

Call for evidence

Digital Finance



Responding to this paper

ESMA invites comments on this paper and in particular on the specific questions summarised in Appendix 1. Responses are most helpful if they:

- respond to the question stated;
- contain a clear rationale;
- give concrete examples

ESMA will consider all responses received by **1 August 2021**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_DCFE_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_DCFE_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_DCFE_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Call for Evidence on Digital Finance").

Publication of responses

All contributions received will be published following the close of the call for evidence, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult



you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper

All interested stakeholders are invited to respond to this call for evidence.

This call for evidence is primarily of interest to:

- (i) Financial firms relying on third-parties, in particular technology firms, to fulfil critical or important functions;
- (ii) Third-parties, in particular technology firms, on which financial firms rely to fulfil critical or important functions;
- (iii) Technology firms providing financial services, either directly or through partnerships with financial firms;
- (iv) Platforms marketing or providing access to different financial services;
- (v) Groups combining financial and non-financial activities, also known as mixed activity groups.

Abbreviations and definitions

Abbreviations

EBA	European Banking Authority
EC	European Commission
ESAs	European Supervisory Authorities
EIOPA	European Insurance and Occupational Pensions Authority
ESMA	European Securities and Markets Authority
EU	European Union
ICT	Information and Communication Technology
MAGs	Mixed-activity groups
NCA	National Competent Authority

Definitions

'Financial firm' means any firm falling within ESMA's remit, including (i) alternative investment fund managers of 'AIFMs' as defined in Article 4(1)(b) of the AIFMD and depositaries as referred to in Article 21(3) of AIFMD ('depositaries of alternative investment funds (AIFs)'); (ii) management companies as defined in Article 2(1)(b) of the UCITS Directive ("UCITS management companies") and depositaries as defined in Article 2(1)(a) of UCITS Directive ("depositaries of UCITS"); (iii) central counterparties (CCPs) as defined in Article 2(1) of EMIR and Tier 2 third-country CCPs within the meaning of Article 25(2a) of EMIR which comply with the relevant EMIR requirements pursuant to Article 25(2b)(a) of EMIR; (iv) trade repositories as defined in Article 2(2) of EMIR and in Article 3(1) of SFTR; (v) investment firms as defined in Article 4(1)(1) of MiFID II and credit institutions as defined in Article 4(1)(27) of MiFID II, which carry out investment services and activities within the meaning of Article 4(1)(2) of MiFID II; (vi) data reporting services providers as defined in Article 4(1)(63) of MiFID II; (vii) market operators of trading venues within the meaning of Article 4(1)(24) of MiFID II; (viii) central securities depositories (CSDs) as defined in Article 2(1)(1) of CSDR; (ix) credit rating agencies as defined in Article 3(1)(b) of the CRA Regulation; (x) securitisation repositories as defined in

Article 2(23) of SECR; or (xi) administrators of critical benchmarks as defined in Article 3(1)(25) of the Benchmarks Regulation.

‘Financial service’ and ‘financial product’ means any financial service and product falling within ESMA’s remit, i.e., any financial service and product provided by a financial firm as defined above. Please note that banking, payment, credit and insurance services and products are excluded from the scope of the call for evidence as they fall within EBA’s and EIOPA’s remit.

‘Platform’ means any digital platform that enables financial firms directly (or indirectly using a regulated or unregulated intermediary) to market to investors, and/or conclude with investors contracts for, financial products and services. The definition of ‘platform’ aims to be both ‘model’ and ‘technology-neutral’. Examples of platforms that are relevant for this call for evidence include but are not limited to technical infrastructures used by financial firms to market or distribute different financial products and services, and enabling investors to access products and services provided by different financial firms, such as fund distribution platforms, robo-advisors and on-line trading platforms. Those technical infrastructures that have been developed by financial firms for their sole individual benefit are outside of the scope of this call for evidence.

‘Mixed activity group’ means a group of undertakings (a parent undertaking and its subsidiary undertakings) conducting both financial and non-financial activities.

Table of Contents

1	Executive Summary	7
2	Introduction	8
3	More fragmented or non-integrated value chains	12
4	Platforms and bundling of various financial services.....	19
5	Risks of groups combining different activities	23

1 Executive Summary

Reasons for publication

Technological innovation is transforming financial services at an unprecedented speed, by facilitating new business models and services and the entrance of new market participants. Covid-19 is accelerating this shift and the digitalisation of financial services. These changes bring a host of opportunities, including the prospect of better financial services for businesses and consumers and greater financial inclusion. Yet, they raise challenges as well, as they can contribute to introduce or exacerbate new risks. Also, the existing regulatory and supervisory framework may not fully capture and address these new developments.

In September 2020, the European Commission (EC) published a digital finance package¹ with the aim to embrace digital finance in the EU. Following on the package, in February 2021, the EC set out a request for technical advice² to the European Supervisory Authorities (ESAs) on three main issues, namely (i) the growing fragmentation of value chains in finance, (ii) digital platforms and (iii) groups combining financial and non-financial activities. In particular, the ESAs are requested to assess the regulatory and supervisory challenges brought by these developments and the way in which they could be addressed. ESMA is seeking feedback from external stakeholders to inform its work on the matter.

Contents

Section 2 explains the background of this call for evidence. Sections 3, 4 and 5 set out the topics on which ESMA is asking for feedback and the questions. Appendix 1 summarises the questions.

Next Steps

ESMA will consider the information received through this call for evidence when drafting its response to the EC. ESMA, together with the other ESAs, need to deliver a report to the EC by 31 January 2022. The technical advice received from the ESAs will not prejudice the EC's decisions in any way.

¹ [Digital finance package | European Commission \(europa.eu\)](https://ec.europa.eu/press/press-releases/2020/09/20200924-digital-finance-package)

² https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/210202-call-advice-esas-digital-finance_en.pdf

2 Introduction

1. Digitalisation is transforming society, the economy and the financial sector. This transformation, and the application of innovative technologies in the EU financial sector, has the potential to benefit people and companies. By facilitating the entry of new market participants, reducing geographical barriers and promoting greater transparency in the provision of financial services, technological innovation can provide better financial services to a wider range of businesses and consumers, possibly at a lower cost. It can also foster financial inclusion.
2. Meanwhile, those changes are not exempt of challenges. The entry of - large and small - technology companies in financial services and the growing reliance on those companies by financial firms can give rise to new forms of risks, e.g., in relation to security, interconnectedness, concentration and competition.³ These changes raise specific regulatory and supervisory challenges as well, including due to their global and cross-sectoral nature and the risk of unlevel playing field.
3. The EC aims to address the challenges and risks attached to digital transformation by proposing, where relevant, adaptations to the existing legislative frameworks by mid-2022. To prepare these actions, and considering that regulation should be technology neutral according to the ‘same activity, same risk, same rule’ principle, the EC is requesting technical advice from the ESAs on the following key issues⁴:
 - a. more fragmented or non-integrated value chains arising as a result of the growing reliance by financial firms on third parties for the delivery of their services and the entry of technology companies in financial services;
 - b. platforms and bundling various financial services;
 - c. groups combining different activities, namely mixed activity groups providing both financial and non-financial services.
4. Importantly, the recent legislative proposals for the Digital Markets Act (DMA)⁵ – adopted on 15 December 2020 – and Digital Operational Resilience Regulation (DORA)⁶ intend to address some

³ For a detailed introduction on how BigTech firms are entering the financial services sector and the possible challenges and benefits associated with this development, please have a look at [ESMA's 'Trends, Risks and Vulnerabilities report 1/2020'](#).

⁴ The EC is also asking EBA for input in the areas of protection of client funds and non-bank lending.

⁵ https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en

⁶ https://ec.europa.eu/info/publications/200924-digital-finance-proposals_en

of the above risks and challenges already. DMA proposes new ex-ante rules for gatekeeper platforms as well as a new supervisory framework at EU level to address conduct and competition harm risks. Most of the large technology companies which are currently offering financial services are likely to fall into the scope of this proposal. Similarly, DORA proposes a new oversight framework for those ICT service providers that are critical to the financial sector, which is likely to apply to most of the large technology companies to the extent that they provide ICT services to financial firms. The framework aims to monitor and address concentration risk and systemic risk that may arise from critical third-party provision of ICT services. However, other gaps and issues, e.g., in relation to conduct or prudential risks or cooperation between relevant competent authorities, may be left unaddressed and require further adaptations to the existing regulatory and supervisory frameworks.

5. With this call for evidence (CfE) ESMA seeks the input of market participants, technology companies and other stakeholders on those remaining gaps and issues that would need to be addressed.
6. Noteworthy, ESMA is cooperating closely with EBA and EIOPA on these matters, leveraging on the work already undertaken, for example in the form of a survey on digital platforms to the industry⁷ for what concerns EBA or a Discussion Paper on the (re)insurance value chain and new business models arising from digitalization⁸ for what concerns EIOPA.

⁷ <https://www.eba.europa.eu/financial-innovation-and-fintech/fintech-knowledge-hub/regtech-industry-survey>

⁸ [EIOPA \(2020\). Discussion Paper on the \(re\)insurance value chain and new business models arising from digitalization.](#)

General information about respondent

Name of the company / organisation	DekaBank
Activity	Other
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Q1 Please insert here any general observations or comments that you would like to make on this call for evidence, including how relevant digital finance may be to your own activities.

<ESMA_QUESTION_DCFE_1>

DekaBank is the securities service provider (*Wertpapierhaus*) of the German Savings Banks Group.

We believe that the potential of technological innovation goes far beyond simply digitising the status quo.

From a merely technological point of view DLT-applications for cash and securities transfer open up a wide range of possibilities in both trading and post-trading activities. DLT-platforms can bundle various financial services (from tokenisation of conventional assets to issuance of native crypto-assets, from trading to custody services) from even different financial firms. On the long run, blockchain and DLT will lead to a convergence of front- and back-office processes into a trusted single point of truth for transactional data. Decentralized Finance (DeFi) as it happens right now in the wild in the Ethereum ecosystem is a good preview of the future of the financial infrastructure.

This is why we, as a financial institution, are actively committed to digital transformation. From a traditional bank's perspective the digital transformation effort is significant. It ranges from becoming familiar with foundational tools (smart contracts, wallets, cloud) and new digital financial assets to adapting network and information systems and getting in touch with new ecosystem players and new ways of offering financial services.

One of the issues we face at this stage is the lack of harmonisation and standardisation in the Single Market. Interoperability between digital services and products needs common standards, a common set rules on features and technical aspects, a common tech-neutral taxonomy and a harmonised regulatory framework. We would welcome if ESMA would play an active role here as international standard setters, by promoting and developing European or even global standards.

Another issue is that the existing regulatory framework is based on bilateral relationships (for example, outsourcing regulation and legal provision on settlement accounts), while a feature of new technologies, such as cloud, and DLT, is their distributed nature. These technologies are based on multilateral relationships, which hardly fit into existing regulation.

These are just some of the challenges we are currently facing, which show the importance of the regulatory framework for digital innovation. In these regards, we highly appreciate the regulation proposals of the Digital Finance Package. At the same time, we would welcome redefinitions of terms and established concepts in existing regulation (such as SFD, CSDR).

<ESMA_QUESTION_DCFE_1>

3 More fragmented or non-integrated value chains

7. Technological developments are increasing the extent to and ways by which financial firms rely on third-parties, in particular technology firms, for the delivery of services, thereby leading to more fragmented or non-integrated value chains. This dependency can take different forms, e.g., outsourcing, partnerships, cooperation agreements or joint ventures. Examples include cloud outsourcing arrangements or the use of technology companies for data analytics, risk management or marketing purposes. In addition, digital innovation facilitates the entry of technology companies in financial services, again leading to potentially closer interlinks and increased inter-dependency between those companies and financial firms.
8. These new business models may entail various benefits, such as increased efficiency. However, they may also introduce new risks and may not be fully captured by the existing regulatory framework. Indeed, the entities contributing to the provision of the financial services may be subject to a set of individual requirements in the absence of a holistic approach or even fall outside of the regulated space. These models may also raise challenges in relation to cross-border supervision, cooperation between different competent authorities, as well as legal responsibility for conduct, operational resilience of the entire value chain and prudential treatment.
9. This call for evidence aims to collect evidence on new material developments in the evolution and fragmentation of value chains and the extent to which this phenomenon introduces new risks and/or create regulatory and supervisory challenges.

Questions

- Q2 Do you observe changes in value chains for financial services (e.g., more fragmented value chains) as a result of technological innovation or the entry of technology firms? How different is the situation now when compared to pre-Covid?**

<ESMA_QUESTION_DCFE_2>

When it comes to value chains, having all securities recorded in a decentralised ledger could, in theory, enable the merger of trading and post-trading activities. The possibility to have real time settlement could potentially supersede the need to have trading and settlement activities performed by separate market infrastructures. The benefits are clear: Real time (or near real time) settlement would reduce settlement fails, eliminate the need to reconcile information across different systems and, finally, reduce the number of transfer orders requiring SFD protection.

At the same time, we are aware that the current digital landscape is shaped by tailored DLT-based solutions developed by individual financial institutions or specialised technology firms. We don't see any impact from covid on such digital landscape. The adoption of innovative technologies based on DLT and smart contracts has speeded up in recent years, but the coincidence with Covid in our opinion is purely coincidental. Therefore, we cannot draw a line between the pre-pandemic and the post-pandemic digital landscape.

However, as opposed to what asserted under sections 7-9 above, we believe that fragmentation does not arise as a result of the growing reliance by financial firms on third parties for the delivery of their services and the entry of technology companies in financial services.

Rather, fragmented or non-integrated value chains are the result of lack of standards and common rules on features and technical aspects. Without continuing harmonisation and common standards, industry ends up with what ROFIEG calls a “digital Tower of Babel”, where market participants simply digitise the status quo

(https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/191113-report-expert-group-regulatory-obstacles-financial-innovation_en.pdf).

In terms of standardisation, some interesting initiatives have been developed by market participants. A concrete example, where common standards were set and accepted by the market is the so-called “Spunta-Project” by the Italian Banking Association. The SPUNTA consortium has set up a productive DLT network with more than 100 participants and has more than 300M+ productive transactions for its bank account reconciliation use case. It remains to be seen, however, whether this model is scalable at supranational level since reconciliation practices vary significantly at national level.

Another initiative worth mentioning is the German Swiat-Platform (<http://swiat.digital>), where even different functions (from issuance of cryptoassets, to settlement and to tokenisation of traditional securities) are coexist on one platform bundling different modules.

In general, we would welcome if ESMA would play an active role here as international standard setter.

<ESMA_QUESTION_DCFE_2>

Q3 Do you consider that financial firms are increasingly relying on technology firms to fulfil critical or important functions? If so, for which particular functions? Are there particular types of technologies (e.g., Big Data, artificial intelligence, cloud computing, others) and technology firms involved?

A type of technology where financial firms are increasingly relying on technology firms are cloud applications, that offer technological solutions for financial institutions to innovate, scale up and save costs. Cloud applications are key technologies in critical functions such as, by way of example, custody of cryptoassets and safekeeping of private keys.

The reliance of financial firms on technology firms in this case comes from the availability of a limited number of critical (mostly third-party) service providers. In these regards, we welcome the approach laid down in the EU's proposal Digital Operational Resilience Act (DORA) to have principle-based rules for monitoring of risk arising in the context of outsourced functions to third-party services providers.

Q4 Do you have examples of technology companies providing financial services in the EU, either directly or through arrangements with financial firms? If so, please briefly describe their business model and the type of financial services that they provide.

<ESMA_QUESTION_DCFE_4>

In the context of payment solutions, some Big Techs have entered the market like Paypal, Apple (Apple Pay), Google (Google Pay) or Amazon (Amazon Pay) offering payment services as kind of overlay service and even bank-related services. Apart from that it is also in some cases possible to pay in bitcoin (Tesla).

<ESMA_QUESTION_DCFE_4>

Q5 Do you have examples of technology companies being used by financial institutions in the EU to fulfil critical or important functions? If so, please briefly describe their business model and the way in which they contribute to, or facilitate, these critical or important functions.

<ESMA_QUESTION_DCFE_5>

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<ESMA_QUESTION_DCFE_5>

Q6 Do you see changes in the way or extent to which financial market data are being collected, used and disseminated by unregulated data service providers?

<ESMA_QUESTION_DCFE_6>

Financial market data becomes increasingly important and a positive effect of unregulated data service providers collecting, using and disseminating financial market data might be a chance to break open the oligo- and monopolistic use and dissemination of data by the data sources and big data providers.

However, the fact that currently market data providers seem to tighten their fee schedules and the licenses more and more makes it difficult for market participants to collect and use the data for data analytics etc. Hence, there is little room to explore the possibilities of the use of financial market data.

As regards data quality: more and more market data is available on the market, but there is still no consistent form of delivery, pricing, scheduling. We would welcome if the data service providers (like Bloomberg, Refinitiv) were more regulated in this respect.

<ESMA_QUESTION_DCFE_6>

Q7 What implications, if any, do changes in value chains (e.g., more fragmented value chains) have on your own activities? To which extent are you taking an active role in these changes?

<ESMA_QUESTION_DCFE_7>

If we could unlock the full opportunities from digital innovation, we would benefit from cost savings and efficiency gains. Just to mention one, DLT-solutions could make settlement procedures leaner and increase settlement efficiency. This is why we are fully committed to digital transformation even by designing and testing own digital solutions.

For a traditional bank's perspective, taking an active role in these changes means getting familiar with foundational tools, like wallets, distributed ledgers, smart-contracts and cloud and adapting internal information system infrastructures. Further, it is crucial to understand the functioning of new digital financial assets and rethink the way of offering financial services.

A further issue is integration of DLT-based solutions with existing architecture and conventional systems, interoperability with other DLT-Systems – all this in an environment with a low level of harmonisation and standardization.

From a legal point of view, it is essential to understand how native digital assets and corresponding EU-proposals (MiCA, Pilot Regime) fit into the current financial regulatory framework, both at EU and domestic level. The compatibility of conventional rules on the transfer of securities in a DLT context must be clarified, since in a DLT context transfer occurs on a peer-to-peer (P2P) basis and in conventional system it is intermediated. Existing regulatory framework is based on bilateral relationships (for example, outsourcing regulation and legal provision on settlement accounts), while a feature of new technologies, such as cloud and DLT, is their distributed nature.

<ESMA_QUESTION_DCFE_7>

Q8 Do you see new or exacerbated risks (e.g., to investor protection, financial stability, market integrity, security or level playing field) in relation to the reliance on technology firms by financial firms?

<ESMA_QUESTION_DCFE_8>

While the traditional role of technology in financial firms is well established, when it comes to cloud services and the way such technology is used new digital challenges arise. The cloud is more than flexible hardware capacity. It is becoming the source for running applications and providing banking services over the internet.

Today, cloud services are concentrated in the hands of a few large service providers, currently based outside the EU. The size and scale of the relevant platforms pose significant risks to operational resilience. In addition, the concentration of service providers raises questions about the imbalance of market power between cloud services providers and the individual firms that use them.

While cloud services providers operate globally, the responsibilities of regulators and supervisors are typically national and increasingly fragmented in their approaches.

In the cloud services sector, authorities also need to decide to what extent cloud services providers shall be regulated and how relevant the business itself needs to be supervised. We need to ensure that European financial services providers can use cloud services at least within an adequate framework to ensure their competitiveness in the global level playing field. In these regards, we welcome the EU's work on regulatory minimum standards to be included in contracts with critical third party service providers included in Art: 25 – 39 of DORA.

<ESMA_QUESTION_DCFE_8>

Q9 Do you see new or exacerbated risks (e.g., to investor protection, financial stability, market integrity, security or level playing field) in relation to the provision of financial services by technology companies?

<ESMA_QUESTION_DCFE_9>

Actually, technology companies are not seeking to provide financial services due to high entry barriers created by financial markets regulation. Rather, they position themselves as intermediaries directly at the interface to the customer. In the short term, this can have a positive impact as the consumer has access to a wider range of options.

However, by gaining increasing distribution power in this role, new risks may arise.

In terms of consumer protection: the producer of the service loses the connection to the client - the client can no longer judge how reliable the service provider is and the provider does not have detailed knowledge of the client's needs.

In terms of efficiency and competitiveness: there are several providers trying to make a margin out of the same service as before (direct contact customer - provider). This either needs to result in higher cost for the client or will limit the number of products available to him. The intermediary could steer the available products based on financial incentives of the providers.

<ESMA_QUESTION_DCFE_9>

Q10 Do you see new or exacerbated risks (e.g., to investor protection, financial stability, market integrity, security or level playing field) in relation to the collection, use and dissemination of financial market data by unregulated data service providers?

<ESMA_QUESTION_DCFE_10>

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<ESMA_QUESTION_DCFE_10>

Q11 Do you consider that some adaptations to the EU regulatory framework are needed to address the risks brought by changes in value chains?

<ESMA_QUESTION_DCFE_11>

A first step to support financial innovation in the Single Market would be a common technology-neutral taxonomy. This would not only facilitate digital communication among financial institutions, regulators and supervisors, improving clarity in terms of the regulatory framework. It would finally reduce fragmentation and support interoperability of systems.

A second step we deem crucial would be promoting EU-harmonization of issuance of digital assets and tokenization of securities and their custody. In most EU countries, the issuance of native digital assets does not even exist. In addition, rules on the transfer of securities are largely based on local rather than harmonised EU-legislation. Talking about harmonisation, overlaps of EU and national regulation should be avoided. An example is the recent regulation of crypto-custody in Germany, which is likely to interfere with the MiCA Regulation, once adopted.

With a view to boosting financial innovation in Europe, passporting regimes to providers of new financial services should be offered across the EU.

And finally established concepts and processes of the existing regulatory framework should be made tech neutral by redefining, for instance, concepts like “system”, “transfer order”, “bookentry”, “settlement account”.

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<ESMA_QUESTION_DCFE_11>

Q12 Do you consider that some adaptations to the EU regulatory framework are needed to unlock the benefits brought by changes in value chains?

<ESMA_QUESTION_DCFE_12>

A striking benefit of having all securities recorded in a decentralised ledger is the potential to merge of trading and post-trading activities. The possibility to have real time settlement could potentially supersede the need to have trading and settlement activities performed by separate market infrastructures.

Currently, the regulation of infrastructures for trade on the one and settlement on the other hand are two separate spheres. A merger of these spheres could bring benefits by possibly shortening the value chains and increase efficiency with regards to time and costs. The proposal for a DLT pilot regime should therefore include the possibility to test a combination of initial recording, trading and settlement of DLT securities transactions. Art. 4 (2) of the Pilot Regime is, in our view, a very important aspect since it will enable DLT transferable securities that are not recorded in a CSD in accordance with Article 3(2) of Regulation (EU) 909/2014 to be, instead, recorded on the DLT MTF’s distributed ledger.

<ESMA_QUESTION_DCFE_12>

Q13 Do you consider that there is a need to enhance supervisory practices, e.g., cross-border or cross-sectoral cooperation, in relation to changes in value chains?

<ESMA_QUESTION_DCFE_13>

The European regulatory framework should address possible concentration risks if many financial institutions rely on the same third party service provider. These service providers can pose a systemic risk for the financial sector on a European level. Therefore, we support a European oversight mechanism over these critical third party providers while properly including National Competent Authorities in the governance of such common oversight body.

<ESMA_QUESTION_DCFE_13>

Q14 Which recommendations, if any, would you make to EU regulators/supervisors to address opportunities and challenges brought by changes in value chains?

<ESMA_QUESTION_DCFE_14>

Before developing standards or adapting regulation, the EU should take a wait-and-see approach, giving projects the time to experiment. In these regards, we welcome the Pilot regime for market infrastructures based on DLT. Sandboxing should be adopted for many more areas: small, manageable projects that are open to the entire market and that are tested in short periods of time so that market participants and supervisors can gain important experience.

In addition to the tokenisation of the asset leg, it should also be possible for the cash leg to be purely digitally processed. The goal must be to enable automated delivery versus payment e.g. by a harmonizing project the entire market is involved. Concerning Delivery vs Payment with central-bank money, we should not wait 5+ years until CBDCs has been implemented, but already start with increasing the interoperability of existing payment systems like TARGET2 with Blockchain/DLT. There is already research on this conducted in 2018 by ECB (Stella Project, Phase 2 Report). Moreover, there are also promising approaches by Bank of England with RTGS Omnibus Accounts (<https://www.bankofengland.co.uk/news/2021/april/boe-publishes-policy-for-omnibus-accounts-in-rtgs>)

We would like to see more innovation in the European market, so that Europe becomes the leader in tokenized payments. Currently, activities seem to be unfolding primarily in response to external pressure (LIBRA/DIEM, Chinese digital central bank money, etc.). However, there are already projects that have been successfully implemented. For example, the Bundesbank has tested a trigger solution for the settlement of DLT-based securities in central bank money; another example is the Helvetia project of the Swiss National Bank, in which the asset leg was tokenized as well. However, these were not projects that were open to the entire market; often only a few market participants were involved. It is also not apparent what conclusions are drawn from these successful projects - a common thread of development is difficult to discern at present. Certainly, it is new technical and legal territory for everyone. Nevertheless we would like to discern a coherent common vision of those involved.

This is not to say that different strands should not be tried - quite the opposite. But this should be accompanied and completed by a joint assessment and conclusions and decision on the way forward.

<ESMA_QUESTION_DCFE_14>

Q15 Do you have any other observations or comments in relation to changes in value chains?

<ESMA_QUESTION_DCFE_15>

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<ESMA_QUESTION_DCFE_15>

4 Platforms and bundling of various financial services

10. Platforms can market and provide access to multiple different financial services, often from different financial firms. Different financial firms can also partner with technology firms to bundle a range of financial services which are then distributed through digital channels.
11. The financial firms and platform providers are not always part of the same group and sometimes operate in different EU Member States or third countries. In addition, the different financial services bundled on the platform may fall under separate sectorial regulations or outside of the scope of the EU financial services regulatory perimeter, which can leave certain risks unaddressed and raise specific supervisory challenges.
12. A more holistic approach to the regulation and supervision of these platforms and bundled services could be relevant, considering the increased risk that they can pose, regarding e.g. interaction with consumers and consumer protection, conduct of business, money laundering and operational risk.
13. The CfE is intended to help ESMA collect insights on the use of digital platforms in the EU the extent to which this phenomenon introduces new risks and/or create regulatory and supervisory challenges.

Questions

Q16 Do you have examples of platforms bundling different financial services from different financial firms in the EU? If so, please provide a brief description of the most prominent ones.

<ESMA_QUESTION_DCFE_16>

Most prominent market initiatives we observe in Germany, either concentrate on a specific financial service, or they have been designed by individual financial firms covering different services. For the time being, none of these platform bundles different financial services from different financial firms.

This applies also to certain DLT-solutions the ECB has analysed this year within a broader assessment of fragmentation and interoperability in the DLT-landscape (see Annex I of the Report Advisory Groups on Market Infrastructures for Securities and Collateral and for Payments, "The use of DLT in post-trade processes" 21. April 2021).

However, we believe it is just a question of time until market initiatives in the EU will reach a sufficient level of digital maturity to bundle different financial services from different financial firms in the EU.

<ESMA_QUESTION_DCFE_16>

Q17 Do you consider that the use of platforms by financial firms for the marketing or the conclusion with customers of financial products and services is widespread in the EU? Do you observe an increase in the use of platforms compared to pre-Covid?

<ESMA_QUESTION_DCFE_17>

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Q18 (To financial firms) As a financial firm, are you using platforms for the marketing or the conclusion with customers of your financial products and services? If yes, please provide a brief description of(i) the types of services provided by the platform, (ii) the arrangement in place with the platform (e.g., are you or the platform responsible for the governance and/or maintenance of the technical infrastructure and the interactions with customers), (iii) the extent and way in which the arrangement is disclosed to the customer, (iv) the tools and processes in place to ensure that the risks attached to the financial products and services are properly disclosed to the customers.

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Q19 (Same question to platforms) As a platform, do you facilitate the marketing or the conclusion with customers of financial products and services? If yes, please provide a brief description of(i) the types of services provided to financial firms, (ii) the arrangement in place with the financial firms (e.g., are you or the financial firm responsible for the governance and/or maintenance of the technical infrastructure and interactions with customers), (iii) the extent and way in which the arrangement is disclosed to the customer, (iv) the tools and processes in place to ensure that the risks attached to the financial products and services are properly disclosed to the customers.

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Q20 Which key opportunities and challenges do you see in relation to the use of platforms by financial firms?

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Q21 Do you consider any of the following risks to be new/exacerbated where financial firms use platforms for the marketing or conclusion with customers of contracts for financial products and services? Please explain (i) risk to financial stability, (ii) risk to investor protection, (iii) risks in relation to conduct of business, (iv) ICT and security risks, (v) money laundering / terrorism financing, (vi) risk to data protection and privacy, (vii) risk to fair competition, (viii) market manipulation, or (ix) other risks.

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Q22 (For financial firms) Which controls, and processes are in place to oversee the specific risks emerging from the use of platforms?

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Q23 Do you consider that some adaptations to the EU regulatory framework are needed to address the risks brought by the use of platforms?

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Q24 Do you consider that some adaptations to the EU regulatory framework are needed to unlock the benefits brought by the use of platforms?

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Q25 Does the use of platforms give rise to any challenges regarding the cross-border supervision of financial sector activities in the EU? Do you consider that there is a need to enhance supervisory practices, including convergence measures, in relation to the use of platforms?

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Q26 Which recommendations, if any, would you make to regulators/supervisors to address opportunities and challenges brought by the use of platforms?

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5 Risks of groups combining different activities

14. Large technology companies active in various sectors and forming mixed-activity groups increasingly enter the financial services sector, including through the establishment of their own subsidiaries for the provision of financial services. These groups can quickly scale up the offerings in financial services leveraging on vast amounts of customers' data collected through their affiliated entities and elevating intra-group dependencies on operating systems and processes. The capacity to use intra-group data and other processes within the group to support the provision of financial services raises challenges in relation to conduct, prudential and systemic risks and a possible detrimental effect to the level playing field between entities providing the same financial services as a part of a group versus a single entity.
15. Even though existing sectoral financial legislation already embeds approaches for group supervision, it does not provide a framework for coordinated supervision on a cross-sectoral basis for emerging types of mixed activity groups, as their financial activities usually represent only a limited share of their total balance sheet. Even when a group has a specialised financial subsidiary undertaking within its group, sectoral financial legislation would only apply to that subsidiary undertaking, with limited possibilities to supervise and prevent risks stemming from the interactions between the financial subsidiaries and the broader group.
16. The new emerging risks in relation to mixed-activity groups that build up substantial market share in financial services may not be captured by the existing EU legislation and by supervisory practices limited to regulated entities in the mixed-activity groups.
17. The call for evidence aims to collect evidence on whether (i) large technology companies as mixed-activity groups should be supervised specifically, (ii) how interdependencies within the groups, and potential risks stemming from, can be identified and addressed, and (iii) how supervisory cooperation can be improved for these groups.

Questions

Q27 Are you aware of mixed activity groups (MAGs), including BigTech groups, whose core business is not financial services but that have subsidiary undertakings that provide financial services in the EU?

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Q28 Which types of financial services do these entities provide?

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Q29 In such MAGs, how and to what extent the dependency of a subsidiary financial firm on its parent company and/or other subsidiaries of the same group influences the provision of the financial service?

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Q30 Do you see new or exacerbated risks in relation to MAGs?

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Q31 Do you consider that there is a risk of unlevel playing field between individual ('solo') financial firms and MAGs?

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Q32 In your opinion, is the current EU regulatory framework adequate for MAGs?

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Q33 Do you consider there is a need for new cooperation and coordination arrangements between financial supervisors and other authorities (data,



competition, consumer protection, AML/CFT, cyber) within the EU and/or with 3rd countries in order to ensure effective supervision of MAGs?

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