

EEA CONSOLIDATED VERSION

OF

COMMISSION DELEGATED REGULATION (EU) No 272/2012

of 7 February 2012

supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies

(OJ L 90, 28.3.2012, p. 6)

as adapted for the purposes of the EEA Agreement by

DECISION OF THE EEA JOINT COMMITTEE No 205/2016

of 30 September 2016

(OJ L 46, 23.2.2017, p. 48)

that entered into force

on 1 October 2016

Legend:

- Text added by an EEA adaptation
- Replacing text by virtue of an EEA adaptation
- ~~Text deleted or disappplied by an EEA adaptation~~
- The provisions of this act shall be read in accordance with Protocol 1 to the EEA Agreement, unless otherwise specified in the adaptations to the provisions of this act agreed upon by the EEA Joint Committee and reported in the present document.

CHAPTER I GENERAL PROVISIONS

Article 1

Subject matter

AS REGARDS THE EU

This Regulation lays down rules regarding the fees that the European Securities and Markets Authority (ESMA) shall charge to credit rating agencies for supervision, registration and certification.

AS REGARDS THE EFTA STATES

This Regulation lays down rules regarding the fees that the European Securities and Markets Authority (ESMA) or the EFTA Surveillance Authority, as the case may be, shall charge to credit rating agencies for supervision, registration and certification.

Article 2

Recovery of supervisory costs in full

The fees charged to credit rating agencies shall cover:

- (a) all costs relating to the supervision of credit rating agencies by ESMA or the EFTA Surveillance Authority, as the case may be, in accordance with Regulation (EC) No 1060/2009, including costs resulting from the registration and certification of credit rating agencies;
- (b) all costs for the reimbursement of competent authorities to which ESMA or the EFTA Surveillance Authority, as the case may be, has delegated tasks in accordance with Article 30 of Regulation (EC) No 1060/2009;
- (c) all costs for the reimbursement of competent authorities that have provided assistance to ESMA or the EFTA Surveillance Authority, as the case may be, in accordance to Article 23c(4) and Article 23d(5) of Regulation (EC) No 1060/2009.

Article 3

Applicable turnover

1. For the purposes of calculating the fees referred to in Article 5, Article 7(1) and Article 11(1) and (2), the applicable turnover for a given financial year (n) shall be the revenues of a credit rating agency as published in its audited accounts of the previous year (n-1) generated from rating activities and ancillary services.
2. Where the credit rating agency did not operate during the full year (n-1), the applicable revenue shall be estimated by extrapolating that amount for the whole financial year.

**CHAPTER II
FEES**

Article 4

Types of fees and general payment modalities

1. Credit rating agencies established in the Union that apply for registration in accordance with Article 14(1) of Regulation (EC) No 1060/2009 shall be charged the following types of fees
 - (a) annual supervisory fees according to Article 5;
 - (b) registration fees according to Article 6.
2. Credit rating agencies established in third countries that apply for certification in accordance with Article 5(2) of Regulation (EC) No 1060/2009 shall be charged the following types of fees:
 - (a) flat annual supervisory fees according to Article 7;
 - (b) certification fees according to Article 8.
3. The fees shall be payable in Euro. They shall be payable as specified in Articles 5(3), 6(6), 7(2) and 8(2). Any late payments shall incur a daily penalty equal to 0,1 % of the amount due.

Article 5

Annual supervisory fee for registered credit rating agencies

1. A registered credit rating agency shall be charged an annual supervisory fee.

By way of derogation from the first subparagraph, a registered credit rating agency shall be exempted from paying an annual supervisory fee where its total revenues as published in its most recent audited accounts is less than EUR 10 million, or in case it belongs to a group of credit rating agencies, where the group of credit rating agencies has aggregate total revenues of less than EUR 10 million.
2. The annual supervisory fee for a given financial year shall be calculated as follows:
 - (a) the basis for the calculation of the annual supervisory fee for a given financial year shall be the estimate of expenditure relating to the supervision of credit rating agencies as included in the ESMA budget for that year, set out and approved in accordance with Article 63 of Regulation (EU) No 1095/2010;

- (b) the relevant amount for the calculation of the annual supervisory fee for a given financial year shall be the estimate of expenditure according to point (a) reduced by any annual supervisory fees to be charged to certified credit rating agencies for a given financial year according to Article 7 and increased by any deficit from the previous financial year;
- (c) a registered credit rating agency as referred to in paragraph 1 shall pay as an annual supervisory fee a part of the relevant amount which corresponds to the ratio of the credit rating agency's applicable turnover to the total applicable turnover of all registered credit rating agencies required to pay an annual supervisory fee in accordance with paragraph 1.

3. The annual supervisory fee for a given financial year shall be paid in two instalments.

The first instalment shall be due by the end of February of that year and shall amount to two thirds of the estimated annual supervisory fee. If the applicable turnover is not yet available at that time, ESMA shall base the calculation on the turnover included in the most recent audited accounts available.

The second instalment shall be due by the end of August. The amount of the second instalment shall be the annual supervisory fee calculated according to paragraph 2 reduced by the amount of the first instalment.

AS REGARDS THE EU

ESMA shall send the invoices for the instalments to the credit rating agencies at least 30 days before the respective payment date.

AS REGARDS THE EFTA STATES

The EFTA Surveillance Authority shall send the invoices for the instalments to the credit rating agencies at least 30 days before the respective payment date.

When, as regards credit rating agencies established in the EFTA States, the EFTA Surveillance Authority is to send the invoices for the instalments, ESMA shall inform the EFTA Surveillance Authority of the calculations necessary as regards each credit rating agency sufficiently in advance of the respective payment date.

Article 6

Registration fee

1. The amount of the registration fee to be paid by individual credit rating agencies applying for registration shall be proportionate to the complexity of the application and the size of the credit rating agency as specified in paragraphs 2 to 5.
2. For the purposes of calculating the amount of the registration fee, the following criteria shall be taken into consideration:
 - (a) whether a credit rating agency intends to issue ratings for structured finance instruments;
 - (b) whether a credit rating agency has a branch in another Member State or in a third country;
 - (c) whether a credit rating agency intends to endorse ratings.
3. Where none of the criteria set out in paragraph 2 apply, the registration fees shall be calculated according to the number of employees, as follows:
 - (a) credit rating agencies with fewer than 15 employees shall pay EUR 2 000;
 - (b) credit rating agencies with 15 to 49 employees shall pay EUR 15 000;
 - (c) credit rating agencies with at least 50 employees shall pay EUR 40 000.
4. Credit rating agencies that only meet one of the criteria set out in paragraph 2 shall pay the following registration fees according to the number of their employees, as follows:
 - (a) credit rating agencies with fewer than 15 employees shall pay EUR 10 000;
 - (b) credit rating agencies with 15 to 49 employees shall pay EUR 40 000;
 - (c) credit rating agencies with at least 50 employees shall pay EUR 100 000.
5. Credit rating agencies that meet at least two of the criteria set out in paragraph 2 shall pay the following registration fees according to the number of their employees, as follows:
 - (a) credit rating agencies with fewer than 15 employees shall pay EUR 30 000;
 - (b) credit rating agencies with 15 to 49 employees shall pay EUR 85 000;

(c) credit rating agencies with at least 50 employees shall pay EUR 125 000.

6. The registration fee shall be payable in full at the time the credit rating agency applies for registration.

AS REGARDS THE EU

7. If a credit rating agency withdraws its application for registration before ESMA has notified it that the application is complete in accordance with the second subparagraph of Article 15(4) of Regulation (EC) No 1060/2009, ESMA shall reimburse three quarters of the registration fee paid. If the application is withdrawn after this date, but before ESMA adopts the reasoned decision to register or refuse registration, ESMA shall reimburse one quarter of the registration fee paid.

AS REGARDS THE EFTA STATES

7. If a credit rating agency withdraws its application for registration before the EFTA Surveillance Authority has notified it that the application is complete in accordance with the second subparagraph of Article 15(4) of Regulation (EC) No 1060/2009, the EFTA Surveillance Authority shall reimburse three quarters of the registration fee paid. If the application is withdrawn after this date, but before the EFTA Surveillance Authority adopts the reasoned decision to register or refuse registration, the EFTA Surveillance Authority shall reimburse one quarter of the registration fee paid.

When, as regards credit rating agencies established in the EFTA States, the EFTA Surveillance Authority is to reimburse part of the registration fee paid, ESMA shall without delay make available the amounts to be reimbursed to a credit rating agency to the EFTA Surveillance Authority for that purpose.

8. By way of derogation from Article 5, a registered credit rating agency that is required to pay an annual supervisory fee in accordance with Article 5(1) shall pay in the year of its registration an initial supervisory fee of EUR 500 for each complete month in the time period between the date of registration and the end of the financial year. This fee shall be payable in full once the registration is notified to the credit rating agency.

Article 7

Flat annual supervisory fee for certified credit rating agencies

1. A credit rating agency certified in accordance with Regulation (EC) No 1060/2009 shall pay an annual supervisory fee of EUR 6 000.

By way of derogation from the first subparagraph, a certified credit rating agency shall be exempted from paying an annual supervisory fee where its total revenues as published in its most recent audited accounts is less than EUR 10 million, or in case it belongs to a group of credit rating agencies, where the group of credit rating agencies has aggregate total revenues of less than EUR 10 million.

2. The annual supervisory fee for a certified credit rating agency shall be due by the end of February. ESMA shall send a payment invoice to a certified credit rating agency at least 30 days before that date.

Article 8

Certification fee

1. A credit rating agency applying for certification shall pay a certification fee of EUR 10 000.

2. The certification fee shall be payable in full at the time the credit rating agency applies for certification.

3. If a credit rating agency withdraws its application for certification before ESMA has notified it that the application is complete in accordance with the second subparagraph of Article 15(4) of Regulation (EC) No 1060/2009, ESMA shall reimburse three quarters of the certification fee. If the application is withdrawn after that date, but before ESMA adopts the reasoned decision to certify or refuse certification, ESMA shall reimburse one quarter of the certification fee.

4. By way of derogation from Article 7, a certified credit rating agency that is required to pay an annual supervisory fee according to Article 7(1) shall pay in the year of its certification an initial supervisory fee of EUR 500 for each complete month in the time period between the date of certification and the end of the financial year. This fee shall be payable in full once the certification is notified to the credit rating agency.

Article 9

Reimbursement of competent authorities

1. Only ESMA or, as regards credit rating agencies established in the EFTA States, the EFTA Surveillance Authority shall charge fees to credit rating agencies for their registration, certification and supervision. Competent authorities shall not charge fees to credit rating agencies, including cases where those authorities carry out tasks on behalf of ESMA or the EFTA Surveillance Authority, as the case may be, according to Article 30 of Regulation (EC) No 1060/2009.

2. ESMA shall reimburse a competent authority for the actual costs incurred as a result of carrying out delegated tasks in accordance with Article 30 of Regulation (EC) No 1060/2009 or as a result of assisting ESMA in accordance with Article 23c(4) or 23d(5) of that Regulation. Costs to be reimbursed shall comprise all fixed costs and variable costs related to the performance of the delegated tasks or the assistance provided to ESMA.

CHAPTER III TRANSITIONAL AND FINAL PROVISIONS

Article 10

Fees in 2011

1. Credit rating agencies registered in 2011 shall pay, for 2011, an initial supervisory fee of EUR 500 for each complete month in the period between the date of registration, but not earlier than 1 July 2011, and 31 December 2011. This fee shall be payable in full by end of April 2012.

By way of derogation from the first subparagraph a registered credit rating agency shall be exempted from paying a supervisory fee in 2011 where its total revenues as published in its most recent audited accounts is less than EUR 10 million, or in case it belongs to a group of credit rating agencies, where the group of credit rating agencies has aggregate total revenues of less than EUR 10 million.

2. Credit rating agencies certified in 2011 shall pay, for 2011, an initial supervisory fee of EUR 500 for each complete month between the date of certification, but not earlier than 1 July 2011, and 31 December 2011. This fee shall be payable in full by end of April 2012.

By way of derogation from the first subparagraph, a certified credit rating agency shall be exempted from paying a supervisory fee in 2011 where it has an applicable turnover of less than EUR 10 million, or in case it belongs to a group of credit rating agencies, where the group of credit rating agencies has an aggregate applicable turnover of less than EUR 10 million.

Article 11

Entry into force

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 February 2012.