

Terms of Reference

Digital Finance Standing Committee [DFSC]

1. ESMA's mission is to enhance investor protection, promote orderly financial markets and safeguard financial stability, by (i) assessing risks to investors, markets and financial stability, (ii) completing a single rulebook for EU financial markets, (iii) promoting supervisory convergence and (iv) supervising specific financial entities.
2. In order to fulfil its mission the ESMA Strategy 2023-2028¹ sets out three strategic priorities: (i) fostering effective markets and financial stability, (ii) strengthening supervision of EU financial markets, and (iii) enhancing protection of retail investors and two thematic drivers: (i) enhancing sustainable finance, and (ii) facilitating technological innovation and effective use of data.
3. ESMA shall act within the powers conferred by its establishing Regulation (ESMA Regulation or ESMAR²) and among others within the scope of Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology (DLTR/ DLT Pilot Regime), Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (DORA), the upcoming Regulation on markets in crypto-assets (MiCA) and any other legally binding Union act which confers tasks to ESMA on issues relating to digital finance and technological innovation.
4. In order to fulfil ESMA's mission and in line with the Procedures for ESMA groups (ESMA/2011/BS/236rev2), the Board of Supervisors has established the Digital Finance Standing Committee, thereafter DFSC, pursuant to Article 41 of ESMAR as a permanent internal committee. These Terms of Reference specify its tasks, responsibilities, functioning and governance.

Tasks and responsibilities

5. The DFSC contributes to ESMA's mission by (i) undertaking the relevant work; (ii) fostering cooperation, coordination, and convergent approach between EU National Competent Authorities and, more generally, (iii) addressing issues related to digital finance and technological innovation (such as issues relating to MiCA, DORA, DLT Pilot Regime, Artificial Intelligence and cybersecurity). In particular, the DFSC contributes to the strategic priorities and thematic drivers of the ESMA Strategy in the following ways:
 - Fostering Effective Markets and Financial Stability, including by:

¹ https://www.esma.europa.eu/sites/default/files/library/esma_strategy_2023-2028.pdf

² ESMA Regulation No 1095/2010 of the European Parliament and of the Council

- drafting or coordinating the drafting of technical advice, technical standards and guidelines as mandated under the Regulations within the remit of DFSC³;
 - developing reports to the European Commission as foreseen under the legislative acts within the remit of DFSC, including the reports assessing the latest market developments in relation to digital finance and technological innovation and identifying areas which are not addressed by existing Regulations;
 - preparing any other additional input to the European Commission or other EU entities in relation to issues within the scope of responsibilities of DFSC;
 - providing, as requested, information upon the implementation of the legislative acts within the remit of DFSC;
 - contributing to the strengthening of the digital operational resilience of financial entities by accompanying the timely and adequate implementation of DORA.
- Strengthening Supervision of EU Financial Markets, including by:
 - facilitating co-ordinated action and contributing to the consistent application of the Regulations under the remit of DFSC by sharing experiences gathered in the course of the supervisory or enforcing activity, discussing specific cases, as well as submitting to the Board of Supervisors relevant material to promote supervisory convergence in these areas;
 - promoting the building of a common culture on the supervision of crypto-asset service providers and DLT market infrastructures, through the enhancement of supervisory convergence and the exchange of supervisory practices;
 - facilitating co-ordinated and consistent enforcement actions⁴;
 - promoting and facilitating the operational cooperation and bilateral or multilateral exchange of information between national competent authorities as well as with other supervisory authorities where relevant for surveillance, investigation and enforcement purposes in relation to supervisory issues within the scope of responsibilities of the DFSC (including MiCA, DORA, DLT Pilot Regime, Artificial Intelligence and cybersecurity);
 - promoting activities for developing and improving cooperation with third-country jurisdictions in matters related to market integrity investigations;

³ For DORA, the drafting and coordination of Level 2 work is under the responsibility of the JC SC DOR, however, the DFSC will be informed of this work and will provide input when needed, see details in the cooperation section of this document.

⁴ For DORA, cooperation and coordination regarding, supervision, enforcement and exchange of information will primarily be discussed within the forums foreseen under DORA (e.g. the Oversight Forum and the Joint Oversight Network).

- contributing to more convergent practices amongst EU supervisors through the publication of opinions as foreseen under MiCA and the DLT Pilot Regime;
- developing own initiative guidelines, recommendations, opinions, Q&As or other practical instruments and convergent tools as foreseen under ESMAR to promote common supervisory approaches and practices in relation to digital finance and technological innovation.
- Enhancing protection of retail investors, including by:
 - ensuring, through the development of the EU regulatory framework and its consistent application across the Union, that investors, in particular retail investors, are treated fairly and offered an adequate level of protection when using new services, protocols and products relying on technological innovation;
 - ensuring that new financial entities providing service in relation to crypto-assets or DLT to EU retail investors are adequately regulated as prescribed under MiCA and the DLT Pilot Regime;
 - implementing and activating, as necessary, the temporary product intervention powers foreseen under MiCA.
- Enabling Sustainable Finance, including by:
 - ensuring that sustainability factors are adequately taken into consideration when developing requirements and standards or promoting common supervisory approaches and practices in relation to digital finance and innovation;
 - in the context of MiCA, specifying the content, methodologies, and presentation of information in respect of sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts to be published by issuers of asset-reference tokens, e-money tokens and crypto-asset service providers.
- Facilitating Technological Innovation including by
 - ensuring that developed obligations and promoted supervisory practices remained adequate and do not hinder the sound development of innovative technology and businesses in the EU;
 - taking appropriate measures to coordinate actions undertaken by relevant national competent authorities with a view to facilitating the entry into the market of sound actors or products relying on technological innovation.

- Facilitating Effective Use of Data, including by developing registers, as envisaged in DORA, MiCA and the DLT Pilot Regime, facilitating access to key and relevant information for NCAs and market participants.

The DFSC also serves to fulfil any other tasks requested by the ESMA Board of Supervisors in relation to digital finance and technological innovation.

Cooperation and coordination

6. The work of the DFSC is not expected to duplicate or overlap with the functions of the other ESMA's Standing Committees or the Joint Committee Sub-Committee on Digital Operational Resilience (JC SC DOR) that will remain responsible for addressing matters in the respective areas of EU legislation that fall within their respective remits. For this purpose, the DFSC should ensure close coordination arrangements with other ESMA Standing Committees, in particular with the Market, Investor Protection and Data Standing Committees, notably on topics that relate to or are complementary to those of other groups in order to achieve an aligned outcome for ESMA.
7. In particular, as the DFSC will serve as the unique discussion and decision Standing Committee within ESMA for all issues related to MiCA, DORA and the DLT Pilot Regime, it is important to coordinate and provide ad hoc updates to other ESMA Standing Committees on these issues. Conversely, the DFSC will seek for feedback and technical input from other ESMA sectoral Standing Committees if needed.
8. The DFSC should ensure appropriate coordination and cooperation arrangements with the EBA⁵ and EIOPA notably on the topics relating to MiCA and DORA in order to achieve an outcome for the SC that is sufficiently aligned with that of the other ESAs. It should be noted though that for DORA, coordination will primarily be organised through the JC SC DOR and other joint structures to be set in place in the future as foreseen in the DORA framework. Moreover, in carrying out its tasks of facilitating technological innovation, the DFSC should ensure coordination with the European Forum for Innovation Facilitators established by the Joint Committee.
9. In order to facilitate more effective coordination, EBA and EIOPA will be invited to participate to the DFSC as observers which will give them access to all documents circulated to DFSC members and to all discussions held (in relation to non-confidential sessions only).
10. The DFSC should also discuss technical positions in the scope of the SC to ensure a coordinated EU approach when ESMA and NCAs participate in international fora.

⁵ For MiCA, EBA Standing Committees include Standing Committee on Consumer Protection and Financial Innovation (SCConFin); Standing Committee on Oversight and Supervision (SCOS); Standing Committee on Regulatory Policy (SCRePol); Standing Committee on Reporting and Data (SCReDat); Standing Committee on Supervision, Risks and Innovation Standing Committee (SUPRISC).

Powers

11. In line with ESMA's temporary intervention powers under Article 103 and 106 of MiCA, the DFSC will put in place means to identify potential investor protection concerns, threats to the orderly functioning and integrity of markets in crypto-assets or to the stability of the financial system and, where appropriate, assess them in accordance with the agreed methodology and procedures or refer them to another committee for such assessment.

Composition

12. The DFSC shall be composed of one person per Board of Supervisors member as principal member and one person as an alternate, each representing that Board member. In addition, a maximum of three persons or a functional email address can be added to the e-mail distribution list. Participant to a SC meeting from the same NCA shall coordinate their positions in advance of the meeting.
13. Where responsibilities are split at national level between more than one competent authority or where the responsibility for one of the topics in the remit of the DFSC is with a different competent authority than the Board member's authority, representatives of competent authorities that are not part of the DFSC may attend as observers, at the invitation of the Board Member's authority, only for agenda items concerning their responsibilities.
14. Members of DFSC shall also coordinate their positions with those held by persons from the same NCA, who serve as members / alternates of sub-groups to the DFSC as well as with persons from the same NCA, who serve as members / alternates of other relevant sectoral Standing Committees.
15. Furthermore, representatives of the European Commission, EBA and EIOPA shall be appointed as observers to the DFSC.
16. Members of the DFSC shall have an adequate level of knowledge and skill and the mandate to be able to take a position on the matters discussed.
17. A member of the SC may, when a topic for discussion in the SC so requires, be accompanied by an expert from its Competent Authority for that part of the SC meeting. The SC member shall announce this intent to the Rapporteur in advance of the meeting.

Structure and governance

18. The responsibilities of the Chair, rapporteur and members of the DFSC are as set out in the Procedures for ESMA groups (ESMA/2011/BS/236rev2), which also set out the rules concerning ESMA Group's structure, governance and working methods.
19. The DFSC may set up permanent working groups or temporary task forces or project team/drafting teams reporting to the DFSC if required by the work and in line with the Procedures for ESMA groups.
20. The DFSC has established the following permanent working group, with its own terms of reference:

- DLT Working Group, established to address in particular issues relating to the DLT Pilot Regime and in line with the Terms of Reference (ESMA70-154-4775).
21. The DFSC will meet on a regular basis as required in order to deliver its tasks under ESMA's (multi-)annual work programme. Meetings of substructures will be organised as necessary to enable the DFSC to fulfil its tasks.

Working methods

22. The working methods will follow the Procedures for ESMA groups as described in paragraphs 31 and following.
23. In addition, the members of the DFSC shall consider the Procedure on the adoption of ESMA opinions on specific permissions to operate DLT Market Infrastructures (ESMA70-460-31).

Confidentiality

24. All members of DFSC are under the obligation to respect confidentiality as per paragraph 30 of the Procedures for ESMA Groups.

Review

25. The Terms of Reference will be reviewed at least every two years by the Board of Supervisors.