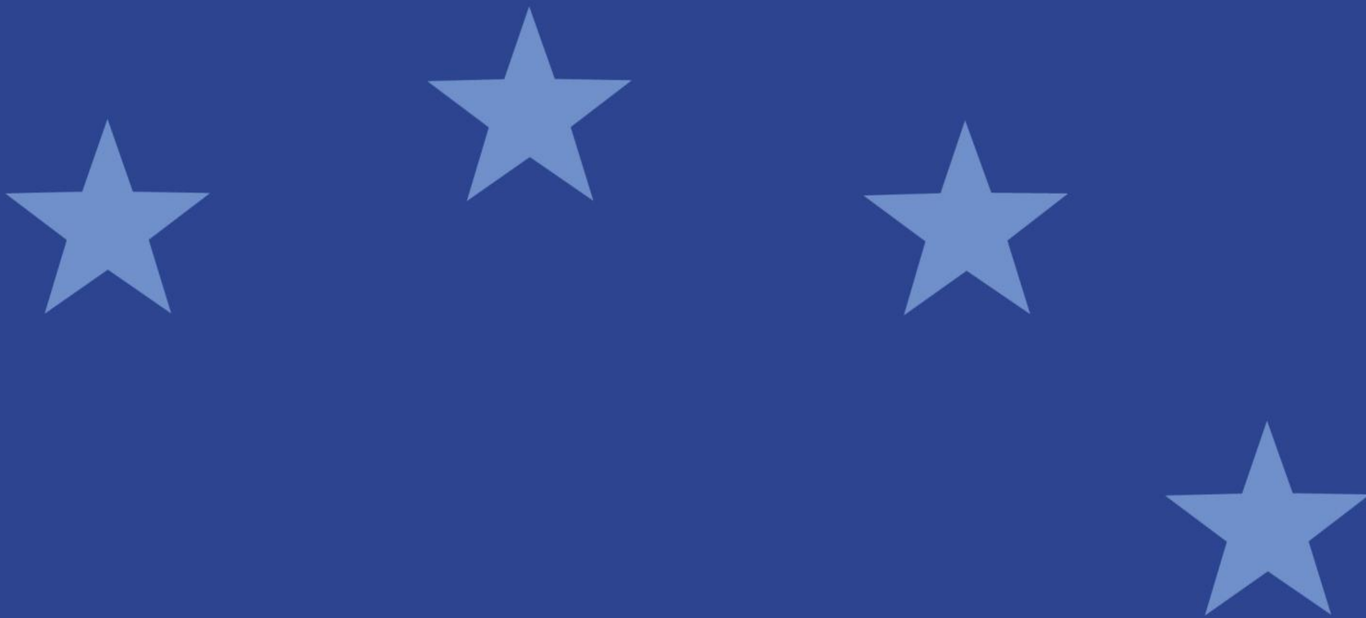
Report

Call for evidence on digital finance



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1 Background

1. On 2 February 2021, the European Commission (EC) published a request for technical advice to the European Supervisory Authorities (ESAs) on digital finance and related issues and more specifically the regulation and supervision of more fragmented or non-integrated value chains, platforms and bundling of various financial services, and risks of groups combining different activities.[1]

2. On 25 May 2021, ESMA launched a public call for evidence to collect feedback from external stakeholders on those issues with a deadline for responses on 1 August 2021.[2]

3. The call for evidence included 33 questions covering fragmented value chains, digital platforms and mixed activity groups (MAGs). Respondents were also invited to provide any other general observations that they thought could be relevant to ESMA's work.

4. ESMA received a total of 32 responses, of which 8 were confidential, from a wide range of stakeholders, including financial firms, technology companies and investors representatives. The answers received are available on ESMA's website unless respondents requested otherwise.

5. This report summarises the feedback received from respondents, which has served to inform the ESAs' response to the EC's request for technical advice.[3]

2 Executive summary

6. There was a broad consensus among respondents that the growth of digital finance has contributed to greater fragmentation of the financial value chain. Fragmentation was not considered a necessarily undesirable trend because outsourcing to third-party service providers enables financial firms to focus on their core products. Nor is fragmentation a recent phenomenon in financial value chains.

7. If left unmanaged though, fragmentation poses certain risks for the financial sector, including concentration risk, the risk of an uneven playing field between regulated firms and technology companies, reputational risk for customer-facing firms and risks to investor protection, e.g., in case liabilities are not clearly established along the value chain or when consumers have no clarity as to with whom they are actually contracting. Several respondents also highlighted the rising costs of market data and the growing importance of unregulated data providers.

8. Half of the respondents confirmed the existence of platforms bundling different financial services from different financial firms in the EU. Stakeholders primarily shared insights on fund distribution platforms, which have seemingly changed their business model in the recent years, with the provision of additional services and new remuneration models that raise fee transparency issues. Risks reported by stakeholders in relation to the use of platforms include market concentration and risks to fair competition, investor protection

[1] EC, 2021, 'request to EBA, EIOPA and ESMA for technical advice on digital finance and related issues', February 2021.
[2] ESMA, 2021. 'ESMA launches call for evidence on digital finance (europa.eu)', May 2021.
[3] ESAs, 2022. 'Joint European Supervisory Authority response to the European Commission's February 2021 Call for Advice on digital finance and related issues: regulation and supervision of more fragmented or non-integrated value chains, platforms and bundling of various financial services, and risks of groups combining different activities', 7 February 2022.

with a particular focus on the risks of poor customer outcomes, conflicts of interest, lack of transparency around pricing models and potential exclusion of categories of customers. Respondents also highlighted increased risks in relation to information and communication technology (ICT), data protection and privacy and money laundering/terrorist financing. Meanwhile, they also noted opportunities, such as a wider offer of financial products and diversification opportunities for investors and access to a larger consumer base, lower operating costs, scale efficiency and automatization of processes for firms.

9. Overall, respondents recognised the cross-border nature of platforms and fully support enhanced cross-sectoral and cross-border cooperative arrangements and monitoring practices. High level recommendations from respondents in relation to the current regulatory framework include ensuring a level playing field, proportionality, and harmonised rules across the EU. They also mentioned the need to promote interoperability between platforms, European regulatory sandboxes, and financial education.

10. A common observation from respondents is that BigTechs currently participate in financial services either through partnerships or directly with a focus on the areas that are subject to a less stringent regulatory framework, not capital intensive or/and show higher ROEs. Several respondents expect that BigTechs will further develop their direct participation in financial services. Almost all respondents they see risks in relation to MAGs coming and named among them financial stability, consumer protection, data related, competition and ICT risks and risk of unlevel playing field between 'solo' financial firms and MAGs. The majority believe that the current EU regulatory framework does not capture the emerging risks generated by the entry of MAGs into financial services and needs adaptations, while few respondents do not see any need to change the current regulatory framework. All supported enhanced cooperation between securities regulators, consumer protection authorities, AML/CFT agencies, data protection authorities, central banks, competition authorities, tax authorities in the EU and with third countries.

3 Feedback received

Q1. Please insert here any general observations or comments that you would like to make on this call for evidence, including how relevant digital finance may be to your own activities.

11. Nearly all financial firms today, including the traditional incumbents, offer some form of digital finance tools to their customers, according to respondents. Therefore, separating technology companies from traditional financial firms is not straightforward in the context of fragmented value chains. An important distinction lies between firms that operate in a regulated space (e.g., licenced as a payment institution) versus those that do not. Respondents were near unanimous on the need to bring firms that are not regulated in the financial sector (but are nonetheless active in the financial value chain) into existing regulatory frameworks.

12. Respondents principally expressed a preference for activity-based supervision, which they said would ensure financial stability and competition in the EU's internal market while also mitigating risks that have become more pronounced due to the digitisation of financial services—such as abuses of data and concentration of market power. This affinity for the "same business, same risk, same rules" principle was shared by many respondents,

especially those interested in a level playing field between incumbent firms and new entrants. A fully harmonized internal market operating by these principles would also make it easier for Europe's digitally native financial tech companies, many of which are start-ups, to achieve greater scale and compete globally, one respondent said.

13. Indeed, scalability was important for many respondents who said facilitating such scale would require legal certainty to reduce regulatory arbitrage and market fragmentation within the EU. An activity-based approach, respondents said, would be technology neutral and would uphold the EU's values of transparency, fairness, stability, investor protection, and market integrity. At the same time, some respondents said customer-focused ecosystems built by BigTechs required greater scrutiny as new sources of customer data and cross-selling where non-financial and financial activities merge have grown.

14. On the emergence of new financial technologies and innovations, respondents urged regulators not to stifle such developments and to give market players the time and latitude required to explore new technology applications before subjecting them to potential regulations.

15. Legally, respondents said the EU should at least provide for some minimum of harmonisation of contract and securities laws to facilitate the issuance of digital financial instruments by, inter alia, limiting requirements on paper-based financial instruments or physical registration requirements (e.g., a public notary or land registers) to allow for fully digitalised value chains.

16. Furthermore, interoperability between digital services and products would need a common set of standards. Existing regulatory frameworks are based on bilateral relationships (for example, outsourcing regulation and legal provisions on settlement accounts). However, many new technologies, especially those based on distributed ledger technology (DLT), have no central authorities or intermediaries, meaning they are based on multilateral relationships and consensus (which does not fit into existing regulation). Regulation should acknowledge this new decentralized paradigm that the advent of crypto assets (CAs) has introduced to finance, some respondents said.

Q2. Do you observe changes in value chains for financial services (e.g., more fragmented value chains) as a result of technological innovation or the entry of technology firms? How different is the situation now when compared to pre-Covid?

17. Respondents mostly agreed there is growing fragmentation in the value chain for financial services as digital finance has matured. Areas of cooperation between traditional finance and technology companies include customer identification, including for Know Your Customer (KYC), Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) purposes, customer interface solutions, data aggregation or analysis, distribution of products and compliance. Other respondents observed that elsewhere in the value chain, cloud providers have replaced in-house data centres and financial firms are increasingly interacting with a growing number of highly specialised technology companies, e.g., in the development of DLT or Artificial Intelligence (AI) applications. There is also a trend towards greater decentralisation, including with the growth of so-called 'decentralised finance' or DeFi which operates on DLT with CAs. These market developments are obscuring the boundaries between traditional financial firms and technology companies.

18. This fragmentation presents certain challenges according to some respondents. Several respondents were concerned that fragmentation could foster market concentration and diminish competition in some key areas of the financial value chain. A prominent example is the use of cloud service providers. While it is true that cloud providers can facilitate efficiency gains and incentivise investments in new technologies such as artificial intelligence or big data analytics, this may come at the expense of greater concentration risks. It can also encourage disparate standards if market participants choose to only offer their services for those with access to their closed ecosystems. So digital innovation can open access for new players and create more competition only if this fragmentation and decentralization is accompanied by interoperability. Further details on the possible challenges and risks brought by those changes are outlined under Q7 and Q8.

19. The consensus view on the impact of Covid-19 is *not* that it has led to the emergence of new trends or services offered by technology firms, rather, the pandemic has increased the pace of adoption and digital transformation that was already underway. Development cycles in the financial industry towards digitalization began in the last 2-3 years and Covid-19 is largely viewed as incidental to this process. In some instances, Covid-19 has led to projects which had already been in the pipeline to be brought forward earlier.

20. Only one respondent noted a shift from the status quo caused by Covid-19, namely, the growing number of cyber-attacks it has spawned as more business is conducted online. This trend means financial firms must undergo structural responses, accelerating the adoption of new or more resilient cybersecurity services. Another respondent noted that the pandemic has increased cost pressure on firms, and hence spurred the adoption of more cost-effective digital solutions.

Q3, Q4, Q5. Do you consider that financial firms are increasingly relying on technology firms to fulfil critical or important functions? Are there particular types of technologies and technology firms involved? Do you have examples of technology companies providing financial services in the EU or being used by financial institutions in the EU to fulfil critical or important functions?

21. Most respondents across the spectrum of financial services confirmed a growing reliance on third-party technology firms, though not all considered such partnerships critical to fulfilling important functions. One of the most referenced areas of participation with technology firms was in cloud computing. Several industry groups and market participants cited the use of cloud operators in outsourcing ICT and other cybersecurity functions.

22. Asset managers and market infrastructures use third-party technology to perform a variety of functions, from obtaining data for risk analysis to order management and trade execution systems. Respondents said they continue to rely on traditional methods for custody and fund depository functions but noted this may change as DLT technology and the market for CAs matures.

23. Some respondents representing investment advisers said firms have begun offering 'robo-advisors' through online platforms that use AI. They use algorithms to process client data in online questionnaires and use that to curate investment recommendations for the client. The same respondents said financial firms rarely build their proprietary technologies in-house anymore. Instead, they commission them to third parties whose greater competence in software and data analysis allows these firms to focus on other core areas.

24. Broadly, respondents agreed that the use of big data and cloud platforms provide considerable opportunities for RegTech, e.g., using AI tools to bolster AML and CFT efforts, identification of fraud, detecting suspicious trades, and preventing insider trading or market manipulation.

25. Looking at concrete examples of technology companies providing financial services in the EU, several respondents highlighted the growth of BigTechs in the payments market, spurred by the introduction of the PSD2 directive. Describing what this growth may mean for other sectors, one respondent said BigTechs might partner with one or more leading financial institutions to become the customer-facing provider of a certain finance services (such as current accounts or loans). Or BigTechs might create additional layers on top of existing services, for instance acting as a marketplace—offering customers the ability to access the products of multiple financial institutions through their distribution channel or platform. However, none of the respondents foresaw BigTech penetration into traditional European capital markets.

26. Respondents across the spectrum of industries surveyed said they partner with technology companies across the financial value chain from customer-facing services, such as trading or data analysis, to operational and ICT functions. Services that have seen new tech entrants include order management systems and execution management systems for bonds, derivatives, and equity trading. One respondent suggested these new systems could 'effectively replace' multilateral trading systems.

27. Describing the business models, several respondents noted that technology companies—particularly BigTechs—tend to build ecosystems of connected products and services around their users because the customer data obtained in one market can be leveraged to gain a foothold in other markets. Technology companies do this by offering new services not only as a direct source of revenue, but also to collect data that allows them to strengthen the wider ecosystem. This business model was often described by respondents as offering a 'one-stop-shop' for financial and non-financial services to retail customers.

28. Most respondents agreed that digital delivery of financial services in the EU increasingly relies on technology offered by third parties, but it tends to dominate non-core functional areas of the value chain, such as ICT functions (data centres and cloud platforms), payments (near field communications or NFC) and security (biometric authentication).

29. In core areas for financial businesses, respondents offered examples of AI being used to deliver personalized investment products via 'robo-advisers' and enhance the risk analysis capabilities of financial institutions, as well as bespoke software being used to augment trading, settlement, clearing, and collateral management services.

30. One respondent from the FinTech industry, which offers third-party technology for its trading venue clients, relies on a large tech firm for virtualised infrastructure. A CSD respondent offered other examples of software companies that provide market infrastructure products, including a range of automated clearing solutions for trading venues and solutions for market pricing and collateral management. A respondent from the investment advising sector gave the example of a FinTech company specializing in robo-advising that can customize life insurance policies and investment portfolios based on the profiles of their clients.

31. It should also be noted that a challenge for FinTechs lies in finding finance or bank partners with a reach across Europe, since there is significant fragmentation preventing them from

scaling their services across the bloc. This phenomenon is most acute in cross-border digital payments.

Q6. Do you see changes in the way or extent to which financial market data are being collected, used and disseminated by unregulated data service providers?

32. Several respondents highlighted an increase in the breadth of data used by financial firms and the growing importance of alternative (or non-financial) data, such as data originated from the Internet or technical devices, for decision making, trading or risk management purposes. They noted that quality data is a prerequisite for the provision of any service along the entire value chain in asset management, from research, portfolio, and risk management, to trading, clearing, and settlement. Secure access to and availability of high-quality financial market data is also indispensable for regulatory and customer reporting.

33. According to some respondents, the financial services industry is currently in a transition from a human-driven to a more digital-driven world. At the same time, there is a shift in consumption of data from display to non-display activities, which reflects the ongoing automation of market activity. There are changes as well in the business models of data providers, with the emergence of new unregulated data providers and the development of additional services by mainstream financial data providers. Furthermore, BigTechs are entering the market for data products, leveraging their cloud platforms, which have the potential to become the new venue for the financial data marketplace.

34. A common refrain among respondents was that while more market data is available, there is no consistency around pricing and delivery. Relatedly, several respondents acknowledged the improvements brought by the recent ESMA guidelines on market data but pointed to persistent weaknesses in the current MiFID rules on two fronts: 1) transparency of fee schedules and 2) limitations on liability when the data provided is not accurate. Respondents also encouraged ESMA to clarify the concept of “data service providers” to understand which entities would be subject to the existing EU regulatory framework.

35. Several respondents reported increased or unpredictable data prices that in some scenarios negatively affect the net performance of investment funds and, by extension, return to investors. In describing the problem, respondents identified the business model in which data licensing agreements originate with the exchanges, but data delivery is handled by third-party vendors—who often charge a mark-up enabled by the oligopolistic nature of the market in which they operate.

36. One respondent observed that regulated financial services companies may be sidestepping potential regulatory obligations by outsourcing their data distribution to unregulated market data distributors.

37. Chain of custody for financial data also raised concerns among several respondents with an interest in collecting data that would reveal valuable customer feedbacks. Access to vastly more granular data means that technology firms can more accurately predict customer behaviours than traditional financial firms because they go beyond just “settlement” and into real consumer trend data. In other words, technology companies appear to obtain the most important data, which translates to advantages in the lucrative market for data analytics.

38. Furthermore, indicators (on fund health, ESG benchmarks, etc.) drawn from market data should receive more intensive regulatory scrutiny, some respondents said. Specifically, the growth of sustainable finance has led to the creation of a novel set of ESG indicators issued by specialised providers. As these funds grow in importance, the fidelity of the data going into the ratings system is paramount, they said.

39. One respondent noted that the MiFID II review should support the emergence of Consolidated Tape Providers (CTPs), which should help address possible weaknesses in the regulation. The same respondent claimed market data redistributors and vendors are not responsible for the high costs of market data in the EU. Instead, market data costs have risen because the originators of that data (e.g., trading venues and APAs)—not redistributors or third-party vendors—have raised their fees and fail to properly disclose their pricing methodology. This view was echoed by one other respondent.

40. Finally, some respondents requested specific measures be adopted to manage risk in the provision of financial market data, including by bringing unregulated data providers into the MiFID II regulatory framework, ensuring both transparency of the fees and greater flexibility of licensing and contract arrangements, or at least the ability to compare the various offers in a competitive market.

Q7. What implications, if any, do changes in value chains have on your own activities? To which extent are you taking an active role in these changes?

41. Respondents broadly welcomed a certain degree of (controlled) fragmentation in financial value chains, especially in ways that enable firms to incorporate the specialized knowledge of third parties to offer better services to clients. It also contributes to more robust levels of security and efficiency as third parties must often provide state of the art technology to compete. Changes in financial value chains, therefore, are seen as a positive sign of evolution of the financial services industry, with technology fostering more competition and efficiency at reduced costs and with reduced risks.

42. Fragmentation was also considered an opportunity to develop new services and communication channels. Asset managers said they aim to externalize their non-core activities to focus their operating models on value-adding activities. Some tools offered by third-party providers are easier to maintain and adapt to rapidly changing regulatory requirements. Due to their specialized nature, they also tend to do the specific functions better than generic tools. Their code is easier to audit, and the data flows are more transparent, which makes it easier to inspect how data is processed and exchanged. Greater fragmentation is associated with more specialization in the value chain, which has also led to the emergence of new service providers in areas such as Know Your Customer (KYC) utilities, data management, loan administration, liquidity and treasury provision and bank service aggregation, among others.

43. On a less positive note, some respondents said that “outage incidents” in cloud environments or other third-party failures (data breaches) could cause reputation blowback from end user customers against their financial service providers—through no fault of their own. A respondent from the banking industry noted the entry of BigTechs in the financial services market could pose certain risks, including compromise of customer data privacy (in the event of a cyber breach) or looser (and therefore riskier) credit offerings.

44. On the regulatory front, respondents in the FinTech industry said as financial firms increasingly rely on FinTechs, regulatory or legislative decisions regarding those FinTechs naturally extended to financial firms who use their services.

45. One respondent pointed to the potential risk of increased fragmentation in capital markets with the development of DLT, for example, in case some fund units are issued on a DLT and others via a CSD.

Q8. Do you see new or exacerbated risks in relation to the reliance on technology firms by financial firms?

46. Several respondents said the growing reliance on technology firms to carry out core functions within financial market value chains made conducting proper due diligence more difficult. Asset managers were particularly concerned that traditional risk assessments have not kept pace with evolving technologies, exposing investors to fraud, data leaks, and other cybersecurity threats.

47. Many respondents also cited concentration risks within certain technology dependent sectors of the financial market value chain. Asymmetries of market information and power in negotiations between customers and service providers appears acute in cloud services and the provision of market data.

48. The perception of increased risk in financial market value chains was not shared by all. Two respondents said the intersection of technology providers and financial firms is already highly supervised and incentives are such that a highly resilient infrastructure for business continuity has emerged, proving robust during the Covid-19 pandemic. Moreover, it can be understood as a means of mitigating risk because outsourcing to more competent providers of technology can lead to stronger data safeguards.

49. Several respondents also raised specific concerns in relation to CAs, because of potential gaps in investor protections (fraud, theft of private keys, privacy, etc.) as well as operational risks such as anti-money laundering, tax evasion, and difficulties in monitoring capital movements. At the macro level, the patchwork (or absence) of approaches taken by regulators on CAs in various jurisdictions makes managing these risks difficult, these respondents said.

50. Respondents from the FinTech industry expressed concern about their reliance on commercial banks for access to payment systems and custody of funds because of current rules that limit these activities to credit institutions. Opening direct access to payment systems would mean fewer interdependencies and reduced systemic risk in the case of a 'black swan' event, the industry said. The same respondents called for proportionate and risk-based assessments rather than a rush to add FinTechs to existing regimes. Furthermore, they said applying the same oversight as banks and other payment institutions implicitly supports incumbents. Not only would this potentially create barriers to entry it would also favour companies with business models identical to banks when consumers would benefit from diversity in financial services. A consumer representative warned of risks associated with FinTechs that may not be regulated as financial service providers, even when duly registered as financial intermediaries.

51. On operational resilience, one respondent said it will be important that any developments seeking to bring third parties within the regulatory perimeter (as in DORA), do not lead to the inadvertent disclosure of commercially sensitive information between competing firms.

Another respondent warned against listing market data providers as critical services under the DORA—referring to the US framework as an ideal model. Several respondents welcomed the minimum standards to be included in contracts with critical third-party service providers under DORA.

52. On competitive risks and maintaining a 'level playing field,' most respondents, regardless of industry or sector, expressed a preference for technological neutrality from regulators. One respondent emphasised the asymmetries of power in negotiation between customers and certain service providers (i.e., the extraordinary efforts and time required to agree on regulatory compliant contracts with cloud services providers in the financial sector).

Q9. Do you see new or exacerbated risks in relation to the provision of financial services by technology companies?

53. Respondents noted their support for a regulatory framework that is technology neutral and that applies the 'same risk, same activity, same regulation' principle to uphold the values of transparency, level playing field, investor protection, and market integrity. Despite some stakeholders pointing out that the current regulatory framework is already characterized by technological neutrality, most of them acknowledged the existence of new or exacerbated risks in relation to the provision of financial services by technology firms due to the appearance of innovative services/products, service providers, and third-party relationships that are not covered by existing EU regulation and that have the potential to become critical and systemically important.

54. One of the risks that is recognised by a plurality of respondents is the lack of level playing field when technology firms begin providing financial services, particularly when it comes to their large customer base that is unattainable by incumbents and by having less stringent processes as they are not regulated financial entities. Some market participants also noted that large tech companies can cross-subsidize new business lines and significantly undercut regulated firms, which can be detrimental to competition and can lead to potential market distortions. Some respondents also declared that the gain of market share by tech giants in the financial space can lead to increased credit risk and compromise traditional controls. A minority of respondents claimed that new entrants are beneficial for competition (as long as they offer safety and reliability guarantees), and others said new entrants are cooperating with incumbents, instead of trying to gain market share, and thus allowing the provision of a wider range of improved services to customers.

55. Risks to consumer protection were also highlighted by several respondents; in particular, such risks may arise when end providers are not clearly identified, when investors lack understanding of the new products/services being offered, and when there is uncertainty with regards to the allocation of liabilities. All these scenarios are likely to arise with the provision of novel products/services that are not covered by existing regulation.

56. Some market participants also noted the presence of other risks such as (i) risks to financial stability due to the systemic importance of the aforementioned and their potential monopolistic power, (ii) concentration risks, (iii) increased outsourcing risks, (iv) ICT and data quality and protection risks, and (v) money laundering and terrorism financing risks arising from the creation of complex value chains and the avoidance of strict standards.

Q10. Do you see new or exacerbated risks in relation to the collection, use and dissemination of financial market data by unregulated data service providers?

57. Some respondents pointed out the lack of level playing field and fair competition when it comes to the collection, use, and dissemination of financial market data. Particularly, they noted that the possibility of the industry becoming overly reliant on certain data service providers may result in a degree of monopolistic power, potentially jeopardizing quality and increasing the costs. One respondent also noted the trend of trading venues and vendors merging, creating new types of dominant players, and further consolidating these negative effects. As the dependency on such data keeps increasing, some market participants suggest that the same principles and rules should apply to both regulated and unregulated data service providers, improving the well function and transparency of markets especially when certain regulations require the use of financial data. Others have a less stringent approach, suggesting higher monitoring instead of legislative action over unregulated data service providers.

58. Opposite to this line of thought, data providers who replied to the Call for Evidence lay out that increasing costs of end-user data are beyond their control, as such rising costs come from the increasing fees regulated data providers charge them for the use of raw historical market data. They add that the competition between redistributors and vendors to supply derived market data and analytics (and other value-adding services) help keep overall costs for end-users low.

59. Stakeholders also raised concerns over data-related risks, including the risk of data leakage when transferring data across suppliers, as well as risks related to data generation and the use of the data itself claiming that such data is not always properly selected/tested in advance as there is no legal requirement to do so. One respondent also noted that such lack of control over how the data is used and by whom can lead to risk to financial stability. Another respondent suggested the need for a higher level of aggregation and anonymity when data is being shared, as well as having a single data standard across all providers.

60. Two respondents also highlighted potential operational resilience risks, and one of them suggested that digital operational resilience standards should be developed with proportionality in mind so that all relevant financial market participants adhere to appropriate standards. Another respondent noted risks to consumer protection, while another one emphasized high lock-in risks with data vendors.

Q11. Do you consider that some adaptations to the EU regulatory framework are needed to address the risks brought by changes in value chains?

61. As a general comment, several respondents noted the need for greater scrutiny and further harmonization across existing regulatory frameworks, to both reduce compliance costs and ensure a level playing field. Some respondents also pointed to the need of undertaking in-depth fitness checks and impact assessments of all relevant EU rules in the financial sector to ensure technological neutrality and address risks brought by changes in value chains (and propose regulatory updates when necessary). One respondent noted that regulations should be continuously reviewed and updated as the pace and complexity of new technologies is incremental.

62. Another general comment brought up by respondents was the need to have a simple and easy to implement legal framework to ensure all unregulated entities fall under the regulated space (including bringing further clarity to existing rules). One market participant suggested the creation of a ‘technology-neutral’ taxonomy to increase transparency and reduce fragmentation.

63. Overall respondents declared support of existing outsourcing standards and regulatory initiatives (cloud guidelines, DORA) to address risks along the value chain, but some pointed out the need for improved communication of such rules to relevant stakeholders. Particularly in this context, one respondent also cautioned against the development of new rules in this space given that outsourcing guidelines are relatively new, and DORA is yet to be finalised. Additionally, another one noted that there is a need to distinguish between outsourcing to external parties vs. intra-group providers. One market participant also cautioned that while DORA improves visibility on critical third-party providers, it does not impose requirements on non-critical third-party service providers.

64. When it comes to competition-related initiatives, respondents again welcomed ongoing policy developments. Yet, several respondents pointed out that new entrants are not holistically supervised and noted support for the need to push further the principle 'same activity, same risk, same rules' in a proportionate basis. Some market participants highlighted the need for bringing into the regulated space firms that are not regulated in the financial sector but are active in the financial services value chain to ensure the 'chain' is consistent and properly supervised. One of them particularly noted the need for some adjustments to current rules to ensure that new entrants have the required expertise to offer adequate guarantees of safety and reliability to customers.

65. Several respondents suggested adaptations specific to the crypto/DLT and AI areas. In the crypto/DLT area, market participants agreed for the need of EU-harmonized rules avoiding overlaps between national and EU regulations (e.g., one respondent noted that recent crypto-custody rules in Germany are likely to interfere with MiCA once adopted), with particular mentions to the need for precise classification mechanisms of instruments. Other suggestions include the need to provide for preventive protection mechanisms, the need to identify centers of responsibility, the need for interoperability in DLT-based infrastructures, and the opportunity to introduce systems of convergence and international cooperation. In the AI space, one respondent highlighted the need for a legislative framework for AI-powered automated decision making to ensure the safeguard of EU citizens' fundamental rights.

66. Other suggestions provided by respondents were (i) the need for an acknowledgement of the professionality of financial advisors at cross-national level, (ii) the need for passporting regimes to providers of new financial services across the EU (noteworthy, the respondent did not provide any further details as to which services these new regimes should aim to cover), (iii) to study the cross-selling and cross-data analysis where non-financial and financial activities are combined, (iv) make all new regulatory frameworks interoperable on a technical basis, and (v) consulting KYC providers to support secure customer experience, as well as a unified EU approach on KYC requirements.

Q12. Do you consider that some adaptations to the EU regulatory framework are needed to unlock the benefits brought by changes in value chains?

67. The majority of respondents agreed on the need for some adaptations to the EU regulatory framework to unlock the benefits brought by changes in value chains. Many comments reiterated the need for further harmonization of the regulatory framework (see Q11). Some stakeholders made specific reference to blockchain technology and the need of agreeing on common industry standards to improve interoperability and to push for further decentralisation through the Pilot Regime (as in the current proposal CSDs still hold a central role). Two respondents suggested the merge of 'trade' and 'settlement' regulations

to permit the testing of a combination of initial recording, trading and settlement of DLT securities transactions, thus shortening the value chain and increasing time and cost efficiencies. Others pointed to L2/L3 clarifications needed to unlock the potential benefits of DLT. In this context, respondents brought up again the idea of a shared taxonomy as essential to regulation clarity and application.

68. Other suggestions from respondents include: (i) the possibility to allow the sharing of KYC information between financial institutions, (ii) enhance supervisory practices for cross-border and cross-sectorial collaborations, (iii) provide rules for tech infrastructures, regardless of their scope, (iv) ensure that firms can operate within an appropriate risk framework when they outsource to unregulated firms, and (v) focus on regulatory frameworks that better support the commercial adoption of value chain enhancements.

Q13. Do you consider that there is a need to enhance supervisory practices, e.g., cross-border or cross-sectoral cooperation, in relation to changes in value chains?

69. About half of respondents agreed for the need to enhance cross-border and cross-sectoral cooperation to prevent the development of duplicative regulatory frameworks. A handful of them pointed out the unclear sharing of responsibility between central banks and securities regulators in the context of digital finance and the need for further cooperation. Some respondents also noted the need to further extend such cooperation to the global level to ensure all nations are moving in the same direction. Several stakeholders highlighted the need for increased efficiency in contrast to adding more complexity (i.e., establishing new bodies/networks within authorities with new reporting lines would not be beneficial if they slow down coordination time, as well as the fact that sector-specific rules (e.g., DORA) should have precedence over cross-industry rules (e.g., NIS Directive). One respondent proposed to leverage new tech to ease data exchanges across NCAs.

70. Some respondents emphasized the need for harmonising reporting requirements across EU member states to lower the financial burden to both the industry and supervisors associated with regulatory compliance. Yet, nearly half cautioned against the creation of a centralised EU regulatory reporting body and recommended that primary financial regulators should remain responsible regulating reporting flows in the jurisdictions they operate in.

71. There were several comments regarding testing, particularly the need to harmonise testing requirements, to establish an EU-wide sandbox to ensure effective evaluation by the ESAs and the application of uniform solutions in a safe context, and the need for supervisory authorities to be present in the testing of innovative proposals.

72. Other proposals raised by stakeholders include (i) using the oversight approach of DORA as a blueprint for big techs' activities in other sectors, (ii) further transparency from regulators on the need and use of data reported, and (iii) AML-specific cooperation suggestions involving institutions, financial authorities and the police.

Q14, Q15. Which recommendations, if any, would you make to EU regulators/supervisors to address opportunities and challenges brought by changes in value chains? Do you have any other observations or comments in relation to changes in value chains?

73. Responses to this question reiterated previous suggestions by respondents: (i) broaden regulatory perimeter to capture new unregulated players – in this context, one comment suggested to explicitly highlight those tech platforms that are not regulated in the EU, (ii) interpret rules in an activity-based way and consider proportionality to ensure regulatory level playing field, (iii) further harmonisation and clarification of EU rules, and the (iv) need for system interoperability.

74. Some other proposals were made, for instance (i) to widen the mandate of supervisory authorities so that they can exert better oversight of all new providers, (ii) to increase communication between market participants and supervisors, and (iii) the need for many more sandboxes to allow for more testing (including an EU-level sandbox). As for the testing of new projects, some respondents highlighted the need for opening the development of new projects to a broader range of market participants and further EU involvement in such processes. On the other side, one respondent suggested that the EU should take a wait-and-see approach giving several projects the time to experiment

75. While several respondents welcomed the developments of MiCA, Pilot Regime and DORA, one market participant noted that until MiCA is applicable, a common interpretation of EU NCAs with regards to freedom of service in the CA area is necessary to avoid the need to apply for multiple licenses along the value chain in different member states.

76. One respondent commented on the need to rethink third-party risk management, as current rules place compliance responsibilities on financial regulated entities, who have less bargaining power when collaborating with large third-party service providers. Another respondent suggested to assess and provide more transparency on the 'price' customers pay when providing personal data.

77. One respondent noted that value chains, technical and operational working practices will continue to evolve and change, which means that rules targeting the regulation of the current state will always be outdated. Instead, they suggest that a principles-based framework focused on incentivising transparency and choice, along with regulatory changes that decentralise risks while offering customers choice is the only approach that can continually work.

78. Another stakeholder suggested raising awareness of investor protection regimes through coordination led by a pan-European programme aimed at informing retail investors about risks—as a compliment (not a substitute) to the investor protection framework at EU level.

Q16. Do you have examples of platforms bundling different financial services from different financial firms in the EU?

79. Several respondents confirmed that they observe examples of platforms bundling different financial services from different financial firms in the EU. These include fund distribution platforms which provide a single access point to a wide universe of investment funds. These platforms, which are mainly B2B in the EU, typically offer RTO and related services but also additional capabilities such as digital engagement or model portfolios. Other examples include online robo-advice platforms and trading platforms, the latter offering users the option to connect directly to CCPs to facilitate OTC derivative clearing. Importantly, the stakeholder stressed that this service is indeed helpful but should remain optional and not be bundled in a compulsory manner.

80. Other respondents do not observe examples of platforms bundling different financial services from different financial firms in the EU capital markets. However, several of them added that it is only a matter of time until the market matures enough for this phenomenon to materialise within the EU.

81. Two stakeholders provided examples in the banking or insurance sectors, also highlighting that such bundling may already exist in other jurisdictions and three mentioned related developments in Asia, including BigTechs offering financial services to retail clients. One other respondent highlighted specific products offered by BigTechs.

Q17. Do you consider that the use of platforms by financial firms for the marketing or conclusion with customers of contracts for financial products and services is widespread in the EU? Do you observe an increase in the use of platforms compared to pre-Covid?

82. Half of the respondents 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, with platforms becoming more diversified in their product and service offering. Meanwhile, the other half does not believe that the phenomenon is currently widespread in the EU although several of those respondents observe an increase in interest, for example by private clients, to use platforms for comparison purposes and to access retail products.

83. Regarding fund distribution platforms, respondents note an increase in market concentration, with four main platforms operating in a quasi-monopolistic status across regions within the EU. Their dominance enables them to impose their conditions, e.g., in terms of fees or liability, on fund managers, thereby highlighting the need for greater fee transparency and legal certainty, also because of the key role they play in the distribution chain.

84. When it comes to the reasons why digital platforms may become more widespread, two stakeholders attributed the growing popularity of platforms and online marketing by financial firms to the Covid-19 pandemic and the global lockdowns. Other respondents pointed to a trend possibly accelerated by Covid-19 and the consequent rise in digitalisation but also different regulatory developments, such as PSD2 Regarding fund distribution platforms, stakeholders explicitly stated that their growing popularity is not spurred by Covid-19 but rather results from the increasing regulatory complexity and growing digitalisation of financial services. For example, restrictions on fee rebates for specific activities in certain jurisdictions have led platforms to offer additional services and develop new customer-centric business models. Finally, one stakeholder stressed the efficiency gains, cost reductions and increase in innovative services provided by platforms as a likely driver for their future uptake.

Q18, Q19. As a financial firm/platform are you using platforms facilitating the marketing or conclusion with customers of contracts for financial products and services?

85. One respondent commented that the arrangements in place with platforms vary depending on the third-party provider. Broadly speaking, technology companies tend to maintain the technical infrastructure, while financial entities retain responsibility for the interactions with customers. The governance of the technical infrastructure may be shared, through e.g.,

Joint Ventures or partnerships models. Another respondent relies on external cloud service providers for its technical infrastructure.

86. Two respondents do not use any platform for the marketing or the conclusion with customers of their financial products and services but one said that PSD2 is enabling other firms to utilize their customers' data on platforms.

87. Two respondents shared further insights on fund distribution platforms, saying that they provide distributors with a unique access point to select and execute orders on funds' units and collect commissions Meanwhile, the platforms are used by asset managers to distribute their funds, monitor collected assets and the associated commissions. The same respondents observe that these platforms have introduced new and/or increased fees over the recent years and that their pricing structure is opaque. Also, asset managers seemingly have little leeway in the choice of the platforms, as distributors typically impose the platforms with which they wish to work. One further noted that the arrangements in place should reflect the platform's role in the distribution chain, in particular its AML duties. However, some platforms rather portray themselves as technical intermediaries only.

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

88. Respondents identified several opportunities connected to the use of platforms, which are shared by most of them. From a consumer's perspective, the use of platforms can enhance consumer experience and enlarge the range of available financial services and products from different entities, and hence opportunities for investment diversification. The development of in-depth intelligence about investors and behaviours through platforms can also lead to a better fit in terms of financial products provided, improving the robustness of suitability/appropriateness processes. For financial firms, the use of platforms can provide access to a larger consumer base, lower operating costs, centralise several functions at a unique point of distribution and enhance scale efficiency and the automatization of regulatory processes (e.g., KYC processes).

89. Respondents also identified a series of challenges, including the monopolistic or dominant position of platform service providers, the risk of "data-oligopolies", and the need to address specific ICT, security and AML risks (see Q21 and Q22 below for further details). They also highlighted technical implementation challenges, as cloud providers and other platforms increasingly rely on technologies proprietary to their platform, and the potential for reputational risk, e.g., caused by other firms operating on the same platform, and the difficulty for firms to gain assurance that all the entities operating through the same platform are aligned in terms of risk approach. The use of platforms can also make clients' retention more challenging and regulatory boundaries less clear. Finally, in the fund management area, some asset managers seemingly struggle in their contract negotiations with platforms to clearly define and separate legal liabilities.

Q21, Q22. Do you consider that the use of platforms by financial firms for the marketing or conclusion with customers of contracts for financial products and services brings new/exacerbated risks? Which controls and processes are in place at firms to oversee the specific risks emerging from the use of platforms?

90. There is broad consensus around an increase in cyber risk due to the digitalisation of services. For example, while larger firms may be better equipped to secure their systems,

the amount of data they process makes them tempting targets. Also, platforms may not have as stringent security requirements as regulated firms and the risk of fraud increases as activities move to the online space, especially in relation to identity theft. Relatedly, stakeholders highlighted an increased risk to data protection and privacy because of the higher number of digital transactions being processed and the fact that individuals/the general public tend to have less secured access to public networks than corporations.

91. Several respondents highlighted the difficulty to connect with and to access relevant information in relation to the end investor. From an asset manager's point of view, this could make due diligence and supervision processes more difficult. It could also make the development of tailor-made products more challenging and costly. A few respondents also noted possible issues in relation to suitability tests when provided through digital means and highlighted a lack of clarity in terms of liabilities along the value chain. One stakeholder specifically focusing on robo-advisors, noted the risks of incomplete disclosure to retail investors, inappropriate investment advice, high dispersion of asset allocation for similar investor profiles, and the limited product offering with a sustainability focus. One respondent noted additional risks connected to the potential exclusion of consumers, e.g., in case they do not wish to share their data or do not have the necessary levels of financial/digital literacy.

92. Some respondents highlighted that market concentration could lead to systemic risk, caused for example by operational risk or market manipulation involving a large platform. The majority also saw risks to fair competition because of the concentration of market power in a few players. Other negative spill over effects of concentration include lock-in risk, an increase in prices, and reduced product innovation. Several stakeholders noted the "gatekeeping risk", where the access to relevant data and infrastructure is limited or denied to financial firms, putting them at disadvantage. Many stakeholders also pointed to the limited transparency/unclarity of the pricing models of the platforms. Furthermore, two respondents highlighted risks in relation to the use of algorithms, search engines and comparison tools, which can favour the company to the detriment of consumers and lead to unfair and discriminatory practices.

93. Several respondents noted increased ML and TF risks, for example because of the lack of proper incentives for providers of KYC services, or weak on-line verification methods, also considering the higher volumes of customers-to-be-verified. The cross-border element was also highlighted and the fact that AML/CFT standards may be perceived differently across the EU.

94. There was a general agreement that the use of platforms could increase the risk of market manipulation, including because of the limited control on the veracity of the information circulating on the Internet. Differences in national online advertising rules can have detrimental effects for retail investors and create uneven competitive environments.

95. More broadly, respondents highlighted that digital evolution has led to unclarity in the delineation of responsibilities along the value chain, with the risk of a poor application of regulatory requirements.

96. Stakeholders noted that regulated financial institutions have extensive controls and processes in place to mitigate risks, in line with regulatory requirements, which translate into detailed internal policies for firms (e.g., in the areas of outsourcing, data protection, AML/fraud, third party risk management, concentration risk, business continuity/disaster

recovery, etc). One respondent reported the use of contractual clauses to mitigate platform specific risks (e.g., additional arrangements in relation to business continuity, contractual agreements on AML/KYC responsibility securing firms managers access to the platforms processes and controls in the area; clauses to guarantee firm's prior approval of the distribution perimeter of the firm's products).

Q23, Q24. Do you consider that some adaptations to the EU regulatory framework are needed to address the risks and/or unlock the benefits brought by the use of platforms?

97. One respondent highlighted difference in portability between financial (under PSD2) and non-financial data, which cannot be shared with third party providers and noted the risk of "data-oligopolies" with platforms. The respondent is supportive of the obligation for gatekeepers to provide continuous and real-time data access and portability, as foreseen by the proposed DMA. In relation to "open finance", the benefits of the proposal will depend on whether it will consider, in addition to financial data, data from providers that are outside the financial ecosystem but relevant to the provision of financial services. On a related topic, the same respondent sees positively the requirement under the DMA for large digital platforms to provide third-party providers with access to infrastructures under fair and transparent conditions to avoid the risk of large digital platforms building proprietary ecosystems. This is an issue that financial authorities should consider, for example, in the review of PSD2.

98. Three respondents highlighted the need to have a "same activity, same risk, same rules" approach, while considering the technological evolution of financial services and instruments. They noted the importance of proportionality not to impose excessively burdensome requirements on suppliers of technological services, with a view to avoid concentrations towards few players able to bear the costs of adaptation.

99. Two respondents suggested to regulate platforms to address the emerging risks connected to them. For example, one respondent suggested to formally designate platforms as distributors and regulate them as such under MIFID. Regarding fund distribution platforms, two respondents noted that a more stringent regulation would be beneficial to ensure reasonable fees and balanced contractual terms with fund managers. Regulatory/supervisory action to ensure that responsibilities in the distribution chain are clearly delineated and that platforms carry out their duties properly (e.g., on AML) would also be needed.

100. One stakeholder suggested a series of amendments regarding investment advice when provided through robo-advice tools, as the advice may be inconsistent with the investor's preferences and risk profile. The respondent suggested some policy work around suitability, independent investment advice and cost and charges disclosure.

101. One respondent highlighted the need to reassess market infrastructure rules to reduce centralisation. Finally, one respondent noted that the proposed regulations on CAs do not seem ambitious enough, in particular regarding the DLT pilot regime thresholds (too low) and the inter-operability across systems and players and across borders.

Q25. Does the use of platforms give rise to any challenges regarding the cross-border supervision of financial sector activities in the EU? Do you consider that there is a need to enhance supervisory practices, including convergence measures, in relation to the use of platforms?

102. Respondents largely recognised the cross-border nature of platforms and supported enhanced cross-sectoral and cross-border cooperative arrangements. A stronger gatekeeper and supervisory role for ESMA and the ESAs overall was mentioned. Respondents are also supportive of improving monitoring practices and oversight across Europe.

103. Most stakeholders stressed the importance to harmonise rules and apply them consistently across the EU. One respondent highlighted the need to ensure consistent enforcement of EU rules in all Member States, with reference to the "Wirecard case" and the scope of the EU Directive on collective redress. Another respondent pointed to AML as an area where cross-border and cross-institutions cooperation was needed.

104. In relation to the supervision of new digital business models, one respondent suggested a new supervisory mechanism for the most important digital platforms, with a view to ensure holistic supervision of all their activities and coordination with other authorities at EU and global level. This new supervisory mechanism should involve financial, conduct, anti-money laundering and consumer protection authorities, as well as data and competition authorities. Another respondent suggested that a thorough analysis of activity-based versus entity-based regulation should be performed.

105. One respondent noted the importance of sandboxes and would welcome sandboxes at the European level, which would allow an effective evaluation by the ESAs and the application of uniform solutions in a safe context.

106. With the emergence of new asset classes by way of new technologies and digitalization, two respondents suggested to consider giving ESMA a role in the definition of new products/asset classes, for example in case of hybrid categories, such as for crypto-assets, which could qualify as financial or non-financial instruments during their life cycle.

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

107. Several high-level recommendations, such as the need to provide for a level playing field, harmonised rules across the EU and proportionality, were highlighted by respondents once again (see Q23 and Q24). Several respondents also repeated their earlier recommendations on the need to have appropriate rules in place to address ML risks, possible negative spill over effects of dominant positions and to provide for fee transparency. The need to promote interoperability between platforms, including to mitigate lock-in risk, and European regulatory sandboxes was also mentioned again. Regarding fund distribution platforms, one respondent reiterated the need to look into their market power and remuneration model and to consider whether a minimum regulatory framework to ensure fair competition and proper investor protection would be relevant.

108. In addition to those recommendations already made, a stakeholder suggested to enhance investors' knowledge and make them better able to identify regulated versus unregulated providers, through additional information and training.

109. A respondent said that MAGs and large platforms entering financial services may require a more comprehensive supervisory approach to capture the unique risks of market dominance. The same respondent highlighted that several large technology companies operating in the financial services space rely on bank rails (by buying a licenced entity, or by having bank sponsor access) and that regulators should therefore allow non-banks to

directly access financial infrastructures, as this would provide for a better assessment of risks and oversight.

110. A stakeholder recommended ESMA and the EC to use the outcomes of these consultations to make appropriate amendments to MiFID II RTS 6 and 7 to ensure that appropriate operational resilience and risk structures remain in place as technologies evolve.

111. Another respondent referring to advertising and marketing rules on large platforms, recommended that platforms should be required to verify firms before they are allowed to advertise, especially financial services firms. The example of the UK, with the Government's draft Online Safety Bill including an economic harms chapter to tackle user-generated financial fraud online, was mentioned in that respect. The UK Government's Department for Digital, Culture, Media & Sport is also currently undertaking a full review of online advertising, including measures to tackle fraud.

112. Another recommendation suggests to expressly provide for bans on national gold-plating in EU legislation.

113. Finally, a respondent noted that CAs trading platforms are not regulated yet, which exposes retail investors to risks.

Q27. Are you aware of mixed activity groups (MAGs), including BigTech groups, whose core business is not financial services but that have subsidiary undertakings that provide financial services in the EU?

114. Not many respondents provided insights to this question. Some indicated that they are aware of such practices without specifying the MAGs and the subsidiaries, others referred to examples outside of the EU or confirmed that they are not aware of MAGs that have subsidiary undertakings that provide financial services within EU financial markets. One respondent is itself a financial services subsidiary of a telecom company.

115. Several respondents referred to the BIS report[4] for a description of BigTechs licensing status in different jurisdictions. One respondent observed that BigTechs tend to establish partnership relationships with financial firms rather than create their own subsidiaries and another respondent stressed that MAGs such as Google, Amazon, Apple, or Alibaba, partner with financial institutions in the financing, payment, insurance and asset management sectors.

116. Respondents also reported the intention of BigTechs to access financial services markets even though such access has not been granted so far.

117. Some respondents asked for clarifications surrounding the concept of MAGs especially if a framework for coordinated supervision on a cross-sectoral basis of emerging types of MAGs was to be considered. They argued against categorising individual financial firms as 'MAGs' based on pre-defined activities not to undermine the principle of "same business, same risks, same rules".

Q28. Which types of financial services do these entities provide?

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[4] Big techs in finance: regulatory approaches and policy options (bis.org), BIS , March 2021

118. Few respondents provided feedback to this question.

119. The respondent that is as a subsidiary of a telecom company provides notary, central maintenance, and settlement services under CSDR.

120. Other respondents referred to payment services, credit provision to SMEs and consumers (with risk taking or only distribution in collaboration with credit entities) and insurance products. One respondent expects a growth in investment management, following examples in other regions (for example, Asian BigTechs already started building ecosystems that cover asset and wealth management).

121. Some respondents indicated that MAGs provide automated services without human relationship, conduct market data aggregation and analytics. There was also a reference to asset management in the EU (individual portfolio management and advice under MiFID or investment funds) but no details on the specific MAGs and subsidiaries.

122. Respondents observe that BigTechs have focused on those areas that are subject to a less stringent regulatory framework, are not capital intensive or show higher ROEs, and are complementary to their existing core businesses (e-commerce, social networks, etc.).

Q29. In such MAGs, how and to what extent the dependency of a subsidiary financial firm on its parent company and/or other subsidiaries of the same group influences the provision of the financial service?

123. Respondents stressed that they do not have the full details of how internal dynamics and dependencies operate in MAGs, but they observe that digital platforms leverage on common data, networks, and infrastructures from the whole group (parent and subsidiaries). Another common trait observed is the ancillary nature of financial services within BigTechs' ecosystems which might have implications in terms of incentives and continuity of the provision of financial services.

124. Some respondents observed that financial services at MAGs do not only intend to generate revenues but also to gather information on customers insights and their behaviour and thus complement other service offerings. This could lead to innovative business models supported by complex intra-group arrangements (e.g., integrated data pools, IT systems, common processes) with other non-financial businesses, within the MAG.

125. The respondent representing a subsidiary of a telecom company stressed that provision of financial services is dependent on the funding from the parent company.

126. Examples of risks that such dependency may trigger include conflicts of interest, for example where the subsidiaries are obliged to present the financial products of their parent company in priority to other financial products.

127. There are also risks to consumer protection and to competition created by such dependencies and the cross-selling and cross-data analysis of customer's information. References were made to Facebook and its Diem project providing a platform which would create locked systems through a private currency, negatively affect competition and create captive retail investors.

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

128. Only one respondent reported to not see risks emerging in relation to BigTechs entering financial services.

129. Other respondents stressed risks to financial stability specifying that these risks may arise from the development of private currencies (e.g., Facebook and Diem), from retail payments becoming unavailable, from funding flows from BigTechs becoming large or unstable or concentrated in some market segments, or from the failure of BigTechs to provide financial services causing widespread disruption to other parts of the financial system or the economy more broadly.

130. Some respondents mentioned risks to consumer protection referring to profiling risks when gathering and analysing client data are performed superficially, without an assessment of investors' real needs. Another example is when customers are required to subscribe or contract a financial service provided by a BigTech to access other services of the BigTech.

131. Many respondents raised data related risks. BigTech companies generate and collect vast amounts of non-financial data inherent to their business model, which could allow them to develop unfair competitive advantages over incumbent undertakings by combining financial data with non-financial user data to profile consumers (from social media platforms). The business model of MAGs is typically built around data aggregation and correlation, which can create risks in the execution of controls. Data protection risks might also arise due to lack of clarity about the different uses of personal data.

132. In turn, the concentration of data in a few dominant market players can lead to restraining innovation and competition. Gatekeepers in one market might utilize that position to enter and gain a solid position in adjacent markets and thus harm competition.

133. Respondents also believe that large players coming from outside of the financial sector and offering financial services can exacerbate and/or relocate existing risks, such as operational and ICT risks, security, governance, and reputational risks.

134. The risks related to cross border activities of MAGs was also mentioned. Depending on where the MAG is headquartered, issues regarding investor protection, financial stability, market integrity, safety or level playing field, data protection may arise.

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

135. Almost all respondents consider that there is a risk of unlevel playing field between individual ('solo') financial firms and MAGs. According to respondents, circumstances that already contribute to distorted competition in financial services between MAGs and financial firms include:

- financial regulation, especially the entity-based approach underpinning banks' prudential regulation (CRR/CRDIV). Another reported example was discrepancies in remuneration limits;
- differences in supervision. For example, the procedures that financial institutions must follow to approve new technological providers or access cloud services are not comparable to that of non-regulated entities;

- differences in loan origination procedures, AML and CFT rules, or transparency and consumer protection frameworks were also reported;
- lack of fair access to digital infrastructure for 'solo' financial firms (e.g. platforms can offer advantages to favour their own services);
- asymmetric conditions in data sharing.

136. Some also argued that cross-subsidisation of business lines allows MAGs to obtain significant market share and squeeze regulated players out of the market.

137. One respondent argued that given the financial strength of certain MAGs and the fact they do not need to make a profit out of financial services as such, they can outperform and outprice most competitors. Some respondents stressed that there is a risk of an unlevel playing field, if the principle of "same services, same risks, same rules" is not applied.

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

138. Some respondents believe that the present framework addresses the risks posed by BigTechs and does not prevent competition. One respondent argued that it is a matter of applying existing rules adequately rather than changing rules. Moreover, any change to the principle that only financial firms are directly supervised by financial authorities bears the risk of an unlimited scope.

139. However, the majority of the respondents believe that the current EU regulatory framework does not capture the emerging risks generated by the entry of MAGs into financial services and needs adaptations.

140. Some market participants highlighted that it would be crucial to follow the principle of "same activities, same risks, and same rules" to ensure a level-playing field between all actors concerned and thus support an activity-based regulation for MAGs. Others argued that entity-based regulation may be necessary to address the risks arising from the combination of financial and non-financial activities, as well as the aggregate systemic risks posed by BigTechs. They would see value in a combined entity and activity-based regulatory and supervisory approach to fully capture the risks generated by the MAGs.

141. There was a proposal to enhance rules on data portability to provide non-discriminatory access to data among market players and to introduce fees for using someone's data.

142. One respondent argued that MAGs should have clear functional Chinese walls in place, including segregated controls, with a view to ensure that larger firms that perform multiple functions in the financial value chain perform their controls independently.

Q33. Do you consider there is a need for new cooperation and coordination arrangements between financial supervisors and other authorities (data, competition, consumer protection, AML/CFT, cyber) within the EU and/or with 3rd countries in order to ensure effective supervision of MAGs?

143. All respondents to this question supported the need for new cooperation and coordination arrangements between financial supervisors and other authorities.

144. Many respondents proposed to enhance cooperation between central banks, competition authorities, cyber authorities, and securities regulators. One respondent stressed the need for coordination and information exchange with tax authorities.

145. Assessing risks stemming from MAGs may require cooperation and collaboration of multiple relevant authorities, given the ability of technology providers to operate on a cross-sectorial and cross-border basis. The regulatory framework should however remain technology-neutral, supportive of innovation, consistent with global standards, and applied in the principle of 'same risk, same activity, same regulation'.

146. Respondents highlighted that cross-border finance flows will further increase globally and that further cooperation and coordination not only within the EU, but also involving third countries is therefore needed.

147. The importance of skilled resources, including with IT profiles, at regulators and supervisors to allow for more efficient enforcement of existing rules was also highlighted. Sharing of experience between financial supervisors across the EU as well as with other relevant authorities on a case-by-case basis would also be helpful to achieve a harmonised approach.

148. One of the respondents proposing an entity-based approach to MAGs on top of improved activity-based frameworks, explained that it might require a reform of the licensing and supervisory frameworks in place (e.g., for payments, electronic money or non-bank lending) and could include tightening operational resilience and third-party risk requirements, introducing resolution requirements, demanding closer supervision and more exhaustive risk governance or defining additional reporting and disclosure requirements. The proposal also included the creation of a "college type" supervisory setup at EU level that would ensure adequate coordination (inspections, legal actions, etc.) between relevant supervisors. The authorities that could be involved in this structure could include: financial supervisors, conduct and consumer protection authorities, AML/CFT, as well as data protection and competition authorities. Reporting requirements would also need to be expanded to better monitor and mitigate the systemic component of BigTechs. These measures would aim to ensure that financial authorities have a detailed mapping of intra-group dependencies (operational, reputational, financial and strategic) between financial and non-financial activities and that they are entitled (through "supervisory college") to request more information on non-financial activities. The supplementary supervision should also cover unregulated activities that are ancillary to the provision of several financial services.