European Securities and Markets Authority

Call for evidence

Digital Finance

02 August 2021

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’remit, i.e., any financial service and product provided by a financial firm as defined above. <u>Please note that banking, payment, credit and insurance services and products are excluded</u> 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 unprecedent 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[1] 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[2] 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 prejudge 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 issues[4]:

   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

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[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 industry[7] for what concerns EBA or a Discussion Paper on the (re)insurance value chain and new business models arising from digitalization[8] 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	BETTER FINANCE
Activity	Non-governmental Organisation and Other Associations
Are you representing an association?	☒
Country/Region	Europe

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>

TYPE YOUR TEXT HERE

<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>

The fintech wave of innovation introduces and transforms existing business models. The extensive use of third-party providers and outsourcing may lead to both as well as a possible fragmentation of the value chain. For example, several incumbent insurance-related companies and other financial services providers, have become software companies. The degree of this transformation is marked by the level of adoption of technological solutions in their core business processes.

<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>

Yes, financial firms are increasingly relying on technological firms to implement complex digital functions such as AI, Big data, algorithms, machine learning, etc . For example, with the emergence of digital technologies, investment firms started to offer advice through online platforms using artificial intelligence. As such, algorithms process the data a client enters when filling out an online questionnaire, determine a profile and “calculate” an investment recommendation for the advisee. This is done through online platforms that we refer to as Robo-advisors.

<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>

N/A

<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>

N/A

<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>

The BF Report 'Consumer Access to EU Equity Trade Data[9]' does not gauge of data collection or usage, but of their presentation (website-assessment-based), and mainly for "lit" markets are regulated markets (RM), multilateral and organized trading facilities (MTF/OTF). SI or dark pools were out of the MIFID/MIFIR scope of "transparency" – and other – (such as pre-post trade data requirements) obligations.

BETTER FINANCE report shows;

- The shrinking of transparent EU-based equity markets, in favour of non- or less transparent, non-EU-based players since MiFID I and II. Those non-traditional "Market venues" are less transparent to retail investors.
- ESMA reported that, in 2019, monthly trading volumes for equities on dark pools fluctuated between 43% and 49% of the total; moreover, 87% of equity instruments issued by companies outside the European Economic Agreement (EEA, meaning the EU and EFTA) were traded outside "lit" markets.
- Thirteen years ago, the top four European equity markets were EU-based companies ("market operators", according to the MiFID II terminology).
- By 2019, the landscape shifted towards non-EU-based companies, with the top four markets being subsidiaries of US- or UK-based operators.
- Overall, the share of all "lit" (as they are called by stakeholders) **EU-based regulated markets combined has declined to around 18% of total European equity trades.**

In 2019, this shift in trading activity by type venues accounted as follows;

- RMs 26% (regulated)
- MTFs 27% (regulated)
- OTC 27% (partly non-regulated)
- Sis 20% (non regulated)

This is due to market fragmentation generated by MIFID, while MIFID II did boost (Sis) systematic internalisers.

Unlike SIs, for whom rules are voluntary in their use, regulated trading facilities are bound by certain rules such as the obligation to organize trading and match bid/ask orders under fair, orderly and non-discriminatory rules.

Sis are not transparent, can potentially hold positions on own held instruments (conflict of interest) and they affect the price formation process, affecting investors.

According to ESMA, at the end of 2019, there were 430 trading venues registered in the EEA: 135 RMs, 223 MTFs and 72 OTFs.

<ESMA_QUESTION_DCFE_6>

[9]https://betterfinance.eu/wp-content/uploads/BETTER-FINANCE-Report-Consumer-Access-to-EU-Equity-Trade-Data-25032021.pdf

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>

N/A

<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 recent scandal involving the star of the German fintech industry **– Wirecard –** constitutes a good example of the risks posed by the alleged failings in the multidisciplinary cooperation between authorities due to, among others, the **blurred lines between financial and non-financial sector**. Bafin the German financial regulator did not consider Wirecard as a financial services providers admitting shortcomings in the supervision of the fintech company, in particular how the supervisory authority handled allegations of irregularities at the payments' provider.

Based on BETTER FINANCE's research, in many instances European FinTech companies are treated as "technology" companies, rather than financial services providers, even when duly registered as financial intermediaries (e.g. advisors, investment firms) with the competent supervisory authorities.

Risks linked with the emerging trend of Robo Advisors: Consumers very often complain about the high fees charged for the investment product due to the fact that these fees are actually higher than those explained during the advice process. **New fintech platforms as Robo-advisors**, operate as an alternative to more traditional financial advisors, with comparatively lower fees and offering access to simpler and cheaper products such as ETFs. However, the use of <u>algorithm and Automated Decision Making (ADM) may cause risks to consumers concerning the level of suitability of the investment advice:</u>

- several platforms provide **investment advice that seems inconsistent with the investor and risk profile of the mystery shoppers**.
- **strong discrepancy in terms of investment gains and high dispersion of asset allocation for the same investor profile**.

Robinhood case & Trade republic case: Whereas, at first sight, these platforms seem to provide very cheap brokerage services, their business model could be based on the Payment for Order flows (PFOF) mechanism and constitute a conflict of interest between their duties to their clients and to third parties (i.e., clearing houses).

- o little incentive to respect the spirit of their best-execution obligation to obtain the best-price execution from other market makers or trading venues for their clients.

- In many instances, orders are routed to platforms or dark pools, where there is no transparency and the “market maker” can use this pre- retail trade info to trade on its own account and/or to derive a profit from the spread and share it in one way or another with the broker.
- This leads to consumer detriment, poorer execution prices or, sometimes, to orders not being executed at all.
- It also affects the price discovery and formation process, which can be very detrimental in the long-term for EU equity trading.
- As such, this business model inevitably places the interest of the parties involved in these order flows before the needs of their end-users.

<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>

Please see answer to Q8

<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>

Please see answer to Q8

<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>

We consider that in order to regain the trust of consumers and financial service users the EU Commission should

- propose a legislative framework for AI-powered automated decision making (ADM) to ensure that they are fair, transparent and accountable to consumers and do not harm EU citizens' fundamental rights.[10]
- undertake an in-depth fitness check of all relevant EU legislation in the insurance and financial sector in order to propose legislative updates where necessary.

For example, specific rules should be also developed to address the pricing problem in the insurance sector. The use of algorithm may generate substantial risks to consumer as discrimination or unfair practices. Some group of customers may be directly excluded by the algorithm being determined as too risky (too costly).

<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>

N/A

<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>

N/A

<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>

N/A

<ESMA_QUESTION_DCFE_14>

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

<ESMA_QUESTION_DCFE_15>

[10] BETTER FINANCE is a contributor of the Human-Centric Digital Manifesto for Europe, How the digital transformation can serve the public interest (September 2019): https://www.beuc.eu/publications/beuc-x-2019-053-a-human-centric-digital-manifesto-for-europe.pdf

Raise awareness of investor protection regimes:

ESMA should consider coordinating a pan-EU investor protection awareness programme, aimed at informing "retail" investors of the sets of rights that protect them when seeking for advice and investing in capital markets and citing examples of successful enforcement cases. The programme would simply reassure "retail" investors that investment services are regulated and that they benefit from a good investor protection regime that is being enforced.

The programme could copy the successful project of the EC on passenger rights ("Your Passenger Rights") and duplicate the mobile application with simple, user-friendly interfaces and descriptions of the main rights EU citizens have when using investment services or investing in capital markets. However, such a campaign would not substitute adequate regulations and enforcement tools, public and private: it would merely complement the investor protection framework at EU level. <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>

N/A

<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>

The global lockdowns and restrictive measures are associated to an increased use of digital platforms thus bringing many new young investors into the capital market. In the first edition of the half-annual report on *Trends, Risks, and Vulnerabilities* (no. 1, 2021) on EU capital markets, ESMA observed "*large increases in stock buying and volume traded by retail investors, a trend confirmed by studies in different countries*" such as Belgium, France, or Italy. ESMA highlighted several reasons for this increased participation of retail investors in capital markets, such as additional savings due to consumption constraints or "*increased time spent online during lockdowns, with ready access to online trading and investment tools*".[11] However, even if these platforms seem to provide very cheap brokerage services, their business model could be based on the Payment for Order flows (PFOF) mechanism and constitute a conflict of interest between their duties to their clients and to third parties (i.e., clearing houses). (See answer to Q8 for additional information).

Robo-advice online platforms: Following four consecutive years of research on Robo-advice by BETTER FINANCE (link to the report), four main areas of concern stand out: **(i) investor protection awareness (ii) investment advice (iii) disclosure** and **(iv) sustainable investing.**

I. **Investor protection awareness:** Our research suggests that the propensity of "retail" investors to seek advice and take financial action (invest) is determined by the level of financial literacy and trust in capital markets. These two factors act more as complements and can reduce the vulnerable position of "retail" savers and their perceived lack of protection.

II. **Investment advice:** For the third time in a row, the findings our Robo-Advice report show that:

- several platforms provide **investment advice that seems inconsistent with the investor and risk profile of the mystery shoppers**.
- **strong discrepancy in terms of investment gains and high dispersion of asset allocation for the same investor profile**. This may stem from how the investor questionnaires are designed or how the background information of the mystery shoppers is analysed.
  - the recommended equity exposure ranges **from 9% to 95%** for exactly the same investor profile.
  - **Annual returns vary from + 1.80% to + 12.8% for the "Millennial" profile, and from +1.60% to +7.40% for the "Baby Boomer".**

III. **Disclosure:** the responsibility to provide clear and non-misleading information falls squarely on the suppliers of financial services. However, we have observed that the information provided to individual investors is somehow scattered across the website or even missing in certain cases:

- 14 out of 17 platforms include **best- and worst-case scenarios but only 10 platforms include past performance scenario in their investment advice.**

[11] ESMA TRV no. 1 2021 p. 34 available at: https://www.esma.europa.eu/sites/default/files/library/esma50-165-1524_trv_1_2021.pdf.

- **only 5 platforms (28%) specify that the past/future performance scenario are not reliable indicators of the actual performance**.
- Only 33% of the platforms clearly provide a warning stating that the investment may lose value.
- 67% of platforms clearly disclose **the risk level of the portfolio** in question, though the underlying details of what the risk level contains in practise varies greatly and leaves much to be desired.

IV. **Sustainability:** Only 6 of the 18 platforms analysed in this year's research also propose sustainable investing options to their clients. However, it is quite disappointing to note that **none of the platforms ask about the sustainability preferences of their clients during the questionnaire**.

- Only a few platforms ask whether the client wants to invest sustainably at the beginning of the questionnaire, but most of the 6 platforms in scope allow for tweaking their portfolio from "traditional" to "sustainable" once the investment advice is provided.

<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>

N/A

<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>

N/A

<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>

N/A

<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>

From a retail investment perspective, recent events have shown how easy it can be sometimes to manipulate retail investors, and how prone they are to take their information and advice on the internet (websites etc). This is even more worrying where companies use these channels to call upon the 'eco-consciousness' of consumers (e.g. German Pellets, Prokon) to mislead them. This is even more true in cases where issuers or manufacturers use online-channels to call upon the "eco-consciousness" of consumers to mislead them. Cases in Germany like German Pellets or Prokon are bad examples in that respect.

Differences in online advertising at national level can create detrimental effects for retail investors and uneven competitive environments and would further reduce investors' trust in the EU capital market. But we believe it is mainly an issue of enforcement of existing rules and of better supervisory convergence

<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>

N/A

<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>

Investment advice: Robo-Advice report show that several platforms provide investment advice that is inconsistent with the investor and risk profile and strong discrepancy in terms of investment gains and high dispersion of asset allocation for the same investor profile is concerning.

- **ESMA should consider policy actions to improve such processes, such as developing more detailed guidelines on investor questionnaires, on asset allocations or risk profiles.**
- ESMA could require investment advisors to use the same scale to measure the risk profile of the client and assign an equivalent portfolio.
- MiFID II regarding the disclosure of independent/non-independent advice should be amended to make it clear: (i) when exactly, in what format and medium, can an investment firm be considered to fulfil its disclosure obligations: the "provision in good time" is not sufficient and may allow the circumvention of the obligations enshrined in Art. 24.

Actual cost, risk and performance disclosure: the investment recommendations display very high divergences in future return estimates, which are quite misleading. EU law should require investment advisors to present the main characteristics of the advice (risk, fees, past performance of the portfolio) similar to that of the current UCITS KIID.
<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>

N/A

<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>

Supervisors should change their vantage point from traditional one to one compliant with the way software companies work. This will allow better understanding of value creation and distribution as well as better mapping of critical points.

EU and Member States regulation and supervision must apply consistently to all providers acting on a specific market (payment services in this case) regardless of the provider category (whether it is a bank or a non-bank in this case) in order to ensure that the hard-won financial regulation acquis produces its intended effects. ESMA must ensure consistent enforcement of EU rules in all Member States **(Wirecard case)**.

Problem of Redress: abused individuals and non-professional shareholders are still exclude them from the scope of the EU Directive on collective redress. As it stands, the abused EU citizens who bought Wirecard shares will still not have access to a PanEuropean collective redress mechanism, available for all other consumers and individual investors who just buy “packaged” investment products.

<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 establishement 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 withing the groups, and potential risks stemming from, can be identified and adressed, 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>

N/A

<ESMA_QUESTION_DCFE_27>

Q28 Which types of financial services do these entities provide?

<ESMA_QUESTION_DCFE_28>

N/A

<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>

N/A

<ESMA_QUESTION_DCFE_29>

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

<ESMA_QUESTION_DCFE_30>

Digitalization is characterized by business models that use data aggregation and analytics, thus becoming the core of innovation. The huge amount of data generated by consumers is a key for these business models to develop products and services.

However, **the concentration of data in few big market players could be in violation of EU data protection**, **privacy, consumer law, restraining innovation and competition that are beneficial for citizens.**

<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>

N/A

<ESMA_QUESTION_DCFE_31>

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

<ESMA_QUESTION_DCFE_32>

The EU Commission should complete the regulatory framework for a competitive data economy. **Data portability** should be at the core of this regulatory framework in which individuals and business should have the possibility **to access data but also to provide better protection to individuals on the data that they generate and should clearly own**.

Therefore, **non-discriminatory access to data and interoperability among market players should be considered in the legislative framework**. The only way to transfer the benefit of using someone's data on the generator of data is to introduce **payment for that data:**

- This will stifle the misuse since users of data will have to internalize the costs of data into the product's pricing.
- This will level the market and cure distortions due to size – if you want to use more people's data it will be costlier for you, not like now when VW or FB pay much smaller amounts per item due to their huge data pools as compared to let say small data aggregator.

<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>

N/A

<ESMA_QUESTION_DCFE_33>