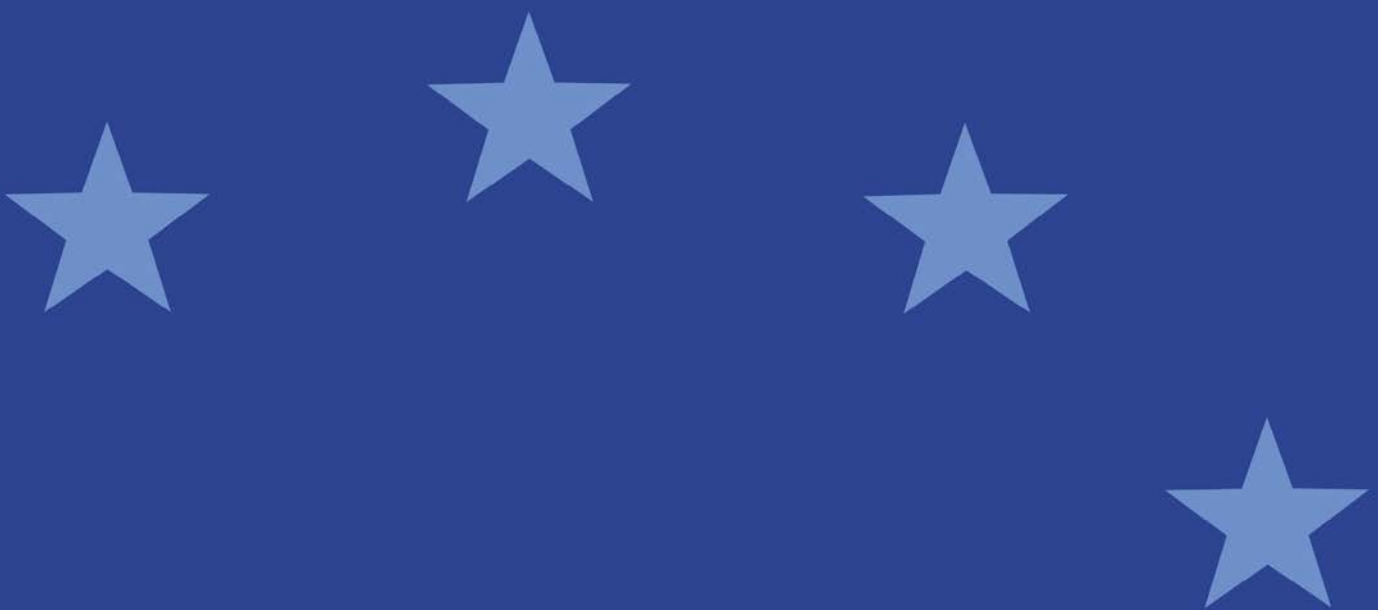


Call for evidence

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.

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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/info/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

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 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	Association of German Public Banks
Activity	Banking Association
Are you representing an association?	<input checked="" 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>

In light of the rapid development of new technologies, such as blockchain, artificial intelligence (AI) or cloud services and the associated digital transformation, the demands on the IT infrastructure of banks are not only constantly changing, but they are also constantly increasing. Established credit institutions in particular are facing major challenges due to the often historically grown IT landscapes. They have to develop business models, services and products, taking into account the market conditions and, in doing so, to use information and communication technologies in a consistent and continuous fashion.

At the same time, however, more and more FinTechs and other competitors are entering the market with tailor-made technological concepts that take over parts of the value chain in the banking business. In order to continue to meet the demands of their customers in a digital world, credit institutions are faced with the dilemma of whether to adapt their existing IT infrastructure on their own or buy in third-party services. There is, of course, no one-size-fits-all solution. Each bank must weigh up for itself and on a case-by-case basis, whether to outsource activities and processes or to develop the solutions on its own.

We, the German Association of Public Banks, representing about 45 German banks (including *Landesbanken* and promotional banks (*Förderbanken*)), fully support the work of the European institutions aimed at making the EU fit for the digital age and developing a harmonised regulatory framework. We welcome the EU-Commissions proposals made in the context of the Digital Finance Package of September 2020, such as proposals for Digital Organizational Resilience Act (DORA) and a Markets in Crypto Assets Regulation (MiCAR), but also in the context of Digital Services, such as the proposal for a Digital Markets Act (DMA) and a Digital Services Act (DSA). Finally, the proposals made in the proposal for a Data Governance Act in November 2020, the Establishment of a framework for a European Digital Identity which further develops the eIDAS regulation for electronic identification and trust services as well as the up-coming Data Act, are all steps into the right direction.

As a general comment, we support a legally binding approach, based on existing EU financial market practices, as this would provide legal certainty to reduce regulatory arbitrage, inconsistencies, market fragmentation, and ensure scalability of services within the EU. We would also highlight that technology neutrality and “same business, same risks, same rules” principles should apply to uphold the values of transparency, fairness, stability, investor protection, and market integrity.

<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>

The members of the German Association of Public Banks, representing about 45 German banks, (including *Landesbanken* and promotional banks (*Förderbanken*)) are looking into new technologies, especially the tokenisation of assets or the development of smart contracts. The use of DLT in the context of the issuance of promissory note bonds (*Schuldscheindarlehen*) or electronic securities can also be observed. In the future, we expect changes in the value chains in the context of trade and settlement of cryptoassets since the currently applicable mechanisms will then no longer be needed.

However, the mere fact that decentralised solutions are created does not automatically lead to fragmentation. Fragmentation can also result from a lack of uniform standards. Because of this lack of standards, there is the danger that market participants become active and try out different models and forms of cooperation which end up in isolated solutions involving only a few market participants and which, in the worst case, are not compatible with each other. One successful example, where common standards were set and accepted by the market is the so-called “Spunta-Project” by the Italian Banking Association. However, such approach is – due to different national banking systems – not always and everywhere possible. Hence, wherever possible, we would welcome that the European regulator strives for standard setting and common definitions.

This is especially true in the case of electronic signatures. Their admissibility depends on a number of factors ranging from the applicable law, the type of the contract/document, the form of electronic signature and further cross-border implications. For authentication purposes, our members rely on third-party digital software, such as Docu Sign and Adobe Sign.

In our view, these developments are not Covid-driven, but rather owe to the development of tokenisation and digitalization in general. This has taken place in the last 2-3 years. The coincidence with Covid is purely coincidental. The development cycles in the institutions are longer than the Covid pandemic lasted.

On the other hand, we have seen that new providers (FinTechs) entering the market, typically aiming at being able to operate their business without a banking licence, as the high requirements of banking regulation represent a clear barrier to market entry. Their goal is to enable consumers to invest money, take out a loan, complete payment transactions or take financial advice (cf. robo-advisory) directly via the internet without an intermediary. FinTechs are favoured by developments in the area of big data and cloud computing, as well as the rapid spread of smartphones, laptops and tablets in connection with almost constant access to the internet. This makes it possible for young and small companies to make life difficult for established companies, or to occupy a niche in the market.

Finally, our members also cooperate with FinTechs, for example in the area of customer identification, customer-bank interface solutions or cross-selling. This results in a fragmentation of the value chain.

<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>

As a general remark, we, the German Association of Public Banks, representing about 45 German banks (including *Landesbanken* and promotional banks (*Förderbanken*)), would like to highlight, that irrespective of the functions for which our members rely on technology firms, processes are not just transferred to the cloud without thorough consideration of the risks involved. Our members always apply a cautious approach when using cloud services.

Cloud markets offer technological solutions for financial institutions to innovate, scale up and save costs through the application of pay per use models and are generally welcomed. Certain services, such as custody of cryptoassets, are usually provided by using a cloud.

In the case of outsourcing of services for which there are only a few providers (concentration risk) and which are therefore not readily replaceable, a particular dependence on the service provider may arise. In these cases it can be difficult to extricate oneself from the outsourcing relationship in the event of a service disruption without the client incurring damages, such as reputational damage or IT equipment failures. We acknowledge the limited number of providers, which are mainly not even European providers. The large cloud providers have a great deal of negotiating power, so that it can sometimes be difficult to negotiate necessary clauses into the contracts, e.g. for data protection reasons. Difficulties may arise in the drafting of service contracts, insofar as the reporting obligations or the control and audit rights of the client appear too far-reaching. Therefore, it is necessary to address the issue of bargaining power by large cloud providers. We, the German Association of Public Banks, representing about 45 German banks (including *Landesbanken* and promotional banks (*Förderbanken*)), therefore, welcome the EU Commission's consultation on a Data Act (https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13045-Data-Act-including-the-review-of-the-Directive-96-9-EC-on-the-legal-protection-of-databases-/public-consultation_en). All in all, these challenges underpin that the demands on the outsourcing management of the institutions are complex – but are diligently observed and taken into account by our members.

The EU should cater for cloud providers operating in the EU to be supervised within the EU and be required to respect European legislation. It must be ensured that if market participants use certain service providers from third countries (e.g. Amazon web services), that this does not raise any concerns from a legal point of view (especially data protection). Catering for this level of legal certainty is of utmost importance for our members.

On the other hand, in order not to lose competitiveness on international level and encourage innovation, it is crucial that the EU market remains open to non-EU cloud service providers. Many of our members already use cloud services in their operations. However, we are aware that using cloud services for core functions might include the risk of losing data sovereignty and being dependent on third party support in case of malfunctions. Therefore, our members apply a cautious approach when using cloud services, e.g. by primarily using the infrastructure provided by cloud service providers rather than using applications developed by cloud service providers for core functions. Processes are not just transferred to the cloud without thorough consideration of the risks involved. In addition, the institutions try to avoid being dependent on only one provider, even if this is difficult due to the limited number of providers. Consequently, the market participants do not outsource indiscriminately to the cloud. It is favoured using state of the art encryption of the data stored in the cloud servers, which ensures that the data of their customers is protected. In conclusion, we welcome the fact that there is a choice depending on how and which services are to be outsourced.

In summary, banks face practical problems in drafting contracts, which makes cooperation with service providers more difficult. Even though the banks are partly dependent on the procurement of (IT) services, they have to weigh up the pros and cons of outsourcing on an ad hoc basis. Given the huge amount of time and money banks already spend on managing service providers and complying with regulatory requirements, they may lack the resources for innovation and growth in this regard. This favours the market entry of less regulated competitors, who benefit from an unfair advantage. The supervisory authority should therefore simplify outsourcing requirements and provide the necessary incentives for banks to allow them to better utilize synergies from outsourcing services and processes.

In addition, apart from using (cloud-)outsourcing services providers, we would like to mention that Artificial Intelligence tools are also being deployed by our member firms, for example, in the context of anti-money laundering, anti-terrorist-financing and identification of frauds according to patterns. However, such tools are provided by a range of technology firms other than big tech, often by small highly specialised companies.

<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>

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>

TYPE YOUR TEXT HERE

<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 more and more important and our members are relying more on it than ever.

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 our members 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.

Fintechs seem to be better able to obtain the necessary data. That gives them advantages in data analytics, which is difficult for our members to compete with.

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 applicable rules provided for more clarity and were more unambiguous 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>

Our members cooperate with FinTechs, please refer to our answers Q2 and Q3.

The increased use of digital signatures places new demands on our members in terms of implementation.

In the case of settlement efficiency, blockchain solutions could be used straighten out past mistakes and make procedures leaner, which would, ultimately, increase settlement efficiency.

In the area of crypto-asset custody, we currently perceive different solutions on different blockchain networks. Here, the market is currently very fragmented. Certainly, the different approaches and competition among them are driving development. However, the many different solutions make cross-market cooperation difficult. We expect a market shakeout in this respect. The solutions that are the most compatible will probably have the best chances to survive.

<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>

As a general remark, we, the German Association of Public Banks, representing about 45 German banks) (including *Landesbanken* and promotional banks (*Förderbanken*)), would like to highlight that technology neutrality and “same business, same risks, same rules” principles should apply to uphold the values of transparency, fairness, stability, investor protection, and market integrity.

Cloud services are becoming increasingly important – most of them being offered by third-country entities. We recognise the limited number of providers, but in order to encourage innovation and not to lose competitiveness on international level, it is crucial that the EU market remains open to non-EU cloud service providers. We would like to point out the asymmetries of power in negotiation between customer and service providers (i.e. the extraordinary efforts and time required to agree on regulatory compliant contracts with cloud services providers in the financial sector). Therefore, we actively support 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>

As a general remark, we, the German Association of Public Banks, representing about 45 German banks (including *Landesbanken* and promotional banks (*Förderbanken*)), would like to highlight that

technology neutrality and “same business, same risks, same rules” principles should apply to uphold the values of transparency, fairness, stability, investor protection, and market integrity.

However, it might prove difficult in individual cases, especially in view of the rapidly evolving digital world, to determine exactly whether or not an entity provides a financial service. For the sake of investor protection, financial stability, market integrity, security or level playing field, in cases of doubt the regulation should be interpreted rather broadly than too narrowly by the competent authorities. This is what distinguishes Europe from China, for example. In China, banking regulation was not as strict, so it was easier for unregulated newcomers to enter the financial services sector and thus, pose a strong risk for investor protection, financial stability, market integrity, security or the level playing field.

<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>

TYPE YOUR TEXT HERE

<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>

With regard to the issuance of promissory loan notes (*Schuldscheindarlehen*), as an established alternative to bank loans and bonds, we support uniform standards for the electronic signature that will provide for accreditation EU-wide with a high security level.

<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>

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 regard 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, the German Association of Public Banks, representing about 45 German banks (including *Landesbanken* and promotional banks (*Förderbanken*)), are supportive of 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>

The rapid evolution of new technologies and use-cases pose a huge challenge for any rule setting authority to act in an effective manner, without accurate and up-to-date information about the trends in the markets. From the market participants' perspective, this can lead to uncertainty whether and how the use of any new technology and the corresponding products and services are/will be regulated. In consequence, this uncertainty on both ends can delay investments and prevent economic growth or even lead to an unordered situation, which can be at the expense of the consumers and to the detriment of trust in new technologies. Therefore, it will be imperative to strengthen the cooperation between market participants and regulators/competent authorities and to maintain a constant dialogue.

In addition, we, the German Association of Public Banks, representing about 45 German banks (including *Landesbanken* and promotional banks (*Förderbanken*)), believe that there should be many more sandboxes. In our opinion, an approach like the Pilot regime for market infrastructures based on DLT is the right way to go. This 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.

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>

TYPE YOUR TEXT HERE

<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>

We have not observed developments of Big Techs in Europe compared to developments in Asia, where big platforms like Alibaba through their affiliate Ant Financial offer customers the possibility to put their unused money in their wallets in money market funds to receive interests (see ESMA's Report on Trends, Risks and Vulnerabilities 1/2020, page 50). However, we suspect that such approaches could become a trend, also 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>

No.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

In particular, as regards the topics security risks, data protection and privacy as well as fair competition, we would like to point out the asymmetries of power in negotiation between the European customer and the often rather big platforms, that have their main office in a third country. This means that extraordinary efforts and time are required to agree on regulatory compliant contracts with platforms in the financial sector). Therefore, we actively support 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_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>

As stated under question 21, it is difficult to break the market power of the big platforms. Therefore, the European regulator should take into account such fact and oblige third country-platforms to adhere to European regulations.

<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>

The European regulatory framework should address possible concentration risks if many financial institutions rely on the same platform. These platforms can pose a systemic risk for the financial sector on a European level. Therefore, we are supportive of a European oversight mechanism over such platforms while properly including National Competent Authorities in the governance of such common oversight body.

<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>

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<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 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?

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DCFE_29>

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

<ESMA_QUESTION_DCFE_30>

TYPE YOUR TEXT HERE

<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>

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<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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<ESMA_QUESTION_DCFE_33>