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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.

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**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-2) 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-3) 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-4) 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-5):
	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-6) – adopted on 15 December 2020 – and Digital Operational Resilience Regulation (DORA)[[6]](#footnote-7) 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-8) for what concerns EBA or a Discussion Paper on the (re)insurance value chain and new business models arising from digitalization[[8]](#footnote-9) for what concerns EIOPA.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Italian Banking Association |
| Activity | Other |
| Are you representing an association? |[x]
| Country/Region | Italy |

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>

The initiative and the effort dedicated to investigating the implications on the current regulatory framework of the digitalization of financial services, and in particular the development of new platform paradigms and open finance, can be shared.

Some of the factors that could determine and modify – even partially – current models of service provision and the features of the value chains are:

- The potential diffusion of platform models, which allow to reduce the costs of entering the market for new players by allowing companies to access the service components made available and to integrate them into their systems; the platform model also facilitates the offer of innovative services, and therefore encourages their development.

- Open Finance: the possibility for investment firms and Banks to access the information and data available to other intermediaries could allow them to improve the quality of their services, e.g. by providing advisory and wealth management services that take into account the entire customer portfolio and fit their needs.

- DLT and Crypto-Assets: the use of DLT and tokenization has multiple potential uses in the provision of investment services which determine the entry on the market of new service providers (e.g. exchanges, trading platforms) or the adoption of new models for traditional and supervised entities (e.g. investment firms, trading venues, CSD).

- Artificial intelligence: it allows the development of advice models - in combination with the adoption of open finance models – that are capable of evaluating a large amount of data, potentially leading to the development of RoboAdvice models by service providers.

The aforementioned factors can lead to an evolution in the provision of financial services that is capable of reducing their costs for investors, facilitating investors' access to value-added services (especially consultancy).

Hence, the development of new and further models should not be subject to regulatory constraints such as to hinder its development. However, at the same time, we believe that a substantial level playing field must always be maintained, applying the same regulatory and authorization requirements - even with a view to proportionality - to companies that provide the same services.

<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>

As mentioned in answer no. 1, some factors are leading to some changes regarding value chains and the service providers involved in them; in particular:

* The **platform** model and the use of **API** allow producers/issuers to give visibility to their products even through non-traditional channels (e.g. on the app of other companies) by integrating them into the latter. These fosters fundraising and makes the regulatory boundaries of the provision of investment services more uncertain.
* Moreover, the use of platforms also allows service providers to **make them more easily available to financial entities and to sell them on the market**, ensuring competition. The provision of strict regulatory requirements - and in addition to what is already foreseen - would end up raising entry costs, penalizing SMEs and Start-ups and, on the contrary, leading to concentration in favor of large operators (e.g., BigTechs). Excessive and disproportionate regulation would end up increasing those concentration risks that are likely to be prevented.
* Through **open finance models**, the companies that provide consulting services can have access to the data collected by other parties (e.g. Banks), concluding agreements with the latter in order to provide portfolio and advanced advice services. For example, it is possible for banks to allow access via API to third party consultants to customer securities accounts.
* **Disruptive technologies** such as DLT could change the role of traditional operators (e.g. trading venues, CSDs, investment firms), bringing out new players (e.g. trading platforms, exchanges) that are difficult to place in the current regulatory framework (for example, some could be classified as trading venues). The phenomenon also extends to the perimeter of this call for action, as the spread of tokenization of financial instruments (security-token) is foreseeable; moreover, for many tokens that do not represent traditional securities it is difficult to determine with interpretative certainty whether they are financial instruments according to the broad MiFID II definition. For these reasons, the perimeter of subjects providing financial services in scope for ESMA could be expanded and enriched with figures needing a clear placement in the regulatory framework and the application of proportional requirements but respectful of the level playing field principle.

This is the context for service providers with a large amount of data available and with a widespread customer base (e.g. BigTechs), which could in turn request the necessary authorizations for the provision of investment services and enter the market with technological means and data sets such as to determine an inevitable impact on the system.

In any case, it should be noted that the evolution of the provision of investment services according to the above guidelines is slower than in other sectors; this in consideration of the complexity of the services provided and the always crucial importance of advice intermediation with investors / customers.

<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>

Digital evolution is an important opportunity for growth, but at the same time, some related risks and concerns are recognized.

In particular, the new platform paradigm can facilitate the access of investment firms and banks to services provided by third parties and, therefore, the offer of services by start-ups and SMEs and their entry into the financial services market. However, this is an element to be preserved, as it guarantees competition and continuous technological evolution, to the benefit of the quality of the services offered to the customer/investor.

Similarly, it is necessary to avoid the risk of concentration of these services in the hands of a few providers (e.g. BigTechs), guaranteeing the equal availability of data in a regulatory framework that encourages the sharing and development of open-finance solutions.

In any case, this process has not yet determined a significant increase in reliance on service providers, but a change in the services provided (such as cloud, Big Data and Artificial Intelligence). Outsourcing was already widespread in the provision of investment services.

<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>

<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>

There are several cases of IT service providers - whether or not belonging to the same Group - to which investment firms and banks turn for the provision of critical and important functions. The provision of these services is moreover subject to the regulations on outsourcing and the consequent checks carried out by financial institutions.

<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>

Generally speaking, we see a growing complexity in the evolution of the offer of "info provider" services, whose conditions often highlight opacities that are negatively reflected in the relationship with the counterpart.  In particular, we see recurrent changes in commercial policies and user licenses of increasing complexity, with possible incorrect behavior, to the detriment of users. Regarding trading venues market data, MIFID provisions (which provides that such data are charged on the basis of costs) proved not to be effective in achieving their goal.

We ask for specific measures to be adopted in order to manage this risk, aimed at ensuring both transparency on the costs applied and capability to compare the different offers.

<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>

Wherever possible, some companies conceive new products and services according to a logic of openness and possible sharing on the platform in order to exploit the added value and potential offered by new technologies and the ecosystem. For these reasons, in some cases, companies could be set up which have as their core business the development of platforms for the provision of financial services and the supply of infrastructure and technological solutions necessary for the offer of services using APIs.

<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>

A basic assumption is that only entities authorised by current legislation (MIFID, UCITS, AIFMD, etc.) can operate in the investment services and products market and, therefore, third parties wishing to provide such services will have to be subject to the same authorisations and requirements as banks and other authorised intermediaries.

At the moment “exacerbated” risks coming from increasing digitalization of the key/core processes, also in terms of more fragmented value chains are not perceived.

The regulation is based on the actually provided services and inspired by principles of technological neutrality (at least formal). For this reason, the current framework, being applicable to all operators providing the same services, allows adequate investor protection. At the same time, the risks result already mitigated by the application of the existing regulatory framework on outsourcing.

<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>

Please see answer to question no. 8.

The provision of the same services should be subject to the same requirements (starting from the authorization requirements) to guarantee a level playing field and the application of the investor protection requirements. Moreover, the regulation is based on the services actually provided, and inspired by principles of technological neutrality (at least formal). For these reasons, the current framework, being applicable to all operators providing the same services, allows adequate investor protection.

Instead, there is an evident - opposite - risk that some services can not be provided due to the difficulties in applying the legislation to new technologies (this is the case, for example, with the issue and negotiation of security-tokens).

The risks of non-application (or different application) therefore do not derive from the current requirements, but from possible classification uncertainties on some products (e.g. some crypto-assets) for which there is doubt whether they should be qualified as financial instruments and, therefore, subject to the MiFID II framework. In the absence of a clear definition of the tokens that must be classified as financial instruments, therefore, the risk of interpretative differences between the various service providers remains, with consequent risks of non-application or, on the contrary, interpretations that are excessively extensive and such as to slow down development of services. Differences may also affect the various Member States and, therefore, lead to an unlevel playing field at EU level.

<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>

<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>

The approach “same activity, same risk, same rules” should be maintained: the provision of the same services should be subject to the same requirements (starting from the authorization ones) in order to guarantee a level playing field.

In order for this approach to achieve a level competitive playing field, the current regulatory model needs to be rethought to redesign a new scope that takes into account the technological evolution of financial services and financial instruments. In fact, it is wrong to think that the current discipline can be applied analogically to digital services without the appropriate adjustments. If, on the one hand, the provision of digital services leads to a physiological level of fragmentation due to the presence of multiple technology partners working with the same investment firm, on the other hand, regulation must ensure the application of duties, responsibilities and requirements that are distributed among all the entities that make up a value chain and that are calibrated with respect to the role played in the chain.

In this respect, it is also important that excessively burdensome and additional requirements are not imposed on suppliers of technological services compared to what is currently envisaged.

<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>

The adoption of the expected regulatory project on open-finance is considered essential, in order to ensure equal conditions of data usage, access and sharing by the entire financial ecosystem.

<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>

In this contest, it is considered necessary to strengthen supervisory practices and cross-border and/or cross-sector cooperation. The use of regulatory experimentation mechanisms accessible by all parties involved in the provision of financial services is increasingly important. Sandboxes should also be established at the European level, in order to ensure the effective evaluation by the European Supervisory Authorities and the application of uniform solutions in a safe context. This could be a good starting point for both the evaluation of the effects and the possible implementations of the regulation.

<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>

Please see previous answers. It is considered essential:

- the application of the principle of proportionality, taking into account the risks on the value chain and avoiding excessively burdensome regulation and such as to prevent concentration risks in the hands of a few operators able to bear the compliance costs;

- guarantee both formal and substantial level playing field, ensuring the effective applicability of the framework even in the case of use of new technologies (e.g. DLT);

- maintain the approach “same service, same rule, same license”, in order to ensure an effective level playing field;

- pursue greater clarity of definition in order to avoid interpretative and application discrepancies that could damage the level playing field and interpretative doubts that cause excessive compliance risks;

- provide the use of sandbox mechanisms rather than invasive and untested regulatory interventions (establishment of European regulatory sandboxes) on whose experience then propose amendments to the regulations or adopt soft law acts (e.g. Guidelines etc.).

<ESMA\_QUESTION\_DCFE\_14>

1. 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>

# 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>

<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>

Even if not so widespread, the use of platforms in the provision of services could widely increase. The potential diffusion of these models allows companies to access the service components made available and integrate them into their systems, allowing to reduce the costs of entering the market for new players; the platform model also facilitates the offer - and therefore encourages the development - of innovative services.

<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>

<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>

<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>

There are some key opportunities and challenges related to the use of platforms by financial firms:

* The **platform** model and the use of **API** allows producers/issuers to give visibility to their products even through non-traditional channels (e.g. On the app of other companies) by integrating them into the latter. This fosters the raising of finance and makes the regulatory boundaries of the provision of investment services more uncertain.
* Moreover, the use of platforms also allows service providers to **make them more easily available to financial entities and to sell them on the market**, ensuring competition. The provision of strict regulatory requirements - and in addition to what is already foreseen - would end up raising entry costs, penalizing SMEs and Start-ups and, on the contrary, leading to concentration in favor of large operators (e.g., BigTechs). Excessive and disproportionate regulation would end up increasing those concentration risks that are likely to be prevented. The application of a principle of proportionality, taking into account risks on the value chain, could reduce the impact on smaller firms where the context allows it.
* Through **open finance models**, the companies that provide advice services can have access to the data collected by other parties (e.g. Banks), concluding agreements with the latter in order to provide portfolio and advanced consulting services by a faster and more efficient interchange of data and information. For example, it is possible for banks to allow access via API to third party consultants to customer securities accounts.

<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>

We believe that the mentioned risks are not new nor exacerbated where financial firms use platforms for the marketing or conclusion with customers of contracts for financial products and services, as the regulatory requirements still apply to the investment service providers, regardless of the use of components available on the platform.

<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>

The approach “same activity, same risk, same rules” should be maintained, so that same services are subject to the same requirements (starting from the authorization ones), in order to guarantee a level playing field.

In order for this approach to achieve a level competitive playing field, the current regulatory model needs to be rethought to redesign a new scope that takes into account the technological evolution of financial services and financial instruments. In fact, it is wrong to think that the current discipline can be applied analogically to digital services without the appropriate adjustments. If, on the one hand, the provision of digital services leads to a physiological level of fragmentation due to the presence of multiple technology partners working with the same investment firm, on the other hand, regulation must ensure the application of duties, responsibilities and requirements that are distributed among all the entities that make up a value chain and that are calibrated with respect to the role played in the chain.

In this respect, it is also important that excessively burdensome and additional requirements are not imposed on suppliers of technological services with respect to what is currently expected; this in order to avoid concentrations towards the few subjects able to bear the costs of adaptation (BigTechs and large operators). Moreover, the legislation on outsourcing already provides adequate requirements in order to limit the risk deriving from excessive reliance on service providers.

<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 answer no. 26.

<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>

The use of regulatory experimentation mechanisms accessible by all parties involved in the provision of financial services is considered increasingly important. Sandboxes should also be established at the European level, in order to ensure the effective evaluation by the European Supervisory Authorities and the application of uniform solutions in a safe context. This could be a good starting point for both the evaluation of the effects and the possible implementations of the regulation.

<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>

In general, it is considered essential:

- the application of the principle of proportionality, avoiding excessively burdensome regulation and such as to prevent concentration risks in the hands of a few operators able to bear the costs of adjustment. The outsourcing regulation already available should be able to address the issue;

- guarantee both formal and substantial level playing field, ensuring the effective applicability of the framework even in the case of use of new technologies (e.g. DLT);

- maintain the approach “same service, same rule, same license”, in order to ensure an effective level playing field;

- pursue greater clarity of definition in order to avoid interpretative and application discrepancies that could damage the level playing field and interpretative doubts that cause excessive compliance risks;

- provide the use of sandbox mechanisms rather than invasive and untested regulatory interventions (establishment of European regulatory sandboxes) on whose experience then propose amendments to the regulations or adopt soft law acts (e.g. Guidelines etc.);

- expressly provide in the European legislation for bans on national gold-plating, as provided for in the draft regulation on Artificial Intelligence.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_29>

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

<ESMA\_QUESTION\_DCFE\_30>

TYPE YOUR TEXT HERE

<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>

Regarding mixed-activity groups including Big Tech, it is important to act strongly and in a timely manner to ensure the same conditions among operating entities in this mode and the individual entity (level playing field).

<ESMA\_QUESTION\_DCFE\_31>

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

<ESMA\_QUESTION\_DCFE\_32>

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<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>

TYPE YOUR TEXT HERE

<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-2)
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-3)
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-4)
4. The EC is also asking EBA for input in the areas of protection of client funds and non-bank lending. [↑](#footnote-ref-5)
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-6)
6. https://ec.europa.eu/info/publications/200924-digital-finance-proposals\_en [↑](#footnote-ref-7)
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-8)
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-9)