



Brussels, **XXX**
[...](2021) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council by specifying fees, rules of procedure for measures and criteria for derogation relating to the supervision by the European Securities Markets Authority of data reporting service providers

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2019/2175, amending Regulation (EU) No 600/2014 on markets in financial instruments (MiFIR), was published in the Official Journal on 27 December 2019.

Derogation

The Regulation grants the European Securities and Markets Authority (ESMA) direct authorisation and supervisory powers over data reporting services providers, except for those ARMs and APAs that, by way of derogation from MiFIR on account of their limited relevance for the internal market, are subject to authorisation and supervision by a competent authority of a Member State.

The power to adopt a delegated act on this derogation is provided in Article 2(3) of MiFIR. The Commission shall take into any or all of the following elements: the extent to which the services are provided to investment firms authorised in one Member State only, the number of trade reports or transactions and/or whether the ARM or APA is part of a group of financial market participants operating cross border.

Fines

Article 38k(10) of MiFIR, empowers the Commission to adopt a delegated act to further specify the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

Fees

As provided in Article 38n(1) of MiFIR, ESMA shall charge fees to data reporting services providers and those fees shall fully cover ESMA's necessary expenditure relating to the authorisation and supervision of data reporting services providers. The amount of a fee charged to a data reporting services provider has to be proportionate to the turnover of the data reporting services provider. Those fees should also cover the reimbursement of any costs that the competent authorities may incur as a result of delegation from ESMA under Article 38o of MiFIR. The power to adopt a delegated act on fees is provided in Article 38n(3) of MiFIR. According to that provision, the Commission is empowered to adopt a delegated act to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On 18 June 2020, the Commission asked ESMA for an opinion (technical advice) on the Commission delegated regulations to be adopted under Article 2(3), 38k(10) and 38n(3) of MiFIR.

Following an in-depth technical assessment, ESMA conducted a public consultation on the technical aspects of the envisaged delegated regulations on derogation and fees from 20 November 2020 to 4 January 2021. 11 stakeholders responded to this public consultation. The main aspects flagged by respondents to the consultation are related to the minimum fee having regard to a break-even (cost-recovery) functioning of data reporting services providers, the potential increase of fees for data reporting services providers' clients and (upfront) transparency of fees. Other questions relate to the use of revenue for the fee determination, the differences between fees from national supervision versus ESMA

supervision and the shape of the market. The Commission notes that the fees are based on ESMA's supervisory budget for the following year, which budget needs to be approved by the Commission. The Commission agrees with ESMA that the share of revenue of an individual DRSP in a specific category (i.e. APA or ARM) relative to the total revenue of all DRSPs in a specific category (i.e. all APAs or all ARMs) is one of several possible criteria to base the amount of annual fees individual DRSPs are due. The minimum fee relates to fixed activities by ESMA, such as periodic information gathering, and ensures that the revenue based division does not lead to the largest DRSPs being responsible for the fees of the smallest DRSPs.

ESMA also conducted a public consultation on the technical aspects of the envisaged delegated regulation on fines from 23 December 2020 to 23 January 2021. Two stakeholders responded to ESMA's consultation. Comments were given on the absence of a possibility to submit comments until ESMA has adopted an interim decision. The Commission proposes to apply the derogation from the duty to respect the right to be heard only with regard to ESMA, but not with regard to the investigation officer.

ESMA submitted its technical advice on all three topics in three separate reports to the Commission on 23 March 2021.

On 19 July 2021, the Commission consulted the Expert Group of the European Securities Committee (EGESC) on ESMA's technical advice and on the content of this delegated act. Some EGESC members provided comments regarding the derogation determination which have been taken into account when drafting the delegated Act.

The delegated act has been subject to a four week feedback period from [...] to [...] in line with the Commission's Better Regulation guidelines. [...] contributions were received.

An impact assessment has not been carried out for the following reasons:

- This Regulation follows the measures proposed by ESMA in its technical advice.
- The decision to determine criteria for derogation, to impose fines and periodic penalty payments and to determine criteria for fees, was taken in the Regulation which already sets out the method for calculating these penalties and the situations when they should be imposed. The Regulation also establishes data reporting services providers' rights of defence. The overall objectives and the need for these rules were outlined in the impact assessment accompanying the Commission proposal for Regulation (EU) 2019/2175.
- The provisions for fees and fines included in these delegated acts are of a procedural nature. This Regulation follows the logic from previously adopted Regulations on fines and periodic penalty payments and criteria for fees that are in ESMA's supervisory remit.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Chapter I of the proposed regulation sets out the general provisions, in particular the subject and scope of this Act and the relevant definitions.

Chapter II of the proposed regulation sets out the provisions for derogation of ESMA supervision in the relevant Articles. In particular the criteria on whether services are provided to investment firms authorised in different Member States and the number of reports or transactions.

Chapter III of the proposed regulation sets out the provisions on fines and penalties. The articles describe the procedure for the exercise of power to impose fines or penalties.

Chapter IV of the proposed regulation sets out the provisions on fees. The articles contain the fee basis.

Chapter V of the proposed regulation sets out the final provisions. The articles contain the transitional provisions and the entry into force.

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supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council by specifying fees, rules of procedure for measures and criteria for derogation relating to the supervision by the European Securities Markets Authority of data reporting service providers

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012¹, and in particular Articles 2(3), 38k(10) and 38n(3) thereof,

Whereas:

- (1) Given the cross-border dimension of market data handling, data quality and the necessity to achieve economies of scale, and to avoid the adverse impact of potential divergences on both data quality and the task of data reporting providers, Regulation (EU) 2019/2175 of the European Parliament and of the Council² transferred authorisation and supervision powers with regard to the activities of data reporting services providers ('DRSPs') in the Union to the European Securities and Markets Authority ('ESMA').
- (2) At the same time, approved publication arrangements ('APAs') and approved reporting mechanisms (ARMs) are derogated from ESMA supervision, and instead remain in scope of national supervision, where their activities are of limited relevance for the internal market.
- (3) The activities of an APA or an ARM should firstly be considered to be of limited relevance for the internal market based on the relative amount of clients established in Member States different from the home Member State of the APA or the ARM. If the services offered by APAs or ARMs are to a large extent cross border, derogation should not apply. Secondly the relevance for the internal market should be based on the share of the total reported or published transactions that is reported or published by individual APAs or ARMs. If this share exceeds a minimum threshold, then it should not be considered to be of limited relevance to the internal market. The APA calculation should be based on transparency data submitted to the Financial

¹ OJ L 173, 12.6.2014, p. 84.

² Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds (OJ L 334, 27.12.2019, p. 1).

Instruments Reference Data System and the Financial Instruments Transparency System and the ARM calculation on the transaction reports submitted to the competent authorities.

- (4) Where an APA and an ARM or multiple APAs or ARMs are operated by a single operator, derogation of ESMA supervision is only possible if all APAs or ARMs are eligible for derogation.
- (5) It is appropriate to specify the rules of procedure for the exercise of the power to impose fines and periodic penalty payments by ESMA with regard to the DRSPs in scope of its supervision. In particular, Regulation (EU) No 600/2014 prescribes that those rules of procedures should include provisions on the rights of the defence, the collection of fines or periodic penalty payments and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.
- (6) Where ESMA finds that there are serious indications of possible existence of facts liable to constitute one or more infringements of the requirements for data reporting services providers, ESMA is to appoint an independent investigation officer within ESMA to investigate the matter. Upon completion of the investigation, the investigation officer is to give the person(s) subject to the investigation the opportunity to be heard. This means that the person should have the right to make written comments within a reasonable time limit of not less than four weeks before the investigation officer submits its findings to ESMA. The persons subject to the investigation should be allowed to be assisted by a counsel of their choice. The investigation officer should consider, whether, as a result of the submissions made by the person subject to the investigation, it is necessary to amend the statement of findings before submitting it to ESMA. If this is the case, the person subject to the investigation should be given the opportunity to make further submissions.
- (7) ESMA should assess the completeness of the file submitted by the investigation officer based on a list of documents. To ensure that the person subject to the investigation is able to adequately prepare their defence, before adopting a final decision with regard to fines or supervisory measures, ESMA should provide them the right to provide further written comments.
- (8) In order to ensure that ESMA persons cooperate with an investigation, ESMA should be able to take certain coercive measures. When ESMA has taken a decision requiring a person to bring an infringement to an end, or has requested to supply complete information or to submit complete records, data, procedure or any other material, or has taken a decision to conduct an on-site inspection, it may impose periodic penalty payments in order to compel the person subject to the investigation to comply with the decision taken. Before imposing periodic penalty payments ESMA should provide the person the opportunity to provide written submissions.
- (9) The right of defence should be weighed against the need, under specific circumstances, for urgent action by ESMA. Where urgent action pursuant 381 of Regulation (EU) No 600/2014 is warranted, the right of defence of the person subject to the investigation should not be an impediment to ESMA taking urgent measures. In such case the person subject to investigation should be heard as soon as possible after taking the decision. If urgent action is needed in order to prevent significant and imminent damage to the financial system, ESMA may adopt an interim decision without providing the person subject to the investigation the opportunity to make submissions. In such case ESMA should give the person the opportunity to be heard as soon as possible after adopting the interim decision and before a confirmatory decision

is adopted. The procedure should nonetheless grant the right of the person subject to the investigation to be heard in advance by the investigation officer.

- (10) The files prepared by ESMA and the investigation officer contain information that is indispensable to the persons concerned in preparing for judicial or administrative proceedings. After a person subject to investigation has received the notification of statement of finding either from the investigation officer or from ESMA, the person should therefore be entitled to have access to the file subject to the legitimate interest of other persons in the protection of their business secrets. The use of file documents accessed should only be permitted for judicial or administrative proceedings in relation to infringements of Regulation (EU) No 600/2014.
- (11) Both the power to impose fines and periodic penalty payments and the power to enforce fines and periodic penalty payments should be subject to a limitation period. For reasons of consistency, limitation periods for the imposition and enforcement of fines or periodic penalty payments should take into account existing Union legislation applicable to the imposition and enforcement of penalties on supervised entities and ESMA's experience in applying such legislation.
- (12) In order for ESMA to ensure safekeeping of collected fines and periodic penalties, ESMA should deposit them on interest-bearing accounts that are opened exclusively for the purpose of a single fine or periodic penalty payments aiming at ending a single infringement. As a matter of budgetary prudence, ESMA should only transfer the amounts to the Commission once the decisions are final due to the rights to appeal being exhausted or lapsed.
- (13) It is important to specify the fees that ESMA may charge with regard to the application, authorisation and supervision of data reporting services providers.
- (14) Fees charged to DRSPs are aimed at full recovery of costs made by ESMA related to authorisation and supervision of DRSPs. Supervisory activities include the assessment of suitability of the management body, supervision of compliance by DRSPs with organisational requirements, the exercise of powers to require information, conduct investigations and perform on-site inspections and the imposing of supervisory measures. ESMA assesses its budget on an annual basis.
- (15) Fees charged for ESMA's activities related to DRSPs should be set at a level such as to avoid a significant accumulation of deficit or surplus. Where there is a recurrent significant surplus or deficit, the level of fees should be revised.
- (16) A DRSP should submit its application to ESMA in order to ensure harmonised application of the derogation criteria. During the first phase of the application, ESMA should determine if a DRSP is eligible for derogation from ESMA supervision. If the criteria for derogation apply, ESMA should forward the application to the national competent authority. No fee should be charged by ESMA in this case. The fixed fees related to the authorisation by ESMA should be divided between an application fee, which should relate to the assessment of completeness of an application and an authorisation fee. The process of authorisation should be completed within six months.
- (17) ESMA shall assess if DRSPs that are already authorised at national level from 1 January 2022 will fall in scope of ESMA supervision and inform the respective DRSPs. DRSPs that are already authorised at national level should not be subject to reauthorisation by ESMA. These DRSPs already comply with the requirements applicable to DRSPs and should not be charged for a duplication of the authorisation process by ESMA.

- (18) The annual fees charged by ESMA should cover all activities related to the DRSPs. ESMA should assess annually its supervisory budget related to each type DRSP and charge each individual DRSP a fee that is proportionate to its revenue compared to the total revenue of all DRSPs of the same type. Revenue related to activities directly ancillary to core DRSP services should be included in the calculation of the applicable turnover for as far as it is likely to have an impact on ESMA's supervision of the DRSP and it is not already covered by separate supervision activities. A minimum fee for APAs and ARMs covers the fixed costs related to requests for information, on-going monitoring and, investigations. The annual fee applies per calendar year.
- (19) ESMA may delegate supervisory tasks to national competent authorities, in which case the national competent authorities should be reimbursed by ESMA for their costs incurred.
- (20) In order to ensure smooth functioning of the new supervisory framework for DRSPs, as introduced in Article 4 of Regulation 2019/2175³, this Regulation should enter into force no later than 1 January 2022, at which date the new supervisory framework for DRSPs will commence.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

This regulation lays down criteria for derogation of supervision by the European Securities Markets Authority (ESMA) of APAs and ARMs, rules of procedure regarding fines and periodic penalty payments to be imposed by the European Securities Markets Authority on data reporting services providers, and rules on supervisory fees.

Article 2

For the purpose of this Regulation “data reporting services provider”, or “DRSP”, means an approved reporting mechanism or an approved reporting mechanism as defined in Article 2(1)(34) and Article 2(1)(36) of Regulation (EU) No 600/2014;

³ Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds, OJ L 334, 27.12.2019, p1-145.

CHAPTER II

DEROGATION FROM ESMA SUPERVISION

Article 3

Assessment of APAs and ARMs

1. Approved publication arrangements ('APAs') and approved reporting mechanism ('ARMs') shall be subject to authorisation and supervision by a competent authority of a Member State as defined in Article 4(1), point (26) of Directive 2014/65/EU on account of their limited relevance for the internal market if the activities of those APAs and ARMs on average do not exceed any of the thresholds set out in Article 4 of this Regulation. Where more than one APA or ARM is operated by the same operator, a derogation shall only apply if the activities of none of the APAs or ARMs exceed the thresholds set out in Article 4.
2. For the purpose of authorisation, the assessment of the criteria set out in Article 4 shall be based on estimates of the future activities provided by the applicant.
3. The relevance for the internal market of the activities of an APA or an ARM referred to in paragraph 1 shall be reassessed by ESMA every year, starting in the year following the first full calendar year after authorisation. The assessment of the criteria in Article 4 shall be based on data representing the full calendar year prior to the reassessment.
4. In the case that based on the reassessment referred to in paragraph 3 in two consecutive years the thresholds for derogation or application of ESMA supervision are no longer met, the change into application or derogation of ESMA supervision shall take effect on 1 June in the following year.

Article 4

Criteria for identification of derogation from ESMA supervision

1. An APA or ARM shall be subject to a derogation from ESMA supervision where:
 - (a) an APA or ARM provides services to investment firms in maximum three different Member States, while at least 70% of the clients are authorised in the same Member State as the APA or ARM; and
 - (b) the number of trades reported to the public and the volume thereof by an APA in accordance with Article 20(1) of Regulation (EU) No 600/2014 regarding equity instruments amounts to less than 0,5% of the total number of trades or volume reported by all APAs in accordance with Article 20(1) of that regulation and the number of trades reported to the public and the volume thereof by an APA in accordance with Article 21(1) of that regulation regarding non-equity instruments does not amount to more than 0,5% of the total number of trades or volume reported by all APAs in accordance with Article 21(1) of that regulation; and
 - (c) the number of transactions reported by an ARM in accordance with Articles 26(1) and 26(7) of Regulation (EU) No 600/2014 does not amount to more

than 0,5% of the total number of transactions reported by all ARMs in accordance with Articles 26(1) and 26(7) of that Regulation .

2. An APA or ARM shall provide the competent authority on request data which allows the assessment of the criterion laid down in paragraph 1, point (a).

CHAPTER III

RULES OF PROCEDURE FOR FINES AND PENALTIES

ARTICLE 5

Rules of procedure in infringement proceedings before the investigation officer

1. Upon completion of an investigation of potential infringements of the requirements referred to in Article 38g(1) of Regulation (EU) No 600/2014 and before submitting the file to ESMA, the investigation officer referred to in Article 38k(1) of that Regulation shall inform the person subject to investigation in writing stating its findings and shall provide that person with the opportunity to make written submissions pursuant to paragraph 3. The statement of findings shall set out the facts liable to constitute one or more of the infringements of the requirements referred to in Article 38g(1) of (EU) No 600/2014, including an assessment of the nature and seriousness of those infringements, taking into account the criteria laid down in Article 38g(2) of that Regulation.
2. The statement of findings shall set a reasonable time limit for the person subject to investigation to make its written submissions. In investigations other than those referred to in Article 8, this time limit shall be at least four weeks. The investigation officer shall not be obliged to take into account written submissions received after that time limit has expired.
3. In the written submissions, the person subject to investigation may set out all the facts which are relevant to its defence, and shall, if possible, attach documents as proof of the facts set out. The person subject to investigation may propose that the investigation officer hears other persons who may corroborate the facts set out in the submissions of the person subject to investigation.
4. The investigation officer may invite a person subject to investigation to which a statement of findings has been addressed to attend an oral hearing. The persons subject to investigation may be assisted by a counsel of their choice. Oral hearings shall not be public.

Article 6

Rules of procedure in infringement proceedings before ESMA with regard to fines and supervisory measures

1. The complete file to be submitted by the investigation officer to ESMA shall include the following documents:

- (a) the statement of findings and a copy thereof addressed to the person subject to the investigation;
 - (b) a copy of the written submissions by the person subject to the investigation;
 - (c) the minutes of any oral hearing.
2. When a file is incomplete, ESMA shall make a reasoned request for additional documents to the investigation officer.
3. Where ESMA considers that the facts described in the statement of findings of the investigation officer do not constitute infringements of the requirements referred to in Article 38g(1) of Regulation (EU) No 600/2014, it shall decide to close the case and it shall notify that decision to the person subject to investigation.
4. Where ESMA does not agree with the findings of the investigation officer, it shall submit a new statement of findings to the person subject to investigation. That statement of findings shall set a time limit of at least four weeks within which the person subject to investigation may make written submissions. ESMA shall not be obliged to take into account written submissions received after the expiry of that time limit for adopting a decision on the existence of an infringement and on supervisory measures and the imposition of a fine in accordance with Articles 38g and 38h of Regulation (EU) No 600/2014.
5. Where ESMA agrees with all or some of the findings of the investigation officer, it shall inform the person subject to investigation accordingly. Such communication shall set a time limit of at least four weeks within which the person subject to investigation may make written submissions. ESMA shall not be obliged to take into account written submissions received after the expiry of that time limit for adopting a decision on the existence of an infringement and on supervisory measures and the imposition of a fine in accordance with Articles 38g and 38h of Regulation (EU) No 600/2014.
6. ESMA may invite the person subject to investigation to which a statement of findings has been addressed to attend an oral hearing. The person subject to investigation may be assisted by a counsel of their choice. Oral hearings shall not be public.
7. If ESMA decides that one or more of the infringements of the requirements referred to in Article 38g(1) of Regulation (EU) No 600/2014 has been committed by a person subject to investigation and has adopted a decision imposing a fine in accordance with Article 38h of that regulation, it shall notify immediately that decision to the person subject to investigation.

Article 7

Rules of procedure in infringement proceedings before ESMA with regard to periodic penalty payments

1. Before making a decision imposing a periodic penalty payment pursuant to Article 38i of Regulation (EU) No 600/2014, ESMA shall submit a statement of findings to the person subject to the proceedings setting out the reasons justifying the imposition of a periodic penalty payment and the amount of the periodic penalty payment per day of non-compliance. The statement of findings shall set a time limit of at least four weeks within which the person subject to the proceedings may make written submissions. ESMA shall not be obliged to take into account written submissions

received after the expiry of that time limit for deciding on the periodic penalty payment.

2. Once the DRSP or the person subject to the proceedings, has complied with the relevant decision referred to in Article 38i(1) of Regulation (EU) No 600/2014, a periodic penalty payment shall no longer be imposed.
3. A decision referred to in Article 38i(1) of Regulation (EU) No 600/2014 shall indicate the legal basis and the reasons for the decision, the amount and the starting date of the periodic penalty payment.
4. ESMA may invite the person subject to the proceedings to attend an oral hearing. The person subject to the proceedings may be assisted by a counsel of their choice. Oral hearings shall not be public.

Article 8

Rules of procedure for interim decisions on supervisory measures

1. By way of derogation from Article 6(4), (5) and (6) and from Article 7(1), the procedure set out in this Article shall apply where ESMA adopts interim decisions pursuant to Article 38l(1), second subparagraph of Regulation (EU) No 600/2014.
2. Where ESMA decides that one or more of the infringements of a requirement referred to in Article 38g(1) of Regulation (EU) No 600/2014 has been committed by a person subject to investigation and adopts an interim decision imposing supervisory measures pursuant to Article 38g of Regulation (EU) No 600/2014, it shall notify immediately that interim decision to the person subject to the interim decision.

ESMA shall set a time limit of at least four weeks within which the person subject to the interim decision may make written submissions on that decision. ESMA shall not be obliged to take into account written submissions received after the expiry of that time limit.

Upon request, ESMA shall grant access to the file to the person subject to the interim decision. File documents accessed shall be used only for the purposes of judicial or administrative proceedings concerning the application of Regulation (EU) No 600/2014.

ESMA may invite the person subject to the interim decision to attend an oral hearing. The persons subject to the interim decision may be assisted by a counsel of their choice. Oral hearings shall not be public.

3. ESMA shall take a final decision as soon as possible after the adoption of the interim decision.

Where ESMA considers, after having heard the person subject to the interim decision, that an infringement of the provisions referred to in Article 38g(1) of Regulation (EU) No 600/2014 has been committed by the persons subject to the interim decision, it shall adopt a confirmatory decision imposing one or more supervisory measures laid down in Article 38g of Regulation (EU) No 600/2014. ESMA shall immediately notify that decision to the persons subject to the interim decision.

4. Where ESMA adopts a final decision that does not confirm the interim decision, the interim decision shall be deemed to be repealed.

Article 9
Access to the file and use of documents

1. Upon request, ESMA shall grant access to the file to the person subject to the investigation to whom the investigation officer or ESMA has sent a statement of findings. Access shall be granted following the notification of any statement of findings.
2. File documents accessed shall be used by the person referred to in paragraph 1 only for the purposes of judicial or administrative proceedings concerning the application of Regulation (EU) No 600/2014.

Article 10
Limitation periods for the imposition of fines and periodic penalties

1. Fines and periodic penalty payments on DRSPs and other persons subject to investigation shall be subject to a limitation period of five years.
2. The limitation period referred to in paragraph 1 shall begin on the day following that on which the infringement is committed. In the case of continuing or repeated infringements, that limitation period shall begin on the day on which the infringement ceases.
3. Any action taken by ESMA, or by the national competent authority acting at the request of ESMA in accordance with Article 38o of Regulation (EU) No 600/2014 for the purpose of the investigation or proceedings in respect of an infringement of the requirements referred to in Article 38g(1) of Regulation (EU) No 600/2014 shall interrupt the limitation period for the imposition of fines and periodic penalty payments. That limitation period shall be interrupted with effect from the date on which the action is notified to the DRSP or the person subject to the investigation in respect of an infringement of the requirements referred to in Article 38g(1) of Regulation (EU) No 600/2014.
4. Each interruption as referred to in paragraph 3 shall restart the limitation period. The limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without ESMA having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which limitation is suspended pursuant to paragraph 5.
5. The limitation period for imposing fines and periodic penalty payments shall be suspended for as long as the decision of ESMA is subject to proceedings pending before the Board of Appeal referred to in Article 60 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴, or is subject to a review by the Court of Justice of the European Union in accordance with Article 38m of Regulation (EU) No 600/2014.

⁴ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Article 11
Limitation periods for the enforcement of penalties

1. The power of ESMA to enforce decisions taken pursuant to Articles 38h and 38i of Regulation (EU) No 600/2014 shall be subject to a limitation period of five years.
2. The limitation period referred to in paragraph 1 shall be calculated from the day following that on which the decision becomes final.
3. The limitation period for the enforcement of penalties shall be interrupted by:
 - (a) a notification by ESMA to the person subject to the proceedings, of a decision varying the original amount of the fine or periodic penalty payment;
 - (b) any action of ESMA, or of a national competent authority acting at the request of ESMA in accordance with Article 38o of Regulation (EU) No 600/2014, designed to enforce payment or payment terms and conditions of the fine or periodic penalty payment.
4. Each interruption referred to in paragraph 3 shall restart the limitation period.
5. The limitation period for the enforcement of penalties shall be suspended for so long as:
 - (a) time to pay is allowed;
 - (b) enforcement of payment is suspended pursuant to a pending decision of ESMA Board of Appeal in accordance with Article 60 of Regulation (EU) No 1095/2010, and a review by the Court of Justice of the European Union in accordance with Article 38m of Regulation (EU) No 600/2014.

Article 12
Collection of fines and periodic penalty payments

1. The amounts of fines and periodic penalty payments collected by ESMA shall be lodged to an interest-bearing account opened by ESMA until such time as they become final. In case of multiple fines and periodic penalty payments collected by ESMA in parallel ESMA shall ensure that they are lodged to different accounts or subaccounts. Fines and periodic penalty payments paid shall not be entered into ESMA's budget or recorded as budgetary amounts.
2. Once ESMA has established that the fines or periodic penalty payments have become final following the exhaustion of all appeal rights ESMA shall transfer those amounts and potential interest accruing to the Commission. These amounts shall then be entered in the Union Revenue budget.
3. ESMA shall report on a regular basis to the Commission on the amounts of fines and periodic penalty payments imposed and their status.

CHAPTER IV

FEES

Article 14

Application and authorisation fees

1. Where a DRSP applies for authorisation to provide data reporting services it shall pay:
 - (a) for APAs and ARMs an application fee of EUR 20 000 for the first application and EUR 10 000 for each following application for authorisation of additional data reporting services;
 - (b) for APAs and ARMs an authorisation fee of EUR 80 000 for the first authorisation and EUR 40 000 for each following authorisation of additional data reporting services, in case the applicant does not have a derogation in accordance with Chapter II.

Article 15

Annual supervisory fees

1. A DRSP which is subject to ESMA supervision shall be charged an annual supervisory fee.
2. The total annual supervisory fee and the annual supervisory fee for a given DRSP shall be calculated as follows:
 - (a) the total annual supervisory fee for a given year (n) shall be the estimate of expenditure relating to the supervision of data reporting services providers' activities under Regulation (EU) No 600/2014 as included in ESMA's budget for that year;
 - (b) a data reporting services provider's annual supervisory fee for a given year (n) shall be the total annual supervisory fee determined pursuant to point (a) divided between all data reporting services providers authorised in year (n), in proportion to their applicable turnover calculated pursuant to Article 16.
3. In no case shall an APA or ARM authorised by ESMA pay an annual supervisory fee of less than EUR 30 000.

In case an entity is subject to minimum supervisory fees for more than one data reporting service, it shall pay the minimum supervisory fee for each service provided.
4. By way of derogation paragraphs 2 and 3, the first year fee shall be calculated by lessening the authorisation fee referred to in Article 14(1), point (b) with a factor that is equal to the days between authorisation and the end of the year divided by the total number of days in that year. It shall hence be calculated as follows:

*data reporting services provider first-year fee = Min (Authorisation fee, Authorisation fee * Coefficient)*

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

Where a DRSP is authorised during the month of December, it shall not pay the first-year supervisory fee.

Article 16

Applicable turnover

1. DRSPs shall keep audited accounts for the purposes of this Regulation which distinguish between at least the following:
 - (a) revenues generated from ARM services;
 - (b) revenues generated from APA services;
 - (c) revenues generated from ancillary services to ARM activities;
 - (d) revenues generated from ancillary services to APA activities.
2. The applicable turnover of a DRSP for a given year (n) shall be the sum of:
 - (a) its revenues generated from the core functions of the provision of ARM or APA services on the basis of the audited accounts of the year (n-2), or, if they are not yet available of the year previous to that (n-3) and
 - (b) its applicable revenues from ancillary services on the basis of audited accounts of the year (n-2), or, if they are not yet available of the year previous to that (n-3) divided by the sum of
 - (c) the total revenues of all authorised ARMs or APAs generated from core functions of provision of ARM or APA services on the basis of the audited account during the year (n-2), or, if they are not yet available of the year previous to that (n-3) and
 - (d) the total applicable revenues from ancillary services of all ARMs or APAs on the basis of audited accounts during the year (n-2), or, if they are not yet available of the year previous to that (n-3).
3. Where the data reporting services provider did not operate during the full year (n-2), its applicable turnover shall be estimated according to the formula set out in paragraph 2 by extrapolating for the data reporting services provider the values calculated for the number of months during which the data reporting services provider operated in year (n-2) to the whole year (n-2).
4. DRSPs shall provide ESMA, on an annual basis, with audited accounts as referred to in Article 16(1). The documents shall be submitted to ESMA by electronic means no later than 30 September each year (n-1). If a DRSP authorised after 30 September, it shall provide the figures immediately upon authorisation and by end of the year of authorisation.

Article 17
General payment modalities

1. All fees shall be payable in euro. They shall be paid as specified in Articles 18 and 19.
2. Any late payments shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁵.

Article 18
Payment of application and authorisation fees

1. The fees for application, authorisation or extension of authorisation shall be due at the time the DRSP applies and shall be paid in full within 30 days from the date of issuance of ESMA's invoice.
2. When a DRSP decides to withdraw its application for authorisation before ESMA adopts its reasoned decision to authorise or refuse authorisation, the application or authorisation fees shall not be reimbursed.

Article 19
Payment of annual supervisory fees

1. The annual supervisory fee referred to in Article 15 shall be due at the beginning of each calendar year and paid in full to ESMA in the first three months of that year. ESMA shall submit an invoice specifying the full amount of the supervisory fee at latest thirty days before the final payment date. The fees shall be calculated on the basis of the latest available information for annual fees.
2. When a DRSP decides to withdraw its authorisation, the annual supervisory fee shall not be reimbursed.

Article 20
Reimbursement of national competent authorities

1. 1. In case of a delegation of tasks by ESMA to national competent authorities, the national competent authority shall not recover costs incurred while carrying out supervisory tasks delegated by ESMA directly from the DRSP.
2. ESMA shall reimburse a competent authority for the actual costs incurred as a result of work carried out pursuant to Regulation (EU) No 600/2014, in particular as a result of any delegation of tasks pursuant to Article 38o of Regulation (EU) No 600/2014.
3. ESMA shall ensure that the costs to be reimbursed to national competent authorities fulfil the following conditions:
 - (a) they should be previously agreed between ESMA and the NCA;

⁵ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

- (b) they should be proportionate to the turnover of the relevant DRSP; and
 - (c) they should not be greater than the total amount of supervisory fees paid by the relevant DRSP.
4. Any delegation of tasks by ESMA to national competent authorities shall be determined on an independent basis, may be revoked at any time and shall not impact the amount of fees charged to a particular DRSP.

CHAPTER V

TRANSITIONAL AND FINAL PROVISIONS

Article 21

Transitional provisions

1. For the purposes of Article 3, ESMA shall perform the initial assessment of the derogation criteria listed in Article 4. Such initial assessment shall be performed by 31/01/2022 and be based on data related to the first 6 months of 2021.
2. Article 14 shall not apply to DRSPs authorised by the national competent authorities prior to the entry into force of this Regulation.
3. In derogation of Article 19(1) in case this Regulation enters into force after the third month of 2022, the annual supervisory fees over 2022 applicable to DRSPs under ESMA supervision shall be due within thirty days after of issuance of ESMA's invoice.
4. For the purposes of the calculation of the annual supervisory fee applicable to DRSPs under ESMA supervision for the year 2022, the applicable turnover as referred to in Article 15 shall, in derogation of Article 16(2), be provisionally based on revenue generated in 2021 based on non-audited accounts. When the audited accounts over 2021 become available the DRSPs shall submit them to ESMA without delay. ESMA will recalculate the annual supervisory fees over the year 2022 based on the audited accounts and will submit a final invoice for the difference to each DRSP.

Article 22

Entry into force

This Regulation shall enter into force on the third day following that of 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,

For the Commission

The President

Ursula VON DER LEYEN

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