

ESAs findings in response to the European Commission's Call for Technical Advice on Digital Finance

European Parliament's FinTech Working Group
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ESAs approach to the Call for Advice



Approach to concepts and terms

- **Platform** – any technological infrastructure 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/services.

Platform aims to be both ‘model’ and ‘technology-neutral’.

- **Mixed activity groups** (MAGs) – group of undertakings (a parent undertaking and its subsidiary undertakings) conducting both financial and non-financial services.
- **BigTech** – large technology company with extensive customer networks; it includes firms with core businesses in social media, internet search, software, online retail and telecoms (FSB 2020 definition). BigTechs are a type of MAG.

Methodology

- **Surveys and research** with Competent Authorities
- **Public consultations:** EBA survey to firms on digital platforms, EIOPA public consultations on insurance value chains, blockchain and open insurance, ESMA call for evidence on digital finance
- **Extensive outreach** to external stakeholders: +40 joint-ESAs bilateral interviews with a wide range of stakeholders
- Consultation of ESAs stakeholders’ groups
- Desk-based research

Key market developments and challenges



Value chains

- Increased dependency on third-parties
- Growing intertwined relationships between regulated firms and tech companies

Digital platforms

- Growing in use (search for convenience, APIs)
- Bundled products and services
- Operating cross-border
- Interactions with social media

Mixed activity groups

- Limited direct provision of FS in the EU so far
- But capacity to reach scale quickly - data and network effects

- Oversight challenges (gaps in available information or oversight framework)
- Existing rules not always well-suited to digital context
- Lack of regulatory certainty
- Supervisory coordination challenges between authorities (home/host, financial/non-financial)
- Insufficient prudential and supervisory frameworks for mixed activity groups (MAGs)
- Insufficient resources at authorities to effectively monitor constantly evolving markets

Recommendations for the European Commission



1. **Fragmented value chains**

- Consider holistic approach to regulation/supervision of value chains – in particular consider issues related to reliance on third party providers that may not be addressed by upcoming rules (esp. with regard to DORA).

2. **Consumer protection in a digital context**

- Update disclosure requirements to make them fit-for-purpose in a digital setting.
- Address the risk of (cross) mis-selling, incl. in relation to bundled products and services.
- Overcome weaknesses in complaints-handling processes.

Additional recommendations may be provided by the ESAs through separate legislative reviews (e.g. MCD) and calls for advice (incl. call for advice regarding certain aspects relating to retail investor protection).

3. **Financial and digital literacy**

- Take steps to improve financial literacy and prevent financial exclusion, e.g. by ensuring technology-driven financial services do not exacerbate financial exclusion or cause unfair discrimination.

4. **Cross-border financial services**

- Provide further guidance on the definition of cross-border services in a digital context, including in relation to the right of establishment and freedom to provide services.

5. **Supervisory skills and resources**

- Consider ways to strengthen skills and resources at national and EU supervisors to supervise digital finance more effectively.

Recommendations for the European Commission (cont.)



6. **AML/CFT**

- Mandate the AMLA, in close cooperation with the ESAs, to issue guidelines on outsourcing and governance arrangements for Consumer Due Diligence (CDD) and undertake thematic review of best practices.
- Clarify data protection obligations in the CDD and wider AML/CFT context.
- Mandate the AMLA to issued guidelines on crowdfunding and assess as a matter of priority whether crowdfunding platforms should be subject to AML/CFT requirements.

7. **Mixed activity groups (MAGs)**

- Update definitions dealing with the scope of (existing) prudential consolidation rules.
- Consider the need for new consolidation frameworks (e.g. for groups including a payment institution).
- Consider the creation of a structured regulatory and supervisory framework to extend to MAGs involved in financial services.

8. **Cooperation between financial and other relevant authorities**

- Consider possible ways to enhance cooperation between financial and other relevant authorities (e.g. consumer protection, data protection, cyber security and competition authorities), building on existing cooperation models.
- Three (non-exclusive) possible frameworks are set out in the report.

Recommendations for the ESAs



9. Cross-border financial services

- Consider possible ways to enhance cooperation between home and host authorities (e.g., through additional guidance on notification requirements, discussions of practical cases in supervisory fora, or procedures in case of infringement of the rules), including with third country authorities.

10. Social media

- Actively monitor the growing use of social media in relation to financial services, and assess whether regulatory action may be warranted as part of upcoming work, including as part of the call for advice regarding certain aspects relating to retail investor protection.

EIOPA-specific actions



1. Solvency II restriction in the scope of (re)insurance activities

- EIOPA will consider further analysis of what is and is not considered as “activities directly related to insurance” in different Member States to bring more clarity (e.g. through issuing guidelines for enhancing supervisory convergence).
- Legislation change is most likely not needed.

2. The treatment of P2P insurance

- Due to the current relatively low market penetration of P2P insurance business models, and the fact that most of the business models seems to fall under existing regulation EIOPA does not see a pressing need for special regulatory approaches or changes in relation to P2P insurance.
- EIOPA will continue to monitor market developments.

THANK YOU!



Annex



Overview of key market developments



Opportunities and risks, gaps and challenges

Value chains in financial services

Increased fragmentation and complexity

Growing interactions between incumbents,
FinTechs and **BigTechs/MAGs**

Increased **dependency** on third-party providers

→ New **data centric** business models

→ Expanding range of **products/services**, cross
border dimension

Phenomenon not new, but accelerating with digitalisation and technological innovation:

- Cloud outsourcing for data storage and data processing
- Use of tech for specialised services, e.g., client on-boarding, compliance checks, risk analytics, regulatory reporting
- Use of wider range of alternative/non-financial data, e.g., behavioural, IoT, social media and ESG data

Digital platforms

Growing in use, varied business models

Search for **convenience**, on-line solutions to access products and services

Broader range of products/services available to **wider consumer base, cross-border**

Interconnectedness with **social media**

Bundling of different products/services

- Again, not new but accelerating with new technologies and digital transformation
- Incumbents under market pressure to adapt or be left behind
- Different business models:
 - One-stop shops
 - Neo-brokers
 - Fund distribution platforms
 - Etc.

Mixed activity groups

Limited direct provision of financial services by BigTechs in the EU

	Brazil			China			European Union			United Kingdom			United States		
Licence held	B	C	P	B	C	P	B	C	P	B	C	P	B	C	P
amazon									✓			✓			✓
Apple															✓
FACEBOOK									✓			✓			✓
Alphabet Google									✓			✓			✓
ANT GROUP Alipay			✓	✓*	✓	✓			✓			✓			✓
Baidu 百度				✓*	✓	✓									
JD.COM					✓	✓									
Tencent 腾讯				✓*	✓	✓									
mercado libre			✓												
docomo							✓		✓			✓			
Rakuten							✓		✓			✓			✓

B = banking licence
C = credit licence
P = payments licence

- Market presence in partnership or joint venture with other FIs
- ✓ BigTech has entity within group that holds financial licence
- ✓* Shareholding of BigTech in these banks is below 50%
- ✓ BigTech offers financial services both through partnership or JV with other FIs and has entity within group that holds financial licence

A host of opportunities

Value chains

Enhanced efficiency and
flexibility at financial firms

Digital platforms

New distribution channels,
efficiency gains in
distribution

MAGs/BigTechs in finance

One-stop shop for consumers

- Greater **convenience** and enhanced access for users of financial services
- Accelerating **innovation** and shorter time-to-market in financial services
- Increased competition, enhanced **Digital Single Market**, open finance
- Better financial products and services at potentially lower costs
- Enhanced **financial inclusion**

Potential new sources of risks



European Securities and
Markets Authority



Value chains

High dependency on third party
providers

Digital platforms

Certain platform features may
raise investor/consumer
protection issues

MAGs/BigTechs in finance

Potential for uneven playing
field between MAGs and
financial groups

- New forms of **ICT and operational resilience** risks
- Potential for **consumer detriment** (e.g., not clear with whom customers are contracting, aggressive sales techniques, insufficient financial/digital literacy on the part of customers)
- Risks in relation to the access and use of **customer data**
- Possible **concentration** and **interconnectedness** risks (dominant position of certain providers)
- **Competition and level-playing** field issues
- New forms of **ML/TF risks**

Gaps and challenges

	Value Chains	Platforms	MAGs, BigTechs
Potential lack of regulatory certainty for firms and supervisors (e.g., less clear delineation between regulated and unregulated services) + certain requirements not entirely suited to a digital context (e.g., disclosures, complaints handling mechanisms)	✓	✓	✓
Supervisory coordination challenges between home/host authorities, across sectors and geographies, and possibly other authorities (data protection, competition, cyber security)	✓	✓	✓
Oversight challenges (e.g. gaps in the oversight framework, lack of relevant information to monitor potential build up of risks)	✓	✓	✓
Some tech providers not within scope of AML/CFT legislation or not understanding well their obligations	✓	✓	✓
Challenges in the application of current governance and conduct rules	✓	✓	✓
Existing frameworks for group supervision (CRR and CRD, Solvency II, FICOD) not capturing/adaptable to MAGs			✓
Potential risk of an uneven playing field	✓	✓	✓
Evolving nature of phenomenon and insufficient resources at regulators/supervisors complicates monitoring	✓	✓	✓