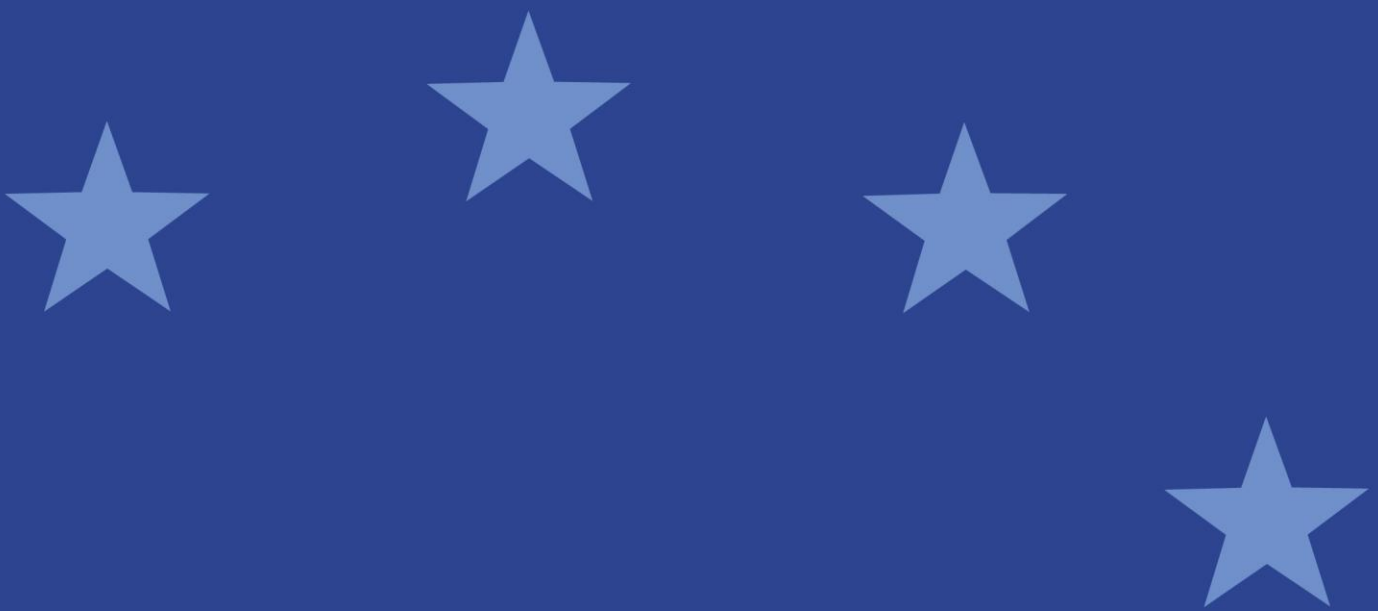


# Call for evidence

## Digital Finance



## Responding to this paper

ESMA invites comments on this paper and in particular on the specific questions summarised in Appendix 1. Responses are most helpful if they:

- respond to the question stated;
- contain a clear rationale;
- give concrete examples

ESMA will consider all responses received by **1 August 2021**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

## Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_DCFE\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_DCFE\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_DCFE\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading "Your input – Open consultations" → "Call for Evidence on Digital Finance").

## Publication of responses

All contributions received will be published following the close of the call for evidence, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email



message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

## **Who should read this paper**

All interested stakeholders are invited to respond to this call for evidence.

This call for evidence is primarily of interest to:

- (i) Financial firms relying on third-parties, in particular technology firms, to fulfil critical or important functions;
- (ii) Third-parties, in particular technology firms, on which financial firms rely to fulfil critical or important functions;
- (iii) Technology firms providing financial services, either directly or through partnerships with financial firms;
- (iv) Platforms marketing or providing access to different financial services;
- (v) Groups combining financial and non-financial activities, also known as mixed activity groups.

## Abbreviations and definitions

### Abbreviations

EBA	European Banking Authority
EC	European Commission
ESAs	European Supervisory Authorities
EIOPA	European Insurance and Occupational Pensions Authority
ESMA	European Securities and Markets Authority
EU	European Union
ICT	Information and Communication Technology
MAGs	Mixed-activity groups
NCA	National Competent Authority

### Definitions

'Financial firm' means any firm falling within ESMA's remit, including (i) alternative investment fund managers of 'AIFMs' as defined in Article 4(1)(b) of the AIFMD and depositaries as referred to in Article 21(3) of AIFMD ('depositaries of alternative investment funds (AIFs)'); (ii) management companies as defined in Article 2(1)(b) of the UCITS Directive ("UCITS management companies") and depositaries as defined in Article 2(1)(a) of UCITS Directive ("depositaries of UCITS"); (iii) central counterparties (CCPs) as defined in Article 2(1) of EMIR and Tier 2 third-country CCPs within the meaning of Article 25(2a) of EMIR which comply with the relevant EMIR requirements pursuant to Article 25(2b)(a) of EMIR; (iv) trade repositories as defined in Article 2(2) of EMIR and in Article 3(1) of SFTR; (v) investment firms as defined in Article 4(1)(1) of MiFID II and credit institutions as defined in Article 4(1)(27) of MiFID II, which carry out investment services and activities within the meaning of Article 4(1)(2) of MiFID II; (vi) data reporting services providers as defined in Article 4(1)(63) of MiFID II; (vii) market operators of trading venues within the meaning of Article 4(1)(24) of MiFID II; (viii) central securities depositories (CSDs) as defined in Article 2(1)(1) of CSDR; (ix) credit rating agencies as defined in Article 3(1)(b) of the CRA Regulation; (x) securitisation repositories as defined in

Article 2(23) of SECR; or (xi) administrators of critical benchmarks as defined in Article 3(1)(25) of the Benchmarks Regulation.

'Financial service' and 'financial product' means any financial service and product falling within ESMA's remit, i.e., any financial service and product provided by a financial firm as defined above. Please note that banking, payment, credit and insurance services and products are excluded from the scope of the call for evidence as they fall within EBA's and EIOPA's remit.

'Platform' means any digital platform that enables financial firms directly (or indirectly using a regulated or unregulated intermediary) to market to investors, and/or conclude with investors contracts for, financial products and services. The definition of 'platform' aims to be both 'model' and 'technology-neutral'. Examples of platforms that are relevant for this call for evidence include but are not limited to technical infrastructures used by financial firms to market or distribute different financial products and services, and enabling investors to access products and services provided by different financial firms, such as fund distribution platforms, robo-advisors and on-line trading platforms. Those technical infrastructures that have been developed by financial firms for their sole individual benefit are outside of the scope of this call for evidence.

'Mixed activity group' means a group of undertakings (a parent undertaking and its subsidiary undertakings) conducting both financial and non-financial activities.

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# 1 Executive Summary

## Reasons for publication

Technological innovation is transforming financial services at an unprecedented speed, by facilitating new business models and services and the entrance of new market participants. Covid-19 is accelerating this shift and the digitalisation of financial services. These changes bring a host of opportunities, including the prospect of better financial services for businesses and consumers and greater financial inclusion. Yet, they raise challenges as well, as they can contribute to introduce or exacerbate new risks. Also, the existing regulatory and supervisory framework may not fully capture and address these new developments.

In September 2020, the European Commission (EC) published a digital finance package<sup>1</sup> 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<sup>2</sup> to the European Supervisory Authorities (ESAs) on three main issues, namely (i) the growing fragmentation of value chains in finance, (ii) digital platforms and (iii) groups combining financial and non-financial activities. In particular, the ESAs are requested to assess the regulatory and supervisory challenges brought by these developments and the way in which they could be addressed. ESMA is seeking feedback from external stakeholders to inform its work on the matter.

## Contents

Section 2 explains the background of this call for evidence. Sections 3, 4 and 5 set out the topics on which ESMA is asking for feedback and the questions. Appendix 1 summarises the questions.

## Next Steps

ESMA will consider the information received through this call for evidence when drafting its response to the EC. ESMA, together with the other ESAs, need to deliver a report to the EC by 31 January 2022. The technical advice received from the ESAs will not prejudice the EC's decisions in any way.

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<sup>1</sup> [Digital finance package | European Commission \(europa.eu\)](#)

<sup>2</sup> [https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/210202-call-advice-esas-digital-finance\\_en.pdf](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/210202-call-advice-esas-digital-finance_en.pdf)



## 2 Introduction

1. Digitalisation is transforming society, the economy and the financial sector. This transformation, and the application of innovative technologies in the EU financial sector, has the potential to benefit people and companies. By facilitating the entry of new market participants, reducing geographical barriers and promoting greater transparency in the provision of financial services, technological innovation can provide better financial services to a wider range of businesses and consumers, possibly at a lower cost. It can also foster financial inclusion.
2. Meanwhile, those changes are not exempt of challenges. The entry of - large and small - technology companies in financial services and the growing reliance on those companies by financial firms can give rise to new forms of risks, e.g., in relation to security, interconnectedness, concentration and competition.<sup>3</sup> 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<sup>4</sup>:
  - a. more fragmented or non-integrated value chains arising as a result of the growing reliance by financial firms on third parties for the delivery of their services and the entry of technology companies in financial services;
  - b. platforms and bundling various financial services;
  - c. groups combining different activities, namely mixed activity groups providing both financial and non-financial services.
4. Importantly, the recent legislative proposals for the Digital Markets Act (DMA)<sup>5</sup> – adopted on 15 December 2020 – and Digital Operational Resilience Regulation (DORA)<sup>6</sup> intend to

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<sup>3</sup> 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'](#).

<sup>4</sup> The EC is also asking EBA for input in the areas of protection of client funds and non-bank lending.

<sup>5</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en)

<sup>6</sup> [https://ec.europa.eu/info/publications/200924-digital-finance-proposals\\_en](https://ec.europa.eu/info/publications/200924-digital-finance-proposals_en)

address some of the above risks and challenges already. DMA proposes new ex-ante rules for gatekeeper platforms as well as a new supervisory framework at EU level to address conduct and competition harm risks. Most of the large technology companies which are currently offering financial services are likely to fall into the scope of this proposal. Similarly, DORA proposes a new oversight framework for those ICT service providers that are critical to the financial sector, which is likely to apply to most of the large technology companies to the extent that they provide ICT services to financial firms. The framework aims to monitor and address concentration risk and systemic risk that may arise from critical third-party provision of ICT services. However, other gaps and issues, e.g., in relation to conduct or prudential risks or cooperation between relevant competent authorities, may be left unaddressed and require further adaptations to the existing regulatory and supervisory frameworks.

5. With this call for evidence (CfE) ESMA seeks the input of market participants, technology companies and other stakeholders on those remaining gaps and issues that would need to be addressed.
6. Noteworthy, ESMA is cooperating closely with EBA and EIOPA on these matters, leveraging on the work already undertaken, for example in the form of a survey on digital platforms to the industry<sup>7</sup> for what concerns EBA or a Discussion Paper on the (re)insurance value chain and new business models arising from digitalization<sup>8</sup> for what concerns EIOPA.

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<sup>7</sup> <https://www.eba.europa.eu/financial-innovation-and-fintech/fintech-knowledge-hub/regtech-industry-survey>

<sup>8</sup> [EIOPA \(2020\). Discussion Paper on the \(re\)insurance value chain and new business models arising from digitalization.](#)

## General information about respondent

Name of the company / organisation	DeutscheBörse Group
Activity	Regulated Market
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

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

<ESMA\_QUESTION\_DCFE\_1>

### Digital Finance and new technologies are important for the financial sector

Deutsche Börse Group (DBG) in its capacity as a financial market infrastructure (FMI) provider uses modern IT and technological solutions to operate, and service the financial sector worldwide. DBG's technologies are at the core of its operations and forming an integral part of the regulated services we operate. We ensure the efficient functioning of these markets; including but not limited to trading and market data, provision of indices, clearing, securities custody, etc.

Regarding new technologies, we are currently working on the use of Cloud technology, AI and distributed ledger technology (DLT) / blockchain as well as automation of processes. We use these technologies in a rather gradual, granular and tested manner, hence continuing to guarantee transparency, stability and investor protection at all times. Therefore, Digital Finance is an important topic for our current and future activities.

### Balance between innovation and security necessary

We would like to highlight that “technology neutrality” and “same business, same risks, same rules” principles should apply within Digital Finance to uphold the values of transparency, fairness, stability, investor protection, and market integrity.

In addition, and as a rather general comment to this consultation, in our view, technological innovation provides many benefits and is of utmost importance for the future development of the EU's financial sector to be competitive and to offer better as well as new services to consumers. Consequently, to reap those benefits, technology must be supported, and adequate safeguards need to be addressed, in order to keep the balance between innovation and safety for financial markets. We see regulators and authorities already addressing these issues and to provide for the regulatory frameworks for new technologies (e.g. ESA's Guidelines for Cloud Outsourcing, “DORA” and “MiCA”).

### COVID-19 pandemic accelerates existing trend

With regard to COVID-19, we think that the pandemic has only accelerated the trend, which was already existing prior.

Further, the outbreak of COVID-19 has particularly shown again that the G20 reforms after the financial crisis of 2007/08 have made our financial system safer and more resilient. Against this background we want to highlight that Financial Market Infrastructures and market operators play an important role, as they contribute essential to the functioning of the markets in times of market stress and towards robust and efficient price formation and risk management.

This can be seen for example in 2020's 'flight to quality' – illustrated by the increase in trading volumes on lit exchanges against the drop in off-exchange volumes and gains in market shares for lit continuous trading at the expense of auction trading, Systematic Internalisers (SIs) as well as OTC trading.

#### DBG supports path chosen by regulators

Consequently, the EU27's current political reflections on key initiatives such as Digital Finance as well as the Green Deal should be seen as an integral part of the European ambitions to fully support innovative, operational, well-functioning and stable financial markets, given their key function to provide access to financing for companies and to investment for investors based on a robust and transparent price formation process and risk-management.

Within Digital Finance, we support a legally binding approach, based on existing EU financial market practices, as this would provide legal certainty to reduce regulatory arbitrage, inconsistencies, market fragmentation, and ensure scalability of services within the EU. Scalability is extremely important for EU firms to successfully compete on a global scale and with non-EU entities active within the EU.

<ESMA\_QUESTION\_DCFE\_1>

### 3 More fragmented or non-integrated value chains

7. Technological developments are increasing the extent to and ways by which financial firms rely on third-parties, in particular technology firms, for the delivery of services, thereby leading to more fragmented or non-integrated value chains. This dependency can take different forms, e.g., outsourcing, partnerships, cooperation agreements or joint ventures. Examples include cloud outsourcing arrangements or the use of technology companies for data analytics, risk management or marketing purposes. In addition, digital innovation facilitates the entry of technology companies in financial services, again leading to potentially closer interlinks and increased inter-dependency between those companies and financial firms.
8. These new business models may entail various benefits, such as increased efficiency. However, they may also introduce new risks and may not be fully captured by the existing regulatory framework. Indeed, the entities contributing to the provision of the financial services may be subject to a set of individual requirements in the absence of a holistic approach or even fall outside of the regulated space. These models may also raise challenges in relation to cross-border supervision, cooperation between different competent authorities, as well as legal responsibility for conduct, operational resilience of the entire value chain and prudential treatment.
9. This call for evidence aims to collect evidence on new material developments in the evolution and fragmentation of value chains and the extent to which this phenomenon introduces new risks and/or create regulatory and supervisory challenges.

### Questions

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

<ESMA\_QUESTION\_DCFE\_2>

Digital Finance is an opportunity

Yes, we see this trend within the overall financial sector. This is most prominent within the banking-sector, but not restricted to it. However, we have not observed developments of “Big Techs” entering the financial sector in Europe compared to developments in Asia, where big platforms offer the possibility to place dormant cash in money market funds to receive interests (ESMA Report on Trends, Risks and Vulnerabilities, 1/2020, p. 50, RA.13).

As stated, we have seen acceleration during COVID-19, while the trend of digitalization was already prevalent in the financial sector before. Digital finance had its starting point significantly earlier and has also been influenced by developments outside of the financial sector, e.g. the increase in services available online and 24/7, such as streaming of content from the internet.

DBG generally considers this to be a positive development, as it holds potential to create new services and innovations to the sector benefiting investors.

We are also part of this development as we started co-operations with institutions and companies, including start-ups, see for example the recent successful launch of HQLAx (<https://www.hqla-x.com/>), which leverages DLT to provide liquidity management and collateral management solutions for institutional clients in the global securities financing markets.

#### New technologies pose opportunities, but risks must be monitored and managed adequately

We agree of course with ESMA that there may be additional risks and challenges to be identified and properly addressed within this development. We would like to share the following observations in a nutshell:

A prominent example on how technological innovation takes ground within finance is the recent trend/debate around DLT/Blockchain and especially with regard to crypto-assets. Those assets and connected services have often emerged outside of existing regulatory frameworks and have often been offered rather by fin-techs than by established financial entities. Meanwhile, as crypto-assets have arrived in the mainstream of political discussions and the financial regulatory frameworks (see MiCA or Member States initiatives, such as the German law on electronic securities), we see partnerships or joint ventures between established financial firms and those fin-techs.

In this context, we are of the opinion that the adaption of the financial rules and the introduction of crypto-assets into the existing framework are important and necessary steps to create legal certainty for market participants and to facilitate this new asset class.

Currently, the trend of “Decentralized Finance (DeFi) emerges, with financial products built on DLT networks, often on public blockchains. Financial services are offered via peer-to-peer layers to (retail-) clients without a central intermediary implying certain rules automatically e.g. on the basis of programmed smart contracts. These new and innovative concepts are attracting growing interest.

However, to grasp the full potential of this development, it is again necessary to ensure a certain level of protection for consumers/investors and to have adequate rules in place. It will be important to protect consumers/investors the same way, as if they would buy “traditional” financial services.

From our perspective, Trusted Third Parties could fulfil important functions in this context, as not every function can be “outsourced” to technology.

<ESMA\_QUESTION\_DCFE\_2>

**Q3 Do you consider that financial firms are increasingly relying on technology firms to fulfil critical or important functions? If so, for which particular functions? Are there particular types of technologies (e.g., BigData, artificial intelligence, cloud computing, others) and technology firms involved?**

<ESMA\_QUESTION\_DCFE\_3>

Technology firms provide important services to the financial sector

Digitalisation is changing our economy, our society and our everyday lives. It may have consequences that we cannot fully measure at the moment. It offers opportunities for new developments and presents us with new technical, regulatory and ethical challenges. Therefore, the usage of new technologies has also become an important factor within the finance sector in order to be competitive.

We see that especially outsourcing via Cloud services is increasingly important for financial services to be innovative, as Cloud markets offer technological solutions for financial institutions to innovate, flexible scale-up, save costs through the application of pay per use models and should be supported in general.

It is important to note that financial firms are already supervised when it comes to outsourcing of their services, regardless of the technology used. Therefore, firms are responsible already and will still be asked to conduct a proper risk management.

Nevertheless, we acknowledge the limited number of providers and the potential risks associated. However, in order to foster innovation and not lose competitiveness on the international level, it is crucial that the EU market remains open to non-EU Cloud service providers.

Hence, we welcome the European Commission's proposal of DORA (see e.g. Art 25, 26, 29 or 31) and ESMA's outsourcing guidelines (Guideline 2, 9) from 2020, which tackle this issue as well. These regulatory/supervisory frameworks will further support the use of Cloud technology in the financial sector, while addressing potential risks.

<ESMA\_QUESTION\_DCFE\_3>

**Q4 Do you have examples of technology companies providing financial services in the EU, either directly or through arrangements with financial firms? If so, please briefly describe their business model and the type of financial services that they provide.**

<ESMA\_QUESTION\_DCFE\_4>

We see large technology companies providing payment services in cooperation with established financial institutions. Also, we see technology companies cooperating with financial institutions in the realm of asset management ("robo-advisor"). Further, we see in non-EU jurisdictions where large technology companies act as "one-stop-shop" offering financial services as well as non-financial services.

We generally agree with ESMA, that every entity offering financial products and/or services should be required to follow the same rules as other service providers, even if the means to do so vary due to technology ("same business, same risk, same rules"-principle).

However, in principle these kind of cooperation between technology- and financial firms can bring innovation to the financial sector and should therefore not only be seen as risk.

<ESMA\_QUESTION\_DCFE\_4>

**Q5 Do you have examples of technology companies being used by financial institutions in the EU to fulfil critical or important functions? If so, please briefly describe their business model and the way in which they contribute to, or facilitate, these critical or important functions.**

<ESMA\_QUESTION\_DCFE\_5>

As stated above, financial institutions use Cloud companies for their various services (PaaS, SaaS, IaaS). This topic is already addressed by regulators within the recent DORA proposal of the European Commission.

<ESMA\_QUESTION\_DCFE\_5>

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

<ESMA\_QUESTION\_DCFE\_6>

Clarification of the terminology

DBG understands the terminology “financial market data” in the context of this consultation as all kind of data which may be used in the context of financial services. Consequently, we understand that the term differs from the terminology of “market data” as defined by ESMA (compare ESMA Guidelines 1 June, ESMA70-156-43-05), which only refers to pre- and post-trade market data as lined out within MiFIR/MiFID II.

Alternative data becomes increasingly important

In this context, we would like to share some observations/comments, which are being focused on a growing market of “alternative data” used within the financial sector (for further information please see also the report by the FIRD Alternative Data Council; [https://history.siiia.net/Portals/0/A%20Guide%20to%20Alternative%20Data\\_jan2021..pdf?ver=2021-01-11-165202-730](https://history.siiia.net/Portals/0/A%20Guide%20to%20Alternative%20Data_jan2021..pdf?ver=2021-01-11-165202-730) ).

Digitalization enables new ways of collecting, aggregating, disseminate and using all sorts of data. For example, there is data generated through the internet (e.g. polls or scraping), or generated through technical devices such as meters in water, in soil or other (e.g. such as density of soil on plantations impacting harvest and prices for commodities), or satellite pictures (e.g. of commercial traffic in order to predict any business climate index), as well as numerous other opportunities.

From our understanding, this “alternative data” (in contrast to “traditional” data, which can for example be financial statements or statistics officially published by a company) is more and more used within the financial market, be it within decision making, electronic trading via algorithms, and ever more so within the asset management industry.

Dissemination of such data may happen in various forms, one to one between a data provider and an interested party or via a marketplace. In various cases, entities provide the data to any interested party, in other they may be tasked exclusively to provide special data to an exclusive user only.

However, as the data is generated in various ways, quality varies, which in turn can generate issues at the receiver’s end.

<ESMA\_QUESTION\_DCFE\_6>

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

<ESMA\_QUESTION\_DCFE\_7>

DBG takes an active role within Digital Finance



The usage of third-party service providers allows us to provide our own core-services more efficiently and a reduction of cost. The adoption of new technologies creates additional growth opportunities, fosters operating efficiency and enhances customer experience. DBG will continue to invest in Cloud technology, distributed-ledger technology (DLT) and other clearly defined areas.

With regard to Cloud, DBG is following a “Multi-Cloud” strategy, in order to manage the inherent risk of “vendor lock-in” effects and other risks.

As a general remark, in the fast-changing world of new technologies, it often makes sense for financial firms to incorporate the specialized knowledge of third-party service providers in order to offer better services to clients. Some of this knowledge and the necessary resources would be difficult to adhere for every financial firm at the same level. Furthermore, specialisation also contributes to a high level of security as the third-party service providers has to provide state of the art technology and proven strategies when it comes to security to be competitive.

<ESMA\_QUESTION\_DCFE\_7>

**Q8 Do you see new or exacerbated risks (e.g., to investor protection, financial stability, market integrity, security or level playing field) in relation to the reliance on technology firms by financial firms?**

<ESMA\_QUESTION\_DCFE\_8>

Again, we would highlight that the principles of technology neutrality and “same business, same risks, same rules” as well as considerations to ensure a level playing field are necessary, to uphold the values of transparency, fairness, stability, investor protection, and market integrity.

As stated before, Cloud services are becoming increasingly important for financial services. In today’s practice, financial entities use third-country service providers as a common practice. We recognise the limited number of providers but, to favour innovation and not lose competitiveness on an international level, however, it is important to mention that risk as such is neither new to financial entities, nor exacerbated by new technologies as such.

To support the uptake of Cloud technology in the financial sector, we actively support the EU’s work on regulatory minimum standards to be included in contracts with critical third-party service providers included in the European Commission’s proposal towards DORA and the proposals to design “Voluntary Standard Contract Clauses” to facilitate future negotiations.

<ESMA\_QUESTION\_DCFE\_8>

**Q9 Do you see new or exacerbated risks (e.g., to investor protection, financial stability, market integrity, security or level playing field) in relation to the provision of financial services by technology companies?**

<ESMA\_QUESTION\_DCFE\_9>

See above, the principle of “same business, same risk, same rules” must apply, in order to close any potential gap.

<ESMA\_QUESTION\_DCFE\_9>

**Q10 Do you see new or exacerbated risks (e.g., to investor protection, financial stability, market integrity, security or level playing field) in relation to the collection, use and dissemination of financial market data by unregulated data service providers?**

<ESMA\_QUESTION\_DCFE\_10>

In the case of “alternative data” (see also Question 6), there may be risks involved both, in the data generation, as well as in the usage of the data itself. There may be risk for investors once the data is being used in algorithms (e.g. for the service of “robo-advise”), while not having been properly selected or tested before. Risks should ideally be taken due care of by the firms using the alternative data, through testing and documentation before applying in production and offering services.

We would not recommend legislative action in relation to the collection, use and dissemination of “alternative” financial market data by unregulated data service providers at this time, however, we recommend further monitoring.

<ESMA\_QUESTION\_DCFE\_10>

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

<ESMA\_QUESTION\_DCFE\_11>

From our point of view and as already stated, (Cloud) outsourcing is important for the financial sector in the EU, hence rules and requirements have to be as harmonized as possible. We see regulators and authorities already addressing these issues and to provide for the regulatory frameworks for new technologies (e.g. ESA’s guidelines for Cloud outsourcing or DORA) and support a more streamlined approach.

Besides Cloud outsourcing, further monitoring / impact assessments are needed to adjust the regulatory framework properly, if necessary.

<ESMA\_QUESTION\_DCFE\_11>

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

<ESMA\_QUESTION\_DCFE\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_12>

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

<ESMA\_QUESTION\_DCFE\_13>

Streamlining of and more efficiency within existing processes necessary

DBG is of the opinion that coordination between authorities on all levels becomes increasingly important. However, we would also highlight the need for increased efficiency in contrast to adding more complexity. For example, establishing new bodies/networks within authorities with new reporting lines would not be beneficial, if they ultimately slowed down the time for coordination (as foreseen in Art 31 Regulation 2017/0536).

Further, in order to avoid double-reporting, we would recommend more streamlined reporting processes as well as the re-use of data to be reported, where it is appropriate and within the mandate of authorities. In this context the different guidelines established by ESA's are already important to harmonize the supervisory practices by NCAs and therefore support a balanced use of Cloud technology (see ESMA and EBA guidelines on Cloud outsourcing). Therefore, from our point of view and against the background of DORA, we do not see the need for additional coordination and/supervision within the financial sector regulation.

#### Double regulation and unclear competencies must be prevented to allow for more efficiency

However, with regard to IT security overall it is of crucial importance to streamline the various regulatory/supervisory frameworks in the EU, as regulators on the European and Member States level develop rules for all industries on a horizontal level (e.g. the "NIS 2.0" directive or the directive on the resilience of critical entities "CER"). In this context, sector specific rules like DORA, must be given clear precedence in order to avoid unnecessary "double regulation" or conflicting requirements. Hence a "lex specialis" approach favouring DORA would be favourable.

With regards to cross-border co-operation, it is important to provide for efficient/effective processes, also when it comes to third countries. Otherwise, the costs of compliance for all entities in the value-chain could increase, which in turn could lead to withdrawals followed by reduced competition, choice and product innovation (see for example the effects of Brexit on Trade Repositories).

<ESMA\_QUESTION\_DCFE\_13>

#### **Q14 Which recommendations, if any, would you make to EU regulators/supervisors to address opportunities and challenges brought by changes in value chains?**

<ESMA\_QUESTION\_DCFE\_14>

As technologies and use-cases are currently evolving rapidly, it is difficult for any rule-setting authority to act adequately, without accurate and up-to-date information about the trends in the markets. From our perspective, this can lead to uncertainty about whether and how the use of any new technology and the corresponding products and services are/will be regulated. In consequence, this uncertainty on both ends can delay investments and prevent economic growth or even lead to an unordered situation, which in turn can come at the expense of the consumers and to the detriment of trust in new technologies.

Constant dialogue between companies/business associations and regulators/competent authorities could be a beneficial solution for this problem. Companies could be invited to explain their concrete use-cases to authorities, in order not only to make them aware of new trends but also to support the involvement of the regulatory framework.

Furthermore, authorities should have the capacity to be involved effectively in these discussions, to process the information and to provide a clear regulatory framework addressing possible risks without hampering innovative developments.

<ESMA\_QUESTION\_DCFE\_14>



**Q15 Do you have any other observations or comments in relation to changes in value chains?**

<ESMA\_QUESTION\_DCFE\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_15>

## 4 Platforms and bundling of various financial services

10. Platforms can market and provide access to multiple different financial services, often from different financial firms. Different financial firms can also partner with technology firms to bundle a range of financial services which are then distributed through digital channels.
11. The financial firms and platform providers are not always part of the same group and sometimes operate in different EU Member States or third countries. In addition, the different financial services bundled on the platform may fall under separate sectorial regulations or outside of the scope of the EU financial services regulatory perimeter, which can leave certain risks unaddressed and raise specific supervisory challenges.
12. A more holistic approach to the regulation and supervision of these platforms and bundled services could be relevant, considering the increased risk that they can pose, regarding e.g. interaction with consumers and consumer protection, conduct of business, money laundering and operational risk.
13. The CfE is intended to help ESMA collect insights on the use of digital platforms in the EU the extent to which this phenomenon introduces new risks and/or create regulatory and supervisory challenges.

### Questions

**Q16 Do you have examples of platforms bundling different financial services from different financial firms in the EU? If so, please provide a brief description of the most prominent ones.**

<ESMA\_QUESTION\_DCFE\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_16>

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

<ESMA\_QUESTION\_DCFE\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_17>

**Q18 (To financial firms) As a financial firm, are you using platforms for the marketing or the conclusion with customers of your financial products and services? If yes, please provide a brief description of(i) the types of services provided by the platform, (ii) the arrangement in place with the platform (e.g., are you or the platform responsible for the governance and/or maintenance of the technical infrastructure and the interactions with customers), (iii) the extent and way in which the arrangement is disclosed to the customer, (iv) the tools and processes in place to ensure that the risks attached to the financial products and services are properly disclosed to the customers.**

<ESMA\_QUESTION\_DCFE\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_18>

**Q19 (Same question to platforms) As a platform, do you facilitate the marketing or the conclusion with customers of financial products and services? If yes, please provide a brief description of(i) the types of services provided to financial firms, (ii) the arrangement in place with the financial firms (e.g., are you or the financial firm responsible for the governance and/or maintenance of the technical infrastructure and interactions with customers), (iii) the extent and way in which the arrangement is disclosed to the customer, (iv) the tools and processes in place to ensure that the risks attached to the financial products and services are properly disclosed to the customers.**

<ESMA\_QUESTION\_DCFE\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_19>

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

<ESMA\_QUESTION\_DCFE\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_20>

**Q21 Do you consider any of the following risks to be new/exacerbated where financial firms use platforms for the marketing or conclusion with customers of contracts for financial products and services? Please explain(i) risk to financial stability, (ii) risk to investor protection, (iii) risks in relation to conduct of business, (iv) ICT and security risks, (v) money laundering / terrorism financing,**

**(vi) risk to data protection and privacy, (vii) risk to fair competition, (viii) market manipulation, or (ix) other risks.**

<ESMA\_QUESTION\_DCFE\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_21>

**Q22 (For financial firms) Which controls, and processes are in place to oversee the specific risks emerging from the use of platforms?**

<ESMA\_QUESTION\_DCFE\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_22>

**Q23 Do you consider that some adaptations to the EU regulatory framework are needed to address the risks brought by the use of platforms?**

<ESMA\_QUESTION\_DCFE\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_23>

**Q24 Do you consider that some adaptations to the EU regulatory framework are needed to unlock the benefits brought by the use of platforms?**

<ESMA\_QUESTION\_DCFE\_24>

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<ESMA\_QUESTION\_DCFE\_24>

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

<ESMA\_QUESTION\_DCFE\_25>

Generally, the role of ESMA in the area of the new Digital Finance Strategy for the EU could be assessed, because the emergence of new asset classes by way of new technologies and digitalization will be significantly transforming the services are provided to businesses and citizens, and include cross-border, consumer protection and financial stability dimensions. This could also include the mentioned use of platforms.

It could also be considered to give ESMA a role for the definition/determination of new products/asset classes in case they are hybrid categories, as for example for crypto-assets which could qualify as financial as well as non-financial instruments during their life-cycle.

A stronger gatekeeper and supervisory role for ESMA and the ESAs overall, may contribute to the European Commission's objective to implement a common Digital Finance Strategy and the Digital Single Market for the EU, when we also think about the DORA proposal.

<ESMA\_QUESTION\_DCFE\_25>

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

<ESMA\_QUESTION\_DCFE\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_26>



## 5 Risks of groups combining different activities

14. Large technology companies active in various sectors and forming mixed-activity groups increasingly enter the financial services sector, including through the establishment of their own subsidiaries for the provision of financial services. These groups can quickly scale up the offerings in financial services leveraging on vast amounts of customers' data collected through their affiliated entities and elevating intra-group dependencies on operating systems and processes. The capacity to use intra-group data and other processes within the group to support the provision of financial services raises challenges in relation to conduct, prudential and systemic risks and a possible detrimental effect to the level playing field between entities providing the same financial services as a part of a group versus a single entity.
15. Even though existing sectoral financial legislation already embeds approaches for group supervision, it does not provide a framework for coordinated supervision on a cross-sectoral basis for emerging types of mixed activity groups, as their financial activities usually represent only a limited share of their total balance sheet. Even when a group has a specialised financial subsidiary undertaking within its group, sectoral financial legislation would only apply to that subsidiary undertaking, with limited possibilities to supervise and prevent risks stemming from the interactions between the financial subsidiaries and the broader group.
16. The new emerging risks in relation to mixed-activity groups that build up substantial market share in financial services may not be captured by the existing EU legislation and by supervisory practices limited to regulated entities in the mixed-activity groups.
17. The call for evidence aims to collect evidence on whether (i) large technology companies as mixed-activity groups should be supervised specifically, (ii) how interdependencies within the groups, and potential risks stemming from, can be identified and addressed, and (iii) how supervisory cooperation can be improved for these groups.

### Questions

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

<ESMA\_QUESTION\_DCFE\_27>

We kindly ask for clarifications surrounding the concept of mixed activity groups (MAGs). Whilst we understand that the Commission aims to provide a framework for coordinated supervision on a cross-sectoral basis for emerging types of mixed activity groups, we would be cautious against categorising individual 'financial firms' to 'MAGs' based on pre-defined activities that would be undertaken within a firm's value-chain.

<ESMA\_QUESTION\_DCFE\_27>

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

<ESMA\_QUESTION\_DCFE\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_28>

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

<ESMA\_QUESTION\_DCFE\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_29>

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

<ESMA\_QUESTION\_DCFE\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_30>

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

<ESMA\_QUESTION\_DCFE\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DCFE\_31>

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

<ESMA\_QUESTION\_DCFE\_32>

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<ESMA\_QUESTION\_DCFE\_32>

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

<ESMA\_QUESTION\_DCFE\_33>

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<ESMA\_QUESTION\_DCFE\_33>