

FESE response Commission consultation on supervisory convergence and the single rulebook

Brussels 21st May 2021

Questions for the assessment of the European supervisory authorities (ESAs) and the recent changes in their founding regulations

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

Please rate as follows: 1= less significant impact, 2= not so significant impact, 3= neutral, 4= significant impact, 5= most significant impact

	1	2	3	4	5	Don't know/no opinion/not applicable
The financial system as a whole			X			
Financial stability				X		
The functioning of the internal market				X		
The quality and consistency of supervision			X			
The enforcement of EU rules on supervision		X				
Strengthening international supervisory coordination			X			
Consumer and investor protection				X		
Financial innovation			X			
Sustainable finance				X		

Please explain your answer to question I on ESMA:

5000 character(s) maximum

FESE has a positive view of the overall workings of ESMA. 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 recently been strengthened through the 2019 ESA Review. ESMA could use these tools to a greater extent and more effectively to promote supervisory convergence, in particular in areas such as investor protection. The impact of diverging supervisory practices tends to be particularly significant in areas where there is a move towards EU regulatory harmonisation, underpinning cross-border business and competition, for example in the area of secondary trading. In enhancing the functioning of a Capital Markets Union, promoting supervisory convergence will be essential. FESE therefore suggests for the EU institutions to make, where appropriate and proportionate, greater use of Regulations as opposed to Directive, with the ultimate goal of having a Single Rulebook.

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

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

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

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

1. The supervisory convergence tasks of the ESAs

1.1 Common supervisory culture/supervisory convergence

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

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

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

5000 character(s) maximum

ESMA has the appropriate mandate and tools to pursue supervisory convergence which have recently been strengthened through the 2019 ESA Review. While some discretion by NCAs should remain, ESMA should keep focusing on ensuring that legislation is implemented as intended by the legislator. In this context, we believe that the convergence tools could be used to a greater extent and more effectively to promote supervisory convergence, in particular in areas such as investor protection.

The impact of diverging supervisory practices tends to be particularly significant in areas where there is a move towards high-levels of EU regulatory harmonisation, underpinning cross-border business and competition. As a concrete illustration of how supervisory convergence would support policy objectives, transparency around current market practices in payment for order flow arrangements across Member States is needed. ESMA may take a stronger role here in enhancing and harmonising supervisory practices as

regards compliance with best execution and disclosure requirements and the management of potential conflicts of interests between brokers and their clients. Such mechanisms are an important part of delivering supervisory convergence, especially where the goal is high levels of EU regulatory harmonisation and where significant differences are still experienced today.

In seeking greater supervisory convergence, efforts should focus on those areas with cross-border characteristics. Enforcing supervisory convergence should mean ensuring that legislation is implemented as intended by the legislator to establish a level playing field, while identifying and recognising any situations in which there may be more than one way to achieve these objectives. Therefore, FESE wishes to strongly underline the need to recognise the importance of supervisors' understanding of the local or regional cultures and habits as well as regulatory frameworks and business models which may have been developed, benefitting market players and the CMU as a whole.

Furthermore, financial market regulation has installed a quantitative regulatory and supervisory approach which heavily depends on data consistency and availability. Unfortunately, shortcomings have been observed, e.g. in relation to the functioning of ESMA databases such as FIRDS.

Therefore, the starting point for questions around ESMA's future mandates should be around the fulfilment of current tasks. There is a difference between improving convergence on the one side and adding to ESMA's mandates on the other side.

National competent authorities have the competence, expertise, and knowledge to pursue the tasks under their regulatory and supervisory remit; due to their proximity to the national market, they even have superior local supervisory competence compared to ESMA. We generally welcome the CMU High Level Forum's proposals on strengthening supervisory convergence under the current structure but would not support unspecified "emergency powers" and further product intervention measures.

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?

Please rate as follows: 1= less significant contribution, 2= not so significant contribution, 3= neutral, 4= significant contribution, 5= most significant contribution

	1	2	3	4	5	Don't know/no opinion/not applicable
Providing opinions to competent authorities				X		
Promoting bilateral and multilateral exchanges of information between competent authorities						X
Contributing to developing high quality and uniform supervisory standards				X		
Contributing to developing high quality and uniform reporting standards				X		
Developing and reviewing the application of technical standards				X		
Contributing to the development of sectoral legislation by providing advice to the Commission				X		

Establishing (cross)sectoral training programmes						X
Producing reports relating to their field of activities				X		
Conducting peer reviews between competent authorities				X		
Determining new Union strategic supervisory priorities			X			
Establishing coordination groups						X
Developing Union supervisory handbooks						X
Monitoring and assessing environmental, social and governance- related risks			X			
Adopting measures using emergency powers						X
Investigating breaches of Union law						X
Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)				X		
Mediating between competent authorities						X
Monitoring the work of supervisory and resolution colleges						X
Publishing on their website information relating to their field of activities			X			
Monitoring market developments				X		
Initiating and coordinating Union-wide stress tests of financial institutions						X
Developing guidelines and recommendations				X		
Developing Q&As				X		
Contributing to the establishment of a common Union financial data strategy						X
Providing supervisory statements				X		
Other instruments and tools to promote supervisory convergence				X		

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

5000 character(s) maximum

No action letters have proven helpful and effective.

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

5000 character(s) maximum

ESMA has the appropriate mandate and tools to pursue supervisory convergence which have recently been strengthened through the ESAs Review. While some discretion by NCAs should remain, ESMA should keep focussing on ensuring that legislation is implemented as intended by the legislator. In this context, we believe that the convergence tools could be used to a greater extent and more effectively to promote supervisory convergence, in particular in areas such as investor protection.

National competent authorities have the competence, expertise, and knowledge to pursue the tasks under their regulatory and supervisory remit; due to their proximity to the national market, they even have superior local supervisory competence compared to ESMA. We generally welcome the CMU High Level Forum’s proposals on strengthening supervisory convergence under the current structure but would not support unspecified “emergency powers” and further product intervention measures.

Furthermore, financial market regulation has installed a quantitative regulatory and supervisory approach which heavily depends on data consistency and availability. Unfortunately, shortcomings have been observed, e.g. in relation to the functioning of ESMA databases such as FIRDS.

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:

Please rate as follows: 1= less significant contribution, 2= not so significant contribution, 3= neutral, 4= significant contribution, 5= most significant contribution

	1	2	3	4	5	Don’t know/no opinion/not applicable
Promote the effective and efficient functioning of colleges of supervisors				X		
Foster consistency in the application of Union law among colleges				X		
Promote converging supervisory practices among colleges				X		

Please explain your reasoning when answering question 1.1.3 on ESMA:

5000 character(s) maximum

The college structure for instance for CCPs has contributed to fostering consistent application of EU law.

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

FESE’s experiences of ESMA’s work in respect of providing Level 3 clarifications on key elements of the MiFID II regime have been positive. We welcome the fact that, during the process of finalising the rules and standards for implementation, ESMA is generally open to stakeholder input and, where possible, provides helpful feedback.

FESE has contributed to the work of ESMA on guidelines and recommendations, and in many instances these guidelines provide useful guidance for NCAs to supervise the application of the relevant legislation.

The new process for question and answers has recently become applicable and has not yet been fully tested. It is therefore too early to fully evaluate it at this stage.

In principle, the changes aim to provide further transparency, strengthen and formalise the Level 3 process which is welcome. In general, however, ESMA 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 where they merely repeat the text of the law.

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

Please see our answer to the previous question.

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

While ESMA already had the powers to issue forbearance statements, FESE sees clear merits for the usage of no action powers at supervisory level, also in light of ESMA's growing supervisory responsibilities. There have been examples of practical difficulties in implementing regulation due, for example, to a lack of clarity, conflicting rules or delays in the Level 2 and 3 legislation. In the context of the onset of the Covid pandemic, regulators rightly recognised the challenges for businesses in implementing comprehensive legislation within the foreseen timeframes and offered both forbearance and no action statements. There is also a good argument for ESMA to make use of no action powers when policy has already been changed by the co-legislators and when it is in the process of being adopted. In these circumstances, ESMA should have the legal ability to disapply rules that

have been or are being revised to ensure legal certainty for market participants regarding application.

The pandemic illustrated the need to ensure mechanisms are in place to deal with such situations, by the ESAs having the power, where deemed necessary and appropriate, to temporarily commit not to take action in case of financial market participants' non-compliance with specific provisions of Union law, thereby ensuring a consistent supervisory approach in the Union.

Provided they i) have an appropriate scope, ii) are precisely defined and limited to specific situations, and iii) are subject to scrutiny from the Commission and co-legislators, "time-limited no-action letters" is an efficient means of giving market participants legal certainty in those areas where significant operational challenges with respect to implementation are identified. Such a mechanism could provide comfort to market participants in instances where it is not possible to meet certain application dates for legitimate reasons. It could also offer assurance that they would not be held liable if they are unable to implement particularly problematic provisions despite their best efforts. Against this background, it is important that no action letters are always justified and that they are only issued when they are fit for purpose. Where the use of no action letters is warranted, we would find it helpful if the process for using them could be facilitated as if they are issued very close to the application date with respect to applicable legislative timelines, while helpful, it represents a challenge for the industry. Please see for instance the example on benchmarks included below.

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

5000 character(s) maximum

N/A

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

One example of a helpful no action letter was when ESMA in April 2020 published one regarding disclosure requirements relating to sustainability-related disclosures for benchmarks. This was published since, while Level 1 was becoming applicable on 30th 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 29th April. In this instance, ESMA rightly recognised 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. At the same time, we take note that the no action letter was only issued one day before the requirements were to become applicable. We would like to emphasise that this type of situation is extremely challenging for the industry to handle.

We also very much welcomed ESMA's forbearance statement about the delay of the entry into force of the MiFIR provisions on non-discriminatory access for ETDs by an additional

year, until 4th July 2021. This temporary relief was granted by ESMA, based on the operational risk arising from implementing such experimental measures in the midst of the Covid-19 crisis. Furthermore, FESE welcomes the Commission's consideration to review Art. 35 and 36 of 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. We would also welcome if ESMA and NCAs would consider taking action under the form of a no action relief until the matter has been reviewed by the co-legislators.

Further, ESMA has provided helpful certainty for the industry in relation to the application of the recent MiFID Quick Fix in form of its forbearance statements which are a useful tool where the conditions for a no action letter are not fulfilled. As part of the Recovery Package regulators intended for the quick fix to provide swift relief to the industry in the aftermath of the Covid-19 crisis, however, the implementation timeline provides a 12 month transition period. ESMA's statements on the position limits regime and the suspension of the best execution reports (RTS27) had a similar effect as a no action letter helping to bridge the gap until national application and provide legal certainty.

1.3 Peer reviews

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

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

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

Please rate as follows: 1= less significant contribution, 2= not so significant contribution, 3= neutral, 4= significant contribution, 5= most significant contribution

	1	2	3	4	5	Don't know/no opinion/not applicable
Convergence in the application of Union law						
Convergence in supervisory practices						
More wide spread application of best practices developed by other competent authorities						
Convergence in the enforcement of provisions adopted in the implementation of Union law						
Further harmonisation of Union rules						
Other						

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

Please rate as follows: 1= less significant contribution, 2= not so significant contribution, 3= neutral, 4= significant contribution, 5= most significant contribution

	1	2	3	4	5	Don't know/no opinion/not applicable
Convergence in the application of Union law						
Convergence in supervisory practices						
More wide spread application of best practices developed by other competent authorities						
Convergence in the enforcement of provisions adopted in the implementation of Union law						
Further harmonisation of Union rules						
Other						

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

5000 character(s) maximum

FESE believes peer reviews are an insightful tool to ensure consistent application of regulation, as well as to provide comparability amongst different jurisdictions. In particular, a more extensive use of the peer review tool can prove highly beneficial for those topics that require supervisory convergence such as MiFID/MiFIR market structure models. We believe ESMA should foster the use of peer reviews as a means to address topics that require harmonisation.

In respect of the current tool of peer reviews, we note that the ESA rules provide for ESMA to undertake periodic reviews of the NCAs focused on, inter alia, the degree of convergence reached in application of EU law and in supervisory practice. In respect of the activities of FESE Members, we do not believe that these peer reviews have been used extensively and would strongly support an increase in their use in order to deliver strengthened supervisory convergence and cooperation.

While today the primary focus of the current peer reviews appears to be on the application of EU law, we would welcome a strengthened focus of the new review system on differences in supervisory practices. These reviews should take into account best practices and recognise the need for NCAs to have the flexibility to achieve the same outcomes by different means.

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?

Please rate as follows: 1= least effective, 2= rather not effective, 3= neutral, 4= rather effective, 5= most effective

	1	2	3	4	5	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.						
The peer review report is now adopted by written procedure on non-objection basis by the BoS.						
Transparency provisions: if the PRC main findings differ from those published in the report, dissenting views should be transmitted to the three European Institutions.						
PRC findings may result in recommendations to NCAs under Article 16 of the ESAs Regulations that are now distinguished from guidelines, addressed to all NCAs. The use of this type of individual recommendations entails the application of the "comply or explain" mechanism and allows a close follow-up.						
Mandatory follow-up to peer reviews within two years after the adoption of the peer review report.						
The possibility to carry out additional peer reviews in case of urgency or unforeseen events (fast track peer reviews).						
The Management Board is consulted in order to maintain consistency with other peer reviews reports and to ensure a level playing field.						

Please explain your reasoning when answering question 1.3.2:

5000 character(s) maximum

N/A

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

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

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

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

1.4 Other tasks and powers

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

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

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

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

If you identify any areas for improvement, please explain:

5000 character(s) maximum

Enhanced coordination between the ESAs as well as between the ESAs and the NCAs is much appreciated by FESE for fostering consistent supervisory approaches. Nonetheless, setting strategic targets and priorities in context of the strategic supervisory plan should be closely monitored since it should not necessarily lead to de facto binding standards for NCAs, but could rather leave enough flexibility for national best practices and particularities (no "one size fits all" approach in all cases).

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

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

Question 1.4.4 Please assess the significance of the new ESAs’ task of fostering and monitoring the supervisory independence of national competent authorities:

- 1 - Not significant at all
- 2 - Rather not significant
- 3 - Neutral
- 4 - Rather significant
- 5 - Very significant
- Don’t know / no opinion / not relevant

Please explain your answer to question 1.4.4:

5000 character(s) maximum

ESMA has the appropriate mandate and tools to pursue supervisory convergence which have recently been strengthened through the 2019 ESA Review. While some discretion by NCAs should remain, ESMA should keep focusing on ensuring that legislation is implemented as intended by the legislator. We believe that these tools could be used to a greater extent and more effectively to promote supervisory convergence, in particular in areas such as investor protection. National competent authorities have the competence, expertise, and knowledge to pursue the tasks under their regulatory and supervisory remit; due to their proximity to the national market, they even have superior local supervisory competence compared to ESMA. We generally welcome the CMU High Level Forum’s proposals on strengthening supervisory convergence under the current structure but would not support unspecified “emergency powers” and further product intervention measures.

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?

Please rate as follows: 1= irrelevant, 2= rather not relevant, 3= neutral, 4= rather relevant, 5= fully relevant

	1	2	3	4	5	Don’t know/no opinion/not applicable
Operational independence			X			
Financial independence			X			
Appointment and dismissal of governing body			X			
Accountability and transparency			X			
Adequacy of powers and ability to apply them			X			
Other						

Please explain your answers to question 1.4.5:

5000 character(s) maximum

N/A

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

There are no specific obstacles to allow for more effective supervisory convergence. ESMA has the appropriate mandate and tools to pursue supervisory convergence which have recently been strengthened through the 2019 ESA Review. While some discretion by NCAs should remain, ESMA should keep focusing on ensuring that legislation is implemented as intended by the legislator. In this context, we believe that these tools could be used to a greater extent and more effectively to promote supervisory convergence, in particular in areas such as investor protection.

Furthermore, financial market regulation has installed a quantitative regulatory and supervisory approach which heavily depends on data consistency and availability. Unfortunately, shortcomings have been observed, e.g. in relation to the functioning of ESMA databases such as FIRDS.

Therefore, the starting point for questions around ESMA's future mandates should be around the fulfilment of current tasks. There is a difference between improving convergence on the one side and adding to ESMA's mandates on the other side. National competent authorities have the competence, expertise, and knowledge to pursue the tasks under their regulatory and supervisory remit; due to their proximity to the national market, they even have superior local supervisory competence compared to ESMA. We generally welcome the CMU High Level Forum's proposals on strengthening supervisory convergence under the current structure but would not support unspecified "emergency powers" and further product intervention measures.

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

Yes

No

Don't know / no opinion / not relevant

Question 1.4.8 Do you consider that the purpose and outcome of inquiries under Article 22.4 is clear?

Yes

No

Don't know / no opinion / not relevant

Please indicate what role such inquiries should play:

5000 character(s) maximum

N/A

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

ESMA has the appropriate mandate and tools to pursue supervisory convergence which have recently been strengthened through the 2019 ESA Review. While some discretion by NCAs should remain, ESMA should keep focusing on ensuring that legislation is implemented as intended by the legislator. In this context, we believe that these tools could be used to a greater extent and more effectively to promote supervisory convergence, in particular in areas such as investor protection. National competent authorities have the competence, expertise, and knowledge to pursue the tasks under their regulatory and supervisory remit; due to their proximity to the national market, they even have superior local supervisory competence compared to ESMA. We generally welcome the CMU High Level Forum's proposals on strengthening supervisory convergence under the current structure but would not support unspecified "emergency powers" and further product intervention measures.

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

N/A

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 ESA's review			
After 2019 ESA's review			

Please explain your answer to question 1.5.2 for ESMA:

5000 character(s) maximum

N/A

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

N/A

Question 1.5.5 ESMA: Do you think that ESMA has always acted, where needed, under Article 17 and Article 19 of the ESAs' Regulations?

Yes

No

Don't know / no opinion / not relevant

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

5000 character(s) maximum

N/A

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

N/A

1.6 Emergency situations and response to COVID-19 crisis

Question 1.6.1 ESMA: Please rate the impact of ESMA's response in the context of the COVID-19 crisis

1 - the less significant impact

2 -

3 -

4 -

5 - the most significant impact

Don't know / no opinion / not relevant

Please explain your answer to question 1.6.1 for ESMA:

5000 character(s) maximum

In the context of the onset of the Covid-19 pandemic, regulators and supervisors, including ESMA, rightly recognised the challenges for businesses in implementing comprehensive legislation within the foreseen timeframes and offered forbearance and no action statements.

This shows the need to ensure mechanisms are in place to deal with such issues, by the ESAs having the power, where deemed necessary and appropriate, to temporarily commit not to enforce financial market participants’ non-compliance with specific provisions of Union law.

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:

Please rate as follows: 1= least effective, 2= rather not effective, 3= neutral, 4= rather effective, 5= most effective

	1	2	3	4	5	Don’t know/no opinion/not applicable
Market illiquidity and implications for asset managers and insurers						
Impact of large scale downgrades of corporate bonds on markets and entities across the financial system						
System-wide restraints on dividend payments, share buybacks and other pay-outs						
Liquidity risks arising from margin calls						

Please explain your answer to question 1.6.2:

5000 character(s) maximum

N/A

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

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.

In the context of the onset of the Covid pandemic, regulators and supervisors, including ESMA, rightly recognised the challenges for businesses in implementing comprehensive legislation within the foreseen timeframes and offered forbearance and no action statements.

This shows the need to ensure mechanisms are in place to deal with such issues, by the ESAs having the power, where deemed necessary and appropriate, to temporarily commit not to enforce financial market participants' non-compliance with specific provisions of Union law.

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.

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

It is appropriate that the Council determines the existence of an emergency situation, after consultation with the authorities listed in that article. In addition, all entities involved can respond relatively swiftly to the situation.

We generally welcome the CMU High Level Forum's proposals on strengthening supervisory convergence under the current structure but would not support unspecified "emergency powers" and further product intervention measures.

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

N/A

1.7 Coordination function (Art 31 ESAs' Regulations)

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

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

Question 1.7.2 ESMA: Do you see a need for greater coordination between ESMA and/or with other EU and national authorities as regards developing data requirements, data collection and data sharing?

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

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

Coordination becomes increasingly important, however, it will be just as important to ensure efficiency and not adding more complexity. More streamlined reporting processes where it is appropriate and within the mandate of ESSMA would be helpful.

Further, as regards data collections, we would welcome more publicly available information on the timeline of ESMA's requests.

We consider important that ESMA acknowledges the differences in reporting strictness amongst different Member States and, in case further convergence is needed, it does not put an additional burden but rather takes into account the models used by jurisdictions with a more extensive information reporting already in place.

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:

Please rate as follows: 1= least effective, 2= rather not effective, 3= neutral, 4= rather effective, 5= most effective

	1	2	3	4	5	Don’t know/no opinion/not applicable
Exchange of information and best practices				X		
Adopt guidelines				X		
Adopt recommendations				X		

Please explain your reasoning when answering question 1.7.3:

5000 character(s) maximum

We would highlight that technology neutrality and “same business, same risks, same rules” principles should apply to uphold the values of transparency, fairness, stability, investor protection, and market integrity. The three tools mentioned above have proven very effective in the past to coordinate the supervision of technologically innovative actors across the Union. They have strongly influenced the supervisory approaches of national competent authorities to these new actors and their products, resulting in a relatively harmonised treatment (e.g. case of initial coin offerings and tokens).

Question 1.7.3.1 In the framework of 2019 ESAs’ review, do you think ESMA’s new coordination function (Article 31b ESMA Regulation) in relation to orders, transactions and activities that give rise to suspicions of market abuses and have cross-border implications for the integrity of financial markets or financial stability in the EU is an effective tool?

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

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

5000 character(s) maximum

N/A

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

N/A

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

FESE believes that ESMA fulfils its coordination role in a satisfactory way. For example, the guidelines of EBA and ESMA on cloud-outsourcing seem to have a positive harmonising 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, 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

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

We fully share 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, FESE supports 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 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.

Turbos are predominantly traded on regulated markets or MTFs with associated levels of trade transparency, strict trading rules and independent market surveillance. The existing regulatory environment for turbos is sufficient. Investors hedge open positions in the underlying assets by trading turbos and the characteristics of investors show that they are experienced traders who are familiar with financial products and trade frequently in other products. They know about the functionality of turbos, the use of stop losses and the functioning of underlying instruments and assets. The level of complexity is manageable, the relationship between return opportunities and risk should be known to investors.

We note that AFM has recently consulted on measures to restrict the marketing, distribution or sale of turbos. FESE considers that the proposed AFM product intervention measures would be inappropriate and consider that ESMA correctly assessed turbos in 2018. In this respect we believe ESMA has a key role in forming an opinion on the intended ban by AFM, as it will undoubtedly have a cross-border impact. We are concerned that the previous issued opinion on specific products and their trading environment by ESMA seems to be set aside by an individual NCA and would call for increased supervisory convergence in this respect.

In addition, ESMA’s issuance of warnings has been an effective tool to inform retail investors directly on the risks and benefits of certain products (e.g. tokens).

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

Please rate as follows: 1= less significant impact, 2= not so significant impact, 3= neutral, 4= significant impact, 5= most significant impact

	1	2	3	4	5	Don't know/no opinion/not applicable
Analysis of consumer trends				X		
Reviewing market conduct				X		
Developing indicators				X		
Contributing to a level playing field				X		
Financial literacy				X		
Follow up to work in this area				X		

Please explain your answer to question 1.8.2 for ESMA:

5000 character(s) maximum

N/A

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

We fully share 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, FESE supports 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 be proportionate and appropriate, as is the case with ESMA's measures on the above-mentioned instruments. We therefore supports that ESMA explicitly excluded turbos from the product intervention measures on the provision of CFDs and binary options in 2018.

Turbos are predominantly traded on regulated markets or MTFs with associated levels of trade transparency, strict trading rules and independent market surveillance. The existing regulatory environment for turbos is sufficient. Investors hedge open positions in the underlying assets by trading turbos and the characteristics of investors show that they are experienced traders who are familiar with financial products and trade frequently in other products. They know about the functionality of turbos, the use of stop losses and the functioning of underlying instruments and assets. The level of complexity is manageable, the relationship between return opportunities and risk should be known to investors.

We note that AFM has recently consulted on measures to restrict the marketing, distribution or sale of turbos. FESE considers that the proposed AFM product intervention measures would be inappropriate and consider that ESMA correctly assessed turbos in 2018. In this respect we believe ESMA has a key role in forming an opinion on the intended ban by AFM, as it will undoubtedly have a cross-border impact. We are concerned that the previous issued opinion on specific products and their trading environment by ESMA seems to be set aside by an individual NCA and would call for increased supervisory convergence in this respect.

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

It is important to reiterate that NCAs have relevant competence over ESMA to understand and address retail investor protection concerns in national markets. ESMA is well positioned to react quickly on an ad hoc basis to sudden trends but it should not have the ability to act through acts of general and long-term application, as that may negatively impact local markets.

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

N/A

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

By coordinating mystery shopping activities, ESMA can assess the level of consumer protection in a particular sector on a cross-Union basis.

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

We would welcome if ESMA would perform research on the suitability of the current investor protection regulatory framework addressed directly at investors. This would be helpful for understanding the actual reach of the messages aimed at said investors and which elements investors consider more valuable when assessing a potential investment.

Potential benefits stemming from this could include a simplification of regulation and the drafting of detailed Level 3 guidelines.

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

N/A

1.9 International relations

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

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

5000 character(s) maximum

FESE welcomes that the role of ESMA in the third country dimension has been significantly strengthened through the 2019 ESA Review. For details, please see our response to question 1.9.2.

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

FESE welcomes ESMA's broader role in assisting the Commission in preparing equivalence decisions as well as in the implementation and monitoring of such decisions.

Convergence and harmonisation in relation to third country aspects are important in order to maintain a level playing field and financial stability in global capital markets. This is valid for matters within the EU as well as for matters which include any type of third country aspects. A general guiding principle in this context must be the assurance of reciprocal market access under equivalent conditions.

Moreover, delivering these objectives, FESE would recommend that the ESAs, and in particular ESMA, always consider the international dimension, such as the work of IOSCO to ensure that EU guidelines do not significantly differ from international standards. We would urge ESMA to advocate that EU wide legislation follows its own previous guidance

or international guidance to avoid legal uncertainty and avoid unnecessary compliance costs.

Equivalence regimes across EU legislative texts differ. FESE believes that an appropriate mechanism at EU level is important to ensure that third country standards are equivalent to European ones and that equivalence decisions can be assessed on a recurring basis. Therefore, FESE welcomes the extended role the ESAs play in ensuring constant monitoring of third country regulation and supervisory standards and to develop administrative arrangements with third countries.

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 of the ESMA Regulation, any regulatory divergence in the UK in preparations of equivalence discussions.

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

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

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

5000 character(s) maximum

ESMA's role has just been specified in the 2019 ESA Review and it should not be further expanded or specified. It is important the NCAs maintain some discretion to develop administrative arrangements with third-country authorities. The effort to follow those arrangements should be considered in the context of the specificities of the securities markets in their jurisdictions.

1.10 The role of the ESAs as enforcement actors/enforcers

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

5000 character(s) maximum

N/A

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

ESMA has the appropriate mandate and tools to pursue supervisory convergence. We believe that these tools could be used more to promote supervisory convergence, in particular in areas such as investor protection. National competent authorities have the competence, expertise, and knowledge to pursue the tasks under their regulatory and supervisory remit. We generally welcome the CMU High Level Forum's proposals on strengthening supervisory convergence under the current structure but would not support unspecified "emergency powers" and further product intervention measures.

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

N/A

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

N/A

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

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

2. Governance of the ESAs

2.1 General governance issues

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

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

Please explain your answer to question 2.1.1:

5000 character(s) maximum

N/A

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

N/A

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

N/A

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?

Please rate as follows: 1= less significant impact, 2= not so significant impact, 3= neutral, 4= significant impact, 5= most significant impact

	1	2	3	4	5	Don't know/no opinion/not applicable
Request to the Board to establish internal committees for specific tasks						
Set the agenda to be adopted by the Board and table items for decision						
Call a vote at any time						
Propose the composition of independent panels for breach of Union law investigations and dispute settlements						
Propose the composition of peer review committees for peer reviews						
Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation						
Vote in the Board of Supervisors (except on matters that are decided on the basis of						

qualified majority voting)						
Other						

Please explain your answers to question 2.1.4:

5000 character(s) maximum

N/A

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

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

2.2 Decision-making bodies and preparatory bodies

Question 2.2.1 Does the current composition of the Board of Supervisors (BoS) and of the Management Board (MB) ensure that decisions are taken efficiently and independently?

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

Question 2.2.2 Do the current voting modalities (e.g. simple majority, qualified majority...) of the BoS ensure efficient decision making?

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

Question 2.2.3 Does the current allocation of tasks between the BoS and the MB ensure that the ESAs are run effectively and perform the tasks conferred on them?

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

Question 2.2.4 In the framework of 2019 ESAs' review, to what extent the enhanced role of the Management Board has improved the decision making process?

Please rate as follows: 1= less significant impact, 2= not so significant impact, 3= neutral, 4= significant impact, 5= most significant impact

	1	2	3	4	5	Don't know/no opinion/not applicable
The MB can give opinions on all matters to be decided by the Board of Supervisors						
The MB ensures the consistent use of a methodology for all peer reviews conducted						
The MB proposes a peer review work plan every two years.						
The MB can set up coordination groups on its own initiative						

Please explain your answers to question 2.2.4:

5000 character(s) maximum

N/A

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

Please indicate if there should be more decisions taken under this procedure and in which areas:

5000 character(s) maximum

FESE emphasises the need for involvement of NCAs in this process as their expertise of local markets is essential.

Question 2.2.8 Do you think the functioning of preparatory/supporting bodies of the ESAs (e.g. technical working groups, standing committees, task forces etc.) is effective and efficient?

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

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

Please rate as follows: 1= less significant impact, 2= not so significant impact, 3= neutral, 4= significant impact, 5= most significant impact

	1	2	3	4	5	Don't know/no opinion/not applicable
Standing committees and other permanent committees				X		
Other preparatory bodies (e.g. technical working groups)				X		
Committee on consumer protection and financial innovation						
Proportionality Committee						

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

5000 character(s) maximum

N/A

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

Please indicate your suggestions for improvements and the expected benefits:

5000 character(s) maximum

FESE believes that ESMA has the appropriate mandate and tools to pursue supervisory convergence which have recently been strengthened through the 2019 ESA Review. If ESMA were to obtain an increased role in supervisory decisions, FESE believes that the governance structure could be amended similarly to the new governance structure in relation to CCP supervision to cater for ESMA's new role. In this area, CCPs already had a very European system with the EMIR colleges which were complemented with the new CCP Supervisory Committee under EMIR 2.2 encompassing ESMA, the ECB (and CBIs) and NCAs. Within the new governance structure, the CCP Supervisory Committee supports harmonization of supervisory practices impacting EU CCPs and is responsible for the recognition of third country CCPs, while daily supervision remains in the hands of the NCAs. As alluded to in our answer to question 3.3, FESE would not see a need to revise the current ESMA mandates nor the supervisory setup for CCPs. However, if ESMA were to become fully responsible for supervisory decisions governing CCPs, an enhanced supervisory structure is justified as it inherently involves national taxpayer liability.

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

The vast majority of NCAs in the area of financial services are funded through industry contributions. FESE understands that efficient fulfilment of supervisory tasks requires adequate resources for the ESAs. However, any increase of industry funding of the ESAs should be met by a corresponding reduction of the fees that Exchanges pay to their NCAs. Cost inefficiencies and duplication of the funding requirements for supervised entities 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

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

N/A

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

FESE appreciates the opportunity to provide input to the ESAs in their preparation of Level 2 and 3 measures. The provision of input from stakeholders helps inform regulatory measures.

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 ESAs consultations that facilitates providing input on additional aspects. However, we would like to emphasise that comprehensive consultations should leave enough time for the industry to respond, i.e. three months.

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

Please rate as follows: 1= lowest quality, 5= highest quality

	1	2	3	4	5	Don't know/no opinion/not applicable
General consultations launched by ESMA				X		
Specific consultations when developing data collection requirements				X		

Please explain your answer to question 2.4.2 for ESMA:

5000 character(s) maximum

FESE appreciates the opportunity to provide input to the ESAs in their preparation of Level 2 and 3 measures. The input from a wide range of stakeholders helps inform regulatory measures. 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 appreciate the open nature of ESAs consultations that facilitates providing input on additional aspects. However, we would like to emphasise that comprehensive consultations should leave enough time for the industry to respond, i.e. three months.

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

Our experience is that ESMA consultations are generally drafted in a clear open manner. We also appreciated the opportunity to participate in open hearings and find that ESMA is overall open to exchange views with stakeholders.

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

Please rate as follows: 1= less significant impact, 2= not so significant impact, 3= neutral, 4= significant impact, 5= most significant impact

	1	2	3	4	5	Don't know/no opinion/not applicable
EIOPA Insurance & Reinsurance Stakeholder Group						X
EIOPA Occupational Pensions Stakeholder Group						X
ESMA Securities and Markets Stakeholder Group				X		
EBA Banking Stakeholder Group						X

Please explain your answers to question 2.4.4:

5000 character(s) maximum

N/A

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)?

Please rate as follows: 1= less significant impact, 2= not so significant impact, 3= neutral, 4= significant impact, 5= most significant impact

	1	2	3	4	5	Don't know/no opinion/not applicable
Composition of stakeholders groups				X		
Selection of members		X				
Term of office				X		
A third of its members can issue a separate advice			X			

Please explain your answers to question 2.4.5:

5000 character(s) maximum

The changes from the 2019 ESAs Review set strict rules regarding the composition of the stakeholder groups. The ESMA Securities and Markets Stakeholder Group shall be composed

of 30 members, 13 members representing in balanced proportions financial market participants operating in the Union, 13 members representing their employees' representatives, consumers, users of financial services and representatives of SMEs and four of its members shall be independent top-ranking academics.

The overall number of participants is fixed, the number of academics needs to be four and the number of industry side representatives is set at 13. This provides for a lack of flexibility in balancing representation of different interest groups. In this context, it should be noted that, before the changes were implemented, both the Banking Stakeholder Group and the Securities and Markets Stakeholder Group operated with a higher number of academics than the minimum required by the Regulations.

The extension of the term of office to four years is welcome as it enables members to become familiar with the group and how it operates.

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

In principle, the fixed limits regarding the background of participants introduces a lack of flexibility in ensuring a balanced representation as explained above. Having said this, the stakeholder groups currently in place are well functioning and have managed to ensure a balanced representation while working within these constraints.

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

More transparency on the work by the groups would be welcome. Often, only the composition of the groups is publicly available. Agendas and protocols are not published or only published after several weeks/months.

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:

Please rate as follows: 1= least effective, 2= not so effective, 3= neutral, 4= rather effective, 5= most effective

	1	2	3	4	5	Don't know/no opinion/not applicable
Organisation						
Functioning and time limits						
One joint Board of Appeal for the 3 ESAs						
The composition of the BoA						

If you identify areas for improvement, please explain:

5000 character(s) maximum

N/A

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

Please rate as follows: 1= least effective, 2= not so effective, 3= neutral, 4= rather effective, 5= most effective

	1	2	3	4	5	Don't know/no opinion/not applicable
Functioning						
Working methods						
Ensuring cross-sectoral cooperation						
Ensuring consistent approaches						
Decision making process						
The legal structure (no legal personality)						

If you identify areas for improvement, please explain:

5000 character(s) maximum

N/A

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

Please rate as follows: 1= less significant impact, 2= not so significant impact, 3= neutral, 4= significant impact, 5= most significant impact

	1	2	3	4	5	Don't know/no opinion/not applicable
Consumer Protection and Financial Innovation						
Coordination and cooperation for bi-annual Joint Risk Reports, published in spring and autumn						
Financial Conglomerates						
Securitisation						
European Forum of Financial Innovators						

If you identify areas for improvement, please explain:

5000 character(s) maximum

N/A

3. Direct supervisory powers

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

Please rate as follows: 1= lowest rate, 5= highest rate

	1	2	3	4	5	Don't know/no opinion/not applicable
Credit Rating Agencies						
Trade Repositories under EMIR					X	
Trade Repositories under SFTR					X	
Securitisation Repositories (STS)						

Please explain your answers to question 3.1:

5000 character(s) maximum

FESE members that have entities being directly supervised by ESMA consider 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 assess them with the highest rate. Recent amendments and specifications of these regulations are sufficient to allow ESMA to perform its direct supervision powers.

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

Please rate as follows: 1= lowest rate, 5= highest rate

	1	2	3	4	5	Don’t know/no opinion/not applicable
Credit Rating Agencies						
Trade Repositories under EMIR			X			
Trade Repositories under SFTR			X			
Securitisation Repositories (STS)						

If you identify areas for improvement, please explain:

5000 character(s) maximum

ESMA’s performance as a direct supervisor of the Trade Repositories (TRs) under EMIR and SFTR has been neutral, from the registration process and the system set-up, to the ongoing monitoring after registration. 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. These established very high reporting requirements for TRs supervised under EMIR and SFTR and TRs were encouraged to follow the guidelines even before they entered into force.

Nonetheless, there are still some areas for improvement. The timing of informing TRs on upcoming legislative and technical requirements that are technically sensitive is very important. We therefore welcome ESMA’s initiative to have a series of virtual roundtable events with TRs in 2021 to inform about upcoming changes on Level 1 to Level 3.

The other area of improvement relate to ESMA registers where NCAs have to provide information to ESMA and ESMA databases. These are used as reference for TRs for establishing access to data, as commented under section 1. We would welcome a review of ESMA registers and databases to ensure that data is accurate.

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

ESMA powers were recently assessed and amended through the 2019 ESAs Review and we believe that the priority should be to implement these changes properly and assess their impact in the first instance. In terms of future changes, we do not support moves towards direct supervision by ESMA under any timeframe. In light of the ambition to progress on the CMU, we 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 expertise on the national level, pace and resources for the transition to an EU supervision.

FESE wishes to strongly underline the need to recognise the importance of supervisors' understanding of the stakeholders under supervision and the markets they operate in. The right balance must be struck, within the European supervisory system, between a centralised European approach and the role of NCAs. NCAs are necessary for further development of European capital markets due to their wealth of experience supervising their local markets and adapting the regulatory environment to best suit the local ecosystem, taking into account local habits, culture, historical solutions. This is the best way to achieve the objective of CMU while still ensuring the diversity of markets in the EU can be nurtured and prosper in the future.

Enforcing supervisory convergence should mean ensuring that legislation is implemented as intended by the legislator to establish a level playing field, while importantly identifying and recognising any situations in which there may be more than one way to achieve these objectives.

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

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

4. The role of the ESAs as regards systemic risk

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

Please rate as follows: 1= lowest rate, 5= highest rate

	1	2	3	4	5	Don't know/no opinion/not applicable
The quality of the analysis of market developments				X		
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs						X
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						X
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						X
The broader cooperation between the ESRB and the ESAs within the ESFS						X
The contribution of the ESAs to facilitating the						X

dialogue between micro- and macro- supervisors

If you identify room for improvement for ESMA, please specify how this could be addressed:
5000 character(s) maximum

N/A

5. The ESAs work towards achieving a rulebook

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

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

Please specify what you mean by 'other' in your answer to question 5.1 for ESMA:
5000 character(s) maximum

Specifying regulation certainly helps in improving consistent application of rules across jurisdictions. However, there have been cases where technical standards or guidelines were not clear enough themselves. For example, there are technical standards in MIFID II (Level 2) where some parts are not clear (e.g. technical trades/addressable liquidity) and more clarity would be welcome.

Generally, FESE 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 is incomplete without greater consistency and convergence of supervisory practices. FESE also supports a shift to the greater use of Regulations as opposed to Directives if and as appropriate and proportionate, with the ultimate goal of having a Single Rulebook.

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

Generally speaking, yes, the process to develop technical standards is working well. The ESAs have adopted transparent procedures to consult stakeholders and they are open for input. The ESAs often organise open hearings to explain their perspective, how they assess input received in the context of consultations and how they consider that a provision should be interpreted. This is very welcome.

However, there have been instances where the initial timelines set out in Level 1 have been very challenging and Level 2 has not been finalised at the time of application of the regulation. This is extremely challenging for industry as there is no clarity about how to implement measures to comply with Level 2. This is not so much a question for the ESAs as it is for the co-legislator to set workable timelines and for the Commission to adopt final Level 2 measures in a timely manner.

In addition, the current system already provides for the possibility of review and change of RTSs with no change to Level 1 but this mechanism is not used often enough or not at all. FESE stresses that the ESA's have a duty of responsiveness to react to evidence of anomalies of Level 2 rules without waiting for the co-legislators, in particular to better fulfil the Lamfalussy process.

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

N/A

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

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

N/A

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

This question is not clear and we are not sure that we fully grasp the intention behind it. However, we consider that the ESAs should always operate under a clear mandate based on regulation and do not consider that the ESAs' powers should be expanded without there being a clear legal basis. Moreover, we consider that the ESAs should only take measures where this is 'necessary to ensure the effective and consistent application of that legislation'.

Question 5.6.1 If you think of the Wirecard case as an example, how could supervision be improved in the field of auditing and financial reporting?

- Including Regulation (EC) No 1606/2002 (IAS Regulation) and Directive 2013/34/EU (Accounting Directive) in Article 1(2) of the ESMA Regulation
- Other
- No improvements are needed
- Don't know / no opinion / not relevant

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

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

Please explain your answer to question 5.7:

5000 character(s) maximum

N/A

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

N/A

Question 5.9 Do you think that ESMA could have a role with regard to Regulation (EC) No 1606/2002 (IAS Regulation) Regulation)?

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

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

5000 character(s) maximum

Generally speaking, the opinions and technical advice provided by ESMA is of high quality.

6. General questions on the single rulebook

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

Please give your reasons for each:

5000 character(s) maximum

A higher degree of harmonisation in certain areas is critical to underpinning the supervisory convergence evoked earlier in this paper. The impact of diverging supervisory practices tends to be particularly significant in areas where there is a move towards EU regulatory harmonisation, underpinning cross-border business and competition, for example in the area of secondary trading. FESE therefore suggests the EU institutions make, where appropriate, greater use of Regulations as opposed to Directives with the ultimate goal of having a Single Rulebook.

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?

- 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

A higher degree of harmonisation in certain areas is critical to underpinning the supervisory convergence evoked earlier in this paper. The impact of diverging supervisory practices tends to be particularly significant in areas where there is a move towards EU regulatory harmonisation, underpinning cross-border business and competition, for example in the area of secondary trading. FESE therefore suggests the EU institutions make, where appropriate, greater use of Regulations as opposed to Directives with the ultimate goal of having a Single Rulebook.

6.4 Questions regarding the appropriate level of regulation

Question 6.4.1 In your view, are there circumstances in existing EU legislation where level 1 is too granular, or for other reasons, would rather be preferable to have a mandate for level 2, or guidance at level 3?

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

Please specify the area (and if possible, specific piece of legislation) and explain why (e.g. in order to have appropriate flexibility to adapt the specifics of the regulation in case of change of circumstances):

5000 character(s) maximum

As a starting point, FESE believes it is important to recall the objectives of the original reforms introduced under the Lamfalussy Report and Process which underpin the current regulatory and supervisory structure in EU financial services legislation. The report diagnosed the problem as: “the challenges facing the creation of an integrated securities market in Europe are that the basic legislation is not in place; that there is still insufficient prioritization; and that the present system cannot produce quickly or flexibly enough the type of legislation that modern financial markets require; and that inconsistent implementation is severely handicapping the emergence of a pan-European market.” The report recommended a four-pillar approach: (i) Level 1 adoption of framework principles to be adopted under the co-decision procedures of the EU institutions, (ii) Level 2 technical rule-making, (iii) Level 3 enhanced cooperation between supervisory authorities to ensure consistent and equivalent transposition of the Level 1 and 2 provisions, and (iv) Level 4 strengthened enforcement by the European Commission working in conjunction with Member States and regulators.

Importantly, the Report noted that

“This approach (Levels 1 & 2) recognized two layers in the legislation related to financial markets : basic political choices that can be translated into broad but sufficiently precise framework norms (Level 1); and the more detailed technical measures, in full conformity with this framework, needed to implement the objectives pursued by the legislation (Level 2). Level 1 = principles Level 2 = detailed technical measures. The two layers should be efficient, in the sense of achieving the stated objectives with the lowest cost in terms of regulatory burden; they should aim at establishing a level playing field, by removing any opportunity to erect regulatory barriers to competition; they should help speedy implementation and be flexible, so that they can be quickly adapted to the rapid pace of technical changes and product innovation in the financial markets (...)”

At the time of the publication of the Report in 2001 and subsequent discussions, the financial industry was generally positive on the proposed reforms, noting their potential to lay the basis for an efficient legislative and supervisory process in the EU in respect of financial services. A critical part of this, from the perspective of the industry and exchanges in particular, is the degree to which the legislative and supervisory structure contributes to enhancing overall competitiveness.

FESE believes Level 1 texts should be as granular and clear as necessary to frame the requirements in Levels 2 and 3. Key requirements should not be decided on Level 2 or Level 3. Level 2 should rather be used to provide technical details such as calibrating thresholds. 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.

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?

- 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

They all contribute to building the rulebook in an equal manner, we therefore consider a combination to be the most effective. In addition, issuing more Regulations than Directives could help achieving a more convergent outcome. At the same time it is sometimes necessary that legislation also takes into account local specificities in particular regarding national rule sets linked to EU regulation.

Nevertheless, Level 1 is the most effective in setting standards and should therefore 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 and definitions on the subsequent levels. We also believe that Level 3 can be quite effective to bring more granular and concrete illustrations regarding Level 1 and 2, provided that Level 3 is also subject to the Better Regulation approach, meaning that Level 3 should be subject to public consultation and a more transparent process.

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

- 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

Please also see our answer to 6.4.2.1.

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

The application dates and sequencing of acts on the three levels should allow the industry sufficient time to implement measures and adapt business models to adopted rules. There have been instances where the initial timelines set out in Level 1 have been very challenging and Level 2 has not been finalised at the time of application of the regulation. This is extremely challenging for industry as there is no clarity about how to implement measures. FESE would thus welcome procedures for allowing for an efficient sequencing of application dates.

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

Please rate as follows: 1= unimportant, 2= rather not important, 3= neutral, 4= rather important, 5= fully important

	1	2	3	4	5	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)		X				
Broad discretion left to national authorities and frequent use of that discretion by these national authorities				X		
High level of gold plating by national rules				X		
High degree to which supervision of the same type of actors and/or activities render divergent outcomes across Member States					X	
All of the above						
None of the above						
Other aspects						

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

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

Please specify in which legislative sector(s) should EU legislative acts at level 1 become more detailed and contain a higher degree of harmonisation:

Please select as many answers as you like

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

Market organisation (MiFID, MIFIR, MAR)

Please identify the specific piece(s) of legislation at level 1 in the area of market organisation that should become more detailed and contain a higher degree of harmonisation and explain:

5000 character(s) maximum

FESE believes Level 1 texts should be as granular and clear as necessary to frame the requirements in Levels 2 and 3. Key requirements should not be decided on Level 2 or Level 3. Level 2 should rather be used to provide technical details such as calibrating thresholds. 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.

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

5000 character(s) maximum

The impact of diverging supervisory practices could be addressed by more detailed and higher degrees of harmonisation at Level 1 in MiFID/MiFIR. This would come within the objective of moving, where appropriate, from Directives to Regulations to support the

Single Rulebook. It is particularly important to achieve this in areas where there is a move towards high-levels of EU regulatory harmonisation, underpinning cross-border business and competition, for example in secondary trading.

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?

- 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

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.

Additional information

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

N/A