

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

CHAPTER I

Registration procedure

Article 14

Requirement for registration

1 A credit rating agency shall apply for registration for the purposes of Article 2(1) provided that it is a legal person established in the ^[F1]Union].

[^{F2} The registration shall be effective for the entire territory of the Union once the decision to register a credit rating agency adopted by ESMA as referred to in Article 16(3) or Article 17(3) has taken effect.]

3 A registered credit rating agency shall comply at all times with the conditions for initial registration.

[^{F2} A credit rating agency shall, without undue delay, notify ESMA of any material changes to the conditions for initial registration, including any opening or closing of a branch within the Union.]

[^{F3} Without prejudice to the second subparagraph, the credit rating agency shall notify ESMA of the intended material changes to the rating methodologies, models or key rating assumptions or the proposed new rating methodologies, models or key rating assumptions when the credit rating agency publishes the proposed changes or proposed new rating methodologies on its website in accordance with Article 8(5a). After the expiry of the consultation period, the credit rating agency shall notify ESMA of any changes due to the consultation.]

[^{F24} Without prejudice to Article 16 or 17, ESMA shall register the credit rating agency if it concludes from the examination of the application that the credit rating agency complies with the conditions for the issuing of credit ratings set out in this Regulation, taking into consideration Articles 4 and 6.

5 ESMA shall not impose requirements regarding registration which are not provided for in this Regulation.]

Textual Amendments

F1 Substituted by [Regulation \(EU\) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\).](#)

Status: Point in time view as at 31/12/2020.

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)

- F2** 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).
- F3** Inserted by Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies (Text with EEA relevance).

[^{F2}Article 15

Application for registration

1 The credit rating agency shall submit an application for registration to ESMA. The application shall contain information on the matters set out in Annex II.

2 Where a group of credit rating agencies applies for registration, the members of the group shall mandate one of their number to submit all the applications to ESMA on behalf of the group. The mandated credit rating agency shall provide the information on the matters set out in Annex II for each member of the group.

3 A credit rating agency shall submit its application in any of the official languages of the institutions of the Union. The provisions of Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community⁽¹⁾ shall apply *mutatis mutandis* to any other communication between ESMA and the credit rating agencies and their staff.

4 Within 20 working days of receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the credit rating agency is to provide additional information.

After assessing an application as complete, ESMA shall notify the credit rating agency accordingly.

Textual Amendments

- F2** 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).

Article 16

Examination of the application for registration of a credit rating agency by ESMA

1 ESMA shall, within 45 working days of the notification referred to in the second subparagraph of Article 15(4), examine the application for registration of a credit rating agency based on the compliance of the credit rating agency with the conditions set out in this Regulation.

2 ESMA may extend the period of examination by 15 working days, in particular if the credit rating agency:

- a envisages endorsing credit ratings as referred to in Article 4(3);
- b envisages using outsourcing; or
- c requests exemption from compliance in accordance with Article 6(3).

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3 Within 45 working days of the notification referred to in the second subparagraph of Article 15(4), or within 60 working days thereof where paragraph 2 of this Article applies, ESMA shall adopt a fully reasoned decision to register or refuse registration.

4 The decision adopted by ESMA pursuant to paragraph 3 shall take effect on the fifth working day following its adoption.

Textual Amendments

F2 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 \(Text with EEA relevance\)](#).

Article 17

Examination of the applications for registration of a group of credit rating agencies by ESMA

1 ESMA shall, within 55 working days of the notification referred to in the second subparagraph of Article 15(4), examine the applications for registration of a group of credit rating agencies based on the compliance of those credit rating agencies with the conditions set out in this Regulation.

2 ESMA may extend the period of examination by 15 working days, in particular if any of the credit rating agencies in the group:

- a envisages endorsing credit ratings as referred to in Article 4(3);
- b envisages using outsourcing; or
- c requests exemption from compliance in accordance with Article 6(3).

3 Within 55 working days of the notification as referred to in the second subparagraph of Article 15(4), or within 70 working days thereof where paragraph 2 of this Article applies, ESMA shall adopt a fully reasoned individual decision to register or refuse registration for each credit rating agency of the group.

4 The decision adopted by ESMA pursuant to paragraph 3 shall take effect on the fifth working day following its adoption.

Textual Amendments

F2 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 \(Text with EEA relevance\)](#).

Article 18

Notification of a decision to register, refuse or withdraw registration, and publication of the list of registered credit rating agencies

1 Within five working days of the adoption of a decision under Article 16, 17 or 20 ESMA shall notify its decision to the credit rating agency concerned. Where ESMA refuses to

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register the credit rating agency or withdraws the registration of the credit rating agency, it shall provide full reasons in its decision.

[^{F12} ESMA shall communicate to the Commission, EBA, EIOPA, the competent authorities and the sectoral competent authorities, any decision under Article 16, 17 or 20.]

3 ESMA shall publish on its website a list of credit rating agencies registered in accordance with this Regulation. That list shall be updated within five working days following the adoption of a decision under Article 16, 17 or 20. The Commission shall publish that updated list in the *Official Journal of the European Union* within 30 days following such update.

Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).
- F2** 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 \(Text with EEA relevance\)](#).

Article 19

Registration and supervisory fees

[^{F11} ESMA shall charge credit rating agencies fees in accordance with this Regulation and with the Commission regulation referred to in paragraph 2. Those fees shall fully cover ESMA's necessary expenditure relating to the registration, certification and supervision of credit rating agencies and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 30.]

2 The Commission shall adopt a regulation on fees. That regulation shall determine in particular the type of fees and the matters for which fees are due, the amount of the fees, the way in which they are to be paid and the way in which ESMA is to reimburse competent authorities in respect of any costs that they may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 30.

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.

The Commission shall adopt the regulation on fees referred to in the first subparagraph by means of a delegated act in accordance with Article 38a and subject to the conditions of Articles 38b and 38c.

Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).
- F2** 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 \(Text with EEA relevance\)](#).

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Article 20

Withdrawal of registration

1 Without prejudice to Article 24, ESMA shall withdraw the registration of a credit rating agency where the credit rating agency:

- a expressly renounces the registration or has provided no credit ratings for the preceding six months;
- b obtained the registration by making false statements or by any other irregular means; or
- c no longer meets the conditions under which it was registered.

2 The competent authority of a Member State in which credit ratings issued by the credit rating agency concerned are used and which considers that one of the conditions referred to in paragraph 1 has been met may request that ESMA examine whether the conditions for the withdrawal of the registration of the credit rating agency concerned are met. If ESMA decides not to withdraw the registration of the credit rating agency concerned, it shall provide full reasons.

3 The decision on the withdrawal of registration shall take immediate effect throughout the Union, subject to the transitional period for the use of credit ratings referred to in Article 24(4).

Textual Amendments

- F2** 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 \(Text with EEA relevance\)](#).

CHAPTER II

Supervision by ESMA

Article 21

ESMA

1 Without prejudice to Article 25a, ESMA shall ensure that this Regulation is applied.

2 In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall issue and update guidelines on the cooperation between ESMA, the competent authorities and the sectoral competent authorities for the purposes of this Regulation and for those of the relevant sectoral legislation, including the procedures and detailed conditions relating to the delegation of tasks.

3 In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall, in cooperation with EBA and EIOPA, issue and update guidelines on the application of the endorsement regime under Article 4(3) of this Regulation by 7 June 2011.

[^{F1}4 ESMA shall develop draft regulatory technical standards to specify:]

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- a the information to be provided by a credit rating agency in its application for registration as set out in Annex II;
- b information that the credit rating agency must provide for the application for certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5;
- c the presentation of the information, including structure, format, method and period of reporting, that credit rating agencies shall disclose in accordance with Article 11(2) and point 1 of Part II of Section E of Annex I;
- d the assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3);
- [^{F1}e the content and format of ratings data periodic reporting to be requested from registered and certified credit rating agencies for the purpose of ongoing supervision by ESMA.]

[^{F3}ESMA shall submit those draft regulatory technical standards to the Commission by 21 June 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.]

[^{F3}4a ESMA shall develop draft regulatory technical standards to specify:

- a the content and the presentation of the information, including structure, format, method and timing of reporting that credit rating agencies are to disclose to ESMA in accordance with Article 11a(1); and
- b the content and format of periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by ESMA.

ESMA shall submit those draft regulatory technical standards to the Commission by 21 June 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

4b ESMA shall report on the possibility of establishing one or more mappings of credit ratings submitted in accordance with Article 11a(1) and submit that report to the Commission by 21 June 2015. The report shall, in particular, assess:

- a the possibility, cost, and benefit of establishing one or more mappings;
- b how one or more mappings can be created without misrepresenting credit ratings in light of different rating methodologies;
- c any effects mappings could have on the regulatory technical standards developed to date in relation to Article 21(4a)(a) and (b).

ESMA shall consult EBA and EIOPA in regard to points (a) and (b) of the first subparagraph.]

[^{F1}5 ESMA shall publish an annual report on the application of this Regulation. That report shall contain, in particular, an assessment of the implementation of Annex I by the credit rating agencies registered under this Regulation and an assessment of the application of the endorsement mechanism referred to in Article 4(3).]

6 ESMA shall present annually to the European Parliament, the Council and the Commission a report on supervisory measures taken and penalties imposed by ESMA under this Regulation, including fines and periodic penalty payments.

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7 ESMA shall cooperate with EBA and EIOPA in performing its tasks and shall consult EBA and EIOPA before issuing and updating guidelines and submitting draft regulatory technical standards referred to in paragraphs 2, 3 and 4.]

Textual Amendments

- F1** Substituted by Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies (Text with EEA relevance).
- F3** Inserted by Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies (Text with EEA relevance).

Article 22

Competent authorities

1 By 7 June 2010, each Member State shall designate a competent authority for the purpose of this Regulation.

2 Competent authorities shall be adequately staffed, with regard to capacity and expertise, in order to be able to apply this Regulation.

^{F4}Article 22a

[^{F1}Examination of compliance with methodology requirements]

1 In the exercise of its ongoing supervision of credit rating agencies registered under this Regulation, ESMA shall examine regularly compliance with Article 8(3).

2 Without prejudice to Article 23, ESMA shall also in the framework of the examination referred to in paragraph 1:

- a verify the execution of back-testing by credit rating agencies;
- b analyse the results of that back-testing; and
- c verify that the credit rating agencies have processes in place to take into account the results of the back-testing in their rating methodologies.]

Textual Amendments

- F1** Substituted by Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies (Text with EEA relevance).
- F4** Inserted 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).

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[^{F2}Article 23

Non-interference with content of ratings or methodologies

In carrying out their duties under this Regulation, ESMA, the Commission or any public authorities of a Member State shall not interfere with the content of credit ratings or methodologies.

Article 23a

Exercise of the powers referred to in Articles 23b to 23d

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 23b to 23d shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 23b

Requests for information

1 ESMA may by simple request or by decision require credit rating agencies, persons involved in credit rating activities, rated entities and related third parties, third parties to whom the credit rating agencies have outsourced operational functions or activities and persons otherwise closely and substantially related or connected to credit rating agencies or credit rating activities to provide all information that is necessary in order to carry out its duties under this Regulation.

- 2 When sending a simple request for information under paragraph 1, ESMA shall:
- a refer to this Article as the legal basis for the request;
 - b state the purpose of the request;
 - c specify what information is required;
 - d set a time-limit within which the information is to be provided;
 - e inform the person from whom the information is requested that there is no obligation to provide the information but that any reply to the request for information must not be incorrect or misleading;
 - f indicate the fine provided for in Article 36a, in conjunction with point 7 of Section II of Annex III, where the answers to questions asked are incorrect or misleading.

- 3 When requiring the supply of information under paragraph 1 by decision, ESMA shall:
- a refer to this Article as the legal basis for the request;
 - b state the purpose of the request;
 - c specify what information is required;
 - d set a time-limit within which the information is to be provided;
 - e indicate the periodic penalty payments provided for in Article 36b where the production of the required information is incomplete;
 - f indicate the fine provided for in Article 36a, in conjunction with point 7 of Section II of Annex III, where the answers to questions asked are incorrect or misleading; and

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- g indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4 The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5 ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 who are concerned by the request for information are domiciled or established.

Article 23c

General investigations

1 In order to carry out its duties under this Regulation, ESMA may conduct all necessary investigations of persons referred to in Article 23b(1). To that end, the officials of and other persons authorised by ESMA shall be empowered to:

- a examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;
- b take or obtain certified copies of or extracts from such records, data, procedures and other material;
- c summon and ask any person referred to in Article 23b(1) or their representatives or staff for oral or written explanations on facts or documents related to the subject matter and purpose of the inspection and to record the answers;
- d interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
- e request records of telephone and data traffic.

2 The officials of and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 36b where the production of the required records, data, procedures or any other material, or the answers to questions asked of the persons referred to in Article 23b(1) are not provided or are incomplete, and the fines provided for in Article 36a, in conjunction with point 8 of Section II of Annex III, where the answers to questions asked of the persons referred to in Article 23b(1) are incorrect or misleading.

3 The persons referred to in Article 23b(1) shall submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 36b, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice of the European Union.

4 In good time before the investigation, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

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5 If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6 Where authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.

Article 23d

On-site inspections

1 In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 23b(1). Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on-site inspection without prior announcement.

2 The officials of and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 23c(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3 The officials of and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection, and the periodic penalty payments provided for in Article 36b where the persons concerned do not submit to the inspection. In good time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where it is to be conducted.

4 The persons referred to in Article 23b(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, specify the date on which it is to begin and indicate the periodic penalty payments provided for in Article 36b, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice of the European Union. ESMA shall take such decisions after consulting the competent authority of the Member State where the inspection is to be conducted.

5 Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, upon the request of ESMA, actively assist the officials of and other persons authorised by ESMA. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the competent authority of the Member State concerned may also attend the on-site inspections upon request.

6 ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 23c(1) on its behalf. To

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that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 23c(1).

7 Where the officials of and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

8 If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

9 Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.

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.

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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.

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.

Article 24

Supervisory measures by ESMA

1 Where, in accordance with Article 23e(5), ESMA's Board of Supervisors finds that a credit rating agency has committed one of the infringements listed in Annex III, it shall take one or more of the following decisions:

- a withdraw the registration of the credit rating agency;
- b temporarily prohibit the credit rating agency from issuing credit ratings with effect throughout the Union, until the infringement has been brought to an end;
- c suspend the use, for regulatory purposes, of the credit ratings issued by the credit rating agency with effect throughout the Union, until the infringement has been brought to an end;
- d require the credit rating agency to bring the infringement to an end;
- e issue public notices.

2 When taking the decisions referred to in paragraph 1, ESMA's Board of Supervisors shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

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- a the duration and frequency of the infringement;
 - b whether the infringement has revealed serious or systemic weaknesses in the undertaking's procedures or in its management systems or internal controls;
 - c whether financial crime was facilitated, occasioned or otherwise attributable to the infringement;
 - d whether the infringement has been committed intentionally or negligently.
- 3 Before taking the decisions referred to in points (a), (b) and (c) of paragraph 1, ESMA's Board of Supervisors shall inform EBA and EIOPA thereof.
- 4 Credit ratings may continue to be used for regulatory purposes following the adoption of the decisions referred to in points (a) and (c) of paragraph 1 during a period not exceeding:
- a 10 working days from the date ESMA's decision is made public under paragraph 5 if there are credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation; or
 - b three months from the date ESMA's decision is made public under paragraph 5 if there are no credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation.

ESMA's Board of Supervisors may extend, including following a request by EBA or EIOPA, the period referred to in point (b) of the first subparagraph by three months in exceptional circumstances relating to the potential for market disruption or financial instability.

5 Without undue delay, ESMA's Board of Supervisors shall notify any decision adopted pursuant to paragraph 1 to the credit rating agency concerned and shall communicate any such decision to the competent authorities and the sectoral competent authorities, the Commission, EBA and EIOPA. It shall make public any such decision on its website within 10 working days from the date when it was adopted.

When making public its decision as referred to in the first subparagraph, ESMA's Board of Supervisors shall also make public the right for the credit rating agency concerned to appeal the decision, the fact, where relevant, that such an appeal has been lodged, specifying that such an appeal does not have suspensive effect, and the fact that it is possible for the Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

Article 25

Hearing of the persons concerned

1 Before taking any decision under Article 24(1), ESMA's Board of Supervisors shall give the persons subject to the proceedings the opportunity to be heard on ESMA's findings. ESMA's Board of Supervisors shall base its decisions only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA's Board of Supervisors may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2 The rights of defence of the persons subject to the proceedings shall be fully respected during the proceedings. They shall be entitled to have access to ESMA's file, subject to the

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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.

[^{F1}Article 25a

Sectoral competent authorities responsible for the supervision and enforcement of Article 4(1) and Articles 5a, [^{F5}8b,] 8c and 8d

The sectoral competent authorities shall be responsible for the supervision and enforcement of Article 4(1) and Articles 5a, [^{F5}8b,] 8c and 8d in accordance with the relevant sectoral legislation.]

Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\).](#)
- F5** Deleted by [Regulation \(EU\) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations \(EC\) No 1060/2009 and \(EU\) No 648/2012.](#)

CHAPTER III

Cooperation between ESMA, competent authorities and sectoral competent authorities

Article 26

Obligation to cooperate

ESMA, EBA, EIOPA, the competent authorities and the sectoral competent authorities shall cooperate where it is necessary for the purposes of this Regulation and for those of the relevant sectoral legislation.

Article 27

Exchange of information

1 ESMA, the competent authorities, and the sectoral competent authorities shall, without undue delay, supply each other with the information required for the purposes of carrying out their duties under this Regulation and under the relevant sectoral legislation.

2 ESMA may transmit to the central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, to the European Systemic Risk Board and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks. Similarly, such authorities or bodies shall not be prevented from communicating to ESMA information that ESMA may need in order to carry out its duties under this Regulation.]

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^{F6}Article 28

[^{F6}Cooperation in case of a request with regard to on-site inspections or investigations

Textual Amendments

- F6** Deleted 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 \(Text with EEA relevance\).](#)

^{F6}Article 29

Colleges of competent authorities]

Textual Amendments

- F6** Deleted 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 \(Text with EEA relevance\).](#)

[^{F2}Article 30

Delegation of tasks by ESMA to competent authorities

1 Where it is necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 21(2). Such specific supervisory tasks may, in particular, include the power to request information in accordance with Article 23b and to conduct investigations and on-site inspections in accordance with Article 23d(6).

2 Prior to the delegation of a task, ESMA shall consult the relevant competent authority. Such consultation shall concern:

- a the scope of the task to be delegated;
- b the timetable for the performance of the task to be delegated; and
- c the transmission of necessary information by and to ESMA.

3 In accordance with the regulation on fees to be adopted by the Commission pursuant to Article 19(2), ESMA shall reimburse a competent authority for the costs incurred as a result of carrying out delegated tasks.

4 ESMA shall review the delegation referred to in paragraph 1 at appropriate intervals. A delegation of tasks may be revoked at any time.

A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity. Supervisory responsibilities under this Regulation, including registration decisions, final assessments and follow-up decisions concerning infringements, shall not be delegated.

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Article 31

Notifications and suspension requests by competent authorities

1 Where a competent authority of a Member State finds that acts contrary to this Regulation are being, or have been, carried out on the territory of its own or of another Member State, it shall give notice of that fact in as specific a manner as possible to ESMA. Where the competent authority considers it appropriate for investigatory purposes, the competent authority may also suggest to ESMA that it assess the need to use the powers under Articles 23b and 23c in relation to the credit rating agency involved in those acts.

ESMA shall take appropriate action. It shall inform the notifying competent authority of the outcome and, as far as possible, of any significant interim developments.

2 Without prejudice to the duty to notify set out in paragraph 1, where the notifying competent authority of a Member State considers that a registered credit rating agency, whose credit ratings are used within the territory of that Member State, breaches the obligations arising from this Regulation and the infringements are sufficiently serious and persistent to have a significant impact on the protection of investors or on the stability of the financial system in that Member State, the notifying competent authority may request that ESMA suspend the use, for regulatory purposes, of credit ratings of the credit rating agency concerned by the financial institutions and other entities referred to in Article 4(1). The notifying competent authority shall provide ESMA with full reasons for its request.

Where ESMA considers that the request is not justified, it shall inform the notifying competent authority in writing, setting out the reasons. Where ESMA considers that the request is justified, it shall take the appropriate measures to resolve the issue.

Article 32

Professional secrecy

1 The obligation of professional secrecy shall apply to ESMA, the competent authorities, and all persons who work or who have worked for ESMA, for the competent authorities or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA. Information covered by professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings.

2 All the information that, under this Regulation, is acquired by, or exchanged between, ESMA, the competent authorities, the sectoral competent authorities or other authorities and bodies referred to in Article 27(2), shall be considered confidential, except where ESMA or the competent authority or other authority or body concerned states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.]

^{F6}Article 33

[^{F6}Disclosure of information from another Member State]

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Status: Point in time view as at 31/12/2020.

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Textual Amendments

- F6** Deleted 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 \(Text with EEA relevance\).](#)

CHAPTER IV

Cooperation with third countries

[^{F2}Article 34

Agreement on exchange of information

ESMA may conclude cooperation agreements on exchange of information with the supervisory authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 32.

Such exchange of information shall be intended for the performance of the tasks of ESMA or those supervisory authorities.

With regard to transfer of personal data to a third country, ESMA shall apply Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽²⁾.

Textual Amendments

- F2** 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 \(Text with EEA relevance\).](#)

Article 35

Disclosure of information from third countries

ESMA may disclose the information received from supervisory authorities of third countries only if ESMA or a competent authority has obtained the express agreement of the supervisory authority that has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that supervisory authority gave its agreement or where such disclosure is necessary for legal proceedings.]

Textual Amendments

- F2** 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 \(Text with EEA relevance\).](#)

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(1) [^{F2}OJ 17, 6.10.1958, p. 385/58.]

(2) [^{F2}OJ L 8, 12.1.2001, p. 1.]

Textual Amendments

F2 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).

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