



BANKING AND FINANCE

Public consultation on the operations of the European Supervisory Authorities

Fields marked with * are mandatory.

Introduction


Since their establishment, the European Supervisory Authorities have carried out remarkable work contributing to the building of the Single Rulebook, to ensure a robust financial framework for the Single Market and to underpin the building of the Banking Union as part of the EMU. However further progress in relation to especially supervisory convergence is needed to promote the Capital Markets Union (CMU) for all EU Member States, integration within the EU's internal market for financial services and to safeguard financial stability. While the ESAs have started to shift attention and resources to analyse risks to consumers and investors and undertake more work to increase supervisory convergence, work in this area must be accelerated. It will be important to also capture the ever growing benefits from technological developments such as FinTech, whilst addressing any possible risks arising in this context. ESAs have an important role to play in this respect.

A reflection is needed on what possible changes to the current legal framework are needed to optimise the rules within which the ESAs operate in order to increase their ability to deliver on their mandates. In particular, it is necessary to examine which changes to ESAs' existing powers and governance system are needed to increase the effectiveness of supervision (giving due consideration to the principle on the delegation of powers) and to design a funding system which would enable the ESAs to deliver fully on their mandates. In addition, a reflection is needed on the supervisory architecture to assess its effectiveness in the light of increasing complexity and interconnectedness of financial markets, and the need to ensure effective micro-prudential oversight to face the future challenges of the EU financial markets.

This consultation is designed to gather evidence on the operations of the ESAs focusing on a number of issues in the following broad areas: (1) tasks and powers; (2) governance; (3) supervisory architecture; and (4) funding. The aim is to identify areas where the effectiveness and efficiency of the ESAs can be strengthened and improved, while respecting the legal limitations imposed by the EU Treaties. The results should provide a basis for concrete and coherent action by way of a legislative initiative, if required.

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

More information:

- [on this consultation](#)
- [on the protection of personal data regime for this consultation](#) 

1. Information about you

*Are you replying as:

- ☐ a private individual
- ☐ an organisation or a company
- ☒ a public authority or an international organisation

*Name of the public authority:

Actuarial Association of Europe

Contact email address:

The information you provide here is for administrative purposes only and will not be published

moniques@actuary.eu

*Type of public authority

- ☒ International or European organisation
- ☐ Regional or local authority
- ☐ Government or Ministry
- ☐ Regulatory authority, Supervisory authority or Central bank
- ☐ Other public authority

*Where are you based and/or where do you carry out your activity?

Belgium

*Field of activity or sector (*if applicable*):

at least 1 choice(s)

- ☐ Accounting
- ☐ Auditing
- ☐ Banking
- ☐ Credit rating agencies
- ☒ Insurance
- ☒ Pension provision
- ☐ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- ☐ Listed companies
- ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Other financial services (e.g. advice, brokerage)
- ☐ Trade repositories
- ☐ Other
- ☐ Not applicable



Important notice on the publication of responses

*Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?

(see [specific privacy statement](#) )


- ☒ Yes, I agree to my response being published under the name I indicate (*name of your organisation /company/public authority or your name if your reply as an individual*)
- ☐ No, I do not want my response to be published

2. Your opinion

I. Tasks and powers of the ESAs

A. Optimising existing tasks and powers

I. A. 1. Supervisory convergence

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 1: In general, how do you assess the work carried out by the ESAs so far in promoting a common supervisory culture and fostering supervisory convergence, and how could any weaknesses be addressed?

Please elaborate on your response and provide examples.

The AAE has significant interaction with EIOPA, including bi-annual meetings of the AAE Board with EIOPA Management as well as meetings at operational level e.g. regarding IORP Stress Test specifications. AAE currently has 2 nominees amongst the membership of both EIOPA Stakeholder Groups. The AAE responses to this consultation relate to EIOPA only.

AAE considers that the work done to date by EIOPA in relation to the development and implementation of Solvency II is driving convergence in the approach to supervision of (re)insurance undertakings in the EU. There is less convergence in the supervision of pensions, due to the significant differences in pension vehicles and cultures in Member States and the fact that the IORP Directive adopted a minimum harmonisation approach. The recent amendments to the Directive, particularly in relation to governance and risk assessment, which must be transposed into national legislation by January 2019, should lead to some convergence in supervisory culture in relation to pensions.

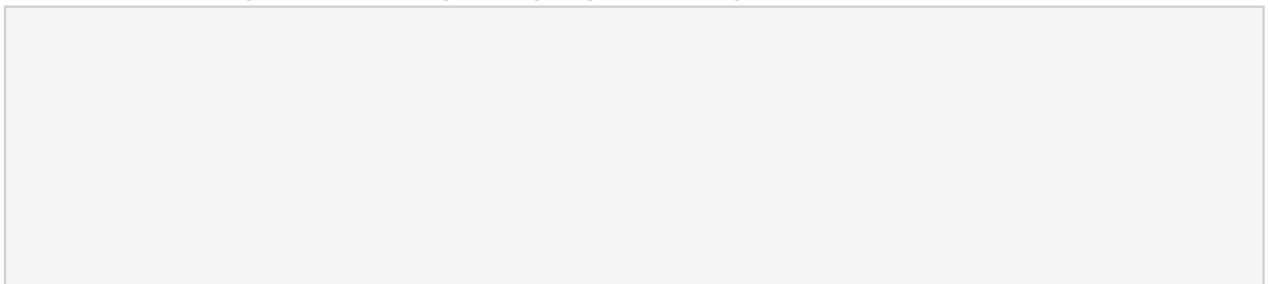
Question 2: With respect to each of the following tools and powers at the disposal of the ESAs:

- peer reviews (Article 30 of the ESA Regulations);
- binding mediation and more broadly the settlement of disagreements between competent authorities in cross-border situations or cross-sectorial situations (Articles 19 and 20 of the ESA Regulations);
- supervisory colleges (Article 21 of the ESA Regulations);

To what extent:

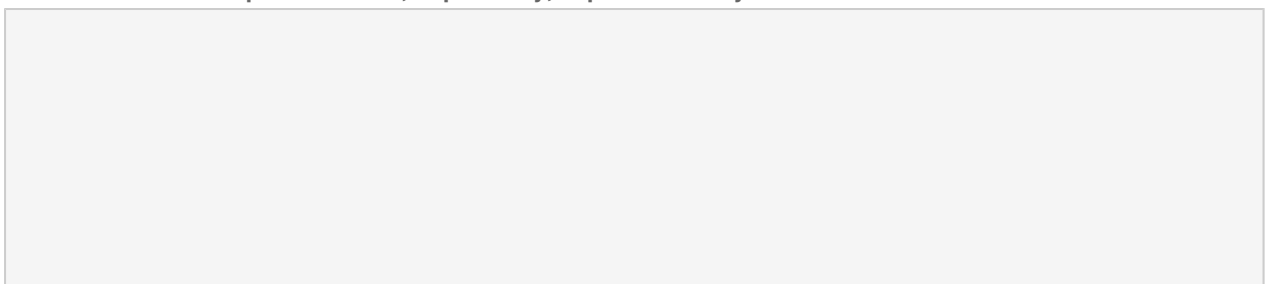
- a) have these tools and powers been effective for the ESAs to foster supervisory convergence and supervisory cooperation across borders and achieve the objective of having a level playing field in the area of supervision?

Please elaborate on questions and, importantly, explain how any weaknesses could be addressed.



- b) has a potential lack of an EU interest orientation in the decision making process in the Boards of Supervisors impacted on the ESAs use of these tools and powers?

Please elaborate on questions and, importantly, explain how any weaknesses could be addressed.




Question 3: To what extent should other tools be available to the ESAs to assess independently supervisory practices with the aim to ensure consistent application of EU law as well as ensuring converging supervisory practices? Please elaborate on your response and provide examples.

Please elaborate on your response and provide examples.

Question 4: How do you assess the involvement of the ESAs in cross-border cases? To what extent are the current tools sufficient to deal with these cases?

Please elaborate on your response and provide examples.


I. A. 2. Non-binding measures: guidelines and recommendations

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 5: To what extent are the ESAs tasks and powers in relation to guidelines and recommendations sufficiently well formulated to ensure their proper application? If there are weaknesses, how could those be addressed?

Please elaborate and provide examples.

I. A. 3. Consumer and investor protection

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 6: What is your assessment of the current tasks and powers relating to consumer and investor protection provided for in the ESA Regulations and the role played by the ESAs and their Joint Committee in the area of consumer and investor protection? If you have identified shortcomings, please specify with concrete examples how they could be addressed.

Article 9 of the EIOPA Regulations requires EIOPA to take a leading role in consumer protection including

(a) collecting, analysing and reporting on consumer trends; We believe that EIOPA's reports on consumer trends are contributing to improved consumer protection

(b) reviewing and coordinating financial literacy and education initiatives by the competent authorities; We are not aware of activity in this area (which does not imply that there is none)

(c) developing training standards for the industry; We are not aware of activity in this area (which does not imply that there is none)and


(d) contributing to the development of common disclosure rules.

This is a challenging project as has been seen in the recent debate around the RTS for PRIIPs. The AAE is not convinced that common disclosure rules for products which are fundamentally different e.g. long term insurance-based savings policies, pensions products, UCITs are necessary or indeed helpful for consumer protection.

Question 7: What are the possible fields of activity, not yet dealt with by ESAs, in which the ESA's involvement could be beneficial for consumer protection?

If you identify specific areas, please list them and provide examples.


I. A. 4. Enforcement powers – breach of EU law investigations

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 8: Is there a need to adjust the tasks and powers of the ESAs in order to facilitate their actions as regards breach of Union law by individual entities? For example, changes to the governance structure?

Please elaborate and provide specific examples.


I. A. 5. International aspects of the ESAs' work

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 9: Should the ESA's role in monitoring and implementation work following an equivalence decision by the Commission be strengthened and if so, how? For example, should the ESAs be empowered to monitor regulatory, supervisory and market developments in third countries and/or to monitor supervisory co-operation involving EU NCAs and third country counterparts?

Please elaborate and provide examples.

I. A. 6. Access to data

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.


Question 10: To what extent do you think the ESAs powers to access information have enabled them to effectively and efficiently deliver on their mandates?

Please elaborate and provide examples.

Question 11: Are there areas where the ESAs should be granted additional powers to require information from market participants?

Please elaborate on what areas could usefully benefit from such new powers and explain what would be the advantages and disadvantages.

I. A. 7. 7 Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.


Question 12: To what extent would entrusting the ESAs with a coordination role on reporting, including periodic reviews of reporting requirements, lead to reducing and streamlining of reporting requirements?

Please elaborate your response and provide examples.

Question 13: In which particular areas of reporting, benchmarking and disclosure, would there be useful scope for limiting implementing acts to main lines and to cover smaller details by guidelines and recommendations?


Please elaborate and provide concrete examples.

I. A. 8. Financial reporting

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 14: What improvements to the current organisation and operation of the various bodies do you see would contribute to enhance enforcement and supervisory convergence in the financial reporting area? How can synergies between the enforcement of accounting and audit standards be strengthened?

Please elaborate.


Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 15: How can the current endorsement process be made more effective and efficient? To what extent should ESMA's role be strengthened?

Please elaborate.

B. New powers for specific prudential tasks in relation to insurers and banks

I. B. 1. Approval of internal models under Solvency II

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 16: What would be the advantages and disadvantages of granting EIOPA powers to approve and monitor internal models of cross-border groups?

Please elaborate on your views, with evidence if possible.

Regarding the approval process for internal models we see the need for harmonisation across the NCAs. In their working program 2017 EIOPA have already planned as one issue in Strategic Action Area 2.3 to be leading in convergence to consistent and high-quality supervision.

We support the planned activities quoted below:

Over this period, the number of new, large internal model applications will reduce, although group models may still generate regular major changes that must be approved by the relevant college members. EIOPA's attention will move to the question of assessing the consistency of the implementation and calibration of internal models, carried out by a series of quantitative and qualitative benchmarking exercises. These exercises, repeated over time, will provide supervisors with the means to detect gradual weakening of model calibrations. Model indicators will be developed and their effectiveness should improve as the number of periods for which there is model data increases. In the area of internal models, where EIOPA staff cannot currently provide deep expertise in all areas, EIOPA will continue to cultivate networks of technical experts to provide input into the consistency projects. In at least some areas, EIOPA will begin to develop an independent, in-house view of appropriate quantification of risks.

But approval of internal models requires a deep knowledge of the business model and of the legal framework and contractual condition.


The group supervisor and the national supervisors in the particular college of supervisors are familiar with these facts and are able to assess the soundness of the modeling.

Based on our experience, the approval process required a very intense discussion with group supervisor and college of supervisors. All institutions or persons involved had a full overview over the business model in their respective country. Supervisors visited undertakings to assess the quality of the modeling and of the assumptions used.

It cannot be assumed that EIOPA has a comparable or deeper understanding of the business and the whole application process. Under reference to the subsidiarity principle the current process should therefore remain unchanged.

In addition, the timeline for an approval process is short; also in case of major model changes. EIOPA could only comply with these requirements if they increased their staff. This would increase costs without generating better quality.


I. B. 2. Mitigating disagreements regarding own funds requirements for banks

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 17: To what extent could the EBA's powers be extended to address problems that come up in cases of disagreement? Should prior consultation of the EBA be mandatory for all new types of capital instruments? Should competent authorities be required to take the EBA's concerns into account? What would be the advantages and disadvantages?

Please elaborate and provide examples.


I. B. 3. General question on prudential tasks and powers in relation to insurers and banks

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 18: Are there any further areas where you would see merits in complementing the current tasks and powers of the ESAs in the areas of banking or insurance?

Please elaborate and provide examples.

C. Direct supervisory powers in certain segments of capital markets

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 19: In what areas of financial services should an extension of ESMA's direct supervisory powers be considered in order to reap the full benefits of a CMU?

Please elaborate on your responses providing specific examples.

Question 20: For each of the areas referred to in response to the previous question, what are the possible advantages and disadvantages?


Please elaborate on your responses providing specific examples.

Question 21: For each of the areas referred to in response to question 19, to what extent would you suggest an extension to all entities or instruments in a sector or only to certain types or categories?

Please elaborate on your responses to questions 19 to 21 providing specific examples

II. Governance of the ESAs

A. Assessing the effectiveness of the ESAs governance

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 22: To what extent do you consider that the current governance set-up in terms of composition of the Board of Supervisors and the Management Board, and the role of the Chairperson have allowed the ESAs to effectively fulfil their mandates? If you have identified shortcomings in specific areas please elaborate and specify how these could be mitigated?

We are not in a position to comment.

Question 23: To what extent do you think the current tasks and powers of the Management Board are appropriate and sufficient? What improvements could be made to ensure that the ESAs operate more effectively?

Please elaborate.

We are not in a position to comment.

Question 24: To what extent would the introduction of permanent members to the ESAs' Boards further improve the work of the Boards? What would be the advantages or disadvantages of introducing such a change to the current governance set-up?

Please elaborate.

Although we do not know if, or to what extent, problems have arisen under the current structure where the Board of Supervisors, which is formed of representatives of the NCAs, were unable to agree a position due to differing national perspectives (notwithstanding the provisions of Article 42), we consider that there would be merit in having independent, permanent voting members of EIOPA's Board as this might aid the development of agreed positions and would also conform with good governance generally.

Question 25: To what extent do you think would there be merit in strengthening the role and mandate of the Chairperson? Please explain in what areas and how the role of the Chairperson would have to evolve to enable them to work more effectively? For example, should the Chairperson be delegated powers to make certain decisions without having them subsequently approved by the Board of Supervisors in the context of work carried out in the ESAs Joint Committee? Or should the nomination procedure change? What would be the advantages or disadvantages?

Please elaborate.


The Regulations (48 to 50) set out the duties of the Chairperson, but do not provide much detail other than preparing the work of the Board of Supervisors and chairing the meetings of the Board and the Management Board.

It would be important to know if and, if so, in which areas the work of EIOPA is impeded by the current power granted to the Chairperson. If such areas can be identified, it could be discussed how these impediments can be removed. Strengthening the role of the Chairperson results automatically in a diminution of the role of other parts of the organisation (and also stakeholders). If a strengthening is assumed to be necessary, we recommend that it should be limited to precisely described areas with the possibility to revoke it. In general, we consider that it would be appropriate to delegate powers to the Chairperson where this would aid the efficiency of EIOPA.

We do not see any need to change the way in which the Chairperson is appointed.

Regarding the work carried out in the Joint Committee, the Board of Supervisors should approve the decisions. According to our observations especially in Insurance and Pension business there are a lot of issues that depend on national specifics. An approval by the Board of Supervisors can help to avoid misleading decisions.

B. Stakeholder groups

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.


Question 26: To what extent are the provisions in the ESA Regulations appropriate for stakeholder groups to be effective? How could the current practices and provisions be improved to address any weaknesses?

Please elaborate and provide concrete examples.

Given the requirements set out in Regulation 37 in relation to the membership of the Stakeholder Groups (SGs), it is to be expected that the opinions and advice submitted to EIOPA may not contain an agreed position, leading to the perception that the SGs do not make a significant impact. However, it is difficult to see what changes can reasonably be made to the regulations in relation to the composition of the SGs without weakening the diversity which is an essential element. The second SGs whose mandate concluded in 2016 made a number of suggestions in relation to the operation of the SGs [https://eiopa.europa.eu/Publications/Reports/EIOPA-OPSG-16-07%20OPSG%20Activity%20Report%202013-2016.pdf] which the AAE would support, in particular that the SG should have the opportunity to attend meetings of the Board of Supervisors where they have expressed opinions on proposals being put to the Board by EIOPA management.

We would further suggest to add to Regulation 37.8 “together with their reasoned feedback”. We believe that a requirement for authorities to provide reasoned feedback would contribute to the quality of the decision-making process as well as to the motivation of the members of the SGs.

III. Adapting the supervisory architecture to challenges in the market place

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 27: To what extent has the current model of sector supervision and separate seats for each of the ESAs been efficient and effective?

Please elaborate and provide examples.


Question 28: Would there be merit in maximising synergies (both from an efficiency and effectiveness perspective) between the EBA and EIOPA while possibly consolidating certain consumer protection powers within ESMA in addition to the ESMA's current responsibilities? Or should EBA and EIOPA remain as standalone authorities?

AAE recognises that the way in which supervision of financial institutions and activities is structured differs between Member States. In some, there are separate bodies dealing with banks, insurance, pensions and securities markets and in others there may be a single unified entity, which may itself have separate arms covering the different sectors, or they may have adopted the "twin peaks" model whereby prudential regulation of all of the entities is carried out one body, with market conduct and consumer protection being supervised by another body.

AAE has no preference for the structure of the supervisory bodies at Member State or EU level, but emphasises that the supervision of insurance and pensions institutions and markets must be appropriate for those markets and consumers, and should not be assumed to be the same as for banks, as in our view the requirements are fundamentally different.

AAE accepts that it is appropriate and desirable for the ESAs to exploit synergies in their operation, and this is already being achieved through the Joint Committee. The extent of the co-operation between the ESAs should be expanded if thought appropriate, subject to ensuring that each sector continues to be supervised appropriately.

IV. Funding of the ESAs

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 29: The current ESAs funding arrangement is based on public contributions. Please elaborate on each of the following possible answers (a) and (b) and indicate the advantages and disadvantages of each option.

a) should they be changed to a system fully funded by the industry?

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

What are the advantages and disadvantages of option a)?

As set out in Article 62 of the EIOPA Regulations, the tasks of EIOPA have either regulatory and supervisory character. EIOPA is currently funded by payment from the Commission and from the NCAs. In relation to their regulatory activities (e.g. answering calls for advice from the Commission, own initiative reports etc.), EIOPA should continue to be financed by the Commission. Supervisory tasks and other related work e.g. stress testing should be financed by NCAs and thus indirectly by the undertakings.

The overall costs of ESAs can be increased by (political) decisions that do not necessarily lead to an advantage for the consumer or the industry. If the Commission has to provide a budget for the ESAs, this should lead to a disciplined allocation of tasks to the ESAs. An inherent risk in case of a full funding by the industry is an uncontrolled increase in costs. As institutions tend to expand their role and activities there is a need for an approval process of the budget.

b) should they be changed to a system partly funded by industry?

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

What are the advantages and disadvantages of option b)?

See response at question 29.a.

Question 30: In your view, in case the funding would be at least partly shifted to industry contributions, what would be the most efficient system for allocating the costs of the ESA's activities?

- ☐ a) a contribution which reflects the size of each Member State's financial industry (i.e., a "Member State key")
- ☐ b) a contribution that is based on the size/importance of each sector and of the entities operating within each sector (i.e., an "entity-based key")

Please elaborate on (a) and (b) and specify the advantages and disadvantages involved with each option, indicating also what would be the relevant parameters under each option (e.g., total market capitalisation, market share in a given sector, total assets, gross income from transactions etc.) to establish the importance/size of the contribution.

Article 44 of the EIOPA Regulations describes the decision making in the Board of Supervisors. Each member has one vote. A “Member State key” could lead to the situation that a few members have to pay for most of the costs, but they don’t have an adequate weight in decision making. As Insurance and Pension business show significant differences across the countries, this could result in an imbalance.

Pension business is of significant importance in a smaller number of Member States, and these Member States would have to pay the costs. But decisions on regulation and supervision of this business – and implicitly the costs – could be taken by a simple majority of all members.

We consider that an “entity based key”, where account is taken of size and the complexity of the business, would be a fairer base for apportioning supervisory costs, although this would not directly address concerns about the way in which decisions are made in the Board.

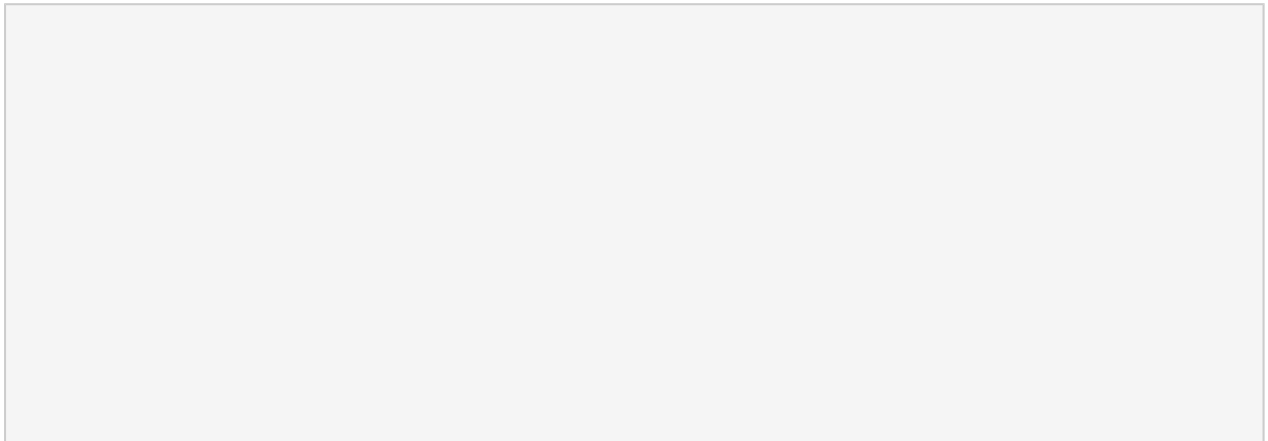
Question 31: Currently, many NCAs already collect fees from financial institutions and market participants; to what extent could a European system lever on that structure? What would be the advantages and disadvantages of doing so?

Please elaborate.

General question

Question 32: You are invited to make additional comments on the ESAs Regulation if you consider that some areas have not been covered above.

Please include examples and evidence where possible.



3. 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) here:

Useful links

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

[Consultation details \(http://ec.europa.eu/info/finance-consultations-2017-esas-operations_en\)](http://ec.europa.eu/info/finance-consultations-2017-esas-operations_en)

[Specific privacy statement \(https://ec.europa.eu/info/sites/info/files/2017-esas-operations-privacy-statement_en.p\)](https://ec.europa.eu/info/sites/info/files/2017-esas-operations-privacy-statement_en.pdf)

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