

ORDER No 1

of 29 June 2026

In Case ESMAT 4/2025

William Hyldedahl, Appellant, member of staff of the European Stability Mechanism

Self-represented

v

European Stability Mechanism, Respondent

represented by João Sousa Gião, General Counsel of the European Stability Mechanism

Concerning the Application to Intervene lodged by AD on 26 February 2026

The Administrative Tribunal of the European Stability Mechanism

Adopts the present **ORDER**.

I. INTRODUCTION

1. On 2 December 2025, William Hyldedahl (“the Appellant”) presented an appeal against the European Stability Mechanism (“ESM”) challenging the ESM disposition of three reports filed by the Appellant pursuant to the Whistleblower and Witness Protection Policy.
2. A notice announcing the lodging of the appeal was published on 28 January 2026.

3. On 26 February 2026, AD, a member of staff of the ESM (“the Applicant”) submitted an application to intervene in the present proceedings in accordance with Rule 27(2) of the Tribunal’s Rules of Procedure.
4. In his statement of views of 4 March 2026, the Appellant indicated that he was taking no position for or against the admissibility of the application and that he trusted the Tribunal to take the appropriate decision. In its statement of views of 17 March 2026, the ESM contended that the application was inadmissible.
5. By letter of 8 May 2026, the parties were informed that the panel appointed to hear this case had decided that the Appeal should be referred to plenary in accordance with Article 8(2) of the Statute of the Tribunal.
6. The Applicant who will, on grounds of convenience only, be referred to with the masculine pronoun throughout the present Order, has requested that his identity not appear in the published materials relating to the present application. The Tribunal has decided to accede to this request.

II. ADMISSIBILITY OF THE APPLICATION TO INTERVENE

(a) Legal background

7. Rule 27(1) of the Tribunal’s Rules of Procedure provides for the issuance of “a notice summarising the issues raised in an appeal”.
8. Rule 27(2) provides as follows:

“Any person to whom the Tribunal is open under Article 2 of the Statute may, within 30 days of the issuance of this notice, apply to intervene in a case on the ground that he or she has a right which may be affected by the decision to be adopted by the Tribunal. Such person shall for that purpose draw up and file an application to intervene in accordance with the conditions laid down in Rule 13 *mutatis mutandis*.”
9. This provision lays down two substantive conditions, *ratione personae* and *ratione materiae*, for the Tribunal’s jurisdiction to consider an application in intervention, that is:
 - The applicant must be a person to whom the Tribunal is open under Article 2 of the Statute, and

- The applicant must have a right which may be affected by the decision in the proceedings at issue.
10. Rule 27(2) also lays down a temporal condition of admissibility (“30 days from the issuance of th[e] notice”) and formal requirements (“conditions laid down in Rule 13 *mutatis mutandis*”).

(b) Positions of the parties

11. The Applicant has argued that the following rights of which he claims the benefit would be affected by the Tribunal’s decision in the present case:

- “Right to a Proper Standard of Proof in Whistleblowing Proceedings”;
- “Right to an Impartial and Independent Investigation”, and
- “Right to Seek Revision Based on Structural Defects”.

12. The ESM contends that an applicant “should demonstrate that he or she has a right individually conferred on him/her by decisions taken by the ESM, which may be affected by the decision to be adopted by the Tribunal”. In its view, “[s]hould the Tribunal maintain or annul the ... contested decision in Case [ESMAT] 4/2025, there would be no legal consequence on the [Applicant’s] individual situation or rights.” The ESM concludes that the application should be declared inadmissible.

(c) Findings of the Tribunal

13. The right of intervention under Rule 27(2) must be interpreted in light of Article 2 of the Statute. It is obvious that the Tribunal cannot have a wider material jurisdiction in the framework of intervention proceedings than that which it enjoys in relation to an appeal. If this were not the case, an intervener could in theory enlarge the scope or modify the character of the factual and legal matters of which the Tribunal is seised. The Tribunal could therefore find itself deciding not the appeal, but a different set of matters dictated by the submissions of the intervener(s), in the consideration of which the written pleadings of the Appellant and the ESM may be of only marginal relevance.
14. It follows from Rule 27(2), interpreted in the light of Article 2 of the Statute, that an intervener may not act in pursuit of some abstract general right or “in the interests of the law”, but must demonstrate that, as of the point in time the application to intervene is submitted, the Tribunal’s future decision in the particular proceedings may directly affect, positively or negatively, the intervener’s legal situation in a manner analogous to its effect on the Appellant.

15. In the present case, the Applicant is first claiming rights to a proper standard of proof and to an impartial and independent investigation in whistleblowing proceedings and argues that an incorrect standard of proof was applied in the case of his whistleblowing report. In his view, a determination by the Tribunal that the correct standard of proof is lower than that of “clear and convincing evidence” would “directly affect the legality of the Managing Director’s decision of 11 May 2023 in [his] case”. He also argues that Case ESMAT 4/2025 raises concerns regarding the conduct of, and in particular respect for the requirements of impartiality in, the process for investigating whistleblowing reports.
16. The Tribunal considers that the Applicant already enjoys the rights to the application of a proper standard of proof and to an impartial and independent investigation in whistleblowing proceedings, as do any members of ESM staff. He has, on the other hand, not demonstrated the existence of any right which is specific to his own legal situation which would be affected by the Tribunal’s decision in the present proceedings.
17. While the Tribunal’s judgment in the present case may influence the ESM’s application of the legal framework for the conduct of investigations, including investigations of whistleblower reports, the Applicant’s interest in the outcome of the present proceedings is no different from that of any other person to whom the Tribunal is open under Article 2 of the Statute.
18. Second, the application to intervene is predicated on the notion that if the Tribunal were to find “systemic flaws in the investigative operating procedures, the conflation of disciplinary and administrative proceedings, or data-protection or outsourcing irregularities”, such a ruling would allow him to challenge the validity of Managing Director’s decision of 11 May 2023.
19. In accordance with the principle of legal certainty, Articles 2(2) and 7(1) of the Statute stipulate that a negative decision may only be challenged following the applicable internal procedures and an appeal filed within the time limits indicated. In the present proceedings, the Tribunal is seised exclusively of the validity of the decisions challenged by the Appellant; its findings on the standard of proof and the investigation of whistleblowing reports would not under any circumstances affect the validity of the decision of 11 May 2023.
20. By the Applicant’s own account, the decision which he wishes to challenge indirectly by means of his application to intervene was taken by the Managing Director some three years ago. It was open to him at that point in time to challenge

this decision and, if he had so wished, to rely on the grounds he is raising in his application to intervene. The Tribunal is not, however, now seised of the validity of the decision of 11 May 2023 and nothing in the future decision of the Tribunal in the present case would affect the validity of that decision. The Applicant's application to intervene in the present proceedings is manifestly an attempt to reverse his own decision in 2023 not to challenge the rejection of his whistleblower report.

21. As the Applicant has not shown that he enjoys a right which may be affected by the decision to be adopted by the Tribunal in the sense of Rule 27(2), the present application to intervene is inadmissible as being outside the Tribunal's jurisdiction.

III - DECISION

22. The application presented by AD on 26 February 2026 to intervene in Case ESMAT 4/2025 is rejected as inadmissible.

Kieran Bradley, (President)

(signed)

Tonia Gillett, (Registrar)

(signed)