

# Procedure on Consultative Working Groups

## 1 Objective of Consultative Working Groups (CWGs)

1. Consultative Working Groups (CWGs) are an important part of ESMA's stakeholder outreach formed under the terms of ESMA's Public Statement on Consultation Practices (ESMA34-39-969<sup>1</sup>).
2. The purpose of these groups is to provide informal advice to the respective standing committees or working groups in relation to all aspects of that group's work; for example, in the development of a policy line in relation to specific technical matters, or to give a view on specific aspects of the proposals. These groups may also be used as a sounding board for work plans, for receiving feedback on implemented policies, or for providing insights and intelligence on current events, trends and risks.
3. CWGs are most suitable where the expertise and profile of the representatives can respond to most of the committee's or working group's work while remaining at a technical level. They have the advantage of being established through a public call for candidates and therefore their establishment is transparent and perceived as fair.

## Establishment of CWGs

4. CWGs may be established at the level of a Standing Committee (SC) or a Working Group (WG), collectively "ESMA Groups".
5. A single SC may have more than one CWG if the topics that CWGs are expected to advise on risk becoming too broad, making them unsuitable for one single set of membership.
6. For certain SCs it may make sense for CWG to be set at a more specialised level (e.g. a WG); if considered helpful in order to target technical experts able to give specialised advice.
7. In some cases it may make sense for an ESMA Group to use the CWG of another ESMA Group in coordination with that ESMA Group; this might particularly be the case with the horizontal SCs but does not need to be limited to them.

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<sup>1</sup> [ESMA34-39-969 Public Statement of Consultation Practices, available at \[www.esma.europa.eu\]\(https://www.esma.europa.eu\)](https://www.esma.europa.eu/press-news/esma-news/esma34-39-969-public-statement-of-consultation-practices)

8. CWGs can be quickly activated outside of scheduled meetings or for ad hoc meetings if circumstances require it.
9. CWG members are selected following an open call for candidates published on ESMA's website.
10. Members of the CWGs are selected for a term of three years. At the end of the three-year term ESMA will launch another call for candidates to which previous members may apply.
11. Typically, a CWG is composed of around 18-20 members; however there is no strict upper or lower limit. The number of members should remain at a practical level for holding discussions while allowing for a range of stakeholders to be represented.

## **2 Selection of CWG members**

12. The rapporteur of the relevant ESMA group prepares a final selection for decision by the Executive Director, the relevant Head of Directorate/Department/Unit of ESMA, and the Chair of the relevant group<sup>2</sup>.
13. To the extent possible within the limits of the topic of the ESMA Group and the candidatures received, the selection of CWG members will aim to ensure an appropriate geographical and gender balance, and representation of all relevant stakeholders across the EU affected by the work of ESMA in this area. A candidate for one CWG should not normally be already a member of another ESMA CWG or the Securities and Markets Stakeholder Group (SMSG).
14. The Call for candidates should provide some description of the minimum or expected experience of the applicants, e.g. a certain number of years in a particular industry, holding a position at a certain level, as well as the specific topic area(s) that are required.
15. Where possible, a reserve list of candidates may be established to provide replacements in case of resignation. However, choosing a replacement from this reserve list should not be mandatory when replacing a member of the CWG, in particular as the candidates' experience should take first place, as well as the overall balance of categories, nationalities, and gender in the group.
16. The composition of the CWGs is made public through ESMA's website.

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<sup>2</sup> The relevant group is the ESMA group to which the CWG is attached; this can be either a Standing Committee or a Working Group of a Standing Committee.

### **3 Code of Conduct of CWG members**

17. CWG members are subject to confidentiality requirements and may be shown non-public information, such as draft technical standards or guidelines, at the discretion of the rapporteur. CWG members should not reveal any non-public papers, or their contents, shared with them in their role as a CWG member.
18. CWG members are requested to provide expertise and not advocacy for specific national institutional or sectoral positions nor on behalf of their employer. Members of the CWGs are appointed and participate in their personal capacity.
19. CWG members that are placed in a position of conflict of interest by an item on the CWG agenda should declare that conflict of interest at the beginning of the meeting.
20. Members of the CWG should make clear in their professional engagements that they are not representatives of ESMA.
21. When responding to a call for expression of interest, CWG members will be requested to agree to a code of conduct encompassing these considerations (in Annex 2).
22. CWG members can resign by writing to the relevant rapporteur and notably should do so if their professional position becomes incompatible with their role in the CWG.
23. Members of the CWG may be removed upon decision of the Executive Director in consultation with the relevant Director / Head of Department/Unit of ESMA and the Chair of the relevant group.

### **4 Consultative Working Group meetings**

24. CWG meetings are called by the relevant rapporteur in consultation with the ESMA Group Chair.
25. There are usually two CWG meetings a year but that is an indicative number; the final number of meetings will depend on the needs of the relevant ESMA Group, balanced with reasonable use of time and resources.
26. In line with the procedure on ESMA Groups, at least 50% of the meetings of the CWG should be held virtually. Physical meetings will, in principle, be held at ESMA's premises, although in exceptional and duly justified circumstances they can be held elsewhere.
27. CWG members representing retail investors/customers, trade unions, non-governmental organisations (NGOs), non-profit organisations, shareholder associations, or small or medium enterprises, or who are academics may be entitled to

reimbursement of expenses in line with ESMA's policy on the reimbursement of external persons (ESMA63-46-710<sup>3</sup>).

28. ESMA retains the final authority regarding how to take into account the advice of the CWGs as part of ESMA's work.

## 5 Interactions outside of CWG meetings

29. Periodic interactions through ad-hoc virtual meetings with individual or selected members of the CWG may also take place according to ESMA's needs.
30. Beyond the regular meetings of the CWG to which they belong, individual CWG members may, on an ad hoc basis be invited to join a discussion with the CWG of another ESMA Group on a given topic.
31. Certain ESMA Groups may make use of workshops instead of, or as a complement to, CWG meetings. In this case care should be taken to ensure that invited experts cover an appropriate geographical and gender balance, and representation of all relevant stakeholders across the EU affected by the work of ESMA in this area.

## 6 Communication with SMSG

32. CWGs form part of an overall stakeholder landscape that includes the Securities and Markets Stakeholder Group (SMSG). In order to assist with their prioritisation of which of ESMA's consultation papers to provide advice on, ESMA will provide the SMSG Steering Committee (the Chair and Vice-Chair(s) of the SMSG) with the agendas of the CWGs.
33. Rapporteurs will share the agendas with the SMSG secretariat ([stakeholders@esma.europa.eu](mailto:stakeholders@esma.europa.eu) managed by IIA/GEA), together with the annual meeting schedule set for each CWG at the beginning of each year (if available).

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<sup>3</sup> [ESMA63-46-710 Reimbursement of travel and subsistence expenses for external persons, available at www.esma.europa.eu](http://www.esma.europa.eu)