



ESMA's call for evidence on digital finance

[Link to the paper: *Call for evidence on Digital Finance*](#)

1.- Target audience (potential stakeholders):

This call for evidence is primarily of interest to:

- Financial firms relying on third parties, in particular technology firms, to fulfil critical or important functions.
- Third parties, in particular technology firms, on which financial firms rely on fulfil critical or important functions.
- Technology firms providing financial services, either directly or through partnerships with financial firms.
- Platforms marketing or providing access to different financial services.
- Groups combining financial and non-financial activities, also known as Mixed Activity Groups (MAGs).

It is also of interest to any other stakeholders in the financial markets.

The CNMV would appreciate it if all the above-mentioned potential stakeholders were to send a copy of their responses to the call for evidence to the following email address:

Documentosinternacional@cnmv.es

2.- Information Note

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 offer a series of opportunities, including the prospect of better financial services for businesses and consumers and greater financial inclusion but they also raise challenges, as they can contribute to introduce or exacerbate new risks. In addition, the existing regulatory and supervisory framework may need adaptation to address the new challenges associated with technological innovation.

In September 2020, the European Commission published a digital finance package with the aim to embrace digital finance in the EU. Some of the recent legislative proposals of the European Commission, such as the Digital Markets Act (DMA) or the Digital Operational Resilience Regulation (DORA) already intend to address some of the above risks and challenges.

In February 2021, the European Commission submitted a request for technical advice to the European Supervisory Authorities (ESAs). In particular, the ESAs were requested to assess the regulatory and supervisory challenges brought by these developments and the way in which they could be addressed for digital transformation, by considering that the regulation should

be technology neutral according to the “same activity, same risk, same rule” principle. ESMA is closely cooperating with EBA and EIOPA to issue joint technical advice.

On 25 May, ESMA issued a paper addressed to the industry to obtain contributions to be considered in the technical advice on digital finance to be submitted to the European Commission.

The request for technical advice is namely on the following three key issues:

i) The growing fragmentation and non-integrated value chains in finance arising as a result of the reliance by financial firms on third parties (technology firms) for the provision of essential services and the entry of technology companies into financial services.

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 technology companies and financial firms.

These new business models may entail various benefits, such as increased efficiency, but they may also introduce new risks. For example, technology companies may, in the absence of a holistic approach, fall outside of the regulated and supervisory space, raising numerous challenges in relation to cross-border supervision, determining individual responsibility or operational resilience of the entire value chain and its prudential treatment.

ii) Digital Platforms and bundling various financial services.

Digital platforms market and provide access to various financial services, often from different financial firms. Financial firms can also partner with technology firms to bundle a range of financial services which are then distributed through digital channels. The platforms and the financial firms are not always part of the same group or operate in different countries. Furthermore, the financial services they provide may fall under separate sectoral regulations or outside of the scope of EU legislation, which can leave new risks unaddressed and raise specific supervisory challenges.

A more holistic or comprehensive approach to the regulation and supervision of these platforms and bundled financial services could be relevant, considering the increased risk that they can pose for investor protection, compliance with the rules of conduct and money laundering prevention regulations, as well as higher operational risk.

iii) Groups of companies combining different activities, known as Mixed Activity Groups (MAGs), providing both financial and non-financial services.

Large technology companies forming part of mixed activity groups are increasingly entering the financial services sector, including through the establishment of subsidiaries for the provision of financial services. These companies can use the client databases of other subsidiaries to access a large number of potential clients, elevating intra-group dependencies on operating systems and processes. This could entail detrimental effects to the level playing field between entities providing financial services as a single entity versus those providing them via a mixed activity group.

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 business. The fact that mixed activity groups are not covered under existing EU legislation and that financial supervision is limited to regulated entities forming part of the mixed activity groups, poses challenges to supervise the rules of conduct, as well as potential prudential and systemic risks.

The paper is divided into the three sections mentioned above, and contains 33 questions as to whether these issues pose supervisory and regulatory challenges and how to address them, how cooperation among NCAs should be for cross-border supervision, and how potential emerging risks could be mitigated.

ESMA will take into account the information received through this call for evidence to prepare its advice for the European Commission. ESMA, together with the other ESAs, will deliver a report to the European Commission by 31 January 2022. The technical advice received from the ESAs will not prejudice the EC's decisions in any way.

The European Commission will propose, where relevant, adaptations to the existing legislative frameworks by mid-2022.

3.- Submission of comments

The deadline for submitting comments is **1 August 2021**.

Respondents may send their comments through ESMA's website: www.esma.europa.eu. Both the paper of this call for evidence and the response form are available in the section [Consultations](#) (place the cursor on the word to obtain the link).

Likewise, as indicated above, the CNMV would also appreciate it if stakeholders could send a copy of their responses to the call for evidence to the following address:

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