



European Securities and
Markets Authority

Principles

Stakeholder engagement in peer reviews



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Executive Summary

The European Securities and Markets Authority's (ESMA) approved, in March 2016, six high-level principles guiding the interaction with stakeholders in the course of peer reviews. The objective is to obtain background information relevant for the peer review.

Stakeholder engagement – in the form of meetings – should allow for a better understanding of the supervisory practices in place, seen from the practical experience of stakeholders and contribute to enriching peer reviews.

The principles build on ESMA's current practices and aim at responding to the following key questions:

- What entities are considered as stakeholders in the context of a peer review?
- Who decides if interaction with stakeholders is needed?
- When does this decision need to be taken? Must NCAs accept the fact of stakeholder engagement?
- If an NCA may decline such a possibility, does an NCA need to explain why it would not want to have stakeholder engagement for a particular peer review?
- How is the interaction organized and how are the stakeholders chosen?
- What use is made of the outcome of the stakeholder interaction?

The scope of the principles focuses on external stakeholders:

- on which competent authorities rely for the implementation of the provisions under review, which may entail some supervisory responsibilities (e.g. regulated markets);
- who need to apply those provisions (e.g. financial market participants), or who are impacted one way or another by the implementation of these provisions (as users, advisors, ...).

The principles do not apply to interaction with national authorities which have full or partial supervisory responsibilities for the implementation of the provisions subject to a given peer review, and who therefore must be involved as any other

competent authority in the peer review. Indeed, when, under national law, competences for the provisions covered by a peer review have been entrusted to an authority different from the one represented at ESMA, the Assessment Group in charge of the review should be able to contact those authorities. Therefore, national institutions or bodies responsible in full or in part for the supervision of the provisions under review should not be considered as stakeholders for the purpose of this note.

These principles contribute to ESMA's commitment to focus on supervisory convergence in 2016, as flagged in the [ESMA Strategic Orientation 2016-2020](#), and to ensure consistency of supervisory tools, in line with its [Supervisory Convergence Work Programme](#). ESMA may in the future, in light of its experience, prepare a set of procedures for stakeholder engagement in peer reviews, which could be annexed to the [Methodology for peer reviews \(ESMA/2013/1709\)](#).

Principles for stakeholder interaction within peer reviews

Principle 1 – Interaction can only be considered with stakeholders having an interest – direct or indirect – in the topic under review

1. Stakeholders, for the purposes of this note, have been defined as third parties affected or having any type of interest/responsibility in the subject being examined in the context of a peer review but not subject to the peer review. This means that competent authorities cannot be regarded as stakeholders.
2. Stakeholders can be split in two categories:

Category A – Entities which although not established as competent authorities under national law have been entrusted with some supervisory/oversight functions, either directly or by delegation, e.g. trading venues or post-trading infrastructures, as well as authorities in charge of customer protection, accounting standard setters and/or supervisors, anti-trust authorities, the national ombudsman, etc., when they have a direct or indirect interest /responsibility in the topic under review;

or

Category B –Other stakeholders (regulated or non-regulated) , comprising a wide variety of entities, including – but not limited to- market participants (such as intermediaries, listed firms, fund managers, trading venues, post trading infrastructures (as supervised entities)), law firms, investors' associations, academics etc.

3. ESMA already has dedicated groups for institutional interaction with stakeholders. The Securities and Markets Stakeholder Group (SMSG) is typically involved in supervisory convergence work: it provides topics for possible peer reviews and is informed of the outcome of these reviews. Similarly, a number of standing committees have established consultative working groups (CWGs), which provide technical input on specific matters. Interaction with the existing stakeholder groups should therefore be considered in light of the objective and desired outcome of stakeholder involvement in a peer review, although it cannot be seen as a prerequisite to interaction with other stakeholders.

Principle 2 – Stakeholder interaction needs to be reasoned and its usefulness in a given peer review is a matter for the Board of Supervisors to decide upon

4. The usefulness of engaging with stakeholders will be considered when preparing the mandate for a peer review, and if such interaction is deemed desirable, it will be included in the mandate, highlighting the line of reasoning, the expected benefits and the type of stakeholders targeted. As the mandates of peer reviews are to be adopted by the Board of Supervisors, so will any stakeholder interaction.

5. If the need to engage with stakeholders emerges at a later stage of a peer review specific approval of the Board of Supervisors needs to be granted before any interaction with stakeholders can be organised.
6. Depending on the subject-matter under review the purpose of stakeholder visits could be:
 - to make sure that all relevant parties having some supervisory function on the topic under review are engaged with;
 - to obtain information as regards a specific peer review topic under way, (beyond what is provided by the NCAs to ESMA/the Assessment Group under Article 35 of the ESMA Regulation), for the purposes of better understanding the supervisory practices adopted by the relevant NCA in relation to the matter under review;
 - to make use of the practical experience of stakeholders, gathering information about the market or the subject under scrutiny, especially as regards cross-border activities ;
 - to complement the views provided by NCAs in the self-assessment process; and
 - to identify good practices or points of attention as perceived by the market.

Principle 3 – NCAs must permit engagement with category A stakeholders, but a discretion remains as regards engagement with category B stakeholders

7. If stakeholder engagement in the context of a specific peer review is approved in principle by the Board of Supervisors, NCAs would not be permitted to veto engagement with category A stakeholders, whose tasks are closer to NCAs. NCAs would, however, retain discretion to refuse to permit engagement with *category B* stakeholders, such as financial market participants.
8. As regards the second category of stakeholders, such a refusal should be explained in broad terms (e.g. enforcement case underway at some firms, lack of representativeness of proposed stakeholders,...), and conveyed for information to the Board of Supervisors.

Principle 4 – Stakeholder meetings are organised in liaison with NCAs

9. Selecting stakeholders is a joint effort of the Assessment Group and NCAs concerned. While the Assessment Group establishes criteria for selecting stakeholders that will be applied consistently throughout the review, the NCAs are best placed to set up a list of stakeholders meeting those criteria. Based on this list, and on the availability of

stakeholders, the Assessment Group will then finalise the shortlist of stakeholders with whom to interact.

10. NCAs will arrange the meetings with stakeholders and will be present at the meetings with the Assessment Group. The meeting can be arranged either at the NCAs' premises or, if deemed easier for the NCA and suitable for the stakeholder, at the premises of the stakeholders. The NCA will also be present whenever there are contacts with the stakeholders via conference calls, video conferences and comparable means.
11. Last, the nature of the visit and interaction needs to be clarified at the outset. The information to be sought should be related to market intelligence and general information, and should not cover specific client files nor disputes/(pre)litigation between firms and NCAs, nor files/data related to the NCAs' exercise of their supervisory tasks towards visited supervised stakeholders.

Principle 5 – Confidentiality

12. The content and type of information exchanged with stakeholders will vary from one peer review to another.
13. Any communication and interaction with the Assessment Group must be considered confidential and must not violate the rules on professional secrecy in national legislation.

Principle 6 – Published peer review reports do not contain stakeholders' names

14. The outcome of stakeholder engagement will be reflected in the peer review report, without necessarily requiring a specific section. Whenever reference is made to stakeholders' views, this should be made clear.
15. However, as the information that stakeholders may provide is relevant as one among many contributions to the peer review reports, stakeholders' names will be redacted before the report is published.