

MEMO# 33274

March 19, 2021

European Commission Consultation on Supervisory Convergence and the Single Rule Book

[33274]

March 19, 2021 TO: ICI Global Members SUBJECTS: International/Global RE: European Commission Consultation on Supervisory Convergence and the Single Rule Book

On March 12, 2021, the European Commission (EC) issued a consultation on supervisory convergence and the single rulebook (Consultation).[\[1\]](#) The Consultation seeks feedback on matters related to the 2019 European Supervisory Authorities (ESAs) review and information gathered will be used to prepare a report required by the capital markets union action plan. Overall, the tone of the consultation is one of “fact finding” and the majority of questions are open-ended, asking stakeholders to provide specific examples or suggestions.

Stakeholders must submit their responses to the questionnaire by May 21, 2021 and indicate for which ESA their response is intended.[\[2\]](#) We intend to prepare a response to this Consultation and will reach out to members to begin gathering feedback shortly.

Key Questions

- **Extension of Direct Supervisory Powers** – The Consultation asks stakeholders how they “envisage the future scope of direct supervisory powers of ESMA or any other ESA.” The Commission also requests stakeholders to comment on the impact of ESAs peer reviews and whether a mandatory peer review, including enforcement aspects, should be introduced in some sectoral legislation.
- **Sufficiency of ESAs Toolkit** – The Commission asks stakeholders whether no action letters are fit for their intended purpose and how their use compares to other jurisdictions’ use of the tool. The Consultation also requests that stakeholders provide a response to whether the ESAs powers in relation to breaches of Union law and binding mediation are effective, and to provide concrete examples where introducing binding mediation provisions in sectoral legislation would be useful.
- **ESAs’ Competence as a Supervisor of Third Countries** – The Commission asks stakeholders whether the coordination function of the ESAs, to ensure that competent authorities are effectively supervising outsourcing, delegation, and risk transfer arrangements in third countries, works in a satisfactory way and, if not, how it can be adjusted.

- **Potential Solutions to the Board of Supervisors Amendment Process** – The Commission asks stakeholders to propose possible solutions when ESAs need to amend joint technical standards and there is a blocking minority at the Board of Supervisors of one of the ESAs.
- **Increased Role for ESMA in Auditing and Financial Reporting** – The Commission asks how supervision of the auditing and financial reporting field could be improved using the Wirecard case as an example. It also asks whether ESMA’s role, with respect to the Transparency Directive, could be strengthened. The Commission provides, for example, that ESMA could be mandated to draft Regulatory Technical Standards “to further harmonize enforcement of financial (and non-financial) information.”
- **Regulations vs. Directives** – The Commission asks stakeholders which EU legislative acts (from level 1) across the financial services sector would benefit from becoming a regulation and to provide examples and explanations.

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endnotes

[1] A copy of the consultation is available on the European Commission’s website:
https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2021-esas-review-consultation-document_en.pdf.

[2] Questionnaires must be submitted through the online portable available here:
<https://ec.europa.eu/eusurvey/runner/esas-review-2021?surveylanguage=en>.

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