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COMMISSION DELEGATED REGULATION (EU) 2025/754

of 16 April 2025

supplementing Regulation (EU) 2023/2631 of the European Parliament and of the Council by specifying rules of procedure for the exercise of the power to impose fines or periodic penalty payments by the European Securities and Markets Authority on external reviewers

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds [1], and in particular Article 63(10) thereof,

Whereas:

(1) To give full effect to the right to be heard, as guaranteed in Article 63(5) of Regulation (EU) 2023/2631, a person that is subject to an investigation by ESMA because that person may have committed one of the infringements listed in Article 60(1) of that Regulation should have the right to make written comments within a reasonable time limit of at least four weeks before the investigating officersubmits his or her findings to ESMA. That person should be allowed to be assisted by a counsel of his or her choice.

(2) ESMA should assess the completeness of the file submitted by the investigating officer based on a list of documents. To ensure that the person subject to the investigation is able to adequately prepare their defence, ESMA should, before adopting a final decision to impose a fine or periodic penalty payment, give that person the right to provide further written comments.

(3) Article 61 of Regulation (EU) 2023/2631 obliges ESMA to impose periodic penalty payments, inter alia, where a person subject to investigation refuses to submit to such an investigation or to provide information requested by ESMA. To fully guarantee the right of defence of such persons, ESMA should give the person the opportunity to provide written submissions on the matter subject to investigation or on the fact whether such periodic penalty payment is appropriate in the case at hand before such periodic penalty is imposed.

(4) The right of defence should be weighed against the need, under specific circumstances, for urgent action by ESMA. Where urgent action pursuant to Article 64(2) of Regulation (EU) 2023/2631 is warranted, the right of defence of the person subject to the investigation should not be an impediment for ESMA to take urgent measures. In such case, in order to prevent significant and imminent damage to the financial system, ESMA should be able to adopt an interim decision without providing the person subject to the investigation the opportunity to make submissions. 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.

(5) ESMA's power to impose a periodic penalty payment should be exercised with due regard for the right to defence and should not be maintained beyond the period necessary. Where ESMA decides to impose a periodic penalty payment, the person concerned should therefore be given the opportunity to be heard and any penalty payment should no longer be due as of the moment the person concerned complies with the decision that ESMA has addressed to that person.

[1] OJ L, 2023/2631, 30.11.2023, ELI: http://data.europa.eu/eli/reg/2023/2631/oj.

(6) The files prepared by ESMA and the investigating officer contain information that is indispensable to the person concerned in preparing for judicial or administrative proceedings. After a person subject to investigation has received the notification of statement of findings either from the investigating officer or from ESMA, that 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) 2023/2631.

(7) Both the power to impose fines and periodic penalty payments and the power to enforce fines and periodic penalty payments should be exercised within a reasonable time and therefore 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.

(8) To ensure safekeeping of collected fines and periodic penalties, ESMA should deposit the amounts received due to those fines and periodic penalties on interest-bearing accounts that are opened exclusively for the purpose of a single fine or periodic penalty payment. As a matter of budgetary prudence, ESMA should only transfer the amounts to the Commission once the decisions are final due to the fact that the rights to appeal have been exhausted or have lapsed,

HAS ADOPTED THIS REGULATION:

Article 1

Rules of procedure in infringement proceedings before the investigating officer

1. Upon completion of an investigation into facts that may constitute one or more infringements listed in Article 60(1) of Regulation (EU) 2023/2631 and before submitting their file to ESMA, ('statement of findings'), the investigating officer shall inform the person subject to investigation in writing about their findings and shall provide that person with the opportunity to make written submissions pursuant to paragraph 3 of this Article.

2. The draft statement of findings shall set out the facts liable to constitute one or more of the infringements listed in Article 60(1) of Regulation (EU) 2023/2631 and shall contain an assessment of the nature and seriousness of those facts, based on the criteria laid down in Article 59(3) of that Regulation.

3. The draft statement of findings shall set a reasonable time limit of at least four weeks for the person subject to investigation to make their written submissions. The investigating officer shall not be obliged to take into account written submissions received after that time limit has expired.

4. In their written submissions, persons subject to an investigation may set out all the facts which are relevant to their defence, and shall, where possible, attach documents as proof of those facts. Persons subject to investigation may propose that the investigating officer hears other persons who may corroborate the facts set out in their submissions. The persons subject to investigation may be assisted by a counsel of their choice in the preparation of their written submissions.

5. The investigating officer may invite persons subject to an investigation to which a draft statement of findings as referred to in paragraph 1 has been addressed to attend an oral hearing. The persons subject to an investigation may be assisted by a counsel of their choice. Oral hearings shall not be public.

6. The investigating officer shall send the finalised statement of findings to the person subject to investigation.

Article 2

Rules of procedure to be followed by ESMA with regard to fines and supervisory measures

1. The investigating officer shall submit the following documents to ESMA:

(a) the statement of findings and a copy thereof that the investigating officer addressed to the person subject to the investigation;

(b) 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 investigating officer.

3. Where ESMA considers that the facts described in the statement of findings of the investigating officer do not to constitute one or more infringements as listed in Article 60(1) of Regulation (EU) 2023/2631, it shall decide to close the case. ESMA shall notify that decision to close the case to the person subject to investigation.

4. Where ESMA agrees with all or some of the findings of the investigating officer, it shall inform the person subject to investigation thereof. Such communication shall set a time limit of at least two weeks where ESMA agrees with all of the findings of the investigating officer, and at least four weeks where ESMA does not agree with all of the findings, within which period 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.

5. ESMA may invite the person subject to investigation to whom 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.

6. Where ESMA decides that a person subject to investigation has committed one or more of the infringements listed in Article 60(1) of Regulation (EU) 2023/2631 and has adopted a decision imposing a fine in accordance with Article 60 of that Regulation, it shall immediately notify that decision to the person on whom the fine is imposed.

Article 3

Rules of procedure in infringement proceedings to be followed by ESMA with regard to periodic penalty payments

1. Before imposing a periodic penalty payment pursuant to Article 61 of Regulation (EU) 2023/2631, ESMA shall provide the person subject to the proceedings with a statement of findings that sets out the reasons for the imposition of that periodic penalty payment and states the amount of the periodic penalty payment per day of non-compliance. The statement shall set a reasonable 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.

2. 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.

3. A decision as referred to in Article 61(1) of Regulation (EU) 2023/2631 shall indicate the legal basis and the reasons for the decision, the amount and the starting date of the periodic penalty payment.

4. ESMA shall no longer impose a periodic penalty payment once the external reviewer or the person subject to the proceedings has complied with the relevant decision referred to in Article 61(1) of Regulation (EU) 2023/2631.

Article 4

Rules of procedure to be followed by ESMA with regard to interim decisions on supervisory measures

1. Where ESMA has adopted an interim decision as referred to in Article 64(2) of Regulation (EU) 2023/2631, it shall immediately notify that interim decision to the person subject thereto. ESMA shall set a reasonable 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.

2. 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) 2023/2631.

3. 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.

4. ESMA shall take a final decision as referred to in Articles 59(1), 60(1) and 61(1) of Regulation (EU) 2023/2631 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 the person subject to the interim decision has committed an infringement as listed in Article 60(1) of Regulation (EU) 2023/2631, it shall adopt a confirmatory decision imposing one or more of the supervisory measures laid down in Article 59 of that Regulation. ESMA shall immediately notify that confirmatory decision to the person subject to the interim decision.

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

Article 5

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 investigating officer or ESMA has sent a statement of findings. ESMA shall grant such access 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) 2023/2631.

Article 6

Limitation periods for the imposition of fines and periodic penalty payments

1. Fines and periodic penalty payments on external reviewers 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 that ESMA takes for the purpose of the investigation or proceedings in respect of an infringement listed in Article 60(1) of Regulation (EU) 2023/2631 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 external reviewer or the person subject to the investigation in respect of an infringement of the requirements referred to in Article 60(1) of Regulation (EU) 2023/2631.

4. Each interruption as referred to in paragraph 3 shall start a new limitation period as referred to in paragraph 1. That new limitation period shall expire at the latest on the day on which a period equal to twice the original 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 the limitation period 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 Council [2], or is subject to a review by the Court of Justice in accordance with Article 65 of Regulation (EU) 2023/2631.

Article 7

Limitation periods for the enforcement of penalties

1. The power of ESMA to enforce decisions taken pursuant to Articles 60 and 61 of Regulation (EU) 2023/2631 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 any action of ESMA designed to enforce payment or payment terms and conditions of the fine or periodic penalty payment.

4. Each interruption as referred to in paragraph 3 shall start a new limitation period as referred to in paragraph 1.

5. The limitation period referred to in paragraph 1shall 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 by the Court of Justice of the European Union in accordance with Article 65 of Regulation (EU) 2023/2631.

Article 8

Collection of fines and periodic penalty payments

1. ESMA shall lodge the amounts of fines and periodic penalty payments to an interest-bearing account opened by ESMA until those fines and penalty payments become final. In the case of multiple fines and periodic penalty payments collected by ESMA in parallel, ESMA shall ensure that those fines and penalty payments 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 general budget of the Union.

3. ESMA shall report on a regular basis to the Commission on the amounts of fines and periodic penalty payments imposed and their status.

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[2] 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, ELI: http://data.europa.eu/eli/reg/2010/1095/oj).

Article 9

Entry into force

This Regulation shall enter into force and apply on the twentieth 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, 16 April 2025.

For the Commission
The President
Ursula VON DER LEYEN