

TERMS OF REFERENCE

Financial Innovation Standing Committee

1. ESMA achieves its mission to enhance investor protection and promote stable and orderly financial markets through four activities: (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. The ESMA Regulation¹ states that ESMA shall act within the powers conferred by this Regulation.
3. In order to fulfil its mission, the Board of Supervisors has established the Financial Innovation Standing Committee (FISC). The Terms of Reference cover the responsibilities and tasks of this group and the Procedures for ESMA groups (ESMA/2011/BS/236rev2) set out the rules concerning its structure, governance and working methods.
4. In line with the ESMA 2020-200 Strategic Orientation (ESMA22-106-1942), the Financial Innovation Standing Committee will consider in all its activities how to (i) contribute to a larger retail investor base to develop the Capital Markets Union, (ii) promote sustainable finance and long-term oriented capital markets, (iii) develop digital finance as an opportunity for market participants and regulators, (iv) achieve a proportionate approach.

Responsibilities

5. The FISC contributes to ESMA's mission by addressing issues related to:
6. Assessing risks to investors, markets and financial stability
 - FISC contributes to ESMA risk assessment activities in the following areas:
 - a. **Financial innovation and technological developments:** FISC contributes to ESMA risk assessments through the identification, the monitoring and the assessment of benefits and risks of financial and technological innovation.
 - b. **Consumer protection:** FISC contributes to the identification and monitoring of issues, risks and data needs related to consumer protection, including cost and performance of retail investment products

¹ Regulation (EU) 2019/2175 of the European Parliament and the Council amending Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)



- c. **Sustainability:** FISC contributes to the identification and monitoring of issues, risks and data needs related to ESG developments. In performing these tasks, it pays special attention to cross-sectoral and cross-border risks.
- FISC provides its members with a platform to discuss and carry out new research and analysis to support and enhance the functions of ESMA. It also helps to disseminate these and other relevant studies among the Committee’s members and market participants.

7. Promoting supervisory convergence

- FISC contributes to ESMA supervisory convergence activities in the following areas:
 - a. **Work programme and prioritisation:** FISC contributes to ESMA’s work programme and prioritisation of activities by participating in the development of a harmonized framework for the assessment of financial and technological innovation, retail investor trends and risks, including from ESG developments. In doing so, FISC members inform each other of relevant market or policy developments with domestic or potential cross-border implications in their jurisdictions.
 - b. **Coordination of convergence work:** FISC coordinates at ESMA and national level financial and technological innovation issues. In its co-ordination role, FISC takes account of relevant work at ESMA level, but also at national level, facilitating efficient co-ordination and avoiding any duplication. In the areas that fall within the mandate of the other ESMA SCs, FISC can recommend that those SCs work, if appropriate, on policy measures in their areas of expertise, ensuring appropriate co-ordination between the SCs and with FISC in the area of financial and technological innovation. FISC may also make proposals on the co-ordination of responses to any issues identified in the area of financial innovation being considered, or to be adopted at national level.
- FISC provides its members with a platform to exchange information, experiences and regulatory initiatives at national level in the area of financial and technological innovation.
- FISC supervisory convergence co-ordination activities can range from FISC proposing and implementing,
 - a. an exchange of views on national authorities’ practices in the area of financial and technological innovation, which are not covered by the remit of other SCs,
 - b. a review and assessment of regulatory/supervisory practice with regard to (or treatment of) new or innovative financial activities across the EU (in order to take account of any action taken at national level),
 - c. a number of different legal instruments in the area of financial and technological innovation (e.g., guidelines, opinions, warnings, etc.).

8. Completing a single rulebook for EU financial markets

- FISC contributes to ESMA single rulebook activities in the following areas:

- a. **Technical advice:** FISC provides technical advice in in the area of financial and technological innovation on the basis of any work undertaken such as monitoring, gathering empirical evidence on trends, assessing that data, consulting with the relevant ESMA SCs as needed.
- b. **Analysis:** The extent and shape of any assessment done is underpinned by sufficient analysis (including on costs and benefits) to determine whether some action is required to contain, reduce, restrict, or eliminate a given problem. The extent and shape of any assessment will depend on what the problem is in each case. Such analysis can encompass both an assessment of the scope, nature and impact of potential risks and an analysis of possible regulatory responses.

Product intervention power

9. In line with ESMA's product monitoring obligation under Article 39 MiFIR and its product intervention powers under Article 40 and 43 MiFIR, the Standing Committee will put in place means to identify potential investor protection concerns, threats to the orderly functioning and integrity of financial/commodity markets and to the stability of the financial system and, where appropriate, assess them in accordance with agreed methodology and procedures or refer them to another committee for such assessment.
10. The FISC shall liaise and coordinate with other relevant groups reporting to the Board of Supervisors where its activities relate or are complementary to those of other groups.

Structure and governance

11. The responsibilities of the Chair, rapporteur and members of FISC are as set out in the Procedures for ESMA groups.
12. Permanent or temporary groups reporting to the Standing Committee may be set-up when required in line with the Procedures for ESMA groups.
13. The FISC has established a Consultative Working Group. The Standing Committee can – where appropriate – and in liaison with the rapporteur of the relevant Standing Committee consult other Consultative Working Groups.
14. FISC will meet on a regular basis as required in order to deliver ESMA's annual work programme. Meetings of substructures will be organised as necessary to enable the Standing Committee to fulfil its tasks.
15. Given the horizontal nature of its tasks, FISC cooperates closely with the Supervisory Convergence Standing Committee, other Standing Committees with relevant responsibilities and activities, and supports coordination among the European Supervisory Authorities through the Joint Committee where relevant.

Review

16. The Terms of Reference will be reviewed every two years by the Board of Supervisors.