

Regulation (EC) No 1060/2009 of the European Parliament and of the Council
of 16 September 2009 on credit rating agencies (Text with EEA relevance)

TITLE III

SURVEILLANCE OF CREDIT RATING ACTIVITIES

[^{F1}CHAPTER II

Supervision by ESMA]

[^{F1}Article 23e

Procedural rules for taking supervisory measures and imposing fines

1 Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annex III, ESMA shall appoint an independent investigating officer within ESMA to investigate the matter. The investigating officer shall not be involved or have been involved in the direct or indirect supervision or registration process of the credit rating agency concerned and shall perform his functions independently from ESMA's Board of Supervisors.

2 The investigating officer shall investigate the alleged infringements, taking into account any comments submitted by the persons subject to investigation, and shall submit a complete file with his findings to ESMA's Board of Supervisors.

In order to carry out his tasks, the investigating officer may exercise the power to require information in accordance with Article 23b and to conduct investigations and on-site inspections in accordance with Articles 23c and 23d. When using those powers, the investigating officer shall comply with Article 23a.

Where carrying out his tasks, the investigating officer shall have access to all documents and information gathered by ESMA in its supervisory activities.

3 Upon completion of his investigation and before submitting the file with his findings to ESMA's Board of Supervisors, the investigating officer shall give the persons subject to investigation the opportunity to be heard on the matters being investigated. The investigating officer shall base his findings only on facts on which the persons subject to investigation have had the opportunity to comment.

The rights of defence of the persons concerned shall be fully respected during investigations under this Article.

4 When submitting the file with his findings to ESMA's Board of Supervisors, the investigating officer shall notify that fact to the persons subject to investigation. The persons subject to investigation shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

5 On the basis of the file containing the investigating officer's findings and, when requested by the persons concerned, after having heard the persons subject to investigation in accordance with Articles 25 and 36c, ESMA's Board of Supervisors shall decide if one or more of the infringements listed in Annex III has been committed by the persons who have been subject to investigation, and in such case, shall take a supervisory measure in accordance with Article 24 and impose a fine in accordance with Article 36a.

6 The investigating officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.

7 The Commission shall adopt further rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and shall adopt detailed rules on the limitation periods for the imposition and enforcement of penalties.

The rules referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 38a and subject to the conditions of Articles 38b and 38c.

8 ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical facts, or from facts which are substantially the same, has acquired the force of res judicata as the result of criminal proceedings under national law.]

Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Changes to legislation:

There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

View outstanding changes

Changes and effects yet to be applied to :

- Regulation power to amend conferred by [2021 c. 22 s. 6](#)
- Regulation power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 1](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 1](#)
- Art. 23a-23e omitted by [S.I. 2019/266 reg. 83](#)
- Art. 36-36e omitted by [S.I. 2019/266 reg. 94](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Ch. 2 heading words substituted by [S.I. 2019/266 reg. 78](#)
- Ch. 3 heading substituted by [S.I. 2019/266 reg. 86](#)
- Annex 1 s. Cpara. 1 words substituted by [S.I. 2019/266 reg. 97\(b\)](#)
- Annex 1 s. DPt. 3 para. 3 words substituted by [S.I. 2019/266 reg. 97\(c\)](#)
- Annex 1 s. EPt. 3 para. 1 words substituted by [S.I. 2019/266 reg. 97\(d\)](#)
- Annex 1 s. EPt. 3 para. 8 words substituted by [S.I. 2019/266 reg. 97\(e\)\(i\)](#)
- Annex 1 s. EPt. 3 para. 8 words substituted by [S.I. 2019/266 reg. 97\(e\)\(ii\)](#)
- Annex 3 Pt. 2 point 7 omitted by [S.I. 2019/266 reg. 99\(c\)\(ii\)](#)
- Annex 3 Pt. 2 point 8 omitted by [S.I. 2019/266 reg. 99\(c\)\(ii\)](#)
- Annex 3 Pt. 1 point 10 words substituted by [S.I. 2019/266 reg. 99\(b\)\(i\)](#)
- Annex 3 Pt. 1 point 50 words substituted by [S.I. 2019/266 reg. 99\(b\)\(ii\)](#)
- Annex 3 Pt. 1 point 52 words substituted by [S.I. 2019/266 reg. 99\(b\)\(iii\)](#)
- Annex 3 Pt. 1 point 55 words substituted by [S.I. 2019/266 reg. 99\(b\)\(iv\)](#)
- Annex 3 Pt. 2 point 2 words substituted by [S.I. 2019/266 reg. 99\(c\)\(i\)](#)
- Annex 3 Pt. 2 point 3a words substituted by [S.I. 2019/266 reg. 99\(c\)\(i\)](#)
- Annex 3 Pt. 2 point 3c words substituted by [S.I. 2019/266 reg. 99\(c\)\(i\)](#)
- Annex 3 Pt. 2 point 5 words substituted by [S.I. 2019/266 reg. 99\(c\)\(i\)](#)
- Annex 3 Pt. 2 point 6 words substituted by [S.I. 2019/266 reg. 99\(c\)\(i\)](#)
- Annex 3 Pt. 3 point 4a words substituted by [S.I. 2019/266 reg. 99\(d\)](#)
- Art. 2(2)(c) words substituted by [S.I. 2019/266 reg. 53\(b\)\(i\)](#)
- Art. 2(2)(d) words substituted by [S.I. 2019/266 reg. 53\(b\)\(ii\)](#)
- Art. 2(2)(d)(iv) words substituted by [S.I. 2019/266 reg. 53\(b\)\(iii\)](#)
- Art. 3(2)(a)(b) substituted by [S.I. 2019/266 reg. 54\(b\)](#)
- art. 4(1A)(1B) inserted by [S.I. 2019/266 reg. 55\(c\)](#)
- art. 4(1A)(1B) words substituted in earlier amending provision [S.I. 2019/266, reg. 55\(c\)](#) by [S.I. 2020/1301 reg. 3Sch. para. 16](#)
- Art. 4(3)(b) words substituted by [S.I. 2019/266 reg. 55\(d\)\(i\)](#)
- Art. 4(3)(c)(d) word substituted by [S.I. 2019/266 reg. 55\(d\)\(ii\)](#)
- Art. 4(3)(g) words substituted by [S.I. 2019/266 reg. 55\(d\)\(iii\)](#)
- Art. 4(3)(h) omitted by [S.I. 2019/266 reg. 55\(d\)\(iv\)](#)
- Art. 5(1)(b) substituted by [S.I. 2019/266, reg. 56\(a\)\(ii\)](#) (as substituted) by [S.I. 2020/1055 reg. 11\(4\)\(a\)](#)
- Art. 5(1)(b) words substituted by [S.I. 2019/266 reg. 56\(a\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk. Reg. 56\(a\)](#) substituted (30.9.2020) by [S.I. 2020/1055, regs. 1\(2\), 11\(4\)\(a\)](#))
- Art. 5(1)(c) omitted by [S.I. 2019/266 reg. 56\(a\)\(iii\)](#) (This amendment not applied to [legislation.gov.uk. Reg. 56\(a\)](#) substituted (30.9.2020) by [S.I. 2020/1055, regs. 1\(2\), 11\(4\)\(a\)](#))
- Art. 5(1)(c) words inserted by [S.I. 2019/266, reg. 56\(a\)\(iii\)\(aa\)](#) (as substituted) by [S.I. 2020/1055 reg. 11\(4\)\(a\)](#)

- Art. 5(1)(c) words substituted by S.I. 2019/266, reg. 56(a)(iii)(bb) (as substituted) by [S.I. 2020/1055 reg. 11\(4\)\(a\)](#)
- Art. 5(1)(d) words substituted by [S.I. 2019/266 reg. 56\(a\)\(iv\)](#) (This amendment not applied to legislation.gov.uk. Reg. 56(a) substituted (30.9.2020) by S.I. 2020/1055, regs. 1(2), 11(4)(a))
- Art. 5(1)(d) words substituted by S.I. 2019/266, reg. 56(a)(iv) (as substituted) by [S.I. 2020/1055 reg. 11\(4\)\(a\)](#)
- Art. 5(4)(b) words substituted by [S.I. 2019/266 reg. 56\(d\)\(i\)](#)
- Art. 5(6)(c) words substituted by [S.I. 2019/266 reg. 56\(e\)\(iii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 56(e)(i)(ii) substituted for reg. 56(e)(i)-(iii) immediately before IP completion day by S.I. 2020/628, regs. 1(3), 9(2))
- Art. 8(6)(aa) words substituted by [S.I. 2019/266 reg. 62\(a\)](#)
- Art. 8(7)(a) words substituted by [S.I. 2019/266 reg. 62\(b\)](#)
- Art. 18A inserted by [S.I. 2019/266 reg. 75](#)
- Art. 21(4)(e) words substituted by [S.I. 2019/266 reg. 79\(e\)\(ii\)](#)
- Art. 21(4a)(a)(b) words substituted by [S.I. 2019/266 reg. 79\(f\)\(ii\)](#)
- Art. 35a(3)(b) words substituted by [S.I. 2019/266 reg. 92\(b\)](#)
- Art. 38(2)(a) word omitted in earlier amending provision S.I. 2019/266, reg. 96(1) by [S.I. 2020/1055 reg. 14\(a\)](#)
- Art. 38(2)(b) words substituted in earlier amending provision S.I. 2019/266, reg. 96(1) by [S.I. 2020/1055 reg. 14\(b\)](#)
- Art. 38(2)(c) inserted in earlier amending provision S.I. 2019/266, reg. 96(1) by [S.I. 2020/1055 reg. 14\(c\)](#)