comes to assessing the need to take supervisory action against certain products. As an important principle, the well-conceived and highly integrated safeguards and organizational requirements for regulated trading venues as established by MiFID II should be considered as a differentiating factor as regulated markets or MTFs ensure high levels of trade transparency, strict trading rules and independent market surveillance.

---

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

*5000 character(s) maximum*

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

---

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

*5000 character(s) maximum*

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

---

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

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

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

*5000 character(s) maximum*

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

*5000 character(s) maximum*

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

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

*5000 character(s) maximum*

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

---

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

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

**Please explain your answer to question 1.8.8 for EBA:**

*5000 character(s) maximum*

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

---

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

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

## **Please explain your answer to question 1.8.8 for ESMA:**

*5000 character(s) maximum*

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

Please see our response to question 1.10.2 as regards payment for order flow.

## **1.9 International relations**

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

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

*5000 character(s) maximum*

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

Through Art. 33, DBG welcomes that the role of EBA in the third country dimension has been significantly strengthened through the 2019 ESA Review.

Please also see our response to question 1.9.2 for further details.

### **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.

Through Art. 33, DBG welcomes that the role of ESMA in the third country dimension has been significantly strengthened through the 2019 ESA Review.

Please also see our response to question 1.9.2 for further details.

---

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

*5000 character(s) maximum*

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

When it comes to the third country dimension, it is of importance to ensure a consistent, risk-based approach in the EU. The EU's equivalence decisions framework should balance out the imperatives of preserving multilateral open markets, whilst promoting a case-by-base risk-based approach to safeguard its stability and growth. As mentioned above, DBG therefore welcomes that the role of the ESAs in the third country dimension has been significantly strengthened in terms of assisting the Commission in equivalence decisions, equivalence monitoring and cooperation arrangements with third country authorities.

---

**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.

When it comes to the third country dimension, it is of importance to ensure a consistent, risk-based approach in the EU. The EU's equivalence decisions framework should balance out the imperatives of preserving multilateral open markets, whilst promoting a case-by-base risk-based approach to safeguard its stability and growth. As mentioned above, DBG therefore welcomes that the role of the ESAs in the third country dimension has been significantly strengthened in terms of assisting the Commission in equivalence decisions, equivalence monitoring and cooperation arrangements with third country authorities. Further positive adaptations for ESMA's role in the third country dimension have been included in EMIR 2.2. In light of Brexit, we understand that ESMA is taking stock of market developments since the end of the transition period. We believe it is important that ESMA strategically monitors as part of its mandate under Art. 33 ESMA-R any regulatory divergence in the UK in preparations of equivalence discussions.



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

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

---

**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

**If you identify areas for improvement for ESMA, please specify:**

*5000 character(s) maximum*

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

Based on the recent expansion of ESMA powers through EMIR 2.2 and ESA Review for equivalence assessment and monitoring, third country CCPs and critical benchmarks, the risk-based recognition approach for third country CCPs to trading venues and CSDs as foreseen in the review clause of the ESAs Review is an effective next step to ensure a consistent, risk-based approach to third country entities in the EU. This would include further tasks for ESMA when it comes to equivalence assessment and monitoring of equivalence conditions in these two areas. We also note that ESMA already has supervisory powers over third-country CSDs as set out in Art. 25 and Art. 20 CSDR. Further supervisory tools would be warranted in the case that the cooperation with the relevant third-country supervisor of the third-country CSD is not satisfactory, which would however rather speak against equivalence in the first place or suggest a revocation of recognition once granted.

We make reference in this regard to the messages voiced in our response to the CSDR Targeted Consultation.

Further, in light of Brexit, we understand that ESMA is taking stock of market developments since the end of the transition period. We believe it is important that ESMA strategically monitors as part of its mandate under Art. 33 ESMA-R any regulatory divergence in the UK in preparations of equivalence discussions.

---

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

*5000 character(s) maximum*

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

---

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

*5000 character(s) maximum*

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

---

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

*5000 character(s) maximum*

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

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

Under Articles 17 (breach of Union law), 18 (action in emergency situations) and 19 (settlement of disagreements between NCAs in cross-border situations/binding mediation), in case a competent authority fails to ensure that a market participant or financial institution complies with requirements directly applicable to it, the ESAs have the power to investigate the alleged breach or non-application of Union law and, following a specified procedure and under certain conditions, adopt an individual decision towards the market participant or financial institution requiring it to comply with EU law.

---

### Question 1.10.1 EBA: How do you assess the role of EBA 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 1.10.1 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.

Please see our response to question 1.5.1

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

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

**Please explain your answer to question 1.10.2 for EBA:**

*5000 character(s) maximum*

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.

Please also see our comments to section 5 of this consultation where we highlight that a more consistent application of existing EU rules and enforcement of these rules could be facilitated by moving from directives to more regulations where appropriate and proportionate. Such a move could be coupled with effective guidance on Level 2 and 3 on how to apply certain provisions in practice, ideally based on an efficient process to take into account the feedback by the industry. However, as outlined in our responses to section 1 of the consultation, we think that ESMA and the other ESAs have the right set of tools to ensure supervisory convergence.

To provide an example, we take the issue of payment for order flow. For this ESMA might want to consider using its strengthened tools of supervisory convergence, such as a common supervisory action. The sharing of supervisory practices across national competent authorities would help ensure a common understanding of payment for order flow practices and enhance investor protection. If needed, according to the current legislation, NCAs would have the discretion to prohibit payment for order flow on the national level where they find that MiFID II rules on conflict of interests and inducements are not met. In fact, this has already been done in the UK when it was still part of the EU and in the Netherlands.

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

-

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

**Please explain your answer to question 1.10.3:**

*5000 character(s) maximum*

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

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

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

**Please explain your answer to question 1.10.4:**

*5000 character(s) maximum*

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

---

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

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

---

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

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

## 2. Governance of the ESAs

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### 2.1 General governance issues

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

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

**Please explain your answer to question 2.1.1:**

*5000 character(s) maximum*

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

The revised Art. 42 ESA-R ensures objectivity and independence in the decision-making procedure. Generally, the governance arrangements of ESMA are essential to deliver effective supervisory convergence, ensuring adequate reflection of the diversity of the EU financial ecosystem and that decisions are made without taking a "one size fits all" approach. Therefore, clear responsibilities, rules for decision-making and procedures that avoid redundancies and organizational overhead and allow for efficient processes to handle situations of market stress, are of importance.

Against this background, the governance and decision-making arrangements as set out in the Level1 text of the 2019 ESA Review level occur accurate and function well in our view, in particular considering the roles of NCAs when it comes to fiscal responsibility.

It should also be kept in mind that ESMA's governance arrangements are closely related to its funding, hence any changes in either area would have to result in a re-distribution of both contributions and voting-rights based on the provision of financial services across Member States.

**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.

The revised Art. 42 (3) and (4) ESMA-R ensure a straightforward procedure for Board of Supervisors' members and other participants of Board of Supervisors' meetings to declare ahead of such meetings the absence/existence of any interest which may be considered prejudicial to their independence, and to abstain from participation if needed.

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

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

**Please explain your answer to question 2.2.2.1:**

*5000 character(s) maximum*

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

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

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

**If you identify any shortcomings for EBA 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.

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

	1 (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

**Please explain your answer to question 2.3.1:**

*5000 character(s) maximum*

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

DBG is of the opinion that efficient supervision requires adequate resources, in terms of staff and funding. It should be kept in mind that ESMA's governance arrangements are closely related to its funding, hence any changes in either area would have to result in a re-distribution of both contributions and voting-rights based on the provision of financial services across Member States.

Cost inefficiencies and duplication of the funding requirements for supervised entities at national and EU level in the future should be avoided.

This also applies when it comes to duplication of tasks e.g. to develop databases on European level, where the significant resources that have already been spent on developing national ones are not always taken into account and potentially with industry having to provide funding twice.

Policy makers and regulators should always perform cost benefit analyses and consider the potential return on investment in launching new initiatives requiring funding.



**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.

The supervisory expenditure by the ESAs is allocated partly from the EU budget and partly from national competent authorities (collecting indirect fees from supervised market participants in relation to ESMA's respective expenditure), so that the ESAs should have sufficient resources to perform their tasks. Since the ESAs started their operation, staff and financing needs have been adjusted depending on the growth in tasks and mandates until today.

**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.

DBG welcomes the excellent culture of establishing and consulting the different ESAs' stakeholder groups with the opportunity to provide experiences of market participants and discuss relevant topics. Stakeholder engagement is critical in order to ensure a sound exchange between those who innovate and create markets, jobs and growth and those who supervise and regulate them. Only by so doing the best possible outcome for the markets can be found. Consultations also provide an opportunity for the ESAs to assess if there are any aspects, they have not yet considered in preparing a proposal. We therefore appreciate the open nature of the ESAs' consultations that facilitates providing input on additional aspects, would however like to raise attention that comprehensive consultations should leave enough time for the industry to respond, i.e. three months. DBG also welcomed the strengthened role of stakeholder groups and the industry in the 2019 ESA Review on issues related to Arts. 10 to 16, 29, 30 and 32 (RTS, ITS, guidelines & recommendations, common supervisory culture, peer reviews and stress tests).

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

	1 <small>(lowest quality)</small>	2	3	4	5 <small>(highest quality)</small>	Don't know - No opinion - Not applicable
General consultations launched by EBA	<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 EBA:**

*5000 character(s) maximum*

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

Generally, we think that the consultations and data surveys are very detailed and provide helpful analysis. We also welcome that ESMA not only issues very complete and comprehensive consultations but is also open for dialogue, where necessary, during or after the response period to help inform their understanding of the different views and input received. We would also like to highlight the importance of public consultations which allow everyone to respond compared to industry initiatives only with a view to ensure transparency in decision making procedures.

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

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

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

*5000 character(s) maximum*

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

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

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

**Please explain your answer to question 2.4.3 for EBA:**

*5000 character(s) maximum*

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

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**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.

Please see our response to question 1.4.7.

**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.

Art. 37 ESMA-R ensures that the SMSG is composed of 30 members from all relevant sectors based on a balanced representation, with 13 members to represent in balanced proportions financial market participants, 13 members to represent employees' representatives, consumers and SMEs, 4 members to be independent top-ranking academics.

### 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.

DBG would welcome more transparency on the work by the groups. Often, only the composition of the groups is publicly available. Neither agendas and protocols nor outcomes/decisions/recommendations are published. For the benefit of transparency, we would encourage ESMA to consider adjustments regarding these procedures.

## 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 checked="" type="radio"/>	<input type="radio"/>
Trade Repositories under SFTR	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.

DBG, following the feedback from the one of its entities directly supervised by ESMA, considers that ESMA’s direct supervisory powers in the field of trade repositories under EMIR and SFTR have been significantly increased during the last years and we asses them with the highest rate, we consider that now ESMA has ample powers to execute its supervisory tasks.

Regulation (EU) 2019/834 (EMIR Refit) and the corresponding Regulatory and Implementing Standards widened the scope of the infringements that Trade Repositories could be subject to. Commission Delegated Regulation (EU) No 667/2014 supplementing EMIR on procedure for penalties imposed on trade repositories

was also amended in light of EMIR Refit. The adopted Delegated Regulation (C(2021) 339 final) introduces several changes concerning the rights to access to the file of the persons subject to the investigations, the amount of the fines and periodic payments that ESMA can impose on trade repositories and the right of defense, giving ESMA the power to adopt interim decisions on trade repositories.

Therefore, we consider that these amendments are sufficient to allow ESMA to perform its direct supervision powers.

Their direct supervisory powers allow ESMA to request Trade Repositories any information and we are regularly in touch with them on different topics. For example, during the year 2020 on average we have exchanged around 27 communications (from and to ESMA) per week while in the Q1 2021, there was an average of around 35 e-mail exchanges per week.

**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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trade Repositories under SFTR	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.

DBG assesses ESMA’s performance as a direct supervisor of the Trade Repositories (TRs) under EMIR and SFTR at the neutral rate, from the registration process and the system set-up, to the ongoing monitoring after registration. We see as a positive point that TRs have always been supervised by ESMA, which has allowed for a continued and simultaneous maturing.

Its harmonized approach and expectations for supervised firms, has also allowed firms to leverage on guidance issues even if not directly applicable (e.g. Internal Control guidelines for CRAs can be used as best practices by TRs).

To facilitate ESMA’s ongoing supervision of TRs on a consistent basis the “Guidelines on periodic information and notification of material changes to be submitted to ESMA by Trade Repositories” were developed establishing very high reporting requirements for TRs supervised under EMIR and SFTR, which

were encouraged to be followed even before they entered into force. While we welcome ESMA's initiative to standardize the reporting and clarify the requirements, we note that ESMA has significantly increased a volume of information to be reported that demands considerable efforts from TRs. In addition to notify the material changes to the conditions of registration without delay as per the regulatory requirements under Article 55(4) of EMIR and Article 5(4) of SFTR, the guidelines oblige to report periodic information items, which in comparison to previous reporting request by ESMA has increased in number and details to be provided according to the new established standards (e.g. templates) and within the strict timeline. Not in all occasions it is clear how required information to be reported periodically will benefit to ESMA Supervision's role (e.g. Board meetings agenda). We would recommend to periodically review the guidelines and decrease the number of periodic reporting items that not add significant value to the risk assessment.

There are also other areas identified for improvement.

The timing of informing TRs on upcoming legislative and technical requirements that are technically sensitive is very important. We consider that ESMA could improve in this sense and inform in advance, as in past years on several occasions TRs were receiving vital technical documentation (e.g. Validation rules, ISO schemas etc.) quite close to the implementation deadlines and not yet finalized, which has been changing and, thus, has complicated the system preparation for the launch date.

These issues for example could have been addressed in regular roundtables with TRs. Thus, we welcome ESMA's initiative to launch a series of virtual roundtable events with TRs in 2021, which we expect would help TRs with planning given that in this forum ESMA would inform about timeline of upcoming changes in level 1, 2 and 3 legislation, which were missed in some occasions during 2020 (e.g. SFTR portability guidelines, Guidelines on Periodic information etc.) In addition, we see as a positive thing the internal ESMA restructuring in regard to Supervision of TRs, which we believe could now tackle previous "mis-communications", when contradictory statements were received from different ESMA teams, like in regard to preparations for Brexit and the end of the Implementation Period. We consider that ability to learn from past mishaps and open communication are two of the best features about ESMA.

The other area of improvement is ESMA registers in regard where NCAs have to provide information to ESMA as commented under question 1.7.2 For example, database of "MiFID2/MiFIR Trading venues /Systematic internalisers/Data Reporting Service providers" is not up to date regarding Mic Codes, where some are missing in the system according to the NCAs that contacted us for access to data. Same with the CCPs list, which is not complete. This complicates the onboarding process of authorities at the TR as ESMA databases to be used as reference are not accurate. In addition, there is Q&A 37 which requires ESMA to make available the ISIN list upon NCAs information, however, it is still not available. In relation to benchmarks, the data source available at ESMA register only lists the benchmarks administrators for which the authorities are competent for, without providing further granularity on benchmarks' references, which is needed for TRs for establishing access to data. Therefore, we would welcome ESMA's initiative to review its registers.

### **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.



In only 10 years, ESMA has become the vital hinge of supervisory cooperation and oversight for EU capital markets. In this context, significant progress in ESMA's role has recently been achieved through the ESA Review, on the clearing front, as well as on the third country dimension.

However, the division of supervisory tasks between the national and the EU level has proven to be efficient, reflecting different areas of expertise at different supervisory levels. Currently, NCAs know the local markets best based on national legal frameworks as well as an in-depth understanding of the business models of supervised entities. It should also be taken into account that as long as there is no single rulebook but fragmented national legal frameworks with regard to e.g. taxation, insolvency law, securities law, etc. a lot needs to stay in discretion of NCAs.

The right way forward in our view is to further improve the existing supervisory structures towards better coordination and cooperation of NCAs and ESAs. This would enable the ESAs to best pursue their current tasks of achieving more convergence and harmonization in national interpretation and application of EU legislation. In this context, ESMA and EBA's coordination as well as Level 2 and Level 3 work to provide guidance to NCAs is welcome. Ensuring consistency across NCAs is key to contribute to a well-functioning financial system. Importantly, there is however a difference between improving consistency and convergence on the one hand and asking for more powers for ESMA on the other hand. Hence, the starting point for questions around ESMA's immediate future should evolve around a serious fulfilment of its current tasks.

In light of the ambition to progress on the CMU, we therefore support a common supervisory culture and enhanced and balanced convergence to ensure a level playing field within Europe. However, any further integration should give due consideration to the pace and resources for the transition to an EU level supervision, whilst reflecting on how national supervisors should continue being part of the supervisory system, as they hold both the expertise and the fiscal responsibility - as recommended by the CMU High Level Forum.

As alluded to above, and against the background of ESMA's increased workload, we would recall in this context that significant progress on supervisory architecture has been achieved in 2019, not only through the ESA Review but in particular on the clearing front. The new supervisory mandates by the ESAs Review for ESMA will take effect on 1 January 2022. Therefore, there is a need to take into account the phase-in of the recently updated ESMA supervisory powers in relation to data services providers (APAs, ARMs and CT), critical benchmarks, third country CCPs and benchmarks as well as a leading role in the new CCP supervisory committee. We need more time for both ESMA and our markets to thoroughly implement the new supervisory mandates on the European level and gain some experience before considering further changes. We should first see how ESMA performs on the new powers and within the new governance arrangements via the ESA Review and the new CCP supervisory committee as established via EMIR 2.2. The sectoral legislations mandate review reports by the European Commission on governance and supervisory arrangements that should not be preempted.

Notwithstanding the above, the problem in supervision concerns the domestic interpretation/gold-plating of rules and not a lack of cooperation amongst NCAs. Even in the event of the establishment of a college for the establishment of a CSD passport, NCAs around the table would not be able to counter diverging national laws nor the NCA requirement to open a CSD branch to issue equities or the tax benefit for securities issued with via the national CSD. ESMA has a role to play in achieving convergence in the application of the CSDR cross-border requirements the same way throughout the EU as required by the CMU. We reiterate in this regard the messages voiced in our response to the CSDR Targeted Consultation.

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

- Yes
- No
-

### Please explain your answer to question 3.4:

*5000 character(s) maximum*

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

Against the backdrop of a realistic pace and resources for expanding EU level supervision, it could be considered to add a new task for ESMA as regards the current reflections around ESAP as alluded to in question 1.7.2. Such a tool meant to improve gathering and availability of relevant information on companies and to create a simple gateway for investors could make a meaningful contribution to boost the CMU when supervised centrally.

In addition, and as already mentioned in question 1.4.9., the role of ESMA in the area of the new Digital Finance Strategy for the EU could be assessed, because the emergence of new asset classes by way of new technologies and digitalization will be significantly transforming the services are provided to businesses and citizens, and include cross-border, consumer protection and financial stability dimensions. It could also be considered to give ESMA a role for the definition/determination of new products/asset classes in case they are hybrid categories, as for example for crypto-assets which could qualify as financial as well as non-financial instruments during their life-cycle. Another example would be a stronger role for ESMA in the DLT Pilot Regime to prevent fragmentation when it comes to the exemptions granted for firms. A stronger gatekeeper and supervisory role for ESMA and the ESAs overall, when we also think about the DORA proposal, may contribute to the European Commission's objective to implement a common Digital Finance Strategy and the Digital Single Market for the EU.

When it comes to the third country dimension, it will be of importance to ensure a consistent, risk-based approach in the EU. The EU's equivalence decisions framework should balance out the imperatives of preserving multilateral open markets, whilst promoting a case-by-base risk-based approach to safeguard its stability and growth. As mentioned above, positive adaptations have been included in EMIR 2.2 in the interest of the protection of taxpayers, financial stability, and ordinary monetary policy conduct. The EU might want to consider expanding the risk-based recognition approach for third country CCPs to trading venues and CSDs as foreseen in the review clause of the ESAs Review. This might include further tasks for ESMA when it comes to equivalence assessment and monitoring of equivalence conditions in these two areas. Also, please see our response to question 1.9.3 where we mention that further supervisory tools would be warranted in case cooperation with the relevant third-country supervisor of the third-country CSD is not satisfactory, which would however rather speak against equivalence in the first place or suggest a revocation of recognition once granted.

Furthermore, convergence is the key pillar of ESMA's tasks and the reason for the authority's creation in the first place. Its existing powers in this regard have recently been strengthened through the 2019 ESA Review (i.e. peer reviews, Breach of Union Law, settlement of disagreements, common supervisory handbook, EU-wide supervisory priorities, etc.). Consequently, strengthening of general convergence powers (peer reviews, Q&As, no-action-letters, settlement of disputes between NCAs, etc.) and further harmonizing national administrative practices in sectors where direct supervision should not be transferred to ESMA would be a proportionate and effective way forward to foster financial market integration and a level-playing field in the EU as key prerequisites on the way towards a true EU single market for financial services.

However, there is a need for a differentiated treatment of those entities that have a strong prudential dimension given the financial stability perspective, recognizing that national supervisory authorities play a key role regarding direct supervision as relevant expertise and importantly fiscal responsibility remain in their hands.

EU Financial Market Infrastructures such as CCPs, CSDs and trading venues therefore operate within a wide range of different supervisors across the EU Member States at national and EU level, following the principles of subsidiarity and proportionality – this system has proven to be effective and resilient overtime, helping to manage the unprecedented market turmoil during the COVID-19 pandemic.

However, in light of the ambition to progress on the CMU, we support a common supervisory culture and enhanced convergence to ensure a level playing field within Europe. Any further integration based on an “US SEC style approach” however should clearly reflect how national supervisors form part of the system, which is key to guarantee expertise required to fulfill supervisory functions.

At the end of the day, any changes to the supervisory architecture need to result in an even better system that is designed against the background of stability and crisis resilience and provides for efficient and competitive EU financial markets.

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

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know No opinio 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"/>
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The cooperation within the European System of Financial						

Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The broader cooperation between the ESRB and the ESAs within the ESFS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**If you identify room for improvement for EBA, 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.

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know No opinion Not applicable
The quality of the analysis of market developments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The cooperation within the European System of Financial Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The broader cooperation between the ESRB and the ESAs within the ESFS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The contribution of the ESAs to facilitating the dialogue between micro- and macro-supervisors	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.

In particular the design, coordination and execution of stress test contributes to having an overview on markets robustness.

A cooperation between relevant authorities in the sense of transparency and information sharing is certainly helpful to create a comprehensive view of relevant aspects to gaining an objective evaluation of systemic risk.

## B. Questions on the single rulebook

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Please click on next to respond to the questions.

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

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

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

**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.

Specifying regulation certainly helps in improving consistency of rules application across jurisdictions. However, there have been cases where technical standards or guidelines were not clear enough themselves. E.g. there are technical standards out in MIFID II (Level 2) where some parts are not clear (e.g.

regarding technical trades/addressable liquidity or regarding the criteria to assess if inducements enhance quality of services – in this regard please also see our response to question 1.10.2 in relation to payment for order flow) potentially resulting in regulatory arbitrage and where more clarity needs to be provided. Generally, DBG believes that ESMA has the correct range of tools to deliver supervisory convergence and has successfully worked towards this end. However, a single rulebook for financial services goes hand in hand with supervisory convergence. In this context, we believe that issuing more regulations than directives where appropriate and proportionate could be a helpful element to ensure regulatory and supervisory convergence. Please also see our responses to section 6.

**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.

The revised Arts. 10 and 15 under the 2019 ESA Review provide for an efficient process to develop technical standards. We welcome the provisions to conduct open public consultations, cost-benefit analysis and request advice by the SMSG. However, there have been instances where the initial timelines set out in Level 1 have been very challenging and Level 2 has not been finalized at the time of application of the regulation. This is extremely challenging for industry as there is no clarity about how to implement measures. DBG would thus welcome procedures for conflicts of implementation timelines to ensure legal certainty for market participants, e.g. where deadlines set on Level 1 cannot be fully met, legislation needs to be postponed, Level 2 or Level 3 measures cannot be provided in time to allow for efficient and timely implementation and compliance by the industry.

**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.

Please see our response to question 5.2. The revised Arts. 10 and 15 under the 2019 ESA Review provide for an efficient process. We welcome the provisions to conduct open public consultations, cost-benefit analysis and request advice by the SMSG. We consider stakeholder engagement as critical in order to ensure a sound exchange between those who innovate and create markets, jobs and growth and those who supervise and regulate them. Only by doing so the best possible outcome for specifications of regulations can be found.

**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.

DBG appreciated ESMA's guidance on the criteria for the scope of the Share Trading Obligation (STO) under Art. 23 MiFIR to determine which shares shall be subject to the STO.

We agree that the limitation of the STO to all those shares with an EEA-ISIN – combined with the currency approach - is the clearest and least complex way to determine which shares have their main pool of liquidity in the EU and are therefore within the scope of the STO. It thereby allows EU market participants to continue trading EU shares in the domestic currency of the issuer and ensures access to additional pools of liquidity while limiting any unfair competition with EU trading venues. Albeit the guidance has been helpful to provide clarity in light of Brexit, we recommend embedding this approach into the Level 1 text to ensure equal application amongst EU member states.

Furthermore, DBG recommends some additional modifications to be considered in the broader review of MiFID 2/R as we believe that the construct of the STO is still flawed and that those deficiencies need to be addressed: With the clarified instrument scope, the exemption from the STO for “non-systematic, ad-hoc, irregular and infrequent” trades should be removed as it is no longer necessary to ring-fence the STO. To the contrary, keeping this exemption provides a loophole to transparency and runs counter to increasing trading in a regulated and supervised environment. Instead exemptions should only apply for those trades



that do not contribute to price formation based on a clear and consistent list of qualifying non-price forming transactions in Art. 2 RTS 1 MiFIR in order to ensure that the STO will be applied in the same way by all market participants. Further, for the benefit of increased transparency in the ETF market which has been growing significantly in recent years, we suggest expanding the scope of the STO to ETFs. A general review clause of Article 23 MiFIR (Level 1 amendment) after a period of two years would help to evaluate if the current flaws of the STO have been appropriately addressed or may need further adjustments.

**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.

We believe that guidelines should first and foremost be issues were stipulated in Art. 1(2) ESMA-R with a view to ensure consistent application across the Union. However, we see merit in ESMA providing additional guidance to ensure legal certainty and convergence in supervisory practices where other supervisory convergence tools would not suffice to reach this aim and/or upon specific request by Member States.

**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

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

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

**Please explain your answer to question 5.8:**

*5000 character(s) maximum*

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

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

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

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

*5000 character(s) maximum*

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

Generally, we consider the work undertaken by EBA positively.

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

*5000 character(s) maximum*

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

Generally, we consider the work undertaken by ESMA positively.

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## 6. General questions on the single rulebook

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

**Please give your reasons for each:**

*5000 character(s) maximum*

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

While we appreciate a streamlining of existing EU legislation where inconsistencies or duplications have been identified, we value sectoral legislation which provides for specific needs of specific sectors /businesses. Generally, DBG believes that ESMA has the correct range of tools to deliver supervisory convergence and has successfully worked towards this end. However, a single rulebook for financial services goes hand in hand with supervisory convergence. In this context, we believe that issuing more regulations than directives where appropriate and proportionate could be a helpful element to ensure regulatory and supervisory convergence. Please also see our responses to the following questions.

**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.

More regulations should be adopted than directives where appropriate and proportionate, which is an important element to achieving a more convergent supervisory outcome. At the same time, it is sometimes necessary that legislation also takes into account local peculiarities in particular regarding linked national rulesets.

We have experienced issues where Level 1 does not provide for a clear mandate to clarify a concept or definition in Level 2. This can give rise to divergent interpretations or legislation not being applied as intended by the legislator. In this regard, the legislator should ensure that legislation includes mandates to clarify and resolve potential issues in Level 2 so that the single rulebook is applied in an equal manner.

Therefore, Level 1 should be sufficiently granular and clear, given the primacy of Union legislation over Level 2 and Level 3 acts. Level 2 and 3 are rather important to ensure that there is a convergent application of legislation – they should not provide for additional requirements. Level 1 should therefore include clear mandates for clarifications for concepts, definitions, or thresholds on the subsequent levels.

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

Please select as many answers as you like

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

**Please explain your answer to question 6.4.2 and 6.4.2.1:**

*5000 character(s) maximum*

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

As per our answer to question 6.3, we consider a combination to be most effective. Issuing more regulations than directives where appropriate and proportionate could help achieving a more convergent outcome. At the same time, it is sometimes necessary that legislation also takes into account local peculiarities in particular regarding linked national rulesets.

Generally, Level 1 should be sufficiently granular and clear, given the primacy of Union legislation over Level 2 and Level 3 acts. Level 2 and 3 are rather important to ensure that there is a convergent application of legislation – they should not provide for additional requirements. Level 1 should therefore include clear mandates for clarifications for concepts, definitions or thresholds on the subsequent levels so that the single rulebook is applied in an equal manner.

**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.

Please see our answer to the previous question: Generally, we would welcome to see more regulations than directives where appropriate and proportionate to ensure there is no regulatory arbitrage. Further, key requirements should be outlined on Level 1 and not be transferred to Level 2 or Level 3; Level 2 and 3 are rather important to ensure that there is a convergent application of legislation – they should not provide for additional requirements.

**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.

There have been instances where the initial timelines set out in Level 1 have been very challenging and Level 2 has not been finalized at the time of application of the regulation. This is extremely challenging for industry as there is no clarity about how to implement measures. DBG would thus welcome procedures for conflicts of implementation timelines to ensure legal certainty for market participants, e.g. where deadlines set on Level 1 cannot be fully met, legislation needs to be postponed, Level 2 or Level 3 measures cannot be provided in time to allow for efficient and timely implementation and compliance by the industry.

**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 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 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 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 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

**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.

While DBG appreciates a streamlining of existing EU legislation where inconsistencies or duplications have been identified, we value sectoral legislation which provides for specific needs of specific sectors/businesses.



## Additional information

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

The maximum file size is 1 MB.

You can upload several files.

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

### Useful links

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[Consultation document \(https://ec.europa.eu/info/files/2021-esas-review-consultation-document\\_en\)](https://ec.europa.eu/info/files/2021-esas-review-consultation-document_en)

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