

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

General

The Joint Board of Appeal of the European Supervisory Authorities (“ESAs”) is established under the Regulations establishing the European Supervisory Authorities themselves. These are Regulations (EU) No 1093 of 2010, No 1094 of 2010, and No 1095 of 2010 of the European Parliament and of the Council of 24 November 2010 (“the ESA Regulations”), and in particular Articles 58 to 61. Each of the ESA Regulations is in essentially the same form.

Under Article 58.8, the ESAs provide operational and secretarial support for the Board of Appeal through the Joint Committee, which is also established by the ESA Regulations. This is done through a Secretariat.

The Board of Appeal is independent of the ESAs, and its purpose is to provide an independent right of appeal from their decisions, with a further right of appeal to the European Court of Justice.

The Board of Appeal has adopted Rules of Procedure pursuant to Article 60.6 of the ESA Regulations, which are subject to amendment. These are publicly available on the Board of Appeal page on the ESAs’ websites.

These Guidelines are subject to the ESA Regulations and the Rules of Procedure, which contain the rules which should be followed.

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 Authority within 2 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 Authority published its decision.

A form of Notice of Appeal is found on the website. Please make sure that it complies with Article 5 of the Rules of Procedure. The decision appealed against and any documents relied on should be attached.

By Article 60.2 of the ESA Regulations, the appeal must be filed in writing at the Authority which is the respondent to the appeal.

Communication in relation to the appeal

By Article 4 of the Rules of Procedure, communication by the parties with the Board of Appeal in relation to the appeal is through the Secretariat. Article 7 of the Rules of Procedure deals with filing and service. Whilst formal documents should be filed in physical form, it is envisaged that the Board of Appeal will generally permit email communications. Please confirm this with the Secretariat. Where there is a time limit, it is the parties' responsibility to ensure that the communication is received in due time.

Time limits

By Article 8 of the Rules of Procedure, any time limit under the Rules of Procedure may be extended by the Board of Appeal or by the President. If more time is needed, an extension should be obtained in advance. However, the grant of an extension is not to be assumed, because the procedure is intended to deal with appeals expeditiously.

Case Management

The Board of Appeal will seek to manage appeals in accordance with best practice, and the parties are expected to cooperate in that regard. By Article 11 of the Rules of Procedure, the President may give directions by way of case management for the efficient conduct of the appeal at any stage in the appeal. If it is appropriate, for example in a complex appeal, this may be way of a pre-hearing conference.

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 adduced, but parties need permission to adduce expert evidence.

By Article 19 of the Rules of Procedure, exceptionally, and at a party's request, the Board of Appeal may give permission for that party to call a witness or an expert who has given a written statement under Article 17 to give oral evidence at the hearing, in person, on the phone or by video link.

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.

The President will give directions as to the order and form of such hearing and set a timetable. These matters will normally be fixed at the pre-hearing conference (otherwise the Secretariat will notify the parties).

The hearing may take place at the seat of one of the European Supervisory Authorities, and will do so, unless the Board of Appeal gives different directions. If the parties or either of them wishes an alternative venue for any reason, it should make a request to the Board of Appeal as soon as possible. Before it considers such a request, the Board of Appeal will require suitable arrangements as regards the alternative venue to be agreed by the parties. In any case, the Secretariat will be present at the hearing.

In accordance with best practice, the parties must honour the timetable which has been set. 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 decision

By Article 23 of the Rules of Procedure, within 7 days of being sent the Decision the parties may provide through the Secretariat a list of clerical mistakes, errors in calculation or obvious slips in the Decision. The Board of Appeal may by way of order of its own motion or in response to such list rectify clerical mistakes, errors in calculation and obvious slips in the Decision.

Costs

By Article 25 of the Rules of Procedure, any questions as to the apportionment of costs are dealt with subsequently. There are no assumptions in relation to costs. The rules provide that the Board of Appeal may decide which of the parties shall bear the costs or in which proportion they shall be borne by the parties.

Amendment

The Rules of Procedure may be amended by the Board of Appeal. 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.