

DECISION OF THE MANAGEMENT BOARD

Rules of Procedure

The Management Board

Having regard to Regulation (EU) 2019/2175 of the European Parliament and of the Council¹ 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)² and in particular Articles 45 to 47 of the Regulation.

Whereas in order for the Management Board to give guidance to the work of ESMA and fulfil the tasks given to it under Article 47 of the Regulation, and to fulfil the requirement of Article 45a(3) of the Regulation, it is necessary for the Management Board to adopt rules of procedure.

Has adopted this decision:

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¹ OJ L 334, 27.12.2019, p.1.

² OJ L 331, 15.12.2010, p.84.

Article 1 – Composition

Voting Members

- (1) In accordance with Article 45(1) of the Regulation, the Management Board shall be composed of the following (each a “Member”):
 - (a) the Chairperson; and
 - (b) six members of the Board of Supervisors elected by the Board of Supervisors.

Participants

- (2) In accordance with Article 45a(2) of the Regulation, the following shall participate in the meetings of the Management Board (each a “Participant”):
 - (a) the Executive Director (who shall be non-voting); and
 - (b) a representative of the Commission (who shall be non-voting except on matters referred to in Article 63 of the Regulation (Establishment of the budget)).

Observers

- (3) The Management Board may decide to admit observers and invite experts.
- (4) The Vice-Chairperson shall be entitled to attend Management Board meetings as an observer.

Advisers

- (5) Members and Participants may each be accompanied at meetings of the Management Board by one adviser. The Chairperson and Executive Director may be assisted by other ESMA staff.

Notification of documents

- (6) The Chairperson shall maintain a list of the Members, Participants and observers and of alternates nominated in accordance with Article 7(8) of these Rules. Members, Participants and observers shall notify the Chairperson of the email addresses to which notifications required by these rules of procedure shall be sent and shall inform the Chairperson of any necessary change.

Article 2 – Tasks and powers

- (1) The Management Board’s tasks are those assigned to it in accordance with the Regulation, in particular Article 47 thereof (see the Annex).

- (2) In addition, the Management Board shall carry out other tasks delegated to it by the Board of Supervisors.
- (3) The Management Board may request the Board of Supervisors to establish internal committees and delegate to them, the Chairperson or Executive Director specific and certain clearly defined tasks attributed to the Management Board.
- (4) In accordance with Article 45b of the Regulation, the Management Board may set up coordination groups.
- (5) The Management Board shall be consulted on the Chairperson's proposal for the Chair and Members of the peer review committees and shall provide its opinion to the Chairperson on the composition of independent panels for the purposes of Article 17, Article 19 and Article 22(4) of the Regulation.
- (6) The Management Board shall make a proposal for a peer review work plan for the coming two years. The peer review work plan shall constitute a separate part of the annual and multiannual work programme. It shall be made public.
- (7) The Management Board shall develop the methodology for peer reviews and assess, in particular, whether the methodology has been applied in a consistent manner across peer reviews and a level playing field is ensured.

Article 3 – Coordination Groups

- (1) The Management Board can set up Coordination Groups either on its own initiative or upon the request of a competent authority on defined topics for which there may be a need to coordinate having regard to specific market developments.
- (2) The Management Board shall set up coordination groups at the request of five members of the Board of Supervisors.
- (3) The Chairperson may invite the Management Board to consider setting up a coordination group.
- (4) The groups shall be chaired by a member of the Management Board.
- (5) Each year the respective member of the Management Board in charge of the coordination group shall report to the Board of Supervisors on the main elements of the discussions and findings and, where deemed relevant, make a suggestion for a regulatory follow up or a peer review in the respective area.

Article 4 – Forward agenda Board of Supervisors

- (1) The Chair shall share with the Management Board the forward agenda for the Board of Supervisors.

Article 5 – Chairmanship

- (1) Meetings of the Management Board shall be chaired by the Chairperson, or by the Vice-Chairperson if the Chairperson is absent or unable to attend.
- (2) If both the Chairperson and the Vice-Chairperson are absent or unable to attend a meeting, those Members present shall elect a Member to chair the meeting.

Article 6 – Decision-making procedures

Quorum

- (1) A quorum is constituted at every duly convened Meeting of the Management Board provided that five Members are represented. In the absence of a quorum the Chairperson shall decide whether to close the meeting and convene another as soon as is practicable, or to continue the meeting and take provisional decisions that shall be ratified by written procedure.

Voting

- (2) Each Member has one vote.
- (3) The representative of the Commission has one vote on matters referred to in Article 63 of the Regulation (Establishment of the budget) and for those purposes shall be considered a Member.
- (4) Decisions of the Management Board shall be adopted on the basis of a simple majority of Members present, whilst striving for consensus.

Written procedure

- (5) Where appropriate, decisions may be taken by written procedure, on a proposal from the Chairperson circulated to the Management Board:
 - (a) stating the time and date by which votes must be cast;
 - (b) where, exceptionally, the period for casting votes is less than 10 calendar days, giving the reason for the short period;
 - (c) describing the key issues and whether the decision proposed is consensual or controversial; and
 - (d) providing any other material considered necessary for making the decision that has not previously been forwarded to the Management Board.

- (6) Voting Members should express their approval (I agree), disapproval (I disagree) or abstention (I abstain). Abstentions will not be considered when calculating the number of votes cast.
- (7) Votes on decisions being taken by written procedure shall be in written form and a failure to vote shall be considered a vote for the proposal.
- (8) The result of a written procedure shall be notified without delay to the Management Board.
- (9) Members may ask the Chairperson to consider discussing at the next meeting of the Management Board aspects of an issue that has been the subject of written procedure. Such a request shall not affect the use or the result of a written procedure but shall be without prejudice to the ability of the Management Board to amend or reverse its decision in a subsequent vote.

Article 7 – Meetings

Convening meetings

- (1) Meetings of the Management Board shall be convened by the Chairperson at his or her own initiative or at the request of at least one third of its Members. Invitations shall be sent to email addresses notified by each Member, Participant and observer to the Chairperson for that purpose.
- (2) Meeting dates and places shall be notified by the Chairperson to the Management Board as soon as practicable.
- (3) Meetings shall normally be held at ESMA's premises, unless the Chair decides otherwise. Meetings may be held by telephone or video conference call, or other technical means.
- (4) The Management Board shall meet at least five times a year.
- (5) When circumstances require and provided a majority of the Members does not object, the Chairperson may change the date or place of a meeting. Notification of such change shall be given to Members and Participants no later than three weeks before the original or revised date of the start of the meeting, whichever is the earlier.
- (6) When a meeting is requested by one third of the Members, the Chairperson shall convene a meeting to take place within six weeks of receipt of the request, or as soon as practicable in urgent cases.
- (7) An agenda, accompanied by the relevant material for decision making, shall be forwarded to the Members, Participants and observers at least 10 days prior to a meeting, or as soon as practicable in urgent cases.

Attendance

- (8) Each Member shall be responsible for nominating, in writing, a high-level alternate, who may replace the Member if that person is prevented from attending.
- (9) The Commission representative shall not attend any discussions within the Management Board relating to individual financial institutions, unless otherwise provided for in Article 75 of the Regulation or in the acts referred to in Article 1(2) of the Regulation.

Agenda

- (10) The Chairperson shall be responsible for setting the agenda for each meeting.

Summary of Conclusions

- (11) The Secretariat shall prepare a summary of conclusions of each meeting of the Management Board setting out the decisions taken with figures for the votes cast at each vote. The draft summary of conclusions shall be forwarded to the Management Board within two weeks of the meeting. Once approved by the Members, the summary of conclusions shall be signed by the Chairperson and forwarded to the Management Board and to the Board of Supervisors.
- (12) The summary of conclusions shall be published on ESMA's website.
- (13) The Chairperson shall report to the Board of Supervisors on the activities and decisions of the Management Board since the previous meeting of the Board of Supervisors.

Article 8 – Code of conduct

Independence

- (1) When carrying out the tasks conferred upon it by the Regulation, the Chairperson and the Members shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government or from any other public or private body.

Confidentiality

- (2) All proceedings of the Management Board shall be confidential. Anyone attending shall respect their confidentiality and shall comply with ESMA's internal rules of procedure concerning professional secrecy.

Transparency

- (3) The names of the Members and their respective alternate shall be made public.

- (4) The decisions and summary of conclusions of meetings of the Management Board shall be subject to the provisions on access to documents in Article 72 of the Regulation and measures taken for its implementation.

Conflicts of interest

- (1) In line with article 42(3) of the ESMA Regulation ESMA has a conflict of interest policy for non-staff in place as set out in ESMA22-328-402.
- (5) Members of the Management Board shall inform the Chairperson about all meetings held and any hospitality received linked to their role as Management Board Member. This information shall be made public.

Article 9 – Secretariat

- (1) The Executive Director shall provide a secretariat and the appropriate administrative support to enable the Management Board to carry out its work.

Article 10 – Final provisions

- (1) This decision enters into force immediately and shall be made public.

Done at Paris on 11 January 2011

Amended at Paris on 17 January 2020

Amended at Paris on 12 March 2020

Steven Maijoor
Chair
For the Management Board

ANNEX

Tasks of the Management Board

The following tasks are assigned to the Management Board in Article 47 of the Regulation:

- (1) The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with the Regulation.
- (2) The Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme.
- (3) The Management Board shall exercise its budgetary powers in accordance with Articles 63 and 64 of the Regulation.
- (4) The Management Board may examine, give an opinion on and make proposals on all matters to be decided by the Board of Supervisors after discussion at the relevant internal committee, save for peer reviews according to Article 30 of the Regulation.
- (5) The Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2) of the Regulation, the necessary implementing measures of the Staff Regulations of Officials of the European Communities.
- (6) The Management Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72 of the Regulation.
- (7) The Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties, to the Board of Supervisors for approval.
- (8) The Management Board shall adopt and make public its rules of procedure.
- (9) The Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5) of the Regulation, taking duly into account a proposal by the Board of Supervisors.