



European Securities and
Markets Authority

Consultation Paper

Fees charged to Credit Rating Agencies by ESMA



Responding to this paper

ESMA invites comments on all matters set out in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **15 March 2021**.

All contributions should be submitted online at www.esma.europa.eu under the heading: 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the closure of the consultation period, unless you specifically request otherwise. Please clearly and prominently indicate in your submission any part that you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested by ESMA in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose a response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper

Credit Rating Agencies (CRAs) issuing or endorsing credit ratings for use in the EU and their auditors, CRAs certifying credit ratings for use in the EU, firms considering registration as Credit Rating Agencies or firms applying for certification status. This Consultation Paper may also be of interest to trade associations representing CRAs and users of credit ratings.

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1 Executive Summary

Reasons for publication

Article 19 of the CRA Regulation (Regulation 1060/2009 as amended) requires ESMA to charge fees to credit rating agencies (CRAs). These fees cover the costs of registering and granting certification status to CRAs as well as the costs of ESMA's ongoing supervision of CRAs issuing, certifying and endorsing credit ratings for use in the EU. The calculation and payment of these fees is set out in Commission Delegated Regulation 272/2012. On 15 July 2020, the European Commission asked ESMA to provide Technical Advice on the revision of this Delegated Regulation. The purpose of the Technical Advice is to highlight areas where the Delegated Regulation might be revised in order to:

- Reflect ESMA's experience of applying the Delegated Regulation in practice;
- Incorporate the findings of the European Commission's Internal Audit Service and European Court of Auditors reports; as well as to
- Consider ways to align the fees collection process across ESMA's supervisory mandates where possible.

Contents

This Consultation Paper presents the main proposals to be included in ESMA's Technical Advice to the European Commission on the revision of Delegated Regulation 272/2012. Section 2 explains the relevant background to the Request for Technical Advice and Sections 3-7 set out ESMA's proposals to simplify the calculation and administration of registration fees, annual supervisory fees and certification fees and to align the fees collection process for CRAs with ESMA's other supervisory mandates.

Next Steps

The deadline for the submission of responses to this Consultation Paper is 15 March 2021. ESMA will then consider the feedback received and submit its Technical Advice to the European Commission by 31 June 2021.

2 Background

2.1 Supervisory Fees Charged to Credit Rating Agencies by ESMA

1. Article 19(1) of the CRA Regulation¹ provides that ESMA shall charge fees to credit rating agencies (CRAs) which cover ESMA's costs relating to the registration, certification and supervision of CRAs. These fees also allow ESMA to reimburse national competent authorities for any costs they incur in carrying out work under the CRA Regulation on ESMA's behalf.
2. Article 19(2) of the CRA Regulation requires the Commission to adopt a Delegated Regulation on supervisory fees to determine the different types of fees payable, the amount of fees payable, the modalities of payment and the reimbursement of fees to national competent authorities. The key principle to be reflected in the Delegated Regulation is set out in the second part of Article 19(2) which states that:

The amount of a fee charged to a credit rating agency shall cover all administrative costs and be proportionate to the turnover of the credit rating agency concerned.

3. Commission Delegated Regulation 272/2012 with regard to the fees charged by ESMA to Credit Rating Agencies (the Fees Delegated Regulation)² entered into force on 31 March 2012. The Fees Delegated Regulation sought to ensure a fair and clear allocation of fees which reflected ESMA's administrative and supervisory costs³ whilst not being unduly burdensome for new market entrants.⁴ In order to achieve this, the Fees Delegated Regulation based the calculation of supervisory fees on CRAs' turnover from credit ratings and ancillary services.
4. Recital 4 notes that CRAs should not circumvent the fair allocation of fees by reallocating revenue to other entities within their group in order to reduce their fee contributions. This recital asks ESMA to monitor and report any critical developments.

¹ Regulation 1060/2009 of 19 September 2009 on Credit Rating Agencies, OJ L 302/1, 17.11.2009 as amended by Regulation 513/2011 of 11 May 2011 OJ L 145/30, 31.5.2011 and Regulation 462/2013 of 21 May 2013, OJ L 146/1, 31.5.2013, consolidated version available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009R1060-20190101&from=EN>

² Commission Delegated Regulation 272/2012 of 7 February 2012, OJ L 90/6, 28.3.2012 available at: https://eur-lex.europa.eu/eli/reg_del/2012/272/oj

³ Footnote 1 *ibid* at Recital 4.

⁴ Footnote 1 *ibid* at Recital 3.

5. Recital 8 of the Fees Delegated Regulation foresees that the exemption thresholds and the amounts of registration and certification fees payable should be reviewed as necessary to ensure that they reflect industry developments.

2.2 Commission Request for Technical Advice on Supervisory Fees

6. In its 2018 review, the Internal Audit Service of the European Commission (IAS) reviewed the collection of supervisory fees by ESMA. They concluded that the lack of harmonisation between the supervisory fees Delegated Regulations for CRAs and Trade Repositories (TRs) resulted in unnecessary complexity and meant that ESMA's resources were not being used as efficiently or effectively as possible. The audit found that this lack of harmonisation could also create confusion and unnecessary work for ESMA's supervised firms, especially in light of ESMA's future supervisory mandates. The IAS recommended that ESMA should prepare a comprehensive Technical Advice for the European Commission proposing changes to the current fees delegated regulations to address these concerns.
7. Furthermore, in its Annual Report on EU Agencies for 2018 the European Court of Auditors (ECA) noted that the current Delegated Regulation on Fees creates the opportunity for CRAs which are part of a group to *'reduce or avoid fees by transferring revenues from credit rating agencies under EU jurisdiction to their related entities outside the EU'*.
8. ESMA explained these concerns to the European Commission by letter of 26 May 2020. On 15 July 2020 the Commission sent a request to ESMA for Technical Advice regarding the fees charged by ESMA to CRAs and TRs. The European Commission asked ESMA to ensure that each Technical Advice:
 - reflects ESMA's experience of applying the Delegated Regulations in practice;
 - addresses the observations of the IAS and ECA; and
 - seeks to ensure consistency and harmonisation across all of ESMA's Delegated Regulations on fees.
9. ESMA agreed that it would provide its Technical Advice to the European Commission by 31 June 2021.

3 ESMA's general budgetary approach and fee collection process

10. ESMA applies a universal budgeting approach, which means that income from fees is treated as general revenue.⁵ This is in line with the principle of universality defined in the EU Financial Regulation⁶ and is the standard practice of other partially fee funded EU agencies, as recommended by DG Budget of the European Commission.
11. ESMA prepares its annual budget with a view to balancing income from fees with its incurred expenditure, understanding that deficits or surpluses are to be balanced by the rest of ESMA's income. The total amount of ESMA's annual revenues is defined on the basis of ESMA's Activity-Based Management methodology. The total estimated costs for the coming year are set out in ESMA's annual work plan which is published in September of year n-1. The approved budget is then published on ESMA's website in the following January (year n).
12. Through the existing EU budgetary procedure, annual reporting mechanism and single programming document, the ESMA Management Board and Board of Supervisors remain fully informed of ESMA's supervisory fee collection processes and expenditure levels. The overall implementation of ESMA's budget, including the fee funded portion, is checked by the ECA and the final audit report is communicated to the European Parliament and Council.
13. In the event of a deficit, where ESMA collects less income than the costs incurred, ESMA does not recover the deficit from supervised firms. If the deficit is repeated or significant, ESMA analyses the reasons for this and draws up lessons learned for the next budgeting period. In the event of a surplus, where ESMA collects more income than the costs it incurs, the same reasoning should be followed, so no excess fees are paid back to supervised firms.
14. The Fees Delegated Regulation is not currently in line with the universal budgeting model and, for this reason, is not consistent with the approaches set out in the Delegated Regulations on fees for Trade Repositories, Securitisation Repositories and third-country CCPs. In particular, ESMA notes that Recital 2 of the Fees Delegated Regulation and Article 5(2)(b) require a budget deficit incurred in one year to be recovered in the following

⁵ See Annex III: Budget of ESMA 2020 Annual Work Programme:

https://www.esma.europa.eu/sites/default/files/library/esma20-95-1132_2020_annual_work_programme_revised.pdf

⁶ Article 20 Regulation 2018/1046 of 18 July 2018 on the financial rules applicable to the general budget of the Union, OJ L 193, 30.7.2018, p. 1–222 available at: <https://eur-lex.europa.eu/eli/reg/2018/1046/oj>

year. This is not consistent with the principles of budget universality and budgetary annuality set out above.

15. Article 4(3) of the Fees Delegated Regulation provides that any late payments of fees to ESMA will incur a daily penalty equal to 0,1% of the amount due. This is not in line with the provisions on default interest set out in Article 99 of the Financial Regulation as adopted under ESMA's other supervisory mandates.
16. ESMA further notes that Article 5(3) of the Fees Delegated Regulation currently requires the payment of annual supervisory fees in two instalments, in February and in August. ESMA wishes to amend this article to require fees to be paid to ESMA in one instalment in the first three months of the calendar year, and by no later than 31 March of the year for which they are due. These changes are necessary to align the Fees Delegated Regulation with the approach taken under other supervisory mandates, to ensure that ESMA has the funds needed to carry out its planned supervisory activities for the year ahead.
17. Where a CRA provides its audited accounts in a currency other than Euro, ESMA usually converts the amounts into Euro using the average EUR foreign exchange rate for the period during which the revenues were recorded as published by the European Central Bank.⁷ This is not currently reflected in the Fees Delegated Regulation, but is relevant to the fees collection process followed in respect of some certified CRAs and non-Eurozone EU CRAs.
18. In order to reflect ESMA's general budgetary approach and to ensure consistency with the fees collection process across ESMA's supervisory mandates, ESMA proposes to amend the wording of Recital 2 of the Fees Delegated Regulation and Articles 2, 3, 4 and 5 regarding the budgeting and fee setting and collection process as follows:

Recital 2 of Delegated Regulation 272/2012 will be amended to clarify that ESMA shall set the fees charged to CRAs at such a level as to avoid any significant and recurrent accumulation of deficit or surplus. Where deficits are incurred, ESMA will not recover these from CRAs. Where a surplus is collected, ESMA will not repay this to CRAs.

Article 2 of Delegated Regulation 272/2012 will be amended to explain that the annual supervisory fees charged to all registered and certified CRAs for any given year will be:

⁷ https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html

1. Equal to the estimated cost of carrying out all activities related to the supervision of CRAs as included in ESMA's budget for that year; and

2. Set at such a level so as to avoid a significant and recurrent accumulation of deficit or surplus.

Article 3 of Delegated Regulation 272/2012 will be amended to state that audited accounts provided in currencies other than Euro will be converted using the average EUR rate applied by the European Central Bank for the period covered by the accounts.

Article 4(3) of Delegated Regulation 272/2012 will be amended to state that any late payment shall bear interest at the rate set in accordance with the EU Financial Regulation.

Article 5(2)(b) of Delegated Regulation 272/2012 will be amended to clarify that:

1. The amount of supervisory fees charged will be reduced by the sum of the fixed annual fees charged; and

2. The amount of supervisory fees charged will not be increased to recover deficits or decreased to compensate for any surplus.

Article 5(3) of Delegated Regulation 272/2012 will be amended to require registered CRAs to pay their annual supervisory fees to ESMA in one instalment in the first three months of the calendar year and by no later than 31 March of the year for which they are due.

Q1: Do you agree with the proposals to reflect ESMA's general budgetary approach in the revised Fees Delegated Regulation? If not, please explain why not.

4 Changes to registration fees

4.1 Basic registration fee

19. ESMA charges a one-off fee to firms applying for registration as CRAs. Article 6 of the Fees Delegated Regulation explains that the amount of the registration fee payable shall be proportionate to the complexity of the application and the size of the CRA.
20. The basic registration fee is set at €2,000 which may then be increased up to a maximum of €125,000 based on the number of employees of the CRA and whether the CRA:
- intends to issue credit ratings on structured finance instruments; and/or
 - has a branch in another member state or in a third country; and/or
 - intends to endorse credit ratings.
21. ESMA has found that the basic registration fee of €2,000 does not reflect the costs incurred in assessing an application for registration. In practice, an average registration accounts for approximately 0.5 full time employees (FTEs). ESMA's internal analysis suggests that each FTE carries a total cost of €195,000 when both direct and indirect costs are taken into account. These indirect costs cover items such as logistics, IT, communications and other shared services. On this basis, the assessment of an average application for registration costs ESMA approximately €97,500.
22. ESMA has also found that the amount of time spent assessing applications for registration does not differ significantly depending on the complexity of the application or the size of the CRA. For example, small CRAs or new entrants applying for registration tend to engage in a longer period of pre-application discussions with ESMA. The resulting applications often require a longer completeness assessment in order to ensure that the applicants have considered all of the processes required by the CRA Regulation. On the other hand, CRAs being registered as part of a group may find it easier to prepare and submit a complete application without first engaging in detailed discussions with ESMA. However, these applications might require a longer compliance assessment by ESMA, depending on the complexity of the applicant's business.
23. ESMA has also found that the criteria in Article 6(2) of the Fees Delegated Regulation which is used to increase the basic registration fee are not always meaningful in practice. This is because applicants for CRA registration are usually newly established firms which open with a skeleton staff and issue credit ratings on one or two asset classes only. Most applicants apply for registration with the intention of expanding their ratings business into

other asset classes and hiring more employees or opening branches or subsidiaries if their businesses grow in future. However, this future growth can be difficult to predict at the point of registration.

24. ESMA wishes to align its approach to registration fees under the Fees Delegated Regulation with that of its other supervisory mandates. ESMA notes that the registration fees charged under other supervisory mandates are set at between €40,000 and €360,000 and that the criteria used under the Fees Delegated Regulation is not used to determine the level of registration fees payable under these other mandates.⁸
25. ESMA is also mindful that one of the overall objectives of the CRA Regulation is to stimulate competition in the CRA industry and that the Fees Delegated Regulation seeks to ensure that fees charged by ESMA are not unduly burdensome for new market entrants.⁹ ESMA therefore proposes to increase the basic registration fee for CRAs but to set it at the lower end of the range of fees charged to other supervised entities in order to ensure that registration with ESMA does not create an unnecessary barrier to market entry. For this reason, ESMA proposes a registration fee of €45,000.
26. ESMA believes that setting the fee at this level strikes an appropriate balance between encouraging market entry and recouping its basic costs.¹⁰ Furthermore, it believes that the fixed fee would not be disproportionate to the turnover of new entrants, as these will not be required to pay ongoing supervisory fees until their total turnover exceeds €1,000,000.¹¹
27. ESMA therefore proposes to amend Article 6 of the Fees Delegated Regulation as follows:

Article 6 of Delegated Regulation 272/2012 will be amended provide for a registration fee of €45,000.

Q2: Do you agree with the proposed changes to registration fees? If not, please explain why not.

⁸See for example, Delegated Regulation 2019/360 of 13 December 2019 with regard to fees charged to trade repositories, *OJ L 81*, 22.3.2019, p. 58–68 available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0360&from=EN>; Commission Delegated Regulation 2020/1732 of 18 September 2020 with regard to fees charged by the European Securities and Markets Authority to securitisation repositories *OJ L 390*, 20.11.2020, p. 1–6 available at: https://eur-lex.europa.eu/eli/reg_del/2020/1732/oj.

⁹ Recital 3 Fees Delegated Regulation.

¹⁰ Further measures to assist new market entrants are set out in Sections 4.3 and 5.1 of this Consultation Paper.

¹¹ See section 5.1 below.

4.2 Reimbursement of Registration Fees

28. Article 6(7) of the Fees Delegated Regulation requires ESMA to repay three quarters of an applicant's registration fees in the event that they decide to withdraw their application before ESMA has assessed it to be complete and one quarter of the registration fee paid for applications withdrawn after this point.
29. ESMA has found that in practice, the assessment of completeness requires more supervisory effort than initially anticipated and that this first phase may account for approximately 50% of ESMA's time costs in assessing an application for registration.
30. ESMA believes that its approach to the reimbursement of application fees under its other supervisory mandates better reflects the significant amount of supervisory effort it takes to assess the initial completeness of an application for registration.
31. For example, ESMA does not reimburse registration fees at all when applications for registration as Trade Repositories or third-country CCPs are withdrawn before the completeness assessment has been finalised. ESMA reimburses 50% of the registration fee paid by applicants for registration as Securitisation Repositories but does not reimburse any fees paid for applications withdrawn after this point.
32. In light of ESMA's finding that the completeness assessment accounts for approximately 50% of ESMA's time costs when assessing applications for registration, ESMA believes that it is proportionate to reimburse 50% of the registration fee paid by applicants withdrawing their application before this assessment has been completed. ESMA therefore proposes to amend Article 6(7) of the Fees Delegated Regulation as follows:

Article 6(7) of Delegated Regulation 272/2012 will be amended to provide for:

1. The reimbursement of 50% of the registration fee paid for applications withdrawn before ESMA has notified the CRA that its application is complete;
2. No reimbursement of registration fees paid for applications withdrawn after this point.

Q3: Do you agree with the proposed changes to the reimbursement of registration fees? If not, please explain why not.

4.3 Payment of initial supervisory fees

33. The current Fees Delegated Regulation requires a newly registered CRA to pay an initial supervisory fee of €500 per month between the date of registration and the end of the financial year. ESMA has considered whether there is scope to align ESMA's approach here with the approach taken under its other supervisory mandates. These require the payment of an annual supervisory fee which is pro-rated from the date of registration to the end of the calendar year using the following coefficient:

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

34. ESMA believes that in order to reflect the costs of its initial supervision, CRAs which are part of a group of CRAs or part of a group of third country CRAs should be charged an initial supervisory fee which equals the registration fee paid, pro-rated from the date of registration to the end of the year of registration as per ESMA's other supervisory mandates.

35. Furthermore, in order to accommodate the transition to the payment of supervisory fees using the accounts from financial year n-2,¹² CRAs which are part of a group of CRAs or part of a group of third country CRAs should pay a supervisory fee equal to the registration fee paid in the first full year following registration.

36. However, for newly registered CRAs which are not part of groups of CRAs or groups of third country CRAs, ESMA does not believe the payment of initial supervisory fees is proportionate to its supervisory efforts. ESMA therefore proposes that these newly registered CRAs should pay neither an initial supervisory fee for the year of registration nor a fee for the first full year following registration. This will also help new market entrants, in line with the CRA Regulation's objective of stimulating competition in the CRA industry.

37. ESMA believes that it is important that CRAs which are part of a group of CRAs or a group of third country CRAs do not benefit from the exemption proposed for new market entrants here, in order to ensure that larger CRAs do not seek to periodically change their group structure in order to circumvent the payment of supervisory fees to ESMA.¹³

¹² See the changes proposed in Section 7 below.

¹³ See Recital 4 of the Fees Delegated Regulation.

38. ESMA therefore proposes to amend Article 6 of Delegated Regulation 272/2012 as follows:

Newly registered CRAs which are part of groups of CRAs or groups of third country CRAs will pay the following initial supervisory fees:

1. In the year of registration, the fee will equal the registration fee paid, pro-rated from the date of registration to the end of the year of registration;
2. In the year following registration, the fee will equal the registration fee paid.

Newly registered CRAs which are not part of a group of CRAs or third country CRAs shall be exempt from the payment of supervisory fees in the year of registration and in the year following registration.

Q4: Do you agree with the proposed changes to the calculation of initial supervisory fees for CRAs? If not, please explain why not.

5 Changes to the annual supervisory fees charged to registered CRAs

5.1 Exemptions for small CRAs

39. Article 5(1) of the Fees Delegated Regulation provides that CRAs with total annual revenues of less than €10,000,000 shall be exempt from the payment of supervisory fees. This exemption was implemented to ensure that annual supervisory fees did not create an unnecessary burden for new market entrants.¹⁴

40. In practice, many of the CRAs supervised by ESMA generate revenues of between €1,000,000 and €10,000,000 but there are only a few CRAs operating in the EU which generate total annual revenues in excess of €10,000,000. In order to ensure that the annual supervisory fees charged to CRAs reflect ESMA's supervisory efforts, ESMA therefore proposes to reduce the threshold for exemption from the payment of annual supervisory fees from €10,000,000 to €1,000,000.

41. ESMA believes that this proposed change to the thresholds for exemption will not create an unnecessary burden for new market entrants, who will be exempt from the payment of supervisory fees for the two years following registration in line with the proposal set out in Section 4.3 above, unless they are part of a group of CRAs.

42. The impact of this proposal on medium sized CRAs will be considered when presenting ESMA's proposed changes to the annual supervisory fees calculation in Section 5.2 below.

43. ESMA therefore proposes that:

Article 5(1) of Delegated Regulation 272/2012 will be amended to exempt CRAs with total annual revenues of under €1,000,000 from the payment of annual supervisory fees.

Q5: Do you agree with the proposal to exempt CRAs with a total turnover of under €1,000,000 from the payment of annual supervisory fees? If not, please explain why not.

¹⁴ Recital 3 Fees Delegated Regulation.

5.2 Calculation of annual supervisory fees

5.2.1 Introduction of fixed fees for CRAs with total revenues of over €1,000,000

44. Article 5 of the Fees Delegated Regulation currently provides that CRAs are divided into two groups for the payment of annual supervisory fees:

- CRAs with total revenues of under €10,000,000 are exempt from the payment of annual supervisory fees; and
- CRAs with revenues of over €10,000,000 pay annual supervisory fees equal to the ratio of their applicable turnover and the total applicable turnover of all registered CRAs required to pay an annual supervisory fee.

45. ESMA has found that this does not reflect the realities of its day-to-day supervision of CRAs and therefore proposes to reduce the threshold for the payment of annual supervisory fees from €10,000,000 to €1,000,000 as explained in Section 5.1 above.

46. In order to ensure that the annual fees charged to CRAs reflect ESMA's supervisory costs in accordance with Article 19 of the CRA Regulation, ESMA now intends to introduce supervisory fees for CRAs with total revenues of between €1,000,000 and €10,000,000.

47. In seeking to determine the level of the fee to charge, ESMA considered the approach taken under its other supervisory mandates and found that the minimum annual supervisory fee charged to other firms supervised by ESMA was at least €30,000.¹⁵

48. However, in order to ensure that the annual supervisory fee does not become a financial burden to medium sized CRAs, ESMA believes that a lower fixed annual supervisory fee of €20,000 is appropriate for these firms. ESMA also believes that proposing an annual fee at this level should not hamper the objective of the CRA Regulation to stimulate competition in the CRA industry.

¹⁵ See for example Commission Delegated Regulation 1003/2013 of 12 July 2013 with regard to fees charged to trade repositories, *OJ L 279, 19.10.2013, p. 4–9* available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1003&from=EN>

5.2.2 Introduction of annual endorsement fees

49. Credit ratings issued outside of the EU may be used in the EU under the provisions relating to endorsement and certification set out in Articles 4 and 5 of the CRA Regulation.
50. ESMA has developed more detailed frameworks regarding the endorsement of credit ratings in recent years.¹⁶ As a part of this process it has devoted a significant amount of supervisory effort to assessing CRAs' applications to endorse credit ratings as well as to ensuring the correct supervision and reporting of endorsed ratings by endorsing CRAs. ESMA's work in this area is set to further increase in the future as CRAs issuing credit ratings in the UK apply to have these endorsed for use in the EU by the EU registered CRAs within their groups.
51. As ESMA charges fees to third country CRAs to reflect the time spent supervising CRAs which certify credit ratings for use in the EU, it seems logical that ESMA should also charge supervisory fees to EU CRAs endorsing credit ratings to reflect its supervisory efforts.
52. ESMA charges certified CRAs fixed annual fees of €6,000 in line with the time devoted to their oversight as explained in Section 7 below. However, the fees charged to third country SFTRs, CCPs and Benchmark administrators are set at much higher levels, between €20,000 and at least €35,000, to reflect the need for increased supervisory focus in these areas.
53. In order to ensure that the fees charged to endorsing CRAs reflect ESMA's supervisory effort whilst remaining proportionate to the turnover of the CRAs supervised, ESMA therefore wishes to introduce additional annual fees for all CRAs which endorse credit ratings, based on their turnover.
54. On this basis, ESMA believes that:
- CRAs with total revenues of €1,000,000-€10,000,000 should be charged an additional annual fee of €20,000; and
 - CRAs with revenues of over €10,000,000 should be charged an additional annual fee of €40,000.

¹⁶ Guidelines on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies Regulation, 18 July 2018, ESMA33-9-246 available at https://www.esma.europa.eu/sites/default/files/library/esma33-9-246_final_report_supplementary_guidelines_on_endorsement.pdf.

55. ESMA therefore proposes that:

Article 5(1) of Delegated Regulation 272/2012 will be amended to:

1. Exempt CRAs with total annual revenues of under €1,000,000 from the payment of annual supervisory fees; and
2. Require CRAs with total annual revenues of between €1,000,000 and €10,000,000 to pay fixed annual supervisory fees of €20,000; and
3. Require CRAs endorsing credit ratings to pay an additional annual fee as follows:
 - CRAs with total revenues of €1,000,000-€10,000,000 shall be charged an additional annual fee of €20,000; and
 - CRAs with revenues of over €10,000,000 shall be charged an additional annual fee of €40,000.

Q6: Do you agree with the proposed changes to annual supervisory fees charged to CRAs? If not, please explain why not.

6 Changes to the calculation of CRAs' applicable turnover

56. Article 3 of the Fees Delegated Regulation explains that supervisory fees are calculated on the basis of a CRA's applicable turnover. This is calculated by taking the CRA's total revenues from credit rating activities and from ancillary services included in a CRA's audited accounts for the previous financial year. In the event that a CRA does not operate for the full year, Article 3(2) of the Fees Delegated Regulation explains that the revenues from credit rating activities and ancillary services are estimated by extrapolating the revenues generated.
57. In practice, ESMA has found that the calculation of supervisory fees can be both challenging and time consuming due to delays in the provision of audited accounts and the assessment of individual requests for the deduction of revenues from CRAs' total turnover.
58. ESMA has found that some CRAs are frequently delayed in providing their audited accounts for the previous financial year, which makes it challenging for ESMA to establish CRAs' applicable turnover, calculate the annual supervisory fees and issue debit notes to CRAs within the required time frame. The reasons for these delays include differences in firms' financial year ends and differing national rules regarding the preparation of audited accounts.
59. Furthermore, as CRAs' applicable turnover is based on the revenues generated from credit rating activities and from ancillary services, ESMA has to assess which of a CRA's revenues are generated from credit rating activities and from ancillary services in response to individual requests for deductions from their total revenues.¹⁷ These assessments require specialist resources and are not sustainable as ESMA assumes new supervisory mandates.
60. ESMA has found that in practice, the calculation of applicable turnover is carried out more efficiently under ESMA's other supervisory mandates¹⁸ for two reasons. Firstly, the audited accounts used are from financial year n-2, submitted to ESMA by 30 September in year n-1. This removes difficulties encountered in the timely submission of accounts. It also allows ESMA to charge firms the full supervisory fee for the year n during the first quarter of that year, ensuring that ESMA has the funds needed to carry out its planned supervisory activities for the coming year.¹⁹ Secondly, the audited accounts provided by supervised firms are required to include a breakdown of the total revenues generated from their core

¹⁷ ESMA provided guidance to CRAs on this process in its 2015 Guidelines on Periodic Reporting. See paragraph 15.13 of ESMA/2015/609 ESMA's Guidelines on Periodic Reporting of 23 June 2015, available at: <https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-609.pdf>

¹⁸ See for example the approach taken to the calculation of supervisory fees under the Delegated Regulations on fees charged by ESMA to Securitisation Repositories and third-country CCPs.

¹⁹ See section 3 above regarding changes proposed to the payment of supervisory fees in instalments.

activities and from ancillary services which makes the process of calculating supervisory fees much more straightforward for ESMA.

61. ESMA believes that adopting this approach would help simplify the calculation of annual supervisory fees both for CRAs and for ESMA going forward. However, as ESMA is mindful that the preparation of audited accounts which include specific breakdowns of revenues from core and ancillary services may be costly and that few CRAs seek significant deductions from their total revenues in practice, ESMA wishes to adapt the approach adopted under other supervisory mandates to better reflect the CRA industry.
62. For this reason, ESMA proposes to take a CRA's total turnover, as stated in its audited accounts, as equal to its revenues from credit ratings and ancillary services.
63. In the event that a CRA wishes to demonstrate that its total turnover is not equal to its revenues from credit ratings and ancillary services, the CRA should prepare audited accounts which include a breakdown of the revenues generated from credit rating activities, ancillary services and other services.
64. ESMA therefore proposes the following:

Article 3 of Delegated Regulation 272/2012 and its related recitals will be amended to explain that:

1. A CRA's applicable turnover for a given financial year (n) will be calculated on the basis of its audited accounts from year n-2 to be provided to ESMA by no later than 30 September in year n-1;
2. A CRA's applicable turnover shall be deemed to be equal to the CRA's total annual revenues;
3. CRAs seeking deductions from their total annual revenues shall keep audited accounts for the purposes of the CRA Regulation which distinguish between revenues from credit rating activities, ancillary services and any other services provided.

Q7: Do you agree with the proposed changes to the calculation of CRAs' applicable turnover? If not, please explain why not.

7 Changes to certification fees

65. A CRA may request certification status so that its credit ratings can be used in the EU if it meets the conditions set out in Article 5 of the CRA Regulation. These include the requirements that:

- The CRA is subject to supervision in a third country;
- There is a Commission equivalence decision in place with that third country;
- Supervisory cooperation arrangements are in place between ESMA and the third country supervisory authority;
- The CRA issues credit ratings which are not of systemic importance to the financial stability or integrity of the financial markets of one or more Member States.

66. Article 8 of the Fees Delegated Regulation requires firms applying for certification status to pay a fee of €10,000. ESMA believes that this fee reflects its supervisory effort and so does not wish to propose a change to the application fees charged to certified CRAs.

67. However, ESMA believes that it is necessary to align its approach to the payment of fees by certified CRAs with the approach proposed for registered CRAs regarding the reimbursement of application fees. ESMA also wishes to simplify the current approach to the payment of initial supervisory fees by certified CRAs and to remove the exemption from the payment of annual fees for certified CRAs with total annual revenues of less than €10,000,000.

7.1 Reimbursement of application fees

68. Article 8(3) of the Fees Delegated Regulation provides that ESMA shall reimburse three quarters of the certification fee paid if the application is withdrawn before the end of the completeness phase, and one quarter after this point.

69. The assessment of applications for certification is similar in nature to the assessment of applications for registration. For this reason, and in order to align ESMA's approach to certification fees for CRAs with its approach to registration fees set out in Section 4 above, ESMA proposes to reimburse 50% of the fee charged to applicants withdrawing their applications before the end of the completeness phase but not to reimburse any of the fees charged for applications withdrawn after this point.

70. ESMA therefore proposes the following:

Article 8(3) of Delegated Regulation 272/2012 will be amended to provide for:

1. The reimbursement of 50% of the certification fee paid for applications withdrawn before ESMA has notified the CRA that its application is complete;
2. No reimbursement of certification fees paid for applications withdrawn after this point.

Q8: Do you agree with the proposal to revise the approach to the reimbursement of supervisory fees for certified CRAs? If not, please explain why not.

7.2 Payment of initial supervisory fees by certified CRAs

71. Article 8(4) of the Fees Delegated Regulation requires certified CRAs to pay an initial supervisory fee of €500 per month from the date of certification to the end of the financial year.

72. ESMA has considered whether there is scope to align ESMA's approach to the payment of initial supervisory fees by certified CRAs with the approach proposed in Section 4.3 above regarding the payment of initial supervisory fees by registered CRAs. ESMA proposes that CRAs which are part of a group of CRAs or third country CRAs should pay an annual supervisory fee which is pro-rated from the date of registration to the end of the calendar year using the following coefficient:

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

73. However, ESMA's experience of supervising certified CRAs is that the payment of an initial supervisory fee would be disproportionate to ESMA's supervisory costs. For this reason, ESMA proposes to exempt all certified CRAs from the payment of initial supervisory fees in the year of their certification.

74. ESMA therefore proposes that:

Article 8(4) of Delegated Regulation 272/2012 will be amended to exempt certified CRAs from the payment of initial supervisory fees.

Q9: Do you agree with the proposal to exempt certified CRAs from the payment of initial fees? If not, please explain why not.

7.3 Annual supervisory fees for certified CRAs

75. Article 7 of the Fees Delegated Regulation requires certified CRAs with a turnover of more than €10,000,000 to pay an annual supervisory fee of €6,000.
76. ESMA has found that in practice, the amount of time that it spends supervising certified CRAs is approximately the same, irrespective of the size of the certified CRA. ESMA therefore proposes to remove the exemption in the Fees Delegated Regulation so that all certified CRAs will pay an annual supervisory fee of €6,000 in future. This allows ESMA to ensure that the fees charged cover its supervisory costs.
77. ESMA also wishes to align its approach to the collection of these annual fees across its supervisory mandates and therefore proposes that annual fees should be paid by certified CRAs on 31 March each year.
78. For this reason ESMA proposes the following:

Article 7 of Delegated Regulation 272/2012 will be amended to require all certified CRAs to pay an annual supervisory fee of €6,000 by 31 March each year.

Q10: Do you agree with the proposal to require all certified CRAs to pay an annual certification fee of €6,000? If not, please explain why not.



8 Annexes

8.1 Annex 1: List of questions

Changes to general budgetary approach

Q1: Do you agree with the proposals to reflect ESMA's general budgetary approach in the revised Fees Delegated Regulation? If not, please explain why not.

Registration fees

Q2: Do you agree with the proposed changes to registration fees? If not, please explain why not.

Q3: Do you agree with the proposed changes to the reimbursement of registration fees? If not, please explain why not.

Q4: Do you agree with the proposed changes to the calculation of initial supervisory fees for CRAs? If not, please explain why not.

Annual supervisory fees

Q5: Do you agree with the proposal to exempt CRAs with a total turnover of under €1,000,000 from the payment of annual supervisory fees? If not, please explain why not.

Q6: Do you agree with the proposed changes to annual supervisory fees charged to CRAs? If not, please explain why not.

Applicable turnover

Q7: Do you agree with the proposed changes to the calculation of CRAs' applicable turnover? If not, please explain why not.

Certification fees

Q8: Do you agree with the proposal to revise the approach to the reimbursement of supervisory fees for certified CRAs? If not, please explain why not.

Q9: Do you agree with the proposal to exempt certified CRAs from the payment of initial fees? If not, please explain why not.

Q10: Do you agree with the proposal to require all certified CRAs to pay an annual certification fee of €6,000? If not, please explain why not.

8.2 Annex 2: Request for Technical Advice



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets
Union

Director General

Brussels,

FISMA A1/JGR/ng/(2020)4264267

Mr Steven Maijoor
Chairman
European Securities and
Markets Authority (ESMA)
201-203 Rue de Bercy
75012 Paris

Per email: Steven.Maijoor@esma.europa.eu

RE: Harmonisation and simplification of the delegated acts on fees charged by ESMA, following IAS and ECA recommendations (ESMA63-46-714).

Dear Mr Maijoor, dear Steven,

Thank you for your letter of 26 May 2020 regarding the harmonisation and simplification of the delegated acts on fees charged by ESMA, following the Internal Audit Service (IAS) and the European Court of Auditors (ECA) recommendations.

I am pleased to accept your suggestion to provide ESMA's technical advice on the review of the following Commission delegated regulations:

- Commission delegated regulation (EU) 272/2012 of 7 February 2012 (related to credit rating agencies);
- Commission delegated regulation (EU) 1003/2013 of 12 July 2013 (related to trade repositories under EMIR); and
- Commission delegated regulation (EU) 2019/360 of 13 December 2018 (related to trade repositories under SFTR).

DG FISMA considers it appropriate that ESMA delivers the advice based on its experience with the use of the delegated acts on fees as well as the observations made by the IAS and the ECA through their reviews on ESMA's revenue collection processes. The technical advice should facilitate consistency and harmonisation across all fee delegated regulations relevant for ESMA.

In terms of the timeline, we would welcome the delivery of the technical advice before 31 January 2021 to align it with the deadline for the Delegated Acts to collect fees for the new supervisory activities related to benchmark administrators and data reporting service providers mentioned in your letter of 5 May (ESMA41-137-1283).

The technical advice should not prejudice the Commission's final decision and should take into account the general principles for technical advice referred to in my letter of 17 June²⁰.

Finally, we share the need to adopt as soon as possible the Delegated Acts on fees under the Securitisation Regulation²¹ and EMIR 2.2²². Regarding the DA on fees based on EMIR 2.2, the public feedback is open until 11 July 2020 and the entry into force of the delegated act is expected in Q3 2020. We are working with the Legal Service to address the comments received in the Inter Service Consultation for the DA on fees based on the Securitization Regulation and the entry into force is expected in Q4 2020.

Should you need any further information or clarifications, please do not hesitate to contact my team.

Yours sincerely,

(e-signed)

John BERRIGAN

²⁰ Ref. Ares(2020)3140202 - 17/06/2020

²¹ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 on securitisation (OJ L347, 28.12.2017, p.35)

²² Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (OJ L322, 12.12.2019, p.1)

Electronically signed on 14/07/2020 19:18 (UTC+02) in accordance with article 4.2 (Validity of electronic documents) of Commission Decision 2004/563