

Decision

on the delegation of the closure of non-complex breach of Union law cases to the Head of the Legal and Enforcement Department and to the Head of the Enforcement Unit

The Chair

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC¹, as last amended (the 'Regulation' and 'ESMA'), and in particular Articles 1(5), 8(2), 8(3), 17 and 41(1) thereof,

Having regard to the Decision of the Board of Supervisors of 25 January 2022 laying down the rules of procedure on breach of Union law investigations² (the 'BUL Rules of Procedure'), and in particular Articles 5, 6, 14(2) and 14(3) thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 41 thereof.

Whereas:

- i. Under Article 17 of the Regulation, ESMA is empowered to investigate requests ('Requests') related to the non-application by a national competent authority (NCA) of the acts referred to in Article 1(2) of the Regulation, or their application in a way which appears to constitute a breach of Union law.
- ii. In accordance with Article 41(1) of the Regulation, the Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to the Chair. On that basis, the BUL Rules of Procedure entrust the Chair with the decision to initiate an investigation into an alleged breach or non-application of Union law pursuant to Article 6 and with the decision to close a request without initiating an investigation pursuant to Article 5.
- iii. Article 5(1)(b) of the BUL Rules of Procedure provide that the Chair may close a Request without initiating an investigation when the Request is admissible but an investigation should not be initiated, as a matter of discretion, having regard to the non-exhaustive list of factors set out in Annex II to those Rules.

¹OJ L 331, 15.12.2010, p. 84.

²ESMA43-318-11471.

- iv. Article 14(3) of the BUL Rules of Procedure expressly provides that the Chair may delegate the closure of the Requests referred to in Article 5(1)(b) thereof to the Head of the Legal and Enforcement Department.
- v. A substantial proportion of the Requests received by ESMA are admissible but do not raise complex issues of substance, having regard to the non-exhaustive list of factors set out in Annex II to the BUL Rules of Procedure. Pursuant to Article 1(5) and Article 8(3) of the Regulation, ESMA is to act with due regard to the principle of proportionality, and Article 41 of the Charter of Fundamental Rights of the European Union requires that matters be handled within a reasonable time. Handling such cases at the level of the Chair is thus not commensurate.
- vi. On 11 July 2024, the Chair accordingly agreed to delegate to the Head of the Legal and Enforcement Department the closure of non-complex admissible cases, on the basis of a set of criteria³ established based on several years of experience in the handling of Requests. Those criteria have since guided ESMA's practice, as reflected in ESMA's Internal Guidance on breach of Union law⁴. It is appropriate to formalise that arrangement in the present delegation, in the interests of transparency, legal certainty and sound administration.
- vii. Furthermore, on 8 July 2026, the Chair agreed to also delegate to the Head of the Enforcement Unit the closure of the Requests covered by those criteria⁵. This is part of the broader efforts of ESMA to simplify internal processes and reduce administrative burden and is justified by the growing number of Requests received by ESMA. In order to allow such Requests to be handled in a timely and proportionate manner, it is appropriate to delegate the corresponding decisions to the Head of the Enforcement Unit. It is appropriate to formalise that arrangement in the present delegation, in the interests of transparency, legal certainty and sound administration.

Has decided:

Article 1 - Subject matter and scope

- (1) This Decision delegates the decision to close a Request pursuant to Article 5(1)(b) of the BUL Rules of Procedure, where the Request is non-complex within the meaning of Article 1(3) of this Decision.
- (2) This Decision does not apply to:
 - (a) decisions to initiate an investigation under Article 6 of the BUL Rules of Procedure;

³ESMA43-1297935121-33253.

⁴Internal Guidance on breach of Union law, ESMA43-1297935121-34320, version 4.2.

⁵ ESMA43-1611686828-41604 and ESMA43-1611686828-41747.

- (b) closures of Requests on grounds of inadmissibility under Article 5(1)(a) of the BUL Rules of Procedure, which continue to be governed by Article 14(2)(a) of those Rules;
 - (c) closures of Requests under Article 5(1)(c) of the BUL Rules of Procedure following an agreement reached with the NCA concerned;
 - (d) any decision falling within the competence of the Independent Panel or of the Board of Supervisors.
- (3) Having regard to the non-exhaustive list of factors set out in Annex II to the BUL Rules of Procedure, a Request shall be considered non-complex where it falls within one or more of the following non-exhaustive categories:
- (a) the allegations put forward in the Request are clearly contradicted by the available evidence or by the action taken by the NCA concerned in that respect;
 - (b) the allegations brought forward in the Request do not concern a supervisory practice or a failure to act on the part of the NCA concerned, but rather an issue relating to the transposition of a Union legislative act at national level, where the European Commission would be better placed to investigate the matter;
 - (c) the Request does not raise complex issues of substance, for example, where:
 - (i) the Request sets out a grievance which is materially the same as one submitted in another Request in respect of which a decision of closure was already taken; or
 - (ii) the allegations concern a failure to act on the part of the NCA concerned, such as a failure to acknowledge receipt of or to reply to a complaint submitted to it, to inform the complainant of the supervisory or enforcement action taken in relation to the supervised entity concerned, or to respond to an objection lodged against an investor compensation scheme.
- (4) The exercise of the delegated tasks is without prejudice to the obligations laid down in Article 5(2) of the BUL Rules of Procedure as regards the notification of the closure to the Requester and, where relevant, to the NCA concerned.

Article 2 - Delegation to the Head of the Legal and Enforcement Department

The Chair delegates to the Head of the Legal and Enforcement Department the decisions to close Requests that are non-complex within the meaning of Article 1(3) and for which a formal request for information pursuant to Article 35 of the Regulation has been sent to the concerned NCA in the course of the assessment.

Article 3 - Delegation to the Head of the Enforcement Unit

- (1) The Chair delegates to the Head of the Enforcement Unit the decisions to close Requests that are non-complex within the meaning of Article 1(3), provided that all information necessary for the assessment was available in the case file or has been obtained from

the requester or the staff of the NCA concerned, without issuing a formal request for information under Article 35 of the Regulation.

- (2) The Head of the Enforcement Unit may at any time refer any Request covered by this Decision to the Head of the Legal and Enforcement Department for decision.
- (3) The Head of the Enforcement Unit shall consult the Head of the Legal and Enforcement Department in case of doubt.
- (4) The Head of the Legal and Enforcement Department may at any time request information in respect of any Request covered by this Decision and may withdraw a specific Request from the scope of the delegation to the Head of the Enforcement Unit.
- (5) No further delegation beyond that provided for in this Article is permitted.

Article 4 - Matters reserved to the Chair and escalation

- (1) The Chair retains the exercise of all tasks and decisions conferred on the Chair by the BUL Rules of Procedure which are not delegated by this Decision.
- (2) A case shall be escalated to the Chair, in particular, where:
 - (a) the file raises legal or institutional sensitivities or complexities; or
 - (b) the matter is likely to require engagement with the NCA concerned at the level of its member of the Board of Supervisors.
- (3) Beyond the circumstances listed in paragraph 2, judgement shall in all cases guide the decision whether to involve the Chair.

Article 5 - Conditions for the delegation

- (1) The delegation is conferred for an indeterminate period.
- (2) The Head of the Legal and Enforcement Department and the Head of the Enforcement Unit may at any time refer any Request covered by this Decision to the Chair for decision.
- (3) The Chair may at any time request information in respect of any Request covered by this Decision and may withdraw a specific Request from the scope of the delegation.
- (4) The delegated tasks shall be exercised in accordance with the BUL Rules of Procedure, taking into account the data protection and confidentiality safeguards, as provided in Article 15 of those Rules, and with the applicable internal guidance.

Article 6 - Reporting and record-keeping

- (1) The Chair shall be informed of all decisions adopted under this Decision in the context of the periodic update to the Chair on breach of Union law activities.

- (2) Decisions adopted under this Decision shall be recorded in accordance with Article 14(2)(b) and Article 17(2) of the BUL Rules of Procedure and shall be covered by the annual reporting to the Board of Supervisors.

Article 7 - Amendment and revocation

The Chair may amend or revoke the delegation established by this Decision at any time. Revocation shall put an end to the delegation with immediate effect and shall be notified without delay to the persons concerned.

Article 8 - Entry into force

This Decision enters into force the day following its adoption. It shall be notified to the persons concerned and published on ESMA's website.

Done at Paris on 09 October 2026.

[Signed]

Verena Ross
Chair
European Securities and Markets Authority