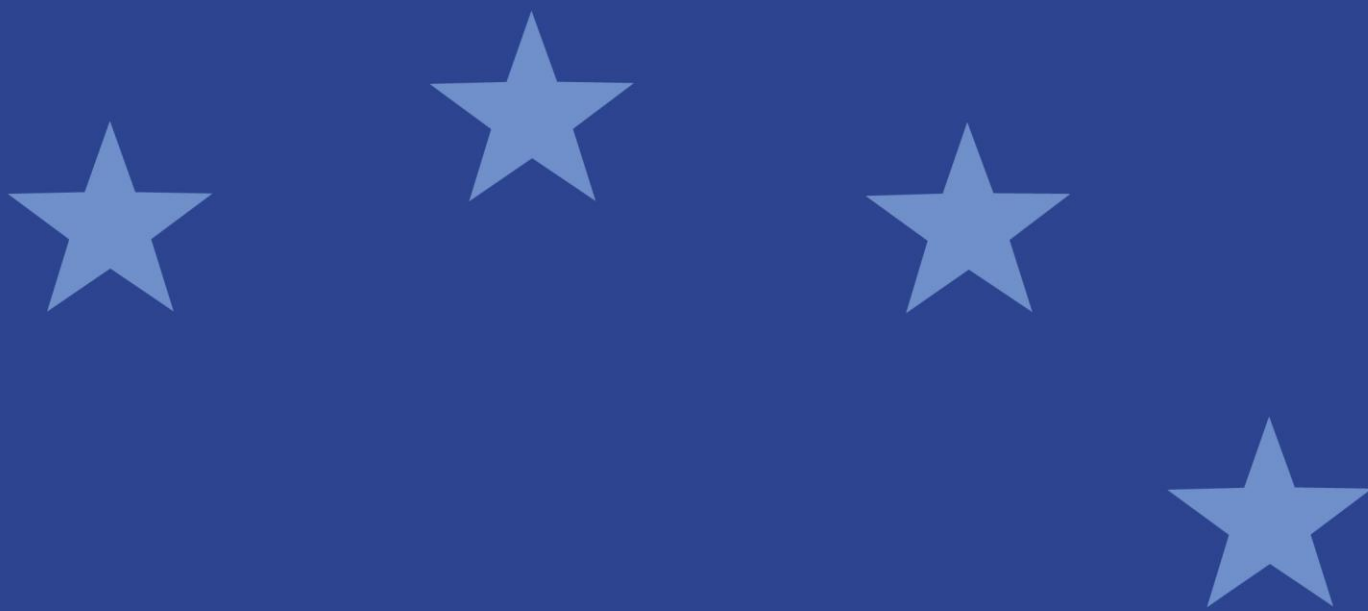


Call for evidence

Digital Finance



Responding to this paper

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

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

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

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_DCFE_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_DCFE_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_DCFE_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Call for Evidence on Digital Finance").

Publication of responses

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



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

Data protection

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

Who should read this paper

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

This call for evidence is primarily of interest to:

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

Abbreviations and definitions

Abbreviations

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

Definitions

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

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

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

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

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

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1 Executive Summary

Reasons for publication

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

In September 2020, the European Commission (EC) published a digital finance package¹ with the aim to embrace digital finance in the EU. Following on the package, in February 2021, the EC set out a request for technical advice² to the European Supervisory Authorities (ESAs) on three main issues, namely (i) the growing fragmentation of value chains in finance, (ii) digital platforms and (iii) groups combining financial and non-financial activities. In particular, the ESAs are requested to assess the regulatory and supervisory challenges brought by these developments and the way in which they could be addressed. ESMA is seeking feedback from external stakeholders to inform its work on the matter.

Contents

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

Next Steps

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

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

² https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/210202-call-advice-esas-digital-finance_en.pdf

2 Introduction

1. Digitalisation is transforming society, the economy and the financial sector. This transformation, and the application of innovative technologies in the EU financial sector, has the potential to benefit people and companies. By facilitating the entry of new market participants, reducing geographical barriers and promoting greater transparency in the provision of financial services, technological innovation can provide better financial services to a wider range of businesses and consumers, possibly at a lower cost. It can also foster financial inclusion.
2. Meanwhile, those changes are not exempt of challenges. The entry of - large and small - technology companies in financial services and the growing reliance on those companies by financial firms can give rise to new forms of risks, e.g., in relation to security, interconnectedness, concentration and competition.³ These changes raise specific regulatory and supervisory challenges as well, including due to their global and cross-sectoral nature and the risk of unlevel playing field.
3. The EC aims to address the challenges and risks attached to digital transformation by proposing, where relevant, adaptations to the existing legislative frameworks by mid-2022. To prepare these actions, and considering that regulation should be technology neutral according to the 'same activity, same risk, same rule' principle, the EC is requesting technical advice from the ESAs on the following key issues⁴:
 - a. more fragmented or non-integrated value chains arising as a result of the growing reliance by financial firms on third parties for the delivery of their services and the entry of technology companies in financial services;
 - b. platforms and bundling various financial services;
 - c. groups combining different activities, namely mixed activity groups providing both financial and non-financial services.
4. Importantly, the recent legislative proposals for the Digital Markets Act (DMA)⁵ – adopted on 15 December 2020 – and Digital Operational Resilience Regulation (DORA)⁶ intend to

³ For a detailed introduction on how BigTech firms are entering the financial services sector and the possible challenges and benefits associated with this development, please have a look at [ESMA's 'Trends, Risks and Vulnerabilities report 1/2020'](#).

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

⁵ https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en

⁶ https://ec.europa.eu/info/publications/200924-digital-finance-proposals_en

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

5. With this call for evidence (CfE) ESMA seeks the input of market participants, technology companies and other stakeholders on those remaining gaps and issues that would need to be addressed.
6. Noteworthy, ESMA is cooperating closely with EBA and EIOPA on these matters, leveraging on the work already undertaken, for example in the form of a survey on digital platforms to the industry⁷ for what concerns EBA or a Discussion Paper on the (re)insurance value chain and new business models arising from digitalization⁸ for what concerns EIOPA.

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

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

General information about respondent

Name of the company / organisation	Assogestioni
Activity	Asset Manager Association
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Italy

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>

The digital transformation of the economy is taking on an important role also in the world of asset management.

The use of artificial intelligence (AI) systems, distributed ledger technology (DLT), to which the blockchain technology belongs, and open finance represent some of the main technological challenges of the asset management industry as well as (and consequently) the object of growing interest by European and international regulatory authorities in search of a fair balance between the need to foster innovation and the need to limit potential risks for the stability of the financial system and the protection of investors.

Artificial intelligence systems. It is widely recognized that artificial intelligence systems – i.e., according to the recent European Commission proposal on artificial intelligence- COM(2021) 206 final - “software that is developed with one or more of the techniques and approaches (...) and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with” - allow asset managers to optimize investment processes, make operational processes more efficient, ensure greater personalization of products for customers.

However, as reported by IOSCO (the International Organization of Securities Commissions) in the consultation document of June 2020 entitled “*The use of artificial intelligence and machine learning by market intermediaries and asset managers*”, the extensive use of artificial intelligence for managing investment products or for producing investment advice exposes asset managers to greater risks, making it necessary to adopt certain measures for their mitigation, including: (i) adequate governance, internal control and oversight measures with respect to the development, testing, use and monitoring of artificial intelligence systems; (ii) adequate knowledge, skills and experience of personnel to implement, monitor and question the results of artificial intelligence systems; (iii) development and testing processes suitable for allowing the identification of potential problems before the full implementation of artificial intelligence systems; (iv) transparency and disclosure measures towards investors, regulators and other interested parties.

The need to adequately understand and manage, especially in times of stress, the risks deriving from the use of digital technologies, or information and communication technologies, is also the prerequisite for the European Commission's proposal for a regulation on digital operational resilience in the financial sector (DORA) of last September, which aims to introduce, taking into account the principle of proportionality, both uniform and transversal rules on ICT security for all operators in the financial sector (including asset managers) and a European regime of direct oversight on critical ICT service providers for the financial sector, based on an oversight framework that provides for the sharing of roles and responsibilities between European (EBA, ESMA and EIOPA) and national Authorities.

Digitization of activities. Even the DLT technologies (i.e., the technologies that support the distributed recording of encrypted data) lend themselves to opening interesting opportunities for the world of asset management, especially when we consider the so-called process of digitization or tokenization of assets, i.e. the conversion of the rights on an asset into a digital token registered on a blockchain, where the material asset and the token are connected by a smart contract (which represents the transposition into code of a contract, with the ability to automatically verify the fulfillment of certain conditions and to carry out actions or give instructions in those cases).

This process, in addition to allowing an acceleration of transaction times and a reduction of operational costs, by operating with tokens registered on an immutable and transparent ledger, also entails important benefits in terms of liquidity and accessibility of the investment. In fact, through the tokenization of assets and, in particular of the typically illiquid ones - such as real estate, infrastructures, private equity funds, venture capital, Eltif - tokens can be traded on a peer-to-peer token market which, in the presence of a large base of investors, increases liquidity for the benefit of investors, who have greater freedom of entry and exit.

Examples of tokenized funds already exist both in the US market and in some European countries. Thus, for example, on 6 July 2020, the SEC approved, pursuant to the Investment Company Act of 1940, the first public offering of shares issued in the form of digitized securities, of a collective investment undertaking established in closed ended form, which operates as a so-called "interval fund". In this case, the tokens representing the fund's shares are issued on the Ethereum blockchain, one of the largest public blockchains in the world that uses the ERC-1404 protocol which allows, compared to the better-known ERC-20, the application of restrictions to the transfer of tokens within the relative smart contract, and therefore to control, among other things, the conditions under which the tokens can be transferred.

The phenomenon of tokenization of assets is also in the spotlight of the European Commission which, in an attempt to create an EU framework that allows both the introduction of markets for crypto-assets and the tokenization of traditional financial assets and a wider use of DLT in financial services, published last September two regulatory proposals on markets in crypto-assets and on the pilot regime on DLT market infrastructures, and a proposal for a directive aimed at allowing the achievement of the objectives enshrined in these regulatory proposals. It is interesting to underline that Article 6 of the proposed directive amends the definition of "financial instrument" contained in MiFID II to clarify that such instruments can be issued using

a distributed ledger technology. This is an important clarification from the perspective of asset managers because it allows a collective investment undertaking both to invest in financial instruments issued using a distributed ledger technology (so-called security token) and to issue units or shares as part of a digital tokenization process. For AIFs, the possibility would then open up to invest in crypto-assets other than financial instruments, falling within the Commission's regulatory proposal on markets in crypto-assets.

The investment in tokenized assets also highlights the emergence of new risks associated with the use of DLT technologies, including: (i) the possibility of unknown technical defects; (ii) the possibility that the security measures that authenticate transactions may be compromised or "hacked"; (iii) the possibility that new technologies or services inhibit access to a blockchain. In order to manage this new type of risk, on February 26 the SEC "Division of Examination" published a risk alert on investment or trading in "Digital Asset Securities". To make the tokenization process safer it is necessary that (1) it develops in compliance with precise normative-regulatory guidelines (regulatory framework) issued by the supervisory authorities; (2) it is based on precise standards recognized by the market and by operators; (3) it is based on DLT governed by authorized and supervised entities. In addition, a lot of tokenisation use cases are relying on the Ethereum blockchain, which can be perceived as a risk or a concentration risk. Rules may be established to avoid blockchain risk concentration.

Open finance. Finally, please consider the initiatives launched by the European Commission on the so-called open finance, a term that designates an extension of "open banking" (i.e., the practice of sharing banking data through standardized and secure interfaces at the request of customers) to the entire financial sector. In its Communication of 24 September 2020 on a Digital Finance Strategy for the EU, the Commission expressed its intention to define, by 2024, an open finance framework, in line with the EU strategy for data. According to the Commission, the open finance framework should also build on initiatives related to digital identities, including the definition of a robust regulatory framework that allows the use of interoperable solutions for digital identity, so as to enable new customers to access financial services quickly and easily ("onboarding").

These initiatives are based on the assumption that open finance can lead to an improvement in financial products, targeted advice and access for consumers, as well as greater efficiency of business-to-business transactions. Access to more customer data would also allow service providers to offer more personalized services and more in line with the specific needs of customers. The Financial Conduct Authority (FCA) also highlighted the benefits deriving from open finance, in its Feedback Statement on open finance (FS21/7) of last March, however, it also focused on highlighting some risks deriving from this initiative, especially in the area of the so called "data ethics". For this reason, the FCA suggests pursuing a gradual approach to open finance, trying to exploit its benefits without imposing (or at least limiting) excessive burdens, costs and uncertainties on companies.

Given the above, in answering to the following questions (in particular with regard to the Italian context), we have taken into account opinions and interventions made by Italian authorities in various contexts.



<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>

In the current period, especially in Italy, we are witnessing an acceleration of the technological transition that will flank the information economy, entrusted to algorithms that quickly transform data into targeted information profiles, with the economy of platforms that also aim to transfer value. In this transformation, a key role will be played by distributed ledger technology (DLT) and in particular by the blockchain. The DLT, with the use of the so-called smart contracts will also be able to

compete with traditional trading and post-trading infrastructures. Starting from the post-trading infrastructures, which directly perform database registration and management functions, we will arrive at the infrastructures that manage the entire life cycle of a financial instrument since its issue.

From a more general standpoint, we notice that while digital innovation can open the access for new players creating more competition, it works only if this decentralization and fragmentation are accompanied by inter-operability. Without interoperability, market participants will not benefit from fragmentation and increased competition among providers. The issue of inter-operability is even more concerning when some players have large market shares: they could easily make their blockchain non-operable with other blockchain-based distribution channels, fragmenting the market or potentially concentrating the risk on one provider.

<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>

It is now a fact that financial firms are increasingly relying on technology, including for the performance of critical and important functions. Some elements suggest that asset managers are particularly dependent on technologies such as artificial intelligence and the Cloud. Even ESMA, in its “*Guidelines on Outsourcing to Cloud Service Providers*”, has considered the outsourcing of critical and important functions. Regarding custody/depository activities, it seems that asset managers still mainly use traditional services, although the technology has evolved. As blockchain solutions emerge, and with it a decentralized model, it will be critical to understanding the liabilities attributed to fund depositories/custodians versus those attributed to the fund managers. For the issuance of security tokens, asset managers will have to rely on digital assets custody solutions offered by custodians. In this case, custodians either develop their own solution or rely on third-party providers.

A wide range of services are used by asset managers to perform a variety of functions, from obtaining security data and risk analysis that inform investment decisions, to order management and trade execution systems that facilitate entry and execution of the negotiations, to the accounting systems.

Third party providers are a wide variety of companies. This landscape is further complicated by the diversity of asset managers’ business models. Many managers seem to take a mixed approach, performing some tasks in-house and engaging providers to fulfill other tasks.

As regards the Italian market, among others, the following elements can be observed:

- it is a small but growing market, made up of very small start-ups on average;

- the business model favors collaboration and not competition with traditional players, mainly due to the difficulty for start-ups to create a sufficient customer base on their own, the difficulty in raising capital and the lack of technical and juridical knowledge of the financial sector;
- technology companies can choose to innovate single phases of the traditional production process and become providers of large traditional intermediaries (scoring for loans; customer profiling; robo advice; compliance services);
- the services offered seem mainly related to banking intermediation, primarily for financing and payment activities, followed by investment services (portfolio management, advice and alternative investments) and other services such as marketing, Big Data analysis, security, compliance, the provision of technological infrastructures.

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DCFE_4>

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

<ESMA_QUESTION_DCFE_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_DCFE_5>

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

<ESMA_QUESTION_DCFE_6>

Financial market data plays an increasingly important role in financial markets and market participants, such as asset managers, are consuming an increased amount and variety of data.

Although regulations such as MiFID II, CRAR and BMR have made improvements, some issues such as the increase of cost in financial data, the lack of transparency on the pricing policy of data providers and limitations on their liability when the data provided appear to be incorrect have not been fully addressed.

The market structure and value chain in which market data is produced and consumed is complex and does not only rely on regulated financial services firms but also on data vendors which are not regulated for this type of activities. For example, changes in prices faced by end-users are not only due to regulated financial services, since data redistributors charge mark-ups and/or additional fees.

Some observers, including ESMA (*Follow-up to the Thematic Report on fees charged by Credit Rating Agencies and Trade Repositories*, 20 December 2019 ESMA80-196-3218), also report that some regulated financial services firms appear to be currently evading potential regulatory obligations by providing services through unregulated firms. We can observe the emergence of various alternative data providers of potential use in the financial sector to support investment decisions, typically activity indicators expressing economic vivacity (useful for the nowcasting), data relating to individual issuers (business quality, ESG, etc.). Therefore, the role of data vendors should be given a higher level of regulatory attention.

Supervisory guidance, such as the ESMA Final Guidelines on MiFID II /MiFIR obligations on market data released in June 2021 are welcomed, however target amendment to relevant regulations (like binding requirements in L1 or L2) are necessary for investor protection and level playing field other than to strengthen the overall concept that market data should be charged based on the costs of producing and disseminating information (plus a reasonable profit margin). Same rules and principles have to apply to all financial market data providers/distributor i.e. both regulated and unregulated.
<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>

TYPE YOUR TEXT HERE

<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>

The services of third-party providers for the storage and management of data (cloud services above all) bring efficiency in themselves but pose the problem of supervising the reliability (stability, security, integrity etc.) of third parties not belonging to

supervised sectors, whose activity constitutes a very high and difficult operational risk to monitor.

Furthermore, the development of crypto assets, if not governed, can have significant negative impacts, especially with regard to technological platforms and related service providers: legal and reputational risks for financial institutions that are significantly exposed to this business, gaps in investor protection (fraud, theft of private keys, privacy, etc.), operational risks related to the security of protocols, risks of money laundering and tax evasion and difficulties in monitoring capital movements. The mapping of these risks at a global level is uncertain, due to the fragmentation of information and the different approaches of public authorities in various jurisdictions. Apart from the problems of systemic stability and security, crypto assets certainly pose urgent policy problems for investors, such as providing safeguards to contain liquidity risks, evaluation risks, the use of financial leverage, volatility and operational risks.

<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>

If new high-tech service providers able to compete or cooperate with traditional entities (banks and investment firms) enter in the market, even offering new services but complementary to the traditional ones, direct competition in this sector raises the problem of: (i) reducing the margins of traditional activities with impacts on business models and intermediation structures; (ii) lower investor protection (for example: it is missing the protection offered by MIFID regulation, leading to higher costs); in Italy, however, a trend is being observed which favors cooperation between “old” and new entities.

A critical profile concerns the direct offer of financial services by large technology companies that rely on a customer base to be considered unattainable even for the largest traditional entities; they are companies that also have dominant positions in the markets, easy access to capital and technological capabilities to manage the impressive amounts of data they get; these features allow them to offer financial and payment services at very low cost; this aspect is currently considered among the most critical at an international level due to the absence of an ad hoc normative framework.

<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>

Financial market data is often provided by natural monopolies and oligopolies. These companies have significant market power and can unilaterally set virtually all contractual conditions, since the customers, like asset managers, cannot undertake the activities that are essential to their business without the data provided by these firms. Rigorous rules and supervision of the entire financial market data business is crucial in order to maximize the economic benefits of financial markets.

Asset managers rely on large amounts of financial market data, especially provided by external unregulated data service providers. In line with our response to Q6 above, we believe that same principle and rules should apply both to regulated and unregulated data service provider. Such interventions would overcome problems, among others, to investor protection and level playing field and could help the fluidity of financial markets and meet the interests of a sustainable development.

<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>

Assogestioni believes that the ongoing discussion on the adoption of the proposals contained in the “Digital Finance Package” presented by the European Commission in September 2020, among other initiatives, is also aimed at adapting the EU regulatory framework to the challenges posed by digitization and technological developments, including those in value chains.

Some aspects of the European action that require further activity are the following:

1. The need to identify in a precise and harmonized way the notion of financial instrument which identifies the scope of the new MICA Regulation.
2. The opportunity to establish clarification mechanisms at European level in case of doubts about the qualification of the instruments.
3. The need to provide for preventive protection mechanisms, such as the suspension of offers, in the event of doubts about the qualification of the products offered to investors.
4. The opportunity to introduce systems of convergence and international cooperation to avoid harmful arbitrage and regulatory races to the bottom.
5. The need to identify the centers of responsibility (neglecting this aspect would compromise the enforcement capacity of the authorities).

Regulators around the world are following the development and uses of technology in collective asset management, also considering how technology, including artificial intelligence (AI) and machine learning (ML), can improve regulatory functions. In addition to imagining new regulations, it is recommended to evaluate the applicability of existing regulations to new technologies and technology/service providers in case the offer financial services covered by the current regulation and provide additional information where required. In general, furthermore, consider that the use and development of AI/ML are not static, it is therefore necessary to think about how the regulation should evolve accordingly.

<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>

Assogestioni believes that a shared taxonomy is absolutely central to the clarity of the rules and their application, especially to assess the need for a transition from a regulatory approach based on “vertical silos” (basically for entities or sectors) to an approach that looks at the risks associated with a certain activity (as hypothesized by the proposal for the DORA regulation and by the legislative proposal of the European Commission on artificial intelligence). According to some authoritative IT experts, in a perspective of horizontal or transversal regulation, a further unavoidable step will be the provision of rules that directly concern the requirements of the technological infrastructures themselves, regardless of their scope of use (for example governance requirements for the large number of existing blockchains or cryptographic system requirements).

Furthermore, clear regulatory indications seem necessary, especially on issues such as the fulfillment, with digital tools, of the obligations regarding customer knowledge (e-KYC), due diligence in the relationship with customers, recruitment (on-boarding) of new customers (customer profiling, anti-money laundering and digital identity).

<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>

First of all, the supervisory authorities should be present in the testing of innovative proposals, with fact-finding and monitoring functions, also participating in digital chains that exploit new technologies (DLT and blockchain) and directly managing the testing of innovative proposals in a supervised environment (sandbox).

In general, some shortcomings can be observed about cooperation in the field of financial supervision, both between different supervisory authorities at cross-border level, and between supervisors and central banks. This also occurs in relation to digital finance, where there is an unclear division of responsibilities and powers between central banks and supervisory authorities, as well as national initiatives that are not sufficiently coordinated in a cross-border perspective. We believe that supervisory practices, such as cross-border or cross-sector cooperation, should therefore be strengthened in relation to changes in value chains. Ideally, however, we believe that cooperation, both cross-border and cross-sectoral, should take place globally, given the nature of the phenomenon. Cross border supervision is very important, particularly in areas where a high degree of standardization and security are required.

<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>

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<ESMA_QUESTION_DCFE_14>

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

<ESMA_QUESTION_DCFE_15>

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<ESMA_QUESTION_DCFE_15>

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>

Not applicable.

<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>

Assogestioni believes that the use of platforms by financial firms can improve the possibility for intermediaries to significantly expand the range of their products with a significant reduction of structural costs (compared to traditional methods). Therefore, we do believe that, in the context of the funds' distribution, the possibility of reaching a wider spectrum of investors is closely connected to this phenomenon.

From the asset managers' perspective, the use of online platforms increases the opportunities of access (including direct) to the retail market and therefore the conditions to operate efficiently on the basis of specialized professional skills.

Distribution platforms also represent an important resource for open architecture strategies. These realities allow sector operators and final investors to have easier access to the product offering, thus multiplying the opportunities for investment diversification. In recent years, these platforms have undergone an important evolution, going from being an intermediary reality only to becoming a service provider for distribution.

<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>

With particular regard to the use of online platforms in the asset management sector, it is believed that the main risks are connected to a) the structure of the value chain used by these platforms and b) the management of data by the parties who operate there.

From the asset managers point of view, in fact, the structure on the basis of which online platforms are developed may not always allow them to receive sufficient information on their final investors, at least of retail investors, thus making it more difficult for the industry to develop products based on investor profile and behavior.

Due to this lack of connection with end investors, the supervision and due diligence costs' that asset managers have to incur to oversee the application of regulations affecting end investors (AML, MiFID II) by their distributors could increase considerably.

Strictly linked to these risks related to the structure in which these platforms are articulated, there is a series of risks connected to the management of the data of who operate there.

Although part of the aspects related to the data management are covered by the GDPR - under which transfer agents, distributors and asset managers should work together to clearly define all processes related to the management, storage and use of data, as well as to clarify the roles of the manager and data controller - it is believed that, given the velocity with which these systems change and develop, and in order to intercept the emerge of new risks linked to an incorrect data management, there is a need for an ongoing monitoring and collaboration of/with who is involved. From a regulatory point of view, therefore, it is considered necessary to start from a greater clarification of the role played by data controllers and data processors as well as the tasks entrusted to them.

If on the one hand it has been said that distribution platforms also represent an important resource for open architecture strategies, as they allow operators and final investors to have an easier access to the offering product, multiplying the opportunities for an investment diversification, on the other hand, the risks properly linked to them cannot be ignored. Among these it is worth mentioning a) the exclusion of some customers who do not wish to share their data, b) an improper use of such data and the risk of financial crimes, fraud or scams which could increase in terms of value and complexity, c) the decrease of retail investors investments due to the low levels of financial literacy and excessive simplification of products for comparison purposes, d) those of a competitive nature, where high charges and costs of regulatory compliance could lead some companies to stop providing certain services and information asymmetries could move the market in favor of “big tech” companies and finally e) those of an operational nature linked to greater interconnection and complexity of relationships, poor security at data collection and analysis providers, limited number of people with an adequately qualification within companies.

Finally, among the risks more properly connected with the distribution of funds, it also seems possible to find, on the one hand, the limited transparency/clarity of the pricing models of these platforms (in particular with regard to retail investors) and, on the other hand, a few market players predominant presence.

In terms of the challenges that the evolution of this phenomenon entails, and in line with the position expressed by the European Commission in the Communication of 25 May 2016 on online platforms and the digital single market first, and with the proposal on the Digital Service Act and on the Digital Market Act then, it is believed that the greatest challenges are related, first of all, to the need of maintaining an online environment in which those who use it can operate safely.

To this end, it is believed that one of the greatest challenges is to establish an effective supervisory system in which there is a concrete collaboration between the competent authorities aimed at preserving and protecting the fundamental rights of the who access these platforms from abusive conduct by who operate there. Therefore, it is considered of fundamental importance to provide safeguards at the regulatory level aimed at identifying the responsibility area of these subjects, the obligations regarding the duty of diligence as well as procedures for reporting abusive conduct and sanctioning/intervention procedures by the competent authorities.

Further challenges can be found in the need to guarantee equal competitive conditions for comparable services as well as in ensuring the transparency and accuracy of the operations carried out on these platforms.

<ESMA_QUESTION_DCFE_21>

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

<ESMA_QUESTION_DCFE_22>

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<ESMA_QUESTION_DCFE_22>

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

<ESMA_QUESTION_DCFE_23>

We do believe that, in addition to the provisions of the proposal on the Digital Market Act and the one on the Digital Service Act, it is needed an ongoing monitoring of the use of these platforms and an analysis of any possible risks that may arise in the context of its development.

<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>

In general, as highlighted in the Communication of 25 May 2016 on online platforms and the digital single market, and considering the development of this phenomenon, in order to unlock the benefits brought by the use of platforms and so in order to promote innovation, growth and competitiveness of these services as well as to make this use more reliable, we share the Commission's position of providing a single body of rules for the entire European market that takes into account the various aspects related to this phenomenon (first of all, those relating to the risks associated with the use of these platforms, the management of the data shared on them and the absence of real competition that also involves small and medium-sized platforms).

<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>

We do not see any particular issue with regard to the cross-border supervision. Anyway, as stated in our answer to Q21, we do believe that at EU level the establishing of an effective supervisory system in which there is a concrete collaboration between the competent authorities aimed at preserving and protecting the fundamental rights of the who access these platforms from abusive conduct by who operate there, represents one of the main challenges. Therefore, it is considered of fundamental importance to provide safeguards at the regulatory level aimed at identifying the responsibility area of these subjects, the obligations regarding the duty of diligence as well as procedures for reporting abusive conduct and sanctioning/intervention procedures by the competent authorities.

<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>

[Please consider what we stated above: a) in terms of identification and monitoring of the possible risks that, given the continuous evolution of the phenomenon, may arise; and b) in terms of safeguards aimed at safeguarding the rights of investors (in particular retailers) who choose to operate on these platforms.

<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>

The FinTech world also includes companies that are born in technological sectors, not in finance, and which subsequently, exploiting the technology developed, combine their business with some financial services, such as partner financing, payment systems, insurance policies and asset management (Google, Amazon, Apple, Alibaba). Please see generally the previous answers.

<ESMA_QUESTION_DCFE_27>

Q28 Which types of financial services do these entities provide?

<ESMA_QUESTION_DCFE_28>

Please see our answer to Q27.

<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>

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<ESMA_QUESTION_DCFE_29>

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

<ESMA_QUESTION_DCFE_30>

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<ESMA_QUESTION_DCFE_30>

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

<ESMA_QUESTION_DCFE_31>

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<ESMA_QUESTION_DCFE_31>

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

<ESMA_QUESTION_DCFE_32>

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<ESMA_QUESTION_DCFE_32>

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

<ESMA_QUESTION_DCFE_33>

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<ESMA_QUESTION_DCFE_33>