



European Securities and
Markets Authority

Procedure

ESMA Stakeholder Group Renewal Procedure 2020

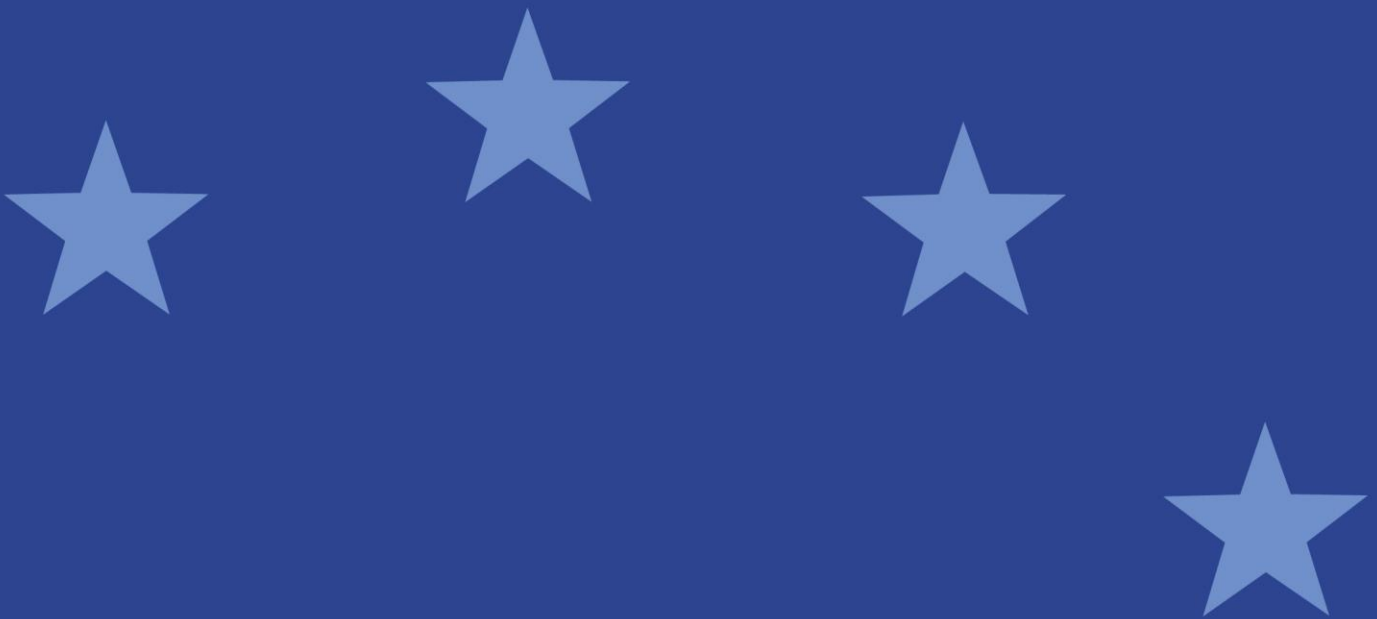


Table of Contents

1.	Introduction.....	3
2.	Legal background	3
3.	Selection criteria and categories of stakeholders	4
3.1.	General considerations.....	4
3.2.	Eligibility criteria.....	4
3.3.	Categories of stakeholders	5
4.	Governance and Selection Process.....	6
4.1.	Selection.....	6
4.2.	Decision by the Board of Supervisors	6
5.	Vacancies.....	7
6.	Information and Publication	7
	Annex – Article 37 of the ESMA Regulation	8



1. Introduction

1. This document lays down the procedure for selection of the members of the ESMA Securities and Markets Stakeholder Group (hereinafter referred to as “the Group”).
2. The objective of the document is to ensure that ESMA applies a legally sound and practicable process which supports ESMA to establish a well-functioning stakeholder group.
3. The current procedure defines the existing selection procedure for the purpose of establishing the Group. It builds on the experiences from the past selection procedures of the Group and has also benefited from discussions with the other ESAs, the European Commission and the European Ombudsman.

2. Legal background

4. The ESMA Regulation (1095/2010), which came into force in 2011, has been amended by Regulation EU 2019/2175. The revised ESMA Regulation (hereinafter referred to as “the Regulation”) applies from 1 January 2020¹ and includes changes to the composition of the Group. While in other areas of the Regulation there are transition provisions, as regards the Group no such transition provisions are included. The ESMA Board of Supervisors has decided that a new stakeholder group should be constituted in 2020 as a result of the said legal situation. This decision was taken after consultation with the other ESAs and the European Commission.
5. ESMA will on this occasion envisage to appoint 30 members for new mandates, as the full group will be renewed as a consequence of the changes to the ESMA Regulation.
6. Article 37 (full text in Annex) requires that the Group shall be composed of 30 members, and be comprised of:
 - a. 13 members representing, in balanced proportions, financial market participants operating in the Union;
 - b. 13 members representing employees’ representatives of financial market participants operating in the Union, consumers, users of financial services and representatives of SMEs; and
 - c. four members who are independent top-ranking academics.
7. The members of the Group shall be appointed by the Board of Supervisors, following an open and transparent selection procedure. 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. Members of the Securities and Markets Stakeholder Group shall be selected according to their qualifications, skills, relevant knowledge and proven expertise.
8. Members of the Securities and Markets Stakeholder Group shall serve for a period of four

¹ Corresponding changes were made for EBA and EIOPA.

years, following which a new selection procedure shall take place. Should a member step down in the course of the four-year mandate period, he or she shall be replaced. Consequently, the four-year mandate periods are individual and do not concern collectively the Securities and Markets Stakeholder Group. The members of the Securities and Markets Stakeholder Group may serve two successive terms.

3. Selection criteria and categories of stakeholders

3.1. General considerations

9. Applicants need to meet the conditions of belonging to one of the categories above to become eligible. Group members serve in their personal capacity for a term of four years and may apply for a second term.
10. To guarantee exclusive representations, each member of the Group must only represent one category and not be in a situation of conflict of interest with another category represented in the Group.
11. Potential applicants should carefully consider their capacity to take part in more than one Stakeholder Group (IRSG, OPSG of EIOPA, BSG of EBA) or similar stakeholder bodies.
12. ESMA shall take into account relevant experience of a candidate at the European/international level.
13. ESMA will consider the final composition of the Group in relation to the candidatures received and the degree of balanced and proportionate representation achievable. In doing so ESMA shall consider professional expertise covering the broad range of areas of activity of the Authority, according to Article 37(3) of the Regulation, gender, geographical regions and field of representation alike.
14. ESMA shall aim to ensure an adequate representation of stakeholders across the Union. An over representation of regions or areas or certain categories of stakeholders representing only particular regions or areas should be avoided.
15. In addition to the Regulation requirements and the mandatory eligibility criteria the following *exclusion criteria* will be considered:
 - a. Candidate is in a situation of conflict of interest.
 - b. Candidate has been found guilty of fraud or misconduct.

3.2. Eligibility criteria

16. The following mandatory criteria shall be stated in the Call for Expression of Interest.
 - a. Experience: minimum four years of relevant professional experience in the financial services sector for all Group membership categories. The professional experience and expertise (“professional quality”) of a candidate will be assessed against the category selected by the candidate in the application form. However, ESMA notes

that experience beyond the minimum criteria will be highly valued and, in most cases, necessary;

- b. Availability to participate in meetings at least four times a year and commitment to deliver active contributions and to carry out significant work between meetings to prepare the output of the Group (opinions, feedback statements, position papers, reports etc.); and
- c. Language command: have sufficient English written and oral communication skills to enable the candidate to actively participate in the Group.

3.3. Categories of stakeholders

17. On the basis of the Regulation, the Authority seeks to have the following categories represented in the Group:

- a) Financial market participants – this group includes i.a.:
 - Financial services' intermediaries,
 - Market Infrastructure providers such as: i) Regulated Markets ii) MTFs iii) CCPs, iv) CSDs and v) Trade Repositories,
 - Issuers incl. corporate treasurers (potentially some of which may *alternatively* represent SME's),
 - Institutional Investors such as i) Asset and Fund Management Firms, ii) alternative investment fund managers, iii) Insurance Companies, iv) Pension Funds,
 - Credit Rating Agencies.
 - Representatives of shareholders,
 - Auditors, and accountants
- b) Representatives of financial services employees i.e. i) employees' representatives from a firm/company or ii) trade unions.
- c) Representatives of consumers and individual consumers – includes representatives of consumer organisations or any natural person acting in a consumer capacity with proven record in protection of consumers' interests.
- d) Users of financial services – includes individuals and/or individuals or associations delivering services and advice to retail users.
- e) Representatives of small and medium-sized enterprises (SMEs) – this group includes individuals employed by an SME relevant to the securities and financial markets field, or representatives of their organisations.

- f) Independent top-ranking academics - individuals falling into this category are assessed based on their academic qualifications. They should preferably hold a Ph.D. in finance, economics, law or other fields relevant to financial services, or equivalent qualifications and a solid academic experience in a university or institute of higher education (e.g. professorship), have a strong publication record in the field of finance, economics, law, and participate in international conferences and workshops. They must be independent from interests of financial market participants.

18. The final number of proposed candidates per category of stakeholders shall be decided on the basis of the applications reflecting the most suitable candidates, bearing in mind the Regulation's requirement for gender and geographical balance. The generally applied criteria and the specific criteria per category of stakeholders, as presented above, shall also be considered.

4. Governance and Selection Process

19. ESMA shall launch a Call for Expression of Interest, establishing the legal basis, the objectives and the criteria for the selection of candidates, and outlining the documentation to be provided in the application, including a declaration on conflict of interest to be signed by the candidates of relevant categories.

20. The Call for Expression of Interest shall be accompanied by a personal data protection notice in order for ESMA to comply with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

4.1. Selection

21. Following the closing of the Call for Expression of Interest, ESMA staff shall produce a list of all the applications received and check whether applications are complete and correctly submitted.

22. Involved ESMA staff are required to raise any potential conflicts of interest in relation to any of the received applications.

23. ESMA staff shall establish a shortlist of preferred candidates regarding each category and present it to the ESMA Management Board for its decision.

24. The ESMA Management Board shall have the possibility to choose any candidate for any category, even if not included in the proposed shortlist submitted to it, provided that minimum eligibility criteria are met.

4.2. Decision by the Board of Supervisors

25. The Management Board, supported by ESMA staff, will present to the Board of Supervisors a first and a second priority list of proposed candidates, accompanied by a reasoned report, for its decision on the selected candidates and the composition of the Group.

26. The Management Board and the Board of Supervisors shall have access to a summary of the full pool of eligible candidates, and, if requested, will be given the possibility to look into all applications and after signing a confidentiality agreement, in accordance with data protection requirements.
27. The Board of Supervisors will decide on the composition of the Group after having taken into account the proposal of the Management Board. The Board of Supervisors will also establish a list of reserve candidates who will be able to stay on the reserve list for a maximum of four years.

5. Vacancies

28. In case of necessary replacement, e.g. due to resignation, the leaving Group member shall be replaced by one of the candidates from the reserve list.
29. The reserve list established according to the process outlined above shall, to the extent possible, contain a minimum of two persons per category of stakeholder without internal ranking. In case of need for replacement, the Management Board shall make a proposal for a replacement making a selection between them taking into account the composition of the Group in full. The decision on the replacement person will be taken by the Board of Supervisors.
30. In case the personal and/or professional circumstances of a member change in such a way that the member does no longer fulfil the eligibility criteria in order to represent the relevant category for which he/she was selected or severe conflicts of interest arise, a member is obliged to step down. ESMA will in such case appoint an appropriate person from the reserve list as described in the paragraph above.

6. Information and Publication

31. The appointed and rejected candidate(s) shall be informed and the appointed ones asked to confirm that they accept the post as members of the Group or whether they wish to be placed on the reserve list of the Group. The composition of the Group of ordinary members shall be made public, while the reserve list shall be kept non-public.

Annex – Article 37 of the ESMA Regulation

Article 37

Securities and Markets Stakeholder Group

1. To help facilitate consultation with stakeholders in areas relevant to the tasks of the Authority, a Securities and Markets Stakeholder Group shall be established. The Securities and Markets Stakeholder 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 market participants, Article 16 concerning guidelines and recommendations. If actions must be taken urgently and consultation becomes impossible, the Securities and Markets Stakeholder Group shall be informed as soon as possible.

The Securities and Markets Stakeholder Group shall meet at least four times a year.

2. The Securities and Markets Stakeholder Group shall be composed of 30 members. Those members shall comprise of:
 - (a) 13 members representing, in balanced proportions, financial market participants operating in the Union;
 - (b) 13 members representing employees' representatives of financial market participants operating in the Union, consumers, users of financial services and representatives of SMEs; and
 - (c) four members who are independent top-ranking academics.
3. The members of the Securities and Markets Stakeholder Group shall be appointed by the Board of Supervisors, following an open and transparent selection procedure. 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. Members of the Securities and Markets Stakeholder Group shall be selected according to their qualifications, skills, relevant knowledge and proven expertise.

- (a) Members of the Securities and Markets Stakeholder Group shall elect a Chair from among its members. The position of Chair shall be held for a period of two years.

The European Parliament may invite the Chair of the Securities and Markets Stakeholder Group to make a statement before it and answer any questions from its members whenever so requested.

4. The Authority shall provide all necessary information, subject to professional secrecy, as set out in Article 70 of this Regulation, and ensure adequate secretarial support for the Securities and Markets Stakeholder Group. Adequate compensation shall be provided to members of the Securities and Markets Stakeholder Group representing non-profit organisations, excluding industry representatives. This compensation shall take into account the members' preparatory and follow-up work and shall be at least equivalent to the reimbursement rates of officials

pursuant to Title V, Chapter 1, Section 2 of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (*) (the Staff Regulations). The Securities and Markets Stakeholder Group may establish working groups on technical issues. Members of the Securities and Markets Stakeholder Group shall serve for a period of four years, following which a new selection procedure shall take place.

The members of the Securities and Markets Stakeholder Group may serve two successive terms.

5. The Securities and Markets Stakeholder 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, 29, 30 and 32.

Where members of the Securities and Markets Stakeholder Group cannot agree on advice, one third of its members or the members representing one group of stakeholders shall be permitted to issue separate advice.

The Securities and Markets Stakeholder Group, the Banking Stakeholder Group, the Insurance and Reinsurance Stakeholder Group, and the Occupational Pensions Stakeholder Group may issue a joint advice on issues related to the work of the ESAs under Article 56 on joint positions and common acts.

6. The Securities and Markets Stakeholder Group shall adopt its rules of procedure by a majority of two-thirds of its members.
7. The Authority shall make public the advice of the Securities and Markets Stakeholder Group, the separate advice of its members, and the results of its consultations as well as information on how advice and results of consultations have been taken into account.