Call for evidence

Digital Finance

30 July 2021

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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'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.

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1 Executive Summary

Reasons for publication

Technological innovation is transforming financial services at an unprecedent 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 package[1] 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 advice[2] 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 prejudge the EC's decisions in any way.

[1] Digital finance package | European Commission (europa.eu)

[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 issues[4]:

    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

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[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

address some 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 industry[7] for what concerns EBA or a Discussion Paper on the (re)insurance value chain and new business models arising from digitalization[8] 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	European Fintech Association
Activity	Fintech
Are you representing an association?	☒
Country/Region	Belgium

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>

We are observing an increasing trend towards more fragmented value chains in financial services. However, we do not primarily see Covid-19 as the driver for this development, but rather an overall industry trend Fintech firms tend to focus on delivering what they are best at, and collaborate to combine forces. In practice, this puts them in partnerships with banks, with other fintechs, or with large technology companies, among other companies.

It’s important to note that today, nearly all financial firms are also digital providers - including incumbents. So in the discussion about fragmented value chains, drawing a clear line between technology companies and traditional financial services can be tricky. Still, we can delineate between firms that are operating in a regulated space (e.g. licenced as a payment institution) versus those who aren’t.
For example: Banking as a Service (BaaS) was intensified during the pandemic, as different investors tried to take advantage of the markets' momentum to "go online"; while bearing innovative ideas, they sought the BaaS opportunity to offer their own products. This has led to a significant increase of the discussions around how BaaS can affect and reformulate a big part of the financial markets within the EU, such as payments
<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>

Yes, we are observing increasing reliance in both core banking, but also supportive functions. We see technology firms providing services in areas such as cloud banking, but also other functions, such as the use of big data in recruiting.

For example: Cloud computing is a key area where fintechs work with technology companies. The comparatively low costs of cloud computing and additional security as well as the flexibility to solve

problems remotely has enabled European fintech companies to scale up quickly and efficiently. Removing or limiting fintechs' ability to utilise cloud computing from technology companies without competitive alternatives would be hugely detrimental to the sector as a whole.
<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., BigData, artificial intelligence, cloud computing, others) and technology firms involved?

<ESMA_QUESTION_DCFE_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DCFE_3>

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>

TYPE YOUR TEXT HERE

<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>

Today's financial services landscape may be more fragmented, but it's also more competitive and delivers better consumer choice, convenience and affordability. Firms focus on what they are best in and collaborate to combine forces - which often leads to the best possible solution for the customer. As specialised fintechs, our members take an active part in this process

<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>

As financial firms are increasingly relying on technology firms to a large extent, any negative impact that regulation or legislative decisions have on technology firms can potentially have a significant impact on financial firms. Also, outage incidents in cloud environments could have a significant impact directly to a firms customers, which could lead to versatile risks (i.e. reputational, etc.)

One example for the first point is C-311/18; Data Protection Commissioner v Facebook Ireland Limited, Maximillian Schrems governing transatlantic data flows.

<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>

The EU can proportionately address current risks that have arisen from this evolving landscape. While the financial services landscape has evolved, some of the regulation hasn't kept pace.

One clear example of this is the fact that payment institutions must still rely on partnering with commercial banks for access to the payments system as well as safeguarding funds, since out-of-date rules (Settlement Finality Directive) limit access to credit institutions only. The result: as non-banks have grown significantly over the past few years, this now presents a concentration risk. Unfortunately, this phenomenon has only been exacerbated by blanket de-risking of the PSP sector by banks. Opening up direct access to payment institutions and e-money institutions would mean fewer dependencies and reduced financial stability risk in case of a black swan event. These are the types of gaps that the EU should be filling through legislative action in response to this new, more fragmented landscape.

More broadly it's important that the EU financial regulatory framework is built in a way that ensures consumers are protected from new risks that arise, and at the same time allows them to benefit from cheaper, faster, and more convenient services.

Treating all players within the financial services value chain with a proportionate approach to the 'same activity, same risk, same rules' regulators will help fill any remaining regulatory gaps. Financial institutions partnering with other financial institutions or other third-parties should be allowed to utilise a risk-based approach in pursuing and maintaining these types of partnerships and dependencies.

Proportionate and risk-based assessments should be made on what risks fintechs' products *actually* present - rather than a rush to pull them under additional existing regimes that may be proportionate for some but not all. Applying additional oversight, e.g. applying the same oversight to banks as well as to EMIs or PIs implicitly supports incumbents. Applying the same cookie cutter approach to regulation means we will end up generating barriers to entry and creating companies based on an identical model (bank) when consumers would actually benefit from diversity in financial services. Additional regulation on non-financial partners in the financial services value chain must be careful to avoid an increase in regulatory burden for European fintechs aiming to compete on the global stage.

Fintechs have different risks, different products, different exposures and if you want to create a variety of models, and a competitive landscape, you need a regulatory approach that acknowledges the variation and responds in a robust, proportionate manner.
<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>

In this case a competition issue might arise, as the usage of this information could lead to market manipulation. In addition, concerns on how this information is preserved cannot be precluded.

<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>

Yes, see Q11.

<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>

Adaptations to the EU regulatory framework are needed to allow financial product providers to rely on KYC of marketplace providers to allow for better multi-product offerings.

KYC providers within the EU offer innovative services; consultation with them could be of great importance, as they can provide deep insights on how to improve customer experience in a secure way, while contributing to the consumer welfare.

At the same time, a unified approach to KYC requirements on EU level will help mitigate risk of fraud. (see also Q 20).

<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>

Enhanced supervisory practices for cross-border or cross-sectoral collaboration could contribute to the further materialization of the single financial market.<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>

see Q8

<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>

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<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>

Yes, especially with Covid-19, we have seen an increase in online shopping and, in turn, also an increase in online marketing by financial firms.

<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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<ESMA_QUESTION_DCFE_17>

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.

<ESMA_QUESTION_DCFE_18>

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<ESMA_QUESTION_DCFE_18>

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.

<ESMA_QUESTION_DCFE_19>

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<ESMA_QUESTION_DCFE_19>

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

<ESMA_QUESTION_DCFE_20>

We consider some of the risks to have become more pronounced compared to the situation pre-Covid:

(iv) ICT and security risks: Risk has become higher, as we see fraudulent activities primarily moving to the online space.

(v) money laundering / terrorism financing: We see an increased level of risk in relation to verification, as online verification might bear more risk, if it is poorly executed, in addition to the higher volumes of customers-to-be-verified. Examples for this would include inappropriate incentivisation of KYC providers or weak methods of verification being used.

(vi) risk to data protection and privacy: We are seeing a higher risk here due to an increased number of online and mobile transactions, along with corresponding information exchange. Moreover, platforms are more difficult to protect, as additional attack vectors cause more vulnerability.

(viii) market manipulation: We see exacerbated risk here via social media, examples for this would be the increase in the price of the stock of GameStop fuelled by discussions on Reddit

(ix) other risks: The risk of fraud has become more pronounced, especially in relation to identity theft (see also (v))

<ESMA_QUESTION_DCFE_20>

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.

<ESMA_QUESTION_DCFE_21>

A high number of additional controls have been put in place, especially in the areas of ICT/security, business continuity management, and outsourcing.

Moreover, in the area of product development, we are seeing a move towards privacy by design.

<ESMA_QUESTION_DCFE_21>

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

<ESMA_QUESTION_DCFE_22>

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<ESMA_QUESTION_DCFE_22>

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

<ESMA_QUESTION_DCFE_23>

We believe that adaptations to the EU regulatory framework are needed to

1. Ease the use of open banking to allow real multi-banking. The user experience is currently unfavourable due to an inconsistent implementation of the SCA requirements.

2. Allow financial product providers to rely on KYC of marketplace providers to allow for better multi-product offerings.

<ESMA_QUESTION_DCFE_23>

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

<ESMA_QUESTION_DCFE_24>

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<ESMA_QUESTION_DCFE_24>

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?

<ESMA_QUESTION_DCFE_25>

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<ESMA_QUESTION_DCFE_25>

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

<ESMA_QUESTION_DCFE_26>

As large platforms enter the financial services space, we expect the main risk to lay in the fact that platforms could, from one day to the next, potentially choose to tap into their billions of users to enter a segment and in turn quickly dominate the market. In order to encourage the emergence of innovative fintechs in Europe, it's important to support all sizes of technology firms and allow them to compete on level footing with larger firms. The EU has already taken action in this space with its Digital Markets Act, which should help to address some concerns and avoid market dominance.

Mixed activity groups and large platforms entering the financial services space may require a more comprehensive approach to supervision to capture these unique risks of market dominance.

Several large technology companies operating in the financial services space rely on bank rails - by buying a licenced entity, or by having bank sponsor access). For better oversight, regulators should allow non-banks to directly access financial infrastructures as it will mean that regulators can assess risks properly ahead of them joining, and maintain oversight along the way.

One other important aspect is the regulation of advertising and marketing on large platforms. Recently we have seen loopholes become apparent. For example, platforms should have to verify firms before they are allowed to advertise, especially financial services firms. The UK has already begun to take action in this space, with the Government's draft Online Safety Bill including an economic harms chapter to tackle user-generated financial fraud online. The Government's Department for Digital, Culture, Media & Sport is also currently undertaking a full review of online advertising, including measures to tackle fraud.

Nevertheless, any legislation aimed at technology firms may also have unintended consequences on mid-size financial technology companies.
<ESMA_QUESTION_DCFE_26>

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 establishement 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 withing the groups, and potential risks stemming from, can be identified and adressed, 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?

<ESMA_QUESTION_DCFE_27>

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<ESMA_QUESTION_DCFE_27>

Q28 Which types of financial services do these entities provide?

<ESMA_QUESTION_DCFE_28>

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<ESMA_QUESTION_DCFE_28>

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?

<ESMA_QUESTION_DCFE_29>

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<ESMA_QUESTION_DCFE_29>

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

<ESMA_QUESTION_DCFE_30>

We do believe that there is a risk of an unlevel playing field, as long as players are not regulated by risk, but by purpose. We do require a single set of legal and regulatory rules throughout Europe that adheres to the principle of "same services, same risks, same rules". This should include targeted regulation which uses the same rules to control the risks associated with the same services, regardless of who performs them.

<ESMA_QUESTION_DCFE_30>

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

<ESMA_QUESTION_DCFE_31>

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<ESMA_QUESTION_DCFE_31>

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

<ESMA_QUESTION_DCFE_32>

Taking into consideration the effects that Covid-19 has had on the way we live and work, we believe that we will likely see an even higher degree of cross-border finance flows, as individuals may no longer be required to live in the same country their employer is registered in. We would therefore advocate for more cooperation and coordination not only within the EU, but also involving 3rd countries.

<ESMA_QUESTION_DCFE_32>

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?

<ESMA_QUESTION_DCFE_33>

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