

Decision of the Securities and Markets Stakeholder Group

Rules of Procedure

The Securities and Markets Stakeholder Group

Having regard to 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)¹ (the 'Regulation' and 'Authority'), and in particular Article 37 of the Regulation

Whereas:

- (1) Article 37(1) of the Regulation provides that the Securities and Markets Stakeholder Group's (the 'Group') role is, to 'help facilitate consultation with stakeholders in the areas relevant to the tasks of the Authority'. In particular, Article 37(1) provides that the Group 'shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial institutions, Article 16 concerning guidelines and recommendations. Such facilitation of consultation implies the Group being asked to give its advice in advance of the issue of any such consultation by the Authority.
- (2) Article 37(5) of the Regulation provides that the Group 'may submit advice to the Authority on any issue related to the tasks of the Authority, with particular focus on the tasks set out in Articles 10 to 16, and 29, 30 and 32', where the latter refer to common supervisory culture, peer reviews of competent authorities and assessment of market developments.
- (3) Article 16b of the Regulation provides that three voting members of the Board of Supervisors may request the Board of Supervisors to request advice from the Group.
- (4) Article 17(2) of the Regulation provides that the Group may submit a request to the Authority, as appropriate, to investigate the alleged breach or non-application of Union law (BUL).

¹ OJ L 331, 15.12.2010, p.84.

- (5) Group members may be on occasion privy to documents and information which are not yet public and are therefore confidential in nature. The Members firmly undertake not to disclose this information to any individuals outside the Group.

Has adopted the following rules of procedure:

Article 1 – Membership appointment and mandates

- (1) The appointment of the Group members is made by the Board of Supervisors in accordance with Article 37(3) of the Regulation, which states that in making its decision, “the Board of Supervisors shall, to the extent possible, ensure an appropriate reflection of diversity of the securities and markets sector, geographical and gender balance and representation of stakeholders across the Union.”
- (2) Group members serve in a personal capacity in accordance with their appointment under Article 37 of the Regulation.
- (3) According to Article 37(4) of the Regulation, Group members shall serve for a period of four years, following which a new selection shall take place.
- (4) As per Article 37(4) of the Regulation, Members may serve two successive terms.
- (5) As per Article 58(2) of the Regulation, Group members may not, as long as they remain members, sit on ESMA’s Board of Appeal.
- (6) Should a member position become vacant before the end of their term, he/she has the duty to inform the Authority and Chair and Vice-Chair(s) of the Group without delay. As the vacancy arises, a new member shall be appointed by the Board of Supervisors, to the extent possible, ensuring the balanced representation of stakeholders as per article 37(3) of the Regulation. The replacement member shall serve until the end of the ongoing SMSG term.

Article 2 – Chairperson and Vice-Chairperson(s)

- (1) The Group shall be chaired in a personal capacity, by one of the Group members selected as Chairperson. The Group shall select a Chairperson and up to two Vice-Chairpersons during its first meeting or at the beginning of the second meeting.
- (2) The first meeting of the newly appointed Group shall be chaired by the ESMA Chairperson until the moment the Chairperson of the Group has been selected.
- (3) The Chairperson and Vice-Chairperson(s) shall act as the Steering Committee of the Group (‘Steering Committee’). The SMSG shall consider the composition and balance of the group when electing the Steering Committee.
- (4) The Steering Committee shall be convened on request of the Chairperson or one of the vice-chairpersons, to discuss the functioning and organisation of the Group, and to prepare the agenda of the SMSG meetings in accordance with Article 4(1).
- (5) The election of the Chairperson shall be preceded by and based on a nomination procedure. Any member of the Group may nominate any other member, including him- or herself or any other member of the Group. The Chairperson shall be elected in a secret ballot by a simple majority of the Group members present at the time of the election and casting a vote. If no

simple majority is achieved in the first round, a second round of voting shall be held between the two candidates who received the highest number of votes in the first round. Group members may only vote for one candidate. Abstentions shall not be counted as votes cast. The Chairperson shall, as per Article 37(3a) of the Regulation, serve as such for a period of two years and may apply as a candidate for the position of Chairperson and/or Vice-Chairperson for one more period of two years.

- (6) The election of the Vice-Chairpersons shall follow the same procedure as that for the Chair outlined in paragraph 5. Each Group member can cast a vote for up to two candidates.
- (7) The Vice-Chairperson (or one of the Vice-Chairpersons) shall replace and represent the Chairperson in case of absence or impediment. If the Chairperson and the Vice-Chairperson (or both Vice-Chairpersons) are absent the meeting shall be chaired by a member of the Group nominated by the Chairperson and Vice-Chairperson(s). The nomination shall be communicated to the Group seven days in advance of the meeting where possible.
- (8) The Chairperson or a Vice-Chairperson may be removed from office on a decision adopted in a secret ballot by two-thirds of the members of the Group.
- (9) If the position of Chairperson is vacant, whether due to removal from office or otherwise, an election shall be held as soon as possible to appoint a new Chairperson in line with the procedure outlined in Article 2(4). In the meantime, the meetings shall be chaired by one of the Vice-Chairpersons. If the position of a Vice Chairperson is vacant, an election according to the rules in article 2(4) shall be organised as soon as possible in order to maintain the balance in the Steering Committee.
- (10) The Chairperson shall:
 - (a) chair the meetings of the Group and endeavour to achieve an active and balanced participation by all the various stakeholder categories in the discussions;
 - (b) with the Steering Committee, co-ordinate the agenda for the meetings of the Group with the Authority and the members of the Group;
 - (c) provide the agreed output of the Group to the Authority's Board of Supervisors; and
 - (d) make public statements on behalf of the Group on the basis of formally agreed positions.
- (11) The Chairperson may, as per Article 37(3a) of the Regulation, be asked to make a statement before the European Parliament and answer any questions from its members whenever so requested.

Article 3 – Convening and location of meetings

- (1) Meetings of the Group shall be convened by the Chairperson. The Group shall meet at least four times a year in accordance with Article 37(1) of the Regulation in the form and according to the timetable determined in agreement with the Authority. The Group shall meet with the Board of Supervisors regularly, at least twice a year, in accordance with Article 40(2) of the Regulation; these meetings shall be preceded by a Group-only meeting. Additional meetings of the Group may be convened depending on the calendar of ESMA's regulatory output and related consultation procedures.

- (2) The Group meetings shall be either in-person, held at the Authority's premises, or by video call; at least 50% of the meetings shall be in-person. Whenever there is an objective need and upon request of the Group and in agreement with the Authority, one meeting per year may exceptionally be held in another location that is convenient to all members of the Group. Whereas the meeting shall be in-person, a Group member can exceptionally request to attend the meeting by video call with the agreement of the Chairperson.
- (3) In order for the Group to convene and make decisions, there shall be a quorum of two-thirds of its members. If the quorum is not met, decisions may be taken without quorum on a preliminary basis subject to subsequent approval by written procedure.

Article 4 – Agenda

- (1) The Chairperson of the Group, after consulting the Steering Committee, shall draw up the agenda following a consultation with the members of the Group and the Authority. The Chairperson will announce at the beginning of the meeting the items that were suggested by the members of the Group but were not scheduled for discussion.
- (2) New items may only be added to the agenda in the light of new developments at the start of a meeting if there is consensus from members present.
- (3) At least once every year, the Group shall discuss the Authority's work plan in order to select those topics of the work plan that are of specific interest to the Group. Dates for Group meetings, as well as some more strategic key topics, for the next calendar year shall be agreed upon in the fourth quarter of the preceding year.

Article 5 – Secretariat support and Group documents

- (1) The Authority shall, as per Article 37(4) of the Regulation, ensure adequate secretariat support for the activities of the Group, its Chairperson and Vice-Chairperson(s).
- (2) As a general rule, the agenda and the supporting documents shall be circulated to the Group by its secretariat 10 days_in advance of each meeting. In urgent or exceptional cases, the Authority shall send drafts on which the Group is consulted and all other working documents to the Group members at the earliest opportunity.
- (3) The Authority shall organise meeting facilities, circulate meeting agendas, background materials and minutes, provide technical coordination for the preparation of advice or any other input the Group may wish to provide to the Authority and arrange the reimbursement of expenses, in line with the Authority's relevant policies on reimbursement of expenses.
- (4) Circulation of documents shall in principle be via ESMA's document distribution tool.

Article 6 – Role of the Group

- (1) The role of the Group is to help facilitate the Authority's consultation with stakeholders in areas relevant to the tasks of the Authority. In carrying out its role, the Group:
 - (a) expects to receive from the Authority, and discuss with it, information on issues relevant to the Group's role sufficiently early as to enable the Group to carry out its role most effectively;

- (b) expects to receive from the Authority an overview of the planned consultations on proposed technical standards and guidelines to enable the Group to plan ahead its activities;
 - (c) expects to receive from the Authority information about discussions held with its consultative working groups;
 - (d) shall be consulted by the Authority, as per Article 37(1) of the Regulation, on actions taken in accordance with Articles 10 to 15 of the Regulation concerning regulatory technical standards and implementing technical standards;
 - (e) shall be consulted by the Authority on actions taken in accordance with Article 16 of the Regulation concerning guidelines and recommendations to the extent that these do not concern individual financial market participants; and
 - (f) may be asked, as per Article 16b (4) of the Regulation, to provide advice on questions and answers developed by the Authority. A duty of confidentiality shall apply to such advice.
- (2) The Group may also:
- (a) submit advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 (regulatory technical standards, implementing technical standards, and guidelines and recommendations), 16 (questions and answers), 29 (common supervisory culture), 30 (peer reviews of competent authorities) and 32 (assessment of market developments) of the Regulation; and,
 - (b) request the Authority to investigate an alleged breach or non-application of Union law within the scope of Article 17 of the Regulation, as per its Article 17(2).
- (3) As stated in ESMA Regulation article 17.2, the Group is one of the five privileged complainants on a possible breach of – or non-compliance with - EU Law (BUL) by an NCA.
- (4) It is not within the MSG's remit or responsibility to receive and/or process BUL complaints from other parties, and a fortiori to deal with those. If the Group does receive such complaints, it may forward them to the Authority.
- (5) Every member of the Group is encouraged to identify potential breaches of union law and report them to the Group for discussion. If and when the Group discusses a potential BUL case, it could on a case-by-case basis - when deemed appropriate by the Group - publicly disclose this in the summary of conclusions of its meetings, or a recommendation to the Authority, published by the Authority on its website. In such a case, the Group will take due care of the wording of the published text, ensuring that clear caveats are made on the Group's role in the process (clarifying, for instance, that the Group's position is only about a "potential" BUL issue without prejudice to the Authority's assessment, etc.)
- (6) Any decision of the Group regarding BUL cases shall follow articles 6(2b), 6(8), and article 7 of its Rules of Procedure.
- (7) The Group shall hold a structured discussion with the Authority once a year, based on a report from the Authority to the Group on its previous years' experience with the BUL procedure. This

discussion can be extended to the use of other ESMA tools for supervisory convergence and compliance of NCAs to EU Law.

- (8) Where the Group issues advice at the request of the Authority, the Group shall deliver its advice within the deadline requested by the Authority. The Authority shall ensure that the Group has sufficient time to agree and deliver its advice. Where the Group issues advice on its own initiative, it shall liaise with the Authority on an adequate date to deliver it to the Authority. At the request of the Group, the Authority will endeavour to give oral feedback on the advice issued by the Group at the next SMSG meeting. Moreover, the Authority shall in its relevant feedback statements/final reports reflect and comment on the advice given by the Group.
- (9) Where the Group issues advice, that advice shall be signed by the Chairperson of the Group and, where applicable, by the relevant working group rapporteur.
- (10) The Group may, as per Article 37(5) of the Regulation and alongside its counterparties in the banking, insurance and pensions industries, respectively the Banking Stakeholder Group, the Insurance and Reinsurance Stakeholder Group, and the Occupational Pensions Stakeholder Group, together issue a joint advice on issues related to the work of the ESAs under Article 56 on joint positions and common acts.

Article 7 – Decision-making

- (1) As far as possible, the Group shall take decisions by consensus.
- (2) In the event that a consensus has not been reached and decisions are put to a vote, agreement among two-third of the members present shall be required except in relation to elections for the Chairperson or Vice-Chairperson which shall follow the procedure set out in Article 2.
- (3) In exceptional circumstances where it has not been possible to reach consensus and one third of the Group's members or the members representing one group of stakeholders present consider that their views are not adequately reflected in an advice to be issued by the Group, those members are entitled by Article 37(5) of the Regulation to issue a separate advice. Such a separate advice may state the names of the members whose views it reflects.

Article 8 – Written procedure

- (1) If necessary, the Group and any Working Group may adopt its decisions through use of written procedure. To this end, the Authority shall be responsible for the distribution to the Group members of drafts on which the Group is being consulted and/or any other working documents.
- (2) The written procedure is to be initiated by the Chairperson of the Group or by the rapporteur of any working group upon a request on the part of at least 50% of the members of the Group or working group or on his/her own initiative.
- (3) The written procedure shall specify the date by which Members shall provide their views or votes which shall not normally be less than ten days after the launch of the written procedure. Votes on decisions taken by written procedure shall be in written form and a failure to vote shall be considered a vote for the proposal.
- (4) However, if one-third of Group members ask for the question to be examined at a meeting of the Group, the written procedure shall be suspended and the question shall be added to the

agenda of the next meeting of the Group or on the agenda of an extra-ordinary meeting to be organised according to the urgency of the issue.

Article 9 – Working language

The working language of the Group shall be English.

Article 10 – Working groups

- (1) In agreement with the Authority, the Group may, as per Article 37(4) of the Regulation, establish working groups from among its members to examine specific issues related to the discharge of the Group's tasks.
- (2) Working groups shall be dissolved as soon as their tasks are fulfilled. Working groups shall appoint a rapporteur who will coordinate the activity of the working group and chair its meetings in a fair and inclusive manner.
- (3) The Group shall decide on the mandate, composition and duration of each working group. These working groups shall report to the Group. The composition of these groups should reflect, where possible, a balance of the Group's constituencies.
- (4) Working Groups shall aim to provide a report to the Group that can form the basis for a decision to be taken by the Group. Reports shall therefore reflect views discussed in the working group, including minority views in accordance with Article 7(3), in a way that is designed to achieve consensus in the Group. Working groups shall therefore work on the basis of consensus. In the event consensus is not reached, the working group shall adopt its report on the agreement of two-thirds of its members present.
- (5) Working group meetings shall be held in principle via video call but may be held at the Authority premises or such other location as is agreed by the members of the working group and the Authority.
- (6) Working groups may in its work interact with ESMA Staff.

Article 11 – Attendance and duties of Group Members

- (1) The Chairperson and the Executive Director of the Authority are invited to attend the meetings of the Group and can ask the Vice-Chairperson and/or members of the Authority's Management Board and/or the Chairpersons of the relevant Standing Committees and working groups of the Authority and/or members of the Authority's staff to join specific meetings.
- (2) At each meeting, the secretariat shall draw up an attendance list.
- (3) Members are expected to attend and actively participate in the meetings of the Group.
- (4) Members are expected to actively contribute to the work undertaken by the Group and to undertake any other duties decided on an *ad hoc* basis by the Group.
- (5) Failure to attend three meetings of the Group in a twelve-month period shall be deemed a failure to perform the member's duties. In such a case, upon consultation with the Group Chairperson, the Authority may ask the Board of Supervisors to vacate the current position and to select a new Group member.

Article 12 – Conflicts of interest

- (1) At the start of each meeting, any member whose participation in the Group's or a working group's deliberations would raise a conflict of interest on a specific item on the agenda, other than the fact of their current positions with organisations, shall inform the Chairperson or rapporteur and disclose the conflict to the Group or working group in a transparent manner. That member may continue to participate in the discussion but shall not have the right to-vote on such items. In the event that the Chairperson's participation in a specific item on the agenda would raise a conflict of interest, the Chairperson shall inform the Group and the discussion of that item shall be managed by the Vice-Chairperson (or one of the Vice-Chairpersons).
- (2) Members' conflicts of interest will be duly noted in any report or advice published by the Group or any of its working groups.

Article 13 – External Guests

- (1) Exceptionally, the Chairperson or a rapporteur may invite an external party to give testimony on a specific subject for consideration by the Group or working group as input. A suggestion to invite an external party can be made by any member and shall be approved by a simple majority of all members following consultation with the Authority. Once the external guest has been approved, the Chairperson or rapporteur shall inform the members no later than at the same time as the agenda is circulated and ask the members if any other point of view should be heard at the same meeting.
- (2) The European Commission may also be invited to attend the meetings of the Group.
- (3) The external guest will only be asked to participate in the part of the meeting directly related to her/his testimony and will be bound by the same rules on confidentiality regarding the session as set out in these Rules.

Article 14 – Summaries of conclusions

- (1) Summaries of the discussion and conclusions on each point on the agenda shall be drafted by the Authority and circulated to the Group following approval by the Chairperson of the Group, after consulting the Steering Committee.
- (2) Summaries of conclusions of previous meetings shall be adopted by the Group by written procedure or at meetings.

Article 15 – Information and confidentiality

- (1) The Authority shall provide to the Group all information that is necessary for it to carry out its role, subject to professional secrecy as set out in Article 70 of the ESMA Regulation and ESMA's Rules of Professional Secrecy and Confidentiality.
- (2) Members of the Group shall not share outside the Group any unpublished documents of the Authority which have been made available to them.
- (3) If Members of the Group fail to respect these obligations, the Authority may request the Member to stand down.

Article 16 – Regular Reporting and Transparency

- (1) The Authority will include in its annual report an overview of the activities of the Group, including a summary of any reports and other advice it has formulated over the course of the given year.
- (2) The summary for inclusion in the annual report shall be approved by the Chairperson and Vice-Chairperson(s) of the Group.
- (3) The Group shall produce an Activity Report containing an executive summary of the advice and reports delivered by the Group listing main achievements and inputs to the Authority, which shall be prepared by the Group and reviewed by the Steering Committee). The Activity Report shall be drawn up at least at the end of every SMSG four-year term.
- (4) The Authority shall make public on its website:
 - (a) the names of members of the Group and any changes or amendments to the Group's membership;
 - (b) the advice of the Stakeholder Group and the results of their consultations, as well as how their advice has been taken into account;
 - (c) the summaries of conclusions of its meetings; and
 - (d) short biographies (CV's) of the Members of the Group.

Article 17 – Correspondence

- (1) Correspondence sent to the Group by third parties shall be addressed to the Authority, for the attention of the Stakeholder Group Chairperson.
- (2) Correspondence sent to Group members by the Authority or group Members shall be sent to the e-mail address which they provide for that purpose.

Article 18 – Access to documents

- (1) Public access to the Group's documents shall be subject to the provisions on access to documents in Article 72 of the Regulation and measures taken for its implementation.
- (2) The Authority shall be competent to take decisions regarding requests for access to Group documents.

Article 19 – Protection of personal data

All processing of personal data for the purposes of these rules of procedure shall be in accordance with Regulation (EU) 2018/1725.

Article 20 – Collaboration with other groups

The Group should work as an interface with other groups in the financial services area established by the Commission or by Union legislation or as otherwise agreed with the Authority.

Article 21 – Amendments to these Rules of Procedure

The Group may, as per Article 37(6) of the Regulation, amend these Rules of Procedure by a majority of two-thirds of the Group's members, in particular in order to take into account possible developments in the roles, tasks and organisation of the Authority and the Group.

Article 22 – Entry into force

This Decision takes effect on the day following that of their adoption and repeals the Decision of the Securities and Markets Stakeholders Group (ESMA22-106-2371) of 9 July 2020.

Done at Paris on 27 January 2023

[signed]

Chairperson

Securities and Markets Stakeholders Group