

Luxembourg, 21 May 2021

## Response to European Commission consultation on supervisory convergence and the single rulebook

### Introduction

The Association of the Luxembourg Fund Industry (ALFI) represents the face and voice of the Luxembourg asset management and investment fund community. The Association is committed to the development of the Luxembourg fund industry by striving to create new business opportunities, and through the exchange of information and knowledge.

Created in 1988, the Association today represents over 1,500 Luxembourg domiciled investment funds, asset management companies and a wide range of business that serve the sector. These include depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax advisory firms, auditors and accountants, specialised IT and communication companies. Luxembourg is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg domiciled investment funds are distributed in more than 70 countries around the world.

We thank the European Commission for the opportunity to participate in this consultation on supervisory convergence and the single rulebook.

### Response to the consultation

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

### General questions

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

	1	2	3	4	5	Don't know - No opinion - Not applicable
	(less significant impact)	(not so significant impact)	(neutral)	(significant impact)	(most significant impact)	

The financial system as a whole	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial stability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The functioning of the internal market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The quality and consistency of supervision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The enforcement of EU rules on supervision	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strengthening international supervisory coordination	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer and investor protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial innovation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sustainable finance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

## **Please explain your answer to question I on ESMA:**

*5000 character(s) maximum<sup>1</sup>*

The European Supervisory Authorities (ESMA, EBA and EIOPA) play a key role in the European System of Financial Supervision. Adopted in 2010 and revised in 2019, the ESMA Regulation creates a robust framework for the supervision and coordination of cross-border business activities, in particular within the EU internal market.

As a general comment, in ALFI's view, ESMA reaches its objective to protect the public interest by contributing efficiently to the short, medium and long-term stability and effectiveness of the financial system as stated in Article 1 of the ESMA Regulation. We further believe that ESMA successfully contributes to the missions detailed in said article, including improving the functioning of the internal market, ensuring the integrity, transparency, efficiency and orderly functioning of financial markets and preventing regulatory arbitrage and promoting equal conditions of competition. We also support ESMA's efficient role in enhancing supervisory convergence across the internal market.

ESMA provides a platform for the exchange and cooperation of National Competent Authorities. The powers and tools granted to ESMA allow the authority to ensure convergence in the asset management sector, which is important to ensure a level playing field across Europe. Investors benefit from a wide variety of investment products and they can rely on ESMA's investor protection focus. This is the reason why as far as the topics raised in the above table are concerned, in our opinion ESMA's impact is either significant or most significant. The only exception is probably financial innovation, where we have not (yet) seen evidence of a focus for ESMA's actions.

The ESA review actually took place less than 18 months ago. Although we believe that this reform was impactful and we understand that it is undertaken as contemplated by article 81 of the ESMA Regulation, we do not have sufficient insight to perform a thorough assessment of the recent changes made to the ESMA Regulation.

Over the last 18 months, to our knowledge, ESMA has not used (or with respect to several powers/tools only on very limited occasions) all its additional and/or enhanced supervisory convergence tools. Moreover, as further described in this consultation, in our opinion – based on concrete experience – some of the supervisory convergence tools need to be improved (e.g. Q&As and Common Supervisory Actions).

Finally, ESMA will benefit from some new direct supervision powers that will take effect only as from 1 January 2022.

As a consequence, we do not see any need to grant any additional powers to ESMA and/or further increase the supervisory convergence tools at its disposal. We would rather suggest to ensure an appropriate and efficient use of the existing powers and tools and targeted improvements based in particular on the constructive feedback received from the industry.

## **Question II. ESMA: In your view, does 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

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<sup>1</sup> including spaces and line breaks, i.e. stricter than the MS Word characters counting method  
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- Don't know / no opinion / not relevant

**If you think that there are elements which should be added or removed from ESMA's mandate, please provide a substantiated answer:**

*5000 character(s) maximum*

The mandate of the ESMA does not include the competitiveness of the European financial industry. The latter is operating in a global world and has to attract business development decisions to create jobs in the EU and investors as well. Yet, this fact is not reflected in the current EU regulation which is focusing on systemic risks and investor protection. Hence, we propose to include the objective of "strengthen the global competitiveness of the European financial industry" as an additional -third- objective in the ESAs framework.

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

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

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

*5000 character(s) maximum*

Deadlines concerning ESMA consultations on regulatory technical standards are sometimes quite short. Since stakeholders need to assess the relevant documents and consult themselves before reverting to ESMA, we would recommend keeping a 3 months consultation period as much as possible. We strongly encourage the Commission and the co-legislators to ensure that sufficient time is given to ESMA to conduct adequate consultations with stakeholders.

## **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*

Although we are not in a position to opine on all activities carried out by ESMA in accordance with Article 29 “Common supervisory culture” of the ESMA Regulation (e.g. promoting an effective bilateral and multilateral exchange of information between competent authorities), ALFI is of the view that ESMA made great and consistent efforts to successfully promote a common supervisory culture throughout the Union.

ALFI believes that ESMA has the relevant tools to continue such efforts and further increase the consistency of supervisory practices.

As explained in this consultation, improvements in the way some ESMA’s powers are implemented or applied would be welcomed by the industry. We are referring in particular to the common supervisory action tool.

Finally, the aim of a common supervisory culture should in our view always be promoted with a constant regard to the hierarchy of acts, notably the different levels of the Lamfalussy process.

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Providing opinions to competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Promoting bilateral and multilateral exchanges of information between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Contributing to developing high quality and uniform supervisory standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to developing high quality and uniform reporting standards	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing and reviewing the application of technical standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to the development of sectoral legislation by providing advice to the Commission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Establishing (cross)sectoral training programmes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Producing reports relating to their field of activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conducting peer reviews between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Determining new Union strategic supervisory priorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Establishing coordination groups	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Developing Union supervisory handbooks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Monitoring and assessing environmental, social and governance-related risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adopting measures using emergency powers	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investigating breaches of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediating between competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Monitoring the work of supervisory and resolution colleges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Publishing on their website information relating to their field of activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring market developments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Initiating and coordinating Union-wide stress tests of financial institutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Developing guidelines and recommendations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Developing Q&As	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Contributing to the establishment of a common Union financial data strategy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Providing supervisory statements	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other instruments and tools to promote supervisory convergence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

*5000 character(s) maximum*

Common Supervisory Actions:

ALFI is generally of the view that CSAs like the recent one on UCITS liquidity risk management are an efficient tool to promote convergence across national supervisory practices.

However, the ongoing CSA on the supervision of costs and fees of UCITS shows that some improvements are needed.

We believe that the information provided by ESMA for the purposes of CSAs should be further detailed. For instance, market participants raised numerous valid questions on the supervisory briefing on the supervision of costs in UCITS and AIFs published by ESMA in June 2020. NCAs were not in a position (or it is not their role) to provide the relevant clarification as they did not have the information and the said clarifications could only be obtained from ESMA. As concrete examples, we are referring to some terms (like ‘undue costs’) or procedural requirements (e.g. the notion of a ‘structured pricing process’) which should be clarified to ensure a common understanding across jurisdictions and NCAs, taking the diversity of asset managers and set-ups into consideration.

Moreover, the consistency of templates that are used in the context of CSAs should also be improved. For example, we understand that for the CSA on the supervision of costs and fees of UCITS ESMA made a template questionnaire available to NCAs, and the latter were allowed to modify this questionnaire. Although we share the view that to the extent feasible and where relevant it is important to give some flexibility to NCAs, we believe that NCAs should be prohibited from doing gold plating. In particular, firms which operate across Europe have difficulties to provide timely feedback when the requirements and scope are different from Member State to Member State. To avoid further changes, the content of the template and its scope should be agreed by NCAs before they are adopted by the ESAs.

Last but not least, the industry would appreciate consistent timelines for the feedback to questionnaires that are issued following CSAs. This goes back to the fact that many businesses operate on an international basis and would like to provide feedback further to joint discussions across EU Member States.

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

*5000 character(s) maximum*

Providing opinions to competent authorities: ALFI is of the view that the opinions provided by ESMA are quite effective, because they usually provoke follow-up actions by NCAs.

Contributing to developing high quality and uniform supervisory standards: In ALFI's view, ESMA made great and consistent efforts to develop extensive and qualitative uniform supervisory standards to the benefit of the industry.

Contributing to developing high quality and uniform reporting standards: ALFI recognises that a lot has been done by ESMA. However, we would welcome clarification on certain aspects by ESMA and/or the NCAs (e.g. interpretation of certain data fields), including consistency across NCAs in this respect.

Developing and reviewing the application of technical standards: ALFI's view is that ESMA made great and consistent efforts to develop and review extensive and qualitative uniform supervisory standards to the benefit of the industry.

Contributing to the development of sectoral legislation by providing advice to the Commission: ESMA's advices, which are usually issued following stakeholder consultations, help the Commission to adopt suitable (level 2) provisions.

Producing reports relating to their field of activities: ALFI is of the view that ESMA makes a lot of efforts and provides the right level of transparency in this respect.

Conducting peer reviews between competent authorities: In ALFI's view, such peer reviews contribute efficiently to the promotion of a common supervisory culture and ESMA provides the right level of transparency in this matter. We are referring in particular to the peer review on the collection and use of STORs under the Market Abuse Regulation as a source of information in market abuse investigations.

Determining new Union strategic supervisory priorities: ALFI believes that this new tool at the disposal of ESMA is appropriate to ensure a convergence of NCAs on key market risks identified by ESMA, such as in 2021 the costs and fees charged by fund managers and the improvement of the quality of transparency data reported under MiFIR.

Monitoring and assessing environmental, social and governance-related risks: Although we are at an early stage and consequently cannot opine on the monitoring of ESG risks, we think ESMA made a lot of efforts to put an efficient mechanism in place.

Adopting measures using emergency powers: Not having much insight, our assessment is neutral in this matter.

Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis): ESMA and the NCAs have significantly contributed to building a common supervisory culture and consistent supervisory practices in the EU during the current crisis.

Publishing on their website information relating to their field of activities: ESMA publishes almost every day relevant information on its website.

Monitoring market developments: ALFI thinks that ESMA performs efficient ongoing monitoring of market developments. Results are published in the form of regular or ad-hoc reports or opinions.

Initiating and coordinating Union-wide stress tests of financial institutions: ALFI is not in a position to provide an opinion on how stress tests are initiated and coordinated.

Developing guidelines and recommendations: In ALFI's view, ESMA's guidelines and recommendations have significantly contributed to building a common supervisory culture and consistent supervisory practices in the EU.

Developing Q&As: Important positions impacting the industry or the investors are sometimes taken through Q&As or supervisory statements (e.g. ESMA opinions), which are not subject to consultation. Submitting these decisions to consultation would improve the standards setting process as the industry would be in a position to feed back the implications of the decisions taken.

Moreover, it is important that the hierarchy of acts as defined by the Lamfalussy process is always complied with. Accordingly, level 3 measures should not deviate from or even go beyond the level 1 and level 2 acts.

As an example, we are referring in particular to the two following interpretations through ESMA Q&As that were not expected by the fund industry when reading the AIFMD (level 1) and its implementing regulation (level 2):

- ESMA introduced in 2016 new Q&As on delegation (questions 2 and 3 of section VIII) which in our view go beyond the provisions included in the AIFMD;
- In 2017, ESMA required AIFMs to disclose information on remuneration of their delegates in the annual report (question 6 of section I). Again, in our views, this requirement goes beyond the content of level 1 and level 2 acts.

In addition, these new interpretations were published without prior consultation of the industry, without transition periods and only years after the transposition of the AIFMD into national law.

**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:**

	<b>1</b>  (less significant contribution)	<b>2</b>  (not so significant contribution)	<b>3</b>  (neutral)	<b>4</b>  (significant contribution)	<b>5</b>  (most significant contribution)	Don't know - No opinion - Not applicable
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Promote the effective and efficient functioning of colleges of supervisors	<input type="radio"/>	<input checked="" type="radio"/>				
Foster consistency in the application of Union law among colleges	<input type="radio"/>	<input checked="" type="radio"/>				
Promote converging supervisory practices among colleges	<input type="radio"/>	<input checked="" type="radio"/>				

**Please explain your reasoning when answering question 1.1.3 on ESMA:**

*5000 character(s) maximum*

Text

**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*

We appreciate ESMA's efforts aiming at ensuring more transparency on questions that have been received and those that are under discussion.

Having said this, we think that further improvements are necessary. Please refer to our answer to the following sub-question.

**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*

We think that Q&As are a useful convergence tool to provide clarification on specific aspects which are usually not addressed by legislative texts, regulations or guidelines. This means that Q&As should not be used to set new rules. They must fit into the given legislative/regulatory framework and provide explanations on (technical) details. For instance, they should not be used to extend the scope of existing requirements to other parties.

Moreover, ALFI would welcome the possibility for the Securities and Markets Stakeholders Group to systematically provide comments, not only upon request. In case the latter considered/explained that Q&As go beyond ESMA's remit, the group should be able to initiate a different procedure, which ensures broader stakeholder involvement (e.g. a consultation) and which may result in a different form of publication.

Finally, ALFI believes that for any kind of Q&As, a short minimum application/implementation period should be granted.

In terms of process, we are of the view that the submission of Q&As via the web-based tool could be improved. For example, if questions concern both the UCITS Directive and the AIFMD (i.e. not only the one or other), it is not possible to indicate this.

If a stakeholder has numerous questions to one topic, it should also be possible to indicate the general references only once (i.e. there should be no need to fill in the related acts for each and every question).

If ESMA needs further information to analyse a question, it should be possible to exchange views with ESMA by e-mail. Only a short response that ESMA does not understand the question and the request to submit it again (with the same time delay as if a new question was submitted) is in our view not appropriate.

Currently, the transparency obligation under article 16b (2) of the ESMA Regulation applies to the questions that were submitted to ESMA. However, there are cases, where the Q&A approach follows as a result of discussions among NCAs. It is our understanding that the publication duty does not include these questions. Subsequently, such discussions among NCAs at ESMA level remain unknown for the interested stakeholders till the final Q&As are published. Here we see a need to expand the transparency obligation and to include all questions being subject to the Q&A approach in the transparency obligation.

**Please explain your answer to question 1.1.5:**

*5000 character(s) maximum*

See answer to the previous sub-questions.

## 1.2 No action letters

In the framework of the 2019 ESAs review:

**Question 1.2.1 In your view, is the new mechanism of no action letters (Article 9a of the ESMA/EIOPA Regulations and Article 9c EBA Regulation) fit for its intended purpose?**

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

**Please explain your answer to question 1.2.1:**

*5000 character(s) maximum*

Text

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

*5000 character(s) maximum*

Text

**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*

Text

## 1.3 Peer reviews

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

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

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

	1 (less significant contribution)	2 (not so significant contribution)	3 (neutral)	4 (significant contribution)	5 (most significant contribution)	Don't know - No opinion - Not applicable
Convergence in the application of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Convergence in supervisory practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
More wide spread application of best practices developed by other competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Convergence in the enforcement of provisions adopted in the implementation of Union law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Further harmonisation of Union rules	<input type="radio"/>	<input checked="" type="radio"/>				
Other	<input type="radio"/>	<input checked="" type="radio"/>				

**Please specify what you mean by other:**

5000 character(s) maximum

Text

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

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

More wide spread application of best practices developed by other competent authorities	<input type="radio"/>	<input checked="" type="radio"/>				
Convergence in the enforcement of provisions adopted in the implementation of Union law	<input type="radio"/>	<input checked="" type="radio"/>				
Further harmonisation of Union rules	<input type="radio"/>	<input checked="" type="radio"/>				
Other	<input type="radio"/>	<input checked="" type="radio"/>				

**Please specify what you mean by other:**

*5000 character(s) maximum*

Text

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

*5000 character(s) maximum*

Text

**Question 1.3.2 How do you assess the impact of each of the changes below introduced by 2019 ESAs review in the peer review process?**

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Ad-hoc Peer Review Committees (PRC) composed of ESAs' and NCAs' staff and chaired by the ESA are responsible for preparing peer review reports and follow-ups.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The peer review report is now adopted by written procedure on non-objection basis by the BoS.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Transparency provisions: if the PRC main findings differ from those published in the report, dissenting views should be transmitted to the three European Institutions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<p>PRC findings may result in recommendations to NCAs under Article 16 of the ESAs</p> <p>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.</p>	○	○	○	○	○	X ○
<p>Mandatory follow-up to peer reviews within two years after the adoption of the peer review report.</p>	○	○	○	○	○	X ○
<p>The possibility to carry out additional peer reviews in case of urgency or unforeseen events (fast track peer reviews).</p>	○	○	○	○	○	X ○

The Management Board is consulted in order to maintain consistency with other peer reviews reports and to ensure a level playing field.	<input type="radio"/>	<input checked="" type="radio"/>				
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**Please explain your reasoning when answering question 1.3.2:**

*5000 character(s) maximum*

Text

**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

**Please specify the piece of legislation and concrete provision under which mandatory peer reviews could be introduced for ESMA:**

*5000 character(s) maximum*

We see no advantage in installing an automatic peer review mechanism in certain areas. A peer review is time-consuming to carry out and evaluate. In our view, the resources should therefore be allocated to ad hoc-subjects that require special attention.

**Please explain your answer to question 1.3.3 for ESMA:**

*5000 character(s) maximum*

Text

**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

**Please specify which improvements could be made to the peer review process:**

*5000 character(s) maximum*

Text

**Please explain your answer to question 1.3.4:**

*5000 character(s) maximum*

Text

#### 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

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

*5000 character(s) maximum*

Text

**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*

Text

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

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

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

*5000 character(s) maximum*

We believe that the toolkit is adequate and more time shall be given to ESMA to fully leverage on the tools placed at its disposal before considering a review.

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

**Please explain your answer to question 1.4.4:**

*5000 character(s) maximum*

Text

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	Don't know - No opinion - Not
--	-------------------	----------------------------	----------------	------------------------	-----------------------	-------------------------------------

						applicable
Operational independence	<input type="radio"/>	<input checked="" type="radio"/> <input type="radio"/>				
Financial independence	<input type="radio"/>	<input checked="" type="radio"/> <input type="radio"/>				
Appointment and dismissal of governing body	<input type="radio"/>	<input checked="" type="radio"/> <input type="radio"/>				
Accountability and transparency	<input type="radio"/>	<input checked="" type="radio"/> <input type="radio"/>				
Adequacy of powers and ability to apply them	<input type="radio"/>	<input checked="" type="radio"/> <input type="radio"/>				
Other	<input type="radio"/>	<input checked="" type="radio"/> <input type="radio"/>				

**Please specify to what other criterion/a you refer:**

*5000 character(s) maximum*

Text

**Please explain your answers to question 1.4.5:**

*5000 character(s) maximum*

Text

**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*

In our view, timing constraints are the main remaining obstacles. We believe that in the initial years of operation ESMA was required to spend significant time and efforts on building the regulatory and technical standards framework – it is only in recent years that ESMA has been able to focus more on building a more supervisory culture. We believe the current broad toolkit for developing a supervisory

framework needs more time to fully bed in before assessing whether there are additional obstacles which need to be addressed.

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

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

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

*5000 character(s) maximum*

Text

**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*

Text

**Please explain your answer to question 1.4.8:**

*5000 character(s) maximum*

Text

**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

**If there is need to add tools or tasks, please specify which one(s) and explain:**

*5000 character(s) maximum*

We believe that the toolkit is adequate and more time shall be given to ESMA to fully leverage on the tools placed at its disposal before considering a review.

**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*

In ALFI's view, the supervisory convergence tools developed by ESMA such as common supervisory actions are effective and contribute efficiently to the achievement by ESMA of its mission to enhance supervisory convergence across the internal market. It is important to remind that the industry does not have access to the preparatory work and discussions between ESMA and NCAs in relation to the preparation/implementation of these tools. Accordingly, ALFI can only opine on the basis of the result which is made public by ESMA (e.g. final reports) and cannot opine on the functioning of the tool itself between ESMA and NCAs. Moreover, although ALFI believes that the convergence tools are rather effective, some improvements would be welcomed as further detailed in this consultation.

## 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*

Text

**Question 1.5.2 ESMA: Do you think that the use of the breach of Union law procedure by ESMA is adequate?**

Before 2019 ESAs' review	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
	Yes	No	N.A.
After 2019 ESAs' review	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Please explain your answer to question 1.5.2 for ESMA:**

5000 character(s) maximum

Text

**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

**Please explain what those other instruments would be:**

5000 character(s) maximum

Text

**Please explain your answer to question 1.5.3:**

5000 character(s) maximum

Text

**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*

Text

**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

**Please give concrete examples where you consider that ESMA should have taken relevant action under these Articles:**

*5000 character(s) maximum*

Text

**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*

Text

**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*

Text

## **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*

We believe that the response provided by the regulators (ESMA and NCAs) during the COVID-19 crisis was really impactful. We take the opportunity to stress the proactivity, availability and involvement of our local NCA, the CSSF, which was really instrumental in addressing the March 2019 operational challenges. We are aware that ESMA played an important role in coordinating similar timely responses by other NCAs. For example, the publication of FAQs helped to address questions from the industry. Moreover, deadlines for reports were postponed by both ESMA and the CSSF, which enabled firms e.g. to report at a time when employees were allowed to return to the office.

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

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

Impact of large scale downgrades of corporate bonds on markets and entities across the financial system	<input type="radio"/>	<input checked="" type="radio"/>				
System-wide restraints on dividend payments, share	<input type="radio"/>	<input checked="" type="radio"/>				
Liquidity risks arising from margin calls	<input type="radio"/>	<input checked="" type="radio"/>				

**Please explain your answer to question 1.6.2:**

5000 character(s) maximum

Text

**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

See our answer to question 1.6.4.

**Please give examples of situations where the coordinating activities**

**carried out by ESMA did not successfully contribute to address the COVID-19 challenges:**

*5000 character(s) maximum*

Text

**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

**Please give concrete examples where you consider that ESMA should have taken relevant action:**

*5000 character(s) maximum*

See our answer to question 1.6.4.

**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*

Although we believe that Article 18.2 of the ESMA Regulation is fit for its intended purposes, ALFI reiterates, as further disclosed in this response to the consultation, that the practice shows that keeping the supervision at the level of NCAs - and in particular of the CSSF in Luxembourg - is extremely valuable to the industry as we could experience recently on the occasion of the Covid-19 situation.

**Please suggest potential changes to Article 18.2 of the ESAs Regulation:**

*5000 character(s) maximum*

Text

**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*

Text

**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

**If you identify areas for improvement for the coordination role of ESMA, please explain:**

*5000 character(s) maximum*

Text

**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*

We see a need for greater coordination as regards the use of common reporting formats and templates. The asset management and investment fund industry operates across jurisdictions, which is why consistent data requirements and data collection/sharing would be much welcomed.

**Question 1.7.3 In the framework of 2019 ESAs' review, please rate the**

**effectiveness, in your view, of the tools below in order to fulfil the new coordination role of the ESAs facilitating the entry into the market of actors or products relying on technological innovation:**

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

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

*5000 character(s) maximum*

We do not have sufficient insight since the entry into effect of the 2019 ESA review. Thus, we are unable to provide firm feedback to these questions.

**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

Text

**Please explain why you do not think ESMA's new coordination function is an effective tool?**

5000 character(s) maximum

Text

**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

Text

**If you identify room for improvement in the new coordination groups, please explain:**

5000 character(s) maximum

Text

**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

ESMA's issued opinions on outsourcing/delegation (in particular with regard to Brexit) which are as such non-binding. Nevertheless, they have been followed and adopted with detailed national rules (e.g. in Luxembourg and Ireland). Therefore, we consider ESMA as a catalyser for effective rules in this regard (but see also above our general statements on opinions).

We believe that the toolkit is adequate and more time shall be given to ESMA to fully leverage on the tools placed at its disposal before considering a review.

Nevertheless, we would like to propose making ESMA's work more didactic and comprehensible towards the financial industry. This could be done in particular by improving the inclusion of the financial industry, e.g. through open discussions and/or workshops.

**Please indicate how the coordination function of ESMA should be adjusted:**

5000 character(s) maximum

Text

**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

Text

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Analysis of consumer trends	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Reviewing market conduct	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Developing indicators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Contributing to a level playing field	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial literacy	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Follow up to work in this area	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

5000 character(s) maximum

Financial literacy/capability is an important area for both investors and asset managers. We are of the view that ESMA should play a more active role, as knowledgeable and capable investors are better protected against misinformation or unsuitable products, and more willing to invest for the long term rather than purely focussing on short term precautionary savings.

**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

Product intervention powers are linked to detailed pre-approval processes. More is in our view not needed and would rather result in inappropriate use of resources.

**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 specify in what other cases the ESAs could adopt acts of general application:**

*5000 character(s) maximum*

Text

**Please explain your answer to question 1.8.4:**

*5000 character(s) maximum*

Text

**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*

Text

**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*

We are not aware that any information on this topic is publicly available. Thus, we are not in a position to provide an opinion.

**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?**

We have not identified any shortcomings concerning Article 9 of the ESMA Regulation. We believe that the toolkit is adequate and more time shall be given to ESMA to fully leverage on the tools placed at its disposal before considering a review.

**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*

Text

## **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*

We are not in a position to take a firm view, but as a matter of principle, we believe European authorities/institutions should play an important/leading role in international forums to ensure more convergence at international level (e.g. in the area of sustainability reporting).

### **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*

Please see our answer to question 1.9.1.

We have limited evidence of these equivalence decisions being applicable in the wealth and asset management sphere.

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

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

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

*5000 character(s) maximum*

Text

### **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*

We welcome the cooperation role of ESMA for developing Memoranda of Understanding with European NCAs and third-country authorities. Particular focus is put in this regard on operational aspects. We have not identified any reasonable background which would justify to further specify ESMA's role in this matter.

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

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

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

5000 character(s) maximum

ALFI does not have access to sufficient information regarding ESMA's actual role under Articles 17, 18 and 19 of the founding Regulations. Accordingly, we are not in a position to provide any opinion in this matter.

### 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

Text

### 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*

Text

**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*

Text

**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

**Please specify what you mean by 'other' in your answer to question 1.10.5 for ESMA:**

*5000 character(s) maximum*

Text

**What role could sectoral legislation and ESMA play in improving the situation? Please substantiate your answer and give examples:**

*5000 character(s) maximum*

Text

## 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*

Text

**Question 2.1.1.1 If you consider that there should be differences in governance between different types of tasks, please explain:**

The current process allows for constant dialogue with different types of stakeholders through consultations, experts groups and through links with either EU commission or NCAs. However, the fact that EU Commission is represented at various stages might have an indirect bearing on the decision making process and ESAs independence.

At this stage, we believe the process should continue to work as is without significant changes, the new organisation of the ESAs dates back to 1 January 2020 and as we do not have sufficient insight to perform a thorough assessment of the recent changes.

**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 2.1.2:**

This principle does apply in any of private companies settings for proper corporate governance and appears as a normal way to mitigate conflicts of interests.

**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

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

5000 character(s) maximum

Text

**Question 2.1.4 In the framework of 2019 ESAs’ review, to what extent the recent enhancements in the role of Chairperson improve the decision making process?**

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Request to the Board to establish internal committees for specific tasks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Set the agenda to be adopted by the Board and table items for decision	<input type="radio"/>	<input checked="" type="radio"/>				
Call a vote at any time	<input type="radio"/>	<input checked="" type="radio"/>				
Propose the composition of independent panels for breach of Union law investigations and dispute settlements	<input type="radio"/>	<input checked="" type="radio"/>				
Propose the composition of peer review committees for peer reviews	<input type="radio"/>	<input checked="" type="radio"/>				

Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation	<input type="radio"/>	<input checked="" type="radio"/>				
Vote in the Board of Supervisors (except on matters that are decided on the basis of qualified majority voting)	<input type="radio"/>	<input checked="" type="radio"/>				
Other	<input type="radio"/>	<input checked="" type="radio"/>				

**Please specify what you mean by ‘other’ in your answer to question 2.1.4:**

*5000 character(s) maximum*

Text

**Please explain your answers to question 2.1.4:**

*5000 character(s) maximum*

Text

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

Yes

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

**Please specify in which area(s) the role of the Chairperson should be strengthened:**

*5000 character(s) maximum*

Text

## 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

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

*5000 character(s) maximum*

Text

**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

**Please explain your answer to question 2.2.2:**

*5000 character(s) maximum*

Text

**Please explain your answer to question 2.2.2 and indicate how voting modalities could be streamlined:**

*5000 character(s) maximum*

Text

**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

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

*5000 character(s) maximum*

Text

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
The MB can give opinions on all matters to be decided by the Board of Supervisors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

The MB ensures the consistent use of a methodology for all peer reviews conducted	<input type="radio"/>	<input checked="" type="radio"/>				
The MB proposes a peer review work plan every two years	<input type="radio"/>	<input checked="" type="radio"/>				
The MB can set up coordination groups on its own	<input type="radio"/>	<input checked="" type="radio"/>				

**Please explain your answers to question 2.2.4:**

5000 character(s) maximum

Text

**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

**In which other areas should the role of the Management Board be strengthened? Please substantiate you answer:**

5000 character(s) maximum

Text

**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

**Please indicate if there should be more decisions taken under this procedure and in which areas. Please substantiate your answer:**

*5000 character(s) maximum*

Text

**Please explain your answer to question 2.2.6:**

*5000 character(s) maximum*

Text

**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*

Text

**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

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

5000 character(s) maximum

Text

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

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

Proportionality committee	<input type="radio"/>	<input checked="" type="radio"/>				
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**If you identify any shortcomings for ESMA please specify how these could be addressed:**

*5000 character(s) maximum*

Text

**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*

Text

## 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:**

As long as there are no new missions the budget foreseen seems appropriate, noting that one of the largest financial centre left the EU at the beginning of the year this should consequently create less work for the ESAs.

It should be added that in many instances the budget of NCA and ESAs is financed by contribution from the financial sector itself. Then this risk creates an arbitrage by financing more the EU level to the detriment of the national one, where expertise is also important. As a consequence, if the budget of the ESAs were to grow, it should on average be neutral at the level of firms contributing to the supervisory/regulatory budget between NCAs and EU level, or be balanced out by regulatory efficiencies leading to costs savings to firms.

Additionally, one has to keep in mind, that ESAs workload is substantially dedicated to regulatory matters, e.g. in the context of technical advice to delegated acts for EU Commission. Consequently, in our view the portion of the budget financed from the EU budget should be increased.

### **Please indicate what other sources of finance could be considered:**

None or third country firms accessing the EU

### **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:**

In a similar vein as for the budget, the staffing and staffing plans appear appropriate, noting that one of the most active Member State left the EU.

### **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*

Text

**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:**

From our perspective, the level and number of consultations is on average adequate, it is important that key issues are debated and potentially amended.

However, deadlines concerning ESMA consultations on regulatory technical standards are sometimes quite short. Since stakeholders need to assess the relevant documents and consult themselves before reverting to ESMA, we would recommend keeping a 3 months consultation period as much as possible. We strongly encourage the Commission and the co-legislators to ensure that sufficient time is given to ESMA to conduct adequate consultations with stakeholders.

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

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

Specific consultations when developing data collection requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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**Please explain your answer to question 2.4.2 for ESMA:**

5000 character(s) maximum

Text

**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:**

The transparency and accessibility could be improved in certain cases (e.g. the possibility to engage with ESMA staff). Therefore, we suggest that ESMA considers in their forward looking strategy to regularly assess the efficiency and effectiveness of the interaction with stakeholders on a case by case basis.

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

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

EIOPA Occupational Pensions Stakeholder Group	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ESMA Securities and Markets Stakeholder Group	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
EBA Banking Stakeholder Group	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Please explain your answers to question 2.4.4:**

In our view, the weight and opinion represented by these groups appears less impacting in terms of changes and results than other stakeholders, above all when they represent retail clients. In some respects, the demands that might be fair from a client/consumer point of view should be more weighted in a cost/benefits analysis.

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

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

Selection of members	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Term of office	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A third of its members can issue a separate advice	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Please explain your answers to question 2.4.5:**

5000 character(s) maximum

Text

**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

Text

**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:**

In our view the accessibility and transparency have much improved over the years with more ALFI response to EC consultation on supervisory convergence and the single rulebook

communication. Communication at an earlier stage could be further improved if the groups would be able to comment on consultations one or two weeks after the release of consultative documents so as to give a form of flavour of the potential market perspective. This being said, they have a consultative role that should not be changed, they are one group of actors tasked by the ESAs to comment on texts that are a compromise between the regulatory demands, the demands from consumers and professional stakeholders.

Finally, given the composition one might wonder if they are able to comment on any and everything as some consultations do require a very specific expertise.

## 2.5 Joint bodies of the ESAs

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

	1 (least effective)	2 (not so effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Functioning and time limits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
One joint Board of Appeal for the 3 ESAs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The composition of the BoA	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

#### If you identify areas for improvement, please explain:

*5000 character(s) maximum*

Text

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

	1 (least effective)	2 (not so effective)	3 (neutral)	4 (rather effective)	5 (most effective)	Don't know - No opinion - Not applicable
Functioning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Working methods	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Ensuring cross-sectoral cooperation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Ensuring consistent approaches	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Decision making process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The legal structure (no legal personality)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

*5000 character(s) maximum*

Text

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

	1 (less significant impact)	2 (not so significant impact)	3 (neutral)	4 (significant impact)	5 (most significant impact)	Don't know - No opinion - Not applicable
Consumer Protection and Financial Innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Coordination and cooperation for bi-annual Joint Risk Reports, published in spring and autumn	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Financial Conglomerates	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Securitisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
European Forum of Financial Innovators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

*5000 character(s) maximum*

Text

### 3. Direct supervisory powers

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

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

**Please explain your answers to question 3.1:**

*5000 character(s) maximum*

An important explanatory work has been undertaken by ESMA in the granting of authorisations. Transparency has been observed with regard to the sanction regime (fines to trade repositories and credit rating agencies).

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know - No opinion - Not applicable

						applicable
Credit Rating Agencies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trade Repositories under EMIR	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trade Repositories under SFTR	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> X	<input type="radio"/>	<input type="radio"/>
Securitisation Repositories (STS)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

*5000 character(s) maximum*

The EMIR reporting framework had to evolve from 85 fields (in 2014) to 129 (in 2017), then to 203 under the current draft RTS. We are of the view that this evolution was not sufficiently anticipated and explained.

A more pedagogical approach might have generated better data quality and consistency in the reporting.

**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*

Additional convergence tools have been granted to ESMA with effect on 1 January 2020, and two new direct supervisory powers will start for ESMA on 1 January 2022.

Convergence does not however necessarily mean centralisation of powers or centralised supervision. The negotiations around the ESA review in 2017 did clearly show that the European co-legislators had no interest in direct ESA supervision in the area of financial services. There seems no clear appetite today either.

Following various contacts with internationally active asset management groups, ALFI has not found a single supporter for direct centralised supervision by ESMA. On the contrary:

- It is reminded that the UCITS Directive and AIFMD contain clear provisions concerning the responsibilities allocated to the home and host Member State. ALFI's members do not see any need for further clarification in this respect, also taking into account the EU Regulation / Directive concerning cross-border distribution of collective investment undertakings, for which the UCITS Directive and AIFMD have already been updated last year. Following the requirement set out in the AIFMD a global network of cooperation agreements between the national competent authorities of the EU and securities regulators in numerous third countries has been established and regulates in detail the daily cooperation among regulators when it comes, among others, to the delegation of functions to third-country entities. It is reminded that this global network of cooperation agreements is coordinated by ESMA as all these agreements are based on a common standard set out by ESMA.
- The way and the speed national supervisors and authorities have reacted to the Covid-19 crisis have stressed the importance of supervisors that have knowledge of the local environment and specificities.
- The day-to-day operations of an IFM rely extensively on a broad set of national rules (e.g. contract law, tax law, insolvency rules) which may vary substantially from one jurisdiction to another depending in particular upon the local legal environment (e.g. common law versus civil law). NCAs having the knowledge of the above mentioned local rules and environment are much better placed than ESMA to perform the day-to-day supervision of IFMs domiciled in their jurisdiction.
- Adding an additional layer of supervision would have a negative impact on time-to-market, the latter being a key component of success for asset managers.

The above does not preclude a role of convergence for ESMA. The ESAs are the ideal fora for discussions among regulators with the aim of fostering a coherent approach in regulation, supervision and enforcement. We refer in particular to the successful Supervisory Coordination Network established by ESMA among 27 EU NCAs in the context of the UK's withdrawal from the EU. As reminded by ESMA on several occasions and in particular during a keynote speech delivered at the AIMA Global Policy & Regulatory Forum on 19 November 2020, the SNC enabled to discuss 250 relocations cases, which *"really contributed to ensuring high levels of consistency in authorisation standards across the EU"*.

ALFI would welcome a NCAs' peer review to assess the actual differences of practices across the EU, identifying in particular best practices. Convergence could then be further improved at the level of NCAs relying on these best practices, with the support of ESMA. This would be in line with ALFI's conviction that an efficient/effective supervision requires a qualitative supervisory cooperation.

### **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

### **Please explain your answer to question 3.4:**

*5000 character(s) maximum*

As explained in further details in this consultation, in particular in our answer to question 3.3, we favour ESMA's convergence role. In our view, areas supervised at EU level are sufficient and we do not see any reasonable background justifying to submit any additional areas to supervision at EU level. Finally, in our opinion, ESMA has already sufficient and appropriate powers to perform its mission efficiently and we have not identified any reason triggering changes in terms of supervision.

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

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

	1 (lowest rate)	2	3	4	5 (highest rate)	Don't know No opinion Not applicable
The quality of the analysis of market developments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

**If you identify room for improvement for ESMA, please specify how this could be addressed:**

*5000 character(s) maximum*

Text

## B. Questions on the single rulebook

### 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
- 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*

Text

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

*5000 character(s) maximum*

Text

**Please explain your answer to question 5.1 for ESMA:**

*5000 character(s) maximum*

ESMA's technical standards, guidelines and recommendations are generally sufficiently detailed and typically subject to wide scale consultation. Given the heterogeneous nature of European markets we urge ESMA to continue its process of broad stakeholder engagement to maintain a coherent approach to developing a core set of standards.

Standards/guidelines/recommendations ensure consistent and effective supervisory practices across the Single Market. These are very useful tools in terms of achieving supervisory convergence and uniform application of EU legislation. Overall, they have been successful, but we refer to the following question as regards necessary improvements concerning the procedure.

**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 specify what you mean by 'other' in your answer to question 5.2:**

*5000 character(s) maximum*

Text

### **Please explain your answer to question 5.2:**

*5000 character(s) maximum*

The process for drafting certain ESMA standards/guidelines/recommendations is sometimes either too lengthy or the date of the entry into force of an EU regulation/directive which relies heavily on such technical documents is too ambitious. For example, the regulatory technical standards with respect to the Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector were published after the entry into force of the regulation, which creates a lot of uncertainty in the market. Application of level 1 rules should not occur before the level 2 rules are available. To manage this gap whilst avoiding a complex legislative process, it may be worth considering providing for application dates of level 1 rules that are gradual and linked to the publication of the level 2 rules.

### **If you have identified areas for improvement, please explain:**

*5000 character(s) maximum*

Deadlines concerning ESMA consultations on regulatory technical standards are sometimes quite short. Since stakeholders need to assess the relevant documents and consult themselves before reverting to ESMA, we would recommend keeping a 3 months consultation period as much as possible. We strongly encourage the Commission and the co-legislators to ensure that sufficient time is given to ESMA to conduct adequate consultations with stakeholders.

### **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*

Text

### **Question 5.4 In particular, are stakeholders sufficiently consulted and any potential impacts sufficiently assessed?**

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

### **Please specify what you mean by 'other' in your answer to question 5.4:**

*5000 character(s) maximum*

### **Please explain your answer to question 5.4:**

*5000 character(s) maximum*

Drafts are published and reviewed by the relevant stakeholders.

### **If you have identified areas for improvement, please explain:**

5000 character(s) maximum

The industry does not have much visibility on what happens after consultation, even though usually a lot of time is invested by industry representatives and trade associations for the preparation of responses to consultations. For example, information is published on answers to the consultation but always remains very vague as to the rationale for making the final decision. We are of the view that the process could be more transparent as to the reason why a particular choice is made by ESMA, and the proportion and type of investors / market participants that were in favour of a particular solution.

It is also worth mentioning that sometimes, even though the industry was consulted before publication, the published version of guidelines still raised a number of questions. This was e.g. the case for ESMA's guidelines on performance fees. These guidelines were published and came into application, although numerous questions submitted to national regulators and ESMA remained unanswered.

**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

We are of the view that the ESMA guidelines on key concepts of AIFMD have been useful and helped Member States adopting a harmonised approach in this respect.

Texts published in the form of Q&As are also very useful for the industry as they are more practical. However, the lack of consultation for the issue of Q&As is not ideal as it can mean there is a failure to assess the impact of specific answers on various national scenarios. More use could be made of the consultative working groups to review Q&As to avoid unintended outcomes (see our detailed answers to questions 1.1.2, 1.1.4 and 1.1.5).

**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 specify in which areas it would be useful for the ESAs to adopt such guidelines:**

5000 character(s) maximum

Text

**Please explain your answer to question 5.6:**

5000 character(s) maximum

We are of the view that in a multi-jurisdictional framework, further guidelines from the ESAs might not be appropriate if not required by level 1 regulations, considering in particular the fact that the ESAs are not an elected body and such work may lack parliamentary control.

**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

**Please explain what you mean by 'other' in your answer to question 5.6.1:**

5000 character(s) maximum

Text

**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 how the role of ESMA with regard to the Transparency Directive could be strengthened:**

5000 character(s) maximum

The Transparency Directive is a very complex regulation and it is hard to ensure its operational application. In ALFI's view, an improvement of ESMA's coordination with respect to the systems for ALFI response to EC consultation on supervisory convergence and the single rulebook

reporting requirements which vary across Member States (as further detailed below) would be welcomed.

The aim of the amended Transparency Directive (“TD2”) was to ensure greater consistency and uniformity in disclosure and notification rules applicable across the EU, in particular regarding the calculation and aggregation of major holdings. The options for EU Member States when implementing the requirements was reduced, however, Member States were still permitted to ‘Gold-plate’ certain requirements.

Member States may impose stricter requirements than those set out in the TD2 when:

- setting lower or additional notifications thresholds and requiring equivalent notifications in relation to thresholds based on capital holdings (“Threshold Gold-plating”);
- setting out procedures for making notifications (including in respect of: the content of notifications; timing for making notifications; the exemption from the need to make a notification where a notification is made by an undertaking’s parent undertaking; the exemption for parent undertakings of management companies from aggregating their holdings with holdings managed by the management company where voting rights are exercised independently; and the exemption for parent undertakings of investment firms from aggregating their holdings with holdings managed by the investment firm on a client-by-client basis) (“Procedural Gold-plating”); or
- applying laws, regulations or administrative provisions adopted in relation to takeover bids, merger transactions, etc. (“Takeover Gold-plating”).

Member States are also able to impose the submission methods and disclosure deadline.

We would support ESMA having a greater role in developing standardisation for both the format of the notification and submission method, in addition to a standard disclosure deadline across all Member States. In our view this would be beneficial in developing a consistent and coherent view of market developments while encouraging higher rates of automation and improved data quality.

*5000 character(s) maximum*

Text

**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*

Text

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

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

**Please explain what role could ESMA have with regard to the IAS Regulation could be strengthened:**

*5000 character(s) maximum*

Text

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

*5000 character(s) maximum*

We are of the view that the evaluation of opinions and technical advices issued by ESMA could be improved and the industry should be invited to provide feedback on the application of a particular body of opinions and technical advices after its publication (see also our answers to previous questions on opinions/technical advices).

## 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*

We would consider that further harmonisation would be welcome (despite several publications, there is still uncertainty) concerning the following:

- AIFMD "passporting" regime: certain countries have required further documents or information if

an EU AIFM is willing to market units/shares of an EU AIF in their territory under Article 32 of AIFMD. The various rules lack clarity and further harmonisation could be sought to create a single AIF market in the EU. There is also an uncertainty about the starting date of the 18 months period during which no reverse solicitation could be possible. In addition, questions may be raised about the practicability of the de-notification process. In terms of timeline, we think it would be good to wait and see how the recently adopted changes (Cross-Border Distribution of CIU Directive) work in practice, before further modifications are considered.

- We are concerned about goldplating. One example are SFDR disclosures to be inserted in offering documents/pre-contractual disclosures – certain countries now require more information than what is required by the regulation, which contravenes the idea of a single level playing field.
- ALFI is convinced that Liquidity Management Tools (LMTs) should be extensively available across EU Member States as this would facilitate cross-border activities and be in the best interest of investors. . It should be at the discretion of the fund manager which tools they want to use. However, this matter should be dealt with at national level, with a need for each relevant NCA to adopt the relevant practice and to provide the relevant guidance, taking the applicable local laws and regulations (e.g. corporate law) into consideration. LMTs rely extensively on local laws and regulations, and the need of LMTs and their implementation may differentiate substantially across different types of AIFs and within the AIF sector. In case there is a need to improve the consistency of the availability of LMTs across EU Member States, ALFI would recommend a better supervisory convergence at the level of NCAs with the support of ESMA as opposed to a harmonisation in the AIFMD.
- The gross and commitment methods currently used under the AIFMD are not appropriate for all types of AIFs and are misleading to managers, investors as well as competent authorities. No single measure can capture all the risks in nature, size and characteristics associated with a fund's underlying assets and strategies. Nevertheless, we are not in favour of introducing a new methodology at this point in time. If changes were to be introduced, they should be addressed by level 2 measures consistent and aligned to IOSCO's recommendations for a framework assessing leverage in investment funds (FR18/2019).

## **Question 6.2 Which are the areas where you consider that national rules going beyond the minimum requirements of a Directive (known as “gold-plating”) are particularly detrimental to a single market?**

Please select as many answers as you like

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

### Asset management

**Please identify the relevant sectoral legislation in the area of asset management for which national rules going beyond its minimum**

**requirements and explain:**

*5000 character(s) maximum*

Different Member States may have different interpretations of the scope of permitted activities of AIFMs with or without a MiFID top up license.

We agree that there should be a level playing field with investment firms that are subject to MiFID rules and perform the same activities. The application of MiFID rules to ancillary services performed under the AIFMD and UCITS Directive should be limited to financial instruments. We think that a level 1 clarification in this respect is not needed as the rules are clear. MiFID rules should not apply to assets such as real estate or private equity, as this would lead to a discrimination towards AIFMs and UCITS management companies.

We are also of the view that it is clear from the provisions of both the AIFMD and UCITS Directive that MiFID rules do not apply if the portfolio management function is delegated. The delegation of portfolio management functions is important for both AIFMs and UCITS management companies, and extensive rules exist in both directives on how to organise such delegation. Collective portfolio management should not be confused with management based on individual mandates. The rules of the AIFMD should be applied in a harmonised way across Member States, but it is our view that an amendment of the AIFMD itself is not required to achieve this objective.

We do not see a specific need to open AIFMD level 1 only for this, but in case the legislator anyway envisages to make changes to the directive and in order to achieve a level playing field with investment firms that are authorised as per MiFID to execute orders from their clients in addition to the activity of discretionary portfolio management, the activity of “execution of orders” could be added under Article 6(4)(b) AIFMD in order to allow AIFMs to execute specific orders from clients as part of the management of mandates.

**Please provide examples of gold plating in the area of asset management and explain:**

*5000 character(s) maximum*

See also our answer on question 6.1 above.

**Please identify the relevant sectoral legislation in the area of asset management for which national rules going beyond its minimum requirements and explain:**

*5000 character(s) maximum*

Text

**Please provide examples of gold plating in the area of asset management and explain:**

*5000 character(s) maximum*

Text

Other

**Please specify to what other legislative area(s) you refer:**

*5000 character(s) maximum*

Text

**Please identify the relevant sectoral legislation in this/these other area(s) for which national rules go beyond its minimum requirements and explain:**

*5000 character(s) maximum*

Text

**Please provide examples of gold plating in the area of this/these other area(s) and explain:**

*5000 character(s) maximum*

Text

**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*

We do not think that the single rulebook needs to be further enhanced to reach uniform application of EU law. It may not be perfect, but it provides a good framework, which consists of various forms and levels (regulations, directives, implementing rules, technical standards). Targeted amendments can always be discussed along the regular review of legislative acts. We do not see a need for new rules, but more guidance on the details (at level 2 or 3) would often be helpful.

#### **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*

For some EU legislation, the thresholds are very precise and not always suitable or efficient where the market evolves.

The AIFMD level 2 regulation provides for the Annex IV reporting requirements. There is a very heavy legislative process to amend these requirements and it might be more appropriate for ESMA to be able to fix the content of reporting from time to time without the need to go through such process. In contrast, the SEC would have more flexibility to fix the scope of reporting required by entities under its supervision. In comparison, fixed income transparency is better calibrated and ESMA does have significant discretion to amend the thresholds and in effect increase or decrease the percentage of fixed income trades (traded on an EU trading venue) annually.

In relation to MiFIR and the double volume cap mechanism, the bandings are set out in level 1. We understand that the European Parliament was seeking assurances in the level 1 text as to the percentage equity trading that would be required to trade on regulated markets (lit) thereby squeezing the percentage traded OTC (unlit).

In relation to MiFIR and the tick size regime, the table setting out the increments at which equities can trade is set out in level 1. Again there are fine levels of detail in what should be in the level 3 regulatory framework for better flexibility.

**Question 6.4.2 On the other hand, in your view, could reducing divergences in rules at level 1 (legislation agreed by the co-legislators), as well as rules regarding delegated acts (regulatory technical standards) or implementation at level 2, (implementing acts and implementing technical standards) and/or level 3 ('comply or explain guidance' by ESAs) further enhance the single rulebook?**

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

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

Please select as many answers as you like

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

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

*5000 character(s) maximum*

Level 2 acts should be sufficiently precise to delimit the purpose of a level 3 measures. Level 3 would allow some flexibility and adaptability to market conditions.

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

Please select as many answers as you like

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

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

*5000 character(s) maximum*

Level 2 regulations are directly enforceable.

**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*

Level 2 should be available sufficiently in advance of the application of Level 1 rules (see e.g. problematic of the publication of regulatory technical standards with respect to the entry into force of SFDR). Rather than setting a final date for implementation of level 1 we recommend that implementation dates are sequenced so as to ensure sufficient implementation time e.g. 12 months after publication of the final level 2 and level 3 texts. This would increase the level of legal certainty while providing sufficient operational clarity for market participants on their obligations. It would also avoid repeated quick fix legislation to push out implementation dates as seen with MiFID and PRIIPs.

In addition, in our view a consistent sequencing of level 1, level 2 and level 3 would allow a more efficient use of resources among industry participants, triggering in particular a reduction of costs to the ultimate benefit of final investors.

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

	1 (unimportant)	2 (rather not important)	3 (neutral)	4 (rather important)	5 (fully important)	Don't know - No opinion - Not applicable
Strong interlinkages with areas of law which remain non-harmonised (e.g. CRIM-MAD and national criminal law)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Broad discretion left to national authorities and frequent use of that discretion by these national authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

High level of gold plating by national rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> X	<input type="radio"/>
High degree to which supervision of the same type of actors and /or activities render divergent outcomes across Member States	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> X	<input type="radio"/>
All of the above	<input type="radio"/>	<input checked="" type="radio"/> X				
None of the above	<input type="radio"/>	<input checked="" type="radio"/> X				
Other aspects	<input type="radio"/>	<input checked="" type="radio"/> X				

**Please specify to what other factors you refer and provide concrete**

## examples:

5000 character(s) maximum

See our responses to question 6.1 above.

We understand that this question aims at identifying criteria which should be observed when it comes to harmonisation across the EU. For example, it is in this case key to avoid national goldplating or to give too much discretion to national regulators. Measures taken under the Cross-Border Distribution of CIU Regulation could be taken as an example.

**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

Asset management (same for any other sub-category except ‘Other’)

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

5000 character(s) maximum

Text

**Please provide examples in the area of asset management and explain:**

*5000 character(s) maximum*

Text

Other

**Please specify to what other legislative area(s) you refer:**

*5000 character(s) maximum*

Text

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

*5000 character(s) maximum*

Text

**Please provide examples in this/these other area(s) and explain:**

*5000 character(s) maximum*

Text

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

Please select as many answers as you like

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

Asset management (same for any other sub-category except 'Other')

**Please identify the specific piece(s) of legislation you have in mind in the area of asset management and explain:**

*5000 character(s) maximum*

Text

**Please provide examples in the area of asset management and explain:**

5000 character(s) maximum

Text

Other

**Please specify to what other legislative area(s) you refer:**

5000 character(s) maximum

Text

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

5000 character(s) maximum

Text

**Please provide examples in this/these other area(s) and explain:**

5000 character(s) maximum

Text

**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

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

5000 character(s) maximum

Generally speaking, thresholds and figures should be included rather in level 2 provisions, because they may need to be adapted more frequently.

**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 select the legislative sector(s) in which you would increase the degree of harmonisation of EU financial legislation:**

Please select as many answers as you like

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

#### Asset management

**Please identify the specific piece of legislation in the area of asset management for which you would increase the degree of harmonisation of EU financial legislation and explain:**

*5000 character(s) maximum*

We would like to refer to our answer to question 6.2 above.

We agree that there should be a level playing field with investment firms that are subject to MiFID rules and perform the same activities. The application of MiFID rules to ancillary services performed under the AIFMD and UCITS Directive should be limited to financial instruments. We think that a level 1 clarification in this respect is not needed as the rules are clear. MiFID rules should not apply to assets such as real estate or private equity, as this would lead to a discrimination towards AIFMs and UCITS management companies.

We are also of the view that it is clear from the provisions of both the AIFMD and UCITS Directive that MiFID rules do not apply if the portfolio management function is delegated. The delegation of portfolio management functions is important for both AIFMs and UCITS management companies, and extensive rules exist in both directives on how to organise such delegation. Collective portfolio management should not be confused with management based on individual mandates. The rules of the AIFMD should be applied in a harmonised way across Member States, but it is our view that an amendment of the AIFMD itself is not required to achieve this objective.

**Please explain the legislative approach (omnibus vs targeted reviews) in the area of Asset management:**

*5000 character(s) maximum*

Text

**Please identify the specific piece of legislation in the area of asset management for which you would increase the degree of harmonisation of EU financial legislation and explain:**

*5000 character(s) maximum*

**Please explain the legislative approach (omnibus vs targeted reviews) in the area of Asset management:**

*5000 character(s) maximum*

Text

Other

**Please specify to what other legislative area(s) you refer:**

*5000 character(s) maximum*

Text

**Please identify the specific piece of legislation in this/these other area(s) for which you would increase the degree of harmonisation of EU financial legislation and explain:**

*5000 character(s) maximum*

Text

**Please explain the legislative approach (omnibus vs targeted reviews) in this/these other area(s):**

*5000 character(s) maximum*

Text

**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*

Text

### **Additional information**

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

The maximum file size is 1 MB. You can upload several files.

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