



BoA 2020 02

## **Guidelines to the Parties to Appeal Proceedings before the Joint Board of Appeal of the European Supervisory Authorities**

### **General**

These Guidelines are intended to be explanatory only. The ESA Regulations and the Board of Appeal Rules of Procedure contain the rules which should be followed.

The Joint Board of Appeal of the European Supervisory Authorities ("ESAs") is established under the founding Regulations of the three European Supervisory Authorities (the EBA, EIOPA and ESMA). These are Regulations (EU) No 1093 of 2010, No 1094 of 2010, and No 1095 of 2010 ("the ESA Regulations") and in particular Articles 6, and 58 to 61.

The ESA Regulations are amended from time to time, and reference should be made to the current version. They are available on the ESAs' websites.

The Board of Appeal is part of the ESAs, but in its decision making it is independent of the ESAs, and its purpose is to provide an independent right of appeal from certain of their decisions. There is a further right of appeal to the Court of Justice of the European Union (General Court).

The Board of Appeal has adopted Rules of Procedure, the current version is that which took effect in 2019. These are available on the Board of Appeal webpage on the ESAs' websites.

### **Secretariat**

The ESAs provide operational and secretarial support for the Board of Appeal through a Secretariat. This rotates annually between the three ESAs. For this reason, the Board of Appeal has email addresses at each ESA.

### **Jurisdiction**

Before bringing an appeal, a prospective appellant should consider whether it is within the Board of Appeal's jurisdiction: see Article 60.1 of the ESA Regulations. Questions of admissibility may be subject to a preliminary ruling under Article 9 of the Rules of Procedure.

### **Bringing an appeal**

By Article 60.2 of the ESA Regulations, the appeal, together with a statement of grounds, has to be filed in writing at the relevant ESA within 3 months of the date of notification of the decision to the person concerned, or, in the absence of a notification, of the day on which the ESA published its decision.

Article 7 of the Rules of Procedure explains how the Notice of Appeal must be filed. This can be done by email, registered post or personal delivery to the respondent ESA, that is the ESA against whose decision the appeal is brought.

If email is used, the email should be sent to the Secretariat at the email address of the Board of Appeal indicated on the respondent ESA's website.

It is the appellant's responsibility to file in time. If there is no acknowledgment of filing, the appellant should make sure that the Notice of Appeal has been received by the respondent ESA.

### **Form of Notice of Appeal**

A form of Notice of Appeal indicating the information which should be included is found on the website. Please make sure that the Notice of Appeal complies with Article 5 of the Rules of Procedure.

The decision appealed against and any documents relied on should be attached.

### **Communications in relation to the appeal**

The Secretariat of the Board of Appeal rotates annually.

After filing, the appeal will be transferred to the Secretariat at the ESA which is providing the Secretariat at that time. That Secretariat will administer the appeal. This is because an ESA cannot administer an appeal against its own decisions.

If the Secretariat is that of the respondent ESA whose decision is under appeal, the Secretariat for the following year will administer the appeal.

Communication by the parties with the Board of Appeal in relation to the appeal is through the Secretariat administering the appeal. Unless a different direction is given by the Board of Appeal, communication by email subject to any applicable security standards is acceptable.

It is important that all communications with the Secretariat are copied to the other party.

### **Time limits**

Where the Rules of Procedure impose a time limit, it is the parties' responsibility to ensure that the time limit is observed subject to any extension given by the Board of Appeal.

### **Case Management**

The Board of Appeal will seek to manage appeals in accordance with best practice, and the parties are asked to cooperate in that regard.

### **Documents and other evidence**

This is dealt with in Chapter 6 of the Rules of Procedure. Any further documents are to be exchanged two weeks after the time for the Response. Witness evidence in writing may be placed before the Board of Appeal, but parties need permission to adduce expert evidence.

## **Oral representations**

By Article 60.4 of the ESA Regulations, parties are entitled to make oral representations. Chapter 7 of the Rules of Procedure deals with oral representations. Parties should ask to make oral representations if they wish to do so. In the absence of a request, the Board of Appeal may require oral representations if it considers it to be necessary for the just determination of the appeal. Otherwise, the Board of Appeal will consider the appeal on the basis of the written material provided by the parties.

Exceptionally, the Board of Appeal may give permission for a party to call a witness or an expert who has given a written statement to give oral evidence at the hearing, in person, on the phone or by video link.

The hearing will take place at the seat of one of the European Supervisory Authorities, unless the Board of Appeal gives different directions.

After the hearing, further evidence or representations are not admitted.

## **Lodging of the appeal**

When the President considers that the evidence is complete, the President will notify the parties that the appeal has been lodged for the purposes of Article 60.2 of the ESA Regulations. The Board of Appeal will proceed to give its decision.

## **The decision**

By Article 23 of the Rules of Procedure, within 7 days of being sent the decision the parties may provide the Secretariat with a list of any clerical mistakes, errors in calculation or obvious slips they consider have been made in the decision: typographical errors are an example.

The Board of Appeal may in response to such a list rectify any clerical mistakes, errors in calculation and obvious slips in the decision, or do so of its own motion.

## **Publication and confidentiality**

By Article 60.7 of the ESA Regulations, the decisions taken by the Board of Appeal shall be reasoned and shall be made public by the Authority.

The decisions of the Board of Appeal are published on the websites of the ESAs.

Article 26 of the Rules of Procedure provides that a party may request the confidential treatment of documents or information filed or served in connection with the proceedings. If the Board of Appeal agrees, such information will be redacted from the published decision.

## **Amendment of Rules of Procedure**

The Rules of Procedure may be amended by the Board of Appeal and have been in 2019. Suggestions from parties or otherwise as regards the development of the Rules are welcome, and can be sent via the contact details on the websites.