



REPORT ON THE USE OF DIGITAL PLATFORMS

IN THE EU BANKING AND PAYMENTS SECTOR

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Abbreviations and glossary

AI	Artificial intelligence
AML/CFT	Anti-money laundering and countering the financing of terrorism
BigTech	Large technology companies with extensive customer networks; they include firms with core businesses in social media, internet search, software, online retail and telecoms
CRD	Capital Requirements Directive (Directive 2013/36/EU)
Credit institution	Institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013
CWA	Creditworthiness assessment
DGS	Deposit guarantee scheme
Digital platform	Technical infrastructure as defined in Section 2.1 of this report
DGSD	Deposit Guarantee Schemes Directive (Directive 2014/49/EU)
DMFSD	Distance Marketing of Consumer Financial Services (Directive 2002/65/EU)
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
EEA	European Economic Area
EFIF	European Forum for Innovation Facilitators
Enabler	Technical infrastructure as described in Section 3.4.5 of this report (and not a digital platform as defined in Section 2.1)
ESAs	European Supervisory Authorities
EU	European Union
E-money	Electronic money
Electronic money	Institution as defined in point (1) of Article 2 of Directive 2009/110/EC

institution

Financial institution	Credit institution, payment institution, electronic money institution
FinTech	Financial technology
GDPR	General Data Protection Regulation (Regulation (EU) 2016/679)
ICT	Information and communication technology
KYC	Know Your Customer
ML/TF	Money laundering/terrorist financing
Payment institution	Institution as defined in point (4) of Article 4 of Directive (EU) 2015/2366
PSD2	Second Payment Services Directive (Directive 2015/2366/EU)
RAQ	Risk assessment questionnaire
RegTech	Regulatory technology
SME	Small and medium-sized enterprises
SREP	Supervisory Review and Evaluation Process
UCPD	Unfair Commercial Practices Directive (Directive 2005/29/EC)

Executive summary

In the context of the response to the COVID-19 crisis, the EBA has identified a sharp acceleration in the digitalisation of both front- and back-office processes in the EU's banking and payment sector,¹ with financial institutions increasingly developing or engaging third-party, technologies to facilitate customer access to financial products and services through digital means.

Against this background the EBA has observed a rapid growth in the use of digital platforms to 'bridge' customers with financial institutions. This trend is expected to accelerate as financial institutions seek to satisfy customer 'search for convenience' and reduce costs, consistent with the core drivers of platformisation across all sectors of the EU economy.

This use of digital platforms presents a range of potential opportunities for both EU customers and financial institutions and offers significant transformative potential. For example, digital platforms can facilitate access to financial products and services, including cross-border.

However, the reliance of financial institutions on digital platforms for the marketing and distribution of financial services is creating new forms of financial, operational, and reputational interdependencies within the EU's banking and payments sector. Although the EBA does not identify the need for any specific legislative changes at this stage, the EBA observes that the platformisation of financial services is posing some challenges for competent authorities in monitoring market developments and any risks arising from these interdependencies.

Indeed, it appears that the vast majority of competent authorities currently have a limited understanding of platform-based business models, particularly in the context of interdependencies between financial institutions and technology companies outside the perimeter of competent authorities' direct supervision. Over time, this imperfect understanding of business models could impair the effective monitoring of specific risks, including those arising from financial, operational and reputational interdependencies between financial institutions and technology companies.

To address this issue, the EBA has identified steps to better monitor market developments and implement changes where needed. As a priority, in 2022 the EBA will help competent authorities to deepen their understanding of platform-based business models and the opportunities and risks arising by supporting competent authorities in:

- developing common questionnaires for regulated financial institutions on digital platform and enabler use. This approach will facilitate tailored and proportionate information-gathering against a fast-evolving market;

¹ <https://www.eba.europa.eu/calendar/jos%C3%A9-manuel-campas-introductory-remarks-2020-eba-policy-research-workshop-new-technologies>

- sharing information about financial institutions' reliance on digital platforms and enablers in order to facilitate coordinated EU-wide monitoring.

Building on that information gained, and experience acquired, as a result of more comprehensive and robust monitoring, the EBA proposes to:

- develop a framework to facilitate the aggregation of information about financial institutions' dependencies on digital platforms and enablers in order to identify cumulative dependencies in the context of the marketing and distribution of financial products and services;
- establish indicators that could help in assessing potential concentration, contagion and potentially future systemic risks and could be taken into account in the context of supervision.

In addition, the EBA proposes to continue its efforts to foster the sharing of supervisory knowledge and experience about digital platforms and enablers on a sectoral and multi-disciplinary basis, to enhance effective dialogue between authorities responsible for financial sector supervision, consumer protection, data protection and competition, including via actions under the coordination of the EBA's FinTech Knowledge Hub.

These proposals will be further considered in the context of the EBA (and wider ESA) work in relation to the joint ESA response to the EC's Call for Advice on digital finance,² which will be published in Q1 2022.

Additionally, the EBA highlights its previous recommendations³ for the EC to update its interpretative communications relating to when a digital activity should be considered as a cross-border provision of services. Clarity on this important matter will support financial institutions and competent authorities in determining how an activity carried out using a digital platform is to be treated under EU and national law, including as regards the application of notification requirements which provide the foundation for better visibility over the cross-border provision of services. The EBA also highlights previous observations about divergences in consumer protection and conduct of business requirements at the national level which may pose potential impediments to the scaling of services cross-border using digital platforms and other innovative technologies.

Further observations and a set of recommendations relating to the digital transformation of the EU financial sector will be set out in the joint ESA response to the EC's Call for Advice on digital finance.

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

³ EBA October 2019 report on potential impediments to the cross-border provision of banking and payment services: <https://www.eba.europa.eu/eba-calls-european-commission-take-action-facilitate-scaling-cross-border-activity>

1. Background

1. As part of the EBA's thematic work in relation to FinTech, and ongoing monitoring of the regulatory perimeter, in early 2020, the EBA launched at its own initiative an analysis of the use of digital platforms for the provision of banking and payment services in the EU.
2. Consistent with the EBA's objective to ensure that the regulatory and supervisory framework is technology neutral and fit for purpose in the digital age, and recognising the disruptive potential of digital platforms, the EBA's core objectives were to:
 - identify key market trends;
 - facilitate knowledge-sharing between industry and competent authorities about opportunities and risks arising; and
 - identify any cross-cutting regulatory and supervisory issues, including areas for potential future action.
3. Following the commencement of this analysis, in September 2020, the EC published its Digital Finance Strategy,⁴ setting out areas of work under four main priorities: (i) removing fragmentation in the Digital Single Market; (ii) adapting the EU framework to facilitate digital innovation; (iii) promoting data-driven finance; and (iv) addressing the challenges and risks with the digital transformation, including enhancing digital operational resilience.
4. As part of the Strategy, the EC signalled its intention to mandate the ESAs to provide an assessment of the need for any changes to the supervisory perimeter to capture risks arising from platform and technology firm provision of financial services and from 'techno-financial' conglomerates and groups.⁵
5. In February 2021 the EC issued its Call for Advice on digital finance and related issues,⁶ mandating the ESAs (among other things):

to assess the extent to which platforms that operate across multiple Member States to market or provide various financial products and services are effectively regulated and supervised. Keeping in mind broader Commission policy objectives, such as the creation of a Capital Markets Union, they should advise whether there is a need to extend or modify current EU financial services regulation and whether there is a need to enhance supervisory practices, including through convergence measures. The ESAs should take into account the supervisory perimeters of the legislation already in force or already adopted (e.g. Regulation

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0591>

⁵ See Section 4.4 of the Strategy *Addressing the challenges and risks associated with digital transformation*.

⁶ See footnote 2.

on European Crowdfunding Service Providers, ECSP). They should also assess if current supervisory capacities and skill are adequate for monitoring such online services and enforcing rules and provide such advice as appropriate.

6. As a result of this mandate, the EBA, in close cooperation with the other ESAs, deepened its analysis of the role of large technology companies, including the so-called 'BigTechs', in the provision of platform and financial services in the EU market.
7. This report is the product of the analysis undertaken. It provides an overview of market developments and sets out the EBA's findings and suggested areas for future action on a series of cross-cutting regulatory and supervisory issues in order to ensure that digital platforms can be leveraged effectively for the provision of banking and payment services within the EU. These findings will inform the EBA's contribution to the joint ESA response to the EC's Call for Advice on digital finance, which will be published in Q1 2022.
8. In particular, the EBA sets out in this report an illustrative taxonomy of the key types of platforms currently observed within the EU banking and payments sector, potential opportunities, and issues and recommended actions relating to:
 - visibility over the utilisation and scaling of digital platforms and enablers, including cross border;
 - consumer protection and conduct of business requirements;
 - AML/CFT;
 - data protection and privacy.
9. The analysis contained in the report is based on a review of available resources, including desk-based analysis, survey responses from competent authorities and industry participants, and bilateral engagements with a wide range of stakeholders, including academics, industry representative bodies, consumer representative bodies, international organisations such as the Bank for International Settlements (BIS) and the Organisation for Economic Co-operation and Development (OECD), financial institutions and technology companies. The EBA thanks all stakeholders for their valuable inputs.

2. Methodological approach

2.1 The definition of ‘digital platform’ adopted for the purposes of this report

10. As a starting point, it is important to note that many definitions of ‘digital platform’ exist.⁷ Indeed, a bank’s in-house mobile banking application could be described as a platform as could a payment institution’s customer-facing online interface. However, the core objective of this report is to reflect on the structural implications arising from platformisation, notably new forms of interconnection between credit institutions, payment institutions and electronic money institutions (collectively referred to in this report as ‘financial institutions’) and non-financial institutions in the EU. For this reason, the EBA has focused its analytical work on digital platforms that enable value-creating interactions between one or more financial institutions (and potentially other firms) and customers.⁸
11. Against this background, for the purposes of this report, the EBA has adopted a broad definition of ‘digital platform’ with limited exclusions reflecting the fact that the EBA has not examined platforms covered by recently adopted EU legislation. Any reference in this report to ‘digital platform’ should therefore be interpreted as follows (unless otherwise stated):

‘Digital platform’ / ‘platform’ means a technical infrastructure that enables at least one financial institution⁹ directly (or indirectly using a regulated or unregulated intermediary) to market to customers, and/or conclude with customers’ contracts for financial products and services, with the exception of the following, which are excluded from scope:

- **mobile banking apps or online banking tools** used by a financial institution to offer regulated financial services in a fully digitalised way displacing the need for customers to enter a physical branch or use a telephone service and without changing the nature of how financial institutions operate and deliver value (i.e. pure financial institution operated digital distribution channels);
- **platforms used only by (and for) ‘crowdfunding service providers’** within the scope of Regulation (EU) 2020/1503;¹⁰
- **platforms used only by (and for) P2P lending.**

⁷ https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/210202-call-advice-esas-digital-finance_en.pdf

⁸ This approach is similar to that of Parker, Van Alstyne and Choudary in their book *Platform Revolution*.

⁹ For the purposes of this report, ‘financial institution’ means a credit institution, payment institution, electronic money institution or firm carrying out the activity of credit provision (lending activity) pursuant to national law of an EEA State. It is important to keep in mind however that digital platforms are used by other types of participants, such as investment funds (e.g. for customer due diligence purposes, distribution via blockchain, etc.).

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1503&rid=4>

12. For the avoidance of doubt, platforms that provide only account information services (AISs) within the meaning of point (16) of Article 4 of PSD2 are also out of the scope of the analysis in this report.
13. The EBA has also considered 'enablers', namely platforms operated by large technology companies, including the BigTechs, that offer payment and digital wallet services (albeit regulated financial institutions remain the relevant payment service providers) in view of the EC's Call for Advice on digital finance which requires the ESAs to consider platforms operated by large technology companies (see further Section 3.4.5).

2.2 Information sources

14. This report is informed by the following:
 - a. the responses to the EBA's November 2020 competent authority survey on financial institution dependencies on digital platforms and regulatory and supervisory issues;
 - b. the responses to the EBA's November 2020 industry survey,¹¹ the responses to the EBA's Spring 2021 RAQ;¹²
 - c. bilateral engagements with over 40 members of the EU banking and payment sector, technology companies, industry representative bodies and international organisations on the opportunities and risks presented by digital platform issues and regulatory and supervisory issues arising;
 - d. responses to the EBA's May 2021 survey issued to members of the EFIF¹³ on classification challenges relating to the provision of services using digital means and whether they qualify as a cross-border provision of services (and, if so, whether under the 'right of establishment' or 'freedom to provide services');

¹¹ The survey was launched via the EBA's FinTech Knowledge Hub: <https://www.eba.europa.eu/financial-innovation-and-fintech/fintech-knowledge-hub/regtech-industry-survey>

¹² The RAQ included the following questions:

Q24.1 Do you currently market or conclude with customers contracts for financial products or services through digital platforms? For the purposes of this survey, 'Digital platform' means a digital platform that enables at least one financial institution directly (or indirectly using a regulated or unregulated intermediary) to market to customers and/or conclude with customers contracts for financial products and services.

Q24.2 If 'Yes – through third party's digital platforms', please provide further information e.g. type of third party and digital platform (e.g. single-product aggregators, multiple-product multi-brand/single-brand aggregators, user-matching platforms such as invoice trading platforms, peer-to-peer lending platforms, crowdfunding platforms etc.), type of services and products offered etc.

Q24.3 Have you encountered any regulatory or supervisory impediments in seeking to use a digital platform to market or conclude with customers contracts for products and services?

Q24.4 If 'Yes', please outline the impediments encountered.

https://www.eba.europa.eu/sites/default/documents/files/document_library/Risk%20Analysis%20and%20Data/Risk%20Dashboard/Q1%202021/1016351/RAQ%20Booklet%20Spring%202021.pdf

¹³ <https://www.eba.europa.eu/financial-innovation-and-fintech/european-forum-for-innovation-facilitators>

- e. responses to the EBA's June 2021 competent authority survey on BigTech financial services activities in the EU;
- f. EBA and competent authority staff desk-based analysis of digital platforms and enablers within and outside the EU;
- g. engagements with EIOPA, ESMA and EC staff, including on the legislative proposals for the Digital Services Act and Digital Markets Act.¹⁴

2.3 Findings and potential actions

15. Based on the information reviewed, the EBA sets out in this report an overview of market developments, including an illustrative taxonomy of the key types of platforms currently observed within the EU banking and payment sector, and the potential opportunities and risks.
16. Building on this analysis, and following extensive engagement with the competent authorities represented on the EBA's Board of Supervisors, the EBA has identified a number of:
 - a. cross-cutting challenges for supervisors relating to: (i) new interdependencies between different types of financial and non-financial institutions, including challenges stemming from a lack of visibility over these dependencies; and (ii) the use of digital platforms to provide banking and payment services cross-border;
 - b. issues relating to consumer protection and conduct of business requirements;
 - c. challenges relating to AML/CFT;
 - d. data protection and privacy issues.
17. Where relevant, the EBA has identified policy actions in each of the specific areas to address or mitigate these issues.

¹⁴ The proposals were published in Q1 2021: <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>

3. The digital platform landscape in the EU

18. Consistent with trends observed across the EU economy, in recent years, financial institutions have been increasingly relying on digital platforms as a means to market and, in some cases, conclude with customers contracts for their products and services. In this chapter, the key trends are outlined, along with an illustrative taxonomy of the key types of platforms currently observed within the EU's banking and payment sector. The EBA also extends its analysis to 'enablers' in view of the EC's Call for Advice on digital finance (see paragraph 13 for background).

3.1 The digital acceleration

19. The EBA has been observing for some time an increased reliance of financial institutions on innovative technologies to launch or transform business models, and in 2018, issued thematic reports on the impact of FinTech on incumbent credit institutions' business models and prudential risks and opportunities arising therefrom¹⁵; and in 2019, issued a report focusing on the impact on payment institutions and electronic money institutions¹⁶.
20. In the context of the response to the COVID-19 crisis, the EBA has identified a sharp acceleration in the digitalisation of both front- and back-office processes¹⁷, with financial institutions increasingly developing or engaging third-party technologies to facilitate customers in identifying and accessing products and services through digital means.

3.2 At a glance: current and anticipated future use of digital platforms and enablers

21. Against this background, the EBA has identified a growing utilisation of digital platforms and enablers as a means to 'bridge' customers and the providers of financial products and services.
22. Strikingly, 97% of the 59 credit institutions that responded to the EBA's Spring 2021 RAQ (representing 80% of total assets of the EU banking sector reporting to the EU)¹⁸, use

¹⁵ <https://www.eba.europa.eu/eba-assesses-risks-and-opportunities-from-fintech-and-its-impact-on-incumbents-business-models>

¹⁶ <https://www.eba.europa.eu/eba-assesses-impact-of-fintech-on-payment-institutions-and-e-money-institutions-business-models>

¹⁷ <https://www.eba.europa.eu/calendar/jos%C3%A9-manuel-campas-introductory-remarks-2020-eba-policy-research-workshop-new-technologies>

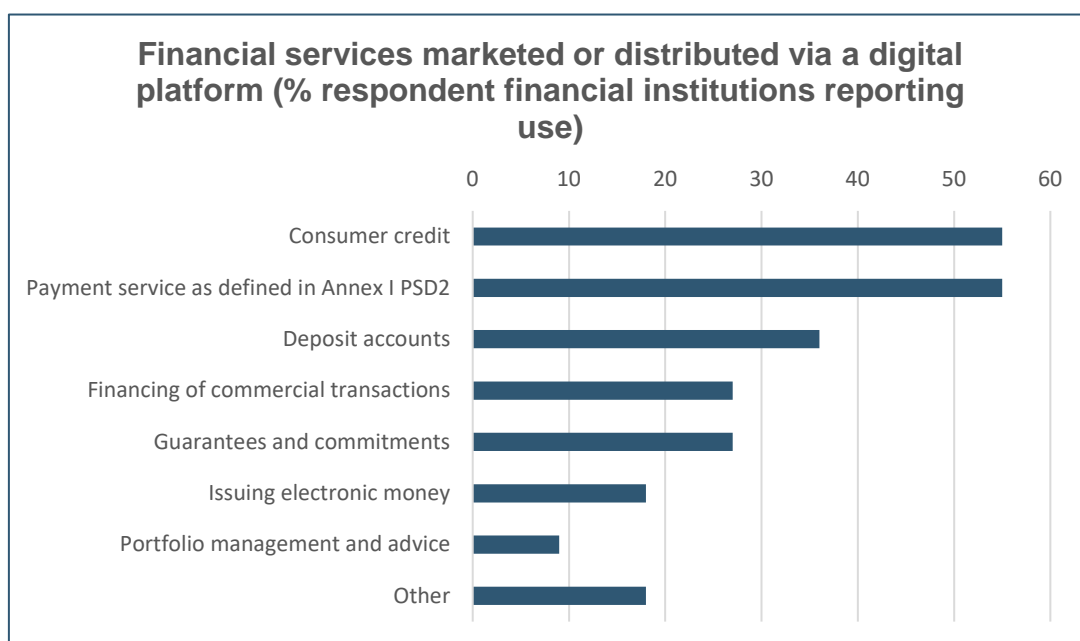
¹⁸

https://www.eba.europa.eu/sites/default/documents/files/document_library/Risk%20Analysis%20and%20Data/Risk%20Dashboard/Q1%202021/1016351/RAQ%20Booklet%20Spring%202021.pdf

platform-based means to market or conclude with customers contracts for products or services (a broad definition of ‘digital platform’ was used for the purposes of the RAQ¹⁹). Competent authorities reported that they anticipate use in the payment and electronic money sector to be similarly high.

23. Although the majority of respondents to the RAQ indicated that digital platforms are being utilised to help serve local markets, 83% noted that digital platforms can support business growth and market diversification by facilitating the provision of services cross-border without the need for physical premises in the local jurisdiction(s).
24. Focusing on digital platforms as defined for the purposes of this report, data compiled by the EBA using the full range of sources referred to in paragraph 14 indicates that approximately 54% of digital platform use is for marketing purposes, with the remainder enabling contract conclusion (typically in addition to marketing). In terms of financial products and services marketed or distributed using digital platforms, there appears to be widespread use in relation to payment services, e-money issuance and also significant levels of platform use for retail and SME deposits, credit products (including short-term unsecured loans and mortgage products) and investment products. Other uses have also been identified, including foreign exchange transactions and trade finance.

Figure 1: Breakdown of reported digital platform use by product/service



¹⁹ For the purposes of the RAQ ‘digital platform’ was defined as a digital platform that enables at least one financial institution directly (or indirectly using a regulated or unregulated intermediary) to market to customers and/or conclude with customers contracts for financial products and services.

25. In terms of expected future trends, although competent authorities cited some challenges in identifying uses of digital platforms in their jurisdictions (see further Section 5.1), the vast majority of competent authorities (92%) and all industry respondents (100%) to the EBA's November 2020 surveys²⁰ expect digital platform use to increase in line with the wider trend towards the further digitalisation of services.

3.3 The role of financial institutions and other firms in platform provision

26. While digital platforms can perform multiple functions, two core functionalities can be identified consistent with the role of platforms in 'bridging' customers and the providers of financial (and non-financial) products and services:
- a. improving visibility of products and services (i.e. marketing);
 - b. facilitating the conclusion of contracts for products and services, whether directly or by 'funnelling' customers to the website of the relevant product or service provider.
27. To gain these functionalities, and depending on corporate objectives and technical capacity of the relevant financial institution, four approaches can be observed toward platform development:
- a. in-house development by the relevant financial institution or group company;
 - b. partnerships among consortia of financial institutions;
 - c. partnerships between financial and non-financial institutions (notably technology companies);
 - d. outsourcing to, and other reliance on, third-party technology companies (i.e. 'contracted in services').
28. In this sense, the approach to platform development is very much in line with financial institutions' approach to the adoption of FinTech and RegTech as observed in previous EBA reports.²¹
29. On the whole, based on their interactions with the industry (usually via the innovation facilitators²²), as well as their ongoing monitoring, competent authorities reported a notable cooperation between financial institutions in the development of digital platforms, with common initiatives identified in particular in the area of payments, mainly because of

²⁰ See paragraph 14(a) and (b).

²¹ See the reports available at footnotes 15 and 16 and the EBA's June 2021 report on RegTech: <https://www.eba.europa.eu/eba-assesses-benefits-challenges-and-risks-regtech-use-eu-and-puts-forward-steps-be-taken-support>

²² Regulatory sandboxes and innovation hubs.

the heightened competition and pressure on margins, which constitutes a strong reason for cooperation and collaboration.

30. Similar levels of cooperation were observed between financial institutions and third parties in the development of digital platforms. This includes cooperation with technology and e-commerce firms in the development and/or enhancement of digital platforms. In some instances, financial institutions invested in technology companies, including start-ups, with the objective to develop platform solutions. In a number of cases, platform development by one or more technology companies was observed for sole or primary use by financial institutions.
31. Overall, size and business model appear to play an important role in determining how financial institutions approach the development and use of digital platforms. For example, large groups may develop their own group platforms to consolidate business lines and strengthen branding, new entrants may use digital platforms as the sole or main means to position themselves towards new customers, and incumbent institutions may target specific customer segments (e.g. millennials) to maintain business share or for business expansion or diversification (see further Section 4.2).

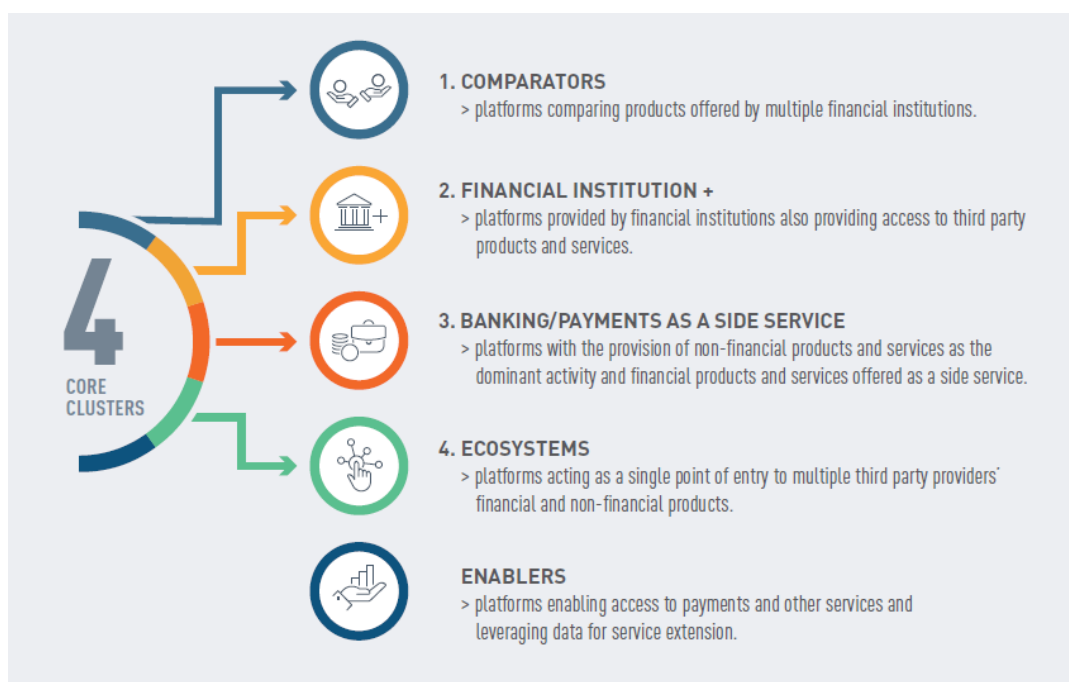
3.4 An illustrative taxonomy of platforms

32. No formalised taxonomy of platforms exists. Indeed, in the course of its work, the EBA has observed a wide variety of platforms operational in the EU. For example, the EBA has observed single-product aggregators (e.g. platforms operated by mortgage credit intermediaries), multiple-product multi-brand/single-brand aggregators, user-matching platforms such as invoice trading platforms, trade finance platforms and general e-commerce platforms/marketplaces. Some are subscription-based, pay as you use/transaction-fee based,²³ no-fee, etc. depending on the business model, functionalities and ecosystem of product providers and customers using the platform.
33. To help illustrate the notion of 'digital platform' for the purposes of this report, the EBA has considered the following core elements:
 - a. who is the operator of the platform (financial institution, technology company, other);
 - b. who is using the platform to provide financial services (one financial institution, several financial institutions of which: same type of financial institution or different types of financial institutions);

²³ In these cases, the financial institutions marketing or concluding contracts for products or services are usually paying the fee, where applicable, although some cases of customers paying the fee were identified.

- c. what types of products and services are being provided (single type of financial product or service, multiple financial products and services, financial and non-financial products and services);
 - d. is the platform being used for marketing and/or conclusion of contracts for products and services.
34. Taking into account these elements, the EBA has identified four indicative ‘clusters’ of digital platform business model summarised in the diagram below and described in Sections 3.4.1 to 3.4.4. Additionally, the EBA has covered a fifth type of platform: ‘enablers’. In the EBA’s view, ‘enablers’ do not fall within the EBA’s definition of ‘digital platform’ as set out in paragraph 11 (because they are not specifically for product/service marketing or contract conclusion) but have been included in light of the EC’s Call for Advice on digital finance which requires the ESAs to consider platforms operated by large technology companies (for further explanation see Section 3.4.5).

Figure 2: Indicative overview of digital platform clusters and enablers



35. In practice, a wide range of business models exist within the EU market with some platforms sharing the attributes of two or more of the categories identified above. As such, the categories are included in this report for **illustrative purposes only**.

3.4.1 Cluster 1: Comparators

36. Cluster 1 comprises digital platforms that enable customers to compare a specific type of financial product or service, or various financial products and services, provided by different financial institutions (e.g. comparison of deposit accounts, mortgages or business loans). They may be operated by financial institutions, technology companies or other

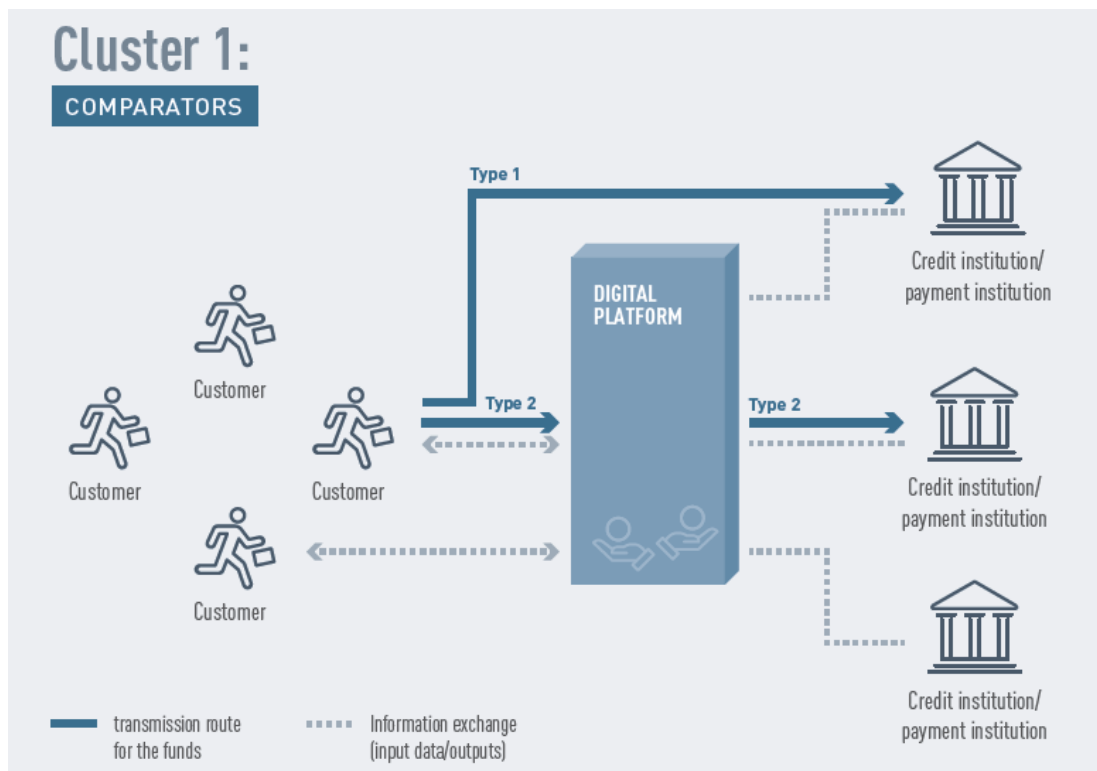
types of regulated or unregulated firms (the need to be licenced or registered depends on the nature of services carried out and the applicable law²⁴).

37. Comparators may offer various functionalities to facilitate the comparison of financial products and services. For instance, they may display information about different products/services in a transparent and directly comparable manner or they may provide rankings or scores based on 'sample' criteria or criteria based on the preferences of the customer.
38. Comparators can be divided into two broad sub-categories:
 - a. *Comparison only*: if the customer wants to acquire a product or service from the financial institution, they are redirected to the financial institution's website (Type 1 in the diagram below). These platforms are typically not financial institutions, but in some instances (and very much dependent on the business model), they may be required to be registered or licensed in the relevant Member State (for instance, as credit intermediators)²⁵;
 - b. *Comparison plus*: the platform acts as a direct financial intermediary between the customer and the financial institution (Type 2 in the figure below), for instance acting as a conduit for the transfer of funds from the customer to the financial institution (these platforms may be required to be registered or licensed in the relevant Member State).

²⁴ As per preceding footnote.

²⁵ Licensing or registration may be with a national authority that is not a 'competent authority' within the meaning of the EBA's Founding Regulation: <https://www.eba.europa.eu/about-us/legal-framework/eba-regulation-and-institutional-framework>

Figure 3: Diagrammatic representation of Cluster 1



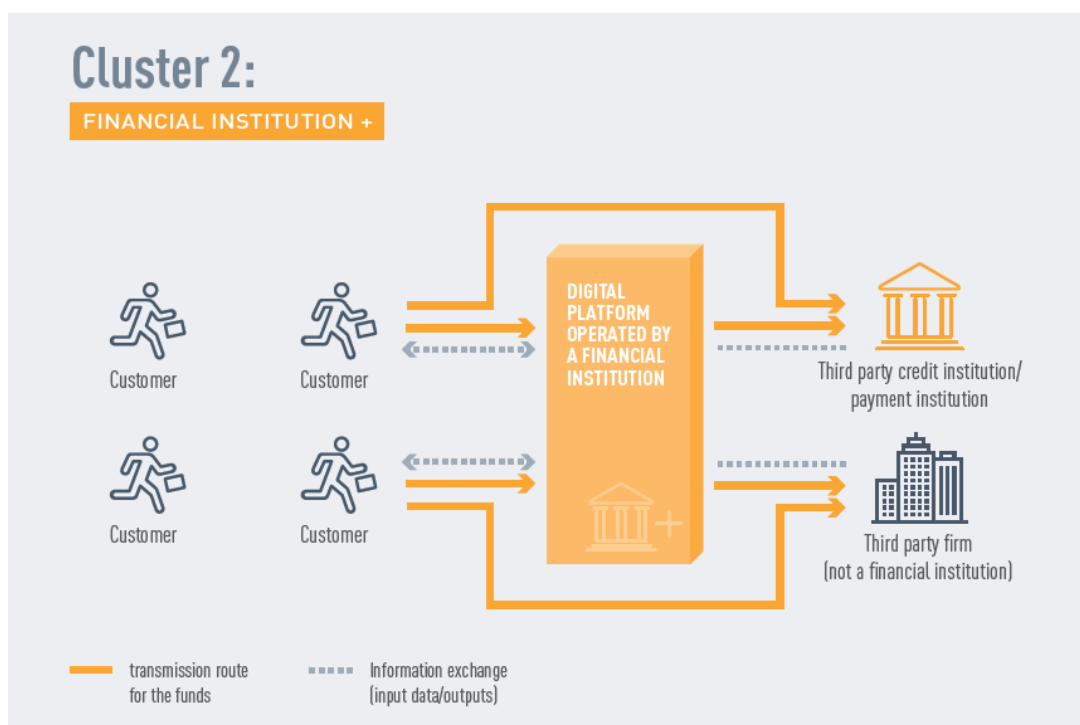
39. Comparators may charge fees to financial institutions for displaying their products and services or may receive a commission should a customer choose to enter into a contract for the financial product or service as an outcome of the comparison exercise.
40. Deposit brokerage platforms are an example of digital platforms within this cluster. These platforms facilitate the placing of deposits with partnering credit institutions by providing a comparison of interest rate offers (and/or other advantages) available in selected jurisdictions. Typically, these platforms do not charge any fees to the depositors – they charge their partner banks for helping them to attract customers and/or offering them a platform to offer third-party products.
41. Where operators of comparators are not financial institutions, competent authorities may not have direct supervisory oversight of the activities undertaken, and governance and risk management requirements may not apply.

3.4.2 Cluster 2: Financial institution +

42. Cluster 2 comprises digital platforms operated by financial institutions which enable third parties (and potentially the financial institution itself) to market or distribute products and services to customers utilising the platforms. The third parties could be financial institutions or other firms.

43. The platform may intermediate the transmission of funds from the customer to the third party; in other cases the customer may receive information about the third-party product or service via the platform but will need to go directly to the third party to contract the product or service.
44. The financial institution may receive a fee (typically paid by the relevant third-party firm) for providing access to platform services or in relation to products/services contracted as a result of interactions via the platform or may facilitate the access to the third-party products and services without receipt of a fee as a means of building customer loyalty or enhancing the customer experience.

Figure 4: Diagrammatic representation of Cluster 2



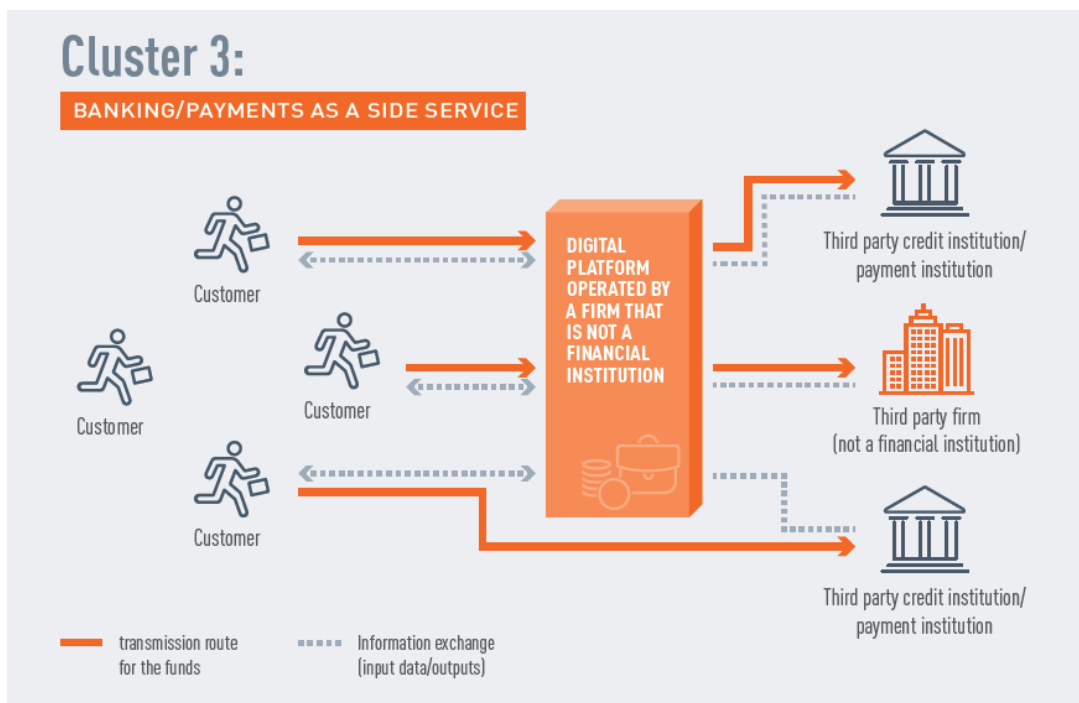
45. Again, depending on the precise business model and activities carried out by the financial institution as the operator of the digital platform, authorisation or registration (not necessarily with competent authority within the meaning of the EBA's Founding Regulation) may be required. In any case, in accordance with the respective EU regulatory frameworks applicable to the financial institutions (for example, the EBA's Guidelines on internal governance²⁶), effective governance and risk management must be maintained in relation to activities carried out, including in the context of the operation of the digital platform, and competent authorities have direct oversight over these activities.

²⁶ <https://www.eba.europa.eu/regulation-and-policy/internal-governance/guidelines-on-internal-governance-revised->

3.4.3 Cluster 3: Platforms with banking/payments as a side service

46. Cluster 3 comprises digital platforms that allow their customers to access banking and payment services offered by third-party financial institutions and non-financial services or products offered by other third-party firms. These platforms are operated by firms other than financial institutions. This means that the platform provider is not subject to governance and risk management requirements applicable to financial institutions. However, in terms of regulatory status, and depending on the precise business model, the company operating the digital platform may be required to be authorised or licenced pursuant to national law (not necessarily by a competent authority within the meaning of the EBA's Founding Regulation).

Figure 5: Diagrammatic representation of Cluster 3



47. Fee arrangements are similar to those for Cluster 2.
48. Examples can be observed in the context of travel (e.g. a travel booking platform linking to providers of foreign exchange services), automobile and real estate sales (e.g. where financial institutions are marketing credit and/or insurance products and/or payment services) and general e-commerce.

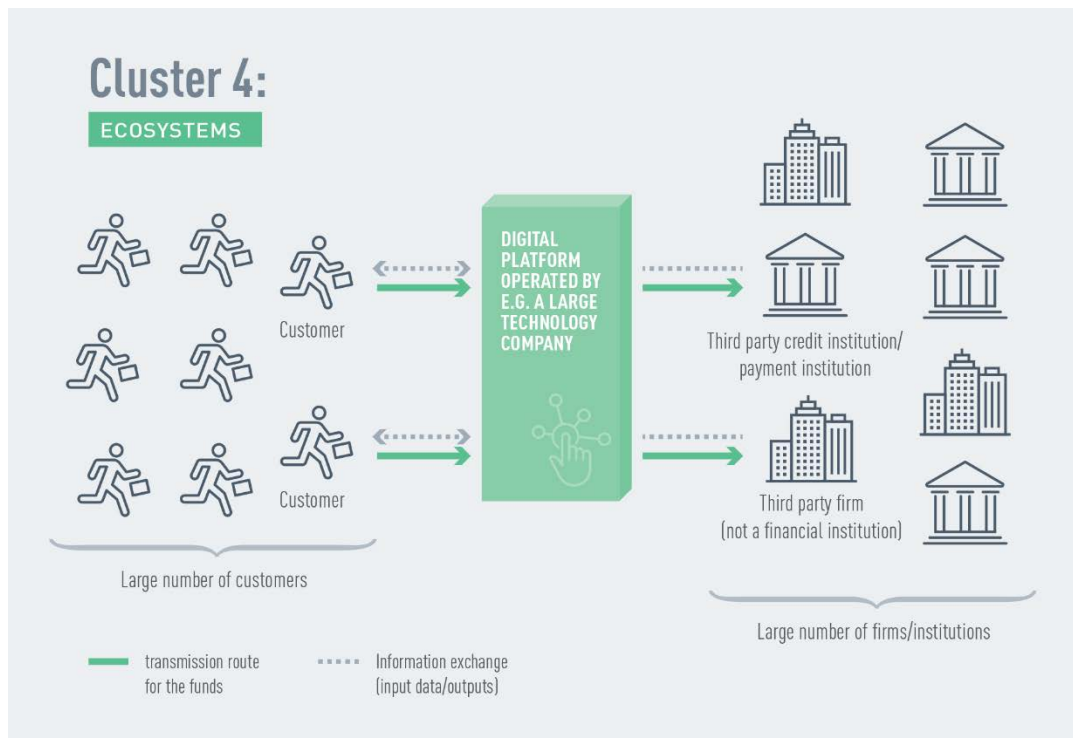
3.4.4 Cluster 4: Ecosystems

49. Cluster 4 comprises digital platforms that serve as marketplaces to enable a large number of financial institutions (and in many cases other firms) to market and distribute their products and services to customers. As compared to Cluster 3, financial services (e.g. banking and payment services, including payment solutions and SME credit) are not

distributed as side/ancillary services, but are offered as part of a wide range of products and services available on the platform.

50. Typically, these platforms will facilitate the marketing of products and services, but may also act as financial conduits from customer to third-party product provider(s), including group companies that may be authorised as financial institutions. In other cases, the customer will need to go 'off-platform' to contract the product or service with the product provider.

Figure 6: Diagrammatic representation of Cluster 4



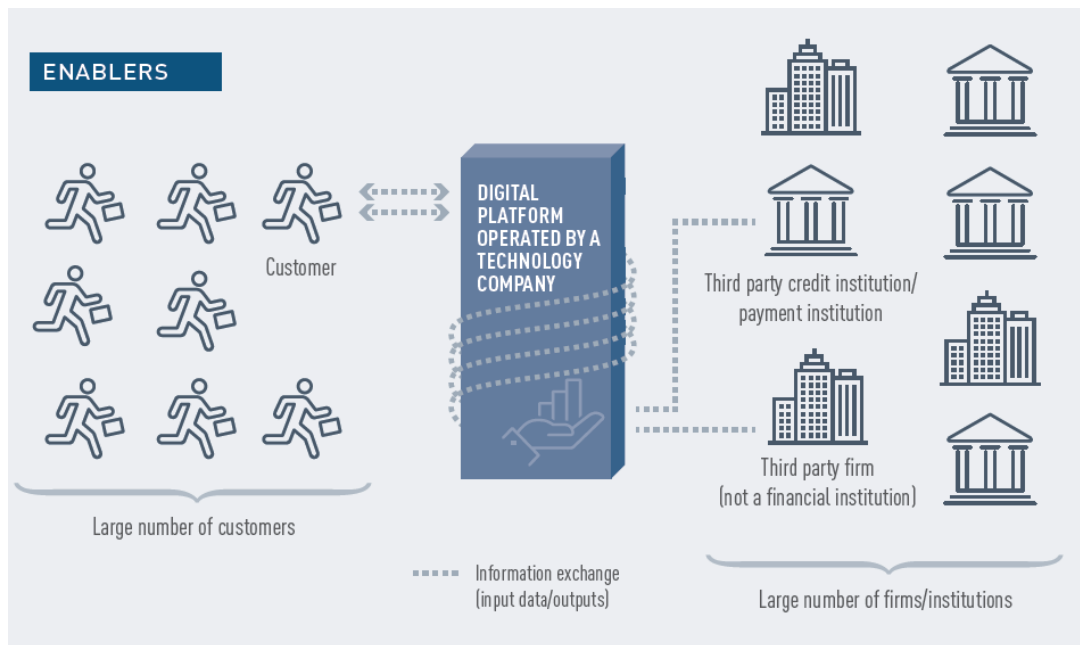
51. This cluster is anticipated to grow rapidly in the next 2 to 5 years as digital commerce continues to grow and the demand from both retail and SME customers for accessibility to financial services to mirror the ease of access to other types of products and services increases.

3.4.5 Enablers

52. Enablers comprise platforms typically (but not exclusively) provided by large technology companies that offer a suite of software which is the interface between the customer and the financial institution(s) and potentially third parties (e.g. firms looking to advertise based on the payment history of a user of the app). Enablers may also offer other services.
53. Enablers can be distinguished from the digital platforms referred to in Clusters 2 to 4 because typically a contractual relationship between the financial institution and the customer exists already (e.g. the customer already had a deposit account with a financial

institution and the platform is merely used to facilitate a new method of payment (see text box 1)).

Figure 7: Diagrammatic representation of ‘enablers’



54. Whether the technology company is required to be authorised or registered depends very much on the activities carried out. Additional considerations relate to whether the use of the enabler by financial institutions constitutes outsourcing or third-party (technology) service provision – this answer depends on the individual facts and requires a case-by-case assessment.

Text box 1: The BigTech ‘Pays’

A number of large technology companies, including the BigTechs, offer (mobile) payment and digital wallet services which allow users to pay for products and services at point-of-sales terminals (using near field communication (NFC) or other means e.g. QR-Codes), for in-app purchases or as a payment method in (online or branch) retail stores and at other merchants. Examples include Apple Pay, Google Pay, and Samsung Pay. These applications are being increasingly integrated into e-commerce platforms and Apps.

Importantly, financial institutions remain the relevant payment service provider²⁷ – the ‘Pays’ typically provide the technology interface essentially tokenizing the payment instruments available to the customer (hence the EBA does not regard them to be in scope of the definition of ‘digital platform’ as set out in paragraph 11).

²⁷ For example, see: [Apple Pay - Payment Platforms - Apple Developer](#)

In this respect, the BigTech providers of ‘Pays’ have started to build partnerships with many financial institutions to provide their payment and wallet services within the Member States. For example, Apple Pay has partnered up with a wide range of credit institutions established in the EU to offer debit and credit card holders the opportunity to create an Apple wallet (connected to and authorised at the respective banking app) to make payments (e.g. in app or in store) using Apple Pay on iPhone, Apple Watch, iPad and Mac.

In a number of cases, BigTechs are entering into partnerships with financial institutions to widen the service proposition accessible via the ‘Pays’ beyond payment services, for example in the US:

- iPhone users can sign up for an Apple Card (provided in association with Goldman Sachs) via the Apple wallet app, and use it immediately for digital purchases²⁸ ;
- Apple is also reported to be working on Apple Pay Later that allows users to split the cost of purchases made by Apple Pay over time²⁹;
- Google and Citi have partnered to enable users of the Google Pay app to open a checking account with Citi³⁰ .

Additionally, the ‘Pays’ introduce an important bridging function in the identity space through mobile-based identification services such as fingerprint and facial recognition, which have facilitated the roll-out of strong customer authentication.

55. As part of their joint response to the EC’s Call for Advice on digital finance the ESAs are carrying out an assessment of the role of BigTechs, and other financial institutions, in the provision of financial services in the EU.

Text box 2: Regulated financial services carried out by BigTechs in the EU

As part of the EBA’s work in relation to the EC’s Call for Advice on digital finance, on 11 June 2021 the EBA launched a competent authority survey on the role of BigTechs as providers of financial services in the EU.³¹ Twenty-four competent authorities representing 23 Member States and 1 EEA State responded to the survey; a response was also received from the Single Supervisory Mechanism (SSM).

²⁸ [Goldman Sachs | Commemorates 150 Year History - Goldman Sachs Partners with Apple on a Game-Changing Credit Card](#)

²⁹ <https://www.bloomberg.com/news/articles/2021-07-13/apple-goldman-plan-buy-now-pay-later-service-to-rival-paypal>

³⁰ <https://www.citigroup.com/citi/news/2020/201118a.htm>

³¹ The survey is available here: <https://ec.europa.eu/eusurvey/runner/ca0b0f05-4947-0865-ec8a-21dd1de223d9>

For the purposes of the survey the following were regarded as BigTechs (i.e. large technology companies with extensive customer networks; they include firms with core businesses in social media, internet search, software, online retail and telecoms):³² Google; Apple; Facebook; Amazon; Alibaba (Ant Group); Baidu (Du Xiaoman); Microsoft; Samsung; JD.com; NTT Docomo; Tencent; Rakuten; Mercado Libre³³.

Five competent authorities reported having authorised or registered (as home authority) a group company of a BigTech to carry out financial services.

In total, 7 BigTechs have group companies authorised or registered by national competent authorities (NCAs) to carry out financial services in their jurisdictions. Three companies are authorised as payment services institutions, 5 companies are authorised as electronic money institutions, and 1 company is authorised as a credit institution. Each of these is carrying out its regulated services across a number of EU Member States as a result of 'passporting' arrangements.

³² This approach was inspired by the approach in the FSB's October 2020 report: <https://www.fsb.org/wpcontent/uploads/P121020-1.pdf>. It was also inspired by the list of BigTechs covered in the BIS March 2021 brief on BigTech in finance: Regulatory and policy options: <https://www.bis.org/fsi/fsibriefs12.pdf>.

³³ IBM, Oracle and Salesforce were not included; they are not known to be providing financial services directly anywhere in the globe.

4. Perspectives from the market: Potential opportunities and challenges from platformisation

56. In the course of the analytical work carried out to inform this report, the EBA engaged with a large number of financial institutions and technology companies, all of whom were keen to highlight the potential opportunities presented by the platformisation of financial services. These opportunities were typically described on a ‘horizontal’ basis (i.e. common to all digital platform clusters, plus enablers) albeit range in relevance and degree depending on the precise business model and platform structure adopted.
57. In this chapter we follow the same approach and outline the potential opportunities on a horizontal basis as well as the (more limited) challenges identified by these stakeholders. In the subsequent chapters we go on to identify challenges from a supervisory and consumer protection and conduct of business perspective.

4.1 Demand-led change

58. Financial institutions and technology companies were unanimous in their view that customer ‘search for convenience’ is driving the trend toward platformisation across all sectors of the EU economy, including finance. This trend has been accelerated by the COVID-19 crisis as customers have sought to access products and services online as opposed to attending branch premises.³⁴ For incumbent financial institutions, this demand-driven component is forcing adaptations, particularly as demand for online services is expected to continue at higher levels than pre-COVID-19 crisis. For new entrants, ‘digital only’ business models are being leveraged to tap into these evolving customer preferences, notably from younger customers who may exert a strong preference for digital access means³⁵.

4.2 Opportunities from platformisation

59. Financial institutions noted that many opportunities from platformisation are the same as those from wider digital transformation (e.g. greater convenience, reduced cost etc.) but some are particularly striking, notably the greater proximity to existing and new customers and the ability to leverage network effects.

³⁴ See further BIS (2021), *E-commerce in the pandemic and Beyond*, BIS Bulletin No. 36: <https://www.bis.org/publ/bisbull36.htm> and World Trade Organisation (2020), *E-commerce, Trade and the Covid-19 Pandemic*, pp. 3-4, https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf.

³⁵ For a further discussion, see the EBA reports referred to in footnotes 15 and 16.

4.2.1 Matching customer preference

60. Although the precise response to the shift in customer preference depends on the business model of the financial institution concerned, institutions may seek to leverage digital platforms to enhance the customer relationship by:
- a. improving visibility of the institution's products and services and, in turn, enhancing the range of services to which the customer may be provided access;
 - b. improving customer convenience in concluding contracts, accessing and administering products and services, thereby reducing the need for/time allocated to form filling (and processing times);
 - c. facilitating 'real-time' 24/7 service access (and without a need to enter physical premises).

4.2.2 Facilitating business strategies

61. The use of digital platforms can support wider shifts in financial institutions' business strategies, and be a key enabler for business model transformation,³⁶ for example by:
- a. providing greater proximity to existing and new customers, enabling wider market reach;
 - b. facilitating faster market discovery and the scaling up of products and services;
 - c. supporting economies of scale and leveraging network effects;
 - d. helping to optimise and reduce costs of advertising capabilities – including via improved user segmentation;
 - e. reducing the need for physical premises and processes thereby enabling cost reduction and enabling integration of front- and back-office processes.

4.2.3 Supporting efficiency of the financial system

62. In terms of other benefits, a number of stakeholders highlighted that digital platforms can improve efficiencies within the financial system by bridging more efficiently demand for and supply of financial products and services (e.g. deposit accounts, personal and SME loans, investment products), including cross-border, notably by improving ease of access (as compared to traditional in-branch contact), reducing search times and costs.
63. Improvements in the speed, and reductions in the cost, of concluding contracts for products and services via technologies built into business processes supporting digital

³⁶ See further BIS (2021), *Fintech and the digital transformation of financial services: implications for market structure and public policy*, BIS Papers No 117, pp. 7-10 <https://www.bis.org/publ/bppdf/bispap117.htm>.

platform functionalities (e.g. automated forms, compared to paper-heavy processes) were also identified, with financial institutions noting that this can help them not only reduce their own operational costs, but also enable cost savings to be passed on to customers. Some financial institutions also observed that additional technology-based processes, e.g. smart contracts, can be leveraged in the context of platform design to create additional efficiencies.

4.2.4 AML/CFT

64. Several stakeholders observed that technologies built into business processes supporting digital platforms in the provision of financial products and services can enhance efficiencies, consistencies and quality of identification and verification processes, mainly at the onboarding stage, through increased automation. Others noted that absent effective systems and controls additional ML/TF risks can arise (see further Section 5.3.3).

4.2.5 Product identification

65. Approximately one third of stakeholders highlighted that digital platforms can help facilitate the identification of products and services based on customer needs, for instance through customer-activated or algorithmic preferencing, enabling a customisation of marketing approaches and product provision, based on an individual consumer or group of customers.

4.2.6 Financial inclusion

66. A small number of stakeholders also identified that digital platforms can promote financial inclusion, for example by:
 - a. 'de-formalising' the customer's engagement with the institution (e.g. by the use of 24/7 fingertip online access in place of in-person branch dialogue);
 - b. improving the availability of information about products and services (e.g. by presentation of information in more user-friendly digital formats).
67. However, as explored in Section 6.2, some applications can also have inadvertent detrimental effects on financial inclusion.

4.3 Challenges from a market perspective

68. Although financial institutions reported substantially more opportunities from digital platformisation than challenges, several challenges were cited relating to: (a) customer preferences; (b) cost, talent and access issues; (c) new forms of risk; and (d) regulatory and supervisory challenges.

4.3.1 Customer preferences

69. Notwithstanding the potential opportunities for customers and shifting preferences identified above, interestingly, financial institutions highlighted ‘acceptance by end-customers’ as a key challenge in digital platform roll-out, noting the preference of some customers for in-branch and telephone banking, and the customer perceptions about data security and privacy as issues. However, financial institutions typically went on to note that these issues are less significant within specific customer segments (particularly younger customers) and as compared to the pre-COVID-19 crisis.

4.3.2 Cost, talent and access

70. Related to rollout, financial institutions highlighted the ‘make vs buy’ dilemma (regarding platform infrastructure), highlighting factors impacting management decision-making such as internal/group technology capabilities and legacy systems, cost and talent acquisition challenges (with a number of credit institutions highlighting in particular group consolidation and remuneration rules as impairing their ability to employ highly skilled platform developers),³⁷ and competitor choices and consumer preferences as impacting choice. Focusing on the latter, several financial institutions highlighted that customer preference for some enablers offered by large technology companies, and competitor shift to these enablers, was such that they felt they had no choice but to follow suit.

71. A small number of financial institutions reported that they had encountered some issues in accessing digital platforms and enablers on terms they considered fair, taking account of platform providers’ vertical integration. Additionally, several respondents noted concerns about a lack of competition in the context of online advertising, and a lack of transparency in the pricing of advertising, via digital platforms, notwithstanding existing EU law (notably Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services³⁸). These issues are not considered further in this report in light of the EC’s legislative proposals for the Digital Services Act and Digital Markets Act which are expressly intended to address concerns of this nature.

Text box 3: The legislative proposals for the Digital Services Act and Digital Markets Act

In April 2021 the EC published its flagship legislative proposals for the Digital Services Act (DSA)³⁹ and Digital Markets Act (DMA)⁴⁰ to upgrade the rules governing digital services

³⁷ Indeed, some financial institutions reported that they have large-scale legacy systems, challenges in attracting qualified engineering talent and cost as creating a negative feedback loop that makes it difficult to accommodate backwards compatibility for older systems while building out towards integration with more advanced digital platforms.

³⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R1150>

³⁹ <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN>

⁴⁰ <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN>

in the EU.⁴¹ Importantly these are horizontal initiatives not limited to the EU financial services sector.

The main goals of the proposals are to:

- create a safer digital space in which the fundamental rights of all users of digital services are protected;
- establish a level playing field to foster innovation, growth and competitiveness, both in the European Single Market and globally.

The rules specified in the DSA primarily concern online intermediaries and platforms. For example, online marketplaces, social networks, content-sharing platforms, app stores and online travel and accommodation platforms are proposed to be in scope.

The DMA includes proposals for rules that would apply to ‘gatekeeper platforms’. Gatekeeper platforms are digital platforms with a systemic role in the internal market that function as bottlenecks between businesses and consumers for important digital services. Some of these services are also covered in the DSA, but for different reasons and with different types of provisions.

As proposed, gatekeepers would be required (among other things) to:

- allow third parties to inter-operate with the gatekeeper’s own services in certain specific situations;
- allow business users to access the data they generate in the use of the gatekeeper’s platform;
- provide companies advertising on their platform with the tools and information necessary for advertisers and publishers to carry out their own independent verification of their advertisements hosted by the gatekeeper;
- allow business users to promote their offer and conclude contracts with customers outside the gatekeeper’s platform.

Gatekeepers would be prohibited from treating services and products offered by the gatekeeper itself more favourably in ranking than similar services or products offered by third parties on the gatekeeper’s platform, and from preventing customers from engaging services outside the platform.

The EBA welcomes these legislative proposals as an essential step toward ensuring a level playing field in the digital environment and will remark further on these proposals in the joint ESA response to the EC’s Call for Advice on digital finance.

⁴¹ Information about the legislative proposals can be accessed from the EC’s web pages: <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>

4.3.3 New forms of risk/elevated risk

72. A large number of stakeholders highlighted that increased digitalisation within the financial sector, including the use of digital platforms, elevates operational risk, notably information and communication technology (ICT) risks, due to dependencies on third-party providers for key digital capabilities (see further Section 5.3.2). Concentration risk (at micro and macro level) may also occur or be exacerbated by platform-based dependencies and potential network effects should firms leverage access to customer data, distribution and provision of financial services (notably the case in relation to Cluster 4 digital platforms and enablers).
73. Additionally, new compliance challenges may arise in relation to data access, aggregation and use/re-use taking account of new forms of data dependencies that may arise within the group or between financial institutions and other firms leveraging the same digital platform.
74. A large number of financial institutions identified new forms of reputational and conduct of business risk arising from dependencies on third-party platforms where they may have more limited control over features such as:
 - a. cyber-security and customer data;
 - b. the display of information about the institution's products and services;
 - c. orientation of customers as regards complaint-handling and redress (with a number of institutions highlighting challenges customers may face in terms of determining to whom to address complaints in relation to aspects of the contractual chain).
75. Finally, several financial institutions noted step-in (or at least spill-over) risk as a potential for concern in the event they are closely (and reputationally) affiliated with a third-party digital platform and it were to encounter operational or financial difficulties.

4.3.4 Regulatory and supervisory challenges

76. On the whole, financial institutions did not cite significant regulatory or supervisory potential impediments to the use of digital platforms or enablers. Those that did referred to the following:
 - a. the impact of financial sector regulation (notably governance and remuneration rules) and corporate culture on the ability to attract technology talent;
 - b. divergences in levels of supervisory acceptance and expectations regarding customer identification and verification, in particular, remote customer onboarding;

- c. divergences in consumer protection and conduct of business requirements in the Member States, with the effect of inadvertent impediments to the scaling of financial services cross-border, including through the use of digital platforms;⁴²
 - d. challenges in configuring systems in a GDPR-compatible manner.
77. Although not cited as a challenge per se, several stakeholders also noted that a lack of supervision over large technology providers and, more generally, a lack of supervision structures to support cooperation between different types of supervisor (e.g. consumer protection, data protection, competition and financial services) in relation to the full constellation of users of digital platforms, could result in burdens for institutions in having to duplicate reporting to multiple supervisors in relation to their use of a digital platform.

⁴² This issue has been previously observed by the EBA in the context of its October 2019 report on potential impediments to the cross-border provision of services: <https://www.eba.europa.eu/eba-calls-european-commission-take-action-facilitate-scaling-cross-border-activity> and in the December 2019 report of the EC's Expert Group on Regulatory Obstacles to Financial Innovation: https://ec.europa.eu/info/publications/191113-report-expert-group-regulatory-obstacles-financial-innovation_en

5. Supervisory perspectives: monitoring risk in the platform economy

78. The reliance of financial institutions on digital platforms for the marketing and distribution of financial services, and on enablers, is creating new forms of financial, operational and reputational interdependencies within the EU's banking and payment sector. In this chapter, a number of horizontal challenges emerging from the responses to the EBA's November 2020 competent authority survey and the stakeholder feedback outlined in the previous chapter are explored, along with suggested actions to address these issues. The EBA observes that these challenges are relevant to all forms of digital platforms and enablers referred to in this report, albeit the specific issues referred to in Sections 5.2 and 5.3 vary in significance depending on the specificities of the business model leveraged. Notably, the EBA reflects on the challenge competent authorities are facing in securing appropriate visibility over financial institutions' reliance on digital platforms and enablers, and sets out actions to support authorities in addressing this important issue.

5.1 Navigating the platform landscape

79. In Chapters 3 and 4, the digital acceleration and trend toward the platformisation of banking and payment services is described. The vast majority of competent authorities reported that the speed of transformation is raising challenges for supervisors in keeping pace with evolutions in business models and wider market developments.

5.1.1 The general visibility challenge

80. Indeed, based on the EBA's analysis, it appears that the vast majority of competent authorities currently have limited visibility over, and understanding of, financial institutions' reliance on digital platforms/enablers, particularly in the context of interdependencies between financial institutions and technology companies outside the perimeter of competent authorities' direct supervision. The reasons for this position are explored in this section of the report, along with proposed actions to address these issues.

5.1.2 Challenges for home and host competent authorities

81. Where the use of a digital platform or enabler forms a material part of a financial institution's business model for the marketing and distribution of financial products and services, competent authorities would be expected to be informed of such dependencies. In particular, competent authorities would expect to receive information:

- a. at the time an application for authorisation to carry out a regulated activity is submitted if the digital platform or enabler is an element of the business model in terms of distribution channels;

- b. after authorisation, and on an ongoing basis, in the context of a material change to the business (e.g. new strategy, business line, change of geographic focus – see further Text box 4);
- c. in the context of critical or important outsourcing projects (typically in the context of a material change to the business model) and third-party risk management.

Text box 4: Example – Applications for the authorisation of credit institutions

An applicant for authorisation as a credit institution is required to include in their application a programme of operations which shall contain at least information regarding⁴³:

- the projected development of operations, such as the characteristics of the operations intended to be undertaken (for example: type of lending, other activities proposed to be performed, type of customer base);
- the geographical area and reference market in which the new credit institution intends to operate and its positioning, including expected market shares; the distributive channels used (network);
- forecasts regarding technical profiles and capital adequacy;
- corporate governance, organisational structures and external and intragroup outsourcing to support the applicant credit institution’s operational or internal control activities.

Details with reference to the distribution network and information systems and IT security are expected to be included in the application for authorisation⁴⁴. Moreover, detailed information shall be provided with reference to organisational arrangements put in place to ensure compliance with the rules on transparency and correctness in relations with customers, including with regard to complaint-handling procedures and the specific procedures put in place for the utilisation of electronic distribution networks (e.g. the Internet).

The EBA currently has underway the preparation of Guidelines on the authorisation of credit institutions, which refer to business models and technology-related aspects, and will further harmonise the authorisation assessment process⁴⁵.

82. Some competent authorities apply additional tools to improve visibility over institutions’ dependencies on digital platforms, including via:

⁴³ For further information, see the EBA’s RTS and ITS on information to be included in applications for authorisation as a credit institution: <https://www.eba.europa.eu/regulation-and-policy/other-topics/rts-and-its-on-the-authorisation-of-credit-institutions>

⁴⁴ Indeed some competent authorities have issued additional guidance with regard to applicants seeking to leverage innovative business models. For example, see the SSM’s guide to the assessment of applications for authorisation in relation to FinTech banks: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/licensing_and_fintech/ssm_guide_on_assessment_for_licensing_of_fintech_credit_insts_draft.en.pdf

⁴⁵ <https://www.eba.europa.eu/regulation-and-policy/other-topics/guidelines-authorisation-credit-institutions>

- a. dialogue between line supervisors and financial institutions;
 - b. ad hoc questionnaires to financial institutions;
 - c. assessments in the context of the SREP⁴⁶ (notably, analysis of business models);
 - d. specific examination, review and challenge of application wireframes showing the full end-to-end customer journey, particularly in cases where multiple regulated and/or unregulated services are offered;
 - e. web-based monitoring;
 - f. online mystery shopping to assess compliance with consumer protection requirements;
 - g. follow-up analysis and investigations in the event of customers' complaints.
83. Notwithstanding these sources of information, only 7 of 26 competent authorities that responded to the EBA's November 2020 survey reported that they have a good level of visibility over the use (for the marketing and conclusion with customers of contracts for financial products and services) of digital platforms and enablers by financial institutions established in their jurisdictions.
84. Competent authorities identified two particular issues:
- a. **notification of digital platform/enabler use:** reliance on digital platforms and enablers as part of a financial institution's business model is not necessarily notified in the context of line supervision – typically only where this constitutes a material change of business (e.g. refocusing of a distribution channel to a digital platform or platform acting as a tied agent), and even then there are wide variations in the way in which institutions describe the purposes for which the platform/enabler is being used, and the financial, operational, and reputational dependencies;
 - b. **digital platform/enabler provision by technology companies is outside the perimeter of direct supervision of the competent authorities:** competent authorities indicated that they do not have good visibility over the activity of platform provision as it typically falls outside the scope of direct supervision (as the activity is not a regulated financial service, with notable exceptions such as crowdfunding platforms). However, the platform could represent a financial institution's direct or indirect distribution channel and/or could be a service provider under the outsourcing framework.
85. Additionally, competent authorities noted that, as 'home' authorities, visibility over the use of digital platforms for cross-border activities in host jurisdictions is very limited, as already

⁴⁶ <https://www.eba.europa.eu/regulation-and-policy/supervisory-review-and-evaluation-process-srep-and-pillar-2>

identified in the ESA Joint Committee report on cross-border supervision of retail financial services⁴⁷ and in the EBA Report on potential impediments to the cross-border provision of banking and payment services.⁴⁸

86. From the perspective of ‘host’ competent authorities, the vast majority noted that they do not have good visibility over the use of digital platforms (and enablers), since they have limited competences in relation to the cross-border provision of services in their jurisdictions. Conversely, few authorities indicated that, as host authorities, they have a good level of visibility over the use of digital platforms by financial institutions providing financial services in their jurisdiction in exercise of the freedom to provide services cross-border, with only 4 of 26 competent authorities responding to the EBA’s November 2020 survey reporting good visibility.
87. In particular, competent authorities restated concerns about challenges financial institutions (and competent authorities) are facing in determining whether a financial service offered by digital means is being provided via the ‘cross-border provision of services’ and therefore whether a notification obligation is triggered (see further Text box 5).⁴⁹

Text box 5: Challenges in identifying whether a service constitutes the cross-border provision of services

In April 2021, a survey of competent authorities was launched via the EFIF, to identify issues relating to the classification of services offered by digital means as a ‘cross-border provision of services’ (and, if so, under the ‘right of establishment’ or ‘freedom to provide services’) in view of the ESAs’ previous work in this area⁵⁰ and sense of increasing relevance of the issues as a result of the digital acceleration.

Twenty-two competent authorities responded to the survey, with 50% reporting cases in which digital means had been used to facilitate the provision of services in their jurisdictions and challenges had arisen in determining whether there was a ‘cross-border provision of services’ (and, if so, under the ‘right of establishment’ or ‘freedom to provide services’). Of these, 9 competent authorities identified examples where the issue had arisen in the context of the utilisation of a digital platform, including:

⁴⁷ <https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2551996/ab0d0bdd-2c9d-4441-a8d9-6d599291be90/Final%20Report%20on%20cross-border%20supervision%20of%20retail%20financial%20services.pdf?retry=1>

⁴⁸ <https://www.eba.europa.eu/eba-calls-european-commission-take-action-facilitate-scaling-cross-border-activity>

⁴⁹ By way of example, see Articles 39 and 40 CRD (Directive 2013/36/EU) regarding notification of the wish to exercise the freedom to provide services, and further the information exchange requirements pursuant to RTS 524/2014 and ITS 620/2014.

⁵⁰ For example, the ESA Joint Committee July 2019 report on the cross-border supervision of retail financial services: <https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2551996/ab0d0bdd-2c9d-4441-a8d9-6d599291be90/Final%20Report%20on%20cross-border%20supervision%20of%20retail%20financial%20services.pdf?retry=1> and the EBA’s October 2019 report on potential impediments to the cross-border provision of financial services available at footnote 46.

- a case where a firm had incorporated in Member State A and set up a platform for investment advisory services which ended up being used extensively by consumers in Member States B and C and where particularly complex issues around the active and passive provision of services had arisen;
- a deposit brokerage platform where issues had arisen in the context of the identification of the applicable rules for disclosures to consumers.

All 22 respondent competent authorities indicated that they consider that challenges in determining whether an activity constitutes a cross-border provision of services will increase in relevance as incumbent financial institutions accelerate their digital transformations and new entrants increasingly adopt a 'digital only' business model from the outset.

In the absence of clarity about classification, competent authorities expressed concerns about their ability to effectively:

- monitor service provision;
- identify the relevant home and host authorities (for instance, in the case of a platform used to provide services in three or more Member States);
- identify and enforce the relevant AML/CFT, prudential, consumer protection, and conduct of business frameworks;
- coordinate supervisory actions on a timely basis.

Indeed, many competent authorities noted that the current lack of appropriate guidance as to when a service may be regarded as a cross-border provision of services (and, if so, under what basis), means that often considerable resource has to be applied by competent authorities over protracted periods to resolve cases – with authorities unable to act on a timely basis to address issues, notably with regard to consumer protection.

The potential for regulatory arbitrage was also identified as a concern, with some competent authorities noting the emergence of increasingly sophisticated digital business models, in some cases designed to attempt to circumvent local regulatory requirements.

To support firms and competent authorities in determining whether there is a cross-border provision of services (and, if so, under what basis) 18 of the 22 respondent competent authorities therefore considered that EC interpretative communications⁵¹ should be updated urgently, in particular to provide guidance on how the principles contained therein (notably the principle of characteristic performance) should be applied in the case of digital services.

Thirteen competent authorities also suggested that there should be an expansion of scope of the communications to a broader range of financial (and potentially non-financial) services. In particular, competent authorities observed:

⁵¹ Notably, the 1997 EC Interpretative Communication Freedom to provide services and the interest of the general good in the second banking directive (97/C 209/04): <https://op.europa.eu/en/publication-detail/-/publication/4a6f984b-dabb-4ea2-96f5-8dc61379a883>

- the fact that the interpretative communications include points of reference for localisation that are no longer comprehensive (e.g. referencing to branching or permanent infrastructure in the host Member State) and may be prone to divergences in interpretation;
- the need to take account of new business models leveraging technology and new forms of intermediary (e.g. in the context of merchant networks, apps, websites, digital platforms, clearing and settlement infrastructure, and more innovative (and currently still limited) decentralised finance (DeFi) models);
- the need to take into account a broader range of financial services (e.g. crypto-asset services, e-money issuance, payment services).

Some competent authorities also highlighted a few examples of more recent EU legislation that already acknowledge changes in business models with a digital-only format, for example Regulation (EU) 2020/1503 on crowdfunding (Article 12(2)) refers to service providers where no physical presence in the host Member State is required. However, in view of the wide range of services that may be offered by digital means, including via digital platforms, competent authorities noted that a more holistic approach would be desirable.

88. Additionally, competent authorities underscored that even if an obligation is triggered to notify the home competent authority of the cross-border provision of services, the notification would not typically include any information about how that service is being carried out (e.g. authorities do not typically receive information about the modalities of the service provision, including the use of digital platforms).⁵² Hence some competent authorities have undertaken specific market monitoring and mystery shopping initiatives to attempt to ascertain information regarding institutions' compliance with their consumer protection obligations.
89. The EBA observes that uncertainties as to the classification of a service gives rise in turn to challenges in determining which authority is the relevant authority for specific supervisory purposes (notably in relation to AML/CFT and consumer protection) and which schemes (e.g. for complaint-handling and redress) are applicable.
- a. **Overcoming impediments to the visibility over the use of digital platforms and enablers**
90. The EBA notes that the majority of competent authorities indicated that additional supervisory actions would be useful to improve visibility over dependencies on digital platforms and enablers by financial institutions established in their jurisdictions. As a means to promote visibility over platform dependencies, the EBA highlights the utility for competent authorities of regular:

⁵² See in particular Section 3.3.3 of the EBA's report available at footnote 48.

- a. industry outreaches, including engagement with the largest platform providers in terms of financial services provision, which is critical in understanding industry developments;
 - b. structured web-based monitoring.
91. The EBA also encourages the use of other tools if routinely used by competent authorities (e.g. mystery shopping activities⁵³).
92. Crucially, however, the EBA sees benefit in coordinated EU-wide monitoring in order to improve visibility over the use of digital platforms and enablers and to better monitor concentration and interconnectedness risks (see Section 5.2). Therefore, going forward, the EBA will take additional actions to support competent authorities in following market developments and identifying the opportunities and risks arising from platform developments through knowledge exchange in the context of the EBA's FinTech Knowledge Hub and the cross-sectoral setting of the EFIF. In particular, the EBA will take steps to support competent authorities in developing common questionnaires to regulated financial institutions on digital platform/enabler use. This approach will facilitate tailored and proportionate information-gathering against a fast-evolving market.
93. The EBA will also keep under review the need for additional actions to:
- a. promote consistency in supervisory expectations regarding the transmission of information from financial institutions to competent authorities on digital platform/enabler use (e.g. in the context of material changes to business models, the materiality of platform dependencies from a business model perspective, and self-assessments from a risk and mitigation perspective);
 - b. support analysis of platform-based business models in the context of the SREP, and more broadly.
94. Finally, in the context of wider work on improving home/host information exchange, the EBA is considering establishing a list of supervisory points of contacts to facilitate ad hoc and regular engagement and information exchange between relevant home and host supervisors in relation to financial institutions providing services cross-border via digital means.

⁵³ In its May 2021 report, the EBA summarises the most common approaches undertaken by national competent authorities, presents lessons learned and identifies good practices: <https://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/european-banking-authority-publishes-report-mystery-shopping-activities-national-authorities>. The EBA published this report as a first step to fulfilling the new mandate it received on 1 January 2020 in Article 9(1) of the EBA Founding Regulation. The mandates require the EBA to 'coordinate mystery shopping activities of competent authorities, if applicable'.

b. Overcoming challenges in classifying services as the ‘cross-border provision of services’

95. In view of the digital acceleration and increasing relevance of the challenge in determining when financial services offered by digital means, including in the context of platformisation, are to be treated as a ‘cross-border provision of services’ (and, if so, under the ‘right of establishment’ or the ‘freedom to provide services’), the EBA restates its previous recommendations for the EC to update its interpretative communications relating to when a digital activity should be considered as a cross-border provision of services.⁵⁴ For example, the EBA highlights that the 1997 EC Interpretative Communication refers to a place of ‘permanent physical infrastructure’ in determining whether an activity is considered under the right of establishment or freedom to provide services which no longer seems fully relevant in the digital age. This is a necessary foundation for a more consistent application of the notification requirements, which is the foundation for better visibility over the provision of services cross-border.

5.2 Monitoring interconnectedness and concentration risks

96. Related to the issues identified above, the EBA has identified that few competent authorities feel they have sufficient information to monitor new forms of interconnectedness risk within and beyond the financial sector (whether financial, operational or reputational) arising from digital platform and enabler use by financial institutions in their jurisdictions.

5.2.1 Current practices

97. Where monitoring of interconnectedness is carried out, the EBA observes this is typically done on an ad hoc and non-systematic way through analysis of contractual relationships on a ‘local’ basis (i.e. in relation to financial institutions established in their jurisdictions, and typically on a ‘siloed’ basis in the context of line supervision of specific types of institutions, e.g. credit institution, payment institution etc.). The EBA underscores the limits of this approach, notably the absence of a mechanism that would provide visibility over interdependencies between different financial institutions (cross-sectorally, and cross-geographically) on the same digital platform/enabler provider.

98. As a result of the current limits on interconnectedness mapping, a significant number of competent authorities reported to the EBA that their ability to monitor concentration risk may be inadvertently impaired.

99. In light of the foregoing, a significant number of competent authorities considered that it would be helpful to have a more coordinated approach to interconnectedness mapping at a macro level.

⁵⁴ See further the reports available at footnote 50.

Overcoming challenges in monitoring interconnectedness and concentration risks

100. The EBA notes that improved visibility over financial institutions' dependencies on digital platforms for the marketing and distribution of financial products and services, and on enablers, combined with measures to support regular dialogue between competent authorities will facilitate interconnectedness mapping at the EU level. However, to further strengthen the monitoring of interconnectedness and concentration risks, and building on information gained as a result of more comprehensive and robust monitoring, the EBA proposes to:
- a. develop a framework to facilitate the aggregation by supervisors (and the EBA through a central mechanism) of information about financial institutions' dependencies on digital platforms in order to identify cumulative dependencies on digital platforms in the context of the marketing and distribution of financial products and services, and on enablers;
 - b. establish indicators that could help in assessing potential concentration, contagion and potentially future systemic risks and could be taken into account in the context of both line supervision and financial sector monitoring (e.g. number of financial institutions relying on a digital platform/enabler, volume/value/type of service provision, customers etc.).
101. Taken in combination these measures can improve both micro- and macro-level monitoring.
102. Additionally, via the EBA's FinTech Knowledge Hub, and leveraging structures such as the EFIF, the EBA will continue to take actions to promote information exchange, cooperation and coordination between financial sector and non-financial sector authorities, such as the data and consumer protection authorities in order to foster dialogue to support the monitoring of interconnectedness (and, relatedly, concentration) risks.⁵⁵
103. The EBA will keep under review the need for any additional actions to ensure consistent and robust monitoring of interconnectedness risks and will take into account this issue in the context of work pursuant to Article 9(1)(ab) of the EBA's Founding Regulation (developing retail risk indicators for the timely identification of potential causes of consumer harm).

⁵⁵ See further Article 9(5) of the EBA's Founding Regulation: <https://www.eba.europa.eu/about-us/legal-framework/eba-regulation-and-institutional-framework>

5.3 Monitoring of specific risks relating to digital platforms

104. In view of the relatively poor visibility over digital platform use, and digital platform ecosystems more generally, competent authorities reported potential impediments to the monitoring of specific risks, notably:
- a. regulatory perimeter considerations;
 - b. ICT and security risk management;
 - c. conduct of business;
 - d. consumer protection;
 - e. data protection; and
 - f. AML/CFT risk.

5.3.1 Regulatory perimeter

105. Twenty of the 26 competent authorities that responded to the EBA's November 2020 survey consider that digital platforms give rise to challenges regarding the supervision of financial sector activities and/or the monitoring of the regulatory perimeter in their jurisdictions. In particular, the EBA observes that because of poor visibility over the way in which platforms are being utilised, it is not always easy for competent authorities to identify, within a platform ecosystem, who is carrying out any regulated financial services, who is carrying out ancillary services, and whether new activities are emerging that could warrant consideration for inclusion within the scope of the financial services regulatory perimeter.
106. Notwithstanding these observations, at this stage, only 3 competent authorities noted that there would be benefit in carrying out a 'deep-dive' review of the application of the regulatory perimeter, specifically as regards Cluster 1 digital platforms (comparison websites) in view of potential similarities with intermediary functions that were ultimately brought within the ambit of EU regulation as a result of the Consumer Credit Directive (Directive 2008/48/EC)⁵⁶ and potential divergences at the national level regarding authorisation and registration requirements.
107. Additionally, the EBA notes that considerations regarding the level playing field (notably the capacity of different types of financial institutions and BigTechs to carry out non-financial services and the regulatory treatment) is under consideration in the context of the joint ESA work in relation to the EC's Call for Advice on digital finance.

⁵⁶ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32008L0048>

Overcoming challenges in monitoring the regulatory perimeter

108. The EBA considers that the steps identified in Section 5.1 will help improve competent authorities' visibility over digital platform (and enabler) use and, in turn, support monitoring of the regulatory perimeter. In view of the limited feedback regarding the need for 'deep dives' into the application of the regulatory perimeter, the EBA does not propose any immediate additional actions. However, the EBA will keep under review the activities of comparison websites and their regulatory treatment at the national level as part of its continuous monitoring of the regulatory perimeter.

5.3.2 ICT and security risk management

109. Twenty-one of the 26 competent authorities that responded to the EBA's November 2020 survey reported that they consider the use of digital platforms gives rise to challenges for the supervision of ICT and security risks, albeit many noted that existing EBA Outsourcing Guidelines⁵⁷ are helpful and that the Digital Operational Resilience Act (DORA) (once in force) will help address some challenges (notably in terms of the proposal to bring in the scope of oversight of critical third party providers (CTPPs)).⁵⁸

110. Competent authorities were keen to emphasise that the nature of the risks depends on the digital platform used and the nature of the services provided, but that greater platform dependencies imply greater ICT and security risks and therefore the need for enhanced supervisory scrutiny. Among the risks highlighted were:

- a. *ICT availability and continuity risk*: the risk that performance and availability of ICT systems and data are adversely impacted, including the inability to timely recover the institution's services, due to a failure of ICT hardware or software components; weaknesses in ICT system management; or any other event;
- b. *ICT data integrity risk*: the risk that data stored and processed by ICT systems are incomplete, inaccurate or inconsistent across different ICT systems, for example as a result of weak or absent ICT controls during the different phases of the ICT data life cycle (i.e. designing the data architecture, building the data model and/or data dictionaries, verifying data inputs, controlling data extractions, transfers and processing, including rendered data outputs), impairing the ability of an institution to provide services and produce (risk) management and financial information in a correct and timely manner.

111. However, in accordance with the remarks set out above relating to the (lack of) understanding and visibility over platform dependencies highlighted resulting issues about capacity of supervisors to monitor and understand operational dependencies and to challenge business model and internal governance arrangements effectively.

⁵⁷ <https://www.eba.europa.eu/eba-publishes-revised-guidelines-on-outsourcing-arrangements>

⁵⁸ See Text box 6.

112. Competent authorities also highlighted the risk of fragmentation where:
- a. supervisors of different financial products and services distributed via the same platform adopt different (and potentially uncoordinated) stances regarding supervisory requirements or otherwise inadvertent gaps as a result of assumptions about the attribution of supervisory responsibilities;
 - b. the perimeter of national law (in relation to both financial and non-financial services) may vary resulting in some products and services falling within the scope of supervision in some Member States but not in others.
113. Competent authorities highlighted particular issues where platform service providers are established outside the EU, notably with regard to access to and storage of data and the carrying out of on-site visits.
114. Some competent authorities also highlighted issues with service provision chains (service providers and service providers of service providers) albeit others noted that the onus must still be on the financial institution to demonstrate the scope, objectives and responsibilities of each party involved as well as the exit strategy / business continuity plan (e.g. via reference to contractual provision).

Overcoming challenges in monitoring ICT and security risks

115. Dependencies on digital platforms could bring ICT and security-related challenges and risks (albeit the range and severity is very much specific to the case in question). These challenges and risks are not new or unique to digital platforms. However, dependencies on digital platforms, as with other digital technologies, may increase the complexity and potential magnitude of risk, particularly as some operators of digital platforms are not regulated financial institutions, and the platform services they provide may not fall under the scope of outsourcing (rather third-party technology provision), and therefore challenges arise for supervisors.
116. However, the EBA has already undertaken action to support financial institutions and competent authorities in adopting a common and effective approach to the management and supervision of ICT and security risks, via the EBA's November 2019 Guidelines on ICT and Security Risk Management⁵⁹ and EBA Guidelines on Outsourcing Arrangements⁶⁰. Additionally, the co-legislative process continues on the EC's flagship proposal on DORA (see Text box 6) which is intended to strengthen digital operational resilience for EU financial entities.

⁵⁹ <https://www.eba.europa.eu/eba-publishes-guidelines-ict-and-security-risk-management>

⁶⁰ <https://www.eba.europa.eu/regulation-and-policy/internal-governance/guidelines-on-outsourcing-arrangements>

Text box 6: The legislative proposal for DORA

On 24 September 2020, the EC published its Digital Operational Resilience Act (DORA) legislative proposal. The purpose of DORA is to put in place a comprehensive framework on digital operational resilience for EU financial entities and to consolidate and upgrade the ICT risk requirements that have so far been spread over the financial services legislation (e.g. CRD, PSD2, MiFID2 etc.). It essentially aims to highlight the importance of ICT risk by distilling it from the financial risks, noting the need for a comprehensive assessment (not focusing only on traditional quantitative approaches). The legislative proposal also responds to ESAs joint technical advice⁶¹ (April 2019) that called for a more coherent approach in addressing ICT risk in finance and recommended the EC to strengthen, in a proportionate way, the digital operational resilience of the financial services industry through an EU sector-specific initiative.

DORA is addressed to ‘financial entities’ which are essentially all the entities falling under existing financial services legislation to date. The approach towards the proportionality principle leverages on the ‘microenterprise’ definition as a point of reference i.e. a lighter approach for financial entities, which qualify as microenterprises. Moreover, only financial entities identified as ‘significant’ for the purposes of the advanced digital resilience testing shall be required to conduct threat-led penetration tests.

DORA aims to achieve a high common level of digital operational resilience, as follows:

- measures applicable to financial entities in relation to:
 - information communication technology (ICT) risk management;
 - reporting of major ICT-related incidents to the competent authorities;
 - digital operational resilience testing;
 - information and intelligence sharing in relation to cyber threats and vulnerabilities;
 - measures for sound management by financial entities of the ICT third-party risk;
- key requirements for ICT third-party service providers in the context of contractual arrangements concluded with financial entities, with a view and extent necessary to support a secure provision of ICT services to financial entities, and with due consideration for the observance of parameters necessary for achieving regulatory compliance and fulfilling business needs, in particular, performance, stability, capacity, integrity and confidentiality;
- the establishment of an Oversight Framework with regard to critical ICT third-party service providers when providing services to financial entities;

⁶¹Joint Advice of the ESAs to the EC on the need for legislative improvements relating to ICT risk management requirements in the EU financial sector, JC 2019 26 (2019): <https://www.eba.europa.eu/esas-publish-joint-advice-on-information-and-communication-technology-risk-management-and-cybersecurity>

- rules on cooperation among competent authorities and rules on supervision and enforcement by competent authorities in relation to all matters covered by this Regulation.

In particular, to ensure sound monitoring of ICT third-party risk, DORA proposes a set of principle-based rules to guide financial entities' monitoring of risk arising in the context of services provided by ICT third-party service providers and, more generally, in the context of ICT third-party dependencies. The conduct of such monitoring should follow a strategic approach to ICT third-party risk formalised through the adoption by the financial entity's management body of a dedicated strategy, rooted in the continuous screening of all such ICT third-party dependencies.

To enhance supervisory awareness over ICT third-party dependencies, and with a view to further supporting the Oversight Framework established by the proposal, financial supervisors should regularly receive essential information (in the form of registers) from financial entities and should be able to request extracts thereof on an ad hoc basis. Based on this information, the ESAs (in their role as Lead Overseer) will designate which ICT third-party providers are critical and thus fall under the Oversight Framework to enable adequately monitoring on a pan-European scale.

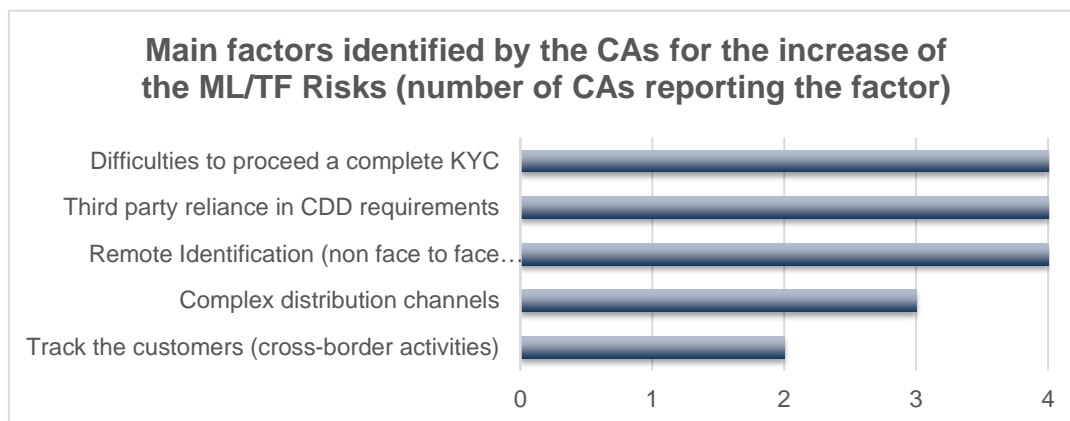
117. Pending the conclusion of the co-legislative process and coming into effect of DORA, the EBA will keep under review the need for further actions to support competent authorities and financial institutions in overcoming the challenges stemming from:
- a. the digital sphere and the threat to the landscape continuously changing/evolving;
 - b. divergences in expectations regarding ICT and security risk management intra and also across sectors where digital platforms are used by different types of financial entities;
 - c. the monitoring of risks associated with digital platforms involving outsourcing arrangements and incomplete visibility of the ICT and security risks in such contexts;
 - d. the need to ensure effective risk management in relation to third-party (non-outsourcing) reliance, for instance via due diligence, adequate legal arrangements, business continuity and measures addressing operational resilience and data security issues when entering into third-party service arrangements.

5.3.3 AML/CFT risks

118. Sixteen competent authorities responding to the EBA's November 2020 survey indicated that they consider the use of digital platforms for the marketing or conclusion with customers of contracts for financial products and services raises or increases ML/TF risks in their jurisdictions (9 indicated they did not consider there to be an increased risk

and the remainder did not respond) albeit, again, risk varies depending on the specificities of the business model.

Figure 8: Factors increasing ML/TF risks



119. As illustrated above, the main reasons identified by the competent authorities for potential increased ML/TF risks were related to the use of remote means for the onboarding (and variations between authorities regarding expectations for these processes), the difficulties in proceeding with comprehensive KYC in situations of cross-border activities, as well as the reliance on third parties for customer due diligence purposes. These issues are not unique to digital platforms, rather they have been observed in connection with the use of FinTech more generally.⁶²

120. To a lesser extent, competent authorities identified factors such as the complexity of the distribution channels, particularly across borders. Some authorities also identified issues relating to automation of processes, such as machine readability. Authorities also identified the risk of the use of falsified documents, and smart contracts which may facilitate high-volume low-value transactions without appropriate monitoring and risk mitigation. By contrast, one authority noted that they considered that the use of those digital platforms might decrease the ML/TF risk, through improving traceability, reporting channels and customer data, and facilitate the detection of irregular situations in an easier manner.

Overcoming AML/CFT issues

121. Following the observations of the competent authorities, the EBA notes that:
- a. the vast majority of the identified reasons for potential increased ML/TF risk are already identified in the Risk Factor Guidelines and the March 2021 Opinion on ML/TF risk⁶³ as well as in the EBA report on potential impediments to the cross-border provision of banking and payment services (as set out in the Risk Factor

⁶² See in particular the section on risks associated with the provision of financial products and services through FinTech firms: [Opinion on MLTF risks.pdf \(europa.eu\)](#)

⁶³ Ibid.

Guidelines, in the specific context of the use of innovative technological means for identification and verification purposes, firms should extend their assessment to the particular ML/TF risks of each technology used);

- b. the EBA intends to publish specific guidelines in the context of remote onboarding as a result of a request from the EC to promote consistency in this area (see Text box 7) and will keep under review the need for any additional actions to promote convergence in AML/CFT measures in the context of innovative business models.

Text box 7: Remote Onboarding Guidelines

In the last few years, there has been a significant increase in the number of digital tools available to financial institutions to onboard their customers remotely. This trend was exacerbated by restrictions on movement in the context of the COVID-19 crisis, which highlighted the importance of institutions having at their disposal reliable and effective means to support remote business customer onboarding and wider remote customer due diligence (CDD) checks.

It is important for competent authorities, financial institutions and software providers to understand the capabilities of these new forms of remote customer onboarding to make the most of the opportunities they offer. It is equally important to support their sound and responsible use. This includes, being aware of the emerging and crystallised ML/TF risks arising from the use of such tools and taking steps to mitigate those risks effectively.

In 2020, in the context of the publication of its Digital Finance Strategy, the EC invited the EBA to develop guidelines on:

- (i) the types of innovative technologies that are acceptable when financial institutions onboard customers remotely,
- (ii) the conditions that need to be met when financial institutions use innovative technologies to onboard customers remotely,
- (iii) the acceptable forms of digital documentation used for remote customer onboarding;
- (iv) the conditions under which it is acceptable for financial institutions to rely on information provided by third parties when onboarding customers remotely.

The draft Guidelines are currently under development and will be published for consultation in the second half of 2021.

122. The EBA also acknowledges the EC's proposals for European Digital Identity Wallets which will enable European citizens to access services online without having to use private

identification methods or unnecessary sharing of personal data⁶⁴ and will mitigate ML/TF risk. The EBA also acknowledges the EC's AML/CFT package⁶⁵ published on 20 July 2021, which is intended to strengthen AML/CFT rules across the EU. The package also includes proposals for a new EU authority that is intended to transform AML/CFT supervision in the EU and enhance cooperation among financial intelligence units (FIUs) and would have powers to promote convergence in the application of AML/CFT rules, including having regard to evolutions in business models.

⁶⁴ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2663

⁶⁵ https://ec.europa.eu/info/publications/210720-anti-money-laundering-counteracting-financing-terrorism_en

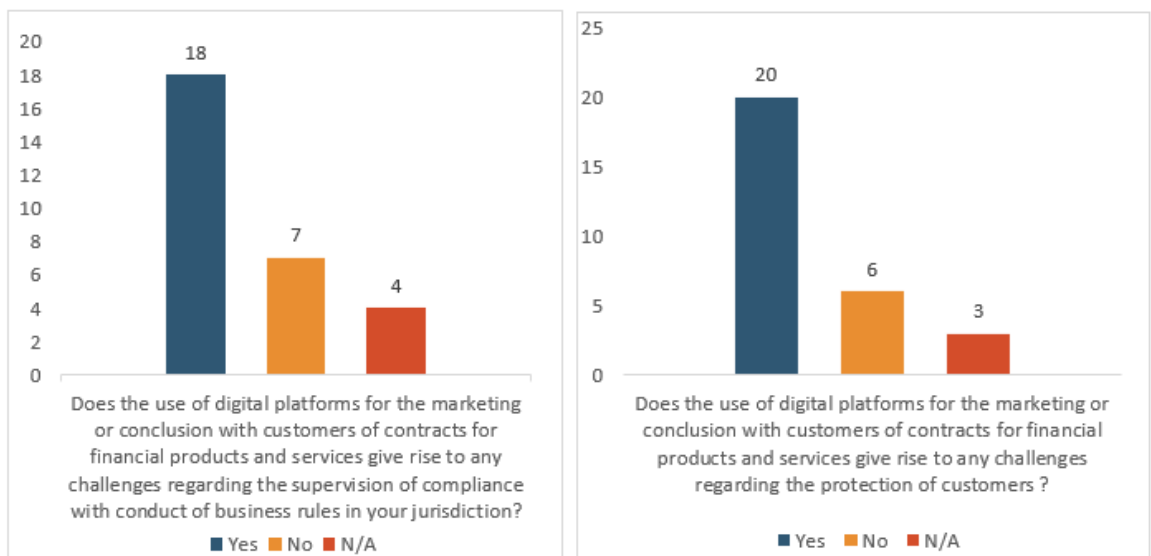
6. Consumer protection, conduct of business and data protection

123. Digital platforms and enablers can offer opportunities for customers by facilitating access to financial products and services, including cross-border. However, the platformisation of financial services can pose some challenges for competent authorities in supervising compliance with conduct of business and consumer protection requirements. Additionally, (and depending on the specificities of the business model) customers may be exposed to new or elevated risks as compared to traditional intermediation channels, for instance in the context of poor disclosure practices, cross-mis-selling, fraud or data loss. Customers may also face challenges in the event of a complaint or a claim for redress. In this chapter, we explore these issues and draw attention to the need for renewed focus of relevant authorities on digital financial literacy commensurate with the acceleration of digitalisation in the EU banking and payments sector.

6.1 Supervising compliance with consumer protection and conduct of business requirements – general challenges

124. The vast majority of authorities that responded to the EBA's November 2020 survey reported that the use of digital platforms for the marketing and conclusion of contracts for financial products and services gives rise to several compliance monitoring and enforcement challenges in their jurisdictions.

Figure 9: Number of competent authorities reporting challenges in monitoring compliance with consumer protection/conduct of business requirements



125. The reported challenges relate mainly to monitoring compliance with disclosure requirements (where applicable) and complaint-handling. Other issues relate to the risks of financial exclusion and data protection which are explored later in this chapter.
126. Additionally, several competent authorities drew attention to the issue identified in the previous chapter of this report, namely that financial institutions may struggle to identify whether the provision of a product or service via a digital platform constitutes a ‘cross-border provision’ of a financial service and, if so, on what basis under EU law. As a result of these difficulties, financial institutions may not always be in conformity with applicable consumer protection or conduct of business requirements, and the allocation of responsibilities between authorities in jurisdictions in which the financial institutions are active may not always be clear.
127. Furthermore, as explained in the EBA’s October 2019 report on potential impediments to the cross-border provision of banking and payment services,⁶⁶ consumer protection rules vary across the EU (e.g. disclosure requirements). These variations can pose practical challenges for firms in calibrating their compliance processes when using digital platforms to distribute financial products and services in multiple Member States, potentially also increasing costs and impeding the provision of services cross-border.⁶⁷ Questions may also arise about who is the responsible authority for consumer protection issues.

6.1.1 Disclosure requirements

128. In order for customers to make informed decisions about financial products and services, they should have access to high-quality information that is provided at the appropriate time, via suitable means, and that explains the features and costs across the lifetime of the product, with a timeframe that enables them to assess whether the product is appropriate for their needs and financial situation. This applies to financial products and services that are marketed and/or sold at a physical meeting between the buyer and seller *and* when the buyer and seller are not interacting with each other in the same physical location (‘distance marketing’) pursuant to the EU Directive on Distance Marketing of Consumer Financial Services (DMFSD).⁶⁸
129. The important disclosure requirements set out in the DMFSD have succeeded in bringing about a high level of protection for consumers considering entering into contracts for financial products and services at a distance. However, as market practices and business

⁶⁶ [EBA report on potential impediments to the cross-border provision of banking and payment services published on 29 October 2019](#)

⁶⁷ *Ibid.*

⁶⁸ Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC OJ L 271, 9.10.2002, p. 16–24: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0065>. The provision on pre-contractual information in case of distance marketing of financial services could be set at national level also widening the scope of application of DMFSD.

models have evolved, the need for clarifications in scope of application of the DMFSD have been identified, in particular in the context of digital platforms. This might require a review of sector-specific product regulation by the EC for reasons identified by the EBA in its 2019 report on potential impediments to the cross-border provision of banking and payment services⁶⁹.

Text box 8: The DMFSD and EBA Opinion

The DMFSD, which is currently under review⁷⁰, established in 2002 a legal framework governing the distance marketing of consumer financial services.

In accordance with this directive, when concluding a distance marketing contract, all information to the consumer prior to the conclusion of the distance contract, the contractual terms and conditions and the prior information as well as additional requirements and right of withdrawal shall be communicated to consumers on a durable medium and be accessible to them in good time before they are legally bound by any distance contract or offer.

In fulfilment of the EBA's objective of contributing to the enhancement of consumer protection and monitoring financial innovations, and by way of executing the EBA's Roadmap on FinTech of March 2018,⁷¹ the EBA assessed disclosure to consumers of banking services through digital means under DMFSD, the extent to which the disclosure requirements in EU law are suitable for achieving a maximum level of consumer protection and facilitating the operation of the Single Market in the EU in an era that has seen such services being increasingly sold through digital means.

To that end, the EBA conducted a more detailed analysis into disclosure rules as part of a wider assessment of potential impediments to cross-border financial services⁷², which covered issues arising in the area of consumer protection, but also authorisations, licencing, and anti-money laundering. The EBA concluded, inter alia, that a review and further harmonisation of the legislative framework on disclosure should be considered and indicated that it would set out more detail in a separate Opinion addressed to the EC.

The EBA Opinion on disclosure to consumers of banking services through digital means under DMFSD (EBA-Op-2019-12)⁷³ develops a number of proposals as to how the disclosure rules should be revised, with a particular focus on the DMFSD. The EBA Opinion proposes

⁶⁹ <https://www.eba.europa.eu/eba-calls-european-commission-take-action-facilitate-scaling-cross-border-activity>

⁷⁰ See EC staff working document evaluation of DMFSD, Brussels, 5.11.2020 SWD(2020) 261 final. The evaluation results will feed into the review of the Directive, which was included among the REFIT initiatives of the EC Work Programme 2020. According to the revised 2020 CWP, adoption of the review has been postponed until the fourth quarter of 2021.

⁷¹ See <https://eba.europa.eu/-/eba-publishes-its-roadmap-on-fintech>

⁷²

https://www.eba.europa.eu/sites/default/documents/files/document_library//EBA%20Report%20on%20potential%20impediments%20to%20the%20cross-border%20provision%20of%20banking%20and%20payment%20services.pdf

⁷³

https://www.eba.europa.eu/sites/default/documents/files/document_library/Opinion%20on%20disclosure%20through%20digital%20means.%20FINAL.pdf

recommendations to ensure that disclosure requirements take account of the increasing use of digital marketing channels for financial services and the resultant issues potentially affecting consumers. The recommendations mentioned in the EBA Opinion relate primarily to the scope and consistency of disclosure rules, the timing of disclosure, the presentation format and accessibility of information. In addition, they cover advertisements, pre-contractual information, rights of withdrawal, complaint-handling and post-sale information. Furthermore, the EBA has developed and published a factsheet to raise awareness on the key steps consumers should consider when choosing online or mobile banking services⁷⁴.

130. Respondents to the EBA’s November 2020 competent authority survey reported several challenges in monitoring compliance of digital platforms with the DMFSD. Notwithstanding, the operators of the platforms are often responsible for the customer interface. They may not be regulated financial institutions and therefore would fall outside the supervisory perimeter of the competent authorities. As explained in Chapter 2, platform provision is not, of itself, a regulated financial service, with notable exceptions such as crowdfunding platforms; however, a platform could represent a financial institution’s direct or indirect distribution channel and/or could be a ‘service provider’ under the outsourcing framework. Should a digital platform represent a distribution channel for a financial institution’s banking products and services, the EBA Product Oversight and Governance Requirements⁷⁵ would be applicable. For an illustration, see Text box 9.

Text box 9: The DMFSD and comparison websites

As stated in the EC’s final report on the evaluation of the DMFSD⁷⁶ a development in the retail financial services supply chain relates to the diffusion of aggregator and comparison websites as distribution channels of financial services. As set out in Section 3.4.1, these can be divided into two broad categories: websites that allow consumers to compare various offers from different providers but do not sell products directly (these may or may not redirect consumers to the websites of the respective providers), and websites that allow a consumer to compare and purchase products from various providers. Comparison websites in the context of financial services are seen ‘as intermediaries⁷⁷ that simplify market operations and provide an economic advantage for both parts of the market’ (Porrini,

⁷⁴ EBA factsheet for consumers: <https://www.eba.europa.eu/eba-raises-awareness-key-steps-consumers-should-consider-when-choosing-online-or-mobile-banking>.

⁷⁵ EBA Guidelines on product oversight and governance arrangements for retail banking products, EBA/GL/2015/18: <https://www.eba.europa.eu/guidelines-on-product-oversight-and-governance-arrangements-for-retail-banking-products>

⁷⁶ European Commission [evaluation of Directive 2002/65/EC on Distance Marketing of Consumer Financial Services Final Report, Written by ICF Consulting Limited, January 2020](#)

⁷⁷ According to the definition mentioned in the European Commission [Evaluation of Directive 2002/65/EC on Distance Marketing of Consumer Financial Services Annex 1 - Case studies written by ICF Consulting limited, January 2020](#), ‘intermediaries provide benefits for consumers in terms of reducing their search time and costs and helping them to access products and services that meet their needs. They also provide benefits for providers of financial services in terms of marketing and selling their products to consumers and facilitating entry into new markets without needing their own distribution and retail networks’.

2018)⁷⁸. The extent to which the DMFSD applies to either of these two categories, and whether such platforms would be considered an ‘intermediary’ as set out in this directive is uncertain. This can lead to situations where comparison websites acting as intermediaries do not comply with the DMFSD because they consider that it does not apply to them given their nature and level of involvement.

131. Moreover, circumstances have been identified in which inadequate disclosures have been provided in the context of digital platform use for the marketing and distribution of banking and payment services. For instance, some disclosures have failed to identify adequately:

- a. product/service terms and conditions;
- b. the name of the contracting party;
- c. the applicable complaint-handling mechanisms and redress schemes;
- d. the applicable deposit/investor protection scheme (if any).

132. Indeed, it is worth highlighting that customers may face challenges in understanding the business model behind the digital platform (i.e. the pricing structure, whether platforms are monetising customer data, who is responsible for determining platform access and continuity of access⁷⁹ etc.). Customers may also face challenges in delineating the functions of parties within the digital platform ecosystem (e.g. nature of the intermediary function – agent, distributor, etc.) and their rights and obligations vis-à-vis those parties, which may result in end-users being unclear about which provider they are contracting with or to whom they should complain if something goes wrong. These challenges can be exacerbated when services are provided cross-border. One example can be found in relation to the application of the Deposit Guarantee Schemes Directive (DGSD)⁸⁰ (see Text box 10). For these reasons, disclosures play a particularly important role in ensuring customers can understand the intricacies of the distribution system.

Text box 10: Deposit brokerage platforms and the DGS

The two biggest deposit aggregators in the EU have been operating since 2011 and 2014 respectively and merged in July 2021. Before the merger, one of them cooperated with more than 100 banks in more than 30 countries, while the other worked with more than 200 banks in more than 20 countries. On their websites, each of the platforms reports to have helped place in excess of EUR 30 bn in deposits. These platforms do not charge any fees to the

⁷⁸ Porrini, D., 2018. The effects of innovation on market competition: the case of the insurance comparison websites. *Marketing and Management of Innovations*, 2018, Issue 3.

⁷⁹ For example, the platform provider or third party leveraging the platform to distribute financial products and services may unilaterally terminate the arrangement with the effect of denying customer access.

⁸⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0049>

depositors – they charge their partner banks for helping them to attract customers and may offer them a platform to offer third-party products.

The main types of deposit brokerage platforms

The two deposit brokerage platforms referred to above share many similarities, but their business models differ in some respects:

- The business model of one involves a depositor opening an account with a credit institution that is part of the same group as the platform, which then places deposits in the product bank chosen by the depositor. The deposits end up in an account in the name of the depositor in the bank chosen by that depositor. In this instance, the website where the depositor looks for offers, the name of the platform and the bank facilitating placing deposits in product banks share the same brand name.
- The business model of the other involves a depositor opening an account with an intermediary credit institution that is not part of the same group as the platform, which then places deposits in the 'product bank' chosen by the depositor. The difference between the business models is that in this case, the deposits are placed with the bank chosen by the depositor, but not in an account in the name of the depositor, but in a beneficiary account opened by the intermediary credit institution. In this business model, the name of the digital brokerage platform, the brand names of websites where a depositor can search for offers and the brand of the bank facilitating placing deposits in products banks are all different⁸¹.

Another business model observed involves customers opening accounts with credit institutions and then using a platform to place deposits in the bank chosen by the customer (in an account in the name of the depositor).

Other business models exist. For example, a business model where the deposit brokerage platform uses a non-bank entity, such as a payment institution or an e-money institution, to place client funds with partnering banks.

Implications of the different business models from a deposit protection perspective

The difference between business models has implications in the event the product bank were to fail:

- Firstly, while deposits in accounts in the name of the depositor are protected up to EUR 100,000 across the EU (with some exclusions mainly for deposits of financial institutions), there are three Member States where deposits placed by one credit institution in a beneficiary account with another credit institution would currently not be covered. This issue could be more significant in instances where the credit

⁸¹ However, it should be noted that both forms of placing deposits are present on both platforms to some degree, thus the business models are not fully distinctive.

institution placing deposits, and the credit institution where the deposits are held in a beneficiary account are in different Member States, where different rules on coverage apply.

- Secondly, deposits in accounts in the name of the depositor must be made available to the depositor within 7 working days from the determination that deposits have become unavailable. Regarding deposits in beneficiary accounts, Member States may decide that they are subject to a longer repayment period, which must not exceed 3 months.
- Thirdly, different business models have different implications in case of bank failures, which may not be well understood by the consumers, because it may require a good understanding both of the business model of the deposit brokerage platform, as well as applicable provisions of the DGSD. That is particularly relevant in cases where deposits are collected cross-border or would not be covered at all.
- Finally, as will be outlined in more detail in the EBA Opinion on the treatment of client funds under the DGSD, the current lack of harmonisation in relation to reimbursing the account holders or the ultimate beneficiaries could lead to different outcomes across the EU, as in some instances, reimbursing the ultimate beneficiaries directly could create contagion risks from the failed credit institution to the account holder (i.e. the entity that placed client funds with the credit institution on behalf of its clients); legal issues may also arise depending on the contractual arrangements in place (e.g. even if the DGS reimburses the ultimate beneficiary, the brokerage platform might still legally be in debt with its client).

Regardless of the business model of the deposit brokerage platform, such platforms help depositors to place deposits with credit institutions in other Member States. Cross-border DGS payouts are operationally more complicated than domestic payouts as they may require communication in different languages, and the DGS's standard payout method may not always be suitable to cross-border payouts. The EBA has outlined the challenges of cross-border payouts in more detail in the EBA Opinion on DGS Payouts (EBA-Op-2019-14)⁸².

Accordingly, effective disclosures to consumers are vital to ensure they understand the rules regarding the protection of deposits, including which DGS protects their funds, should things go wrong, and the allocation of responsibilities between each relevant party (reflective of the business model in question). It is also vital to ensure that deposit brokerage platforms cooperate with the relevant authorities, particularly in relation to effective communication with depositors, in case of bank failures.

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https://www.eba.europa.eu/sites/default/documents/files/document_library/EBA%20Opinion%20on%20DGS%20Payouts.pdf

Issues relating to the Deposit Guarantee Scheme (DGS) protection (or lack thereof) of client funds placed with banks by payment institutions, e-money institutions, investment firms and other types of entities will be discussed in detail in the EBA Opinion on the treatment of client funds under the DGSD to be published in October 2021.

133. Additionally, risks of potential mis-selling or ineffective disclosures may be compounded where no minimum requirements for individual pre-contractual information and explanations are set by law or regulations or where there is limited (or no) opportunity to seek advice or ask questions to the financial service provider before concluding the contract.
134. Finally, although the ‘digital’ format of disclosures can, in some cases, improve customer understanding of key features of financial products and services, depending on the design, in some cases they may be less effective in ensuring effective disclosure.

6.1.2 The risk of ‘cross-mis-selling’

135. Cross-selling occurs where a firm links (or ‘bundles’ or ‘ties’) two or more products or services and sells them to customers as a distinct package. In today’s competitive digital environment, cross-selling can be observed in the context of digital platforms where products or services may be offered in combination, to target new customers or to retain them. Some products or services in the package may be regulated financial services, while others may not; the products and services may be offered by the same firm, by firms in the same group, and/or by different firms/groups.
136. Although cross-selling can be advantageous for customers, for example, in the form of (initial) cost savings or reduced search costs, it can also pose risks (notably of customers being sold unsuitable products), particularly in the event of:
- a. poor quality disclosures of product fees, terms and conditions and comparisons;
 - b. inappropriate distribution channels;
 - c. poor product oversight and governance;
 - d. the inability of customers to limit, control or customise product search functions; and
 - e. issues linked to remuneration incentives/poor remuneration of sales staff.
137. Indeed, several competent authorities reported that, in the context of the use of digital platforms (particularly ecosystems and marketplaces where financial services are a side service) risks of ‘cross-mis-selling’ may arise resulting in potential customer detriment, including the risks that:
- a. the product purchased is unsuitable and does not meet the needs of the consumer;

- b. the choice is (unduly) limited to products and services provided on the platform only, thus consumers forgo the opportunity to buy more suitable products elsewhere;
 - c. the consumer pays more for the package than he/she would have paid if he/she purchased the products separately.
138. These situations might arise due to insufficient disclosures or more limited opportunity for the consumer to seek advice or ask questions to the financial services provider before concluding the contract.
139. Consistent with the observation above regarding challenges in monitoring compliance with disclosure requirements, competent authorities reported some challenges in monitoring activities of digital platforms for the conclusion with customers of contracts for banking and payment services, particularly where the party responsible for maintaining the customer interface falls outside their regulatory perimeter. For instance, in such cases authorities may be unable to require compliance with conduct of business requirements and record-keeping and be unable to assess records to verify whether the required disclosure has been provided to consumers at the pre-contractual stage.

Overcoming risks of insufficient and ineffective information disclosures

140. Financial institutions should comply with the requirements under the DMFSD even where a third party is engaged to provide platform services as an interface between the financial institution and the customer. The same applies in relation to requirements (including regarding pre-contractual information) set out in product/service-specific EU law.
141. This means that financial institutions should be proactive and vigilant in monitoring marketing communications, disclosures and cross-selling practices in relation to their products and services in order to ensure that all customer-facing communications are clear, fair and not misleading. Institutions should strive to achieve an effective balance between transparency requirements and the convenience of the user experience when using the digital platform. Where sufficient controls are absent, institutions face the risk of serious conduct failings and financial penalties.
142. In line with the ongoing review of the DMFSD, the EBA highlights the importance of exploring clarifications and potential extensions of scope based on evolutions in business models leveraging innovative technologies to reach customers, and the potential need for a modification of the relevant definitions, including the definition of 'distance contracts' and 'durable medium'. In carrying out this review, relevant product/service-specific legislation should also be taken into account.
143. The EBA also highlights the recommendations provided in its Opinion on disclosure to customers of banking services through digital means under Directive 2002/65/EC (EBA-

Op-2019-12) and stresses the need to ensure that consumers have access to high-quality information irrespective of the channel used to contract (including where a contract is being concluded via an intermediate platform). In particular, the EBA Opinion, which is addressed to the EC and the co-legislators, sets out a number of proposals as to how the disclosure rules should be revised, with particular focus on the DMFSD (see further Text box 8). The proposals consist of *general* proposals applicable to any information that is being made available to consumers, such as its timing, the presentation format and accessibility, as well as *specific* proposals applicable to particular stages of the information to be provided.

144. The EBA notes for completeness that all aggressive commercial practices, misleading information and anti-competitive product-tying practices correspond to mis-selling practices and are prohibited by the Unfair Commercial Practices Directive (UCPD)⁸³ and relevant national transpositions of the UCPD. It includes products offered on ‘online marketplaces’ which means a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers⁸⁴.

6.1.3 Complaint- handling

145. When buying financial services via digital platforms, customers may struggle to identify how (and with whom) to file a complaint or seek redress. This can be a particular issue where financial services (and potentially other services) from a range of parties are distributed using the same platform. Indeed, some competent authorities highlighted the challenges in delineating regulated financial services (offered by financial institutions) and non-regulated financial products and services and the relevant measures for complaint-handling and redress. They noted that these issues may be further exacerbated where digital platforms are used to provide financial services cross-border via the freedom to provide services or the right of establishment in turn, giving rise to issues as to which competent authority is responsible for supervising compliance with the relevant complaint-handling and redress procedures.
146. Additionally, considering that few digital platforms are regulated entities for financial services and, therefore, are not typically within the scope of the competent authority’s supervision, some compliance monitoring issues regarding conformity with complaint-handling and redress requirements also exist.

⁸³ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) amended by Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

⁸⁴ See Article 2 (n) of the UCPD.

147. In this regard it is worth highlighting that digital platforms can perform a range of different functions, with different resulting obligations in relation to complaint handling.

Overcoming weaknesses in complaint-handling

148. The EBA notes that the nature of the complaint-management functions and therefore the responsibilities for maintaining, updating and resolving complaints vary depending on the business model adopted. However, in view of the issues identified above, the EBA highlights the need for competent authorities to:

- a. promote awareness of complaint-handling requirements by reference to platform-based business models and thereby contribute to ensuring the allocation of responsibility among the different participants is clear for customers;
- b. encourage financial institutions and other relevant institutions to take effective steps to ensure appropriate arrangements are in place building on the EBA Opinion on disclosure to consumers of banking services through digital means under the DMFSD;
- c. continue to take part in coordinated actions at national and EU level, where possible and applicable, including in the context of Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.⁸⁵

149. Turning first to promoting awareness of applicable requirements, in 2014 ESMA and the EBA published complaint-handling guidelines for the investment and banking sectors⁸⁶ that are also identical to the EIOPA guidelines of the same name for the insurance sector.⁸⁷ In 2018, the Guidelines were extended in their scope of application to the authorities supervising the new financial institutions established under the PSD2 and the Mortgage Credit Directive (Directive 2014/17/EU),⁸⁸ both of which came into effect after the original Guidelines.⁸⁹

150. The objective of the Guidelines is to provide EU consumers with a single set of complaint-handling arrangements, irrespective of the type of product or service and of the geographical location of the firm in question. In order to ensure the adequate protection of consumers, these guidelines seek to: (a) clarify expectations relating to firms'

⁸⁵ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 OJ L 345, 27.12.2017, p. 1–26 : <https://eur-lex.europa.eu/eli/reg/2017/2394/oj>

⁸⁶ [Guidelines on complaints-handling for the securities and banking sectors](#), JC 2018 35 published on 4 October 2018.

⁸⁷ [EIOPA Guidelines on complaints-handling by insurance undertakings](#), EIOPA-BoS-12/069 published on 14 June 2012, and [EIOPA Guidelines on complaints-handling by insurance intermediaries](#), EIOPA-BoS-13/164 published on 27 November 2013.

⁸⁸ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32014L0017>

⁸⁹ [Final report on the application of the existing Joint Committee Guidelines on complaints-handling to authorities competent for supervising the new institutions under PSD2 and/or the MCD](#), JC 2018 35 published on 31 July 2018.

organisation relating to complaint-handling; (b) provide guidance on the provision of information to complainants; (c) provide guidance on procedures for responding to complaints; (d) harmonise the arrangements of firms for the handling of all complaints they receive; and (e) ensure that firms' arrangements for complaint-handling are subject to a minimum level of supervisory convergence across the EU.

151. These guidelines apply to authorities competent for supervising complaint-handling by firms in their jurisdiction and set requirements with which the entities have to comply. In particular, Guideline 6 on the provision of information and Guideline 7 which provides procedures for responding to complaints would also prove useful to entities providing products and services via digital platforms.
152. This includes circumstances where the competent authority supervises complaint-handling under EU and national law by firms doing business in their jurisdiction under the freedom to provide services or right of establishment. Consequently, the entity that is providing products and services through the digital platform would need to comply with the relevant requirements and providers of digital platforms might be required to comply with the existing Guidelines either because they are within the scope of action of the Guidelines on complaint-handling (i.e. if the digital platform is considered a mortgage credit intermediary) or because the entity providing financial products and services binds the digital platform via an outsourcing arrangement, the content of which is regulated. In this regard, when a financial institution decides to sell a financial product or service via a digital platform, it should evaluate if it may need to rely on the platform's procedure so that it is compliant with the complaint-handling requirements and/or if the platform complies with the specific obligations imposed, including the ones related to complaint-handling, and assure itself of satisfaction of conformity with the applicable requirements before leveraging the platform in its distribution model.
153. Turning to the EBA Opinion on the DMFSD, complimentary to existing requirements applicable in Member States under Directive 2013/11/EU for the setting up of alternative dispute resolution (ADR), credit institutions (and other relevant financial institutions) are encouraged to set up dedicated spaces within digital platforms enabling consumers to exercise with ease their right to complain, and to be informed of the alternative ADR procedures to which the provider complies.
154. This information should explicitly explain the steps to be followed, e.g. who the consumer should contact, and should provide direct links to ADR webpages, and inform of the relevant national competent authority and national courts where the consumer could take legal actions. In addition, where more than one provider is involved in the provision of the financial service, the provider(s) should clarify to which provider(s) a complaint should be addressed and in respect of which provision(s) in the contract. Such links should be accessible to the consumer and located on the digital platform provider's home page or main menu on a permanent basis.

155. For completeness, the EBA notes that, according to the provisions of the proposed Digital Services Act, all platforms, except the smallest,⁹⁰ will be required, inter alia, to set up complaint and redress mechanisms and out-of-court dispute settlement mechanisms. Therefore, in the context of the review of the DMFSD measures could also be considered to extend the current redress provisions to non-financial institution digital platforms to ensure that adequate and effective complaint-resolution procedures for the settlement of complaints are put in place and apply. Appropriate arrangements would also need to be put in place to ensure effective oversight and enforcement of any resulting obligations. Following careful review, measures may also be considered to ensure effective complaint resolution and sufficient and effective information.
156. Finally, in line with the ESA Joint Committee report on cross-border supervision of retail financial services⁹¹ and the EBA Report on potential impediments to the cross-border provision of banking and payment services,⁹² the EBA highlights that more clarity should be provided by the EU co-legislators on the application of consumer protection requirements, especially in the light of the growing phenomenon of the digitalisation of financial services and the growth of digital platforms (see further Section 5.1.2). As stated in the reports, greater harmonisation at Level 1, particularly related to disclosure requirements imposed in host jurisdictions and the allocation of responsibilities for the supervision of complaint-handling, would be required to mitigate challenges faced by firms when seeking to provide financial services cross-border whilst maintaining high standards of consumer protection.

6.2 Digital financial literacy and the risk of financial exclusion

157. Access to digital channels and digital infrastructure is a prerequisite for digital financial inclusion. However, risks exist if:
- a. increased access is not coupled with sufficient levels of digital and financial literacy at all stages of financial life;
 - b. population groups are excluded from financial services in the event of a shift to digital solutions without other options for some customers to obtain financial services.
158. Against a background of increased digitalisation of the financial sector, competent authorities highlighted these issues and noted the risk that consumers might not only be exposed to mis-selling practices, fraud risks and risks of over-indebtedness⁹³, but also to

⁹⁰ As proposed, those platforms qualifying as micro or small enterprises within the meaning of the Annex to Recommendation 2003/361/EC will not be required to comply with the obligations set out in Section 3 (additional provisions applicable to online platforms) of Chapter III of the proposal for the DSA (see further Text box 3).

⁹¹ JC Report on cross-border supervision of retail financial services, 9 July 2019 JC/2019-22.

⁹² EBA Report on potential impediments to the cross-border provision of banking and payment services, 29 October 2019.

⁹³ As set out in the EBA's Consumer Trends Report 2020/21, competent authorities have identified that there is a heightened risk of over-indebtedness as a result of the growing use of digital channels, including digital platforms, to

new risks such as misuse of personal financial data, digital profiling, cyber-crime, risks arising from overly complex digital assets and services etc. As such, they highlighted an even greater need to promote digital financial literacy, including on cybersecurity risks, and through greater cooperation and coordination between different national authorities involved in consumer protection, financial literacy and financial education initiatives.

159. The EBA notes that a higher level of digital and financial literacy would help consumers make effective use of digital financial services and make effective and responsible choices, identify and report suspicious products and service providers, increase their welfare, efficiently enforce their rights, and have confidence and trust in the digital financial system.
160. In this light, the EBA highlights the need for further actions at the national level to improve digital financial literacy, for example, by enhancing consumers' understanding of opportunities, challenges and potential risks linked to financial innovation, in particular regarding the use of 'seamless' online financial services, including via multi-purpose platforms, and cybersecurity issues. Raising awareness on the risks that consumers may face when choosing online or mobile banking services should be further encouraged on a regular basis.⁹⁴ Consideration should be also given to the existing OECD core competencies for adults⁹⁵ and for youth⁹⁶ which refers to the aspects of knowledge, behaviours and attitudes that form the basis of sound financial decisions and the ongoing work of the EC and the OECD International Network on Financial Education (OECD-INFE), which jointly develop a financial competence framework for the European Union. The project is developed in the framework of the EU Capital Markets Union (CMU) Action Plan, which mandates the EC to work towards the development of a dedicated EU financial competence framework for adults and youth reflecting on recent and emerging issues, including financial digitalisation and sustainable finance.
161. Finally, the EBA encourages a continuation of actions to foster dialogue on innovation-related issues, including from the perspective of measures to promote financial inclusion, for example through the sharing of information about innovative business models via the EBA's FinTech Knowledge Hub and the joint ESA EFIF.

provide and access credit. This could also be attributed, inter alia, to the fact that consumers' credit worthiness assessment may be conducted through automated processes that exacerbate behavioural biases and potentially lead to irresponsible lending decisions. The report is available here: <https://www.eba.europa.eu/eba-assesses-consumer-trends-20202021>. It is also noted that the EBA is carrying out an assessment of non-bank lending activity under section 4.2 of the Call for Advice on Digital Finance. This requires the EBA to consider, among other things, whether the activities are appropriately regulated.

⁹⁴ See [EBA factsheet for consumers](#) 'key tips to protect yourself when choosing online or mobile banking services', 2020.

⁹⁵ [G20/OECD INFE Core Competencies Framework on financial literacy for Adults \(aged 18+\)](#)

⁹⁶ [OECD/INFE Core Competencies Framework on financial literacy for Youth \(aged 15 to 18\)](#)

6.3 Challenges relating to access to and use of data

162. Competent authorities reported that financial institutions and third parties leveraging digital platforms are increasingly data-dependent and are leveraging artificial intelligence and machine learning applications to facilitate the marketing of products and services to customers and to carry out processes such as credit scoring.
163. Against this background, competent authorities observed challenges to effective consumer protection in platform ecosystems, including:
- a. inadequate or insufficient awareness among consumers of the value of their data;
 - b. ineffective mechanisms to support informed consent to the use of personal data taking into account GDPR requirements;⁹⁷
 - c. risks of unlawful data access and fraud;
 - d. a high degree of customisation of AI solutions which may not always allow for supervision via traditional standardised processes, and requires new skills and competence from supervisory authorities in order to effectively challenge and supervise the use of AI solutions;
 - e. automated decisions, based on complex algorithms, which may be difficult to understand and scrutinise by consumers as well as by supervisors, notably in relation to the potential risk of model bias and unlawful discrimination. For example, even if the use of new technologies in credit scoring tools may facilitate the access of consumers to loans, it may also lead to financial exclusion from access to financial services. If the algorithm was based on factors not directly related to creditworthiness, this could negatively affect conduct risk. In addition, if it is accepted that models using such algorithms tend to provide very accurate predictions, some issues may arise regarding the explainability and interpretability of technologies associated with the use of credit worthiness assessment solutions. The subjects of such decisions (consumers and businesses alike) may face situations in which they have no real possibility to assess the correctness or appropriateness of the relevant decision. Some competent authorities also noted that, in the context of digital platforms, they do not always have sufficient knowledge about the type of data collected, consent collection from end-users or whether digital platforms are monetising customer data.
164. Although not the relevant authorities for the purposes of the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679), competent authorities also

⁹⁷ Competent authorities within the meaning of the EBA's Founding Regulation are not typically authorities responsible for monitoring GDPR compliance in the Member States (typically Member States have appointed designated data protection authorities). However, close coordination between these authorities is observed.

referred to the practical issues authorities are facing in monitoring compliance with GDPR obligations where data is held and transmitted between various parties utilising a digital platform to market or distribute financial services.

Text box 11: The GDPR

The GDPR, which applies since May 2018, establishes rules relating to the processing and movement of personal data⁹⁸. In particular, personal data can only be processed in accordance with a number of principles, including the requirement for data to be processed:

- lawfully, fairly, transparently;
- for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes ('purpose limitation');
- in a manner that is adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation').

In order for processing to be lawful, the data subject⁹⁹ must have given consent to the processing for one or more of the specific permitted purposes or otherwise in accordance with Article 6 of the GDPR.

To ensure the consistent application of data protection rules throughout the EU, the European Data Protection Board has been established under the GDPR, comprising representatives of the national data protection authorities of the EU/EEA countries and of the European Data Protection Supervisor.

6.3.1 Overcoming data protection challenges

165. As the use of digital platforms and enablers within the EU's banking and payment sector continues to increase, the EBA draws attention to the need for greater cooperation and coordination between competent authorities and national data protection authorities in monitoring compliance with financial sector-specific (e.g. PSD2) and horizontal (e.g. GDPR) data-related requirements.

166. Indeed, the EBA highlights the obligations imposed by the EBA RTS strong customer authentication, EBA opinions on the RTS on strong customer authentication (SCA) and common and secure communication (CSC) and EBA Guidelines on fraud reporting under the PSD2, and the need for competent authorities to engage more closely with consumer and data protection authorities, for instance in relation to emerging business models and implications for consumers arising from pricing models and the flow of customer data from one entity to another across the platform.

⁹⁸ 'Personal data' is defined in Article 4(1) of the GDPR as any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

⁹⁹ 'Data subject' means an identified or identifiable natural person (see the previous footnote).

167. With regard to the provision of payment services and the protection of related data, the EBA has developed, in close cooperation with the European Central Bank, regulatory technical standard (RTS) specifying the requirements for strong customer authentication,¹⁰⁰ the requirements with which security measures have to comply to protect the confidentiality and the integrity of payment service users' personalised security credentials and data, and the requirements for common and secure open standards of communication. The RTS, together with additional clarifications provided in the related EBA opinions and Q&A provide the required framework to respond to some of the above-mentioned challenges regarding the risks linked to the access to customers' data in the provision of payment services.
168. Regarding the lack of knowledge about the pricing structure, type of data collected, consent collection from the end-users or whether digital platforms are monetising customer data, the huge amount of data processed by digital platforms (e.g. log files) requires competent authorities to acquire new skills and tools to ensure a good understanding of business models (including fee structure and data flow). In this regard, close engagement between competent authorities, data protection authorities and competition authorities is encouraged in order to facilitate awareness of business models and to coordinate actions as appropriate within the sphere of competence of the relevant authorities to ensure appropriate levels of consumer and data protection.
169. Finally, the EBA will continue to cooperate closely with the European Data Protection Board on innovation-related issues further to Article 9(3) of the EBA's Founding Regulation.

¹⁰⁰ Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication (text with EEA relevance) C/2017/7782 OJ L 69, 13.3.2018, p. 23–43.

7. Concluding remarks

170. The platformisation of the EU's financial sector has accelerated as a result of the response to the COVID-19 crisis and is anticipated to continue to gain pace in the years ahead. Platformisation presents a range of potential opportunities for both EU consumers and financial institutions, for instance in terms of improved accessibility of financial services and reduced cost, and offers significant transformative potential. However, as set out in this report, challenges and risks also arise stemming from new forms of financial, operational and reputational interdependencies.
171. In order to ensure that digital platforms and enablers can be leveraged to their full potential, whilst mitigating effectively the risks, the EBA identifies in this report a series of actions to improve supervisors' understanding of emerging business models and visibility over new forms of interconnection within the EU financial system.
172. Importantly, the EBA identifies current limitations in competent authorities' visibility over financial institutions' dependencies on digital platforms and enablers, and resulting interconnections and concentrations in the EU financial sector. The EBA strongly encourages competent authorities to take steps to help address this issue through regular dialogue and information-gathering in the context of line supervision and wider supervisory activities.
173. To support competent authorities in deepening their understanding of market developments, the EBA has identified the following steps which the EBA will take forward as a priority in 2022 to support competent authorities in:
- a. developing common questionnaires to regulated financial institutions on digital platform and enabler use. This approach will facilitate tailored and proportionate information-gathering against a fast-evolving market;
 - b. sharing information about financial institutions' reliance on digital platforms/enablers in order to facilitate coordinated EU-wide monitoring.
174. Building on information gained and experience acquired as a result of more comprehensive and robust monitoring, the EBA proposes to facilitate coordinated EU-wide monitoring by:
- a. developing a framework to facilitate the aggregation of information about financial institutions' dependencies on digital platforms and enablers in order to identify cumulative dependencies in the context of the marketing and distribution of financial products and services;

- b. establishing indicators that could help in assessing potential concentration, contagion and potentially future systemic risks and which could be taken into account in the context of supervision.

175. In addition, the EBA proposes to continue its efforts to foster the sharing of supervisory knowledge and experience not only on a sectoral, but also multi-disciplinary basis, in view of the need to foster effective dialogue between authorities responsible for financial sector supervision, consumer protection, data protection and competition, including via actions under the coordination of the EBA's FinTech Knowledge Hub. The joint ESA EFIF can also be leveraged in this context.

176. These proposals will be further considered in the context of the EBA (and wider ESA) work in relation to the joint ESA response to the EC's Call for Advice on digital finance.

177. The EBA will also keep under review the need for additional actions in the following areas:

Topic	Area(s) of EBA focus
Regulatory perimeter	<p>Continuous review of the regulatory perimeter, including the activities of comparison websites and their regulatory treatment at national level.</p>
ICT and security risk management	<p>Pending the conclusion of the co-legislative process and coming into effect of DORA, the EBA will keep under review the need for further actions to support competent authorities and financial institutions in overcoming the challenges stemming from:</p> <ul style="list-style-type: none"> <li data-bbox="911 1503 1394 1615">• the digital sphere and the threat landscape continuously changing/evolving; <li data-bbox="911 1659 1394 1895">• divergences in expectations regarding ICT and security risk management intra and also cross-sector where digital platforms are used by different types of financial entities; <li data-bbox="911 1939 1394 2009">• the monitoring of risks associated with digital platforms involving

outsourcing arrangements and incomplete visibility of the ICT and security risks in such contexts.

Access to and use of data

The EBA will continue to cooperate closely with the European Data Protection Board on innovation-related issues, including in relation to digital platform use in the banking and payment sector and issues relating to access and use of consumer data.

178. Additionally, the EBA highlights its previous recommendations for the EC to update its interpretative communications relating to when a digital activity should be considered as a cross-border provision of services. Clarity on this important matter is a necessary foundation for a more consistent application of the notification requirements, which is the foundation for better visibility over the provision of services cross-border, and the effective application and supervision of applicable regulatory requirements, notably as regards consumer protection.
179. Finally, the EBA reminds financial institutions of their obligations to ensure effective governance and operational risk management when leveraging digital platforms and enablers. Financial institutions are also reminded of the need to ensure high standards of consumer protection, including via:
- a. disclosures that allow consumers to make informed decisions about products and services, notwithstanding any reliance on third parties for the distribution of marketing materials, including regarding DGS coverage; and
 - b. effective complaint-handling arrangements, building on the EBA Opinion on disclosure to consumer of banking services through digital means under the DMFSD.
180. Further observations and a set of recommendations relating to the digital transformation of the EU financial sector will be set out in the joint ESA response to the EC's Call for Advice on digital finance.



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