

BoA 2018 01

D E C I S I O N

given by

the
BOARD OF APPEAL
OF THE EUROPEAN SUPERVISORY AUTHORITIES

under Article 60 of Regulation (EU) No 1095/2010
and the Board of Appeal's Rules of Procedure (BOA 2012 002)

in an **Appeal** by

"A"
[Appellant]

against

The European Securities and Markets Authority
[Respondent]

Decision
Ref. BoA 2018 01

Board of Appeal
William Blair (President)
Anna Konstantinou
Beata Maria Mrozowska
Lars Afrell
Marco Lamandini
Pat McArdle

Place of this decision: Frankfurt a.M.

Date: 30 April 2018

I. The appeal

1. On 6 March 2018, the Board of Appeal Secretariat received an email from a person who will be referred to as “A” attaching a document dated 23 February 2018 which was, or was said to be, an appeal against ESMA under Article 60 of the European Supervisory Authorities’ Regulations against decisions not to initiate an investigation against a named national authority under Article 17 of the ESMA Regulation. A asked for the reopening of A’s complaint against the national authority.
2. Article 60(1) of Regulation (EU) No 1095/2010 (the “ESMA Regulation”) gives a right of appeal as follows:

“Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18 and 19 and any other decision taken by the Authority in accordance with the Union acts referred to in Article 1(2) which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.”
3. No decision or decisions of ESMA were identified in the appeal or annexed to the appeal (as required by Articles 5(1) and (2) of the Board of Appeal’s Rules of Procedure).
4. On 19 March 2018, the Secretariat received by email an application from ESMA (copied to A) that the President give directions. In paragraphs 9, 10 and 11 of the application, ESMA asked for a direction that A specify the decision which is the subject of the appeal. ESMA asked the Board of Appeal to dismiss the appeal as a preliminary matter on the basis that it was inadmissible on various grounds.
5. No other material has been put before the Board of Appeal by either party.
6. On 28 March 2018, the Secretariat sent A an email stating that the President asked A to respond in the first instance to these paragraphs and identify the decision or decisions against which A sought to appeal, sending a copy. A was told that a reply would be welcome by 6 April 2018.
7. No response was received from A. On 11 April 2018, the Secretariat sent an email to A stating that it had been directed by the Board of Appeal to ask A to respond by 18 April 2018. A was informed that failure to do so would result in a dismissal of the appeal under Article 14 of the Board of Appeal Rules of Procedure.

8. No response was received from A by 18 April 2018 or at all. In fact, the only communication from A that has been received by the Board of Appeal is the email referred to in paragraph 1 above.

II. The decision

9. In the circumstances, the Board of Appeal unanimously decides that the appeal should be dismissed.
10. The original of this Decision is signed by the Members of the Board in electronic format, and countersigned by hand by the Secretariat.

William Blair (President)
(SIGNED)

Marco Lamandini
(SIGNED)

Anna Konstantinou
(SIGNED)

Pat McArdle
(SIGNED)

Lars Afrell
(SIGNED)

Beata Maria Mrozowska
(SIGNED)

On behalf of the Secretariat
Kai Kosik
(SIGNED)

A signed copy of the decision is held by the Secretariat.