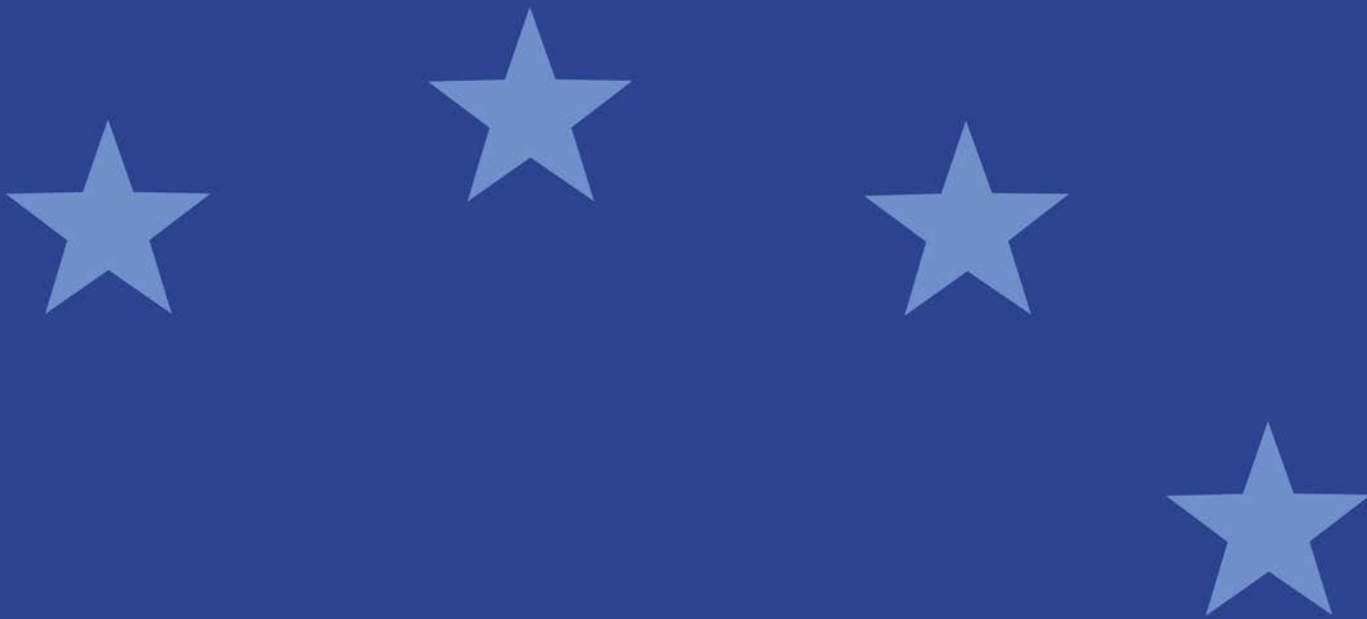


# Final Report

**Technical Advice on Fees Charged to CRAs by ESMA**





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# 1 Executive Summary

## Reasons for publication

ESMA charges fees to credit rating agencies (CRAs) in accordance with Article 19 of the CRA Regulation (Regulation 1060/2009 as amended). 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 should be revised to:

- Reflect ESMA's practical experience of supervision;
- Incorporate the findings of the European Commission's Internal Audit Service and European Court of Auditors reports; as well as to
- Align the fees collection process across ESMA's supervisory mandates where possible.

To prepare its advice, ESMA held a Public Consultation between 29 January and 15 March 2021.

## Contents

This report presents the findings of the Public Consultation and ESMA's Technical Advice to the European Commission. Section 2 explains the relevant background to the request for Technical Advice. Section 3 gives an overview of the responses to the Public Consultation and Sections 4-7 set out ESMA's initial proposals, assess the feedback received and provide ESMA's Technical Advice to the Commission regarding:

- ESMA's budgetary and fee collection process;
- Registration fees;
- Annual supervisory fees;
- The calculation of CRAs' applicable turnover; and
- Certification fees.

## Next Steps

A copy of this report will be submitted to the European Commission for consideration.

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## 2 Background

### 2.1 Supervisory Fees Charged to Credit Rating Agencies by ESMA

1. Article 19(1) of the CRA Regulation<sup>1</sup> 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)<sup>2</sup> 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 costs<sup>3</sup> whilst not being unduly burdensome for new market entrants.<sup>4</sup> 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 revenues to other entities within their group to reduce their fee contributions. This recital asks ESMA to monitor and report any critical developments in this regard.
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.

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<sup>1</sup> 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](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009R1060_20190101&from=EN)

<sup>2</sup> 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](https://eur-lex.europa.eu/eli/reg_del/2012/272/oj)

<sup>3</sup> Footnote 1 *ibid* at Recital 4.

<sup>4</sup> Footnote 1 *ibid* at Recital 3.



## 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 ESMA's Delegated Regulations on fees.
9. ESMA held a Public Consultation between 29 January and 15 March 2021 to seek feedback on the proposals for inclusion in the Technical Advice. ESMA agreed that it would provide this Technical Advice to the European Commission by 30 June 2021.

### 3 Overview of responses to Public Consultation

10. ESMA received 9 responses to its Public Consultation, 4 of which were non-confidential and have been published on ESMA's website.<sup>5</sup> Of the 9 responses received, 5 came from small and medium sized CRAs, 2 of the responses came from large CRAs and 2 responses came from trade associations. The responses from trade associations came from one association representing users of credit ratings and another which represents small and medium sized CRAs.
11. Two of the responses received provided general feedback only. One of the large global CRAs responded to confirm that they had no material comments on the proposals set out in the Consultation Paper. In addition, the response from the trade association representing users of credit ratings raised a general concern about the fees charged by CRAs but did not comment on the proposals set out in the Consultation Paper. They wished to stress that CRAs should be more transparent about the fees that they are charging to users of credit ratings by disclosing their fee structures and that ESMA should ensure that the fees charged by CRAs are proportionate to the work they undertake.
12. The response provided by the trade association representing the interests of small and medium sized CRAs operating in the EU raised general concerns about the increases in ESMA's budget for CRA supervision over time. Similarly, a large global CRA asked ESMA to further explain how it calculates its budget for CRA supervision and how it applies fees received from CRAs against the expenses incurred. This respondent also asked that ESMA publish a detailed overview of its costs so that CRAs and other stakeholders could better understand the basis for the sums budgeted against ESMA's actual expenses and how surpluses and shortfalls are accounted for in subsequent years.
13. As noted in Section 3 of the Consultation Paper, the total amount of ESMA's annual revenues is defined using ESMA's Activity-Based Management methodology. ESMA publishes its total estimated costs for the coming year in its annual work plan in September of year n-1.<sup>6</sup> The approved budget, including the revenue to be collected through CRAs' supervisory fees, is published on ESMA's website in January of year n.<sup>7</sup> Furthermore, ESMA transparently provides information on the budget as executed, including details of all incurred costs (including the costs of CRA supervision) and activities undertaken in its Annual Activity Report which is published in the summer of the year n+1.<sup>8</sup>
14. ESMA's budget for CRA supervision in any given year is driven by the activities that ESMA has planned for that year. Where increases are foreseen in ESMA's annual supervisory budget this may be due to increases in direct costs, such as staff numbers as well as increases in indirect costs, such as the costs of shared services like legal or information technology services. As the EU credit rating industry is evolving it is normal that ESMA's supervisory costs may increase over time to reflect these changes. For example, in recent years ESMA's supervisory costs have increased as new applicants have sought

<sup>5</sup> <https://www.esma.europa.eu/press-news/consultations/public-consultation-fees-charged-credit-rating-agencies-esma>

<sup>6</sup> [https://www.esma.europa.eu/sites/default/files/library/esma20-95-1273\\_2021\\_annual\\_work\\_programme.pdf](https://www.esma.europa.eu/sites/default/files/library/esma20-95-1273_2021_annual_work_programme.pdf) (page 54)

<sup>7</sup> [https://www.esma.europa.eu/sites/default/files/library/esma63-43-1843\\_esma\\_budget\\_2021.pdf](https://www.esma.europa.eu/sites/default/files/library/esma63-43-1843_esma_budget_2021.pdf)

<sup>8</sup> [https://www.esma.europa.eu/sites/default/files/library/esma20-95-1264\\_2019\\_annual\\_report\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma20-95-1264_2019_annual_report_0.pdf)



registration in some national markets whilst established CRAs have changed the nature or structure of their operations. In addition, some CRAs are being consolidated through mergers and acquisitions and some are exiting the market each year.

15. The trade association representing small and medium sized CRAs also raised concerns that the withdrawal of the UK from the EU would have a significant impact on the distribution of supervisory fees charged to CRAs operating in the EU and suggested that ESMA would need to revisit its supervisory budget accordingly.
16. In response to these concerns, ESMA would like to reassure CRAs that the distribution of supervisory fees paid by CRAs operating in the EU is not set to change dramatically following the UK's exit from the EU. This is because supervisory fees charged to CRAs generating annual revenues of over €10 million are calculated as a proportion of the total revenues generated by all CRAs generating revenues of over €10 million in line with Article 5(2)(c) of the CRA Regulation.<sup>9</sup>
17. Whilst some CRAs' EU revenues are expected to decrease as their UK operations will no longer be included in their EU annual audited accounts, the number of CRAs currently operating above the €10m threshold is not expected to change significantly. This means that the largest CRAs operating in the EU will continue to pay approximately the same proportion of supervisory fees that they currently pay.
18. As the EU CRA industry has not changed significantly following the UK's departure from the EU, ESMA does not anticipate that its supervisory activities or its supervisory budget will change significantly in the coming years either.

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<sup>9</sup> See ESMA's proposal in Section 6 of the Report below to increase this threshold to €15 million in response to feedback received.

## 4 Changes to ESMA's general budgetary approach and fee collection process

### 4.1 Background

19. ESMA applies a universal budgeting approach, which means that income from fees is treated as general revenue.<sup>10</sup> This is in line with the principle of universality defined in the EU Financial Regulation<sup>11</sup> and is the standard practice of other partially fee funded EU agencies, as recommended by DG Budget of the European Commission.
20. ESMA prepares its annual budget as explained in paragraph 13 above. 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.
21. Where the costs incurred by ESMA are higher than the income received, ESMA incurs a deficit. Such deficits are not recovered from supervised firms. In order to ensure that ESMA's income is not set at such a level as to generate repeated or significant deficits, ESMA analyses the reasons for any deficits it incurs 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 is followed, so no excess fees are paid back to supervised firms.
22. 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 year. This is not consistent with the principles of budget universality and budgetary annuality set out above.
23. 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.
24. 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.

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<sup>10</sup> 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](https://www.esma.europa.eu/sites/default/files/library/esma20-95-1132_2020_annual_work_programme_revised.pdf)

<sup>11</sup> 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>





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.

25. 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.<sup>12</sup> This is not currently reflected in the Fees Delegated Regulation but is necessary to determine the fees payable by some certified CRAs and non-Eurozone EU CRAs.

## 4.2 ESMA's Proposals

26. In order to ensure that the Fees Delegated Regulation accurately reflects ESMA's budgetary process and is consistent with the fees collection process across ESMA's supervisory mandates, ESMA proposed the following changes to the budgeting and fee setting and collection process:

1. To set the fees charged to CRAs at a level which avoids any significant and recurrent accumulation of deficit or surplus and to not reclaim any deficits or return any surpluses.
2. To convert audited accounts provided in currencies other than Euro using the average EUR rate applied by the European Central Bank for the period covered by the accounts.
3. To charge interest for late payments at the rate set in accordance with the EU Financial Regulation.
4. To require CRAs to pay their annual supervisory fees to ESMA in one instalment by no later than 31 March of the year in which they are due.

## 4.3 Assessment of feedback received

27. In Section 3 of its Public Consultation, ESMA asked respondents whether they agreed with the proposals to reflect ESMA's general budgetary approach in the Revised Fees Delegated Regulation.

28. ESMA received 3 responses to its proposals. The trade association representing small and medium sized CRAs took the view that ESMA should harmonise its approach to the collection of supervisory fees under other supervisory mandates with the approach being taken for CRAs rather than changing the CRA Fees Delegated Regulation. They noted that different EU supervisory authorities adopt different approaches to ESMA and explained

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<sup>12</sup> [https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/index.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html)



that the ECB uses the same approach that ESMA currently takes under the Fees Delegated Regulation in administering the fees it charges for banking supervision.

29. The trade association representing small and medium sized CRAs also explained that they did not favour the collection of fees in one annual instalment as this could lead to liquidity peaks for CRAs and ESMA. This feedback was mirrored by one small CRA as well as by one large global CRA who did not think it was reasonable to ask for all supervisory fees to be paid upfront in advance.
30. One respondent highlighted that the payment of fees in one instalment could create a disproportionately large burden for smaller CRAs. One respondent felt that it would be fairer for CRAs to pay their supervisory dues in monthly instalments in order to better reflect the timing of expenses incurred by ESMA, as well as CRAs' business conditions. The other two respondents expressed a preference for maintaining the current system where fees are collected in two instalments per year.

### **Harmonisation of fees collection across ESMA's supervisory mandates**

31. ESMA acknowledges that there is no single budgetary approach used across the fee-funded agencies in the EU and that not all fee-funded agencies have a supervisory role. Indeed, the approach adopted depends on a number of factors that are specific to each authority. ESMA is not a fully self-financed agency, unlike some other EU agencies.<sup>13</sup> In practice, this means that ESMA's budget is part of the European Commission's consolidated budget and governed by the EU Financial Regulation.
32. The CRA Fees Delegated Regulation was the first piece of supervisory fees legislation to be adopted by ESMA. ESMA has gained a great deal of experience of administering supervisory fees since the Fees Delegated Regulation entered into force in 2012 and its practices have been informed by observations made during audits carried out by the ECA and IAS. Such observations have already been reflected in the supervisory fees regulations adopted by ESMA in respect of its new supervisory mandates, so it is important that the CRA Fees Delegated Regulation should also be amended accordingly.

### **Collection of supervisory fees in 1 instalment**

33. In response to the feedback received, ESMA would like to explain why this proposal is necessary and why it does not represent a significant change to the current approach.
34. In order to respect the principle of budget annuality set out in the EU Financial Regulation, ESMA is not able to maintain a cash reserve which could fund its cash needs in the beginning of the year. As a result, ESMA needs to collect its supervisory fees at the beginning of each year to have the funds available to conduct its supervisory activities. This makes it very difficult to maintain the approach set out in the current Fees Delegated Regulation where fees are collected in 2 instalments in February and in August.

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<sup>13</sup> See for example the Systemic Risk Board

35. ESMA would like to highlight that the proposed approach does not introduce a significant change to the current framework, as CRAs already pay two thirds of the annual supervisory fees due by the end of February in year n and the remaining third by the end of August in the same year. For this reason, the payment of the full fee in March should not create an unmanageable liquidity peak for CRAs, and indeed, any peak arising should be manageable through advanced planning.
36. Furthermore, ESMA believes that its proposal does not introduce a disproportionate burden for small CRAs, as small CRAs would be exempted from paying annual supervisory fees until their total annual turnover exceeds the threshold proposed in Section 6 below. Those small and medium sized CRAs required to pay an annual supervisory fee will be able to predict the amount of the fee payable so they can plan for this expenditure well in advance.

#### 4.4 Technical Advice to the European Commission

37. For the reasons given above, ESMA believes that it is appropriate to maintain the proposals set out in Section 3 of the Consultation Paper and provides the following Technical Advice to the European Commission:

Recital 2 of Delegated Regulation 272/2012 should 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.

Recital 4 of Delegated Regulation 272/2012 states that CRAs should not circumvent the fair allocation of fees and that ESMA should monitor and report any critical developments in this respect. In 2018 the ECA raised concerns that CRAs which are part of a group may use the Delegated Regulation to '*reduce or avoid fees by transferring revenues from credit rating agencies under EU jurisdiction to their related entities outside the EU*'. ESMA has examined these concerns and has asked ECA to close its observation as it has found no evidence to suggest that EU CRAs are transferring their revenues to non-EU entities for the purpose of avoiding the payment of supervisory fees.

However, through its work on Fees Charged by CRAs and Access to and Use of Credit Ratings, ESMA has identified a number of supervisory concerns regarding the licensing and distribution of credit ratings through CRAs' related companies,<sup>14</sup> and notes that as a consequence of structuring their businesses in this way, not all revenues from the groups' EU credit rating activities and ancillary services are included in the EU CRAs'

<sup>14</sup> See ESMA 80-196-954 Thematic Report on Fees Charged by CRAs and TRs of 11 January 2018 <https://www.esma.europa.eu/document/thematic-report-fees-charged-credit-rating-agencies-and-trade-repositories> at p11 and its 2019 Follow up report ESMA 80-196-3218 of 20 December 2019 [https://www.esma.europa.eu/sites/default/files/library/esma80-196-3218\\_followup\\_report\\_on\\_fees\\_charged\\_by\\_cras\\_and\\_trs.pdf](https://www.esma.europa.eu/sites/default/files/library/esma80-196-3218_followup_report_on_fees_charged_by_cras_and_trs.pdf) at p19.

accounts and submitted to ESMA for the purposes of calculating supervisory fees.<sup>15</sup> ESMA did not consult on changes to Delegated Regulation 272/2012 to address these concerns as it believes that they may only be resolved by clarifying the scope of the CRA Regulation itself.

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

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 as to avoid a significant and recurrent accumulation of deficit or surplus.

Article 3 of Delegated Regulation 272/2012 should 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 should 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 should 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 should 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.

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<sup>15</sup> See ESMA 2015/1472 of 30 September 2015 [https://www.esma.europa.eu/sites/default/files/library/esma-2015-1472\\_technical\\_advice\\_on\\_competition\\_choice\\_and\\_conflicts\\_of\\_int.pdf](https://www.esma.europa.eu/sites/default/files/library/esma-2015-1472_technical_advice_on_competition_choice_and_conflicts_of_int.pdf) at p 81

## 5 Changes to registration fees

### 5.1 Background

38. ESMA charges a one-off fee to firms applying for registration as CRAs. Article 19 of the CRA Regulation requires ESMA to charge fees that fully cover the costs it incurs in assessing applications for registration. Furthermore, Article 6 of the Fees Delegated Regulation explains that the amount of the registration fee payable by CRAs must be proportionate to the complexity of the application and the size of the CRA.

39. In the Consultation Paper, ESMA explained that the basic registration fee set out in the Fees Delegated Regulation currently starts at €2,000 and that this fee may 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.

40. ESMA found that the basic registration fee of €2,000 did not reflect the costs incurred in assessing an application for registration. In practice, an average registration accounts for the time of approximately 0.5 full time employees (FTEs). Taking into account the direct and indirect costs incurred, ESMA found that the assessment of an average application for registration costs approximately €97,500.

41. ESMA also found that the criteria in Article 6(2) of the Fees Delegated Regulation which is used to increase the basic registration fee were not 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.

42. ESMA wanted to align its approach to registration fees under the Fees Delegated Regulation with that of its other supervisory mandates. In Section 4 of its Consultation Paper, ESMA noted that the registration fees charged under other supervisory mandates are set at between €40,000 and €360,000 and that these fees are set without using criteria of the type used under the Fees Delegated Regulation.<sup>16</sup>

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<sup>16</sup>See for example, Delegated Regulation 2019/360 of 13 December 2019 with regard to fees charged to trade repositories, OJ 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://eurlex.europa.eu/eli/reg\\_del/2020/1732/oj](https://eurlex.europa.eu/eli/reg_del/2020/1732/oj).



## Reimbursement of registration fees

43. ESMA also wished to align its approach to the reimbursement of registration fees with that of its other supervisory mandates. Article 6(7) of the Fees Delegated Regulation provides that in the event that an applicant for registration withdraws their application before ESMA has assessed it to be complete, ESMA shall repay three quarters of the applicant's registration fees. The amount to be reimbursed is reduced to one quarter of the registration fee paid for applications withdrawn after this point.
44. ESMA has found that, assessing the completeness of applications for registration requires more supervisory effort than initially anticipated. In practice this first phase can account for approximately 50% of the time ESMA spends assessing an application for registration.
45. 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. 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 if the application is withdrawn before the completeness assessment is finished but does not reimburse any fees paid for applications withdrawn after this point.

## Payment of initial supervisory fees

46. ESMA also highlighted that 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:

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

## 5.2 ESMA's proposals

47. ESMA set out 3 proposed changes to registration fees and initial fees in Section 4 of the Consultation Paper. ESMA proposed to charge all new applicants a fixed registration fee of €45,000 and to limit the circumstances in which registration fees could be refunded to cases where an applicant withdraws its application before the end of the first part of the registration process. ESMA further proposed that new market entrants should be exempt from the payment of fees in the year of registration and the year following registration, but



that CRAs registering as part of an existing group of CRAs should pay an initial fee in the year of registration and in the year following registration.

48. In order to ensure that the registration fee charged was predictable and simple to administer, ESMA proposed to charge a fixed fee of €45,000. ESMA acknowledged that setting the fee at this level would not cover the costs of assessing an average application for registration but believed that this amount would not be so high as to discourage market entry.
49. In proposing changes to the level of registration fees ESMA was 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 should seek to ensure that fees charged by ESMA are not unduly burdensome for new market entrants.<sup>17</sup> ESMA highlighted that in its view this fixed fee would not be disproportionate to the turnover of new entrants, as new entrants would not be required to pay ongoing supervisory fees until their total turnover exceeded the threshold for the payment of annual supervisory fees.
50. ESMA's second proposal was to limit the reimbursement of registration fees to situations where an applicant withdraws their application before ESMA has assessed an application to be complete. As ESMA spends approximately 50% of its time reviewing applications for registration assessing whether the applications received are complete, ESMA proposed to reimburse applicants 50% of the fee paid if they chose to withdraw an application by this point. However, ESMA also proposed not to reimburse any fees to applicants withdrawing their applications after this point.
51. ESMA's third proposal was to align ESMA's approach to the payment of initial supervisory fees across its supervisory mandates by charging CRAs which are part of a group of CRAs or part of a group of third country CRAs 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. This initial fee was needed to cover the costs of ESMA's initial supervision.
52. In order to accommodate the transition to the payment of supervisory fees using the accounts from financial year n-2,<sup>18</sup> ESMA further proposed that newly registered 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.
53. However, ESMA proposed that it would be disproportionate for newly registered CRAs which are not part of a group to pay these initial supervisory fees.

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<sup>17</sup> Recital 3 Fees Delegated Regulation.

<sup>18</sup> See the changes proposed in Section 7 below.

### 5.3 Assessment of feedback received

54. ESMA received 1 response to its proposal to charge all future applicants for registration a fixed fee of €45,000. The 8 other respondents did not comment on this proposal. ESMA did not receive any feedback on its proposals regarding the reimbursement of registration fees or the payment of initial fees.
55. The CRA which provided feedback on the proposed changes to registration fees argued that a registration fee of €45,000 was too high for new market entrants to pay and that the increase from the basic fee of €2,000 was too dramatic. This respondent felt that it would be more proportionate to calculate registration fees based on the size of the CRA. The respondent also questioned why ESMA needed to spend the same amount of time assessing an application from a small CRA as an application from a large CRA.
56. With regard to the need to charge registration fees proportionate to the size of the applicant, ESMA does not believe that this is justifiable. This is because in practice, ESMA staff spends approximately the same amount of time assessing applications from established CRAs setting up new subsidiaries in the EU and applications from new market entrants even though the nature of the assessment may differ slightly.
57. In paragraph 4.1 of the Consultation Paper, ESMA explained why this was the case. ESMA noted that 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 an existing group of CRAs may find it easier to prepare and submit a complete application without first engaging in detailed discussions with ESMA. However, these applications frequently require a longer compliance assessment by ESMA, depending on the complexity of the applicant CRA's business. This shows that the amount of time spent assessing an application is approximately the same, irrespective of whether the application comes from an established global CRA or from a new market entrant.
58. With regards to the level of the registration fee, ESMA's proposal to charge a single fixed registration fee of €45,000 was driven by the need to simplify the current fee structure whilst also ensuring that ESMA fulfilled its obligation to charge registration fees which cover ESMA's costs. However, understanding that the costs of processing an average application for registration were over €90,000, ESMA proposed to cap the registration fee charged so that these fees did not create an unnecessary barrier to market entry.
59. ESMA's supervisory experience has shown that new market entrants wishing to be registered as CRAs in the EU need to have developed a serious long term business plan and have the financial means to be able to sustain themselves over the course of many years if they wish to survive past the start-up phase. As the CRA industry is reputation driven, in practice this means that new entrants often need to provide unsolicited credit ratings free of charge over the course of many years in order to demonstrate the quality of their credit rating analysis to issuers and investors. Indeed, ESMA recognises that 6 CRAs





have renounced their registrations since 2017, either because they have been acquired by larger CRAs or because they have not been able to establish themselves in the different national markets for credit ratings in the way they had anticipated.<sup>19</sup>

60. In response to the concern that the proposed increase from the basic fee of €2,000 appears too dramatic, ESMA would like to highlight that the fee of €2,000 is currently only the starting point for the calculation of registration fees under the current Fees Delegated Regulation. In practice, the actual registration fees paid by CRAs registered by ESMA during the period 2012-2020 ranged from €2,000 to €40,000. Increasing the amount of the registration fee within this range would therefore not be as dramatic as the respondent suggested, as new market entrants already paid fees within this range under the current Fees Delegated Regulation. Indeed, ESMA's experience of the registration process has shown that the payment of a fee within this range did not deter the 18 market entrants who sought to be registered as CRAs with ESMA between 2012 and 2020.

61. With this in mind, ESMA does not believe that charging a single fixed registration fee of €45,000 is so high as to deter applicants who are able to enter the EU markets with a view to competing with established local or international CRAs in the longer term. ESMA also highlights that once this fee has been paid, new market entrants have no further fees to pay to ESMA until they reach the threshold for the payment of annual supervisory fees set out in Section 6 below.

62. However, as ESMA truly supports the objectives of the CRA Regulation to ensure that high quality credit ratings are available from a variety of CRAs in the EU, it proposes to reduce the capped registration fee initially proposed by 10% in response to the feedback received.

63. ESMA believes that by reducing the registration fee to €40,000 it will still be able to charge a fee which makes a significant contribution to the costs incurred by ESMA but that the level of the fee will not be so high as to deter serious new market entrants.

## 5.4 Technical Advice to the European Commission

64. ESMA therefore wishes to amend the proposal set out in Section 4.1 of the Consultation Paper regarding the level of registration fees but maintains the proposals set out in Section 4.2 and 4.3 of the Consultation Paper regarding the reimbursement of registration fees and the payment of initial fees. With regards to the payment of initial fees, ESMA wants to clarify in its advice that where a CRA is registered during the month of December, no initial supervisory fee should be payable, as the cost of administering this initial fee would be disproportionate to the fee itself.

65. ESMA provides the following Technical Advice to the European Commission:

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<sup>19</sup> See list of deregistered CRAs available on ESMA's website at: <https://www.esma.europa.eu/supervision/credit-rating-agencies/risk>

Article 6 of Delegated Regulation 272/2012 should be amended to provide for a fixed registration fee of €40,000.

Article 6(7) of Delegated Regulation 272/2012 should 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.

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

- In the year of registration, the fee should equal the registration fee paid, pro-rated from the date of registration to the end of the year of registration;
- By way of derogation, where a CRA is registered during the month of December no initial supervisory fee should be payable.
- In the year following registration, the fee payable should equal the registration fee paid.

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

## 6 Changes to thresholds for exemption and annual supervisory fees for registered CRAs

### 6.1 Background

66. 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.<sup>20</sup>

67. Article 5 of the Fees Delegated Regulation further 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.

68. Articles 4 and 5 of the CRA Regulation set out the conditions under which credit ratings issued outside of the EU may be endorsed or certified for use in the EU.

69. ESMA has developed more detailed frameworks regarding the endorsement of credit ratings in recent years.<sup>21</sup> 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 credit ratings by endorsing CRAs. 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.

70. 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 CCPs and Benchmark administrators are set at much higher levels, starting from €20,000, to reflect the need for increased supervisory focus in these areas.

### 6.2 ESMA's proposals

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<sup>20</sup> Recital 3 Fees Delegated Regulation.

<sup>21</sup> 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](https://www.esma.europa.eu/sites/default/files/library/esma33-9-246_final_report_supplementary_guidelines_on_endorsement.pdf).

71. In Section 5 of the Consultation Paper, ESMA made three proposals:

1. To reduce the threshold for exemption from the payment of annual supervisory fees from €10,000,000 to €1,000,000.
2. To introduce a flat annual supervisory fee of €20,000 for CRAs with annual revenues of €1,000,000 -10,000,000 but to leave the calculation of annual supervisory fees for CRAs generating revenues above this level as set out in Article 5 of the Fees Delegated Regulation; and
3. To introduce an additional annual fee for CRAs endorsing credit ratings for use in the EU of €20,000 for endorsing CRAs with total annual revenues of under €10,000,000 and €40,000 for CRAs with total annual revenues of over €10,000,000.

72. Regarding the threshold for exemption, ESMA explained that in practice, many of the CRAs supervised by ESMA generate revenues of between €1,000,000 and €10,000,000 but that there are only a few CRAs operating in the EU which currently generate total annual revenues in excess of €10,000,000. ESMA therefore proposed to reduce the threshold for exemption from the payment of annual supervisory fees from €10,000,000 to €1,000,000 in order to ensure that the annual supervisory fees charged to CRAs reflect ESMA's supervisory costs.<sup>22</sup>

73. ESMA believed that this proposed change would not create an unnecessary burden for new market entrants, who would 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 of the Consultation Paper, unless they are part of a group of CRAs.

74. ESMA also proposed to introduce a single fixed fee of €20,000 for CRAs with total revenues of between €1,000,000 and €10,000,000 but to retain the existing method of calculating annual supervisory fees for CRAs with revenues of over €10,000,000. In seeking to determine the level of the fixed fee to charge to CRAs generating revenues of between €1,000,000 and €10,000,000, 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.<sup>23</sup>

75. However, in order to ensure that the annual supervisory fee did not become a financial burden to medium sized CRAs, ESMA proposed that a lower fixed annual supervisory fee of €20,000 would be appropriate for these firms and should not hamper the objective of the CRA Regulation to stimulate competition in the CRA industry.

76. ESMA's third proposal was to introduce a further annual fee payable by CRAs endorsing credit ratings for use in the EU. With this proposal, ESMA aimed to reflect the approach taken under its other supervisory mandates and ensure that the fees charged to CRAs

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<sup>22</sup> ESMA notes that Article 5(1) of the Fees Delegated Regulation states that where a CRA belongs to a group of CRAs the aggregate total revenues of the group will be used to determine whether a CRA is exempt from the payment of fees. ESMA has not proposed to change this process, just to reduce the threshold for exemption.

<sup>23</sup> 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://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32013R1003&from=EN>



adequately reflect the monitoring costs incurred by ESMA under its risk-based approach to supervision.

## 6.3 Assessment of feedback

### Threshold for exemption

77. ESMA received 5 responses to the proposal to reduce the threshold for exemption from the payment of annual supervisory fees set out in Section 5 of the Consultation Paper: one from a trade association representing small and medium sized CRAs; one from a small CRA; two from medium sized CRAs and one from a large global CRA. These responses reflected a range of diverse views on the proposal, ranging from the unfavourable to the supportive.
78. The trade association representing the interests of small and medium sized CRAs explained that it would in their view be inappropriate to consider reducing the threshold for exemption from €10 million as competition has not developed in the EU markets for credit ratings to the extent envisaged by the legislators when the CRA Regulation was adopted. On the contrary, they argued that accounting for inflation, the threshold for the payment of annual supervisory fees should in fact be increased by 1.3%, from €10,000,000 to €11,300,000.
79. Two small CRAs responding to the Consultation Paper reasoned that the threshold for the payment of fees should be set at €5,000,000. One of these CRAs explained that setting the threshold at this level would be proportionate to the needs of small CRAs as this is the threshold above which audited accounts must be provided under the legislation in force in their national market. The other CRA noted that if fees are to be charged to small CRAs below this size, ESMA should do more to ensure that the fee charged is proportionate to these CRAs' turnovers, because in their view, charging an annual fee of €20,000 to CRAs with annual revenues of €1,000,000 was disproportionate.
80. The two-medium sized CRAs responding to the consultation also recognised that it was appropriate for smaller CRAs to pay supervisory fees and one of these respondents accepted that a threshold of €2,000,000 would be more appropriate.
81. One large global CRA supported reducing the threshold for exemption to €1,000,000, as it would in their view be more appropriate and proportionate for all CRAs generating revenues of this order to pay fees based on their respective turnovers.
82. ESMA believes that it is appropriate to reduce the threshold for exemption in order to reflect the realities of the CRA industry in the EU. The majority of CRAs supervised by ESMA are in fact small and medium sized firms operating in one or more national markets. By way of illustration, ESMA notes that 19 of the 23<sup>24</sup> CRAs registered with ESMA generate annual revenues of under €10,000,000 and that 15 of these 23 CRAs generate annual revenues of under €5,000,000.

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<sup>24</sup> Counting the different EU CRAs within the same group as one CRA for these purposes.

83. In order to support the objective of the CRA Regulation to stimulate competition in the CRA industry these CRAs need to gain visibility, both within their national markets and at EU level. As the markets for credit ratings are reputation driven, this means that CRAs need to be able to demonstrate the quality of their credit rating activities. It is therefore important that ESMA actively supervises small and medium sized CRAs to make sure that their *'credit rating activities are conducted in accordance with the principles of integrity, transparency, responsibility and good governance in order to ensure that [the] resulting credit ratings used in the EU are independent, objective and of adequate quality'*.<sup>25</sup>
84. However, in response to the feedback received, ESMA believes that it is necessary to amend its proposal to reduce the threshold for exemption from the payment of annual supervisory fees. In order to better reflect the objectives of encouraging the development of competition in the CRA industry and of ensuring that supervisory fees do not become a burden for new market entrants, ESMA now proposes that the threshold for exemption from the payment of annual fees should be reduced from €10,000,000 to €4,000,000.
85. In reconsidering the threshold for exemption, ESMA looked again at the annual turnover of each of the CRAs it supervises but also at how long the different CRAs operating in the EU had been established. ESMA notes that there are currently 11 CRAs operating in the EU which generate annual revenues of over €4,000,000. All of these CRAs have been registered with ESMA for between 8 and 10 years and have recorded relatively stable revenues over time. This suggests that they should no longer be classed as being in the start-up phase.<sup>26</sup>
86. ESMA recognises that setting the threshold at this level will exclude a number of smaller, well established CRAs from the payment of annual supervisory fees but believes that by so doing it better reflects the objective of stimulating the development of the CRA industry in the EU.

### **Charging a single fixed annual fee of €20,000**

87. ESMA received 6 responses to its proposal to charge a fixed annual fee of €20,000 to CRAs generating total annual revenues of between €2,000,000 and €10,000,000. These responses were divided as to the appropriate amount of a fee to be charged to small and medium sized CRAs.
88. At one end of the spectrum, the trade association representing small and medium sized CRAs did not support the introduction of annual supervisory fees for CRAs with an annual turnover of under €10,000,000 at all. However, at the opposite end of the spectrum, a large global CRA noted that charging a fixed annual fee of €20,000 to CRAs with an annual turnover of under €10,000,000 is not high enough to cover ESMA's costs of supervision. They proposed that it would be more proportionate to calculate the fees to be paid by all CRAs based on their applicable turnover.

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<sup>25</sup> See Recital 1 of Regulation 1060/2009 on credit rating agencies, OJ L 302, 17.11.2009, p. 1–31 available at <https://eurlex.europa.eu/eli/reg/2009/1060/oj>

<sup>26</sup>Note that one of these CRAs operated in the EU as a certified CRA between 2013 and 2020.

89. Three other respondents supported introducing individual fees based on turnover. The two-medium sized CRAs responding to the consultation agreed that the fees charged should be more proportionate to the turnover of CRAs. One respondent suggested that it would be more proportionate to cap the fees charged to smaller CRAs at 1% of their turnover rather than imposing a flat fee. One CRA explicitly supported the introduction of a fee of €20,000 for CRAs with an annual turnover of €2,000,000. One small CRA suggested that either a fee of €5,000 would be appropriate for CRAs with an annual turnover of €1,000,000-5,000,000 or that a €20,000 annual fee would be appropriate for CRAs with an annual turnover of over €5,000,000. One further CRA argued for a graduated fee whereby CRAs with an annual turnover of between €5,000,000 and €6,000,000 would pay an annual supervisory fee of €10,000, increasing to €20,000 for CRAs with a turnover of between €6,000,000 and €7,000,000 and so on.
90. The trade association representing the interests of small and medium sized CRAs also stressed the need to ensure that introducing different categories for the payment of fees did not result in cliff effects which might disincentive the growth of medium sized CRAs in future.
91. In response to the feedback received, ESMA would like to re-iterate the importance of its supervision of small and medium sized CRAs in the development of the EU markets for credit ratings. ESMA notes that the respondents to the Public Consultation accepted that some annual fees should be charged to smaller CRAs but stressed that any annual fee charged should be proportionate to the turnover of CRAs in order to ensure a level playing field and to make sure that supervisory fees do not create an undue burden for small and medium sized CRAs.
92. For this reason, ESMA believes it is necessary to revise its proposal regarding the payment of annual supervisory fees to small and medium sized CRAs to:
- Change the turnover category of CRAs to which this fee would apply; and
  - Replace the fixed fee with a percentage of turnover fee.
93. In order to ensure that the existing threshold of €10,000,000 does not disincentivise the future growth of small and medium sized CRAs operating in the EU, ESMA therefore proposes to extend this category so that all CRAs generating revenues of between €4,000,000 and €15,000,000 pay an annual supervisory fee set at 0.5% of their applicable turnover.<sup>27</sup>
94. CRAs generating total annual revenues of over €15,000,000 should continue to pay annual fees which correspond to the ratio of their applicable turnover to the total applicable turnover of all registered CRAs with a turnover of over €15,000,000 in accordance with the existing provisions of the Fees Delegated Regulation.

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<sup>27</sup> Defined as equal to a CRA's total turnover under the proposals set out in Section 6 of the Consultation Paper unless the CRA in question submits specially audited accounts which include a breakdown of revenues from credit rating activities and ancillary services.



95. Under ESMA's revised proposals, a CRA generating annual revenues of €4,000,000 would pay an annual supervisory fee of €20,000 whereas a CRA generating annual revenues of €14,000,000 would pay €70,000. The minimum annual fee proposed is the same as the €20,000 minimum fee ESMA recommended in its Consultation Paper. However, this new proposal is more proportionate as a fee at this level would only apply to CRAs generating annual revenues of €4,000,000.
96. Whilst ESMA notes that the fee of €20,000 does not always cover the full costs of administering and supervising a CRA of this size and complexity, it believes that the contribution is set at a level which will not hinder the future development of the markets for credit ratings. ESMA also appreciates that the amount of the contribution that CRAs make to ESMA's supervisory costs will increase proportionately with the size of the CRA as their businesses develop. This is important to ESMA as it reflects its risk-based approach to the supervision of CRAs. As ESMA had previously sought to reflect this through the introduction of an endorsement fee, this additional fee can now also be removed, as explained in paragraphs 103-105 below.
97. Although charging a percentage fee is not as straightforward for ESMA to administer, it has clear advantages in terms of ensuring predictability and fairness and allows ESMA to ensure that the fees charged to all CRAs remain proportionate to their turnover as required by Article 19(2) of the CRA Regulation.

#### **Charging an additional annual endorsement fee**

98. ESMA received 4 responses regarding its proposal to charge annual endorsement fees. The respondents supported the idea that ESMA's supervisory fees should reflect a CRA's use of endorsed ratings but expressed different views as to how these fees should be calculated and the level of the fees to be charged.
99. The trade association representing the interests of small and medium sized CRAs was supportive of the introduction of endorsement fees, on the basis that the number of endorsed ratings used in the EU may increase following the UK's withdrawal from the EU. However, given the importance of endorsed ratings in the EU, this respondent felt that the amount of endorsement fees charged should be higher and should potentially account for at least 50% of ESMA's supervisory budget.
100. The same respondent agreed that CRAs with an annual turnover of €10,000,000 or less should be subject to the €20,000 flat fee proposed by ESMA but that higher endorsement fees should be charged to endorsing CRAs with turnovers of above €10,000,000. A medium sized CRA also proposed that higher endorsement fees should be levied against CRAs with a turnover of over €10,000,000 to correctly reflect the use and the impact of endorsed ratings in the EU financial markets.
101. Another medium sized CRA stressed that endorsement fees should be graduated to reflect the number of credit ratings endorsed by each CRA in order to ensure the proportionality of such fees. One large global CRA was supportive of the introduction of an





endorsement fee but highlighted that ESMA should be transparent about its budget for work on endorsed ratings.

102. In response to the feedback received, ESMA would like to explain that it had proposed to charge an additional fee to CRAs endorsing ratings by using the endorsement of ratings as an objective proxy for the level of supervisory risk posed by these CRAs. This was intended to reflect ESMA's risk-based approach to supervision rather than being a way of reflecting the number of individual ratings endorsed by each CRA.
103. ESMA does not have distinct budgets for the supervision of EU issued and certified or endorsed ratings. This is because many of ESMA's ongoing supervisory costs, such as monitoring of reporting to ESMA's RADAR system for example, are common to all types of credit ratings. For this reason, ESMA does not intend to introduce separate supervisory budgets for these different types of credit ratings going forward.
104. ESMA considers that if the purpose of charging an endorsement fee should be to reflect the number of ratings endorsed by each CRA, then this fee is already built into the annual fees paid by CRAs with a turnover of over €10,000,000. In the interests of fairness, this should also be reflected in the annual supervisory fees charged to smaller endorsing CRAs in the same way. This has now been reflected in ESMA's revised proposal on annual supervisory fees for CRAs with annual revenues of €4,000,000-15,000,000 set out in paragraphs 93-98 above. For this reason, ESMA now wishes to withdraw its proposal to introduce a separate annual endorsement fee for CRAs.

## 6.4 Technical Advice to the European Commission

105. In light of the feedback received, ESMA believes that it is necessary to amend its proposals regarding the payment of annual supervisory fees to further encourage the development of competition in the CRA industry whilst ensuring that supervisory fees do not become a burden for new market entrants and remain proportionate to CRAs' turnover.
106. In order to achieve these objectives and ensure that the fees charged cover ESMA's costs to the greatest extent possible, ESMA therefore proposes the following Technical Advice to the Commission:

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

1. Exempt CRAs with total applicable turnovers of under €4,000,000 from the payment of annual supervisory fees;

2. Require CRAs with total applicable turnovers of between €4,000,000 and €15,000,000 to pay an annual supervisory fee equal to 0.5% of the CRA's applicable turnover;
3. Require CRAs with total applicable turnovers of over €15,000,000 to pay annual supervisory fees which correspond to the ratio of the CRA's applicable turnover to the total applicable turnover of all registered CRAs with an applicable turnover of over €15,000,000; and
4. Clarify that CRAs which form part of a group of ESMA registered CRAs will be charged annual supervisory fees on the basis of the applicable turnover of the group rather than by individual CRA.

## 7 Changes to the calculation of CRAs' applicable turnover

### 7.1 Background

107. Article 3 of the Fees Delegated Regulation explains that supervisory fees are based on 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.
108. 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.
109. 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.
110. Furthermore, as CRAs' applicable turnover is based on the revenues generated from credit rating activities and from ancillary services, ESMA has had 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.<sup>28</sup> These assessments require specialist resources and are not sustainable as ESMA assumes new supervisory mandates without significantly increasing ESMA's administrative costs.
111. ESMA found that the calculation of applicable turnover is more efficient under ESMA's other supervisory mandates because they require the use of audited accounts from year n-2 which break revenues down into core and ancillary services.<sup>29</sup>
112. The use of audited accounts from year n-2 is designed to remove 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.<sup>30</sup> Furthermore, the audited accounts provided by supervised firms under other supervisory mandates<sup>31</sup> are required to include a breakdown of the total revenues generated from their core activities and from ancillary services. This facilitates the process of calculating supervisory fees for ESMA.

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<sup>28</sup> 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>

<sup>29</sup> 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.

<sup>30</sup> See Section 3 above regarding changes proposed to the payment of supervisory fees in instalments.

<sup>31</sup> Such as for Securitisation Repositories and for Trade Repositories under SFTR

113. ESMA believes that adopting this approach would help simplify the calculation of annual supervisory fees both for CRAs and for ESMA going forward. However, ESMA is mindful that the preparation of audited accounts which include specific breakdowns of revenues from core and ancillary services may be costly. ESMA has also seen that in practice, few CRAs seek significant deductions from their total revenues because their revenues from credit rating activities and ancillary services account for the vast majority of their total turnover. For these reasons, ESMA wished to tailor the approach adopted under its other supervisory mandates so that the preparation of specially audited accounts would be optional for CRAs.

## 7.2 ESMA's proposals

114. ESMA proposed to take a CRA's total turnover as stated in its audited accounts from year n-2 as equal to its revenues from credit ratings and ancillary services in order to simplify the calculation of applicable turnover. However, in the event that a CRA wished to demonstrate that its total turnover was not equal to its revenues from credit ratings and ancillary services, the CRA should submit audited accounts which breakdown the revenues generated from credit rating activities, ancillary services and other services.

## 7.3 Assessment of feedback

115. ESMA received feedback from 4 respondents on its proposed changes to CRAs' applicable turnover. The main points highlighted by these respondents related to the reference period of the audited accounts (year n-2) and the calculation and reporting of applicable turnover.

### **The reference period of year n-2**

116. ESMA received feedback from 2 respondents regarding the proposal to use CRAs' audited accounts from the year n-2 to calculate the annual supervisory fees payable in year n. One response was supportive of the proposal, but the other response raised concerns.

117. The trade association representing the interests of small and medium sized CRAs was supportive of the proposal to use CRAs' accounts from year n-2. However, one large global CRA did not support the proposal on the basis that historical accounts do not reflect the reality of CRAs' current operating environment. This CRA suggested that ESMA should use CRAs' forecasted revenue projections for year n as the basis for charging fees, which it could adjust when the final audited accounts are submitted in May of year n+1, instead of referring to the audited accounts of year n-2.

118. This respondent also stressed that if the amended Fees Delegated Regulation were to enter into force in 2022, fees would be charged on the basis of audited accounts from 2020 which could double-charge CRAs with UK operations that changed their corporate structure during the course of 2020 in anticipation of the UK's departure from the EU.



119. ESMA understands that the financial information recorded in a company's accounts for year n-2 may not reflect the reality of its operations in year n, which means that the supervisory fees charged in year n will never be an accurate reflection of the CRA's financial position in year n. However, once this proposal is implemented, it will be easier for CRAs to have an idea of the level of fees that they will need to pay in advance, so they should be able to make provision for the supervisory fees payable in n+2 in year n+1.
120. ESMA supports this approach as it removes the delays and practical difficulties encountered when using audited accounts from year n-1 set out in Section 7.1 above and allows ESMA to harmonise the fees collection process across its supervisory mandates. This approach is also simple to administer and allows ESMA to use its resources as efficiently as possible, by using only final audited information in its fees calculations which does not need to be adjusted or updated.
121. In respect of the concern raised about the date of entry into force of the Revised Fees Delegated Regulation, ESMA appreciates that a number of EU CRAs needed to reorganise their operations in 2020 in anticipation of the UK's withdrawal from the EU and that for this reason some CRAs' EU 2020 audited accounts may include revenues which would in future years not be attributed to the EU CRA.
122. ESMA is prepared to recommend that the revised Fees Delegated Regulation should take effect from 2023 in order to minimise concerns of this nature and will enter into discussions with affected CRAs on a case-by-case basis in order to ensure that the application of the revised Fees Delegated Regulation causes as few difficulties as possible for CRAs and their auditors.
123. On this basis, ESMA believes it is appropriate to maintain its proposal to rely on CRAs' audited accounts from year n-2 to calculate the supervisory fees due in year n.

### **Calculation of applicable turnover**

124. Four respondents provided feedback on ESMA's proposals regarding the calculation of applicable turnover for the purpose of determining the annual supervisory fees payable by CRAs. Whilst the aim of ESMA's proposal was supported by some respondents, most of the four respondents objected to one or more elements of the proposal. One small CRA objected to the whole proposal. Another respondent warned that changing the calculation of applicable turnover could negatively impact smaller CRAs but expressed tentative support for the proposal if the requirement to provide audited accounts were to be removed. One other CRA responded that guidance would need to be provided as to which services were to be classed as credit ratings and ancillary services in order to facilitate the work of CRAs' auditors.

### ***Ancillary services***

125. Two respondents highlighted concerns about the treatment of revenues from ancillary services in their feedback on this proposal. The small CRA which objected to ESMA's

proposal to take a CRA's total turnover as equivalent to its annual turnover from credit rating activities and ancillary services took the view that this would not be appropriate as ESMA's supervisory activities should relate exclusively to CRAs' credit rating business and therefore revenue from ancillary services should be irrelevant for the calculation of applicable turnover. The trade association representing small and medium sized CRAs also expressed concerns that using CRAs' total turnover to calculate annual supervisory fees would negatively impact on smaller CRAs who report larger revenues from ancillary services rather than providing these through separate entities.

126. ESMA does not agree with these arguments. It is appropriate for applicable turnover to be calculated using revenues from both credit ratings and ancillary services because the ancillary services provided by CRAs are subject to supervision by ESMA.<sup>32</sup> Furthermore, based on its experience of supervising CRAs, ESMA is of the view that relying only on the revenues generated by credit rating activities would not accurately reflect ESMA's supervisory effort. This is because where CRAs provide ancillary services, their operations become more complex. The complexity of a CRA increases the firm's risk profile, which in turn increases the amount of time ESMA spends supervising such CRAs under its risk-based approach.

#### ***Audited accounts***

127. The trade association representing small and medium sized CRAs stated that ESMA should not require CRAs to provide audited accounts for the purposes of demonstrating their annual turnover as the cost of preparing audited accounts is prohibitive for SME CRAs. They argued that these CRAs should be able to rely on annual accounts prepared in accordance with the tax laws of their home Member State.

128. ESMA is mindful of the costs of preparing audited accounts but believes that these are necessary to ensure that ESMA is applying the requirements of the Fees Delegated Regulation in a correct and uniform manner. Indeed, the European Court of Auditors requires ESMA to ensure that it relies only on audited financial information.<sup>33</sup>

#### ***Audited accounts distinguishing between credit ratings and ancillary services***

129. Three respondents gave feedback on the requirement to prepare specially audited accounts. Of these three responses, one noted the importance of reporting non-credit

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<sup>32</sup> See Annex I Section B 4(2) of the CRA Regulation as amended.

<sup>33</sup> As mentioned in the European Ombudsman's review of ESMA's practices in requiring CRAs to submit audited accounts under the Fees Delegated Regulation, case 1884/2015/JAS available at Decision in case 1884/2015/JAS on the refusal of the European Securities and Markets Authority to accept a credit rating agency's financial accounts as proof of exemption from supervisory fees: [Decision in case 1884/2015/JAS on the refusal of the European Securities and Markets Authority to accept a credit rating agency's financial accounts as proof of exemption from supervisory fees | Décision | Médiateur européen \(europa.eu\)](#) last accessed 5 May 2021.

ESMA also wishes to highlight the requirements referred to in recital 43 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ 2013 L 182, p. 19 which notes that 'Annual financial statements and consolidated financial statements should be audited'.



rating revenues, one respondent noted that CRAs would need guidance in order to implement the proposal and another respondent stressed that the provision of special accounts should be optional.

130. One large CRA was supportive on the proposal that CRAs should submit audited accounts which distinguish between credit rating activities, ancillary services, and other activities. They noted that CRAs should be given the opportunity to disclose fee-based credit rating revenues separately from other types of revenue such as intercompany transfers and other non-credit rating related revenues in their audited accounts.
131. Where CRAs are providing specially audited accounts, ESMA would expect intercompany transfers to be recorded as either revenues from credit rating activities, ancillary services or other activities and for reasons to be given for the allocations made, for example, where a deduction is made to avoid double charging for revenues booked by another ESMA registered CRA within the group.
132. A further two respondents highlighted that the lack of clarity regarding the classification of different types of revenue could make this proposal difficult to implement in practice. One respondent recognised that the lack of clear definitions of the terms '*credit rating activity*', '*ancillary services*' and '*non-rating activities*' may lead CRAs to potentially classify specific revenues in different categories and a further respondent stressed that in order to ensure a harmonised approach was adopted by all CRAs, ESMA would need to provide guidance regarding the classification of revenues.
133. ESMA appreciates that guidance may be necessary to ensure that CRAs adopt a uniform approach to interpreting these definitions and will assist CRAs and their auditors with any queries they have regarding the preparation of these accounts on a case-by-case basis. ESMA will also help future applicants for registration to understand the potential classifications of their firm's revenues so that they may determine how best to structure their operations from the outset.
134. The trade association representing the interests of small and medium sized CRAs argued that if ESMA intends to use CRAs' total turnover to calculate supervisory fees, CRAs should not be required to provide revenue breakdowns. ESMA would like to clarify that whilst all CRAs are required to submit audited accounts to ESMA, only those CRAs who wish to seek deductions from their total turnover need to submit specially audited accounts which distinguish between revenues from credit rating activities, ancillary services, and other activities.
135. This proposal was designed to ensure that CRAs generating significant revenues from services which are neither credit ratings nor-ancillary services are treated fairly when it comes to the calculation of supervisory fees. However, ESMA does not expect that this exemption will be widely used, as in practice, very few CRAs ask ESMA to make deductions from their revenues for services which are not related to credit ratings or ancillary services.

## 7.4 Technical advice to the European Commission

136. ESMA maintains the proposals set out in Section 6 of the Consultation Paper. However, in response to the feedback received, ESMA would like to clarify that whilst all CRAs must submit audited accounts for the purposes of calculating supervisory fees, only CRAs wishing to deduct revenues from non-credit rating and non-ancillary services from their total turnover are required to submit audited accounts which include a breakdown of revenues from credit rating activities, ancillary services and other services.

137. On this basis, ESMA provides the following Technical Advice to the European Commission:

Article 3 of Delegated Regulation 272/2012 and its related recitals should 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 submitted 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 as reported in their audited accounts;
3. CRAs wishing to seek 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. In such cases a CRA's applicable turnover will be equal to the revenues from credit rating activities and ancillary services as certified by the CRA's external auditor.



## 8 Changes to certification fees

### 8.1 Background

138. 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.

139. Article 8 of the Fees Delegated Regulation requires firms applying for certification status to pay a registration fee of €10,000. ESMA believes that this fee reflects the time spent processing applications for registration from certified CRAs so does not wish to propose a change to these fees.

140. 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 registration 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.

### 8.2 ESMA's proposals

141. ESMA made 3 proposals regarding fees charged to certified CRAs:

- to reimburse 50% of the fee charged to applicants withdrawing their applications for certification before the end of the completeness phase but not to reimburse any of the fees charged for applications withdrawn after this point;
- to exempt all certified CRAs from the payment of initial supervisory fees in the year of their certification; and
- to remove the exemption in the Fees Delegated Regulation so that all certified CRAs pay an annual supervisory fee of €6,000.

### 8.3 Assessment of feedback



142. Only 1 large global CRA provided feedback on ESMA's proposals regarding certified CRAs. They supported the payment of annual supervisory fees by certified CRAs.

## 8.4 Technical Advice to the European Commission

143. ESMA therefore proposes the following Technical Advice to the European Commission:

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

Article 8(3) of Delegated Regulation 272/2012 should 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.

Article 8(4) of Delegated Regulation 272/2012 should be amended to exempt certified CRAs from the payment of supervisory fees in the year during which their certification takes effect. Annual fees will become payable by all certified CRAs in the year following their certification by ESMA in accordance with Article 7 of Delegated Regulation 272/2012.



## 9 Annex: European Commission 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  
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**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 June<sup>34</sup>.

Finally, we share the need to adopt as soon as possible the Delegated Acts on fees under the Securitisation Regulation<sup>35</sup> and EMIR 2.2<sup>36</sup>. 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

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<sup>34</sup> Ref. Ares(2020)3140202 - 17/06/2020

<sup>35</sup> 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)

<sup>36</sup> 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