Date: January 30th, 2024

EACRA Response to European Commission consultation on Draft Delegated Regulation titled "European Securities and Markets Authority – harmonising and simplifying fees charged to credit rating agencies"

Dear European Commission,

With reference to your above consultation[1] dated January 3rd, 2024, we are pleased to hereby submit the views of our association, representing European credit rating agencies registered with ESMA.

In parallel to this consultation on supervisory fees on Credit Rating Agencies, you are also consulting on the supervisory fees charged by ESMA to other supervised entities: Benchmark administrators, Securitisation repositories, Trade repositories under EMIR and Trade repositories under SFTR. The target of these 5 consultations is to harmonize and simplify certain technical aspects of ESMA's fee collection system so that fee collection is less complex and more uniform across sectors. Our response therefore covers 2 areas:

- Common aspects of all 5 consultations and
- Specific aspects relating to Credit Rating Agencies only.

<u>Common aspects of all 5 consultations</u>

Based on a review of all 5 consultations, we have identified the following common proposals, on which you shall find our feed-back thereafter:

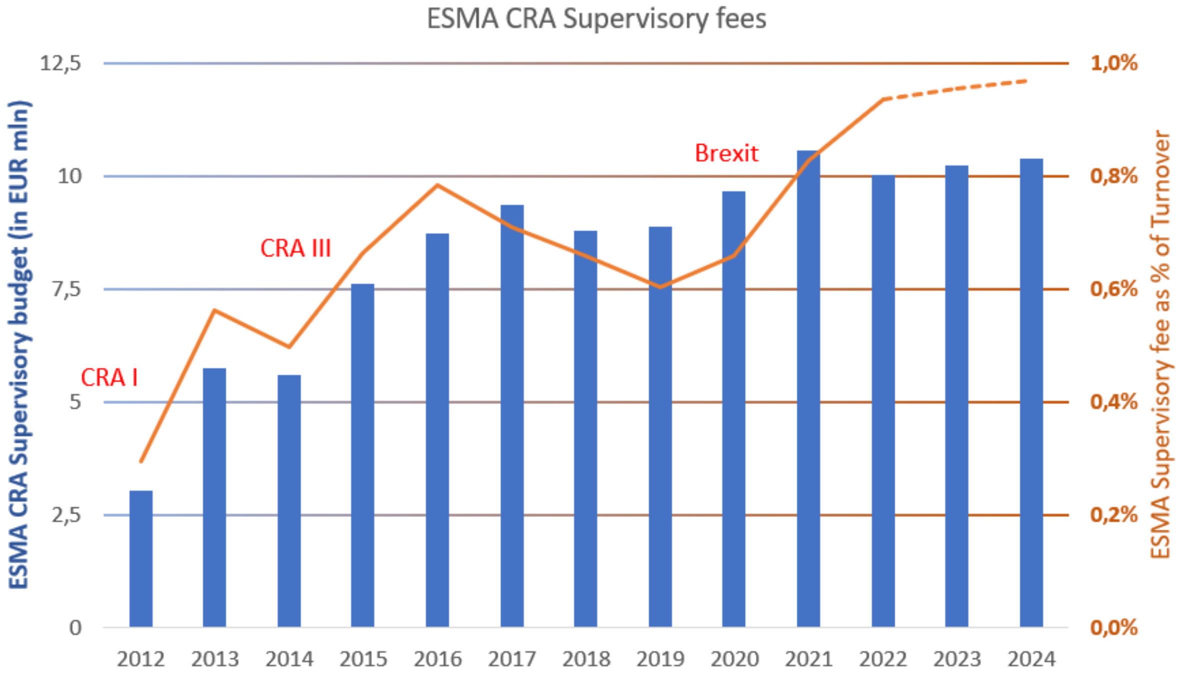
- Supervisory fees charged by ESMA shall cover "direct and indirect costs",
- Supervisory fees payable in year N to be based on financial statements of year N-2,
- Payment of the supervisory fee in one single instalment in March,
- Change in late payment penalties,
- Use of ECB average exchange rates.

With respect to the first item ("recovery of supervisory costs in full"), we note that the wording of Article 2 of the current delegated regulation 272/2012[2] shall be changed from "all costs relating to

[1] Available at : https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13932-European-Securities-and-Markets-Authority-harmonising-and-simplifying-fees-charged-to-credit-rating-agencies_en
[2] The current Commission Delegated Regulation 272/2012 is available here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0272&qid=1705580249617

the supervision of credit rating agencies by ESMA" to "all direct and indirect costs relating to the supervision of credit rating agencies by ESMA"[3].

Adding indirect costs of supervision implies that the supervisory fee's charged by ESMA can only increase. We would like to highlight that supervisory fees charged by ESMA on CRAs have substantially increased in recent years and are likely to reach 1% of the relevant turnover of the industry:



Sources: ESMA Budget for 2012 to 2023, ESMA Annual Workplan for 2024.
Rating activity and ancillary services for 2012 to 2022 based on CRAs annual Transparency reports and own calculations (includes estimates for undisclosed revenues). For 2023 and 2024, revenues assumed unchanged at the level of 2022.

Recital 3 of the proposed Delegated Regulation defines indirect costs as "a reasonable apportionment of the Authority's fixed and variable overheads"[4]. The term "reasonable apportionment" is rather vague and can hardly be challenged from an outside perspective: neither the yearly ESMA budget[5] nor the ESMA work plan[6] provide enough information to assess what a reasonable share of overheads[7] is. Additionally, ESMA has been tasked with a high number of expensive IT projects (eg ESAP), which could equally fall under the scope of "indirect costs".

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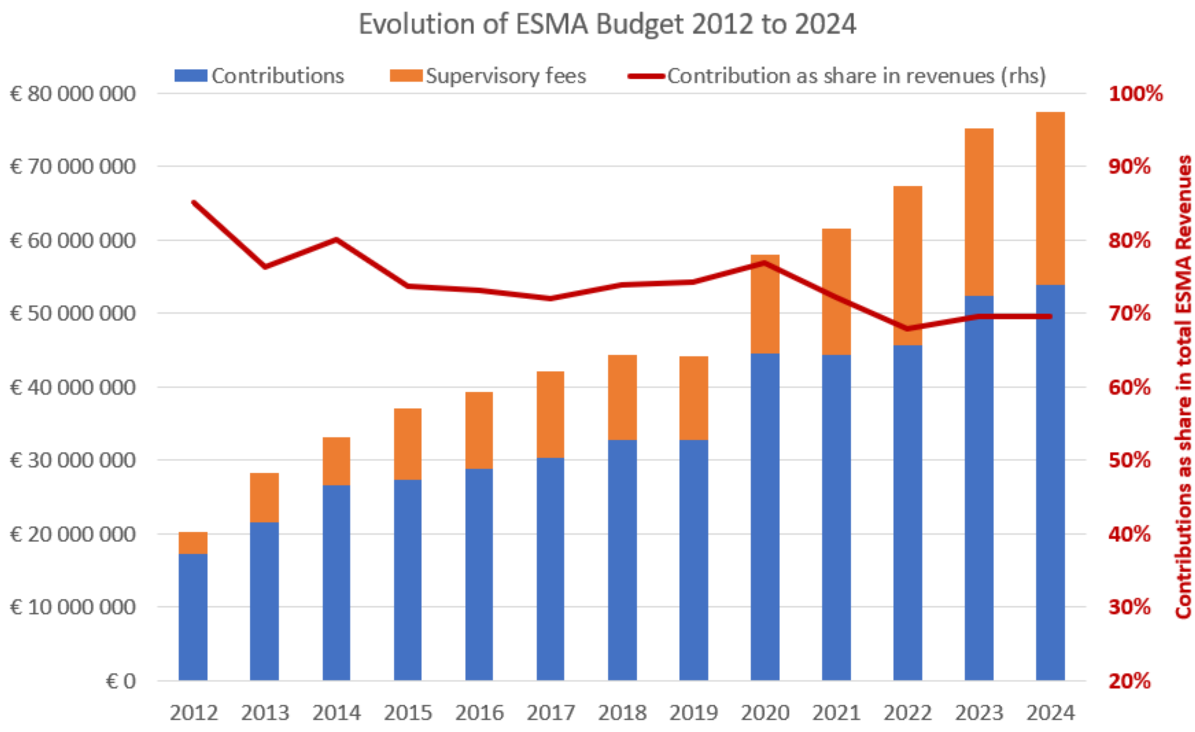
[3] The same approach is used for paragraph (b) and (c) of Article 2 with regard to tasks delegated by ESMA to competent authorities.
[4] See page 4 of the consultation paper.
[5] ESMA budget for 2024 is available here: https://www.esma.europa.eu/sites/default/files/2024-01/ESMA63-833672855-2602_2024_Opening_budget.pdf
[6] ESMA work plan for 2024 is available here: https://www.esma.europa.eu/sites/default/files/2023-09/ESMA22-50751485-1368_-_2024_Annual_Work_Programme.pdf
[7] As an example, the staffing plan included in the budget does not berak-down the number of staff in the numerous departments and units at ESMA. Furthermore, given the numerous tasks carried out by ESMA as a

Looking at ESMA as a whole, we note the following evolution of ESMAs overall budget:



From 2012 to 2024, ESMAs expected revenues rose from EUR 20 mln to EUR 75 mln reflecting the numerous tasks assigned to ESMA in recent years. While ESMA relied at 85% on contributions from the EU and NCAs in 2012, this share has dropped to 70% in 2024.

We therefore propose to **extend the wording in recital 3** of "a reasonable apportionment of the Authority's fixed and variable overheads" by adding thereafter **"but no more than 10% of all direct cost".**

With respect to the applicable turnover for the calculation of the supervisory fees in year N, you are proposing to use the information from year N-2 instead of the year N-1 as currently. We clearly welcome this approach as up to now supervised entities were unable to properly budget these supervisory fees given the tight current timetable[8].

whole, it could be argued that all of them are indirectly connected to the supervisory activities carried out by ESMA.

[8] The supervisory fees paid by each supervised entity depends on three factors: ESMA supersivory budget, the concerned entities turnover and the turnover of all other supervised entities. Since the later was unknown, supervised entities could not properly assess their share of the supervisory fees.

It is further clarified that supervised entities should provide the relevant turnover information by end of September of year N-1. We believe that this timeline fits well into the standard processes applied by undertakings. This clarification is therefore welcomed.

In order to allow a precise budgeting of supervisory fees by supervised entities, we would welcome if ESMA provides an indication of the expected supervisory fee by early December of year N-1 instead of sending an invoice in February of year N.

Regarding the modalities of payment of the supervisory fee, it is proposed to move from 2 instalments (payable in February and August) to a single payment due in March. We think that such a single payment creates a cash peak to ESMA and the supervised entities. **Instead, we propose keeping the current two instalments or potentially using quarterly payments.**

The consultation also proposes to modify the rules relating to the late payment of supervisory fees by supervised entities. While the current system foresees a daily penalty of 0,1% of the amount due, in future any late payment shall incur a default interest rate with reference to the ECBs main refinancing operations rate. This change is welcomed.

As a last technical modification, the consultation clarifies that revenue information in another currency than the euro shall be converted into euro using the euro foreign exchange rate as published by the ECB. While we believe that ESMA is already applying this approach, such a clarification will avoid any potential misunderstanding.

Changes to Delegated Regulation relating to Credit Rating Agencies

The consultation paper includes some specific modifications relating to credit rating agencies with regard to the registration / certification fees as well as the first-year supervisory fees. In this section we also reflect on the need of audited accounts and propose a clear accounting guideline defining rating activity and ancillary services.

The consultation paper outlines changes to the reimbursement of registration fees paid in case the application is withdrawn prior to ESMAs final decision. While currently applicants could get reimbursed ¾ or ¼ of the registration fee, it is proposed that ESMA no longer reimburses such fees to applicants. Given ESMAs experience with some agencies being registered for a very short period of time[9], we somewhat understand the proposed change. We also support the change with regard to first year registration fees.

But, with respect to certification fees, we note that agencies could still get reimbursed 50% of the certification fee and that no supervisory fee shall be charged during the first year. It follows that Third Country agencies would receive a preferential treatment compared to EU based entities willing to register as CRAs. We are of the opinion that this approach is not fair since the EU has opened its market to agencies based in equivalent countries but this is not the case the other way round – no European agencies has been recognized in any of the 4 equivalent countries.

The current delegated regulation as well as the proposed delegated regulation require registered rating agencies to provide ESMA with audited accounts so that ESMA can derive the applicable turnover for the calculation of the respective supervisory fee.

The CRA delegated regulation includes an exemption for small agencies having less than EUR 10 mln total turnover from the payment of supervisory fees[10]. Based on the transparency reports for the year 2022, we estimate that 14 out of the 21 registered agencies have revenues below EUR 10 mln and therefore benefit from this exemption. Some of these agencies exclusively incur the costs of an external audit in order to satisfy the requirements of this delegated regulation. We therefore submit the following **amendment as paragraph 5 in Article 3** to your consideration:

> **"credit rating agencies with a total turnover below EUR 10 mln can also provide ESMA with their accounts based on national tax law without the need for an external audit."**

Kindly note that the exemption form supervisory fees is defined with reference to total turnover whereas the calculation of supervisory fees is based only on rating activities and ancillary services and thereby excludes non-rating related revenues. We believe that these different reference points give enough cushion to ESMA while reducing administrative costs to small agencies.

In order to simplify and streamline ESMAs calculation of supervisory fee charged to single agencies, we propose that ESMA, following a public consultation, issues a clear auditing guideline defining the terms of "rating activity" and "ancillary services".

Currently, rating agencies can submit to ESMA requests from deductions of specific items[11]. Given that such requests "require specialist resources and are not sustainable as ESMA assumes new

[9] No public information is available on agencies having withdrawn their registration requests.
[10] See Article 5 (1) second subparagraph of the current delegated regulation on fees charged by ESMA on CRAs.
[11] See ESMA Guideline on periodic information to be submitted to ESMA by CRAs section 5.3.4 available at: https://www.esma.europa.eu/sites/default/files/library/esma_33-9-295_guidelines_on_the_submission_of_periodic_information_to_esma_by_credit_rating_agencies_.pdf

supervisory mandates"[12], such an accounting guideline would be beneficial to ESMA and to all registered rating agencies. Given that ESMAs calculation of rating agencies market shares in accordance with Article 8d of the CRA Regulation is based on the same data as the supervisory fee's calculation, such an approach would contribute to more transparency in the whole market.

We would like to thank you for the opportunity to comment on this proposed delegated regulation(s). We stand ready to provide any additional information or any clarification you may need.

About EACRA

The European Association of Credit Rating Agencies (EACRA), set up in November 2009 and registered in Paris, was established to act as a platform for cooperation for EU-based Credit Rating Agencies (CRAs). Our mission is to support and facilitate the compliance of CRAs with regulatory requirements through effective communication, cross-border know how, and the promotion of best practices. In addition, EACRA seeks to promote Credit Ratings and the interests of CRAs across Europe, as well as enhance the financial community and general public's understanding of Credit Ratings.

[12] See § 59 page 19 of ESMAs Consultation Paper on Fees charged to CRAs by ESMA dated January 29, 2021 available at [Consultation Paper on Fees Charged to CRAs by ESMA (europa.eu)]