Official Journal
of the European Union

EN
L series

2024/1706

18.6.2024

COMMISSION DELEGATED REGULATION (EU) 2024/1706

of 11 March 2024

amending Delegated Regulation (EU) No 272/2012 as regards harmonisation of certain aspects of fees charged by the European Securities and Markets Authority to credit rating agencies

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ([1]), and in particular Article 19(2) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) No 272/2012 ([2]) specifies the type of fees, the calculation, and the payment modalities with regard to the fees charged by the European Securities and Markets Authority (ESMA) to the credit rating agencies.

(2) In 2018, both the Commission's Internal Audit Service's review and the European Court of Auditors' audit ([3]) concluded that ESMA's fee funding system is unnecessarily complex. To simplify the collection of fees and reduce risks linked to the incorrect calculation or inefficient allocation of fees, it is necessary to ensure consistency of technical aspects across the different delegated acts on fees charged by ESMA to directly supervised entities.

(3) To fully cover ESMA's expenditures relating to the supervision of credit rating agencies, the annual supervisory fees should be determined on the basis of the annual estimate of all direct costs necessary for the supervisory tasks performed by ESMA and a reasonable apportionment of ESMA's fixed and variable overheads.

(4) To ensure consistency among delegated acts on fees paid to ESMA, and to enable ESMA to dispose in due time of audited turnover data for the estimation of fees due by credit rating agencies to ESMA, the reference year of the audited accounts for the determination of the applicable turnover should be 2 years prior to the year for which ESMA charges fees to the credit rating agency.

(5) ESMA should be able to establish its annual budget in time, based on certified turnover data. To facilitate the calculation of the fees by ESMA, credit rating agencies should submit audited accounts with breakdowns of core and ancillary services. A deadline should be set by which credit rating agencies are to submit to ESMA their audited accounts.

(6) The applicable turnover of credit rating agencies is calculated in euros. It is therefore necessary to specify a mechanism for the conversion into euros of revenues generated in other currencies.

(7) To ensure consistency among delegated acts on fees to be paid to ESMA, ESMA should calculate the penalty in case of late payments in line with the provisions on default interest set out in Article 99 of the of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([4]).

([1]) OJ L 302, 17.11.2009, p. 1, ELI: http://data.europa.eu/eli/reg/2009/1060/oj.

([2]) Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies (OJ L 90, 28.3.2012, p. 6, ELI: http://data.europa.eu/eli/reg_del/2012/272/oj).

([3]) Court of Auditors, Annual report on EU agencies for the financial year 2018 (OJ C 417, 11.12.2019, p. 29 and p. 85 ff1).

([4]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).

(8) In line with Commission Delegated Regulation (EU) 2019/715 ([5]), fees charged to credit rating agencies should be set at a level that ensures that the full cost of services provided by ESMA is covered and a deficit is avoided, but at the same time avoids the accumulation of a significant surplus. Where a significant positive or negative budget result becomes recurrent, the level of the fees should be revised.

(9) To further simplify the fee management, and to ensure ESMA has the necessary funds to carry out its planned supervisory activities, annual supervisory fees should be paid in a single instalment during the first 3 months of the calendar year for which such fees are due. Annual supervisory fees should not be reimbursed.

(10) The registration fee is meant to cover the costs incurred by ESMA to examine whether the credit rating agency concerned fulfils all conditions. When an applicant credit rating agency withdraws its application, ESMA will already have made costs and thus should be under no obligation to refund fees related to such.

(11) To avoid an excessive supervisory fee in the year of its registration, a registered credit rating agency should pay an initial supervisory fee the amount of which should be proportional to the period of time in that first year during which the credit rating agency has been registered.

(12) The administrative cost linked to the first year supervisory fee for a credit rating agency registered in December is not proportionate to that fee. Therefore, a credit rating agency that is registered in December should be exempted from the requirement to pay an annual supervisory fee for the year in which that credit rating agency was registered.

(13) To simplify the payment of certification fees, 50 % of the fee should be refunded in case a credit rating agency withdraws its application before ESMA has notified the completeness of the application. If a credit rating agency withdraws its application after ESMA has notified the credit rating agency that the application is complete the certification fee should not be refunded. Certified credit rating agencies should not pay an annual supervisory fee according to Article 7(1) of Delegated Regulation (EU) No 272/2012 in the year during which its certification takes effect.

(14) In order to avoid legal uncertainty for the ongoing fee collection process, this Regulation should apply from 1 January 2025.

(15) Delegated Regulation (EU) No 272/2012 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 272/2012

Delegated Regulation (EU) No 272/2012 is amended as follows:

(1) Article 2 is replaced by the following:

'*Article 2*

Recovery of supervisory costs in full

The fees charged to credit rating agencies shall cover:

(a) all direct and indirect costs relating to the supervision of credit rating agencies by ESMA in accordance with Regulation (EC) No 1060/2009, including costs resulting from the registration and certification of credit rating agencies;

([5]) Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1, ELI: http://data.europa.eu/eli/reg_del/2019/715/oj).

(b) all costs for the reimbursement of direct and indirect costs of competent authorities to which ESMA has delegated tasks in accordance with Article 30 of Regulation (EC) No 1060/2009;

(c) all costs for the reimbursement of direct and indirect costs of competent authorities that have provided assistance to ESMA in accordance with Article 23c(4) and Article 23d(5) of Regulation (EC) No 1060/2009.';

(2) Article 3 is replaced by the following:

'*Article 3*

Applicable turnover

1. For the purposes of calculating the fees referred to in Article 5, Article 7(1) and Article 11(1) and (2), the applicable turnover for a given financial year (n) shall be the revenues of a credit rating agency as published in its audited accounts of the year n–2 generated from rating activities and ancillary services.

2. Where the credit rating agency did not operate during the full year (n–2), the applicable revenue shall be estimated by extrapolating that amount for the whole financial year.

3. Credit rating agencies shall provide ESMA, on an annual basis, with audited accounts as referred to in paragraph 1. Those accounts shall distinguish between revenues generated from rating activities and ancillary services and shall be submitted to ESMA by electronic means by 30 September each year (n–1).

4. Where the revenues referred to in paragraph 1 are reported in another currency than euro, ESMA shall convert those revenues into euro using the average euro foreign exchange rate applicable to the period during which those revenues were recorded. For that purpose, ESMA shall use the euro foreign exchange reference rate published by the European Central Bank.';

(3) in Article 4(3), the second subparagraph is replaced by the following:

'Any late payment shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (*).

_____

(*) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).';

(4) Article 5 is amended as follows:

(a) in paragraph 2, point (b) is replaced by the following:

'(b) the relevant amount for the calculation of the annual supervisory fee for a given financial year shall be the estimate of expenditure referred to in point (a) reduced by the annual supervisory fee referred to in Article 7;';

(b) paragraph 3 is replaced by the following:

'3. The annual supervisory fee shall be paid in a single instalment, which shall be due by no later than the end of March of the year to which it relates.

ESMA shall send debit notes to the credit rating agencies concerned specifying the amount of the annual supervisory fee at least 30 calendar days before the day when annual fees are to be paid.

The annual supervisory fee shall not be reimbursed.';

(5) in Article 6, paragraphs 7 and 8 are replaced by the following:

'7. ESMA shall not reimburse a paid registration fee where a credit rating agency withdraws its application for registration before ESMA has adopted the reasoned decision to register or refuse registration.

8. By way of derogation from Article 5, a registered credit rating agency that is required to pay an annual supervisory fee in accordance with Article 5(1) shall pay in the year of its registration an initial supervisory fee which is calculated as follows:

*registered credit rating agency first-year fee = registration fee * coefficient*

$$\text{Coefficient} = \frac{\text{number of calendar days from the date of registration until 31 December in year (n)}}{\text{number of calendar days in year (n)}}$$

Credit rating agencies shall pay the supervisory fee of the first year after they have been notified by ESMA that their registration is successful and within 30 calendar days from the date of issuance of ESMA's debit note.

However, where a credit rating agency is registered during the month of December, that credit rating agency shall not be required to pay an annual supervisory fee for the year in which it was registered.';

(6) in Article 7, paragraph 2 is replaced by the following:

'2. The annual supervisory fee for a certified credit rating agency shall be due by the end of March of the year to which it relates. ESMA shall send an invoice specifying the amount of the annual supervisory fee to a certified credit rating agency at least 30 calendar days before that date,';

(7) in Article 8, paragraphs 3 and 4 are replaced by the following:

'3. Where a credit rating agency withdraws its application for certification before ESMA has notified that agency, in accordance with Article 15(4), second subparagraph, of Regulation (EC) No 1060/2009, that the application is complete, ESMA shall reimburse half of the certification fee. Where the application is withdrawn after that date, but before ESMA adopts the reasoned decision to certify or refuse certification, ESMA shall not reimburse the certification fee.

4. By way of derogation from Article 7, a certified credit rating agency that is required to pay an annual supervisory fee pursuant to Article 7(1) shall be exempted from the payment of the supervisory fee in the year during which its certification takes effect.

The annual supervisory fee shall become payable by the certified credit rating agency in the year following its certification by ESMA in accordance with Article 7.'.

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. It shall apply from 1 January 2025.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 March 2024.

For the Commission
The President
Ursula VON DER LEYEN