



European Securities and  
Markets Authority

# Report

**Digital finance related issues – Survey to NCAs**







## Table of Contents

1	Background.....	3
2	Executive summary .....	3
3	Fragmented value chains .....	4
4	Digital platforms.....	9
5	Mixed Activity Groups.....	20

# 1 Background

1. On 2 February 2021, the European Commission (EC) published a request for technical advice to the European Supervisory Authorities (ESAs) on digital finance and related issues and more specifically the regulation and supervision of more fragmented or non-integrated value chains, platforms and bundling of various financial services, and risks of groups combining different activities.<sup>1</sup>
2. On 19 March 2021, ESMA launched a survey to National Competent Authorities (NCAs) to inform its work in response to the EC's request for technical advice. NCAs were invited to respond to this survey on a 'best efforts' basis, as they may have no or limited visibility over some aspects of the value chains, platforms and mixed activity groups (MAGs) within their jurisdictions, particularly where they involve entities that do not fall within their direct supervisory remit.
3. The survey was divided in six sections. Section 1 of the survey included questions relating to fragmented value chains; sections 2, 3, 4 and 5 comprised questions related to digital platforms, including the use of digital platforms, access to information, supervision of specific risks, and regarding the suitability of the regulatory perimeter and supervision structures. Finally, section 6 covered questions related to MAGs.
4. 28 NCAs responded to the survey.<sup>2</sup> However, not all of them responded to all questions and the level of granularity varied across responses.
5. This report presents the outcomes of the survey, which have served to inform the ESAs' response to the EC's request for technical advice.<sup>3</sup>

# 2 Executive summary

6. The survey highlighted that while there are some changes in value chains, NCAs do not necessarily consider that these changes bring new risks that are not addressed by the existing rules. Those issues that might require further consideration though include cyber security, concentration and data related risks, the level-playing field and the resources needed at supervisors to keep pace with those changes. The entry of BigTechs into financial services within ESMA's remit seems fairly limited so far. The main recommendation in relation to changes in value chains from NCAs at this point seem to be to enhance cooperation across competent authorities, including competition and data protection authorities, and supervisory convergence within the EU.
7. When it comes to digital platforms, NCAs tend to have limited visibility on the use of such platforms by financial firms, especially when they do not authorise the firm as 'home' authority, thereby highlighting some possible notification challenges between the firms and their NCAs and between home and host NCAs. The use of digital platforms can also blur

---

<sup>1</sup> EC, 2021. '[request to EBA, EIOPA and ESMA for technical advice on digital finance and related issues](#)', February 2021

<sup>2</sup> NCAs from the following Member States responded to the survey: AT, BE, BG, CZ, DE, DK, EE, ES, FI, FR, HR, IE, HU, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK

<sup>3</sup> ESAs, 2022. 'Joint European Supervisory Authority response to the European Commission's February 2021 Call for Advice on digital finance and related issues: regulation and supervision of more fragmented or non-integrated value chains, platforms and bundling of various financial services, and risks of groups combining different activities', 7 February 2022.

the lines between regulated and unregulated services and the geographical scope of activities of firms, which creates specific supervisory challenges and investor protection issues. In terms of main recommendations, again, many NCAs highlighted greater regulatory and supervisory convergence across the EU and also the need for skilled resources, including digital experts, at NCAs.

8. The information reported on MAGs was limited, suggesting that this is not something that NCAs observe or at least are well-aware of. The lack of visibility on these structures may indeed be a challenge. Again, the protection of data and the need for enhanced cooperation and coordination arrangements between financial supervisors and other authorities, including data, competition, consumer protection, anti-money laundering, and cyber authorities, to ensure effective supervision of MAGs was highlighted by NCAs.

### **3 Fragmented value chains**

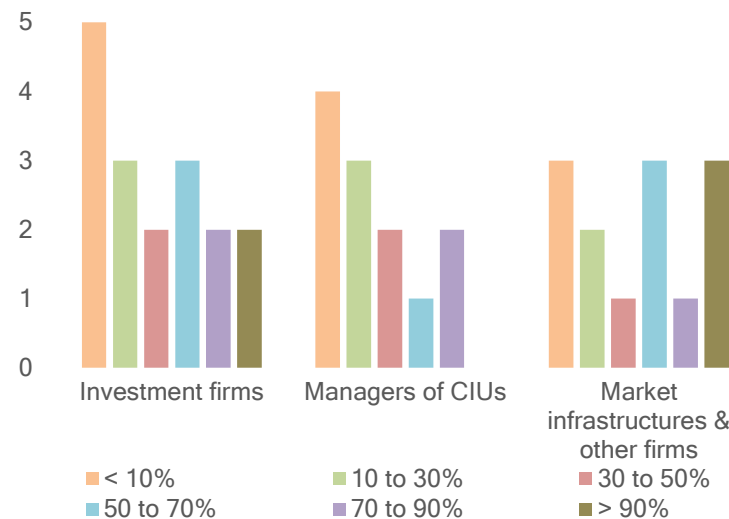
#### **Developments in value chains**

9. 13 NCAs reported that they did see changes in value chains, whereas 13 reported that there were no changes. The main reported changes in value chains include (i) the growing outsourcing to cloud service providers (ii) an increased cooperation along the value chain between FinTechs, BigTechs, and incumbents; in particular, incumbents increasingly use FinTech and digital platforms to interact with their customers and streamline their back-office processes, and (iii) the growing reliance on providers of market data and risk and portfolio management tools, for example in the fund industry. One respondent noted that outsourcing to third-party services providers (TPSPs) is increasing due to regulatory reforms and regulatory inflation, e.g., in relation to extra-financial data or new EMIR valuation standards. Two NCAs specified that the outsourcing observed is on support/low-value tasks (e.g., manage and store data, gathering information in the context of know your customer/anti-money laundering (KYC/AML) processes), although some NCAs have seen it in critical or important functions. Another NCA noted that central securities depositories (CSDs) are starting to explore the outsourcing of critical functions. Four NCAs also reported that although they observed changes in value chains, such changes were not significant, but one of them expects further developments as BigTechs enter secondary markets to provide outsourcing services. Two NCAs have observed that tokenisation is gaining momentum, e.g., with the tokenisation of financial instruments or real estate projects, which creates regulatory and supervisory convergence issues.
10. Similarly, NCAs have mixed views as to whether these changes in value chains introduce risks that are not addressed by the existing regulatory framework. Nine of them see such risks, which include risks to investor protection, market integrity, and financial stability. More specifically, six NCAs highlighted new risks in relation to data security and protection, cyber security, concentration, operational risks and AML and the level-playing field. One respondent noted that there is a risk of “lack of in-house competences” to control and monitor the use of outsourcing. One respondent reported that there are some regulatory uncertainties when outsourcing is related to non-critical activities, and another one has identified sub-outsourcing chains involving poor arrangements between licensed companies and service providers as a potential source of risk. Further details on those

identified risks are provided below. One NCA highlighted specific issues in relation to distributed ledger technologies (DLT), crypto-assets (CAs) and decentralised finance (DeFi). In terms of DeFi in particular, they are concerned that the risks may not be addressed by the upcoming MiCA regulation, and propose to define globally accepted minimum standards, including on infrastructure governance, to be adhered to by all financial firms to be allowed to engage in financial activities based on autonomous and/or decentralised DLT infrastructures. They expect additional risks related to the tokenisation of transferable securities or financial instruments as trading and settlement may take place outside of the regulated space. Another NCA highlighted risks in relation to the tokenization of real estate projects, which are typically designed to avoid existing regulations and also inconsistencies across MS in the interpretation of the rules when it comes to such projects.

11. With regards to how widespread outsourcing is in their respective jurisdictions with respect to critical or important functions, half of the respondents were not able to provide an answer due to lack of information / oversight. Respondents were required to distinguish between (i) investment firms, (ii) managers of collective investment undertakings (CIU), and (iii) market infrastructures and other firms. From those who responded, responses were quite mixed across the three sectors (see T.1). For investment firms, seven respondents noted that over 50% of financial firms were outsourcing critical or important functions to TPSPs, with two NCAs saying that over 90% of investment firms in their jurisdictions were engaged in such outsourcing arrangements. For managers of CIUs, only three respondents noted that over 50% of these entities within their jurisdiction were outsourcing critical or important functions. For market infrastructures and other firms, seven respondents noted that over 50% of these entities in their jurisdictions outsourced critical or important functions to TPSPs, three of which noted that this rate was above 90%.

T.1  
 Percentage of financial firms relying on TPSPs  
 Reliance on TPSPs by EU financial firms vary across sectors  
 6



Note: Percentage of financial firms reported by NCAs to be currently relying on third-party service providers to fulfill critical or important functions  
 Sources: ESMA NCA survey on digital finance (2021)

12. Those services that are outsourced the most across financial firms are cloud computing and IT services. When it comes to trading venues more specifically, it seems that many rely on third parties for their technical infrastructure, including their trading system. The outsourcing of compliance, and client facing tasks, such as client on-boarding or the distribution of investment products is also widespread. Asset managers also delegate important functions such as portfolio management.
13. In terms of the sub-outsourcing to other third parties by TPSPs providing critical or important functions to financial institutions, 11 NCAs noted that this was never or almost never the case. 10 NCAs reported this occurred sometimes and only three responded this occurred often. When it comes to the location of the TPSPs, 11 NCAs reported that these were never or almost never based outside of the EU. Nine NCAs noted this occurred sometimes and four NCAs said this was often the case, again highlighting quite different views across the EU.
14. Six NCAs reported that the role of BigTechs in this evolution of value chains is mainly related to the provision of cloud computing services and IT and infrastructure services. Particularly, one respondent noted that a leading bank in their jurisdiction had signed an agreement to migrate a significant part of their information system to the cloud. Four NCAs reported that BigTechs have, to their knowledge, no role in this evolution. One respondent noted that some financial market participants are becoming equally dominant as BigTechs.
15. In terms of risks in relation to the reliance on TPSPs by financial firms that are not addressed by the existing regulatory framework, Seven NCAs mentioned the importance of considering the concentration risk that could arise. One NCA noted there is a strong degree of dependence of EU financial market participants on non-EU BigTechs,

particularly when it comes to cloud outsourcing. One NCA noted that supervisory authorities could lose oversight of market concentration the more fragmented value chains become. Seven NCAs reported cyber security and outage risks as important to consider as reliance of financial firms on TPSPs increases. One NCA highlighted operational risks that could have spill over effects affecting the provision of financial services. Three NCAs also raised concerns in relation to the use and protection of data, including due to the amount of data BigTechs may hold, risks in relation to the cross-border management of personal data and data protection risks in general. Another mentioned that there are risks of lack of transparency as the complexity of these business structures grow and the loss of control and lack of governance over some processes in the tech framework, with negative implications for their supervision as well. One NCA also highlighted the digital literacy needed when investigating TPSPs, which creates challenges for NCAs. Still, a significant number of NCAs, nine in total, were of the view that the reliance on TPSPs by financial firms did not raise new risks.

### **BigTechs offering financial services**

16. When it comes to BigTech offering financial services, only three NCAs reported to have seen such activity in their jurisdiction, thereby suggesting that for what concerns ESMA's remit BigTech activities remain fairly limited in the EU. One NCA reported that a BigTech had received a money institution license in their jurisdiction, while another reported that a BigTech payments system was already available and being offered locally. The other respondent noted that BigTechs are becoming part of the value chain of financial investment firms but did not provide any further details.
17. 25 NCAs noted that they were either unaware or unable to provide an indication of the market share of BigTechs in their jurisdictions. Only three NCAs provided a specific answer, all noting that such market share was below 30% (and two noting it was below 10%). Four NCAs did not respond to the question. When asked if NCAs had identified BigTechs investing in financial firms established and authorized in their respective jurisdictions, all NCAs responded with either a negative answer or noting that they did not have enough information to respond accurately to this question.
18. In relation to new and/or exacerbated risks related to the entry of BigTechs in financial services that are not addressed by the existing regulatory framework, three NCAs responded they do observe such risks, and 10 NCAs reported that the existence of such risks was a possibility. On the contrary, 11 NCAs responded that they do not observe such risks. Those NCAs that responded positively highlighted risks similar to those related to changes in value chains in general. They pointed out increased market concentration risk, higher cybersecurity risk, as well as the exacerbation of risks related to the loss of control (and spill over effects) and the management of data. Competition issues and the lack of a level playing field with incumbents was also cited by several NCAs. One NCA also raised concerns regarding the global reach of BigTechs and the challenges involved in the enforcement of existing measures due to national barriers.



## **Unregulated data service providers**

19. Only two NCAs provided details on unregulated data service providers in their jurisdictions. There were divergent opinions about risks in relation to the collection and dissemination of data by unregulated data service providers not addressed by existing regulatory frameworks. While eight NCAs reported they did not observe such risks, six NCAs reported they do see such risks and eleven NCAs responded they maybe observe such risks in their jurisdictions. When asked to provide details on unaddressed risks related to the collection and dissemination of data by unregulated data service providers, only a few NCAs provided a response. Among these, some reported the lack of a level playing field, risks related to the misuse or loss of data, and the absence of specific and clear obligations for data service providers. The latter was seen as a source of risk of non-compliance for supervised entities. Two NCAs referred to risks to investor protection and financial stability in general.

## **Regulatory and supervisory challenges**

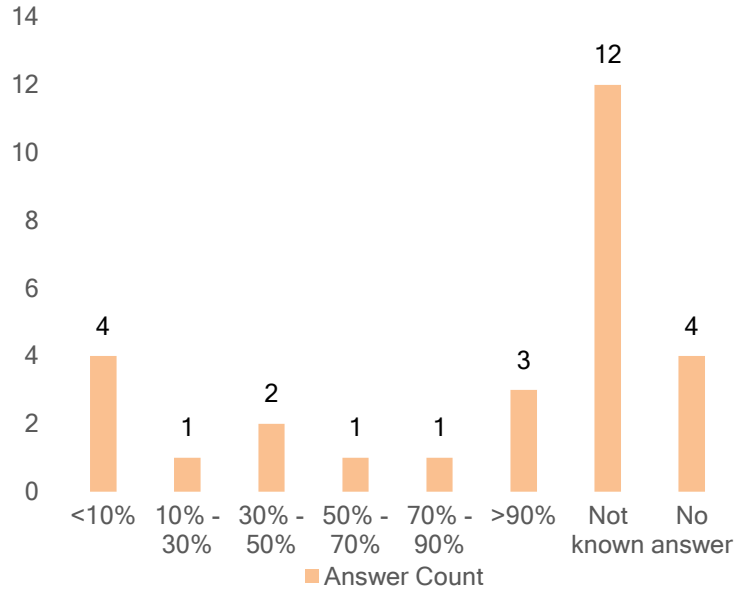
20. On whether there was a need to enhance supervisory practices, including convergence measures, in relation to value chains, the responses were divided. For those 13 NCAs who agreed on the need of such enhancement, they noted the need for an exchange and cooperation between supervisory and regulatory authorities at an international level, with a cross-sectoral approach. In particular, some NCAs highlighted the need for greater cooperation between data protection and financial authorities. Greater cooperation with competition authorities was also cited. Two NCAs also pointed to the need for further supervisory convergence and unified standards across the EU. One NCA observed that DORA should address those issues, although this would depend on its implementation. Another NCA noted that the upcoming MiCA regulation was a positive development with regards to DLT but that it would require a sound implementation and review through time.
21. Six NCAs provided examples of relevant cooperation between competent authorities in relation to value chains. One NCA reported they perform daily due diligence enquiries with other regulators in relation to the outsourcing entities at pre-licensing stages. Another NCA mentioned guidance from the national cyber security centre, which can be useful for cloud outsourcing. Another NCA reported they had made a preliminary analysis on the need for cooperation between competition and data protection authorities and concluded that such cooperation was not needed at the time. Another respondent noted the need for cooperation among competent authorities, with both a cross-border and cross-sectorial dimension. Finally, one respondent highlighted that SupTech could help improve such coordination.
22. Finally, one NCA noted that the key issue was to correctly identify relevant regulated activities through a look-through approach and that market participants were concerned about security risks arising from investments of tech firms coming from jurisdictions with authoritarian regimes. Another one noted that fragmented value chains could make it harder to identify responsibilities and accountabilities, as well as jeopardise NCAs' abilities to gather relevant information. Another respondent noted they favoured an EU response to certain Big Tech activities. Another would see merits in having any changes to the operations of a licensed entity being reviewed by the regulators.

## 4 Digital platforms

23. Only 11 NCAs reported examples of platforms bundling different types of services in their jurisdiction. Among them, five NCAs mentioned robo-advisors offering services ranging from pension planning to wealth management to savings. Other digital business models reported by NCAs are 'neo-banks' offering banking, insurance, investment products, digital asset managers offering investment products and deposits, aggregator platforms e.g., one stop shops offering a wide range of services that were typically available through separate providers previously, comparison websites and social platforms.
24. Two NCAs also stressed that digital platforms may operate within existing group structures, where regulated entities may offer different product types from different providers. One NCA noted that digital platforms are used to provide various services, ranging from payment services, investment services – including advice – to crowdfunding, mortgage management services and insurance services. Two NCAs highlighted that the services often leverage on new technologies, e.g., artificial intelligence or big data, which can be used to enhance the client focus or exploit new sources of (unstructured) data, inter alia from non-financial information sources.
25. With regards to providing an indication as to how widespread the use of digital platforms for the marketing or the conclusion with customers of their financial products and services by financial firms is, half of the respondents reported to not have this overview and four did not provide any answer. Among the remaining 12 NCAs, a third indicated that this percentage is less than 10%, five reported it to be between 10%-90% and three indicated that the phenomenon is comparably widespread with more than 90% (see T.2).

T.2  
 Percentage of financial firms using digital platforms for the provision of financial products and services

Limited visibility on the use of digital platforms by firms

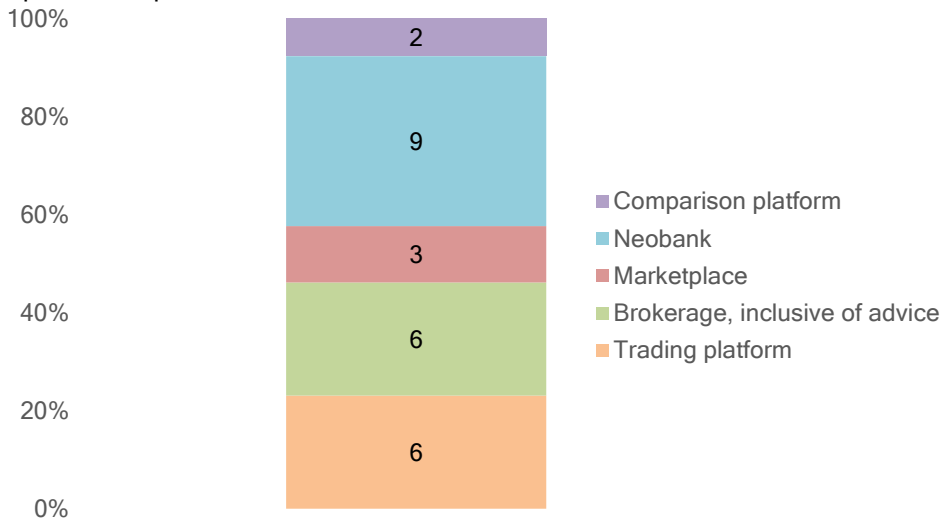


Note: Answer count of NCAs indicating the percentage of financial firms established in their jurisdiction and authorised as 'home' authority considered to be using digital platforms for the marketing or conclusion with customers of Sources: ESMA NCA survey on digital finance (2021)

26. Seven NCAs provided information about a total of 25 different platforms, with varying degrees of information (see T.3). A preliminary classification suggests that eight platforms would best qualify as 'neo-banks', having their core offerings in the payment services sector. Six platforms show characteristics typical of digital trading infrastructures and five may be best classified as 'one stop shops', where different types of services, e.g., trading, execution, advice or analytics, are provided on a single platform. Other platforms are similar to comparison platforms, marketplaces and crowdfunding platforms.<sup>4</sup>

<sup>4</sup> Please note that these categories are indicative and based on best-effort classification. As of now, there is no clear distinction in what for example falls under the often-used category of 'neo-broker' nor is there any widely accepted classification scheme available in the market.

T.3  
Examples of platforms reported by NCAs  
25 platforms spread across seven NCAs



Note: Count of platform types as listed by NCAs in their response to ESMA's survey on the request for technical advice on digital finance.  
Sources: ESMA NCA survey on digital finance (2021)

27. NCAs reported mixed views as to whether the use of digital platforms raised new or exacerbated risks that would be left unaddressed by the existing regulatory framework. 11 NCAs disagreed with this statement and seven NCAs were not too sure. Yet, seven agreed that there were new or exacerbated risks. More specifically, NCAs mentioned issues in the area of investor protection, e.g., due to the aggressive marketing techniques prevailing on digital platforms and the lack of clarity as to the exact nature and regulatory status of the services being offered, market integrity, operational resilience and ethical considerations in relation to the use of data and decision-making based on algorithms.
28. One NCA stressed that the use of digital platforms could blur the lines between tied agent and unregulated marketing activities and that the risk of customers being presented with unsuitable product offerings could increase, including due to a lack of customization choices being offered by the platform.
29. Three NCAs raised concerns about the effective supervision of these platforms, for example due to the multi-disciplinary character of the business models or varying regulatory practices across jurisdictions. Two NCAs stressed that the existing regulatory frameworks did not cover the phenomenon and thus did not address the risks adequately.
30. Three NCAs highlighted possible risks with regards to data and cybersecurity. Finally, one NCA stressed the need to ensure a level playing field, and one more NCA said that there could be risks to financial stability going forward if the use of such platforms were to increase globally.

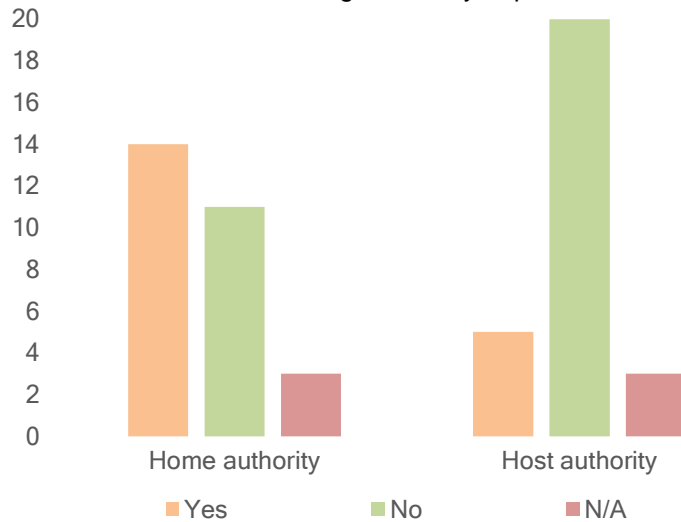
## 2.2. Access to information

31. NCAs are divided in their perception of whether they have a good visibility over the use of digital platforms by authorised financial firms in their jurisdiction (see T.4). 14 NCAs report to have a good visibility, by relying on different sources of information: periodic reporting by supervised entities, MiFID inspections and market surveys and market information. Two NCAs mentioned licensing requirements as a source of information. One NCA mentioned complaints reporting. 11 NCAs consider that they do not have a good visibility over the use of digital platforms in their jurisdiction, mainly because this is not a particular area of focus for them and there is no obligation for firms to report this information. However, only a handful of NCAs seem to see this lack of visibility as a real problem. One NCA suggested to provide for specific requirements for supervised entities to report on this phenomenon.
32. 20 NCAs stated that they did not have a good visibility over the use of digital platforms by financial firms in exercise of the freedom to provide services cross-border which is much higher than where the firms are authorised by the NCA as 'home' authority (44%). One NCA highlighted that this information only needed to be included in the notification provided by the home NCA in case of freedom to establish a branch.<sup>5</sup> Two NCAs said that the home/host supervisory cooperation might not prove effective when services are carried out under the freedom to provide services regime and one NCA referred to the somewhat limited access to information that host authorities have under the current cross-border supervisory framework. Three NCAs pointed to the practical challenges involved (high volumes of notifications, lack of legal basis to investigate the technical infrastructure of firms, resources issues). Those five NCAs that reported to have good visibility on this matter rely on meetings with supervised entities, surveys and market information. Only two NCAs referred to contact with other jurisdictions and notifications from "home" authorities.

---

<sup>5</sup> The information that needs to be provided in the case of passporting of investment services is specified in RTS and ITS. These requirements are legally binding and should ensure harmonisation across Member States. However, they do not directly address the issue of digital platforms.

T.4  
 Visibility over the use of digital platforms home vs. host  
 Home authorities have stronger visibility of platform activities



Note: Number of NCAs claiming 'good' visibility of the use of digital platforms by authorised financial firms based in their jurisdictions (home authority) versus when firms provide cross-border services within their jurisdictions (host authority)  
 Sources: ESMA NCA survey on digital finance (2021)

33. Only nine NCAs specified the circumstances under which firms authorized by them as 'home' authority need to notify them of the use of a digital platform, highlighting that this is typically the case where the use of a digital platform qualifies as delegation and/or outsourcing or it represents a material change to the organisation of the firm. Three NCAs seemingly require a notification regardless of the circumstances. Conversely, 10 NCAs reported no notification at all.
34. When asked about the circumstances in which firms operating in their jurisdiction but not authorized by them as 'home' authority are required to notify of their intention to use a digital platform, the 14 NCAs that answered this question declared that there is no notification by firms operating through the freedom of establishment or in exercise of the freedom to provide services cross-border of their use of digital platforms. However, one NCA highlighted that such firms need to notify them of their intention to use tied agents or to distribute PRIIPS products locally. One NCA stated that firms only need to specify the type of service when seeking a license.
35. 17 NCAs consider not to have sufficient information to monitor interconnectedness risk arising from the use of digital platforms by financial firms in their jurisdiction. Five NCAs stated that they do not have the necessary technical and human resources to monitor forms of interconnectedness risk within and beyond the financial sector. One NCA stated that the role played by digital platforms in secondary markets was still unclear and that their cross-border features made any information gathering more challenging. Among those four NCAs that said that they had sufficient information to monitor interconnectedness, only one provided with details and highlighted the use of ad hoc information requests to firms.

36. 13 NCAs reported that they did not have sufficient information to monitor the use of tying/bundling practices via digital platforms, mainly because there were no systems in place to collect this information. One NCA stated that cross selling practices were reviewed as part of the supervisory activities at firms but no aggregated and systematic data on these practices was available. One NCA suggested that going forward the mandate of supervisory authorities could be expanded to include digital platforms where necessary. Seven NCAs that reported having a better picture of bundling practises rely on varied sources of information. Three NCAs stated that this type of information is usually included in the periodic reporting from regulated entities, other NCAs rely on less systematic communication channels (surveys, external meetings with different stakeholders). One NCA has national legislation limiting bundling practices, so they can monitor and ask for information on that legal basis.

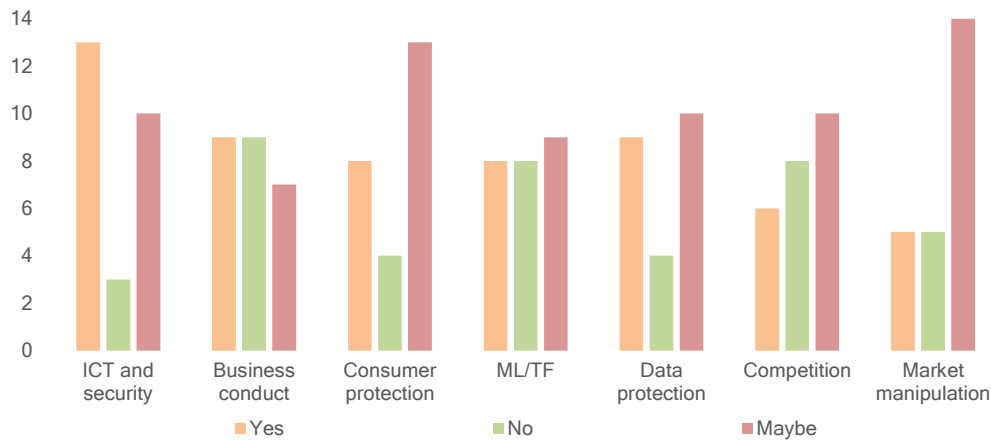
### **2.3. Supervision of specific risks**

37. 13 NCAs responded that the use of digital platforms for the marketing or conclusion with customers of contracts for financial products and services give rise to challenges regarding the supervision of financial sector activities and/or the monitoring of the regulatory perimeter in their jurisdiction.

38. The main challenge seemingly stems from the lack of visibility on the activities of these platforms. Indeed, eight NCA reported the lack of clarity as to which activities these platforms are undertaking and whether they qualify as financial activities, also because the platforms may fall outside of the regulated space, as a challenge. This challenge is typically exacerbated where the regulated firm uses a digital platform in another jurisdiction. Two NCAs highlighted the lack of adequate tools/resources to monitor this type of activity. One NCA said that the distinction between marketing activities and those of a tied agent were not clear cut in the case of aggregator platforms. Finally, one NCA said that this had not been a major source of concern so far, because of the limited activities involved. However, they could see potential issues arising in the future in relation to a single platform, e.g., a comparator or aggregator, providing access to numerous financial products and services across different sectors, specifically where the conclusion of the contract were to happen on this platform. Five NCAs did not highlight challenges concerning the supervision of financial sector activities and/or the monitoring of the regulatory perimeter.

39. The vast majority of NCAs saw challenges (17 NCAs) or possible challenges (6 NCAs) regarding the cross-border supervision of financial sector activities in the EEA financial sector due to the use of digital platforms (see T.5).

T.5  
 Specific risk arising from the use of digital platforms  
 Limited visibility on the use of digital platforms by firms



Note: Specific risks and challenges brought by the use of digital platforms  
 Sources: ESMA NCA survey on digital finance (2021)

40. A key challenge reported by NCAs is the lack of harmonisation across Member States when it comes to the legal qualification of such platforms, and hence the applicable regulatory provisions, which can give rise to regulatory arbitrage. One NCA highlighted the specific example of digital platforms that may qualify as bulletin boards. Another challenge has to do with the home/host supervisory framework, which may not work as well as intended, for example because the home NCA is not in the position to focus its supervision on this type of activity and the host NCA does not have supervisory powers. The home/host framework may not prove effective either when activities are carried out under the freedom to provide services regime. In addition, in case the licensed entity infringes the rules, it may be difficult to get relevant data and documents from a digital platform operating in another jurisdiction. Other NCAs pointed out the difficulty to identify the legal entity behind the platform, e.g., because the platform includes references to different investment firms, sometimes from EU and non-EU countries, belonging to the same group. Two NCAs recommended to increase cooperation among NCAs to address those challenges. Another highlighted that the promotion and distribution of investment services and financial instruments through means of distance communication to retail clients is specifically regulated at national level.
41. Many NCAs consider that the use of digital platforms brings challenges (12 NCAs) or possible challenges (10 NCAs) when it comes to the supervision of ICT and (cyber) security risks. They also note that these risks, and the level of vulnerability vary depending on the system stability, hacking resistance, the use of third-party technology providers (e.g., for cloud services) and possible failure risk of other infrastructures.
42. A first challenge for supervisors is to understand the way in which those digital platforms work. A second challenge lies with the fragmentation of the value chains, which makes it more difficult to ensure that the proper controls are in place, especially if some components of the platforms are located outside the jurisdiction of the NCA. The protection of customer data is an important issue in that respect. Also, disruptions at the platform level could reflect



negatively on the licensed entity. One NCA highlighted the need to have proper SLAs in place and knowledgeable staff at the regulated firm and risks attached to the lack of link maintained between the physical IT infrastructure and the business application of the regulated firm. Another NCA highlighted the need to monitor and act on these developments on a Union-wide basis and to build necessary expertise at supervisors.

43. Views were mixed among NCAs as to whether the use of digital platforms gave rise to specific supervisory challenges in relation to conduct of business rules. Some NCAs perceive the speed and scale at which entities can communicate with their consumers and promote their services through digital platforms as a challenge. For example, entities making use of platforms can reach investors, including retail, in a very short timeframe and if the marketing communication is non-compliant, it becomes more difficult from a supervisory point of view to protect the consumer. As already highlighted in other questions, another challenge is to understand the technology behind the platform being used, which links to the business model of the provider, and the lack of adequate tools/resources to monitor this type of activity (qualified personnel such as IT auditors), especially when the financial firm and digital platforms are not from the same jurisdiction. Yet, one NCA pointed out that digitalisation, assuming that the parameters are properly defined and coded, can facilitate regulatory compliance and supervision. One NCA highlighted the need for cooperation with other NCAs because of the cross-border activities involved.
44. NCAs seem to agree that the use of digital platforms brings challenges to the protection of consumers, although these challenges may not be proven yet. NCAs see two main challenges in relation to investor protection. First, digital platforms facilitate cross-border activities and the offer of services to local investors, both by national and non-national entities. This makes supervision, and hence investor protection more challenging, e.g., because of the need to consider different data and languages and sometimes unregulated entities. Also, it can make addressing possible infringements more difficult if the cooperation with the regulator from that country is not working properly. Second, there may be a lack of information to customers. In case a platform is offering both regulated and unregulated financial services, clients may not know exactly which products/services are regulated. There may also be confusion as to which products correspond to which suitability / appropriateness tests and compensation schemes.
45. One NCA observed that the use of digital platforms often involves pervasive promotional and marketing tools like e-mail, chat, social networks, telephone solicitations and other forms of interaction on web often not requested by the potential investor. One NCA mentioned particular issues in relation to firms marketing complex financial instruments such as CFDs on their platforms cross border. Another mentioned scams linked to the use of digital platforms by unregulated firms. Finally, another problem is that platforms tend to become or strive to become oligopolies or monopolies (“Winner-takes-it-all”) based on network effects. This market power could harm competition and consumers. Another aspect is data ownership - whether the data is held directly by the platform or if a third party is included in the chain. Two NCAs thought that consumers should be better protected, including through enhanced transparency provisions on the risks involved in the use of platforms.

46. Similarly, 17 NCAs reported possible challenges in relation to money laundering/terrorist financing where regulated firms use digital platforms. Five NCAs consider that the remote access (no face-to-face contractual signature) associated with the use of digital platforms is susceptible to the misappropriation of the digital identity of the customer, which is a concern for AML/CTF combat and prevention. One NCA sees a particular risk where the regulated entity uses a digital platform and at the same time outsources the client due diligence process. However, they are of the view that this risk is manageable, due to the number of IT solutions that allow for good AML/CFT monitoring already in place. Similarly, another NCA believes that the individual features of RegTech solutions may lower those risks and that a case-by-case analysis is needed. One NCA said that digital platforms should be subject to requirements of transparency concerning the ownership of the funds and subsequently of the financial products and services offered and that they should be obliged to report to the competent authorities any suspicious behaviour or transactions.
47. 19 NCAs see data protection and privacy as a potential challenge associated with the use of digital platforms. Four NCAs highlighted an increase in data protection and privacy risks in case customer information is stored and/or transferred to a jurisdiction not covered by EU regulations. Ensuring compliance with GDPR may be challenging in this respect. One NCA noted that digital platforms can expose customers to unsolicited offers, e.g., if their data are transferred to partners of the financial institutions. The sharing of data within a group is another source of risk. One NCA saw particular risks to the treatment of customer data and their confidentiality in payment for order flow business models. Two NCAs reported that they did not have competences in this realm.
48. A majority of NCAs reported possible competition issues because of the use of digital platforms but only few provided details on those issues, and eight NCAs did not see issues.
49. One NCA sees the development of platforms whereby no or reduced fees are offered in exchange of a minimum invested amount as a potential risk to fair competition, also considering their attractiveness towards younger investors. In particular, the payment for order flow (PFOF) business model may represent a competitive issue for more traditional firms. Two NCAs highlighted the competitive edge of entities capable of leveraging on data and one NCA underlined concentration risk. Other NAs highlighted that they do not have competences in competition. The one authority that referred to PFOF business models insisted on the need to enforce MiFID rules to avoid any possible competitive issues with other MTFs/OTFs operating in the EU in compliance with the applicable framework.
50. NCAs did not seem very convinced that the use of platforms created market manipulation issues, 14 saying 'maybe' and the rest equally split between 'yes' and 'no'. One NCA highlighted possible issues in case the digital platform is managed by third parties that allow for more than the strict closing of transactions or if the anonymity of users is facilitated. Another pointed to the fact that these platforms may be unregulated.
51. Two NCAs referred to the Gamestop case, which brought to light a number of challenges linked to the use of digital platforms for concluding transactions on listed shares. While the compliance of these cases with the regulatory framework on market abuse is still under analysis, there could be a link between the use of social media and financial forums and the spread of specific digital platforms, which could create the conditions for market abuse conducts. On a related topic, two NCAs highlighted that the so called "social trading", "copy

trading" and "mirror trading" investment services offered by some digital platforms could possibly give rise to strategies such as pump and dump, trash and cash or abusive squeeze or the acceleration/ extension of a trend in short time frames. One NCA recommended to share experiences among NCAs on the topic and suggested that organizing a workshop on this issue would be useful.

52. NCAs seem to be rather of the view that firms have adequate controls and processes in place to oversee the specific risks emerging from the use of digital platforms although in terms of number of responses 'maybe' (12) outnumbered 'yes' (8). Two NCAs highlighted the strong KYC processes in place. Other NCAs made general references the regular risk monitoring and compliance processes and sectoral outsourcing provisions.

#### **2.4. Suitability of the regulatory perimeter and supervision structures**

53. NCAs expressed mixed views as to the existence of gaps in the current regulatory framework in relation to the use of digital platforms. Only seven NCAs reported such gaps and nine expressed the opposite view. Other NCAs did not respond or did not give a definite answer to this question.

54. Some NCAs highlighted that digital platforms allow for new business and marketing models, which can sometimes exacerbate risky behaviour on the part of investors. These developments require monitoring, with a view to better understand the risks and benefits involved and assess whether the existing rules require some adaptations. On that last point one NCA said that the existing regulation was not up to date with technological developments. Another NCA mentioned the upcoming DSA and the EC Digital Strategy as possibly addressing the regulatory gaps, although they were still in the process of assessing the full effects of those rules. One NCA said that the use of digital platform by financial market infrastructures was covered by generic provisions related to the outsourcing of services. Other NCAs alluded to cross border issues, e.g., the difficulty to obtain in a timely manner the necessary data from other competent authorities. One NCA recommended introducing a list of "approved domains" of authorized investment firms to avoid that an unauthorized legal entity, especially when based in a non-EU country, uses references to EU financial firms in its digital platform. When it comes to PFOF, the same NCA suggested enhanced provisions, including for the management of conflicts of interest and the controls in place. For OTFs, they highlighted a possible need to further clarify the rules around the definition of multilateral systems under MiFID II which in some cases may cover these digital platforms.

55. The majority of NCAs saw a need (10 NCAs) or potential need (8 NCAs) to enhance supervisory practises in relation to the use of digital platforms. Four NCAs are in favour of stronger convergence measures with a view to foster greater harmonization across the single market. One NCA insisted on the need to discuss and develop these measures at the European Commission and Member States level.

56. Two NCAs would see merit in widening the scope of the existing supervisory framework to better capture such digital platforms if necessary. Two NCAs mentioned challenges arising from the use of the passporting regime by digital platforms to provide services across the EU, including sometimes to aggressively market risky products. One of them recommended exploring the correlation between the geographical location and the

business models of the platforms to assess whether differences in supervisory practices may affect the level playing field.

57. Only a minority of NCAs felt that they had adequate capacities and skills to monitor online services. Seven NCAs reported that they lacked the relevant technological expertise and tools and eight more said that they were unsure that their resources were adequate. This is mainly due to technological innovation and new business models at financial firms, which require new skills and monitoring tools.
58. One NCA in particular expects that many NCAs will struggle to keep pace with these rapid developments and growing digitalisation at firms. Resources constraints and the ability to attract experts in the field are key challenges in this respect. More staff training would be useful and one NCA has already rolled out training in the area of digital platforms. Another NCA highlighted that new technologies such as AI and ML could be useful to support supervision. Regarding the provision of online services by third country firms, two NCAs pointed out that NCAs' powers were limited and generally based on cooperation arrangements with third country authorities.
59. 15 NCAs did not see legal obstacles or regulatory impediments to the use of digital platforms. Yet, four NCAs highlighted the lack of harmonization of certain areas of the legislation, namely the classification of platforms, marketing rules and identity verification.
60. 12 NCAs did not see the need to define new regulated activities at the EU level. To support this view, one NCA noted the upcoming MiCA and DORA legislative proposals which are intended to address digitalization and the fact that MiFID II covers most investment services already. Those NCAs that saw a need or a potential need for new regulated activities suggested to (i) set minimum requirements and/or basic principles by which institutions should abide by with a view to ensure that they operate and provide services in a standardised way ; (ii) set stronger rules when it comes to market manipulation and; (iii) carry out an in-depth assessment of the role of data vendors on the development of prices for market data, as already suggested by ESMA in its Review Report no. 1 on the cost of market data.
61. Three NCAs reported some planned changes to their national regulatory or supervisory framework in relation to digital platforms in the next 5 years. These include: a legislative proposal to strengthen the financial market integrity, which includes changes to the supervisory structure and the powers of the NCA when examining outsourcing activities by financial service companies, including outsourcing arrangements to digital service providers, changes to the regulation for retail payment systems in connection with DORA and ICT guidelines.
62. Four NCAs anticipate a need for implementing or accompanying national legislative acts, in relation to the recent EU initiatives on digitalisation, e.g., DSA. One NCA may develop closer supervision practices for entities from other MS in cooperation with home country authorities and others measures such as the search and identification of unauthorised platforms with new tools (SupTech). The same authority believes that from a regulatory standpoint the host country authority should have more power to act in a timely manner.
63. Five NCAs provided examples of cooperation between different competent authorities in relation to digital platforms. Regarding cooperation within the same jurisdiction, three NCAs

expressed the importance of establishing communication channels with national data, consumer protection and competition authorities in order to adequately capture the interaction of regulatory areas with each other. Three NCAs pointed out at cross-border cooperation, either direct cooperation between home/host authorities or through international for a, e.g., IOSCO.

64. Additional comments from NCAs included: (i) the importance of good cooperation between home and host authorities. In that respect, a host authority should be entitled to act promptly vis-a-vis entities acting under the freedom to provide services in its country; (ii) the need to consider social media platforms and (iii) the need to consider the capacity of those platforms to reach a wide range of clients cross-border.

## 5 Mixed Activity Groups

65. Of the 28 countries, only two NCAs responded to have identified MAGs and/or Big Techs providing financial services through subsidiary undertakings. One NCA provided further details referring to a MAG in the energy sector and another MAG with a subsidiary providing investment services under MiFID II with less than 5% share of financial activities in the total group's activities. The second NCA noted that the MAGs in their jurisdiction (property managers or project developers) use closed-ended funds as an option to finance or to distribute to the investment market their properties (with the manager of the fund being a subsidiary of the MAG). In other sections of the survey, two other NCAs provided comments on Big Tech companies either partnering with local licensed entities or applying for an electronic money institution license.
66. Only six NCAs believe they have good visibility over the structure, governance, and business model of MAGs in their jurisdictions. Nine NCAs responded they do not have such visibility, while thirteen did not provide an answer. Out of those responding negatively, only one NCA provided examples of unclear and/or unsupervised intra-group links, referring to asset management firms (yet they also noted that ambiguities are addressed in the supervisory dialog between the NCA and the firm).
67. 11 NCAs did not provide an answer to the question about new/exacerbated risks not captured by the current regulatory framework. 10 NCAs responded that they do not see such emerging risks and only four NCAs answered that these new risks do exist. Two NCAs referred to the concentration risk, one NCA mentioned spill over effects and lack of governance over some processes in the tech framework. One NCA commented that the risks of MAGs can be deemed to be systemic due to the capacity of BigTech to quickly scale up offerings of financial services.
68. 20 NCAs did not provide an answer to the question on a risk of unlevel playing field between traditional ('solo') financial firms and MAGs. Two NCAs do not see issues with unlevel playing field while the remaining NCAs see this risk as existing or possible. Two NCAs mentioned related risks of regulatory arbitrage and supervisory convergence across Member States, concentration, and abuse of market power. One NCA explained that 'solo' financial institutions are subject to safety and soundness requirements, but MAGs might not be subject to the same rules, and this leads to unlevel playing field.

### **MAGs related regulation and supervision**

69. 13 NCAs did not provide an answer on whether the current regulatory framework is adequate for MAGs. 10 NCAs consider the existing framework fit for MAGs and five NCAs see the need to adapt the framework for the MAGs practices. Very few comments on the regulatory gaps referred to the potential conflict of interests, operational risks in provision of multiple services and concentration risk. One NCA characterised the existing regulatory framework as fragmented. One NCA stressed that particular attention should be focused on the use of data concerning potential investors held by BigTechs and collected through their other services.
70. Four NCAs see the need to enhance supervisory practices in relation to MAGs and seven NCAs are less certain but still believe that such enhancement might be needed. One NCA commented that centralised supervision could reinforce the supervisory tools available to EU competent authorities and contribute to more comprehensive understanding of the operation of MAGs across the EU. One NCA proposed knowledge sharing between NCAs and one NCA suggested supervisory college as a structure for MAGs' supervision.
71. 13 NCAs believe that there might be a need for new cooperation and coordination arrangements between financial supervisors and other authorities (data, competition, consumer protection, AML/CFT, cyber) to ensure effective supervision of MAGs. Five NCAs do not see the need for new arrangements and ten NCAs did not provide an answer. No more comments were provided about the modalities of such cooperation except one suggestion to align it with DORA and Digital Finance Strategy.
72. Nine NCAs believe that there might be a need for a new framework for the regulation and supervision of MAGs on a consolidated basis and two NCAs are certain about this need. Seven NCAs do not consider that a framework on a consolidated basis is needed. 10 NCAs did not provide an answer. One NCA commented that a new framework should enable financial supervisors to interact with MAGs as a whole and not only with the financial entities of a MAG, as the separation of the entities in the group can be apparent and artificial. The key benefit would be a full picture of the risks of certain business models. One NCA suggested that the first step in developing a framework would be to develop a more detailed definition of MAGs covering the nature of the activities engaged in and their business models. Crafting this definition would be very challenging considering the diversity of business and organisational models.
73. In comments to this section one NCA reiterated the complexity of cross-border element of MAGs, namely the challenge with determining whether financial services of a MAG are provided in Europe.