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| 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](http://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](http://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](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/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:

1. Financial firms relying on third-parties, in particular technology firms, to fulfil critical or important functions;
2. Third-parties, in particular technology firms, on which financial firms rely to fulfil critical or important functions;
3. Technology firms providing financial services, either directly or through partnerships with financial firms;
4. Platforms marketing or providing access to different financial services;
5. 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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# 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]](#footnote-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]](#footnote-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.

# 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]](#footnote-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]](#footnote-4):
	1. 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;
	2. platforms and bundling various financial services;
	3. 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]](#footnote-5) – adopted on 15 December 2020 – and Digital Operational Resilience Regulation (DORA)[[6]](#footnote-6) intend to 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]](#footnote-7) for what concerns EBA or a Discussion Paper on the (re)insurance value chain and new business models arising from digitalization[[8]](#footnote-8) for what concerns EIOPA.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Aquis Exchange PLC |
| Activity | Regulated Market |
| Are you representing an association? |[ ]
| Country/Region | UK |

1. 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>

Aquis Exchange PLC is an exchange services group which has several business interests in digital finance including:

1. Running a UK based Pan-European equities MTF.

2. Running a France based Pan-European equities MTF.

3. Running a UK based RIE listings exchange.

4. Running a systematic internaliser and counterparty bilateral trading hub.

5. Licensing exchange matching engine, market surveillance, systematic internaliser and other ancillary technology/consulting services to 3rd parties.

Due to the nature of the above business lines, Aquis has interest in DORA from the dual perspectives of both a user and a provider of 3rd party ICT services to the financial sector.

<ESMA\_QUESTION\_DCFE\_1>

# More fragmented or non-integrated value chains

1. 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.
2. 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.
3. 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**

1. 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>

Aquis observes significant changes to the value chain in the provision of financial services for the businesses we operate in, however this is in effect not serving to further fragment the value chain but in several ways to consolidate it, potentially leading to greater concentration risk. In particular, as an operator of regulated markets we are today reliant on:

1. Traditional data centre providers.

2. Communication circuit/network providers.

3. Hardware manufacturers.

4. Software providers.

5. Cloud providers.

Managing these diverse providers has required significant resourcing to mitigate the risks associated with using them from a contractual, technical and business perspective to ensure that we remain at all times compliant with the regulatory requirements of our licensed activities.

Aquis also observes a degree of concentration risk around the provision of matching technologies in the European trading landscape, noticeable when providers of matching and hosted matching service offerings have issues which affect regulated markets, these issues can affect more than one regulated market.

The landscape around the provision of many of these services has been shifting for some time towards cloud providers in many other unregulated businesses and has the potential to have a positive outcome for the financial services industry in terms of efficiency gains, cost reduction, streamlining operational processes and contract normalisation for existing activities as well as opening up relatively newer areas to smaller firms such as artificial intelligence, machine learning, big data analytics and more at the expense of potentially increased concentration risk being centred on certain cloud providers.

The industry had already been exploring and transitioning to some of these services such as cloud providers prior to Covid, this has accelerated over the last 18 months however in our opinion is more to do with the provision of greater technological capabilities by the cloud providers (in particular Amazon’s AWS) than Covid in our circumstances.

<ESMA\_QUESTION\_DCFE\_2>

1. 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>

Aquis considers that financial firms are increasingly relying on technology firms to fulfil critical or important functions. Examples of this include:

1. Monitoring of critical and important computer systems (AWS, GCP, Azure, Aquis).

2. Monitoring of critical and important communications networks (AWS, GCP, Azure, Aquis).

3. Procuring physical computer systems (AWS, GCP, Azure, Aquis).

4. Configuring virtualised infrastructure (AWS, GCP, Azure, Aquis).

5. Configuring virtualised networks (AWS, GCP, Azure, Aquis).

6. Designing resilient computer systems and communications networks (AWS, GCP, Azure, Aquis).

7. Creating big data analytics offerings (AWS, GCP, Azure).

8. Creating artificial intelligence offerings (AWS, GCP, Azure).

9. Designing matching services and other ancillary software (Aquis, Deutsche Boerse, Euronext, LSEG Millenium, Nasdaq).

10. Hosting/maintaining matching services and other ancillary software (Aquis, Deutsche Boerse, Euronext, LSEG, Nasdaq).

<ESMA\_QUESTION\_DCFE\_3>

1. 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>

1. 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>

Many financial institutions rely on technology companies. Examples of technology companies financial institutions rely on in the EU include Equinix, Interxion, BT, Colt, Century Link, GTT Communications, EU Networks, Cogent, Amazon, Google, Naviga, FIXspec, Commune.

These companies can generally be broken down into several groups of a certain type including:

1. Communications provider (BT, Colt, Century Link, GTT, EU Networks, Cogent). The companies typically provide communications connections between computer systems and supplement many company’s internal teams by monitoring critical communications network circuits. Products and services are typically offered on a charged basis with both recurring and once off charges.

2. Data centre provider (Equinix, Interxion). These companies provide physical data centres for critical infrastructure as well as internal cross-connect equipment to connect multiple organisations computer systems together. These companies also provide remote onsite support for critical and important functions as well as work to supplement many financial firms’ internal monitoring systems. Products and services are typically offered on a charged basis with both recurring and once off charges.

3. Cloud provider (Amazon, Google). These companies provide virtualised data centre environments (cloud), as well as many technical tools which allow companies to consolidate their technology stack away from numerous disparate hardware, software and data centre providers. Products and services are typically offered on a charged basis with both recurring and once off charges.

4. Outsourced services provider (Aquis, others). These companies offer outsourced services to exchanges and other financial services companies including both on-premise and cloud based infrastructure hosting, monitoring and operation. Products and services are typically offered on a charged basis with both recurring and once off charges.

Aquis relies on Amazon and Google for their cloud computing platforms to be able to provide cloud infrastructure environments for the provision of matching and other services to technology licensing and managed service contracts.

At a high level, the business model is that Amazon provides virtualised infrastructure environments to Aquis directly for Aquis to install, configure, operate and maintain matching engine and ancillary services. Amazon charges Aquis for the use of its virtualised infrastructure on a recurring basis. Aquis charges our end clients a license fee for the software as well as fees for operating and managing the environments and software on a recurring basis.

<ESMA\_QUESTION\_DCFE\_5>

1. 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>

Yes. In particular, Amazon has moved into this space with multiple product offerings including Amazon Data Exchange and Amazon TimeStream.

<ESMA\_QUESTION\_DCFE\_6>

1. 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>

Aquis is actively researching utilising AWS for core matching, market surveillance and ancillary services. This is helpful from a technology provision perspective where previously the infrastructure costs for providing a scalable and resilient exchange matching engine platform might have been prohibitive for smaller niche or startup stage firms.

Aquis is also actively exploring the possibility of moving some of its own regulated activities to cloud based environments with the possibility of reducing costs, increasing resilience and improving working practices/monitoring capabilities as a result of this. Depending on the route taken, this could ultimately result in an increased level of concentration risk with one or more 3rd party ICT providers.

<ESMA\_QUESTION\_DCFE\_7>

1. 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>

Aquis sees both new and exacerbated risks in relation to the reliance on technology firms. In particular there are several areas which might be extrapolated from the current dash towards cloud technology including:

1. Greater risks of trading disruption by relying on a single cloud provider in the event of any non-public “orchestration layer” tooling failures at the cloud provider causing downtime/outages.

2. Greater risks of trading disruption by relying on a single cloud provider in the event of any reserved hardware with a single cloud provider failing.

3. Greater risks to trading disruption as trading networks become increasingly reliant on virtualised network connections.

4. Greater scalability risks in the event that cloud providers do not procure sufficient hardware to manage the diverse needs of their businesses on an ongoing basis and need to choose to prioritise compute loads between different clients.

5. Risks to existing financial services business models as cloud providers develop increasingly differentiated cloud virtualised infrastructure in the event that financial services firms need to develop “multi-cloud” capabilities.

6. Risks to exit strategies from cloud service providers in the event that cloud providers progress further down the track of designing their own chips which result in code optimisations being incompatible between cloud providers.

<ESMA\_QUESTION\_DCFE\_8>

1. 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>

Aquis sees significant risks in large technology companies becoming directly involved in the provision of financial services for several reasons:

1. Large technology companies can effectively cross-subsidise new business lines while significantly undercutting regulated firms in a grab for market share, potentially damaging regulated firms business models. This might then result in the exit of participants from certain business lines, damaging competition, with the potential to ultimately compromise investor protection, market integrity and security in the event of a degree of monopolistic power being obtained and exercised by a technology company.

2. Many technology companies enter new fields with the objective of growing at pace at all costs. In these circumstances, traditional controls and processes which can be expensive to maintain and only called upon under extreme circumstances are often compromised. Examples of this include unregulated cryptocurrency markets which regularly fail during periods of high volatility, to the detriment of investor protection.

<ESMA\_QUESTION\_DCFE\_9>

1. 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>

Aquis sees previously mitigated risks resurfacing as a result of the collection, use and dissemination of financial market data by unregulated data service providers. In particular, the possibility of the industry becoming overly reliant on a given firm which may then result in a degree of monopolistic power being utilised by that firm as was evidenced in the EC RIC code situation in the past. This can reduce industry choice, potentially resulting in increased costs to move away from or diversify data vendors for any given regulated firm. Given technology companies interest in building up their portfolio of both data sources and tooling to support financial market data, the risks here to interoperability of financial market data from both a reference data and technological platform appear high, as do the costs of extracting market data from an unregulated firm’s systems given the costs of transmitting data and the large volume of data that exists in financial markets.

<ESMA\_QUESTION\_DCFE\_10>

1. 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>

Yes possibly, to ensure reasonable regulatory coverage across the whole of financial services infrastructure either via appropriate direct oversight or scrutiny of regulated services arrangements.

<ESMA\_QUESTION\_DCFE\_11>

1. 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>

Yes possibly, to ensure that regulated firms are able to operate within an appropriate risk appetite framework as part of their considerations in outsourcing to unregulated companies.

<ESMA\_QUESTION\_DCFE\_12>

1. 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>

Yes possibly, to ensure that as much as possible the industry can align multiple jurisdictions to a single, proportionate and reasonable standard.

<ESMA\_QUESTION\_DCFE\_13>

1. 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>

ESMA and the EC can use the results of these consultations to make appropriate amendments to MiFID II RTS 6 and 7 to ensure that regulated financial services continue to ensure they have appropriate operational resilience and risk structures in place as technologies adapt.

<ESMA\_QUESTION\_DCFE\_14>

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

<ESMA\_QUESTION\_DCFE\_15>

Value chains, technical and operational working practices, will continually evolve and change, so rules targeting the regulation of the current state will always be out of date. Instead of rules, a principles-based framework along with regulatory changes that decentralise risks while offering customers choice is the only approach that can continually work. The principles to focus on are to incentivise transparency in operation and choice of service provider all the way through the value chain from producer to consumer up to the end consumer.

<ESMA\_QUESTION\_DCFE\_15>

# Platforms and bundling of various financial services

1. 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.
2. 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.
3. 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.
4. 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**

1. 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>

Amazon AWS Data Exchange, Amazon AWS TimeStream, Google GCP Datashare.

<ESMA\_QUESTION\_DCFE\_16>

1. 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>

Aquis considers that the use of platforms by financial firms is in its infancy and not currently widespread in the EU as a proportion of the totality of financial products and services, however this has increased since pre-Covid and is likely to accelerate.

<ESMA\_QUESTION\_DCFE\_17>

1. (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>

Our public website which describes our services and relays certain technical and regulatory data to our customers is hosted using AWS and uses databases hosted using GCP.

<ESMA\_QUESTION\_DCFE\_18>

1. (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>

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

<ESMA\_QUESTION\_DCFE\_20>

Aquis sees the key opportunities to be gained by using platforms as:

1. Speed of deployment.

2. Access to potential customers.

3. Reduction of costs.

4. Improved tooling.

5. Greater operational resilience under some circumstances, for example if utilising multiple platform providers which are reliant on different underlying technology implementations.

Aquis sees the challenges in using platforms to be predominantly:

1. Concentration risk.

2. Possible flexing of monopolistic power by a platform that emerges as dominant over time, including by being non-competitive in its commercial structures and poorer service levels as possible examples.

3. Technical implementation challenges as cloud providers and other platforms increasingly rely on technologies proprietary to their platform to differentiate their offerings, whether physical hardware such as CPUs or software layer technologies.

4. Poorer operational resilience under some circumstances for example, if tied into a single platform provider which has the greatest performance or most reasonable commercial offering, or if deployment to multiple platform providers requires a greater degree of technical complexity.

<ESMA\_QUESTION\_DCFE\_20>

1. 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>

Aquis considers a combination of new and exacerbated risks to the defined areas as follows:

i. Financial stability – Platforms are generally technology offerings which work to aggregate multiple products/offerings/clients in some manner. Where financial stability considers the wider economic landscape and ability of the financial system to withstand shocks the intersection of technological platforms which aim to aggregate financial services offerings could result in a greater degree of technological/platform concentration risk which may result in greater individual firm resilience in the case of a technical issue with a single provider, but decreased industry resilience in the case of significant economic shocks resulting in increased demand by the industry on the platform provider if it is unable to meet the technical demand needs of the industry.

iii. Conduct of business – The ability of a regulated firm to carry out its operations depends on many factors, including the technologies it uses and how competitive its offering is perceived to be in the marketplace. Many platform technologies are intrinsically tied to an underlying technology product offering which is also provided by the same company in a vertically integrated model such as with Amazon’s Data Exchange which is run on the AWS cloud environment. As technology providers such as AWS and others look to increasingly differentiate their cloud offerings by designing their own chips and other physical computer items, the risk to the industry is that in a rush to have the most competitive offering possible, it will look to standardise on a particularly underlying technology stack that has proven itself strongest but which is tied to a single supplier. As such, a higher level of concentration risk on technology/platform providers may result in a diminished ability to conduct business in the event of technical difficulties at a given provider.

iv. ICT and security risks – There are competing schools of thought with regards to security risks of technology platforms. Those that believe that the larger firms have a greater ability to secure their systems due to the economies of scale they achieve by virtue of the platform which allow them to spend a larger absolute amount on ICT security to secure their overall platforms and are therefore more secure. The opposing viewpoint is those that believe that platforms by their nature as aggregators of multiple products and services make them larger targets and therefore the risk of a single security compromised incident is greater due to the amount of data that platforms store generally being larger than individual product offerings. It is likely that the reality is somewhere in between these two extremes and dependant on the profile of the company which uses the platform providers services. If it is a very small company with limited ability to invest in appropriate ICT security, its offerings would likely be hardened by utilising a platform with a strong degree of inbuilt ICT security. Larger companies are likely to already be more tempting targets. There is also a risk that an unregulated, outsourced platform provider may not have as stringent security requirements upon it as a regulated firm and if such a platform provider had a business that was marginal it may let its security standards lapse or decide to exit the platform business.

vi. Data protection and privacy risks are intrinsically connected to the answer above regarding ICT and security risks, particularly where data protection is being considered in relation to GDPR and individuals/the general public which tend to have less secured access to public networks than corporations. Additionally where platforms/platform related products and service offerings are targeting the general public as a client base, in general these will be made available on the public internet in some form which also by its very nature opens up increased attack vectors for ICT security and therefore data protection and privacy.

vii. Fair competition is a significant concern as platform based technology companies are often parts of large corporations that have the ability to significantly cross-subsidise their business initiatives due to the sheer size and scale of these companies. As mentioned in the answers to questions 9, 10 and 20, any large scale technology company offering a technology platform is likely to be able to compete aggressively on price to achieve market share initially before being able to exert monopolistic power on the industry once it has established a dominant position due to a combination of price and other factors.

<ESMA\_QUESTION\_DCFE\_21>

1. (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>

As an operator of regulated markets, Aquis has a number of controls and processes in place examining risks of 3rd party technologies and platform providers including concentration risks. At present, these are aligned with numerous other firms in the financial services industry where established practices around outsourcing of key technology services and procurement, business continuity and disaster recovery planning/regular testing ensure that we work within both the regulatory framework for our businesses as well as our own risk appetite. These processes and controls are currently being informally re-examined with a view to the use of platforms and cloud technology providers with a specific focus on BCP and DR resilience in the digital/cloud age.

<ESMA\_QUESTION\_DCFE\_22>

1. 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>

Yes possibly, to ensure reasonable regulatory coverage across the whole of financial services infrastructure either via appropriate direct oversight or scrutiny of regulated services arrangements.

<ESMA\_QUESTION\_DCFE\_23>

1. 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>

Yes possibly, to ensure that regulated firms are able to operate within an appropriate risk appetite framework as part of their considerations in outsourcing to unregulated companies platforms. Additionally, a reassessment of rules concerning market infrastructure should be made to reduce centralisation such that any outage affects only that financial service provider and its customers.

<ESMA\_QUESTION\_DCFE\_24>

1. 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>

Yes possibly, to ensure that as much as possible the industry can align multiple jurisdictions to a single, proportionate and reasonable standard.

<ESMA\_QUESTION\_DCFE\_25>

1. 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>

ESMA and the EC can use the results of these consultations to make appropriate amendments to MiFID II RTS 6 and 7 to ensure that regulated financial services continue to ensure they have appropriate operational resilience and risk structures in place as technologies adapt. The adoption of platforms would also be eased and value more easily unlocked by the industry if platform providers were required to allow for their platforms to be exited and software run on those platforms to be easily transitioned to a competing provider by allowing for a degree of interoperability between platforms.

<ESMA\_QUESTION\_DCFE\_26>

# Risks of groups combining different activities

1. 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.
2. 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.
3. 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.
4. 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**

1. 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>

Yes

<ESMA\_QUESTION\_DCFE\_27>

1. Which types of financial services do these entities provide?

<ESMA\_QUESTION\_DCFE\_28>

Predominantly retail based offerings such as payments and lending, but increasingly additional services aimed at institutional businesses such as pushing into market data aggregation and analytics capabilities.

<ESMA\_QUESTION\_DCFE\_28>

1. 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>

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

<ESMA\_QUESTION\_DCFE\_30>

Aquis sees both new and exacerbated risks in relation to MAGs, specifically as mentioned previously around the possibilities of concentration risk of financial services exposure to a single MAG entity which may provide underlying technology, financial services platforms or other products and services to the financial services industry. Additionally the risk of cross-subsidisation of business lines allowing a MAG to obtain significant market share and squeeze regulated players out of the market with aggressive pricing before exerting monopolistic power to the detriment of the industry.

<ESMA\_QUESTION\_DCFE\_30>

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

<ESMA\_QUESTION\_DCFE\_31>

Yes

<ESMA\_QUESTION\_DCFE\_31>

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

<ESMA\_QUESTION\_DCFE\_32>

No.

<ESMA\_QUESTION\_DCFE\_32>

1. 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>

Yes.

<ESMA\_QUESTION\_DCFE\_33>

1. [Digital finance package | European Commission (europa.eu)](https://ec.europa.eu/info/publications/200924-digital-finance-proposals_en) [↑](#footnote-ref-1)
2. <https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/210202-call-advice-esas-digital-finance_en.pdf> [↑](#footnote-ref-2)
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’](https://www.esma.europa.eu/sites/default/files/library/esma_50-165-1040_trv_no.1_2020.pdf). [↑](#footnote-ref-3)
4. The EC is also asking EBA for input in the areas of protection of client funds and non-bank lending. [↑](#footnote-ref-4)
5. https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets\_en [↑](#footnote-ref-5)
6. https://ec.europa.eu/info/publications/200924-digital-finance-proposals\_en [↑](#footnote-ref-6)
7. [https://www.eba.europa.eu/financial-innovation-and-fintech/fintech-knowledge-hub/regtech-industry-survey](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.eba.europa.eu%2Ffinancial-innovation-and-fintech%2Ffintech-knowledge-hub%2Fregtech-industry-survey&data=04%7C01%7CClaudia.FernandezGarcia%40esma.europa.eu%7C82cd95d1500c4e54e94f08d90e21aad4%7Ce406f2684ae74c80899402493da00c03%7C0%7C0%7C637556360043904822%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=dE7BJ3QNMEZoxDX2LYv8dhkKYzpDzkCuq%2FrwiF8K9TA%3D&reserved=0) [↑](#footnote-ref-7)
8. [EIOPA (2020). Discussion Paper on the (re)insurance value chain and new business models arising from digitalization](https://www.eiopa.europa.eu/sites/default/files/publications/consultations/discussion-paper-on-insurance-value-chain-and-new-business-models-arising-from-digitalisation.pdf). [↑](#footnote-ref-8)