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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 | BIPAR (European Federation of Insurance and Financial Intermediaries |
| Activity | Other |
| Are you representing an association? |  |
| Country/Region | Belgium |

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>

Technology (e.g algorithms) has already been used in all financial and intermediation activities (front-office and back-office) for quite a long time. The intermediaries’ main function is customer interaction and facilitating and optimising the financial process. Financial intermediaries’ activities keep the providers under competitive pressure and help create trust in the market (by combining technology and human interaction). They also provide the services which are necessary for efficient processes, including data analysis and risk management know-how.

Financial intermediaries offer a wide variety of different customer experiences: for example, prevention or detection advice in combination with tools such as apps and classical services. In the case of claims, the human interaction is still highly appreciated, if not necessary. The customer can choose from a wide variety of services and experiences via a wide variety and combination of tools and systems (apps, web, telephone, face-to-face…).

For businesses, the spectrum of financial (and insurance) intermediation services is even wider and state of the art, tailor-made, risk and management know-how are offered to SMEs and large industries to assist them in their daily operations, innovation and cross-border activities. These services can also include the management of complex cross-border employee benefit services.

Financial intermediaries also offer “sustainable”, cost-effective and efficient services to providers in the interest of efficiency of the financial/investment process (and market) overall and in the interest of consumer experience. Each intermediary defines its own “business model” always in compliance with the MiFID and other relevant rules. In the financial and insurance value chain, for years financial and insurance intermediaries have harnessed technology to optimise the speed, fluidity, efficiency and traceability of the transactions.

New technologies have the potential to create efficiency, but what matters is how you reinvent that efficiency to get better outcomes for customers. If people need more time and support in certain areas, digitalisation enables intermediaries to give customers that time because a level of efficiency and capability is created. The aim is to enhance customer experience and respond better to customer’s expectations. Far from replacing humans, new technological tools at the service of the customer and advisor provide valuable assistance that improve the quality of advice and promote the development of the profession (personalization/profiling, decision support for asset allocation / arbitrage, reduction of risk of error).

In our sector, many thousands of mainly smaller firms and their hundreds of thousands of local employees interact daily with millions of consumers, supporting the demand for intermediaries which is becoming more complex by the time. They comply with a series of regulations which protect the consumers and act in competition with (regulated or unregulated) institutions which are often defined as Fin or InsurTechs. Therefore, a regulatory level-playing field should be the basis of every regulatory initiative in relation to Fin/InsurTech, leveraging on the existing EU rules (MiFID, IDD and Solvency II).

BIPAR believes that firms which are not regulated in the financial services sector but are active in the financial services value chain should be brought into the existing regulatory framework, so that the “chain” is consistent and can be properly supervised.

It is important to ensure that new technology trends and innovation develop effectively and that market players are given the time required to explore the potential of the new technology applications before any further steps are considered by regulators/supervisors.

Cross-selling and cross-data analysis where non-financial activities are combined with financial activities is an issue to be studied (in particular where the non-financial service provider is in a strong position to carry out cross-selling or to “cross-analyse” information from the client through wearables, detection, tracking behaviour, mortgages, etc.).

The answers below are given from the perspective of the financial/investment intermediation sector, in some markets called patrimonium … financial advisors, etc.

<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>

More available data to conduct the risk assessment may lead to changes in client ownership, to increasing dependencies and risk for the financial services industry to be dominated by third-party sales channels / data.

For example, third parties will most likely increase their influence and power in specific lines of business when they have a data insight advantage towards investment firms – hence might dominate the market in future due to their (better) in depth insights on buying behavior, claims, etc. They use the flexibility of the fragmented value chain.

Usage of new additional data points (third-party data provider) that cannot be covered by e.g. traditional paper questionnaires pushed a major shift but also dependencies on further parties involved.  The involvement of third-party data providers increases the need for transparency– depending of the use, it could be positive or negative.

Explainability and privacy concerns are especially relevant for digital financial services, particularly as nowadays unstructured data may be used in addition to structured data which affect the investment decisions. This is also a matter of appropriately applying the existing rules in the digital context.

<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>

Financial and investment industry -similarly to other industries- is leveraging the small amount of cloud providers, such as AWS, Google, Microsoft, and their services around data & analytics. Hence, they (cloud providers) are able to train their AI powered services and increase their future influence, also in the financial services industry.

<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>

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<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>

In the insurance industry (with which BIPAR is more familiar), an example is Coverwallet, an InsurTech platform that provides an easy way for businesses to understand, buy and manage insurance.

CoverWallet uses [Stripe](https://stripe.com/gb?utm_campaign=paid_brand-UK_en_Search_Brand_Stripe-2032860449&utm_medium=cpc&utm_source=google&ad_content=355351450310&utm_term=kwd-373645498487&utm_matchtype=e&utm_adposition=&utm_device=c&gclid=EAIaIQobChMIyt7z2bbn8QIVtWLmCh3Z7A_4EAAYASAAEgKnVvD_BwE) as a payment method both in Europe and the United States.

The area of main challenge is in finding a Premium Finance partner to be used across the different countries in Europe, there is a lot of fragmentation and it is very difficult to make a model scalable across the different countries.

Another challenge is [PCI compliance](https://www.pcisecuritystandards.org/) (payment card). CoverWallet needs to find a partner to make it PCI compliant, allowing customers to make payments over the phone with credit cards without running any security risks

<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>

Key points of concern identified:

* Lack of transparency and explainability of AI/ML-based decisions made for customer
* Missing standards of data quality, secureness/trust of data sources especially when used together with AI.

It can be said that Data&Analytics services & D&A-based advice is also sold to policyholders not only to providers. Data&Analytics is increasingly supporting (and at some point, maybe replacing) advice provided by single financial experts.

For instance, banks running analysis of what a consumer buys, offer summaries on how much money they spend on investment, to offer better conditions.

We believe that many ethical issues could arise in the use of machine learning (ML) or artificial intelligence (AI). Today, for example, consumers have minimal control over how machine learning and AI is used on their data. There is currently no mechanism to ensure consumers understand exactly how their data will be used in this respect or how value will be extracted from it. Further work on digital ethics, particularly on fairness and anti-discrimination, transparency and explainability will be key in this respect.

<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>

Please see our comments under Q2.

<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>

As already mentioned, some potential issues are the following:

* Cross-selling using market power.
* “Digitalization” sometimes used as excuse to create “future” client ownership.
* Financial industry/investment firms may become dependent on third parties who have “oligopoly” of data.

Based on existing rules (GDPR), data sharing conditions could be clarified via a use case approach addressing the specific concerns attached to the different datasets (personal data, non-personal data, generated data etc…). Third parties' accountability in receiving financial-related data will have to be clarified. Consumers must be protected and must have a clear understanding of where liability lays if things go wrong.

Competition risk could arise particularly if firms do not offer equal access to data, putting their competitors at a disadvantage. The regulators must ensure that market distortions, size and position abuse are avoided.

Shifts in global trends are identified which create increasingly complex operating environments that present both challenges and opportunities for traditional business models. Macro trends include the global pandemic, climate change, the gig economy, the continued low interest rate environment, changes to the geo-political environment, growth and use of big data, AI, robotics and automatization, urbanization, growth of intangible assets, increased longevity, changes in connectivity, competition for talent, and the threats from terrorism and data / cyber security.

<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>

Digitalization “or” digitally driven business models by players coming from outside the sector offering “quasi financial” services can amplify or relocate significantly already existing risks, such as operational risk, Information and Communication Technology (ICT) risks, security, governance, and reputational risks, consumer protection. Attention should be paid to investment decisions that can be considered unfair and discriminatory due to the use of new technologies (AI, ML, etc). Human oversight and control should be ensured at all stages to prevent unwanted effects, like homogeneity of decisions and consequently concentration of risk. Another issue to be under scrutiny is possible manipulation “poisoning” of data that feed the technologies used, especially when financial firms (including SMEs) rely more and more on third-party providers.

BIPAR believes that the existing rules for the distribution of financial products are in principle technologically neutral and fit-for-purpose to allow for an uptake of the new technological developments in the sector.

The main issue is the application of the “level playing field” and the “activity-based” interpretation of the rules. Data and access to data in combination with choice by consumers are also a key aspect.

<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>

Barriers to data sharing -through APIs- between providers, intermediaries and clients already exist. Some are explained by confidentiality issues as well as by commercially sensitive data. There would need to be a higher level of aggregation and anonymity to the data being shared. Industry customers’ data is collected and recorded in different ways. Often with unstructured fields and with different language for products and business descriptions for example. A single data standard across all software providers and a mindset to have open APIs could bring more transparency and understanding of the market.

<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>

BIPAR is also of the opinion that:

* A consistent, transparent, all-encompassing and clear activity-based, risk-oriented regulatory framework should be maintained. It is crucial to remove any rules adding administrative burden to business, especially SMEs, when they bring no added value for customers or markets or supervision. The implementation of the technologically neutral rules currently in place should be evaluated and any new rules/necessary adaptations should be based on thorough impact assessment (also considering the real impact on SMEs and local employment).
* The volume and cumulation of the rules recently adopted and implemented have come at a high cost for firms. These rules should be consolidated so that the initial investments can be written off over a reasonable time (and be a basis for future economic and legal stability). BIPAR supports the “one in, one out” principle endorsed by the new European Commission and it should be recognized that every change in legislation (and thus compliance procedures) has a cost (in particular for SMEs) for the firms in the industry.
* Firms which are not regulated in the financial services sector but are active in the financial services value chain should be brought into the existing regulatory framework, so that the “chain” is consistent and properly supervised.
* There should be a regulatory level-playing field between all providers of comparable (quasi) financial services, so that consumers are given a choice to make. The existing legal framework is the best basis for this “hybrid” approach.
* Cross-selling and cross-data analysis where non-financial activities are combined with financial activities is an issue to be studied (in particular where the non-financial service provider is in a strong position to carry out cross-selling (or to “cross-analyse” information from the client…wearables, detection, tracking behaviour, mortgages, etc.).

<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>

As mentioned under Q11, the implementation of the technologically neutral rules currently in place should be evaluated and any new rules/necessary adaptations should be based on thorough impact assessment (also considering the real impact on SMEs and local employment).

Regarding the current regulatory and supervisory framework, it will be crucial that it remains activity-based and follows the principle of "the same activities, the same risks, and the same rules" to ensure a level-playing field between all actors concerned, including FinTechs and indirect distribution. This approach also ensures that consumers are protected in a similar way, regardless of the business model of the company they are dealing with, allowing thereby for innovation within a regulated context.

<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>

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<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>

The price that customers pay with data needs to be properly assessed. For example, some new forms of financial services may actually be tools to get huge amounts of data for little value propositions. The “price” paid through data must be clear for the consumers and their advisors. Leveraging alternative data sources, such as emails, purchase activity, and social media, is becoming a general practice to feed algorithms.

The personal data influencing the terms and conditions should be transparent and easily accessible to customers and their intermediaries/advisors. We believe that any financial product using data sets from third-party sources should disclose both the sources and the exact types of personal data which have been used to determine the terms. Consequently, it may have to be evaluated whether special consent should be required by the data providers (social media platforms, navigation apps, etc) for this data to be shared (in any way) with financial institutions, as a separate category. A bulk inclusion under the terms and conditions chapter is not enough as it usually ends up being left unread. These may be some effective prevention measures to stimulate the responsible use of BDA and they will also enable the industry to have proper access to customer information (in order to promote competition and quality).

Not all benefits and risks are applicable to all business models. It is the combination of bits and pieces of certain techniques or fragmentation which create a risk and benefits balance to be analyzed in relation to the “individual business model” on a case-by-case model.

BIPAR believes there should be a regulatory level-playing field between all providers of comparable (quasi) financial services, so that consumers are given a choice to make. The existing rules for the distribution of financial products are in principle technologically neutral and fit-for-purpose to allow for an uptake of the new technological developments in the sector. The main issue is the application of the “level playing field” and the “activity-based” interpretation of the rules.

<ESMA\_QUESTION\_DCFE\_14>

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

<ESMA\_QUESTION\_DCFE\_15>

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<ESMA\_QUESTION\_DCFE\_15>

# 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>

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<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>

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<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>

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<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>

Please see our comments under Q8.

<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>

Based on existing rules (GDPR), data sharing conditions could be clarified via a use case approach addressing the specific concerns attached to the different datasets (personal data, non-personal data, generated data etc…). Third parties' accountability in receiving financial-related data will have to be clarified. Consumers must be protected and must have a clear understanding of where liability lays if things go wrong.

Competition risk could arise particularly if platforms do not offer equal access to data, putting competitors at a disadvantage. The regulators must ensure that market distortions, abuse of size and dominating position are avoided.

Digitalization “or” digitally driven business models by the players coming from outside the sector offering “quasi financial” services can amplify or relocate significantly already existing risks, such as operational risk, Information and Communication Technology (ICT) risks, security, governance, and reputational risks, consumer protection. Attention should be paid to investment decisions that can be considered unfair and discriminatory due to the use of new technologies (AI, ML, etc). Human oversight and control should be ensured at all stages to prevent unwanted effects, like homogeneity of decisions and consequently concentration of risk. Another issue to be under scrutiny is possible manipulation “poisoning” of data that feed the technologies used, especially when financial firms (including SMEs) rely more and more on third-party providers.

Moreover, the rules of Digital Market Acts which aim to address large platforms and “gatekeepers” are key to make sure that small market players offering services via platforms are treated equally.

<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>

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<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>

Please see our answer under Q11.

<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>

Please see our answer under Q12.

<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>

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<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>

BIPAR believes there should be a regulatory level playing field between all providers of comparable (quasi) financial services, so that consumers are given a choice to make. The existing rules for the distribution of financial products are in principle technologically neutral and fit-for-purpose to allow for an uptake of the new technological developments in the sector. The main issue is the application of the “level playing field” and the “activity-based” interpretation of the rules.

Please see also our comments under Q14.

<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>

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<ESMA\_QUESTION\_DCFE\_27>

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

<ESMA\_QUESTION\_DCFE\_28>

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<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>

The phenomenon of BigTech firms extending their activities to financial services through subsidiaries is increasing which may have an impact on consumer protection. Indeed, the extensive dependency of the subsidiary financial firm to the BigTech could lead to the cross-selling and cross-data analysis and thereby to distortion of competition, in particular where the non-financial service provider is in a strong position to carry out cross-selling (or to “cross-analyse” customer’s information­).

<ESMA\_QUESTION\_DCFE\_29>

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

<ESMA\_QUESTION\_DCFE\_30>

Barriers to data sharing between providers, intermediaries and clients already exist. Some are explained by confidentiality issues as well as by commercially sensitive data. There would need to be a higher level of aggregation and anonymity to the data being shared. Industry customers’ data is collected and recorded in different ways. Often with unstructured fields and with different language for products and business descriptions for example. One data standard across all software providers and a mindset to have open APIs could bring more transparency and understanding of the market.

Competition risk could arise particularly if firms do not offer equal access to data, putting their competitors at a disadvantage. The regulators must ensure that market distortions, abuse of size and dominating position are prevented.

Digitalization “or” digitally driven business models by the players coming from outside the sector offering “quasi financial” services can amplify or relocate significantly already existing risks, such as operational risk, Information and Communication Technology (ICT) risks, security, governance, and reputational risks, consumer protection.

BIPAR believes that the existing rules for the distribution of financial products are in principle technologically neutral and fit-for-purpose to allow for an uptake of the new technological developments in the sector.

The main issue is the application of the “level playing field” and the “activity-based” interpretation of the rules.

<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. Financial industry/investment firms may become dependent on third parties/non-financial firms who have “oligopoly” of data, causing thereby distortion of competition. “Solo” financial firms may find themselves in a disadvantaged position due to lack of equal access to data. More available data to conduct the risk assessment may lead to change of client ownership, increasing dependencies, risk for the financial services industry being dominated by third-parties’ sales channels / data. For example, third parties will most likely increase their influence and power in specific lines of business when they have a data insight advantage towards investment firms – hence might dominate the market in future due to their (better) in depth insights on buying behavior, claims, etc. They use the flexibility of the fragmented value chain.

Also, the “same activities, same rules” principle should be always observed so as to avoid situations where firms acting as MAGs can fall outside the perimeter of the existing financial services rules, creating thereby further unlevel playing towards “solo” financial services.

<ESMA\_QUESTION\_DCFE\_31>

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

<ESMA\_QUESTION\_DCFE\_32>

Regarding the current regulatory and supervisory framework, it is crucial that it remains activity-based and follows the principle of "the same activities, the same risks, and the same rules" to ensure a level-playing field between all actors concerned, including FinTechs and indirect distribution. This also ensures that consumers are protected in a similar way, regardless of the business model of the company they are dealing with, allowing thereby for innovation within a regulated context.

<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. Resources should be allocated by regulators and supervisors for staff with various IT profiles and different training so as to allow for more efficient enforcement of existing rules. Sharing of experience between financial supervisors across the EU as well as with other relevant authorities on a case-by-case basis would be helpful achieve a harmonised approach.

<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)