EFAMA
European Fund and Asset Management Association

# RESPONSE

Brussels, 10 June 2025

## EUROPEAN COMMISSION TARGETED CONSULTATION ON INTEGRATION OF EU CAPITAL MARKETS – PART 1

### 1. Simplification and burden reduction

The focus of this targeted consultation is to remove barriers to enhance the integration of the EU capital markets and to support their modernisation. By doing so, it will contribute to simplify the framework of EU capital markets and support the Commission's initiative to make Europe faster and simpler. This section seeks stakeholders' view on general questions regarding simplification and burden reduction of the EU regulatory framework in the trade, post-trade and asset management and funds sectors. Respondents are asked to provide concrete examples to support answers provided, and, where possible, quantitative and qualitative information.

**Question 1: Is there a need for greater proportionality in the EU regulatory framework related to the trade, post- trade, asset management and funds sectors?**

☐ 1 - Strongly agree

☒ 2 - Agree

☐ 3 - Neutral

☐ 4 – Disagree

☐ 5 - Strongly disagree

☐ Don't know / No opinion / not applicable

**Question 1.1 Please explain your answer to question 1 and provide suggestion on what form it should take:**

*5000 character(s) maximum*

The current AIFMD and UCITS frameworks already include the proportionality principle, and we do not believe that the directives themselves should be amended further in this regard. As we explain in more detail in our response to question no. 4, the current frameworks are functioning well.

Where we see room for improvement is in the broader ecosystem of regulations that apply to the financial industry. Recent years have shown an unprecedented amount of additional obligations being introduced, including, for example, DORA and the recently agreed new AML Package. These frameworks do not always take into account the significant difference between the operations of the asset management industry vis-à-vis, for example, the banking industry.

Moreover, the European Supervisory Authorities (ESAs) do not sufficiently consider the proportionality principle while preparing drafts of Level 2 and 3 measures. It has been observed on numerous occasions that the first draft of these measures would hardly include the proportionality principle, if at all. This has been clearly seen during the discussions on the mandates under the DORA framework, where the Commission had to eventually reject some of the proposed provisions. This can also be observed currently during the discussions on the first mandates under the new AML Package. In particular, in the area of customer due diligence, the EBA has proposed very detailed solutions that do not account for not only the proportionality principle, but also the risk-based approach, which should be central to any anti-money laundering (AML) and countering terrorist financing (CTF) framework. These are examples of instances where the asset management sector is affected by frameworks that encompass the broader financial industry, without proper recognition of its specificities. As asset managers' operations are significantly different from those of, e.g. banks, application of the same rules is highly disproportionate and can unnecessarily divert resources from areas where they would be able to achieve more added value.

This is also closely connected to the ability of financial entities to access and develop IT solutions to implement regulatory requirements. A better recognition of this element of the implementation projects (including the time necessary to create such solutions) would allow entities to take more advantage of integrated systems and economies of scale.

Therefore, a better application of the proportionality principle would be appreciated in reducing the unnecessary complexity that currently affects the entire asset management industry, and in particular, in the Level 2 and 3 measures.

Proportionality should also be understood as avoiding multiplication of regulatory obligations and, instead, concentrating on greater efficiency and cost reduction for both the industry and supervisors. Room for improvement in this regard can be particularly seen in the area of data collection. There, we have observed a growing trend in adding new requirements with little regard for their optimisation and thorough consideration of the true necessity of such amounts of data being reported. New reporting obligations continue to be introduced without adequate consideration of the resulting administrative burden. These include new reporting requirements added in the recent AIFMD/UCITSD review, tax reporting (national, CRS, FATCA), AML-related risk assessment reporting, fund accounting reports, national regulatory system submissions, DORA and cloud compliance reporting, business, and sustainability reporting, as well as human resources reporting. Improvements should be made to limit the reporting requirements to the data most relevant for supervisory purposes, as well as the reuse of data that have already been submitted to the supervisory authorities of all sorts.

**Question 2: In particular, in relation to question 1 above, should the AIFMD threshold for sub-threshold AIFMs take into consideration for instance the market evolution and/or the cumulated inflation over the last 10-15 years?**

☐ 1 - Strongly agree

☐ 2 - Agree

☐ 3 - Neutral

☒ 4 – Disagree

☐ 5 - Strongly disagree

☐ Don't know / No opinion / not applicable

**Please explain your answer to question 2:**

*5000 character(s) maximum*

As regards the threshold, we are of the opinion that in order for the smaller AIFMs to be profitable, the threshold could reflect contingent market situations. At the same time, we believe that the stability of the regulatory framework is of utmost importance for the further development of the industry. As the recent review of the AIFMD and UCITS Directive has just been finalised, following a long period of discussions, and given that the implementation is still ongoing, we do not believe that new legislative changes should be proposed at this stage.

**Question 3: Would you see a need for introducing greater proportionality in the rules applying to smaller fund managers under Alternative Investment Fund Managers Directive (AIFMD),?**

☐ 1 - Strongly agree

☐ 2 - Agree

☐ 3 - Neutral

☒ 4 – Disagree

☐ 5 - Strongly disagree

☐ Don't know / No opinion / not applicable

**Please explain your answer to question 3:**

*5000 character(s) maximum*

Please see our response to question no. 1.

**Question 4: Are there any barriers that could be addressed by turning into a Regulation(certain provisions of) the:**

- Alternative Investment Fund Managers Directive (AIFMD)
- Financial Collateral Directive (FCD)
- Markets in Financial Instruments Directive (MiFID)
- Undertakings for Collective Investment in Transferable Securities Directive (UCITSD)
- Settlement Finality Directive (SFD) ?

☐ 1 - Strongly agree

☐ 2 - Agree

☐ 3 - Neutral

☐ 4 – Disagree

☒ 5 - Strongly disagree

☐ Don't know / No opinion / not applicable

**Please explain your answer to question 4:**

*5000 character(s) maximum*

The AIFMD and UCITS frameworks have been successful in achieving the objectives for which they were intended and set high standards of harmonisation in the fund management sector. They are also internationally recognised standards.

The majority of shortcomings in the creation of a fully integrated EU market for AIFs and UCITS can be addressed through ensuring consistent implementation of both directives across Member States and a higher level of supervisory convergence that will bind NCAs to apply similar interpretations at the national level. Therefore, we believe that further amendments to Level 1 rules should in general be avoided, bearing also in mind that a comprehensive review has just been finalised and the Directive (EU) 2024/927 is currently being implemented. However, where further amendments are necessary to regulatory simplification and burden reduction for the asset management industry, these should be targeted and well-documented.

For the same reasons, we are against turning both directives into regulations. Considering the sheer complexity of the current EU frameworks for asset management companies, including established Level 2 and Level 3 measures, we see a high risk in this endeavour. The asset management industry is diversified in nature due to the broad range of products on offer, markets, and investor types. There is a risk that these key specificities will be disregarded under an even higher level of harmonisation that regulations entail.

Given that the recent review has only recently been finalised and the discussions on Level 2 and 3 measures are ongoing, the vast implementation efforts are still ahead of the industry. This adds to the state of continuous regulatory change that has been observed in recent years, which is due to numerous other initiatives that are addressed to the financial industry (SFDR, GDPR, DORA, new AML package, to name a few). We do not believe that opening another large-scale project will benefit the industry. It is precisely because of the project's expected scale that it will inevitably distract considerable resources from the more important objectives, such as exploring avenues of further innovation (incl. the use of AI, tokenisation, etc.), developing new products, and analysing further investment possibilities to the benefit of investors and the competitiveness of the EU. Therefore, what would benefit the industry more is the legal certainty and stability of the frameworks, with further efforts concentrating on the unified implementation and interpretation of those rules.

We also do not believe such a change can serve as a silver bullet to address the barriers we currently observe. As can already be seen in the example of other frameworks, which took the path of harmonisation through regulation, divergent approaches among Member States still exist through different interpretations of the provisions, rather than different implementations. The ELTIF Regulation can serve as an example here as it didn't prevent discussions on national interpretations.

The possible and limited gains do not justify, in our view, a project of such a significant scale and potential to disrupt the operations of the industry. From the perspective of fostering the competitiveness of the EU market, it is also important to avoid additional regulatory costs for fund managers in order to keep an internationally competitive framework.

Instead, we believe that more focus should be given to supervisory and enforcement convergence. We would encourage the European Commission to ensure that ESMA makes full use of the existing powers at its disposal (including enforcement powers at Level 4) to promote greater supervisory and enforcement convergence.

**Question 5: Are there areas that would benefit from simplification in the interplay between different EU regulatory frameworks (e.g. between asset management framework and MiFID)?**

☐ 1 - Strongly agree

☒ 2 - Agree

☐ 3 - Neutral

☐ 4 – Disagree

☐ 5 - Strongly disagree

☐ Don't know / No opinion / not applicable

**Question 5.1: Please explain and provide suggestions for simplification. Also if possible present estimates of the resulting cost savings:**

*5000 character(s) maximum*

Firstly, we would like to reiterate our previous remarks on the need for legal stability and further regulatory changes being avoided since the AIFMD and UCITS Directive review has just been finalised. We explain this approach in more detail in our responses to questions 1 and 4 above.

Secondly, we would like to point to our previous positions on the need to acknowledge the specificities of the asset management sector vis-à-vis other sectors of the financial industry. As we have comprehensively explained in EFAMA's response to the EBA & ESMA discussion paper on the Commission's call for advice on the prudential framework for investment firms, the business model of UCITS management companies and AIFMs vary significantly in comparison to credit institutions and investment firms. Asset managers do not trade on their own books; they do not hold clients' assets, and instead act only on clients' behalf, which constitutes the very nature of their "agency" business model. These specificities need to be maintained, in particular in the area of capital requirements, which were introduced in the AIFMD and UCITS Directive for business continuity reasons, to ensure the operation of a management company as a going concern, rather than to cover prudential risks such as credit, market or liquidity risk.

If there are any areas that could be considered in the event of future reviews of the frameworks, these are the overlapping and inconsistent requirements with MiFID framework. This regards in particular provisions around product governance, suitability and appropriateness assessments, inducements and transparency requirements. This should, however, not result in the alignment of AIFMD and UCITS frameworks with the rules of MiFID II.

**Question 6: Would the key information documents for packaged retail and insurance-based investment products (PRIIPs KID) benefit from being streamlined and simplified?**

☒ 1 - Strongly agree

☐ 2 - Agree

☐ 3 - Neutral

☐ 4 – Disagree

☐ 5 - Strongly disagree

☐ Don't know / No opinion / not applicable

**Question 6.1: Please explain and provide suggestions for simplification. Also indicate what should be prioritised and if possible present estimates of the resulting cost savings:**

*5000 character(s) maximum*

EFAMA strongly supports the development of a coherent plan for simplification of disclosures for retail investors. However, any decision to rework the PRIIPs framework while the Retail Investment Strategy discussions are ongoing, must be carefully considered, especially without prior consumer testing. This would amount to opening a Pandora's box of technical renegotiation with no guarantee of better outcomes, only more cost and disruption for firms and investors alike.

The current PRIIPs framework has been conceived by regulators, for regulators, without taking a consumer-centric approach and performing consumer testing, ensuring that any changes genuinely empower EU citizens to make better decisions and build long-term financial security.

As a result, the PRIIPs KID is excessively complex, and even misleading in some cases. In this context, it is crucial not to add any new section or new concept.

On the other hand, the current framework could be simplified by a few very targeted amendments aiming at deleting complex and disproportionate elements in the Level 2 framework, such as, for example the calculation of implicit transaction costs which entails a complex and costly procedure (more information below).

EFAMA would like to recommend the following key areas for simplification.

**Regarding the current PRIIPs KID regime:**

1) Remove implicit transaction costs computed under the arrival price methodology, as per the FCA's consultation on the CCI regime of April 16, 2025.

2) Correct the Treatment of Anti-Dilution Mechanisms in the PRIIPs Cost Calculation Formula.

3) Include past performance instead of performance scenarios as the appropriate information on performance (Art.8(3) PRIIPs-Regulation).

4) Limit the obligation to review and revise the PRIIPs-KID (Art.10(1) PRIIPs-Regulation).

5) Remove the requirements to provide new PRIIPs-KIDs as part of saving plans (Art.13 (4) PRIIPs-Regulation).

6) Removal of the reduction in yield calculations for investment products.

**Considering the various proposals (COM, EP, Council) for a Retail Investment Strategy:**

7) Standardise the PRIIPs calculation methodologies to make products more comparable (e.g. for cases where a comparison tool is to be implemented and used) where feasible.

8) Delete the proposal to introduce a "product at a glance" dashboard.

9) Delete the warning alert in Art.8(3)(b) PRIIPs-Regulation "You are about to purchase a product that is not simple and may be difficult to understand".

10) Delay the introduction of a standardised section on sustainability characteristics pending the outcome of SFDR review.

**Any review of PRIIPs should avoid creating barriers and incentivise effective digital engagement**

While digital services are developing apace, much of the legislative framework has been conceived on the basis of face-to-face communication and paper-based disclosures, with digital delivery treated as an add on rather than the primary source of communication. The regulatory framework for investment products and services must adapt to allow for innovation and recognise the changes digital services bring. Rather than deluge consumers with reams of paper and disclosures, we believe the future of disclosures should incorporate a greater number of more intuitive digital tools, to increase point of sale engagement and education on key concepts such as cost, performance and risk. Paper-based disclosures (even if sent via pdf) should be seen as a legal record of the consumer's final decision rather than acting as a static document to be read at the start of their decision-making process. However, we do believe that there must always be an option for investors (opt-in) to receive paper-based documents, as not all investors utilise technology in the same way.

**Appropriate phasing in**

Finally, the application of any changes to the PRIIPs must apply both with a minimum 12-month implementation period after the finalisation of any Level 2 measures and at year end, given the operational complexity of changing and applying quality control measures to tens of thousands of documents. The operational complexity of applying mid-year changes is simply too high. So, for example, if final Level 2 rules are agreed and published in October 2027 these changes should apply to annual updates from 1 January 2029.

**Please explain your answer to question 6:**

*5000 character(s) maximum*

1. Implicit transaction costs are abstract and very difficult to calculate, to the extent that several methodologies exist, all of which have been criticised in both academic and professional circles. Therefore, only explicit costs (RTO fees, transaction taxes, broker fees, etc.) should be taken into account when calculating transaction costs. Furthermore, calculating implicit costs based on arrival price methodologies **requires the purchase of market data**, which is a key problem which has not been properly addressed (not even in the new MiFIR and draft level 2) despite various studies and empirical evidence documenting the problems, hence market data is **prohibitively expensive**. Removing the requirement to disclose implicit transaction costs would **reduce compliance burdens** and **lower the risk of presenting misleading figures**. This issue has been recognised by the UK Financial Conduct Authority, which is proposing to remove the requirement to calculate implicit transaction costs in its latest consultation (FCA CP 25/9). EFAMA welcomes this approach and believes the EU should adopt a similar approach. Should implicit costs not be removed, then transaction costs should be separated from ongoing charges to avoid confusion and to ensure alignment with MiFID.

2. Anti-dilution tools are designed to cover total liquidity costs, both implicit and explicit, and their benefits should be deducted from both in the PRIIPs cost calculation. There should be a removal of the provision stating that anti-dilution benefit shall only be taken into account to the extent that the benefit does not take the total transaction costs below explicit transaction costs (Annex VI, point 11 (c)). The formula should then be amended accordingly by stating that *"The anti-dilution benefit shall only be taken into account to the extent* ***that the total transaction costs remain positive".*** Additionally, the current transaction cost calculation methodology, can lead to **confusing and counterintuitive outcomes**, such as **negative transaction costs**. These have had to be prohibited in the latest revision of the PRIIPs RTS, which further highlights the flaws in the methodology rather than addressing the root issue. Rather than prohibiting the disclosure of negative values, the **underlying formula should be corrected**, especially to ensure fair treatment of anti-dilution mechanisms and a meaningful representation of costs for retail investors.

3. The disclosure of performance scenarios has been highly misleading for investors. These scenarios are not an appropriate way to communicate the performance outlook of funds whose returns depend on the performance of their underlying portfolio assets. Instead, past performance should be the sole performance indicator for such funds and other linear products, in line with the established UCITS KIID framework.

4. The manufacturer should not be required to provide the investor with a new KID as long as the product "can be purchased on the secondary market". Fund units are frequently traded as fungible securities over-the-counter on secondary markets, often without the consent or knowledge of the management company. Moreover, secondary market trading occurs directly between investors on their own initiative, and should therefore not trigger any obligations for the manufacturer. The underlying EBA Q&A in Section I.12 (Consolidated Q&As on the PRIIPs KID, March 2024), which uses the term "open to subscription," also encompasses PRIIPs available for purchase by retail investors on secondary markets. This interpretation is overly broad and should be reconsidered in light of the above arguments.

5. Distributors are currently required to provide a KID every time it is updated. However, the European Parliament's proposal rightly suggests that the KID should only be provided once, prior to the first transaction. This is appropriate, as the KID serves as a pre-disclosure document. Additionally, a reference to where the latest version of the KID can be accessed should be included. This approach would strike a proper balance between meeting investors' informational needs and reducing the significant burden on distributors to resend updated KIDs after every amendment.

6. The reduction in yield methodology is not relevant for investment funds given the PRIIPs methodology already provides a detailed cost breakdown. The concept of RIY is also overly complex for retail investors and leads to confusion in the KID. Cost indicators expressed as percentages often don't align with the monetary amounts shown, undermining clarity. Moreover, the metric is interpreted inconsistently across different EU countries, reducing comparability.

7. Comparing PRIIPs data in a meaningful way remains impossible for retail investors, as many figures are not calculated in a standardised manner. For example, inducement-based investment funds (such as mutual funds) disclose maximum cost figures, even though actual costs may be lower. Conversely, products without inducements may fail to present a full cost picture, since distribution costs (charged solely by the distributor) and third-party costs (such as spreads or fees from market makers) are often omitted.

8. The KID is already a short document intended to provide investors with the most essential product information. Adding new sections would come at the expense of clarity in other areas, as space limitations force the removal or compression of important information. Repetition also undermines transparency and is more likely to confuse investors than inform them.

9. A standardised warning offers no added value to investors because it lacks specificity. A generic warning that applies broadly to certain product types — without assessing them individually — serves only to deter retail investors, contradicting the EC's objective of encouraging greater retail investor participation in capital markets.

**Question 7: Do you have other recommendations on possible streamlining and simplification of EU law, national law or supervisory practices and going beyond cross-border provision?**

☒ Yes

☐ No

☐ Don't know / No opinion / not applicable

**Question 7.1: Please list your recommendation and suggested solutions. Please rank them as high, medium or low priority:**

*5000 character(s) maximum*

EFAMA believes that improvements to the quality, stability, cost-efficiency and predictability of the broader set of rules under which asset managers operate would be beneficial to the streamlining and simplification of EU law. These could include, among others:

1. Adoption of dynamic implementation timelines, which will help ensure that Level 1 provisions do not become applicable before corresponding Level 2 standards are adopted, as well as sufficient time for thorough consultation and implementation of the new rules by market participants. In recent years, we have seen numerous examples where tight implementation timelines didn't allow for these principles to be upheld (e.g., DORA framework, SFDR, and now possibly the AML Package). These situations result in legal uncertainty, as well as magnify the burden and costs of each implementation, which significantly rely on IT and other resources, provided also by third-party vendors.

2. More considerate use of review clauses, with reviews taking place where necessary and when sufficient time has passed to properly evaluate the effectiveness of previously introduced requirements.

3. Implement mandatory competitiveness check throughout the entire legislative process together with more thorough impact assessments that take into account the cumulative impact of regulations on market participants.

Further examples of possible actions were outlined in EFAMA's report Unlock private investment to fund Europe's triple transitions. Towards an enabling regulatory framework.

Moreover, we recommend the temporary suspension of cash penalties under CSDR during the early phase of the T+1 settlement migration. Beyond that, it would make sense to reassess the need for cash penalties as a means to improve or maintain settlement efficiency. On the buy-side we observe that the operational cost of processing cash penalties far outweighs the positive cash credits, even though we are net positive with cash penalties. We don't believe that cash penalties are improving settlement discipline in a meaningful way, but they do require the running of a costly and complex structure.

**Question 8: Does the EU trade, post-trade, asset management or funds framework apply disproportionate burdens or restrictions on the use of new technologies and innovation in these sectors?**

☐ 1 - Strongly agree

☐ 2 - Agree

☐ 3 - Neutral

☒ 4 – Disagree

☐ 5 - Strongly disagree

☐ Don't know / No opinion / not applicable

**Please explain your answer to question 8 and provide examples:**

*5000 character(s) maximum*

National frameworks on DLT assets have been useful in allowing firms to experiment and innovate, creating tailored environments that drive local adoption. As we now look forward to scaling these markets, the fragmentation starts to look more like a liability. Divergent national rules for digital custody and registries complicate cross-border operations, increase costs and reduce efficiencies. This also limits the pooling of liquidity. National laws on custody, registry and safekeeping should be harmonized to maximise DLT's transformative impact.

The AIFMD and UCITSD frameworks alone do not place disproportionate burdens or restrictions that would prevent asset managers from accessing new technologies or innovations. Rather, it is the overall regulatory burden of recent years that strains the limited resources, such as IT, etc. while diverting them from exploring avenues of further innovation. Apart from the resources, it is also a matter of costs that the entity has to bear with every new implementation. An example here could be the ongoing discussions on the FiDA Regulation, where there are limits for the asset managementindustry to facilitate the project, as well as the recently finalised DORA framework.

**Question 9: Would more EU level supervision contribute to the aim of simplification and burden reduction?**

☐ 1 - Strongly agree

☐ 2 - Agree

☐ 3 - Neutral

☐ 4 – Disagree

☒ 5 - Strongly disagree

☐ Don't know / No opinion / not applicable

**Please explain your answer to question 9:**

*5000 character(s) maximum*

The current European System of Financial Supervision (EFSF) remains broadly appropriate, even though improvements could still be made to reach better supervisory outcomes in the investment management sector (e.g., better data sharing and analyses, greater focus on supervision and enforcement rather than regulation, and more efficient use of existing supervisory convergence tools).

The primary challenge the European investment management industry faces is a regulatory overload rather than profound barriers preventing cross-border operations. Indeed, the most significant difficulty

European asset managers face is dealing with ever-increasing EU regulatory initiatives that often go far beyond what is necessary (e.g., the Retail Investment Strategy). These challenges require a different regulatory approach where the EU prioritises regulatory interventions that proportionally address well-evidenced problems. Revamping supervision in the asset management sector will not solve these challenges, as they are most often not of a supervisory nature.

As outlined in our response to question 50 in section 6, the current passporting regime already ensures that most asset managers do not need to interact with multiple supervisory authorities. A single national supervisor is already responsible for supervising management companies established in their jurisdictions, including their cross-border activities. NCAs have, moreover, a long-standing experience in authorising and supervising asset managers and investment funds in their jurisdictions. They are also closer to local markets and understand their specificities and the additional requirements applying to market actors (including investors) in critical areas where EU laws are still not harmonised (e.g., corporate law, contract law, insolvency law, and tax law).

Finally, convergence is broadly sufficient in the investment management sector, even though, as outlined in section 5, a certain degree of regulatory and/or supervisory divergence remains. Illustrations of such divergence are provided in our responses to questions 16 (scope of permissible activities), 18-20 (fund authorisation), 28 (fund passporting), 30-4 (fund marketing), 41-3 (manager passporting), and 44 (group operations). ESMA should proactively seek to understand whether this divergence negatively impacts the single market and results in an uneven playing field. ESMA should use the full range of its supervisory convergence toolkit when it identifies cases of divergence that undermine the single market. Some supervisory convergence tools (e.g., Q&As, CSAs, and no-action letters) could be further refined, however.

## 2. Trading

*This section seeks stakeholders' feedback in the trading space on the nature of barriers to integration, modernisation and digitalisation of liquidity pools and on several issues that can be grouped into two key objectives/areas, as well as their interplay: barriers to cross-border operations in the trading space and barriers to liquidity aggregation and deepening. Respondents are asked to provide concrete examples to support answers provided, and, where possible, quantitative and qualitative information.*

*Please note that regulatory barriers to the operation of groups and their capacity to leverage intra-group synergies is addressed in the separate questionnaire on horizontal barriers.*

### 2.3. Non-regulatory barriers (market practices) to liquidity aggregation and deepening

#### Integrating liquidity pools across the Union

**Question 6.1: Can the use of new digital technology solutions contribute to integrating liquidity pools or connecting different pools across the EU? What barriers do you face in implementing such technology-based solutions? Please explain.**

☒ Yes

☐ No

☐ Don't know / No opinion / not applicable

**Please explain your answer to question 6.1:**

*5000 character(s) maximum*

| |
|---|
| Yes, DLT based platforms can bring about always-on liquidity, and this applies to real world assets, and can be extended to tokenized funds. |

## Focus on ETFs

**Question 12: How would you rate the impact of multiple ETF listings in the EU on the attractiveness of the market in comparison to other third-country markets?**

☐ 1 – Very negative

☐ 2 – Rather negative

☐ 3 – Slightly negative impact

☐ 4 – Rather positive

☐ 5 – Very positive

☒ Don't know / No opinion / not applicable

**Question 13: In your view, which of the following are the most relevant drivers for multiple listings of ETFs in the EU? Please explain. In case of legal barriers to a more integrated trading landscape for ETFs leading to necessary multiple listings, please indicate the relevant provisions and what legislative measures you would recommend to solve this issue.**

*Please select as many answers as you like*

☐ Market practices pertaining to investment firms (e.g. lack of direct connection to venues situated in a different Member State than the one where the investment firm is located)

☒ Market practices pertaining to trading venues

☒ Market practices pertaining to CSDs

☐ Barriers linked to interoperability between CCPs

☐ Supervisory practices

☒ Other barriers (including legal barriers at EU level, legal barriers at national level, tax)

**Please explain your answer to question 13. and provide concrete examples, and where possible estimates of costs.**

**In case of legal barriers to a more integrated trading landscape for ETFs leading to necessary multiple listings, please indicate the relevant provisions and what legislative measures you would recommend to solve this issue:**

*5000 character(s) maximum*

Multiple ETF listings across Europe and the associated fragmentation is a feature of the market that needs to be addressed. We reiterate here that a real-time pre-trade consolidated tape will go a long way toward integrating markets, at least from an end-investor perspective which is probably the most important stakeholder to consider.

Issuers opt for multiple listings across EU jurisdictions to cater to the diverse preferences and requirements of investors in different regions. This practice is driven by the need to provide ETFs in various currencies and with different distribution options, such as accumulating or distributing share classes, and currency-hedged options.

Multiple listings help issuers enhance the accessibility and visibility of their ETFs, thereby attracting a broader investor base. Moreover, the regulatory and tax environments vary significantly across EU member states, prompting issuers to list their ETFs in multiple jurisdictions to optimize tax efficiency and comply with local regulations.

This approach also allows issuers to tap into the liquidity pools of different markets, thereby improving the overall liquidity and trading efficiency of their ETFs.

But is the status quo sub-optimal? It absolutely is:

This fragmentation comes at a cost, mostly attributed to structural and operational challenges. One significant factor is capital market infrastructure which are natural monopolies operating at for-profit basis which enables their ability to prevent genuine competition and preserve fragmentation hence resulting in higher costs and inefficiencies. For instance, the fragmented market structure necessitates that brokers and agency lenders search across multiple exchanges to gather a full measure of any ETF's availability, leading to larger spreads on directional trades and higher failure rates. Additionally, the operational burden of moving custody of ETF units between different Central Securities Depositories (CSDs) is cumbersome (due to cut-offs, the need for instructions, for example) and expensive (the need to have the securities transferred by a prime broker or custodian), further exacerbating the fragmentation.

The inefficiencies in the post-trade structure is increased further by conflicts of law and lack of interoperability between the multiple settlement systems (CSDs). This results in significant processing costs and a relative operational inefficiency. For ETFs, for example, this translates into cut-off times for processing that are too early in the day and in batches, the difficulty for market makers to realign positions between trading venues, and the challenge of having an efficient post-trade management.

The lack of interoperability between CSDs and the absence of a consolidated tape for real-time data transmission also contribute to the fragmented landscape, making it difficult for market participants to achieve seamless trading and settlement across different jurisdictions.

Each exchange has its own registration procedure (with different timelines and prerequisites) and is subject to local regulatory specifics that can vary from one country to another.

Retail investors generally do not have access to foreign stock exchanges, as their financial intermediary(ies) – distributors - bear access and settlement costs that are disproportionate compared to their local stock exchange.

Local financial intermediaries – especially the ones catering to retail investors – tend to restrict trading to instruments traded on venues located in their local market. They usually cite the cost of access, clearing and settlement as the primary reason to do so which underlines the problems with the inefficient and costly capital market infrastructure..

- *Fragmentation at the post-market level*

Being able to register a European ETF (already listed on one European exchange) without the obligation to list it on other European exchanges would be a major step forward. Indeed, some exchanges require at least one share class to be listed locally in order to register the ETF. Simplification would allow better liquidity concentration on one market. ETF issuers, in the meantime, should continue rationalizing listings by focusing on the most liquid markets to avoid markets where market makers would be forced to widen spreads. An ETF issuer can always choose to list on additional markets if, for example, it provides local visibility and/or meets a specific client need.

- *Fragmentation concerning legal and cultural barriers from local regulators*

There are local regulatory requirements related to listing. For example, in Italy, an ETF distributed to a retail client must be listed beforehand on Borsa Italiana in Italy.

Retail investors generally do not have access to foreign stock exchanges, as their financial intermediary(ies) – distributors - bear access costs that are disproportionate compared to their local stock exchange.

### Means to improve the consolidation of liquidity through better interconnections

**Question 14: In your view, should any intermediary offer its clients the possibility to trade, on any EU regulated market, MTF and SME growth market, in all shares and ETFs admitted to trading in the EU?**

☒ Yes

☐ No

☐ Don't know / No opinion / not applicable

**Please explain your reasoning for your answer to question 14 and provide where possible estimates of costs and benefits**

*5000 character(s) maximum*

It would be in the best interests of investors (especially retail investors) to benefit from a wider access to ETFs traded on all venues within the EU, rather than just domestic ones.

This could increase competition for flows between venues, unlike the more siloed, captive model that tends to prevail today, and could in turn reduce the overall cost of investing in ETFs for investors.

However, genuine competition between the trading venues requires a ban on monopoly rent and cross-subsidisation.

Both a direct and mixed/indirect model would be fine as long as investors do not bear higher costs.

**Question 15: Do you believe that intermediaries could improve clients' access to liquidity across the EU by using Smart Order Routing or other similar technologies? What would be the potential costs associated with it and what are the most useful/promising technologies in your view?**

☒ Yes

☐ No

☐ Don't know / No opinion / not applicable

**What would be the potential costs associated with it and what are the most useful/promising technologies in your view?**

**Please explain:**

*5000 character(s) maximum*

Smart order routing could help introduce a degree of competition between venues on which ETFs are traded and help direct flows to the ones where pricing is most competitive. This could improve the cost of trading ETFs compared to the current model where investors (especially retail investors) are often restricted to trading on their local venue, where liquidity might be lower and pricing less competitive.

Please also note our response to Q14 in relation to the present monopoly behavior from e.g. trading venues.

A centralised pan-European order book accessible to all would be beneficial and naturally improve liquidity.

**Question 17: Increased access to financial instruments on a cross-border basis can also be ensured by improving the interconnection between all relevant EU regulated markets and MTFs.**

**To that end, would you consider important to ensure an increased level of interconnection between trading venues in the EU?**

☒ Yes

☐ Yes, provided it is funded / co-funded by public funds

☐ No

☐ Don't know / No opinion / not applicable

**Question 17.1. Which of the following options do you prefer?**

☐ Requiring every EU regulated market and MTF to offer the possibility to trade any share or ETF that has been initially admitted to trading on a regulated market across the EU

☒ Requiring every EU regulated market and MTF to collect the orders and reroute them to one of the venues where a given share or ETF is traded (i.e. without requiring all venues to directly offer trading in all shares and ETFs)

☐ Leaving the choice of the option to each EU regulated market and MTF

☐ Don't know / No opinion / not applicable

**Question 17.2. What would be the impact in terms of building cross-border liquidity?**

**What would be the potential estimated costs or savings associated with such a measure (where relevant, for each respective type of market participant)?**

*5000 character(s) maximum*

Building cross-border liquidity, rather than the fragmentation currently observed in the European ETF trading ecosystem, would allow for a consolidation of flows which would in turn help tighten bid-ask spreads. As liquidity tends to beget liquidity, this could also create a virtuous circle that would allow for some flows currently happening away from trading venues to come back on venue.

All EU investors should then in turn be able to access this liquidity, regardless of their country of domicile or home regulated market. Handling the core issues in relation to capital market infrastructure will enable this.

**Question 17.3. Do you see any post-trade challenges associated with this?**

☒ Yes

☐ No

☐ Don't know / No opinion / not applicable

**Please explain your answer to question 17.3:**

*5000 character(s) maximum*

The fragmentation currently impairing fair access to liquidity for EU retail investors is multi-layered, with trading being only the visible tip of the iceberg. Post-trade fragmentation also plays a key role in limiting or restricting access to non-domestic regulated markets, especially for retail investors. The de facto silos created by the vertical integration of regulated markets/CCPs/CSDs, and relative lack of permeability between these, are at best increasing the costs for end investors, and at worst preventing them altogether from accessing liquidity which might be readily available on another EU venue.

Initiatives that aim to address post-trade fragmentation, such as CCP interoperability or T2S, are steps in the right direction but have not gone far enough to make the post-trade ecosystem seamless. It is a fact that each exchange has its own Central Securities Depository (CSD), which can pose problems for market makers when transferring from one CSD to another, particularly in terms of costs (settlement-delivery costs can be fixed and variable, with different pricing structures), complexity (different cut-offs and instruction requirements, dealing with another prime broker and custodian), etc.

T2S (Target2-Securities) seems operationally complex and is not widely used.

Having multiple CSDs also complicates securities lending and collateral operations, which are useful for enhancing the performance (and thus attractiveness) of ETFs.

**Question 18: Which of the options referred to in questions 14 and 14.1 (better access to trading venues by intermediaries, option A) and question 17 (increased interconnection between trading venues, option B) would better achieve the following objectives:**

| | Option A<br><br>(better access to trading venues by intermediaries) | Option B<br><br>(increased interconnection between trading venues) | Don't know / No opinion |
|---|---|---|---|
| Increasing the level of liquidity for shares and ETFs | ☐ | ☒ | ☐ |
| Improving the quality of execution | ☒ | ☐ | ☐ |
| Increasing the speed of execution | ☒ | ☐ | ☐ |
| Reducing the cost of execution for clients | ☐ | ☒ | ☐ |
| Delivering a more efficient EU trading landscape | ☐ | ☒ | ☐ |

**Please explain your answer to question 18:**

*5000 character(s) maximum*

We would argue that the retail investor likely suffers more than the institutional investor in a scenario where the intermediary only has limited connections to trading venues.

All investors would benefit from improved interconnectedness between trading venues, allowing a single investor to access multiple listing of the same ETF, thereby increasing daily trading volumes and narrowing spreads. Similarly, brokers should be able to source inventory across different markets, again benefiting the end-investor with access to more liquidity and tighter spreads.

**Question 19: In other jurisdictions, notably the US, an increased level of interconnection at the level of trading venues resulted from the application of the 'order protection rule' (Rule 611 of the Regulation National Market System) that established intermarket protection against trade-throughs for certain shares. Do you have any experience with this rule?**

☒ Yes

☐ No

☐ Don't know / No opinion / not applicable

**Please explain your answer to question19:**

*5000 character(s) maximum*

Many of our firms do have experience of trading on US trading venues and the order protection rule. The system works, but one complaint was that it is difficult to analyse the data, to break down what happens with orders, and the role of ELPs and ESIs. Prices move very fast down to micro-seconds. The system relies on trust, trust of the securities regulator and trading venues.

It is difficult to assess the appropriateness of Reg NMS in Europe, simply because we are structurally far removed from being able to support the trade-through rule. Reg NMS style order routing would require major investments and upgrades to provide interconnectivity between trading venues. In Europe, we also have the physical challenge that trading venues are physically remote from each other. Even with very low latency data transfer, the would be a lag depending on the location of the trading venue, making a best price difficult to obtain under such circumstances. Imposing routing based solely on price could generate inefficiencies and distortions—for example, orders bouncing continuously between venues to chase minimal price differences, with operational costs and delays; or discouraging market innovations that deliver distinct services (committed liquidity, periodic executions, etc.) not measurable solely in terms of immediate price. In addition, introduction of an order protection rule in the EU will imply that best execution is only measured against price and not all the other factors as is the requirement in the EU today (costs, speed, likelihood of execution etc.). Hence, there is a risk that the overall result will be worse for the clients. Furthermore, the order protection rule requires mandatory consumption of consolidated tape, which we do not support.

**Question 20: Where implemented, the order protection rules required technological adaptations, so to allow the swift rerouting of the orders.**

**What is your assessment of the ability of the current state of connections among trading venues in the EU to cater for the rerouting of orders to venues offering the best price, as required by the order protection rule in the US?**

☒ 1 - Insufficient

☐ 2 – Rather insufficient

☐ 3 - Neutral

☐ 4 – Rather adequate

☐ 5 - Completely adequate

☐ Don’t know / No opinion / not applicable

**Question 21: Do you consider that geographical dispersion of EU trading venues would pose issues to an effective implementation of similar rules?**

☒ Yes

☐ No

☐ Don’t know / No opinion / not applicable

**Please explain your answer to question 21:**

*5000 character(s) maximum*

This is less a technological issue with the interconnectivity of venues, than a challenge at the post-trade level. Though as previously pointed out, order protection rule is not necessarily in the interests of the clients.

Offering systematic rerouting in the EU requires the post-trade value chain to be harmonized and to have a high built-in degree of interoperability.

The requirement for retail investors especially is less about extremely low latency (to shave off tenths of basis points off the bid-ask spread) and more about reducing/removing the high fixed costs per trade that are tied to the access, clearing and settlement on a non-domestic venue.

**Question 23: Crypto-markets have seen the emergence of a market architecture whereby retail investors have direct access to a crypto-asset trading venue.**

**Do you see merit in allowing or promoting the direct access of retail participants to trading venues for financial instruments, without an intermediary?**

☒ Yes

☐ No

☐ Don’t know / No opinion / not applicable

**Please explain the advantages and disadvantages of such a model, as well as the risks and how they could be mitigated:**

*5000 character(s) maximum*

In principle, we believe that removing intermediaries or gatekeepers to direct trading can be a positive for retail investors. In particular, direct access would eliminate intermediary fees, reducing transaction costs for retail investors. It would also drive market liquidity by increasing market participation especially among younger investors who demand direct, digital-first access to financial markets. We perceive several advantages for retail investors: the elimination of intermediary fees, reduction of transaction costs for retail investors, and deeper market liquidity.

We believe that this can be achieved while addressing investor protection and systemic stability concerns. Trading venues could provide automated assessments, i.e through MiFID II compliant questionnaires to evaluate investor knowledge and risk tolerance before granting access. Certain instruments which are complex or illiquid could simply be inaccessible to retail investors. This approach would balance retail empowerment with investor protection.

## 2.4. Ensuring fair access to market infrastructure to foster deep and liquid EU-wide markets

**Question 24: What is your assessment of the effect of the removal of exchange-traded derivatives from the so-called 'open access' to CCPs and trading venues provision under Articles 35 and 36 of the reviewed MiFIR?**

**Please include elements in terms of costs of trading and clearing, depth of market, switch to OTC.**

*5000 character(s) maximum*

EFAMA supports the objectives of 'open access', non-discriminatory and transparent access between trading venues and CCPs. As indirect participants, we welcomed a measure that could lower cost and improve operational efficiency and avoid the de facto silos that we face in the post-trading space.

- Trading and clearing costs: The exclusion of exchange-traded derivatives from the open access regime may result in higher trading and clearing costs, as market participants could face increased fees and reduced competition among infrastructure providers.
- Market depth: Market depth may be adversely affected, as the absence of open access could restrict the entry of new participants and reduce available liquidity.
- Shift to OTC markets: The removal of open access may incentivise market participants to shift towards OTC trading, potentially increasing risks and reducing market transparency. In particular, diverting order flow away from centrally cleared environments towards bilateral trading can heighten counterparty risk and reduce price visibility. The resulting fragmentation of liquidity across multiple, non-transparent trading channels undermines best execution policies, especially when there is limited or no access to the main venue. Moreover, the removal of open access might lead to concentration of trading activity in fewer venues, while introducing also systemic risk. In addition, the increased complexity and lack of standardisation in bilateral arrangements can also lead to higher operational risk.

The open access provisions set out in Articles 35 and 36 of MiFIR have proven effective in enhancing market competition and efficiency. However, there are operational and supervisory challenges that should be addressed in order to maximise their effectiveness. Regulatory harmonisation, centralised supervision, reduction of connectivity costs, and promotion of interoperability are essential to enhance the implementation of these provisions.

Article 35 of MiFIR requires CCPs to provide open and non-discriminatory access to their clearing services to any entities meeting the relevant operational and risk requirements. This includes trading venues and clearing members. These provisions have contributed to increased competition—lowering costs and improving operational efficiency—and have reduced risks, thereby enhancing financial stability.

Nonetheless, certain operational barriers persist. Smaller entities often face difficulties in complying with the technical and capital requirements necessary to access CCPs. In addition, the high costs of connectivity act as a disincentive to participation and may undermine competition.

Article 36 of MiFIR obliges trading venues to grant open and non-discriminatory access to their trading services to any participants meeting the operational and risk requirements. This has improved competition by enabling more participants to access trading services, reduced transaction costs, and enhanced price formation and execution quality through increased liquidity.

### 2.5. Enhanced quality of execution through deeper markets

**Question 29: There are important differences between best execution rules in the EU and in the US. In particular, in the EU, the obligation to obtain the best possible result for the clients lies on the intermediary. In the US, the quality of execution is guaranteed also through the aforementioned "order protection rule" that prevents trading venues from executing orders if a better execution price can be found on another exchange.**

**Which of the following options would most accurately reflect your assessment of the best execution framework in the EU vis-à-vis the US? Please explain your choice.**

☒ The EU framework is better suited than the US framework to obtain the best results for clients

☐ The US framework is better suited than the EU framework to obtain the best results for clients

☐ Both models are equally effective

☐ Both models are equally ineffective

☐ Don't know / no opinion / not applicable

**Please explain your answer to question 29:**

*5000 character(s) maximum*

When comparing the two legal frameworks, it is important to remember that under the US system, price is the only determinant of best execution quality, whereas in Europe we adopt a 'total consideration' approach. The European approach considers multiple factors such as price, costs, speed, likelihood of execution and settlement, size, and nature of the order. This holistic view ensures that all aspects of the execution process are optimized for the best possible outcome for the client. The total consideration approach allows investment firms to adapt their execution strategies based on market conditions and specific client needs. This flexibility can lead to better execution outcomes, especially in volatile or illiquid markets.

**Question 30: For equity instruments, the consolidated tape will disclose the European Best Bid Best Offer (EBBO) in an anonymised form. The tape will allow to have increased and integrated visibility on the different pools of liquidity available. On a scale from 1 (not effective) to 5 (very effective) how effective would lifting the anonymity of the EBBO be in achieving the following objectives? Please explain and provide a cost/benefit assessment.**

| | 1<br>Not at all effective | 2<br>Rather not effective | 3<br>neutral | 4<br>Rather effective | 5<br>Highly effective | Don't know - No opinion – Not applicable |
|---|---|---|---|---|---|---|
| Improving the ability of investment firms to assess the quality of execution | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| Ensuring a more integrated market whereby investment firms are able to direct their order to the most efficient options | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| Contributing to the efficiency of the price formation mechanism | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| Other (please specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☒ |

**Please specify to what other objective(s) you refer in your answer to question 30:**

*5000 character(s) maximum*

Lack of Transparency and Detail: Anonymized EBBO does not provide the information and detail required for effective decision-making. Market participants, including asset managers and institutional investors, need attributed pre-trade data to understand the source of liquidity and the behavior of different trading venues. While anonymised EBBO provides a basic view of the best bid and offer, it does not offer insights onto specific venues offering liquidity and best prices. This information is crucial for optimizing trading strategies and enabling market participants to interact with available liquidity.

Ensuring Best Execution: Without attributed data, market participants cannot fully assess the quality of execution across different venues. This can lead to market fragmentation and inefficiencies, as traders may not have the information needed to route orders to the most favorable venues. It also means that investors are unable to hold their brokers to account for consistently failing to access the venue offering the best prices. Attributed data helps in identifying the best execution venues and promotes competition among trading platforms.

Regulatory and Compliance Challenges: Anonymized data complicates regulatory oversight and compliance efforts. Regulators and market participants need detailed, attributed data to monitor market behavior, detect potential abuses, and ensure compliance with best execution requirements. Anonymized data falls short in providing the granularity needed for these purposes.

Investor Confidence and Market Integrity: Providing attributed pre-trade data enhances investor confidence and market integrity. Investors can see the full picture of market activity, including the specific venues involved, which helps in making informed investment decisions. This transparency is essential for maintaining trust in the market and encouraging greater participation.

The latest revision of MiFID/R mandates a review of the equities/ETF tape and a possible expansion of the data included on the tape by June 2026. We strongly urge the EC and ESMA to already amend the data coverage of the tape ahead of the commercial launch of an equities/ETF Tape. This will, without a doubt, enhance the attractiveness of the tape and, consequently, its commercial viability.

**Question 31: For equity instruments, the consolidated tape will disclose the EBBO only in relation to one layer of quotes (i.e., show only the best bid and offer, but not the second, third, etc.)**

**How important do you deem expanding the depth of the EBBO displayed by the equity tape? Please explain and provide a cost/benefit assessment.**

☐ 1 - Not needed

☐ 2 – Not really needed

☐ 3 - Neutral

☐ 4 – Rather needed

☒ 5 - Essential

☐ Don’t know / no opinion / not applicable

**Please explain your answer to question 31, providing a cost/benefit assessment:**

*5000 character(s) maximum*

According to the latest US SEC order (2023), US exchanges must submit a plan to provide the market with five layers of pre-trade data (best bids and offers).

In Europe, including 5 layers of data, or depth of book, on the pre-trade consolidated tape is essential for providing a comprehensive view of market liquidity and enhancing trading strategies. Depth of book data allows market participants to see beyond the best bid and offer prices, giving them insight into the available liquidity at various price levels. This information is crucial for advanced trading strategies, such as order routing, liquidity analysis, and algorithmic trading, as it supports more granular decision-making and helps traders optimize their execution strategies.  This is particularly important for ETFs, as they often trade on multiple venues and have varying liquidity profiles. By displaying multiple layers of bids and offers, market participants can better assess the depth of the market and make more informed trading decisions.

Having access to the depth of book helps in decision-making and assists the logic of Smart Order Routers and algo trading.  A deeper book (top-five levels) helps algorithms optimise order routing, manage market impact, and reduce slippage, ultimately lowering transaction costs for end-investors.

This aggregate view allows traders to see how prices are building, and again helps participants make informed trading decision. By offering a consolidated view of liquidity across different trading venues, the pre-trade consolidated tape can enhance transparency and support more informed trading decisions, ultimately benefiting both institutional and retail investors.

**Question 32: Under the current MiFIR, the speed at which core market data is disseminated by the equity consolidated tape is not regulated.**

**How important do you deem defining in legislation the speed at which core market data should be disseminated by the equity consolidated tape?**

☐ 1 - Not needed

☐ 2 – Not really needed

☒ 3 - Neutral

☐ 4 – Rather needed

☐ 5 – Essential

☐ Don't know / no opinion / not applicable

**Please explain your answer to question 32, specifying what should be the adequate speed:**

*5000 character(s) maximum*

EFAMA has consistently called for a real-time consolidated tape for equities/ETFs. We define real-time as a speed of 100 milliseconds. This speed we believe fulfills the use-cases described above as far as trading strategies and best execution, without creating the undue costs that an ultra-low latency tape implies. Any lower latency is also unnecessary precisely because we are not suggesting moving to a trade-through rule as in the US, where the consolidated tape would determine how orders are routed to trading venues.

**Question 33: Which of the following options reflects your assessment of the impact on the consolidated tape of requiring systematic internalisers to contribute to the equity pre-trade consolidated tape?**

☒ It would improve the quality of the data displayed by the tape.

☐ It would reduce the quality of the data displayed by the tape, also considering that systematic internalisers, under certain conditions, can trade at prices that are better than the quoted prices.

☐ It would be irrelevant.

☐ Don't know / no opinion / not applicalbe

**Please explain your answer to question 33**

*5000 character(s) maximum*

Systematic internalisers should be required to contribute their quotes to the Consolidated Tape, even though the quotes provided by SIs may not be available to all market participants. More complete data would allow asset managers to challenge their brokers and request that they are connected to more trading venues and liquidity providers.

However this requirement should strictly be limited to public quotes, and not Indications of Interest (IOIs), which are non-binding, private and used for negotiation. This would provide trading desks the necessary protection if they are dealing in an illiquid instrument.

## 2.6. Building quality liquidity for EU market participants: impact of recent trends

### 2.6.1. Non-transparent ('dark') trading (for equity instruments)

**Question 35: The EU's trading landscape is witnessing a decrease of lit order book equity trading (i.e. order book trading with pre-trade transparency).**

**In your view, what are the main reasons that explain such a trend?**

*Please select as many answers as you like*

☐ Regulation (please specify)

☒ Liquidity fragmentation

☒ Order flow competition (e.g. development of EMS/OMS)

☒ Technological developments (e.g. algorithmic trading/HFT)

☐ Surge in ETFs and passive management

☐ Other (please explain)

**Please explain to which regulation(s) you refer in your answer to question 35:**

*5000 character(s) maximum*

Lit-order-book volumes are shrinking because several broad market trends are pulling in the same direction. However, we do not view this as critical so long as the current safeguards keep the lit/dark balance in check.

Portfolio managers often time trades to coincide with the end-of-day auction, aligning executions with fund NAV calculations and the cash flows from subscriptions and redemptions. They also rely on dark pools or internal crossings to minimise information leakage, reduce market impact, and ease settlement-related constraints. The latter practices, while contributing to the shift away from continuous lit markets, are essential tools for protecting end-investor value and managing operational risk.

**Question 36: On a scale from 1 to 5 (1 being "too low to harm price formation" and 5 being "excessive and very harmful for price formation") what is your assessment of the impact of the current levels of dark trading in the EU on orderly markets and sound price discovery? Please explain your reasoning.**

☐ 1 – Too low to harm price formation

☒ 2 – Sufficiently low to hardly harm price formation

☐ 3 – Neutral

☐ 4 – Slightly excessive and harmful for price formation

☐ 5 – Excessive and very harmful for price formation

☐ Don't know / no opinion / not applicable

**Please explain the reasoning to your answer to question 36:**

*5000 character(s) maximum*

We believe that the current framework results in a balanced market structure that supports both transparency and liquidity; more importantly it provides a variety of trading options for institutional investors whose fiduciary duty it is to provide best execution for their clients.

As European asset managers, we rely on dark pools to execute large orders without causing information leakage on lit markets which could lead to price slippage and adverse market impact. SIs, nevertheless, provide public quotes and therefore contribute to price discovery.

**Question 38: Do you believe that the existing provisions on the reference price waiver (RPW) are fit for purpose? Please explain you reasoning**

☐ Yes

☐ No

☒ Don't know / No opinion / not applicable

**Please explain your reasoning of your answer to question 38:**

*5000 character(s) maximum*

As buy-side, we support institutional investors having the ability to work large orders with limited transparency on exchange. This is especially important as long as periodic auctions are unavailable on trading venues.

## Closing auctions

**Question 43: In your view, what are the main reasons that explain the rising importance of closing auctions? Please select one or more of the options below and explain your reasoning.**

☒ Rise of index investing/passive management

☒ Growing use of quantitative investment strategies benchmarked to the close.

☐ Increased emphasis on best execution under MiFID II.

☐ Move away/protection from HFTs

☐ Other (please explain)

**Please explain the reasoning of your answer to question 43:**

*5000 character(s) maximum*

Portfolio managers may prefer to trade at the end-of-day auction because it ensures that executions are priced in direct alignment with the fund's net asset value (NAV), which is typically calculated based on closing prices. This alignment is essential for maintaining fairness among investors who subscribe to or redeem from the fund on a given day, as it ensures that all participants are treated equally and that transaction costs are not inadvertently shifted between them. Trading at the close also helps reduce tracking error for index-based strategies and provides greater certainty over the pricing of trades, which is critical for effective cash and risk management within the daily fund cycle.

**Question 44: What is your assessment of the current level of competition on closing auctions, including between trading venues that offer trading for the same financial instrument?**

☐ 1 - No competition

☒ 2 – Low level of competition

☐ 3 - Neutral

☐ 4 – High level of competition

☐ 5 – very high level of competition

☐ Don't know / No opinion / not applicable

**Question 44.1. Please point to the main causes for such a situation and to the main implications on the broader functioning of EU markets.**

**Please specify which changes to the EU legislation would increase competition?**

*5000 character(s) maximum*

As asset managers, we value closing auctions in so far as they provide predictability, certainty and lower speed for the benchmarking and NAV calculations that we must perform on funds and portfolios. We believe that an important driver of flows into closing auctions comes from passive investment (ETFs) where the official closing price is key.

Primary exchanges do charge high fees for their closing auctions, which could be regarded as monopolistic pricing. The MiFID framework could be improved in this regard to bring about more competition and cost efficiency.

There are no real alternatives today to the closing auctions which due to their characteristics are also optimized for participants trading limit orders, and the netting of orders which maximizes matched volumes. Given that MTFs and SIs also use the closing auction price, this mechanism acts like an exhaust pipe bringing in all the orders into the primary exchange. Nevertheless, the inability to access the official closing price through more cost-efficient alternatives generates meaningful frictions, particularly for intermediaries and long-term investors operating under fee-sensitive mandates.

In light of these considerations, we would welcome a policy debate on how to foster greater competition around the closing process. Fees applied by primary exchanges have shown limited responsiveness to the broader compression of costs observed across the trading ecosystem. The absence of strong competitive dynamics continues to limit the incentives for significant adjustments to these pricing structure. Any initiatives that enable the same price discovery outcome at a lower cost – for instance through interoperable closing mechanisms – would be beneficial to end-investors and contribute to the overall efficiency of European capital market. Concretely, we propose opening of the closing auction to other trading venues (interoperability). The other trading venues should be credited for the volume they bring in and we urge that the IP rights on market data, which the trading venues claim to have, is removed

## 24-hour trading

**Question 47: How positive do you deem extended trading hours / 24-hour trading for the development and competitiveness of EU markets? Please explain your reasoning.**

☐ 1 – Not significantly positive

☐ 2 – Slightly positive

☒ 3 – Sufficiently positive

☐ 4 – Very positive

☐ 5 – Extremely positive

☐ Don’t know / No opinion / not applicable

**Please explain the reasoning of your answer to question 47:**

*5000 character(s) maximum*

We believe that, given global trends, there is an inevitability to moving to continuous trading which Europe should seriously consider. Some markets in the US have already launched or are in the process of offering 24/7 trading. This trend is amplified by DLT capabilities already demonstrated in crypto exchanges where we find instantaneous settlement and automation.

There will necessarily be some adaptation/investment required by the buy-side for instance, in running 24-hour trading desks, or meeting margin calls over a 24-hour period. But here too solutions can be found via automation and smart contracts that can calculate and settle margin calls in real time.

Increased market access and flexibility would also be welcomed by global investors across different time zones looking to access EU markets.

In terms of liquidity impact, while extended trading hours could split liquidity across 24 hours, increasing bid-ask spreads, this effect could be mitigated by i) increased access by US/Asian investors offsetting liquidity fragmentation ii) Limiting 24/7 trading to high-liquidity real world assets. Iii) ensuring that institutional investors still mainly trade during traditional trading hours where liquidity is bundled, whereas retail investors have the option to trade closer to a 24/5 or 24/7 availability.

Another impact on asset managers would be on the once-daily NAV calculation, potentially being complicated by continuous price volatility and related investor fairness concerns. Would closing auctions play the same role in defining the official closing price for NAVs? However, once again with DLT technology, asset managers can maintain accurate NAVs using 24/7 market data. And this would not preclude asset managers from gradually moving toward intraday or real-time NAVs.

This is why on balance we support a move to 24-hour trading and believe that where there are complexities or operational challenges these will be addressed by DLT-driven solutions.

## The role of multilateral vis-à-vis bilateral trading

**Question 54 : Does the emergence of DLT-based/tokenised asset markets bring in a new element or dynamic, compared to bilateral versus multilateral venues?**

☐ Yes

☐ No

☒ Don’t know / No opinion / not applicable

**Please explain how it bring in a new element or dynamic:**

*5000 character(s) maximum*

Automated market makers will play a key role in DLT-based multilateral venues and boost liquidity there.

For bilateral venues, DLT also has a role to play with the use of smart contracts automating execution and enabling T0 settlement.

### 2.6.2. Single market maker venues

**Question 55: In your view, what are the main benefits and drawbacks associated with so-called "single market maker venues" (i.e. where the venue operator limits market making to one participant)?**

**Please explain your reasoning, in particular when it comes to quality of execution.**

*5000 character(s) maximum*

There should always be competition; market makers should compete for trades even on regional exchanges.

### 2.6.3. Ghost liquidity

**Question 57: Market developments have led to changes in the order submission strategy by certain high frequency traders, such as the submission of more orders than the amount that is really intended to be executed. This may imply that 'consolidated' liquidity (measured as the simple aggregate of a given financial instrument available across all trading venues) is likely to be an overstatement of the actual liquidity that an average trader can access. The difference between measured liquidity and tradeable liquidity is often referred to as 'Ghost Liquidity'.**

**Do you believe that practices associated with Ghost Liquidity are conducive to adequate levels and 'quality' of liquidity and price formation on trading venues?**

☐ Yes

☐ No

☒ Don't know / No opinion / not applicable

**Please explain the reasoning for your answer to question 57:**

*5000 character(s) maximum*

Ghost liquidity, meaning orders that appear on the order book without genuine intention to trade, poses a significant threat to market transparency and integrity. It distorts the perception of available liquidity, opens the door to potential price manipulation, and undermines the efficient functioning of the order book. This not only affects the fairness of the market but can also deter genuine participation, particularly from long-term investors and institutional players who rely on accurate signals for execution.

To address these concerns, it may be worth exploring technical mechanisms already adopted in other markets. For example:

- Speed bumps, as implemented in certain U.S. venues, can help level the playing field by slowing down aggressive, latency-based strategies;

- Ban colocation possibilities;

- Additionally, enhanced monitoring tools such as, measuring the average time orders remain on the book (posting duration vs. average market players) or tracking the ratio of displayed orders to actual executions (cancellation rate vs. average market players), could offer valuable insights into the quality of liquidity and help differentiate between genuine and deceptive activity;

- “hit ratios” % of orders generated electronically (HFT).

### 2.7. Other issues on trading

**Question 58: Please provide any further suggestions to improve the integration, competitiveness, simplification, and efficiency of trading in the EU.**

**Please provide supporting evidence for any suggestions.**

*5000 character(s) maximum*

Access to market data is paramount. The Consolidated Tape both for equities/ETFs and bonds will go some way in addressing the fragmented market structure we have in Europe and provide much greater investor confidence when trading on European capital markets.

Similarly, the provision of market data should be subjective to an enforceable approach: This is either a cost-based approach with price-cap, where market data is a by-product of the trading activity, or simply make market data free of charge due to as a public good. Beware that the recent level 1 (MiFIR, art. 13) and the draft level 2 (RTS on RCB) are not sufficient to solve the problems . We believe that under the current RTS, the reasonable commercial basis provision, is regrettably not sufficient to mitigate against the monopolistic pricing of market data that we currently experience. Improved pricing and accessibility of data would help bring about more cross-border and non-EU investment flows.

## 3. Post-trading

*Issues with respect to post trading identified to date fall into three main areas:*

- *barriers to cross-border settlement*
- *barriers to the application of new technology and new market practices*
- *unharmonised and inefficient market practices and application of law, as well as disproportionate compliance costs.*

*This consultation aims to further specify the above barriers, as well as understand current market practices and costs borne by market participants, be they fees or other compliance costs. This section seeks feedback on possible measures, legislative or non-legislative, to achieve a more integrated, modern post-trading infrastructures. Respondents are asked to provide concrete examples to support answers provided, and, where possible, quantitative and qualitative information.*

### 3.1. Barriers to cross-border settlement and other CSD services

### 3.1.3. Settlement services in the EU

**Question 23: How could settlement in T2S be further enhanced in order to build a deeper and more integrated market in the EU and facilitate cross-CSD settlement?**

*5000 character(s) maximum*

We believe that ideally all CSDs should be connected to the T2S platform which would improve settlement efficiency and likely make the migration to T+1 smoother.

We also would welcome a greater concentration of CSDs (market-driven?) and a simultaneous move to the provision of CSD services as a utility. This could potentially be mandated by the EC to remove fragmentation and provide a single platform for settlement. There is currently little or no competition between CSDs anyway, even with the large number of operational CSDs.

### 3.1.4. Legal certainty

**Question 47. Is there a legal certainty barrier due to the absence of a conflict of law rule, related to proprietary, contractual and system-related aspects, under the CSDR (to complement those under the SFD/FCD etc.)?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Question 47.1. Are the barriers the same or are there different barriers where DLT is used, considering the divergences and uncertainties on the substantive law on the creation, holding and transfer of digital assets/tokens?**

*5000 character(s) maximum*

In Europe, we have observed a pro-active approach by national governments and regulators to create a DLT-friendly framework for the issuance, registry and safekeeping of DLT-based traditional assets. We can cite inter-alia: Luxembourg's Blockchain Laws, Germany's Electronic Securities Act (eWpG) and Italy's Fintech Decree. These are welcome as they have provided regulatory certainty, allowing firms to experiment and innovate. However, this fragmented approach can be detrimental as divergent rules become a barrier for firms operating across multiple EU jurisdictions, increasing compliance costs. This can discourage cross-border expansion, particularly for smaller DLT-native firms that have limited resources.

Even for the firms that nevertheless operate across jurisdictions divergent rules complicate their cross-border operations, increasing costs and reducing efficiency.

A patchwork of EU rules also fragments liquidity ultimately. If issuance and custody rules are not compatible, certain instruments may not be eligible for trading and investment in other markets.

While we note important similarities in the different regimes: substance over form principle (tokenized assets are treated as equivalent to traditional securities), DLT registration and custody requirements, prospectus updates, use of smart contracts and ownership records, reconciliation in hybrid models, we also notice significant differences:

- Scope of tokenization (what can be tokenized)
- Different rules for register management
- Different operating models for fund share registration
- Licensing and oversight of custodians
- Eligibility of crypto-assets in funds
- Different provisions for interoperability
- Different approach to granting retail access

Over time, if this fragmentation is not addressed it can lead to regulatory arbitrage.

We also see an important role for a harmonized approach to the treatment of digital assets across Member States.

**Question 49.1. What is the preferred connecting factor in relation to proprietary aspects related to transactions on a DLT system?**

Please select as many answers as you like

☐ The law chosen by the participants to a transaction

☐ The law chosen by the network participants

☐ The law of the legal entity operating the DLT-based system on which digital assets are recorded

☐ In relation to a digital asset of which there is an issuer, the domestic law of the State where the issuer is established

☐ The place of the relevant operating authority/administrator (PROPA)

☐ The primary residence of the encryption private master keyholder (PREMA)

☒ Other

**Please specify to what other connecting factor(s) in relation to proprietary aspects you refer in your answer to question 49.1:**

*5000 character(s) maximum*

This is an important question, particularly in a bankruptcy or legal dispute scenario.

It also raises the question of on-chain finality. We believe that in the absence of any rules, legal disputes/challenges will be introduced in different jurisdictions on a court-by-court basis.

## 3.2. Barriers to the application of new technology and new market practices

### 3.2.1. Applicability of the CSDR to DLT-based CSDs and the provision of services

**Question 74. Does the definition of cash need to be refined to take into account technological developments affecting the provision of cash, in particular the emergence of tokenised central bank money, tokenised commercial bank money and electronic money tokens?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please specify how the use of such settlement assets can be facilitated while maintaining a high level of safety for cash settlement in DLT market infrastructures:**

*5000 character(s) maximum*

If the definition of cash is expanded and includes for instance, digital commercial bank money, the credit risk should be clear to market participants.

Depending on the use and access, digital cash options vary:

wCBDC is only available to institutional investors, who also would be participants to T2S.

emoney tokens would be accessible down to retail investors.

However, UCITS cannot invest in MiCA stablecoins.

CBMT only exist within the MiCA framework, and not beyond.

For fully native tokenized assets (stablecoins), there should be full transparency on the reserve assets backing the stablecoin to enable appropriate (due diligence) risk assessment by holders of stablecoins.

Yes, the definition of cash could be further refined in such a way to ensure safe on-chain cash instruments. Nevertheless, the definitions should be broad enough not to exclude all the innovative developments in the emoney token space. Ultimately, we require payment methods that are on chain.

**Question 79. In particular in permissionless blockchains, validators have the ability to choose which transactions to prioritise for validation and decide on the order of transaction settlement.**

**Can this feature negatively affect orderly settlement and how can it be mitigated?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 79:**

*5000 character(s) maximum*

The question that needs to be asked is if the transaction reaches finality/settlement. Yes, there could be cases where there is ‘ordering’ going on, in fact not unlike what we see today in the PFOF model. However, this should not be used to elude best execution requirements. Some participants could be down-prioritised. This is not valid and would amount to front running.

**Question 80. Does the emergence of DLT-based tokenised financial instruments require changes to the provision of CSD services or the requirement to use a CSD?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Which CSD roles or requirements could be meaningfully impacted in a DLT environment?**

*5000 character(s) maximum*

The clause in article 3(2) in CSDR that requires the use of CSDs for settlement could be amended to offer more flexibility to DLT platforms offering CSD services.

An MTF platform running a crypto registrar and with the role of control agent could fulfill the current role of a CSD.

However, in favour of retaining the provision of CSD services, is the scenario where a portfolio manager loses the keys. A CSD would mitigate against such losses.

Today however, circumventing a CSD or not, largely depends on national legislation where for instance in some jurisdictions the TA can oversee the whole process.

## EFAMA REPLY TO TARGETED CONSULTATION ON OF EU CAPITAL MARKETS – PART 2

## 4. Horizontal barriers to trading and post-trading infrastructures

*This section seeks feedback on horizontal barriers to trading and post-trading infrastructures in four main areas:*

- *EPTF (European Post Trade Forum)*
- *cross-border operational synergies between entities*
- *issuance*
- *and innovation*

*Respondents are asked to provide concrete examples to support answers provided, and, where possible, quantitative and qualitative information.*

### 4.3. Issuance

**Question 23. Do you believe that the DLTPR limit on the value of financial instruments traded or recorded by a DLT market infrastructure should be increased?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Question 23.1. Please provide details on the preferred changes to the DLTPR and explain your reasoning (how limits should be increased, which concrete assets should be eligible and why)**

*5000 character(s) maximum*

The limits across all the assets, shares bonds and UCITS should be increased. The current limits are too low. This hugely limits the eligible universe of instruments (and hence possible returns on investment), in turn deterring potential applicants for DLT licenses.

We believe that clarity on timing as to when the limits will be raised is critical. One possible approach would be to introduce dynamic thresholds calibrated to how large trading volumes are becoming. Such a phased approach would allow for strong regulatory oversight and risk management, while attracting more DLT platform providers and investors.

**Question 23.2. Please provide a ranking of the importance of the issue:**

☒ High priority

☐ Medium priority

☐ Low priority

☐ Don’t know / no opinion / not applicable

**Question 23.3. Please provide an estimation of the benefits and risks that result implementing the changes to the DLTPR that you propose.**

**For example, if you suggest extending the scope of instruments, or increasing the threshold, you are encouraged to estimate how much additional financial activity would the DLTPR attract, and opine on the associated risks:**

*5000 character(s) maximum*

Please see our response to Q23: a dynamic threshold would give the regulator necessary controls for instance with real-time monitoring and adjustable caps.

**Question 25. Do you believe that the DLTPR should be extended to cover other types of systems, such as clearing systems?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Question 25.1. Please provide details on the preferred changes to the DLTPR and explain your reasoning (how limits should be increased, which concrete assets should be eligible and why):**

*5000 character(s) maximum*

Yes, we support the extension of DLTPR to clearing systems. While instantaneous trading and settlement reduces counterparty risk, there is still a role for clearing houses in a DLT environment. They provide netting across trades which reduces liquidity needs. They also manage collateral, which would still be required to address pre-trade liquidity risks, operational risks and market volatility.

### 4.4. Innovation – DLT Pilot Regime (DLTPR) and asset tokenisation

**Question 26. Should the DLT trading and settlement system (DLT TSS), allowing for trading and settlement activities within a single entity, become embedded into the regular framework (CSDR, MIFID)?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 26, noting in particular the risks and the benefits:**

*5000 character(s) maximum*

Yes, we believe that the DLTPR approach which allows for trading and settlement activities within a single entity should be embedded in CSDR and MiFID. This is consistent with our views expressed under (Add Q.) that over time there should not be a distinction with different regulations applying to the traditional world, while a separate framework applies to DLT.

We can already identify one critical change that should be considered around CSDR and MiFID, where each framework regulates CSDs or trading platforms thereby requiring separate licenses for settlement (CSD) and trading (MTF/OTF), maintaining a traditional separation of roles. We believe that, over the longer term, distinct frameworks should not co-exist, as this leads to inefficiencies and market fragmentation. Such a shift towards a principle-based application of CSDR and MiFID II would enable and facilitate the trading of digital financial instruments in traditional markets; promote the use of e-money tokens (EMTs) for the settlement of transactions.

As we gain more experience of DLT platforms, and better understand how to manage operational risks, we believe we should converge on a single regulatory framework for an integrated ecosystem.

In doing so, it will be important to respect the principle of settlement finality (irrevocable and legally binding settlement), today safeguarded both in CSDR and the SFD. This may require some revisions to both frameworks to ensure that settlement finality does not fall outside the scope of settlement systems.

**Question 29. Does the DLTPR create a sufficiently clear and flexible framework for the use of EMTs as a settlement asset, bearing in mind the overarching need to ensure high level of safety for cash settlement in DLT market infrastructures?**

☐ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 29:**

*5000 character(s) maximum*

MiCA governs the eligibility of e-money token issuers, restricting this activity to credit institutions regulated by CRD, or electronic money institutions (EMIs) falling under the e-money directive. Further clarification is needed [ADD]

Separately, we identify an issue and a need to revise the UCITS directive. Under current rules UCITS that are offered to retail cannot hold EMTs. EMTs are not formally recognized as eligible assets under the directive, making it difficult/risky for such funds to hold these assets. This creates a major regulatory barrier for funds being able to invest in tokenized assets and pay for these with cash-on-chain (EMTs). This means that funds would have to hold traditional cash and convert this cash (at a cost through an intermediary) to access EMTs to conduct a fully on-chain transaction. In the long-run and to enable rapid scaling of DLT markets, funds should be able to hold tokenized assets including EMTs.

**Question 30. Do you think that in addition to, or instead of the current derogations-based approach (allowing switching off of certain MIFID and**

**CSDR provisions), the DLTPR should take a principles-based approach whereby high-level provisions govern trading and settlement services, with the purported aim of creating more flexibility for deploying innovative DLT- based projects?**

☐ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 30:**

*5000 character(s) maximum*

Once again, we believe that the single biggest drawback today in the DLTPR is the thresholds which limit the types of instruments and the liquidity that can be achieved on these platforms. A principles-based approach is certainly more desirable in this regard. Again, we highlight that ultimate objective should be to arrive at a single framework which fosters innovation and does not limit the size and representativeness of DLT platforms.

**Question 31. Do you believe that DLT is a useful technology to support trading services in financial instruments?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 31:**

*5000 character(s) maximum*

Yes, we absolutely believe that DLT is a useful technology to support trading. We hope to see greater growth as more smart-contract-enabled DLT trading platforms such as 21x come on-line. This will expedite the decentralization of exchanges and disintermediation.

**Question 33. For a financial entity using DLT to deploy its services, the distributed ledger is often an external platform on which services are run, and this platform may have a very distributed governance structure.**

**What are the benefits and risks of deploying financial services, including post-trading services, on distributed ledgers external to the financial service provider, and therefore outside its direct control?**

*5000 character(s) maximum*

As asset managers, we want to partner and provide solutions through a wide variety of platforms. Therefore, we value a level-playing field above all, making both permissioned and permissionless platforms accessible for our products. This would signal Europe's openness to innovation and encourage more players to enter the fray which will enrich Europe's DLT ecosystem.

For instance, we support the use of SCO 60 for the issuance of traditional financial instruments.

**Question 38. Asset tokenisation concerns the use of new technologies, such as distributed ledger technology (DLT), to issue or represent assets in digital forms known as tokens.**

**Where do you see most barriers to asset tokenisation in Europe?**

| | 1<br><br>Not important | 2<br><br>Rather not important | 3<br><br>Neutral | 4<br><br>Rather important | 5<br><br>Very important | Don't know – No opinion – not applicable |
|---|---|---|---|---|---|---|
| a) Member State securities and corporate law | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| b) Member State laws other than securities and corporate law | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| c) EU laws that relate to trading and post-trading | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| d) EU laws other than laws that relate to trading and post-trading | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |

**Please explain your answer to question 38, pointing to concrete examples in areas beyond the SFD, FCD and CSDR:**

*5000 character(s) maximum*

Some of the high priority areas that we recommend to address include:

- Lack of harmonization at Member State level on securities law, risk of regulatory arbitrage
- Need to converge legal frameworks governing trading and post-trading FMIs into a single rulebook that does not differentiate between DLT/non-DLT.

**Question 39. Should public policy intervene to support interoperability between non-DLT systems and DLT systems?**

☐ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain how this can be done in a manner that is cost-efficient for the industry:**

*5000 character(s) maximum*

Yes, we believe that more interoperability between DLT and non-DLT systems is important and can drive competition and more concentration of liquidity across platforms. This should support innovation and drive down costs.

Solutions to drive greater interoperability between platforms will likely emerge from the private sector. We don't see a major role for public policy here except for ensuring that the capital market infrastructure (trading platforms, CCPs and CSDs) are not able to charge monopoly rents and perform cross-subsidisation in any of their business legs which their present status as for-profit natural monopolies allows This will enable genuine competition and a level playing field and a market driven development. Similar focus should be on other data providers such as vendors, benchmark providers, CRAs, ESG-providers which enjoy significant market power and no regulation hereof.

**Question 41. Lack of standardisation acts as a hindrance to interoperability. This is especially the case with a relatively new technology such as DLT.**

**Where is the greatest need for standardisation in the area of DLT?**

| | 1 (not important) | 2 (rather not important) | 3 (neutral) | 4 (rather important) | 5 (very important) | Don't know - No opinion - Not applicable |
|---|---|---|---|---|---|---|
| a) Business standards applicable to digital assets (for example data taxonomy to describe digital assets) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| b) Technical standards applicable to digital assets and smart contract- based applications | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| c) Technical standards applicable to links (bridges) between DLTs | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| d) Other | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

**Please specify to what other need(s) for standardisation you refer in your answer to question 41:**

*5000 character(s) maximum*

Achieving a minimum level of standardization is key to driving scalability.

**Question 42. Given how you foresee DLT-based financial market infrastructure to develop, what do you think is the best way of providing interoperability between distributed ledgers?**

| | 1 (not important) | 2 (rather not important) | 3 (neutral) | 4 (rather important) | 5 (very important) | Don't know - No opinion - Not applicable |
|---|---|---|---|---|---|---|
| a) regulated financial entities, such as a CSD, that are present on multiple ledgers, acting as a distributed ledger hub for clients | ☐ | ☒ | ☐ | ☐ | ☐ | ☐ |
| b) pure technology companies that focus on sending messages securely across distributed ledgers for clients that are regulated financial companies | ☒ | ☐ | ☐ | ☐ | ☐ | ☐ |
| c) regulated financial entities that focus on sending messages securely across distributed ledgers for clients that are regulated financial companies | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| d) some other model | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

**Please specify to what other model(s) you refer in your answer to question 42:**

*5000 character(s) maximum*

We are less keen on proposal (a) with CSDs acting as distributed ledger hub as this could lead to monopolistic pricing and behaviour. (b) is also not an attractive option as it would create a layer of tech providers that are less regulated than financial entities. (c) presents a better approach as it would promote interoperability while preserving financial stability and consumer protection.

## 5. Asset management and funds

*Despite the [Directive 2009/65/EU relating to undertakings for collective investment in transferrable securities (UCITSD)] and the [Directive 2011/61/EU on alternative investment fund managers (AIFMD)] enabling funds to be marketed across the EU through a relatively simple notification procedure, national barriers, divergent practices, and regulatory complexities often impede efficient and scalable operations, thereby impacting costs and accessibility for EU citizens.*

*This section seeks to:*

i. *identify obstacles experienced by EU funds and asset managers to accessing the single market*

ii. *gather stakeholder insights on barriers and experiences in managing cross-border investment funds*

iii. *explore the effectiveness of existing authorisation and passport systems*

iv. *and explore possibilities for simplifying current requirements*

*Stakeholders input on operational challenges, passporting/marketing of investment funds, national supervisory practices and other barriers more generally are welcome. Stakeholders are encouraged to share quantitative data and practical evidence to support positions.*

### 5.2. Authorisation Procedures

#### 5.2.1. Authorisation of Management Companies (UCITS and AIFMD)

**Question 13. Are the current authorisation / supervisory approval processes for management companies under AIFMD/UCITSD sufficiently clear and comprehensive to enable the smooth provision of asset management and supervision thereof?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 13:**

*5000 character(s) maximum*

EFAMA is of the opinion that the authorisation and supervisory approval processes provided for under both AIFMD and UCITS Directives represent a robust framework. While some divergences can be observed among Member States (as we explain in more detail below), both directives have allowed for a high standard of harmonisation in the area of authorisation as AIFMs or Management Companies in the EU. They are clear in terms of the scope of permitted activities, which goes together with corresponding requirements on organisation, risk management, and relationships with other stakeholders (such as depositaries and external valuers). They also contributed to increasing investor protection and the prevention of conflicts of interest.

**Question 14. Is the authorisation process proportionate in circumstances where not all requirements are relevant to the activity envisaged by the applicant?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 14 and specify the relevant circumstances and related requirements:**

*5000 character(s) maximum*

Please see our response to question 13 above.

**Question 15. Does the current authorisation process for management companies under UCITSD/AIFMD act as a barrier to the functioning of the single market?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Please explain the main barriers, which may encompass EU law, national law, requirements imposed by national competent authorities (NCAs), and operations such as technology and communication channels:**

*5000 character(s) maximum*

Please see our response to question 13 above.

**Question 16. Are the current authorisation processes / supervision for management companies under AIFMD/UCITSD applied in a consistent way across Member States?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Please present these divergences and explain if these divergences created challenges for operating in the single market:**

*5000 character(s) maximum*

Divergences can be observed in how authorisation process is organised among different Member States.

In particular, there are differences between NCAs in how they interpret the scope of permissible business activities under Art. 6(4) of the AIFMD and Art. 6(3) of the UCITS Directive. These should be sufficiently addressed by the changes introduced in the recent review by the Directive (EU) 2024/927, despite its implementation process is still underway. Therefore, we do not consider further changes to the AIFMD and UCITS Directive as necessary.

Moreover, it can be observed that in some Member States the scope of AIFM authorisation covers all investment strategies, while in others it can be limited only to specific investment strategies. In the second scenario, it creates an additional burden for the management companies as they have to apply for additional authorisation each time before launching a new strategy. This can also have implications for the time-to-market perspective.

At the same time, we do not believe that changes achieving a greater harmonisation and broader level playing field in this case would necessitate any changes in the AIFMD. It would be sufficient to achieve further convergence through tools already available to ESMA within its competences.

**Question 17. Are you supportive of further harmonising and streamlining authorisation requirements and procedures for management companies to increase simplification and reduce fragmentation in the EU's asset management sector?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain how this should be done and provide a ranking having regard to the impact of proposed solutions as high, medium or low priority:**

*5000 character(s) maximum*

As we have already explained in our response to question 16, further harmonisation could be achieved in some supervisory practices. At the same time, we do not believe that this should be achieved through further changes in the AIFMD and UCITS Directive. More supervisory convergence should be achieved by tools that are already available to ESMA.

### 5.2.2. Authorisation of Investment Funds (UCITS)

**Question 18. Is the current authorisation framework for UCITS effective and proportionate?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 18:**

*5000 character(s) maximum*

The current authorisation framework for UCITS is broadly effective and has delivered positive outcomes across the EU. However, there remain opportunities for refinement, particularly in achieving greater consistency and efficiency across jurisdictions.

In some jurisdictions, NCAs apply the rules effectively and proportionately. In others, challenges arise due to unclear requirements or excessively lengthy authorisation timelines.

Further codification of the approval process would be beneficial. Additionally, some NCAs impose extra administrative burdens (such as duplicative reporting obligations, mandatory interaction with national databases, or the completion of extensive questionnaires) which contribute to inefficiencies. For example, certain jurisdictions require the KID to be filed before the prospectus can be approved or officially noted by the NCA, while others require a different sequence.

We recommend harmonising authorisation timelines and improving procedural efficiency through greater sharing of best practices among regulators. For instance, NCAs that leverage specific technologies to streamline the process could share these methods with others, encouraging broader adoption.

The lack of transparency regarding approval timelines across jurisdictions also creates uncertainty and hinders effective planning. Addressing this would support a more predictable and consistent authorisation environment.

Additional burdens also arise from national governance requirements, which would merit harmonisation. For example, in certain jurisdictions, it is necessary for the board of the fund to provide approval before filing for the authorisation of a new sub-fund, which is not a requirement in other jurisdictions. Another example of divergencies is whether or not shareholder approval is also required for a change of investment objective, which is time consuming.

**Question 19. Is the authorisation framework for UCITS sufficiently proportionate in circumstances where not all requirements are relevant to the operations of a fund?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 19, specifying the relevant circumstances and related requirements:**

*5000 character(s) maximum*

As above. Overall, the regime works well and can work in a sufficiently proportionate manner, though whether this happens in practice depends on the jurisdiction. We recommend, as above, the sharing of best practices, greater transparency through codification of procedures and the publishing of transparent timelines.

**Question 20. Do divergent practices arise in the authorisation framework for UCITS across Member States?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain these divergences and whether these divergences create challenges for operating in the single market:**

*5000 character(s) maximum*

Rules are interpreted differently between NCAs in different jurisdictions and may even be interpreted differently by the same NCA vis-à-vis different actors. It is important for pan-European actors to have predictability as to the procedures and timelines for authorisation in the various countries in which they operate.

We very much support the current model of local supervision, which allows supervisors to have sufficient knowledge of the local markets and day to day dialogue with the entities on national issues. Nonetheless, it is important for asset managers operating on a pan-European basis to have predictability as regards the timing of the authorisation and other aspects of the process in the various countries in which they operate. Divergencies in interpretation create difficulties for asset managers to operate at scale cross-border and also create an unlevel playing field across Member States.

Examples include the level and style of information to be approved by the NCA, which varies significantly between jurisdictions – for example, certain NCAs approve only the fund rules while others require the markets prospectus.

As noted above, the timelines for authorisation also vary significantly from one jurisdiction to another. Also, the process for making changes to fund documentation varies. In Sweden, share classes must be set out in the fund rules, meaning that a fund which adds a new unit class requires NCA approval of the fund rules. This is a lengthy process and increases time to market compared to many other markets where unit classes can be set up more flexibly.

**Question 21. Are you supportive of further harmonising and streamlining the authorisation framework, such as requirements and procedures, for UCITS to increase simplification and**

**reduce fragmentation in the sector?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain how this should be done and provide a ranking having regard to the impact of proposed solutions as high, medium or low priority:**

*5000 character(s) maximum*

While we believe local supervision is needed to ensure sufficient knowledge of the local markets and day to day dialogue with the entities on national issues, we support further harmonisation and streamlining through better implementation of the existing EU regulatory framework – i.e., through common interpretations and supervisor convergence as opposed to changes to the existing EU regulatory framework, which we believe should remain stable. Codification of the many regulations, directives and amending legislative measures that have emerged over the last decades would be an excellent means of enhancing better common interpretation, identifying and clarifying areas where there are overlap and improving readability for actors.

Areas where particular attention should be paid include:

- Clearer, transparent approval processes with established deadlines and filing content. High priority.
- Harmonised application and interpretation of EU rules and concepts. This could involve strengthening ESMA's mandate in interpreting how disclosure obligations are interpretate and ensuring that the experiences from SFDR are not repeated (i.e., having an identical EU level template in place yet having to populate it differently in many jurisdictions due to widely diverging views of NCAs). In pursuing greater harmonisation, we emphasise the importance of taking a balanced and proportionate approach. While clarity and consistency are essential, there is a risk that harmonisation could default to the most conservative interpretation, which may inadvertently raise barriers or limit the effectiveness of disclosures. We would therefore encourage policymakers and supervisors to ensure that harmonisation efforts are informed by practical experience and best practices, and to avoid unnecessarily risk-averse standards where these do not clearly support the underlying policy objectives. High priority.
- Templates of notices and documents. For example, aligning requirements on the content and form of UCITS prospectus could better facilitate cross-border operations. Low priority.

### 5.2.3. Treatment of service providers and depositaries during the authorisation process

**Question 22. Where the fund authorisation process involves an assessment by the NCA of the fund service providers appointed to a fund, in particular the depositary, is the current framework (requirements and procedures) sufficient and proportionate?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 22:**

*5000 character(s) maximum*

The current framework for assessing fund service providers, including the depositary, is sufficient and proportionate. The requirements and procedures ensure that service providers meet high standards of governance and operational resilience, contributing to investor protection and market stability. The framework strikes a good balance between thorough due diligence and efficiency, without imposing undue burdens on asset managers. Overall, it effectively addresses the key risks associated with fund service providers.

**Question 23. Should an authorisation process be introduced at the entity level for depositaries, with the understanding that such authorisation would allow them to offer their services across the EU?**

☐ Yes

☒ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 23:**

*5000 character(s) maximum*

We support keeping the requirement that the depositary and fund be domiciled in the same country to ensure strong investor protection and effective oversight. A depositary must understand and apply local doctrines relating to the volume and diversity of assets, which requires close cooperation with local authorities and stakeholders. Having the fund, manager and depositary in different countries complicates supervision and creates legal uncertainty. The upcoming assessment of the national derogation under Article 69-a(d) of the AIFMD provides an appropriate opportunity to reassess the depositary regime. Evidence-based analysis on market competition gaps and operational hurdles will be crucial to inform any future policy changes.

**Question 24. With the entry into application of Directive (EU) 2024/927, to what extent are barriers still expected to persist for investment funds in accessing competitive, good-quality depositary services for AIFs?**

☐ Yes

☐ No

☒ Don’t know / No opinion / Not applicable

**Question 25. What are the main barriers for UCITS to access competitive and good-quality depositary services?**

☐ Yes

☐ No

☒ Don't know / No opinion / Not applicable

**Question 26. What are the main barriers for AIFs to access competitive and good-quality depositary services?**

☐ Yes

☐ No

☒ Don't know / No opinion / Not applicable

## 5.3. EU passport for marketing of investment funds

**Question 27. In the context of the EU framework, are the current passporting provisions on marketing sufficiently simple and proportionate to enable the smooth marketing of investment funds in the single market?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 27 and suggest areas for improvement:**

*5000 character(s) maximum*

1. Art 93(8) of UCITS requires 1-month prior notice to market a new share class, while previously a new share class could be registered immediately once the necessary filings were made. This 1-month period is longer than the time to register a new sub-fund. It dramatically slows down the time to market for the manager and causes delays in responding to investor interest, prolonging investor onboarding timelines as new KI(I)Ds (and translations, where applicable) and other internal governance processes will all be required before onboarding new assets. From an investors' perspective, the notification requirement does not add value as investors must receive pre-contractual registration documents before investing regardless of registration. It also impacts the timeline for revenue earning for managers (e.g. $100m investment at 15bps; one month of not earning revenue will cost the business $12,500 over that month).

2. Art 32a of AIFMD provides that for 36 months after a denotification in a jurisdiction, AIFMs cannot engage in pre-marketing of the same or similar strategies or investment ideas. For closed-ended AIFs, when the fundraising period ends, the AIF closes for new subscriptions and marketing ceases. However, the AIFM cannot deregister the fund as that would trigger a 36-month blackout preventing the AIFM from pre-marketing a successor fund with the same strategy. As a result, certain closed-ended AIFs must remain registered even when the fundraising period is over. Keeping this marketing registration incurs ongoing unnecessary costs for those fund investors, as most countries levy annual supervisory fees. This is difficult to justify to the investors in those funds. For example, taking a case study of an AIF with a 10-year lifespan marketing in 10 EU jurisdictions,

this could incur around €210,852 per AIF in fees payable for registration outside of the fundraising period. Where a manager has a single vintage of a full range of AIFs (18 different AIFs across various strategies, incl. master/feeder and sleeve structures), this could amount to €3,795,336. We also reiterate our pre-existing position that rules on pre-marketing should apply to cross-border distribution (i.e. not to domestic situations).

3. The new denotification process requires formal regulator-to-regulator notification and takes 15 working days. Previously, denotification was immediate and given directly from the UCITS or AIFM to the host NCA. It also includes a blanket offer to redeem where investors remain in the relevant jurisdiction – this results in sub-funds remaining registered in order to not have to make a blanket offer, incurring costs where no additional marketing will take place. In addition, the requirement to publish, by means of a publicly available medium, the intention to terminate arrangements made for marketing units in a Member State, is an administrative and cost burden in cases where no investors remain present.

4. For both UCITS and AIFs, information on fees and local marketing requirements is not easily available. ESMA only centralises this information through providing a collection of links to local regulator websites, some of which are not secure. Local regulator websites are difficult to navigate to find relevant information and many regulators do not have searchable public registers.

5. There is a lack of alignment between NCAs regarding the content and use of the notification letter in the framework of notifying changes under Art 93(8) of UCITS, creating operational challenges and imposing administrative burden as firms must navigate the varying approaches and interpretations adopted by different NCAs. Also, for UCITS, it would be useful to be able to include comments in the official notification form to explain updates – e.g. changing the name of a sub-fund accompanied by an amended notification letter reflecting only the new name can be misleading without a reference to the former name. The official marketing notification form (per Art 32 of the AIFMD) poses a challenge due to the obligation to list share classes, despite the ESMA register not supporting this level of detail.

6. It is rare to receive acknowledgement that notifications have been received. Also, most regulators do not track share class registrations in their registers, which makes it difficult to verify if notifications have been properly noted.

7. The CBDF mandates a 1-month prior filing for any material changes to be submitted to both home and host NCA. Given the frequency of changes within a company, numerous pre-notifications must be made for each jurisdiction, making the process time-consuming. Examples of material changes include change of investment policy/objectives and appointment/change of management companies. Certain changes or information related to marketing arrangements may be implemented immediately prior to the 1-month deadline, which may prevent the UCITS or AIFM from providing the 1-month prior notice.

**Question 28. In the context of the EU framework, are the current passporting provisions on marketing for investment funds applied in a consistent way in domestic legislation by Member States?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**If divergences exist, please explain, describing the impact and suggested areas for improvement:**

*5000 character(s) maximum*

The application of the rules varies from one Member State to another, generating unnecessary operational friction and added cost for asset managers.

We have, under separate cover, outlined examples of such divergencies. The below is a summary of the themes identified:

1. Reporting Obligations: cross-border fund distribution often entails varying local reporting requirements, including statistical and tax reports, which may follow local market practices. These obligations can impose administrative burdens and compliance costs for fund managers operating in multiple jurisdictions.

2. Marketing Rules: approaches to marketing rules differ substantially across Member States. Some NCAs require pre-approval of marketing materials (e.g. websites, fact sheets), while others do not. Requirements around local language translations and content standards also vary, making it difficult to use standardised marketing communications across borders. Even with the introduction of SFDR, there remain inconsistent national approaches to ESG-related disclosures and fund labels, limiting the ability to market a single investment strategy uniformly across the EU. Furthermore, discrepancies in the application of Articles 36 and 42 of AIFMD regarding non-EU AIFs and AIFMs continue to create uncertainty and fragmentation. Additionally, rules concerning the marketing of AIFs to semi-professional investors differ – some jurisdictions permit it under the AIFMD passport; others do not – creating further inconsistency.

3. Operational Issues:

    a. Fractional Shares: the lack of a harmonized approach to fractional shares limits the development of products like regular savings plans for traded UCITS, including ETFs.

    b. Omnibus Accounts: there is no common regulatory stance on omnibus account structures, where a regulated distributor handles investor verification and sends net flows to the fund. Some jurisdictions do not permit these accounts, requiring complex bespoke solutions for cross-border operations.

4. Fees: There are inconsistencies in the levels and structures of fees related to fund registration and notification across jurisdictions, increasing complexity and cost for cross-border fund managers.

5. Retail AIFs: Member States may allow AIFMs to market AIFs to retail investors domestically and impose additional conditions. However, when AIFs are marketed cross-border, some countries apply stricter or additional requirements than those applicable to their own domestic AIFs, contrary to the principle of equal treatment. This inconsistent application has resulted in fragmented access to retail markets for EU AIFs, except under harmonized regimes such as ELTIFs.

**Question 29. In the context of national frameworks, where divergences for passporting (marketing notification regime, review of the marketing documents by the host Member States, IT or additional administrative requirements) exist, please elaborate on them, using practical examples:**

*5000 character(s) maximum*

Please refer to the detailed list of examples we have provided under separate cover, together with the above overview of themes identified.

**Question 30. Are there barriers linked to different national requirements on marketing documents?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain the key differences, impact and suggestions for improvement:**

*5000 character(s) maximum*

An overview of the differences are as follows:

1. Pre-approval requirements: several Member States continue to require pre-approval of marketing materials such as websites, fact sheets, and other promotional literature by local regulators. This adds operational complexity, lengthens time to market, and increases costs for asset managers.

2. Format and language requirements: there is no uniformity in local language translation obligations or the format of marketing communications. Some countries mandate that all investor-facing documents, including prospectuses and KIDs, be provided in the local language unless the investor explicitly consents otherwise. This fragmentation prevents the use of a single marketing communication package across multiple countries, increasing administrative burden. It would be useful to have guidance to clarify that the use of AI-powered translation tool is permitted where a note is included in the document to inform investors about the use of translation technology, with a reference to the original language document.

3. Sustainability marketing rules: although the SFDR has harmonised ESG disclosures at the EU level, national marketing rules and ESG labelling schemes remain inconsistent. This limits the ability of fund managers to present the same investment strategy uniformly across borders without compromising product integrity or incurring additional compliance costs.

4. Notification forms: differences in the content, format, and acceptance of marketing notification letters under UCITS and AIFMD across Member States create operational challenges. For example, changes such as fund name amendments or marketing updates often require bespoke notifications that vary by jurisdiction, complicating cross-border coordination.

5. Information transparency: information regarding local marketing requirements, reporting obligations, and applicable fees is frequently difficult to find and access. Centralised EU resources often provide only links to local regulator websites, which may be hard to navigate and inconsistent in the quality and completeness of information.

6. Additional local requirements: in some Member States, an addendum or country-specific supplement to the home state prospectus must be provided, including information tailored to local investors. Other jurisdictions require detailed notification letters listing all persons involved in marketing, leading

to frequent administrative updates. Furthermore, local regulators may impose specific formats for investor notices, sometimes differing from the home state templates, increasing compliance complexity and costs.

7. Post-notification and reporting: several countries impose post-notification reporting obligations and require the submission of detailed statistical or tax reports on fund marketing activities. These local reporting requirements vary in frequency, content, and format, adding to the administrative burden of cross-border distribution.

8. Communication of fund events: certain jurisdictions require important fund events or investor notices to be communicated through a “durable medium” excluding websites, often mandating dual publication via traditional and digital channels. This imposes additional operational costs and complexity for asset managers.

9. Divergent approaches by regulators: national regulators vary in their approach to marketing materials, with some adopting very cautious stances, especially regarding retail investor communications. This results in highly restrictive requirements on the content and presentation of marketing documents, further complicating uniform cross-border marketing.

**Question 31. Do national frameworks require the appointment of local physical presence in host Member States to access the same rights as domestic UCITS or AIFs (e.g. as regards taxation, simpler administrative procedures)?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Please elaborate on your answer to question 31 and explain the impact of this requirement:**

*5000 character(s) maximum*

Several Member States continue to impose requirements for foreign UCITS and AIFs to appoint a local physical presence, such as paying agents or correspondents, to access the same rights and facilitate fund distribution within their jurisdictions. These requirements often relate to tax administration, regulatory reporting and local investor servicing, and they present practical barriers to seamless cross-border fund distribution.

1. Local paying agents and correspondents: in various jurisdictions, the appointment of a local paying agent or a correspondent is either legally mandated or highly recommended in practice. These local entities serve crucial functions such as acting as fiscal representatives, facilitating communication with local authorities and ensuring compliance with national tax and reporting obligations. The absence of a local physical presence can limit foreign funds’ ability to operate efficiently or access tax benefits available to domestic funds.

2. Tax and administrative compliance: local paying agents often handle tax reporting and payment obligations on behalf of foreign funds. Due to the complexity and specificity of local tax laws and procedures, these agents are indispensable in navigating national requirements. For example, some

countries require that capital gains tax be collected or processed through a locally appointed agent, making the local presence essential.

3. Access to regulatory platforms: access to certain regulatory or reporting platforms can be restricted to entities with a local fiscal residence. This restriction compels foreign funds to designate a local entity with such residence to fulfil filing obligations. This process can introduce additional administrative layers and costs for foreign fund managers.

4. Practical necessity: in some cases, although local presence may not be explicitly mandated by law, market practice and regulator expectations effectively require it. For instance, in some jurisdictions, appointing a local correspondent is considered unavoidable due to the structure of the local fund distribution market and the expectations of local regulators.

For specific examples and further detail, please refer to the memo provided under separate cover.

**Question 32. Are there any aspects of the cross-border distribution of funds framework (Directive (EU) 2019/1160 and Regulation (EU) 2019/1156) that have created obstacles to the marketing of investment funds?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please elaborate on your answer to question 32 and explain the impact of these obstacles:**

*5000 character(s) maximum*

The introduction of the Cross-Border Distribution of Investment Funds Framework was a welcome step in reducing regulatory barriers to the selling and distribution of funds across the European Union. However, certain provisions have themselves created unnecessary inefficiencies and merit reconsideration.

These are outlined in our response given to Question 57 above, notably regarding the one-month prior notice for marketing an additional share class, the 'black-out' period for AIFs and deregistration requirements.

**Question 33. Could the central database published by ESMA pursuant to Article 6 of Regulation (EU) 2019/1156 be improved to support compliance with Member State marketing requirements?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 33:**

*5000 character(s) maximum*

The database has been a good step in facilitating compliance with national marketing requirements for cross-border distribution of investment funds. However, we note the following issues:

1. The degree of information detail and clarity currently provided varies considerably between NCAs. While some NCAs supply comprehensive descriptions of their local marketing procedures, others provide less complete information. This inconsistency undermines the utility of the database as a reliable single source of information for fund managers navigating cross-border marketing obligations.

2. Not all relevant national marketing requirements are fully captured or reflected in the ESMA database. This gap means that asset managers may remain unaware of specific local obligations, such as nuances in document translations, pre-approval needs or reporting formats, which are critical for ensuring full compliance in each jurisdiction.

3. The database has suffered from availability issues, including periods when it was offline or only accessible as a static PDF document. Such limitations restrict users' ability to efficiently search, filter and update information. Additionally, some information within the database is outdated, reducing its reliability as a real-time reference tool.

4. Certain important data points are missing from the database, for example, comprehensive details on the languages in which marketing documents and fund materials may be provided. This information is only partially available and often limited to a subset of Member States, complicating efforts to produce marketing materials that meet all local language requirements.

We would recommend the following:

1. ESMA should work with NCAs to standardise the level of detail and format of information included in the database, ensuring comprehensive and consistent coverage of all national marketing requirements relevant to fund distribution.

2. The database should be maintained as a dynamic, user-friendly, and searchable online platform that is regularly updated to reflect changes in national regulations. Moving away from static or PDF formats will greatly improve usability and reduce compliance risks linked to outdated information.

3. All relevant marketing requirements, including document pre-approval rules, notification procedures, language obligations, reporting duties and fee structures, should be fully captured and clearly presented. This will aid asset managers in preparing compliant cross-border marketing materials efficiently.

Efforts should be made to enhance awareness of the database among industry participants and ensure it is easily accessible and promoted as the primary reference source for marketing requirements under the Cross-Border Distribution Framework.

**Question 34. Are fees/charges, currently levied by some host NCAs, a significant barrier to the distribution of investment funds in the single market?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 34:**

*5000 character(s) maximum*

Whilst each individual fee is not necessarily significant as such, the fees levied by host NCAs vary considerably and such amounts, both individually and in aggregate, can discourage some managers from pursuing cross-border notifications, particularly for smaller markets or limited distribution efforts.

There is considerable disparity in the level of registration, notification and ongoing maintenance fees imposed by host NCAs. Some jurisdictions levy only modest fees, while others impose substantial upfront and annual charges. This lack of harmonisation complicates the cost assessment for fund managers considering entry into multiple markets.

Variations exist not only in fee amounts but also in the methodologies used to calculate fees, such as indexation or fees per compartment/share class. For example, some countries charge fees based on the number of fund compartments, with significant differences in the amounts charged, ranging from a few hundred to several thousand euros per compartment. Differences also exist in terms of the processes for making payment.

The combination of high registration fees, annual supervisory charges and specific local taxes can lead managers to limit or avoid distribution in certain markets. This is particularly relevant for smaller funds or those with niche distribution strategies, where the cost-to-benefit ratio of cross-border marketing becomes unfavourable.

In some Member States, funds face substantial local taxes or subscription levies on assets held by investors, which are applied in addition to regulatory fees. Such charges have been cited as reasons why some funds opt not to distribute in those markets.

We would advocate for more consistent and transparent fee frameworks across the EU to reduce barriers and encourage wider cross-border fund distribution. A potential improvement would be the introduction of an EU harmonised fee system, possibly adopting heterogeneous local fee caps or standardised calculation methods to balance national cost recovery with market accessibility.

**Question 35. Do you think the fees/charges are consistent with the overall cost relating to the performance of the functions of the NCAs in question?**

☐ Yes

☐ No

☒ Don’t know / No opinion / Not applicable

**Please explain your answer to question 35:**

*5000 character(s) maximum*

While we have remarked on the wide variation in fees across jurisdictions, we are not in possession of the information needed to assess whether such fees/charges are consistent with the overall cost of the performance of the NCA's function.

We would suggest that the EU legislator engage with NCAs to evaluate and promote a more reasonable and harmonised fee structure across the EU, ensuring fees are fair and proportionate to the services provided.

To illustrate the current disparities, annual fees for UCITS registered for public marketing vary significantly between Member States, for example:

- EUR 600 for the first sub-fund plus EUR 220 for additional sub-funds (in one jurisdiction)
- EUR 3,452 per sub-fund in another
- EUR 80 per sub-fund elsewhere
- EUR 2,601, EUR 2,000, EUR 1,024, EUR 2,390, and EUR 5,500 (charged at umbrella level) in other countries.

These wide differences raise questions regarding the justification and proportionality of the fees, highlighting the need for greater transparency and coordination at the EU level.

We also note that certain NCAs rely heavily on questionnaires and self-certification, though this has not resulted in a reduction in fees being charged.

**Question 36. Do you think the fees/charges are consistent with the overall cost relating to the performance of the functions of the NCAs in question?**

☐ Yes

☐ No

☒ Don't know / No opinion / Not applicable

**Please explain your answer to question 36:**

*5000 character(s) maximum*

Please see our response to the previous question.

**Question 37. In relation to the tasks listed in Article 92(1)(a)-(f) of the UCITSD, who performs these tasks on behalf of the fund (e.g. the fund itself, a manager or a third party)?**

*5000 character(s) maximum*

The performance of these tasks depends on the organisational structure of the fund and its management company.

We would point out that the list of tasks under Article 92(1) may not fully capture the operational realities in certain distribution models. For example, where the management company operates primarily as a product manufacturer and investor-facing activity is handled by one or a limited number of distributors, it is common for the distributor to perform some of the tasks (e.g., investor communication), while the management company retains responsibility for others.

**Question 37.1. Where third parties are involved in the performance of these tasks:**

**a) Please state the entity type (e.g. transfer agent, consultancy firm, etc) and the task performed by these entities on behalf of the fund:**

*5000 character(s) maximum*

The performance of these tasks depends on the organisational structure of the fund and its management company. These tasks can be performed by the AIFM, transfer agent, consultancy firms, distribution agent, local paying agent.

**b) Please explain why a third party has been appointed to perform the task(s):**

*5000 character(s) maximum*

Reasons cited for appointing a third party to perform these tasks include:

- Access to technical and regulatory expertise.
- Greater operational efficiency
- Ability to benefit from the aspects associated with delegation in general.
- To minimise the cost of the management company structure

**Question 38. Is the notification requirement for pre-marketing of investment funds creating barriers to the marketing of investment funds in the Union?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 38:**

*5000 character(s) maximum*

As outlined in Question 37, the current notification requirement for pre-marketing, as set out under Article 32a of the AIFMD, creates significant barriers to efficient marketing and fund distribution within the EU. This is because, following denotification in a host Member State, asset managers are prohibited from pre-marketing the same or similar investment strategies for 36 months. This effectively restricts fund managers from launching successor funds or similar products in those jurisdictions during this period. For closed-ended funds, which cease raising capital after a fundraising period, the requirement to maintain marketing registration to avoid triggering the blackout means they must incur ongoing regulatory fees and administrative costs despite no longer actively marketing in those jurisdictions. Maintaining registrations solely to avoid the blackout period leads to unnecessary costs, including supervisory fees and creates operational inefficiencies.

We also note that the notification requirement linked to the pre-marketing of investment funds has been considered by some members to represent an administrative burden. It also gives rise to lengthy discussion with NCAs as to whether a notification is required, which indicates a lack of clarity regarding the criteria.

Members have also indicated a variation in terms of the usability of notification platforms and processes. Some jurisdictions provide efficient e-filing systems, but others lack visibility on the status of submitted notifications, complicating compliance and planning.

**Question 39. Please describe any operational issues that you would like to report as a de facto barrier to the distribution of investment funds in the single market.**

**For example, the need to follow a specific procedure to submit documents to a NCA or to use a dedicated platform for communication with a NCA:**

*5000 character(s) maximum*

Below is a thematic overview of examples outlined in more detail in our memo provided under separate cover:

1. Submission platforms: NCAs increasingly require fund managers to submit marketing notifications, documents and updates via dedicated online platforms. However, these platforms vary greatly in terms of access procedures, technical structure, required detail and usability:

    - Access to these platforms is often restricted, especially for foreign group entities or third-party service providers based abroad, which complicates the ability of cross-border firms to manage submissions centrally.

    - Different platforms use different data formats and levels of detail, impeding standardisation and automation. Few NCAs support XML-based bulk data uploads, which would streamline submissions; most require manual uploads, making the process resource-intensive.

    - Managing multiple platforms with varying requirements adds operational overhead and increases the risk of errors.

2. Digital registers: not all NCAs maintain accessible online registers of registered foreign funds. Where such registers exist, formats differ widely and are often non-downloadable or non-extractable, limiting data usability. Information may also be incomplete, lacking granularity at the share class level, complicating investor transparency and reporting.

3. Communication channels with NCAs remain inconsistent, with some using web portals, others relying on email and some offering APIs. This patchwork creates inefficiencies and challenges in workflow integration for fund managers operating across multiple jurisdictions.

4. The payment of regulatory fees often faces practical hurdles, such as payment platforms limited to domestic banking systems. For example, cross-border payments may require manual wire transfers with additional administrative burdens.

5. Some NCAs require additional submissions beyond the formal notification letter (e.g., detailed filings on local online platforms) before marketing can commence, adding layers of complexity. Platforms require specific access rights for users. Transferring these rights when personnel or service providers change can be cumbersome, affecting continuity. In cases of service provider changes or staff turnover, transferring historical submission data or platform access is often difficult, increasing operational risks.

Beyond regulatory content, technical constraints such as file size limits for documents (prospectuses, reports, disclosures) can block successful submissions, especially for large funds or complex product disclosures (e.g., SFDR-related documents). These issues are technological rather than regulatory but represent real barriers to efficient notification.

### 5.4. EU passporting for management companies

**Question 40. In the context of the EU framework, are the current passporting provisions sufficiently clear, comprehensive and proportionate to enable the smooth operation of fund management companies in the single market?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 40:**

*5000 character(s) maximum*

EFAMA believes that the passporting notification process established under both AIFMD and UCITS Directive is clear, comprehensive and proportionate. If any divergences can be observed, they are due to differences in national implementation or supervisory practices of NCAs, which we refer to in more detail below. It would be beneficial to ensure a level playing field on the implementation and supervisory level, as consistent application of the rules of the AIFMD and UCITS Directives will contribute to further promote the Single Market.

**Question 41. In the context of the EU framework, are the current passporting provisions for management companies reflected in a consistent way in domestic legislation by Member States?**

☐ Yes

☒ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 41:**

*5000 character(s) maximum*

Differences can be observed in how the passporting regime is applied across Member States, mainly due to additional requirements in national legislation. These requirements can differ from one Member State to another, complicating the process and requiring additional expertise regarding the obligations imposed in particular Member States. Please see examples in our response to question 42.

At the same time, we do not believe any changes should be made in the EU frameworks to address these issues. Rather than that, currently available tools should be used to (i) enforce better alignment between implementation of EU directives into national legislation (ii) enhance convergence between supervisory approaches of the NCAs by encouraging them to harmonise their approaches, (iii) provide asset managers with more precise, more accessible guidance that will take into account the views from the industry, (iv) create an EU central reference guide on specific, national requirements (e.g., on marketing and the approach towards shareholder communication or notices), and (iv) use digitalisation to streamline the notification process.

**Question 42. In the context of the EU framework, where divergences for passporting of management companies exist, please elaborate on them, using practical examples:**

*5000 character(s) maximum*

According to EFAMA members, additional requirements imposed by Member States include:

1) Requirement for the fund documentation to be translated into the local language/languages (e.g., in France).
2) Appointment of a local entity by the management company to carry out functions such as investment management, distribution, or administration, including a transfer agent and/or accounting. For example, in Ireland, a management company established in another Member State is required to appoint a local transfer agent to be able to use its passport and manage funds domiciled in Ireland. Such requirements not only go beyond what was required by the directives but also may have an impact on the passporting timeline as the notification, approval or non-objection in the home Member State of the management company might be required.
3) Additional regulatory requirements that need to be fulfilled following the passporting approval (e.g., in Germany or Italy).
4) Limits imposed in some Member States on cross-border marketing of funds domiciled in another Member State to local investors de facto limit the use of the marketing passport.

**Question 43. Is the current notification procedure for management companies, which is derived from the EU framework, applied in a consistent way by NCAs?**

☐ Yes

☒ No

☐ Don’t know / No opinion / Not applicable

**Question 43.1. Where barriers and/or divergences in NCA regimes exist, please elaborate on them, using practical examples, including reference to impact, such as on costs and resources:**

*5000 character(s) maximum*

Barriers and/or divergences are created by the NCAs due to their different supervisory approaches. This can take the form of longer approval deadlines or higher scrutiny etc. (e.g., in Greece or Spain).

**Question 43.2. Where barriers and/or divergences in the notification procedure derive from NCA regimes, please explain how they could be best addressed:**

*5000 character(s) maximum*

Please see our response to question no. 41 above.

### 5.5. Group operations - Eliminating inefficiencies and duplication

**Question 44. In your view, what are the key obstacles to consolidating functions across entities within the same asset management group, and to reducing duplication and operational inefficiencies across these entities?**

**Please provide an answer on the following topics:**

Please select as many answers as you like

☒ Legal barriers in UCITSD

☒ Legal barriers in AIFMD

☒ Legal barriers in other EU legislative acts

☒ Legal barriers in national laws

☒ Supervisory barriers

☐ Market practices in different EU Member States

☐ Other barriers

**Please explain why legal barriers in UCITSD are a key obstacle:**

*5000 character(s) maximum*

EFAMA highly appreciates the attention given by the European Commission in this section of the consultation paper to eliminating inefficiencies and duplications in the context of group operations. This is an important aspect worth exploring further, given that asset managers often operate within broader capital groups (where the parent company can be an asset manager, but in most cases a bank, insurance company or investment firm). This bears implications in particular for any functions or services that the asset management company procures within the group, which is a common practice for efficiency reasons.

Regarding the delegation of core functions and services *intra*- or *extra*-group, our position on delegation practices in the asset management industry, as presented in EFAMA's response to the European Commission's consultation on the review of AIFMD in 2021, remains unchanged. One of the strengths of the EU asset management industry is that a fund can be registered in one Member State while simultaneously being managed from several other Member States, or third countries. The current delegation regime strikes a good balance between the twin objectives of investor protection and the preservation of a management company's need to structure its business as most appropriate when serving its investors, regardless of the location of a third party delegate and notwithstanding whether the latter is part or not of the management company's group.

Nevertheless, we also believe there may be room to alleviate some of the inefficiencies that emerge in the case of intra-group delegation. Management companies, especially firms who have operations in two or more Member States, often rely on one or two centres of excellence, or take advantage of hubs providing leading administrative, depositary, and legal services. These are often established within one capital group to which the manager also belongs. These structures and arrangements can take various forms, consisting of branches and subsidiaries, regulated financial entities and unregulated service companies. It is often the case that corporate and support services (e.g., legal, ICT, human resources, accountancy) are centralised within the group and provided by one or few companies to other entities within the group. This allows for higher efficiency and keeps the same standards within the group, as these departments would not need to be duplicated in all group entities. Moreover, delegation to another group entity would also encompass functions required under AIFMD and UCITS Directive, including core portfolio management services. In this case, they would be delegated to another regulated financial entity within the group, often the parent company itself.

These group arrangements not only allow avoid costs and resource duplications, but most importantly, source the best skills and local expertise available within the group. They are performed bearing investors' interests in mind, in line with their desired allocation preferences and risk/reward profiles, while realising all the operational efficiencies that inevitably ultimately translate into lower costs for investors.

This intra-group delegation is currently subject to the same requirements under the AIFMD and UCITS Directive as delegation to a third party, which include notification, reporting and oversight obligations. This means, for example, that due diligence on such a group company will have to be carried out to the same extent as on any other (non-group) provider. As a result, a company that would be delegating the compliance function would still have to perform due diligence on the entity that will in turn be doing the same on the delegator.

This limits the ability of such groups and asset management companies within them to fully benefit from the efficiency that a group structure can provide and limit the duplication of some activities.

We explain further elements that should be taken into account while considering possible solutions in our response to question 46 below.

**Please explain why legal barriers in AIFMD are a key obstacle:**

*5000 character(s) maximum*

Please see above.

**Please explain why legal barriers in other EU legislative acts are a key obstacle:**

*5000 character(s) maximum*

Better alignment of the remuneration policies with the activities of a particular entity could be achieved by the possibility for subsidiaries being a part of a capital group to apply their sector-specific provisions on remuneration. This is already the case for investment firms covered by CRD, where Art. 109(4)(a) allows subsidiaries to apply different remuneration policies if they are subject to sector-specific EU legislation (e.g. AIFMD/UCITSD). This is, however, not the case for the provisions of IFD, and therefore, we would suggest alignment of Art. 25 IFD and Art. 109(4)(a) of CRD in this regard.

**Please explain why legal barriers in national laws are a key obstacle:**

*5000 character(s) maximum*

Apart from issues presented above, examples of local laws can be observed that prevent delegating or require the presence of certain functions in the home Member State of the management company. These go beyond the provisions of the directives and present an even stronger obstacle to consolidating functions within the group.

Moreover, the consolidation of functions can be challenging in cases where a local entity becomes a part of larger, multinational group due to the following reasons: (i) national frameworks that introduce additional requirements on policies and processes, (ii) high exit tax costs, and (iii) impact on the relationship with the clients.

**Please explain why supervisory barriers are a key obstacle:**

*5000 character(s) maximum*

When it comes to improving group operations within the EU, focus should also be put on already existing convergence tools, as already mentioned in other parts of this questionnaire. Different interpretations of EU provisions by local NCAs are also problematic in terms of consolidating functions and achieving greater efficiency. For example, NCAs differently interpret active/passive investment limit breaches and how quickly they need to be resolved and reported. This complicates the ability to establish a unified operational approach on a group level. Some NCAs also require outsourcing oversight to be performed on the branches of the management company, which, as a rule, do not hold a separate legal personality and are within the structure of the asset manager.

**Question 45. Do you consider that there is scope to streamline authorisation and supervision of asset managers operating in groups by reducing duplication, lowering operational costs, and save resources across entities within a group?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Question 45.1. Should this be achieved through group authorisation?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Question 45.2. Should this be achieved through the use of waivers? i.e. authorisation can be issued also where the authorised entity itself does not have the function but another group entity.**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Question 45.3. Please estimate the extent and significance of efficiency gains and cost reductions that a group perspective would bring:**

*5000 character(s) maximum*

We do not believe that the issues explained in our response to question no. 44 should be resolved by changes in the supervision frameworks, including any changes on which authority supervises a particular entity and the scope of its responsibilities.

**Question 46. Please provide suggestions for potential solutions.**

**Suggestions for solutions can include, for instance, legislative changes (specifying which changes are being suggested), supervisory convergence (specifying which tools are being suggested), etc.**

**How many solutions have you identified?**

☐ 1 solution

☒ 2 solutions

☐ 3 solutions

☐ 4 solutions

☐ 5 solutions

**Please rank your suggestions for solution in preferential order.**

**Please explain and detail your preferred solution 1, providing data on the potential costs and**

**benefits of the suggested solutions with a breakdown for different stakeholders:**

*5000 character(s) maximum*

| |
|---|
| To address the issues that were described under our response to question no. 44, EFAMA believes that some of the inefficiencies that emerge in the case of intra-group delegation could be alleviated. This would require careful consideration of possible approaches, taking into account also the fact that the review of the AIFMD and UCITS Directive has recently been finalised, and the implementation of Directive (EU) 2024/927 is still underway. Therefore, changes in supervisory practices achieved through other means, e.g., changes in Level 2 or 3, or the use of additional tools to promote supervisory convergence should be prioritised.<br><br>In any case, any changes should be done in a very targeted way and should not affect the strong AIFM and UCITS brands, as well as the importance of delegation practices for the asset management industry. These changes should not result in any new obligations being introduced on the group operations and only aim at introducing simplifications. In particular, NCAs should not add any additional requirements when considering intra-group delegation arrangements, which will already contribute to lightening the delegation burden. As already mentioned in our response to question 45.3, it should also not result in changes to the current supervision model.<br><br>While we are not yet in a position to provide a concrete solution, EFAMA will continue to discuss this issue to provide the European Commission with additional analysis. |

**Please explain and detail your preferred solution 2, providing data on the potential costs and benefits of the suggested solutions with a breakdown for different stakeholders:**

*5000 character(s) maximum*

| |
|---|
| To achieve greater convergence around the NCAs' interpretations, ESMA should make full use of the tools at its disposal, including guidelines, to ensure a consistent assessment of delegation structures across the Union. |

**Question 49. Do you consider that group-level authorisation and supervision would improve supervision?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

## 5.6. Other barriers to cross-border operations

**Question 50. Have you encountered other specific barriers than those discussed above when marketing and providing asset management functions across Member States?**

| | Yes | No | Don't know - No |
|---|---|---|---|

| | | | |
|---|---|---|---|
| | | | opinion - Not applicable |
| EU financial regulation other than UCITSD/AIFMD | ☒ | ☐ | ☐ |
| National financial regulation | ☒ | ☐ | ☐ |
| Supervisory administrative practices | ☒ | ☐ | ☐ |
| Corporate law | ☐ | ☐ | ☒ |
| Tax law | ☒ | ☐ | ☐ |
| Other | ☒ | ☐ | ☐ |

**Please specify to what other barrier(s) you refer in your answer to question 50:**

*5000 character(s) maximum*

Please see our responses to questions no. 42 and 43.1 above.

Moreover, we would like to highlight issues in the area of tax law. For EFAMA, the lack of harmonisation of the tax law at the (i) investor level, (ii) investment fund level, and (iii) underlying asset level creates barriers to cross-border operations.

To give examples of some of the issues that are being observed, we would like to highlight the following:

UCITS IV allows tax efficiency for mergers, but there are differences in Member States's tax regimes that should be addressed. The original policy logic behind these rules was the need felt in the past to encourage mergers and consolidation. On the path to UCITS IV, the European Commission already recognised that "fund mergers should not give rise to adverse tax consequences for investors," and Member States were encouraged to ensure these transactions take place in a tax-efficient way. Please refer to the European Commission's White Paper on enhancing the Single Market Framework for Investment Funds, 15 November 2006, available here. Aiming to contribute positively to that debate, in 2010 EFAMA analysed the tax implications of UCITS IV and made some recommendations that tax neutrality should be ensured throughout Europe at the fund and investor level regardless of whether the merger is a domestic, foreign or cross-border one (please refer to EFAMA/KPMG "Analysis of the tax implications of UCITS IV") – this study is attached. Notwithstanding, practice evidences that these modifications introduced to fund mergers in UCITS IV could not be adopted adequately for funds on a cross-border basis due to differences in tax regimes between Member States. For example, the tax law in Germany doesn't allow for a tax-neutral cross-border fund merger on the investor level. According to Section 23 of the German Investment Tax Act, mergers between two German funds or two non-German funds (from the same domicile/jurisdiction, which has to provide administrative co-operation and mutual assistance in tax recovery) do not lead to a taxable event. Consequently, a cross-border merger is treated like a sell/redemption and a purchase of shares of the absorbing fund, with an eventual realisation of taxable gains.

Additionally, uncertainty around tax residency rules, such as the application of the "effective place of management" principle in Finland, creates further obstacles, particularly for non-Finnish funds managed by companies based in Finland. We also note that gold-plating, or stricter interpretations of EU rules at national level, creates a barrier, as does misalignment of supervisory requirements between jurisdictions.

## 5.7. Barriers for investments in funds

**The questions in section 5.7 are addressed specifically to investors, in relation to their investments in funds both nationally and on a cross-border basis.**

**Question 51. Have you encountered any specific issues or barriers to accessing investments in EU funds, directly, or a cross-border basis?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Question 51.1. What are these issues or barriers due to?**

*Please select as many answers as you like*

☒ The EU framework

☒ Restrictions or differential treatment based on the national framework where a fund is domiciled

☐ Supervisory administrative practices

☒ Corporate law

☒ Tax law

☐ Other

**Please specify to what other reason(s) you refer in your answer to question 51.1:**

*5000 character(s) maximum*

Investors face several regulatory, operational, and tax-related barriers when attempting to access EU funds, particularly on a cross-border basis:

- Some NCAs impose regulatory standards that restrict access to foreign funds, either through limitations on eligible investments or administrative hurdles. This reduces investor choice and undermines the cross-border distribution of funds.

- National rules governing nominee structures differ significantly across Member States. In some countries (such as Finland), the use of nominees is prohibited in certain contexts, while in other jurisdictions, such as Norway and Sweden, specific local licenses are required with varying scopes of authorisation. These inconsistencies make it harder for investors to access funds through common intermediated channels, particularly in cross-border contexts. Furthermore, the MiFID authorisation needed to act as a nominee varies: in Finland, a nominee must have a license to offer safekeeping of financial instruments; in Sweden, the nominee must be licensed to receive and transmit or execute orders in financial instruments; in Norway, a nominee must have a license to receive and transmit or execute orders in financial instruments or provide portfolio management. Harmonising these nominee regulations would make cross-border fund sales more efficient and improve safeguards related to safekeeping fund units/shares on behalf of beneficial investors. This would also require further alignment with AML regulation, particularly clarifying who the management company's client is from an AML perspective, to enable the management company to operate efficiently as a pure product manufacturer without internal distribution to end investors.

- The lack of harmonisation in reverse solicitation rules can cause issues in this context. Where investors proactively seek to invest in funds not registered in their country of residence, asset managers face legal uncertainty due to the lack of harmonized rules on reverse solicitation. This discourages fund providers from responding to such requests, limiting investor access to the full range of EU funds.

- Diverse national practices on fund naming and marketing create confusion for investors and make it harder to compare or identify products across markets. This inconsistency undermines transparency and impairs cross-border product recognition.

- National tax regimes impose conditions that affect investor access. Tax barriers, such as the application of withholding taxes, or the lack of harmonisation thereof, generate complexity and legal uncertainty for businesses, and consequently hinder investment within the European Union. For example, Finnish funds must meet criteria like a minimum number of unitholders to qualify for tax exemption, which may limit fund availability or structuring options. Swedish UCITS and special funds, while tax-exempt, are not considered tax-transparent, leading to treaty access issues in some countries. As a result, institutional investors may avoid these funds in favour of those domiciled in more tax-efficient jurisdictions. In Denmark, only domestic funds benefit from realization-based taxation. Cross-border EU funds are taxed annually on a mark-to-market basis, which discourages Danish investors from choosing them. The lack of harmonisation in tax treatment generates complexity and legal uncertainty for EU funds operating cross-border and hinders the genuine freedom of movement of capital.

- Difference national approaches to marketing and passporting AIFs to retail investors generates inconsistencies and barriers, which would be better addressed through a more unified approach to the EU through suitability rules. As a related point, permitting more flexibility within MIFID client categories to allow investors to access AIFs more easily, such as reconsidering conditions for the opt-up to professional client status.

- We would suggest also ensuring access to a simple and digital advice regime for all retail investors, and extending the proposed suitability light regime in MiFID II Article 25 (in the Retail Investment Strategy) to all types of investment advice and not only independent advice.

- Introducing new tests and requirements in investor dialogue should be avoided. In particular, the best interest test and the inducements test within the Retail Investment Strategy should be deleted.

**Question 51.2. How have these barriers impacted your investment decisions in funds specifically?**

*5000 character(s) maximum*

These barriers have impacted structuring aspects of fund offerings. They have prevented investors from investing in a wider range of fund products.

**Question 51.3. Where barriers have been identified, please explain how they could be best addressed and provide a ranking having regard to the impact of proposed solutions as high, medium or low priority:**

*5000 character(s) maximum*

National regulations should respect the domicile neutrality principle.

**Question 52. Do you consider that the scope of investor protection rules under UCITSD, and AIFMD are disproportionate for qualified investors?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 52:**

*5000 character(s) maximum*

Certain investor protection rules under UCITSD and AIFMD are disproportionate when applied to qualified investors. In particular, the requirement to produce and update PRIIPs KIDs for AIFs marketed exclusively to non-retail clients is unnecessarily burdensome and offers limited value to professional or semi-professional investors. While PRIIPs KIDs are technically not required for AIFs sold solely to professional investors, ambiguity remains for "semi-professional" or "well-informed" investors, which is a category acknowledged by some NCAs but lacking consistent EU-wide treatment. We recommend clarifying the treatment of "semi-professional / well-informed" investors across Member States to ensure consistent application, and confirming that there is no obligation to provide KIDs for AIFs not marketed to retail clients, including semi-professional investors, and allowing qualified investors to waive such disclosures where appropriate.

**Question 53. Do you consider that some investor protection rules should be waved for qualified investors?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 53:**

*5000 character(s) maximum*

It should be possible for non-passported funds to be marketed to professional investors within the EU without requiring a full passporting regime, which should be focused primarily on retail distribution. For

| |
|---|
| example, allowing Key Information Documents (KIDs) to be provided in English, where the professional investor consents, would improve efficiency. Furthermore, qualified investors should have the option to waive the obligation to receive a KID altogether, as they are capable of conducting their own due diligence. There should also be more flexibility for retail investors to update to professional status to get access to broader services and products. |

### 5.8. Portfolio requirements and investment limits of investment funds

#### 5.8.1. Investment limits – UCITS

**Question 54. Do you believe that Article 53 of the UCITS Directive should be amended to extend the possibility for UCITS funds to benefit from increased investment limits in a single issuer, even when the fund does not aim to replicate the composition of an index?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Question 57. Does the 10% issuer limit affect the liquidity management of funds?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

## 6. Supervision

**This section covers the European Supervisory Authorities (ESAs) with a special focus on the European Securities and Markets Authority (ESMA). It is divided into three parts:**

- *The first part focuses on the effectiveness of the current framework*
- *The second part goes into more detail regarding the specific sectors, i.e. central counterparties (CCPs), central securities depositories (CSDs), trading venues, asset managers, and cryptos assets service providers*
- *The last part covers four horizontal areas: the governance framework for new direct supervisory mandates, supervisory convergence, data and funding*

*Respondents are invited to provide concrete examples to support their responses, and, where possible, include quantitative and qualitative input.*

### 6.1. Effectiveness of the current framework

**Question 1. How effective are current EU supervisory arrangements in achieving the objectives or performing the tasks below?**

| | 1 (least effective) | 2 (rather not effective) | 3 (neutral) | 4 (rather effective) | 5 (most effective) | Don't know - No opinion - Not applicable |
|---|---|---|---|---|---|---|
| Contributing to financial stability | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| The functioning of the internal market | ☐ | ☐ | ☒ | ☐ | ☐ | ☐ |
| The integrity, transparency, efficiency and orderly functioning of financial markets | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| The enforcement of EU rules | ☐ | ☐ | ☒ | ☐ | ☐ | ☐ |
| The prevention of regulatory arbitrage and promotion of equal conditions of competition | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| Supervisory convergence across the internal market | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| Development of the Single Rule Book | ☐ | ☒ | ☐ | ☐ | ☐ | ☐ |
| Consumer and investor protection | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| Support financial innovation in the market | ☐ | ☐ | ☒ | ☐ | ☐ | ☐ |
| Market monitoring | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |

| | | | | | | |
|---|---|---|---|---|---|---|
| Supervisory data management including data sharing | ☐ | ☒ | ☐ | ☐ | ☐ | ☐ |
| Responsiveness, transparency | ☐ | ☐ | ☒ | ☐ | ☐ | ☐ |
| Stakeholder engagement and involvement | ☐ | ☐ | ☒ | ☐ | ☐ | ☐ |
| Use of resources | ☐ | ☐ | ☒ | ☐ | ☐ | ☐ |
| Proportionality of the fees for direct supervision | ☐ | ☐ | ☐ | ☐ | ☐ | ☒ |

**Question 2. What prevents the ESAs from reaching the objectives or performing the tasks listed in Question 1?**

**Please explain your answer:**

*5000 character(s) maximum*

ESMA is an essential player in the Lamfalussy process as it provides technical advice to the legislators and promotes convergence across member states. It can count on a competent Secretariat and has achieved much since its formation.

Unfortunately, several obstacles prevent this authority from making the most of its regulatory and convergence powers in the investment management sector:

- **No competitiveness mandate:** ESMA's present mandate only has an elusive reference to competitiveness. Considering ESMA's results over the last decade, competitiveness has been absent from its considerations. It is therefore unsurprising that building the single market and attracting more savings into capital markets have never ranked high on its regulatory agenda. To redirect ESMA towards this task, the Commission should include a competitiveness mandate in the list of objectives to be pursued by ESMA under Article 1, paragraph 5, of its Founding Regulation. Failing to do this could result in ESMA clashing with the European Commission due to diverging priorities, as was the case, for instance, with the ELTIF 2.0 RTS.

- **Excessively political or dogmatic:** ESMA frequently holds positions which appear to not sufficiently be evidence-based (e.g., ESMA concerns regarding costs and fees, liquidity risks in open-ended funds, or delegation). Possible reasons may lie in having scarce access to supervisory data, in not adopting a risk-based approach in its analyses or remaining vulnerable to political compromises between NCAs within its Board of Supervisors.

- **Excessive passivity:** Due to the Meroni doctrine, ESMA may sometimes be excessively cautious when deciding to take specific regulatory or convergence actions in the absence of a Level 1 empowerment or a specific recommendation from the ESRB (the AIFMD review was a good illustration of this behaviour). ESMA should proactively discuss ongoing regulatory concerns to inform its supervisory convergence activities. In some cases, these exchanges would ensure that the policy issues are sufficiently well-evidenced so that the Commission can find a legislative solution.

- **Insufficient dialogue with stakeholders:** ESMA frequently publishes final L2/3 rules that barely take into account the feedback it receives from the industry. This is due to at least two drivers. First, ESMA is often given insufficient time by the co-legislators to consult its members and external stakeholders on usually quite technical matters. Second, the consultative process is simultaneously short and quite formal. With some notable exceptions, consultations are the primary channel through which ESMA interacts with stakeholders. This is, however, a formalistic process that frequently makes it difficult for stakeholders to understand the concerns driving a specific regulatory initiative. Indeed, these initiatives are commonly justified by high-level considerations backed by limited evidence, if any. Moreover, these consultations usually last two months, which leaves little time for stakeholders to gather and consolidate views. Lastly, stakeholders are rarely involved before or after the consultation, even though these periods are essential to collect preliminary feedback ahead of the consultation and to ensure that changes made following the consultation are also subject to scrutiny. ESMA is usually reluctant to have informal exchanges at a technical level to preserve its perceived independence. For these reasons, sunrise provisions should ensure that L1 rules only enter into force when L2 and L3 are finalised. On its end, ESMA should organise more frequent exchanges with stakeholders to outline the progress made on specific issues and explain to stakeholders how they can contribute to the discussion.

- **Insufficient data sharing:** Supervisory data is not adequately shared across public authorities, undermining these authorities' ability to take a risk-based approach and to have constructive supervisory dialogue within ESMA. As outlined in our response to question 19 in section 7, in order to streamline data sharing among NCAs, ESMA should become the supervisory data hub for capital markets.

- **Limitations in supervisory convergence:** As outlined in our responses to section 7, supervisory convergence tools such as Common Supervisory Actions (CSAs) and peer reviews provide ready-made platforms to enhance supervisory convergence, draw on successful national models, reduce fragmentation, and foster practical cooperation among Member States. More use should be made of them. That said, some tools could be further refined, particularly Q&As, CSAs, and 'no-action letters'.

**Question 3. Please assess ESMA's governance model currently in place for the direct supervisory mandates.**

**Currently, the Board of Supervisors adopts supervisory decisions prepared either by ESMA staff (for example for CRAs) or the CCP supervisory committee (for tier 2 third country CCPs).**

**You may want to consider elements, such as ability to take decisions swiftly, independent decision in EU public interest, quality of the decisions being taken, ability to take into account supervised entities and other stakeholders:**

☐ 1 - Not at all effective

☐ 2 - Rather ineffective

☐ 3 - Neutral

☐ 4 - Rather effective

☐ 5 - Very effective

☒ Don't know / no opinion / not applicable

**Please explain your answer to question 3, considering all the elements provided above:**

*5000 character(s) maximum*

There are no direct supervisory mandates for ESMA in the investment management sector.

### 6.2. Specific questions on supervisory arrangements for different sectors

**Question 4. Do you have ideas how EU-level supervision of financial markets could be structured (for example the whole or part of the sector should be supervised at EU level, supervisory decisions**

**could be taken at EU level or national, etc.)?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Question 4.1. Please explain your ideas and explain what broad changes they would involve:**

**in terms of supervisory architecture and supervisors' responsibilities:**

*5000 character(s) maximum*

The current European System of Financial Supervision (EFSF) remains broadly appropriate, even though improvements could still be made to reach better supervisory outcomes in the investment management sector (e.g., better data sharing and analyses, greater focus on supervision and enforcement rather than regulation, and more efficient use of existing supervisory convergence tools).

The primary challenge the European investment management industry faces is regulatory overload rather than profound barriers preventing cross-border operations. Indeed, the most significant difficulty European asset managers face is dealing with ever-increasing EU regulatory initiatives that often go far beyond what is necessary (e.g., the Retail Investment Strategy). Nonetheless, it cannot be ignored that a certain degree of regulatory and/or supervisory divergence remains, which may sometimes unduly complicate their cross-border operations. Illustrations of such divergence are provided in our responses to questions 16 (scope of permissible activities), 18-20 (fund authorisation), 28 (fund passporting), 30-4 (fund marketing), 41-3 (manager passporting), and 44 (group operations) in section 5.

Beyond supervisory fixes, these challenges require a different regulatory approach where the EU prioritises regulatory interventions that proportionally address well-evidenced problems. Revamping supervision in the asset management sector will not solve these challenges as they are most often not of a supervisory nature. As outlined in our response to question 50 in this section, passporting already ensures that most asset managers can operate cross-border without having to engage with supervisory authorities other than their home NCA. Topical coordination groups may nonetheless play a role in enhancing trust among NCAs, exchanging best practices among these authorities, and facilitating coordination in certain areas.

Supervisory convergence, on the other hand, can tackle divergence stemming from diverging regulatory interpretation by NCAs (in contrast to regulatory divergence resulting from differences in the national transposition of EU law). ESMA has gradually promoted supervisory convergence across the EU over recent years. Priority was, however, given to investor protection and financial stability. Convergence activities that could have promoted the single market were sidelined as a result.

An ambitious EFSF review would probably take years and divert attention from policy initiatives that have a chance to channel savings into capital markets (e.g., recent proposals to develop EU or national investment accounts following the Swedish model).

**in terms of supervisors' approach to exercise their mandates and processes:**

*5000 character(s) maximum*

As outlined in our response to previous questions in this section, rather than exclusively considering investor protection and financial stability concerns, supervisors should also consider how to improve the functioning of the single market and channel more savings into capital markets. This requires raising specific initiatives higher in their regulatory agenda and taking a more evidence-based and risk-based approach. There are many instances where ESMA and certain NCAs have unduly focused on specific issues (e.g., costs and fees or liquidity risk management in open-ended funds).

**in terms of improved cooperation among supervisors:**

*5000 character(s) maximum*

As outlined above, the passporting regime limits the necessity for coordination in the investment management sector. Thematic coordination groups (focusing on specific risks, emerging issues, or regulatory priorities, for instance) could nonetheless contribute to greater convergence in supervisory approaches across the EU.

**Question 5. Some NCAs have developed advanced expertise or specialisation in supervising certain sectors.**

**What is your view on building on these NCAs and creating EU centres of supervisory expertise by sectors?**

*5000 character(s) maximum*

While some NCAs have developed advanced expertise in supervising specific investment management activities, the European Commission should probably explain further what is meant by 'EU centres of supervisory expertise', considering that these could take various forms (e.g., training centres to which other authorities could send their staff for learning best practices or full-fledged regional supervisory hubs).

Granting these centres of supervisory expertise with the power to supervise asset managers across multiple jurisdictions (e.g., those from a given region) would be unrealistic for various reasons. First, no NCA has developed advanced expertise across the whole value chain. Centres of business expertise in the asset management sector are spread over the continent. Asset managers can usually offer local investors end-to-end investment solutions. However, the actual investment strategy and operational setup may vary from country to country. For instance, in Germany, management companies usually focus on portfolio and risk management, while the fund administration and reporting are outsourced to a service provider. Germany's most widespread investment vehicle is an Alternative Investment Fund called a 'Spezialfond', which has no equivalent in other member states. On the other hand, asset managers usually rely on Luxembourg or Ireland-domiciled funds to access the European and international markets. They usually set up an entity to conduct fund administration, risk management, and cross-border distribution in these two countries. The other functions are generally performed by an entity located in another member state. For instance, portfolio management may occur in France, Germany, the Netherlands or Italy. It is also frequent for asset managers to have local offices in various member states to facilitate the distribution of their funds in specific markets, considering differences in culture and market practices. Second, these EU centres of supervisory expertise cannot replace national supervision because, as outlined above, asset managers and their funds operate in specific national legal contexts that only local supervisors understand. It is equally challenging to imagine how an NCAs would conduct supervisory and enforcement activities in another member state in which it has no legal standing (e.g., conducting on-site inspections or imposing sanctions). Third, such a reform could have anti-competitive ramifications if it forces asset managers to work with a NCA from another member state. For instance, it will be easier for an asset manager to launch a new firm with a local authority than with an authority in another member state. This setup risks making it even harder for new entrants into the industry.

**Question 6. Do you think supervision of EU financial markets would benefit from pooling together resources and expertise of individual NCAs in regional hubs?**

*5000 character(s) maximum*

Please refer to our response to the previous question.

**Question 7. What is your view on setting up regional hubs of ESMA to ensure closer interaction with market participants?**

**Please explain your reply highlighting benefits and downsides**

*5000 character(s) maximum*

While we agree that ESMA needs to become more accessible to market participants, there is no objective reason to set up regional hubs for the investment management sector. ESMA does not have direct supervisory responsibilities in this sector. As a result, setting up these hubs to bring ESMA closer to different markets is unnecessary. Supervisory convergence activities can be efficiently coordinated in Paris.

## 6.6. Questions on the supervision of funds and asset managers

### 6.6.1. Identifying costs related to current supervisory framework and benefits of more integrated EU supervision

**Question 46. How would you rate the convergence of supervisory practices across Member States in the area of the supervision of funds and asset managers?**

☐ 1 - Very convergent

☒ 2 - Rather convergent

☐ 3 - Neutral

☐ 4 - Rather divergent

☐ 5 - Very divergent

☐ Don’t know / no opinion / not applicable

**Please explain the reasoning for your answer to question 46 and provide examples of divergent outcomes of supervisory practices for funds and asset managers in different Member States:**

*5000 character(s) maximum*

Convergence is sufficient for the industry not to be excessively concerned about an uneven playing field. However, as outlined in section 5, a certain degree of regulatory and/or supervisory divergence remains, which may sometimes unduly complicate cross-border operations. Illustrations of such divergence are provided in our responses to questions 16 (scope of permissible activities), 18-20 (fund authorisation), 28 (fund passporting), 30-4 (fund marketing), 41-3 (manager passporting), and 44 (group operations) in section 5.

ESMA should more proactively seek to understand whether this divergence negatively impacts the single market and results in an uneven playing field. We note that ESMA carried out such an exercise in 2020 before the launch of the AIFMD review. In a letter to the European Commission, ESMA identified multiple areas where NCAs expressed diverging interpretations of the Directive. Rather than systematically seeking clarifications from the European Commission, ESMA should seek to build consensus among NCAs. As acknowledged in our response to question 2 in this section, this may require either a review of the Meroni doctrine, a change in mindset/approach within ESMA, or potential improvements to ESMA's governance.

**Question 47. Please estimate the regulatory compliance costs [1](including the applicable fees) for UCITS funds, their fund managers and AIFMs that arise from engagement with your current supervisor(s)**

**Please separate any details on costs into fees and compliance, one-off cost and on-going costs and per supervisor.**

**Please explain your answer providing, where possible, quantitative evidence and examples:**

*5000 character(s) maximum*

Our corporate members are better placed to estimate compliance costs arising from the current supervisory framework.

[1] including administrative costs (staff costs, facilities costs, travel, IT technology costs), professional fees (e.g. legal, accounting, consulting, etc.), and supervisory fees.

**Question 48. To which extent do you agree with the following statements about possible benefits of more integrated EU supervision?**

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|---|---|---|---|---|---|---|
| a) It could reduce UCITS funds, their fund managers' and AIFMs' regulatory costs | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| b) It could enhance the quality of supervision over UCITS funds, their fund managers and AIFMs | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| c) It could simplify and accelerate the procedure to apply for authorisation of UCITS funds, their fund managers and AIFMs in the EU | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| d) It could simplify and accelerate the procedure for additional authorisations of managers (e.g. to extend the scope of services or activities offered in the EU) | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| e) It could simplify and accelerate the procedures for marketing UCITS funds and AIFs in the single market (outside the home Member State of the fund) | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| f) It could simplify and accelerate the procedures relating to regulatory notifications and approvals of | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |

| | | | | | | |
|---|---|---|---|---|---|---|
| marketing materials and changes to fund documentation | | | | | | |
| g) It could simplify and accelerate the procedures for obtaining supervisory approvals, e.g. with regard to outsourcing | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| h) It could lead to more efficient use of supervisory resources | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| i) It would decrease uncertainties that currently arise from different implementation or interpretations of EU Regulations in different Member States or by Member States and ESMA | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| j) It would remove the need for market actors to deal with duplicative instructions from more than one supervisory authority | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| k) It would create a level playing field between UCITS funds, their fund managers and AIFMs | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| l) It would create a level playing field between EU authorised funds and fund managers on the one hand and third- country investment funds and managers on the other hand | ☐ | ☐ | ☐ | ☐ | ☐ | ☒ |

| | | | | | | |
|---|---|---|---|---|---|---|
| m) It would reduce the need for detailed regulations and extensive rulebooks to achieve harmonised supervision | ☐ | ☐ | ☒ | ☐ | ☐ | ☐ |
| n) Other | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

**Please explain your answer to question 48. a), providing, where possible, quantitative evidence and examples:**

*5000 character(s) maximum*

Considering that a 'more integrated supervision' could take multiple forms, as outlined by question 51 in this section. It is impossible to make general statements on how greater supervisory integration could enhance the outcomes from various perspectives (e.g., costs, efficiency, market access, and level playing field).

**Question 49. Do you consider that more centralised EU supervision could also produce negative side-effects?**

☒ Yes

☐ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 49:**

*5000 character(s) maximum*

Please refer to our response to questions 51 and 52.

**Question 50. Do you have other comments on the current supervisory framework and benefits of more integrated EU supervision?**

*5000 character(s) maximum*

The current passporting regime already ensures that most asset managers do not need to interact with multiple supervisory authorities. A single national supervisor is already responsible for supervising management companies established in their jurisdictions, including their cross-border activities. At certain moments of the funds' life cycle, asset managers might also have to interact with the NCAs from the member state in which their funds are domiciled.

NCAs have a long-standing experience in authorising and supervising asset managers and investment funds in their jurisdictions. They are also closer to local markets and understand their specificities and the additional requirements applying to market actors (including investors) in critical areas where EU laws are still not harmonised (e.g., corporate law, contract law, insolvency law, and tax law).

When evaluating other supervisory models, authorities should consider the following criteria:

- **Single contact point**: To streamline supervisory interactions, asset managers should only have to work directly with one authority. It would be inefficient to expect asset managers to coordinate with multiple authorities.

- **Effective decision-making**: The decision-making process should be sufficiently streamlined to ensure that (fund) authorisations are granted without delay, guaranteeing a rapid time to market. The authority should also be able to take swift action during crises (e.g., when determining whether to suspend a fund to address investor protection or financial stability concerns).

- **Necessary expertise**: The supervisor should understand the different investment strategies offered by asset managers established in its jurisdiction and the various EU and national regulatory requirements that apply to them. Asset managers and their funds are domiciled in specific member states and therefore subject to that country's national law. The supervisor should understand this national context to apply the EU requirements consistently with other (national) legal requirements that apply to asset managers in its jurisdiction.

- **Sufficient resources**: The supervisor should have sufficient human and operational resources to oversee the asset managers and funds established in its jurisdiction. This includes having a staff with different professional profiles (i.e., case handlers, investment and risk management specialists familiar with specific strategies, sustainable/digital finance experts, economists, and support staff) and sufficient operational capabilities, including IT, to conduct market analyses and on- and off-site inspections.

- **Proximity and reactivity**: The supervisor and the supervised firm should have sufficient frequent contact to ensure they know each other well enough to ask questions without undue administrative burden. This is particularly important for new entrants in the industry who need frequent interactions with the supervisor to understand the requirements they need to satisfy to receive an authorisation. A supervisor who can exchange in the national idiom and knows the other (national) legal requirements would probably offer the most value for incumbents and new entrants.

- **Convergence and level-playing field**: The supervisory model should ensure that no regulatory arbitrage could undermine the single market. Complete convergence is not necessary to satisfy this criterion. Convergence should be enough to ensure that a) the remaining divergence does not give a commercial advantage to asset managers established in a specific member state, and b) it does not create excessive barriers for cross-border operations.

Applying these criteria to the supervisory models outlined in this consultation, we believe that the passporting regime remains the most appropriate model for the asset management sector. In our response to the next question, we explain why other supervisory models are less effective than the existing one.

### 6.6.2. How could more integrated EU supervision function?

**Question 51. Please indicate to which extent you support the following possible models of more integrated EU supervision:**

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|---|---|---|---|---|---|---|
| a) A single EU supervisor, responsible for the supervision of asset managers with significant cross-border activities, while NCAs remain responsible for the supervision for asset managers with limited or no cross-border activity, UCITS funds and AIFs | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| b) A supervisory college, chaired by an EU supervisor, having the main responsibility for, and taking joint decisions on, the supervision of asset managers with significant cross-border activities, while NCAs remain responsible for the supervision of asset managers with limited or no cross-border activity, UCITS funds and AIFs | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| c) A supervisory college, chaired by a "lead NCA", having the main responsibility for, and taking joint decisions on, the supervision of asset managers with significant cross-border activities, while NCAs remain responsible for the supervision of asset managers with limited or no cross-border activity, UCITS funds and AIFs | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |

| | | | | | | |
|---|---|---|---|---|---|---|
| d) A supervisory coordination college comprised of all relevant national competent authorities and ESMA while supervisory responsibilities remain unchanged | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| e) Other set-up | ☐ | ☐ | ☐ | ☐ | ☐ | ☒ |

**Please explain your answer to question 51. a), providing, where possible, quantitative evidence and examples, including on potential costs and benefits, taking into account experience with voluntary colleges established so far:**

*5000 character(s) maximum*

EFAMA opposes granting ESMA direct supervision over asset managers with significant cross-border activities because it would not result in more integrated markets. Beyond the objection that ESMA is not operationally ready to take on such a responsibility, ESMA supervision would inevitably render the supervision of asset managers with significant cross-border activities even more complex.

Introducing a centralised supervisory framework for large cross-border asset managers, while another framework would apply to smaller, more local ones, would fragment the single market and create even more inconsistency than currently exists. Ultimately, it would have the potential to undo almost 50 years of building a single market for investment funds.

Moreover, asset managers would necessarily have to continue complying with national law even after such centralisation has occurred. Although it would be hypothetically possible to develop a single rulebook in some areas, a management company's daily operations and fund offerings would still have to comply with a myriad national provisions (e.g., contract law, insolvency law, tax law, etc.) falling within the remit of member states. One cannot expect that ESMA would be able to take into account the national specificities of each member state in its rule-making and supervisory activities. As a result, it can be expected that asset managers under ESMA supervision would have to continue to work closely with their home NCAs. ESMA supervision could, moreover, result in conflicts of laws which may ultimately lead to protracted legal disputes between ESMA, on the one hand, and national authorities (and possibly even national courts), on the other.

In addition, with a headcount of 314 Full-Time Employees (FTEs), some of whom already work on the direct supervision of other institutions (e.g., credit rating agencies and trade repositories), it is difficult to imagine how ESMA could substitute itself to the NCAs for the supervision of even a fraction of the 4.800 European asset managers. Depending on the threshold for qualifying as 'large cross-border asset managers', ESMA could have to supervise dozens of asset managers in any event. Therefore, ESMA would have to recruit many supervisors or industry professionals with the relevant expertise (authorisation, conduct supervision, prudential supervision, risk management, sustainable finance, financial analysis, investigation, and cooperation with local authorities).

**Please explain your answer to question 51. b), providing, where possible, quantitative evidence and examples, including on potential costs and benefits, taking into account experience with voluntary colleges established so far:**

*5000 character(s) maximum*

While supervisory colleges might appear more proportionate, in practice, these models would be inefficient, operationally complex, and duplicative.

Under Option b, ESMA would need to chair multiple colleges and take joint decisions with NCAs. This would demand significant staff expansion with highly specialised expertise across fund structures, prudential and conduct supervision, sustainable finance, and cross-border legal frameworks (expertise that is today distributed across NCAs and often context-specific). As with Option a, this would place disproportionate resource demands on ESMA without a clear supervisory benefit.

Moreover, these setups would unnecessarily complicate the supervisory decision-making process. While the Commission does not clearly outline which national authorities should join these colleges, one can assume that the decision-making process will become more inefficient as the number of authorities increases. Rather than making direct decisions based on its experience with the supervised entity, the supervisory team overseeing that entity will have to present its findings to the supervisory college to obtain a decision. This opens the door to politicising an activity that should remain objective, technical and risk-based. These colleges may make decisions on the lowest common denominator, as the recent ELTIF L2 discussions illustrated. In addition, these colleges will require the host NCAs to recruit staff to participate in these forums. Indeed, as outlined above, the principle under the current passporting regime is that the home NCA supervises asset managers. A priori, with perhaps a few exceptions (e.g., if a company has a subsidiary in another country), host NCAs do not currently allocate resources to overseeing asset managers established in another member state. Inevitably, these colleges would increase the supervision costs borne by the rest of the industry in a context where these costs have already risen significantly in multiple member states over the past few years.

Last but not least, supervisory colleges may undermine the supervisory team by preventing them from making swift and decisive decisions during periods of stress (e.g., suspension of subscriptions).

**Please explain your answer to question 51. c), providing, where possible, quantitative evidence and examples, including on potential costs and benefits, taking into account experience with voluntary colleges established so far:**

*5000 character(s) maximum*

Colleges chaired by a lead NCA present similar issues to Option b. Regardless of who chairs, supervisory colleges introduce additional bureaucracy and delay.

**Please explain your answer to question 51. d), providing, where possible, quantitative evidence and examples, including on potential costs and benefits, taking into account experience with voluntary colleges established so far:**

*5000 character(s) maximum*

While supervisory coordination colleges present fewer drawbacks than the other supervisory models, ESMA could more effectively achieve similar outcomes through other means, including existing supervisory convergence tools. Even for asset managers that operate across the EU through subsidiaries, the case must be made as to how these colleges would streamline their cross-border operations.

Before considering this setup further, there must be an open discussion on how these colleges would work. Although a handful of asset managers are currently subject to these colleges, little information is available on how they function. To our knowledge, these colleges gather a few times per year and are usually a forum to exchange information. It is even more unclear what shape these colleges would take in the future, considering the frustrations that certain have expressed regarding their low level of ambition.

To the extent that these effectively reduce the interactions that asset managers must have with different supervisors, coordination colleges could have a marginal added value for the few management companies that operate across the EU through subsidiaries rather than branches. Such a setup complicates cross-border supervision because, in contrast to branches, subsidiaries are subject to local supervision. First, these colleges could help build trust among NCAs. Host NCAs could learn more concretely how the home NCA supervises asset managers established in its jurisdiction. Second, these colleges could also become forums where NCAs can exchange best practices. Third, the coordination achieved through these structures could solve situations where asset managers have to interact with multiple NCAs requesting information on similar issues in an uncoordinated fashion (e.g., ad hoc information for a Common Supervisory Action (CSA), daily redemption figures during periods of stress, as was requested during March 2020, or questions on innovative investment products like ELTIF 2.0 that have drawn concerns from various host NCAs less familiar with these semi-liquid fund structures).

That said, the above objectives could probably be more effectively achieved through other means:

- **RTS or guidelines clarifying supervisory responsibilities** could ensure that NCAs do not overstep their authority. For example, during periods of stress, only the home and fund NCA should collect ad hoc data to monitor how a crisis unfolds. It would be inappropriate for any other NCA to request such information. In such a case, ESMA should seek to clarify NCAs' responsibilities through L2 or L3 rules.

- **Standardised reporting and effective data sharing** would ensure that NCAs collect consistent data and have access to the data collected by other NCAs when it is necessary for supervisory activities falling within their remit (e.g., to continue the above example, an NCA could access supervisory data on a fund that has a material footprint in its capital market). While the AIFMD/UCITS review is due to standardise further supervisory reporting in the investment management sector (notably ad hoc reporting during periods of stress), data sharing remains a weak spot. In our response to question 19 in section 7, we outline how better data sharing could be achieved by integrating existing reporting regimes.

- **Coordination groups** would probably be more effective in building trust and exchanging best practices than supervisory coordination because they could ensure that a single issue is discussed in a single forum rather than in multiple colleges where different NCAs may be represented. For example, to facilitate the marketing of innovative investment strategies across the single market, it may be helpful to have pre-authorisation discussions with host NCAs to understand potential reservations. This would allow asset managers to address these concerns before seeking authorisation for these funds, ensuring their smooth distribution across the EU. Considering that most large asset managers would probably consider offering similar products, each college would probably need to hold such a discussion, inevitably resulting in NCAs discussing the same topics in multiple settings.

Lastly, these colleges would require that the EU develop criteria to determine which asset managers have 'significant cross-border activities'. This would be a strenuous exercise because the threshold (e.g., EUR 500, 1000, or 2000 billion) on which the co-legislators will have to agree will inevitably be subjective. Moreover, as outlined above, most (large) asset managers already benefit from a *de facto* single supervision thanks to the passporting regime. The coordination colleges would only result in an additional supervisory layer for these asset managers. Therefore, one can expect rough political negotiations for a measure whose benefits would, at best, be marginal.

**Please specify to what other set-up(s) you refer in your answer to question 51. e), and explain your**

**answer providing, where possible, quantitative evidence and examples, including on potential costs and benefits, taking into account experience with voluntary colleges established so far:**

*5000 character(s) maximum*

| |
|---|
| We do not see other supervisory setups. |

**Question 51.1. Please identify the areas where EU-level supervision would provide the most benefits:**

**AIFMD**

*Please select as many answers as you like*

☐ Authorisation, notification of material changes and withdrawal of authorisations of AIFMs (Articles 6 – 11 of AIFMD)

☐ Delegation of functions (Article 20 AIFMD)

☐ Appointment and supervision of the depositary (Article 21 AIFMD)

☐ Transparency requirements (Articles 22-24 AIFMD)

☐ Pre-marketing (Article 30a AIFMD)

☐ Marketing of EU AIFs in the home Member State of the AIFM (Article 31 AIFMD)

☐ Marketing of EU AIFs in Member States other than in the home Member State of the AIFM (Article 32 AIFMD)

☐ De-notification of marketing arrangements (Article 32a AIFMD)

☐ Management of EU AIFs established in another Member State (Article 33 AIFMD)

☐ Management by EU AIFMs of non-EU AIFs not marketed in Member States (Article 34 AIFMD)

☐ Enforcement and sanctions (Article 48 AIFMD)

**UCITSD**

*Please select as many answers as you like*

☐ Authorisation of UCITS (Article 5 UCITSD)

☐ Authorisation of UCITS management companies (Articles 6 - 8 UCITSD)

☐ Authorisation of UCITS investment companies (Articles 27 – 29 UCITSD)

☐ Delegation of functions (Article 13 UCITSD)

☐ Freedom of establishment and freedom to provide services for UCITS management companies (Articles 16 – 21 UCITSD)

☐ Supervisory reporting (Article 20a UCITSD)

☐ Appointment and supervision of the depositary (Articles 22 – 26a UCITSD)

☐ Marketing of UCITS in other Member States (Articles 91 – 94 UCITSD)

☐ Enforcement and sanctions (Articles 99 -100 UCITSD)

**Please explain your answer to question 51.1 providing, where possible, quantitative evidence and examples:**

*5000 character(s) maximum*

None of the above.

**Question 52. Would joint supervisory teams, composed of experts of NCAs and representatives of ESMA, under ESMA's lead, be an efficient tool to achieve a more harmonised and efficient supervision of AIFs, UCITS and their fund managers?**

☐ 1 - Strongly agree

☐ 2 - Rather agree

☐ 3 - Neutral

☐ 4 - Rather disagree

☒ 5 - Strongly disagree

☐ Don't know / no opinion / not applicable

**Please explain your answer to question 52:**

*5000 character(s) maximum*

Joint supervisory teams across ESMA and NCAs would require substantial new resources and risk creating overlapping mandates, unclear accountability, and inefficient task duplication, without clear added value in most cases.

First, these joint teams risk resulting in overlapping mandates, creating confusion over who is ultimately accountable for supervisory decisions. Under the current framework, a single NCA has a clear, defined role, both legally and operationally, in supervising asset managers. Introducing a team co-led by ESMA and multiple NCAs could undermine this clarity and potentially confuse firms about who to engage with or escalate to.

Second, this model would require significant resourcing from both ESMA and NCAs. As a result, NCAs would need to assign expert staff to cross-border supervisory teams, while continuing to fulfil their own domestic responsibilities. ESMA would similarly need to scale up staffing and sectoral expertise to lead such teams.

Third, supervisory responsiveness is especially important during periods of stress or when addressing firm-specific risks. Joint teams, by nature of their distributed structure, would likely slow decision-making and reduce supervisory agility. This could be particularly problematic when immediate interventions are needed, such as in the case of fund suspensions, liquidity events, or conduct breaches.

**Question 53. How would you expect your compliance cost to change under the supervisory model you chose in question 51?**

☐ Strong increase: +20% or more

☐ Increase: +5-20%

☐ Neutral: +/- 0-5%

☐ Decrease: -5-20%

☐ Strong decrease: -20% or more

☒ Don’t know / no opinion / not applicable

**Please explain the reasoning for your answer to question 53 providing, as much as possible, quantitative evidence (e.g. your calculations of the evolution of your costs, splitting them between administrative costs (staff costs, facilities costs, travel, IT technology costs), professional fees (e.g. legal, accounting, consulting, etc), supervisory fees, etc.:**

*5000 character(s) maximum*

EFAMA did not choose any supervisory models in question 51.

## 7. Horizontal questions on the supervisory framework

### 7.2. Supervisory convergence

**Please select the ESA(s) for which you want to reply in this section:**

Please select as many answers as you like

☒ ESMA

☐ EIOPA

☐ EBA

### ESMA

**Question 7. ESMA: Please rate the effectiveness of supervisory convergence tools in ESMA:**

| | 1 (least effective) | 2 (rather not effective) | 3 (neutral) | 4 (rather effective) | 5 (most effective) | Don't know - No opinion - Not applicable |
|---|---|---|---|---|---|---|
| Breach of Union law | ☐ | ☒ | ☐ | ☐ | ☐ | ☐ |
| Binding mediation | ☐ | ☐ | ☐ | ☐ | ☐ | ☒ |
| Peer reviews | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| Emergency powers | ☐ | ☐ | ☒ | ☐ | ☐ | ☐ |
| Opinions | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| Recommendations | ☐ | ☐ | ☐ | ☐ | ☐ | ☒ |
| Product intervention powers | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| Inquiries | ☐ | ☐ | ☐ | ☐ | ☐ | ☒ |
| No action letters | ☐ | ☒ | ☐ | ☐ | ☐ | ☐ |

| | | | | | | |
|---|---|---|---|---|---|---|
| Guidelines | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| Colleges of supervisors | ☐ | ☒ | ☐ | ☐ | ☐ | ☐ |
| Coordination groups | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |
| Collaboration platforms | ☐ | ☐ | ☐ | ☐ | ☐ | ☒ |
| Warnings | ☐ | ☐ | ☐ | ☐ | ☐ | ☒ |
| Questions and Answers | ☐ | ☒ | ☐ | ☐ | ☐ | ☐ |
| Supervisory handbooks | ☐ | ☐ | ☐ | ☐ | ☐ | ☒ |
| Stress tests | ☐ | ☐ | ☒ | ☐ | ☐ | ☐ |
| Union strategic supervisory priorities | ☐ | ☐ | ☐ | ☐ | ☒ | ☐ |
| Other | ☐ | ☐ | ☐ | ☒ | ☐ | ☐ |

**Please specify to what other convergence tool(s) you refer in your answer to question 7 for ESMA:**

*5000 character(s) maximum*

Other convergence tools are Common Supervisory Actions (CSAs).

**Please explain your answer to question 7 for ESMA:**

*5000 character(s) maximum*

**Union strategic supervisory priorities** ensure greater supervisory convergence among member states by ensuring that NCAs have similar priorities and thereby facilitating other supervisory convergence activities. As argued in our response to question 2 in section 6, factoring in competitiveness would be valuable when determining these strategic priorities. In the investment management sector, there has undoubtedly been an excessive focus on concerns such as costs and fees or alleged liquidity mismatches in open-ended funds. Moreover, these union strategic supervisory priorities must not become additional priorities that come on top of national priorities.

**Coordination groups** could play a central role as ESMA strives to promote supervisory convergence. They allow NCAs to discuss supervisory cases and develop a common supervisory culture. Unfortunately, to our knowledge, ESMA has only set up two such groups: the Supervisory Coordination Network (SCN) in 2017 and the Coordination Network on Sustainability (CNS) in 2019. As outlined in our response to question 51 in section 6, these coordination groups could be good alternatives to supervisory colleges by ensuring that cross-industry issues are discussed within one single forum instead of countless colleges.

**Common Supervisory Actions** (CSAs) are an important tool in ESMA's toolbox. They allow ESMA to coordinate supervisory actions across the EU and gather targeted evidence instrumental in further improving the EU financial services policy. ESMA has conducted several CSAs in the asset management sector in recent years: one on UCITS liquidity management, another on fund valuation, and yet another on compliance and audit functions.

Similarly, **peer reviews** are an excellent instrument to ensure that NCAs sufficiently supervise their respective markets. ESMA also conducted a few peer reviews in the investment management sector in recent years: A first one was on the guidelines on ETFs and other UCITS issues. A second one was on the guidelines on stress test scenarios under the MMF Regulation. A third one was on cross-border activities of investment firms, and the last one was on post-Brexit relocations. The first two have contributed to clarifying outstanding interpretation issues, and the peer review on cross-border activities of investment firms was particularly impactful as it identified significant supervisory shortcomings and made strong recommendations to certain NCAs.

Because CSAs and peer reviews are resource-intensive, ESMA should determine when to launch such exercises in line with its strategic supervisory priorities. It is concerning to see that the co-legislators use these (e.g., the one on costs in the recent AIFMD/UCITS review) as a means of leverage to find political compromises during trilogues.

**Guidelines** are key instruments for developing a high-quality single rulebook. Considering the reservations expressed regarding an ever-expanding rulebook, ESMA should ensure that it only adopts new guidelines when these are absolutely necessary to meet its statutory objectives, including competitiveness. However, due to the Meroni doctrine, ESMA may be overly cautious when deciding whether to issue guidelines based on Article 16 of its Founding Regulation. This was, for instance, the case with ESG fund names. ESMA only decided to develop its recent fund naming guidelines after multiple NCAs had already developed their own guidance. Rather than drafting these guidelines *ex-post* at a stage when NCAs and the local industry have already developed and consolidated their respective perspectives, it would have been more efficient to issue these guidelines *ex-ante* when various stakeholders were still forming their opinions.

**Q&As** are an effective tool for further specifying rules and ensuring greater supervisory convergence. Although Q&As are non-binding, asset managers nonetheless follow their recommendations closely. Because each new clarification can lead to time- and resource-intensive changes to underlying systems, ESMA must provide more transparency into the Q&A decision-making process. The industry must be duly consulted before modifications to the Q&As and given sufficient time to adjust when these enter into force.

ESMA has not fully used its **investigations into breaches of Union law**. It only conducts a few such investigations annually. As outlined in our response to section 5, some cross-border barriers clearly breach Union law by discriminating against cross-border investment solutions (please refer to our responses to questions 28 and 51 in section 5).

### 7.3. Increasing the effective use of supervisory convergence tools

**Please select the ESA(s) for which you want to reply in this section:**

Please select as many answers as you like

☒ ESMA

☐ EIOPA

☐ EBA

## ESMA

**Question 8. ESMA: Do you think that the current supervisory convergence tools are used effectively and to the extent that is possible?**

☒ Yes

☐ No

☐ Don’t know / No opinion / Not applicable

**Please explain your answer to question 8 for ESMA and give examples:**

*5000 character(s) maximum*

Over recent years, ESMA has extensively used existing supervisory convergence tools in the investment management sector. In some circumstances, ESMA could use existing tools more proactively, as outlined in our response to the previous question.

**Question 9. ESMA: Do you think that the current governance and decision- making processes within ESMA provide sufficient incentives for the use of supervisory convergence tools?**

☐ Yes

☐ No

☒ Don't know / No opinion / Not applicable

**Please explain your answer to question 9 for ESMA:**

*5000 character(s) maximum*

EFAMA recommends that the Commission further consider whether revamping ESMA governance could address the concerns expressed in our responses to question 2 in section 6 and to question 7 in section 7.

**Question 9.1. ESMA: What governance changes would you propose to increase the usage of supervisory convergence tools as well as the accountability and transparency of ESMA in using these tools?**

☐ Move supervisory convergence decision to a Supervisory Committee as described above in the governance section

☐ Move supervisory convergence decisions to an Executive Board as described above in the governance section

☐ Other

☒ Don't know / no opinion / not applicable

**Question 10. ESMA: How could the mandate of the Chair and Executive Director of ESMA be modified to allow them to act more independently and effectively in promoting supervisory convergence?**

☐ Prohibition of re-election

☐ Longer term

☐ Other

☒ Don't know / no opinion / not applicable

### 7.4. Enhancements to existing tools

**Please select the ESA(s) for which you want to reply in this section:**

Please select as many answers as you like

☒ ESMA

☐ EIOPA

☐ EBA

## ESMA

**Question 12. ESMA: Do you see limitations or weaknesses in supervisory convergence tools in addressing significant divergences in supervisory practices between NCAs?**

| | Yes | No | Don't know – No opinion – Not applicable |
|---|---|---|---|
| Breach of Union law | ☒ | ☐ | ☐ |
| Binding mediation | ☐ | ☐ | ☒ |
| Peer reviews | ☐ | ☒ | ☐ |
| Emergency powers | ☐ | ☐ | ☒ |
| Opinions | ☐ | ☒ | ☐ |
| Recommendations | ☐ | ☐ | ☐ |
| Product intervention powers | ☐ | ☒ | ☐ |
| Inquiries | ☐ | ☐ | ☒ |
| No action letters | ☒ | ☐ | ☐ |
| Guidelines | ☐ | ☒ | ☐ |
| Colleges of supervisors | ☐ | ☒ | ☐ |

| | | | |
|---|---|---|---|
| Coordination groups | ☐ | ☒ | ☐ |
| Collaboration platforms | ☐ | ☐ | ☒ |
| Warnings | ☐ | ☐ | ☒ |
| Questions and answers | ☒ | ☐ | ☐ |
| Supervisory handbook | ☐ | ☐ | ☒ |
| Stress tests | ☐ | ☒ | ☐ |
| Union Strategic Supervisory Priorities | ☐ | ☒ | ☐ |
| Other | ☐ | ☐ | ☐ |

**(ESMA) If you responded "yes" for breach of Union law, please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**

*5000 character(s) maximum*

As outlined in our response to question 7, breaches of Union law are rarely addressed at the ESMA or Commission levels for political reasons or because they are in areas outside their remit (e.g., tax). The breach of Union law process should be reviewed and/or simplified to address these limitations and ensure easy and quick redress.

**(ESMA) If you responded "yes" for binding mediation, please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**
- *5000 character(s) maximum*

**(ESMA) If you responded "yes" for peer reviews, please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**

*5000 character(s) maximum*

**(ESMA) If you responded "yes" for emergency powers, please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**

*5000 character(s) maximum*

**(ESMA) If you responded "yes" for opinions, please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**

*5000 character(s) maximum*

**(ESMA) If you responded "yes" for recommendations, please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**

*5000 character(s) maximum*

**(ESMA) If you responded "yes" for product intervention powers, please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**

*5000 character(s) maximum*

**(ESMA) If you responded "yes" for inquiries, please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**

*5000 character(s) maximum*

**(ESMA) If you responded "yes" for no action letters, please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**

*5000 character(s) maximum*

EFAMA supports amending the ESMA Founding Regulation to allow the European authority to issue no-action letters that can effectively suspend for a time-limited 6-month period the application of a Level 1 or Level 2 act. Supervisors in other jurisdictions (e.g. the U.S.) can valuably use this power without needing to seek the approval of the legislature.

Despite the EU co-legislator's will to include no-action letters into the revised ESMA toolkit (Article 9a) under the amended Founding Regulation, the final text only confirms a lengthy and impractical process, whereby ESMA is to notify the NCAs and the Commission in detail, accompanied by an opinion on necessary actions (in the form of a new legislative proposal and/or delegated/implementing measures) required to address an exceptional situation. Pending these actions, ESMA will only be able to issue opinions 'with a view to furthering consistent, efficient and effective supervisory and enforcement practices, and the common, uniform and consistent application of Union law.' At the end of this lengthy process, the clauses subject to a no-action letter from ESMA would still legally apply to market participants. There is therefore no guarantee for the former that their respective NCAs will not sanction them for not complying with these clauses.

**(ESMA) If you responded "yes" for questions and answers, please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**

*5000 character(s) maximum*

New or revised Q&As can lead to time- and resource-intensive changes to underlying systems, even though they are not legally binding (in EU Law at least). With no lead time, asset managers have often been confronted with the need to adjust their operations, product disclosures, etc., to comply with ESMA Q&As. In some instances, these have even reversed existing interpretations to the legal texts offered until then by the responsible NCAs.

It is therefore essential to ensure stakeholders are appropriately consulted before any new Q&A is adopted, or when an existing one is under revision. According to Article 16b(4) of the amended Founding Regulation, ESMA may request advice from the ESMA Stakeholder Group, or conduct open public consultations, albeit upon the request of three voting members on the Board of Supervisors. For the reasons highlighted above, this outcome remains sub-optimal. Also, despite these provisions, and to the best of our knowledge, stakeholders in the asset management sector have never been consulted on upcoming reviews of Q&As.

We would also call for greater predictability as to when Q&As are updated. It is impossible to predict when a Q&A will be amended, as the ESMA website only provides information on whether a question is pending or rejected. Therefore, it is impossible for asset managers to prepare in advance for any change to these Q&As by setting aside resources to implement these changes. To improve predictability, ESMA could, for instance, publish in advance, as the EBA does, the list of questions it intends to review in the near future. Alternatively, it could conduct these reviews on a pre-defined timeline (e.g. semi-annually or annually). It is equally essential to provide sufficient time for market participants to comply with new Q&As, as it has not always been the case in the past. For instance, ESMA published in 2017 Q&As on investor protection issues and expected these Q&As to be implemented only a few days later.

Finally, we would like to underscore that Q&As should remain focused and technical. We have noticed that ESMA sometimes uses Q&As to make policy choices. As a way of illustration, ESMA amended in 2016 the AIFMD Q&As to require asset managers to apply delegation rules to all activities falling within Annex I of the AIFMD and to prohibit externally managed AIFs from conducting core investment management functions.

**Please specify to what other convergence tool(s) you refer in your answer to question 12 for ESMA, and please explain:**

- **why you see limitations or weaknesses and in which specific areas**
- **what concrete changes you would propose to address the limitations or weaknesses flagged and make these tools more effective**

*5000 character(s) maximum*

Common Supervisory Actions have faced some coordination issues. National authorities tend to follow different timelines and some NCAs modify the CSA questionnaire or even introduce new questions to the template provided by ESMA. Moreover, there has been scarce coordination among NCAs to ensure that the same cross-border asset managers receive only one questionnaire. Taken together, this has meant that asset managers operating in several member states not only received several uncoordinated requests for inputs but sometimes were asked different questions from one member state to another.

In addition, in some member states, these initiatives supplement national supervisory initiatives rather than substitute for them. This results in an increase rather than a decrease in the supervisory burden for asset managers in these member states.

**Question 13. ESMA: ESMA founding regulations and sectoral legislation lay down the requirements to delegate tasks and responsibilities both from NCAs to ESMA or from ESMA to NCAs. This tool has been rarely used.**

**What kind of changes would be warranted to increase its usability? Please explain, highlighting benefits and downsides:**

*5000 character(s) maximum*

Public authorities are in a better position to respond to this question.

### 7.5. Possible new supervisory convergence tools

**Please select the ESA(s) for which you want to reply in this section:**

Please select as many answers as you like

☒ ESMA

☐ EIOPA

☐ EBA

## ESMA

**Question 14. ESMA: Do you see limitations in the current supervisory convergence tools to address home/host issues?**

☐ Yes

☒ No

☐ Don’t know / No opinion / Not applicable

**Question 15. ESMA: In the context of supervision of products or of conduct of business rules, supervisory convergence powers could be reinforced. ESMA may identify cases where home**

**supervision is deemed ineffective either through ongoing monitoring or in response to a specific complaint. For example, ESMA could be given the power to issue an opinion/binding advice regarding ineffective national supervision to avoid that products or entities are granted access to the EU-market without adequate supervision.**

**Do you think that ESMA should be empowered to issue an opinion in cases where national supervision is deemed ineffective?**

☐ Yes

☐ No

☒ Don't know / No opinion / Not applicable

**Please explain your answer to question 15 on ESMA:**

*5000 character(s) maximum*

ESMA can already rely on peer review and product bans when there are blatant supervisory shortcomings in a specific member state. For instance, ESMA issued a peer review report on cross-border investment services, identifying significant weaknesses in certain member states. As a remedy, it requested that a certain NCA substantially strengthen its supervisory capabilities. Equally, under Art. 40 MiFIR, ESMA can ban a product from being distributed across the EU. It can use this power if it has strong reservations regarding supervisory practices in a certain member state, as with the marketing and sales of binary options (in 2018) and contracts for difference (in 2019) to retail clients.

**Question 16. ESMA: Do you think ESMA should be empowered to issue a binding advice in cases where national supervision is deemed ineffective?**

☐ Yes

☐ No

☒ Don't know / No opinion / Not applicable

**Question 17. ESMA: What would be the cost and expected benefit of such a system?**

*5000 character(s) maximum*

Don't know.

**Question 18. ESMA: Are there additional supervisory convergence tools that should be introduced?**

☐ Yes

☐ No

☒ Don't know / No opinion / Not applicable

## 7.6. Data and technology hub

**Please select the ESA(s) for which you want to reply in this section:**

*Please select as many answers as you like*

☒ ESMA

☐ EIOPA

☐ EBA

### ESMA

**Question 19. ESMA: Which area(s) would benefit most from an ESMA's enhanced role as a data and technology hub?**

*5000 character(s) maximum*

ESMA should become the supervisory data hub for capital markets to improve data sharing among public authorities. As is currently the case, financial institutions would report to NCAs and trade repositories. These would, in turn, share this information with ESMA. To complement this information, ESMA could also access other EU databases, such as the ECB Securities Holding Statistics (SHS). With this data, the European authority would compile the data it receives from these different sources and make it available to relevant authorities (i.e., NCAs, ECB, and other EU agencies). This would reduce the reporting burden on market participants, particularly during situations of stress. Currently, asset managers frequently have to provide the same information to several authorities (e.g., to the NCA of the management company, the fund home NCA, and the National Central Bank). These reporting duplications are particularly problematic during periods of stress, when these different authorities may require additional information to monitor the unfolding crisis. This results in an additional reporting burden on management companies when their time and energy should be dedicated to navigating the crisis.

**Question 20. ESMA: In which sectors/areas would the development of supervisory technology tools (suptech, i.e. use of technology by supervisors to deliver innovative and efficient supervisory solutions that will support a more effective, flexible and responsive supervisory system) be most beneficial to enhance efficiency and consistency of supervision?**

**Please give examples:**

*5000 character(s) maximum*

Public authorities are in a better position to respond to this question.

## 7.7. Funding

**Please select the ESA(s) for which you want to reply in this section:**

*Please select as many answers as you like*

☒ ESMA

☐ EIOPA

☐ EBA

*ESAs' budget is currently composed of:*

- *contributions from the NCAs which are complemented by a contribution from the EU budget, with NCAs contributing 60% and the EU budget 40%*
- *In case of direct supervisory mandates, also of fees charged to market participants to cover the full costs of direct supervisory activities. ESMA has nine separate fee income streams and they represent approx. 30% of ESMA's revenue*
- *other payments from NCAs for ESAs to be able to undertake tasks on their behalf*

## ESMA

**Question 22. ESMA: Do you consider the provisions on financing and resources for the tasks and responsibilities of ESMA appropriate?**

☐ Yes

☐ No

☒ Don't know / No opinion / Not applicable

**Question 23. ESMA: faces pressure to fulfil a growing number of mandates while staying within the ceilings of the multi-annual financial framework (MFF).**

**Taking into account the limitations of public financing, should ESAs be fully funded by the financial sector?**

☐ Yes

☒ No

☐ Don't know / No opinion / Not applicable

**Please explain your answer to question 23 for ESMA:**

*5000 character(s) maximum*

Rather than providing ESMA with additional resources, the co-legislators should ensure that the authority properly uses available resources. ESMA has faced significant resource constraints because it was given an excessive number of new mandates. As outlined above, more resources should be allocated to supervisory convergence activities instead of constantly developing more regulatory standards.

**Question 23.1. ESMA: would you be in favour of targeted indirect industry funding for certain convergence work (indirect fees), e.g. for specific tasks, like voluntary colleges, opinions, etc.?**

☐ Yes

☐ No

☒ Don’t know / No opinion / Not applicable

**Question 24. ESMA: Do you think the current framework includes sufficient checks and balances to ensure that EMSA makes efficient and effective use of its budget?**

☐ Yes

☐ No

☒ Don’t know / No opinion / Not applicable

## 8. 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

## ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages EUR 28.5 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors. Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the EFAMA Fact Book.

More information is available at www.efama.org

**Contact:**

**Name**
Job title
@efama.org | +32 2 513 39 xx