

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. Furthermore, ESMA is committed to support the European Commission² in its efforts in building the Savings and Investment Union which includes increasing the effectiveness of the financial markets, as well as in delivering on the goals of simplification and burden reduction while maintaining an effective supervision, a high level of financial stability and strong investor protection.
4. ESMA acts within the powers conferred by its establishing Regulation (ESMA Regulation or ESMAR³) 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), 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.
5. In order to fulfil ESMA's mission and in line with the Procedures for ESMA groups (ESMA22-104-5119), 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

6. 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, tokenisation of financial instruments, Artificial Intelligence⁴, and cybersecurity).

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

² See mission letter to Commissioner Albuquerque [link](#) and Council Budapest declaration [link](#)

³ ESMA Regulation No 1095/2010 of the European Parliament and of the Council

⁴ Including the Regulation (EU) 2024/1689 on artificial intelligence (the AI Act)

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:
 - drafting or coordinating the drafting of technical advice, technical standards and guidelines as mandated under the Regulations within the remit of DFSC⁵;
 - 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 and implementation 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 and the implementation of common supervisory principles and approaches on the ground.
 - facilitating a co-ordinated understanding of the AI Act implications for areas under ESMA's remit and assessment of the interplay of the AI Act with regulations under ESMA's remit; identification of AI use cases; facilitating the sharing of knowledge and experience on the governance, organisational and operational arrangements adopted by NCAs and promoting co-ordinated action in light of the increasing use of AI by supervised firms;

⁵ For DORA, the drafting and coordination of Level 2 work is under the responsibility of the JC SC DOR or any group potentially replacing JC SC DOR in the future, however, the DFSC will be informed of this work and will provide input when needed, see details in the cooperation section of this document.

- facilitating co-ordinated and consistent enforcement actions⁶;
 - 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 and tokenisation of financial instruments, Artificial Intelligence⁷ and cybersecurity);
 - promoting activities for developing and improving cooperation with third-country jurisdictions in matters related to market integrity investigations;
 - 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

⁶ 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).

⁷ Including the AI Act

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.
- In addition, the DFSC will
 - contribute to the objective of simplification and burden reduction when developing its regulatory and supervisory output and be accountable to the Board of Supervisors on the manner those issues have been addressed in the final outputs.
 - identify and recommend areas for burden reduction and simplification within its scope of work.

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

7. The work of the DFSC is expected to interact with the functions of the other ESMA's Standing Committees, including the Market, Investor Protection and Data Standing Committees, and the Joint Committee Sub-Committee on Digital Operational Resilience (JC SC DOR)⁸. The DFSC will 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 (in areas such as operational resilience, crypto assets, DLT, AI and other innovative technologies).
8. In particular, as the DFSC will serve as the unique discussion and decision Standing Committee within ESMA for all issues related to MiCA, DORA, AI Act and the DLT Pilot Regime, it is important to coordinate and provide ad hoc updates to other ESMA

⁸ or any group potentially replacing JC SC DOR in the future

Standing Committees on these issues. Conversely, the DFSC will seek for feedback and technical input from other ESMA sectoral Standing Committees if needed.

9. The DFSC should ensure appropriate coordination and cooperation arrangements with the EBA⁹ and EIOPA notably on the topics relating to MiCA, AI Act 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 DSFC should ensure coordination with the European Forum for Innovation Facilitators established by the Joint Committee.
10. 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).
11. 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.

Powers

12. 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

13. 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. In special circumstances, a representative of an authority other than the ones represented on the Board of Supervisors can be invited to participate as an observer on an ad-hoc or permanent basis, particularly when designated as NCA under MiCA. This decision is taken in agreement with the Member or Members of the DFSC from the same Member State. Participants to an SC meeting from the same Member State are expected to coordinate their positions in advance of the meeting.
14. 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

⁹ 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).

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.

15. 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.
16. Furthermore, representatives of the European Commission, EBA and EIOPA shall be appointed as observers to the DFSC. The observers are normally not allowed to be present during discussion of confidential topics such as discussion of supervisory cases relating to individual financial market participants, unless the participation of observers is justified by a "need to know" basis (e.g. in the context of cooperation between ESMA and the EBA on the supervision of MiCA).
17. 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.
18. 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

19. The responsibilities of the Chair, rapporteur and members of the DFSC are as set out in the 2023 Procedures for ESMA groups (ESMA22-104-5119), which also set out the rules concerning ESMA Group's structure, governance and working methods.
20. 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.
21. The DFSC has established the following temporary task force:
 - MiCA Delegated Project Task Force, established to set up and implement the collection, processing, and monitoring of crypto-asset data to support MiCA market integrity and risk monitoring requirements (ESMA12-766636679-335).
22. 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 (ESMA75-223375936-6145).
23. 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

24. The working methods will follow the Procedures for ESMA groups as described in paragraphs 31 and following.
25. 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) and the Procedure on the adoption of ESMA opinions on classification of crypto-assets under Article 97(3) and 20(5) of MiCA (ESMA75-453128700-1315).
26. Documents prepared by a subgroup reporting to DFSC concerning issues which are of strategic and/or cross-cutting in nature and/or which have been controversial at the level of the subgroup, will be discussed at and agreed upon by the DFSC (A-items). Documents from these subgroups concerning issues which are neither strategic nor cross-cutting in nature and which were supported by a large majority of WG members will be submitted to the DFSC for endorsement without discussion (B-items) and will hence not be subject to discussion unless requested by a significant minority of DFSC members or ESMA staff. Items on the DFSC agenda not coming from or discussed in the subgroups reporting to the DFSC should generally be classified as A-items.

Confidentiality

27. All members and observers of the DFSC are under the obligation to respect confidentiality requirements equivalent to those applicable to ESMA staff and to Board of Supervisors' Members under Article 70 of the ESMA Regulation. It is the responsibility of Board of Supervisors' members to ensure that their representatives in the DFSC are subject to equivalent professional secrecy rules, in line with Article 70(2a) on the ESMA Regulation.

Review

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