Official Journal
of the European Union

EN
L series

2026/904 30.7.2026

COMMISSION DELEGATED REGULATION (EU) 2026/904

of 24 April 2026

supplementing Regulation (EU) 2024/3005 of the European Parliament and of the Council with regard to rules of procedure on fines and periodic penalty payments imposed to ESG rating providers by the European Securities and Markets Authority

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2024/3005 of the European Parliament and of the Council of 27 November 2024 on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities, and amending Regulations (EU) 2019/2088 and (EU) 2023/2859 ([1]), and in particular Article 39(9) thereof,

Whereas

(1) To give full effect to the right to be heard, as guaranteed in Article 39(7) of Regulation (EU) 2024/3005, a person that is subject to an investigation by European Securities and Markets Authority ('ESMA') should have the right to make written comments in response to statements of findings issued by ESMA's investigating officer and ESMA's Board of Supervisors. 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 defense, 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) Under Article 37(1), point (b)(ii), of Regulation (EU) 2024/3005 ESMA is to impose periodic penalty payments 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) 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 and taking into account ESMA's experience in applying legislation applicable to the imposition and enforcement of penalties on supervised entities, limitation periods for the imposition and enforcement of fines or periodic penalty payments should be the same as in such legislation.

(5) To ensure the 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,

([1]) OJ L, 2024/3005, 12.12.2024, ELI: http://data.europa.eu/eli/reg/2024/3005/oj.

HAS ADOPTED THIS REGULATION:

Article 1

Rules of procedure in infringement proceedings before the investigating officer

1. Upon completion of the investigations in accordance with Article 33 of Regulation (EU) 2024/3005 and before submitting the file to ESMA's Board of Supervisors pursuant to Article 3(1) of this Regulation, the investigating officer shall set out the facts liable to constitute the infringement, including any aggravating or mitigating factors in a statement of findings.

The investigating officer shall inform of the findings the person subject to investigation in the written statement of findings and shall invite that person to make written submissions pursuant to paragraph 3 of this Article.

2. The investigating officer shall set a reasonable time limit in the draft statement within which the person subject to investigation may make its written submissions. The investigating officer may consider written submissions received after that time limit has expired.

3. In its written submissions, the person subject to investigation may set out all the facts relevant to its defence. The person subject to investigation shall attach any relevant documents as proof of the facts set out. The person subject to investigation may propose that the investigating officer hear other persons who may corroborate the facts set out in the submissions. The person subject to investigation may be assisted by a counsel of their choice in the preparation of their written submissions.

4. The investigating 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 held in public.

5. 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 to ESMA's Board of Supervisors the following documents:

(a) copy of the statement of findings that he addressed to the ESG rating provider;

(b) copy of the written submissions by the ESG rating provider;

(c) minutes of any oral hearing.

2. Where ESMA's Board of Supervisors considers that the file submitted by the investigating officer is not complete, it shall send back the file to the investigating officer with reasoned request for additional documents.

3. Where ESMA's Board of Supervisors considers, on the basis of a complete file, that the facts, described in the statement of findings, appear not to disclose any possible infringement, it shall take a decision stating that and notify such a decision to the persons subject to investigation.

4. Where ESMA's Board of Supervisors agrees with the findings of the investigating officer, it shall inform the persons subject to investigation accordingly. Such communication shall set a reasonable time limit within which the person subject to investigation may make written submissions. ESMA's Board of Supervisors may consider 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 35 and 36 of Regulation (EU) 2024/3005.

ESMA's Board of Supervisors may also invite the persons 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 held in public.

5. Where ESMA's Board of Supervisors has decided that an infringement has been committed by a person subject to investigation and has adopted a decision imposing a fine in accordance with Article 36 of Regulation (EU) 2024/3005, it shall notify immediately such decision to the person subject to investigation.

Article 3

Right to be heard by ESMA's Board of Supervisors with regard to periodic penalty payments

1. Before imposing a periodic penalty payment pursuant to Article 37 of Regulation (EU) 2024/3005, the Board of Supervisors shall submit a statement of findings to the person subject to the proceedings setting out the reasons justifying the imposition of a penalty payment and the amount of the penalty payment per day of non-compliance. The statement of findings shall set a time limit within which the person concerned may make written submissions. The Board of Supervisor may consider written submissions received after the expiry of that time limit for deciding on the periodic penalty payment.

2. ESMA's Board of Supervisors shall no longer impose a periodic penalty payment once the ESG rating provider or person concerned has complied with the relevant decision referred to in Article 37(1), points (a) and (b), of Regulation (EU) 2024/3005.

3. ESMA's Board of Supervisors 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 held in public.

Article 4

Access to the file and use of documents

1. Upon request, ESMA shall grant access to the file to the parties to whom the investigating officer or the Board of Supervisors has sent a statement of findings. Access shall be granted following the notification of any statement of findings.

2. File documents accessed pursuant to this Article 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) 2024/3005.

Article 5

Limitation periods for the imposition of fines and periodic penalty payments

1. ESMA shall not impose fines and periodic penalty payments on ESG rating providers after the expiry of limitation period of five years.

2. The limitation period of time referred to in paragraph 1 shall begin to run on the day following that on which the infringement is committed. However, in the case of continuing or repeated infringements, those periods of time shall begin to run on the day on which the infringement ceases.

3. Any action taken by ESMA for the purpose of the investigation or proceedings in respect of an infringement of Regulation (EU) 2024/3005 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 ESG rating provider or the person subject to the investigating or proceedings.

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 shall be suspended for as long as the decision of ESMA is the subject of proceedings pending before the Board of Appeal, in accordance with Article 60 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [2], and before the Court of Justice of the European Union, in accordance with Article 41 of Regulation (EU) 2024/3005.

Article 6

Limitation periods for the enforcement of penalties

1. The ESMA shall not enforce decisions taken pursuant to Articles 36 and 37 of Regulation (EU) 2024/3005 after the expiry of limitation period of five years.

2. The limitation period referred to in paragraph 1 shall start to run on 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. Where the interruption referred to in paragraph 3 occurs, the limitation period referred to in paragraph 1 shall start anew.

5. The limitation period referred to in paragraph 1 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 the Court of Justice of the European Union, in accordance with Article 41 of Regulation (EU) 2024/3005.

Article 7

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. Where ESMA establishes 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. Those 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.

(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 8

Entry into force

This Regulation shall enter into force 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, 24 April 2026.

For the Commission
The President
Ursula VON DER LEYEN