

Information on the methodology to set fines

When ESMA finds that a CRA, a TR, a SR or a TC-CCP have negligently or intentionally committed an infringement, ESMA calculates the fines to be imposed using a two-step methodology.

This methodology is determined respectively by Article 36a of the CRA Regulation and by Articles 65 of EMIR and 25j of EMIR and ESMA cannot deviate from it. The information provided below is published for clarification purposes only.

The two-step methodology consists of:

- (1) the setting of a basic amount for the fine; and**
- (2) the adjustment, if necessary, of that basic amount.**

Setting of the basic amount of the fine

For each of the infringements listed in the CRA Regulation and EMIR, the legislation sets out how the basic amounts of the fines to be imposed shall be calculated.

With regards to CRAs, depending on the annual turnover⁽¹⁾ of the concerned CRA in the preceding business year⁽²⁾, the fine will be either at the lower, middle or higher end:

- **where the annual turnover of the CRA is below EUR 10 million, the basic amount for the fine shall be at the lower end of the limit;**
- **where it is between EUR 10 and 50 million, it has to be at the middle of the limit; and**
- **where it is higher than EUR 50 million, it shall be at the higher end.**

With regards to TRs and SRs, depending on the annual turnover⁽¹⁾ of the concerned TR or SR in the preceding business year⁽²⁾, the fine will be either at the lower end, middle or higher end:

- **where the annual turnover of the CRA is below EUR 1 million, the basic amount for the fine shall be at the lower end of the limit;**
- **where it is between EUR 1 and 5 million, it has to be at the middle of the limit; and**
- **where it is higher than EUR 5 million, it shall be at the higher end.**

With regards to TC-CCPs, the basic amounts of the fines will be:

- **up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or**
- **up to 10 % of the total annual turnover⁽¹⁾ in the preceding business year⁽²⁾.**

Adjustment of the basic amount of the fine

The adjustment of the basic amount of the fine is done as follows:

- **At a first stage, the basic amount of the fine is adjusted to reflect the existence of certain aggravating or mitigating circumstances; and**
- **Where relevant, at a second stage, it is further adjusted to apply the maximum cap or to disgorge any direct or indirect financial benefit derived from the infringement.**

Application of aggravating and mitigating factors

Once the basic amount has been defined, ESMA must assess whether the aggravating or mitigating factors set out in the CRA Regulation or in EMIR are applicable and, if so, adjust the fine.

These aggravating and mitigating factors are the following:

Aggravating factors	Coefficients
Repeated infringement	1,1, for each repetition
Infringement lasted longer than six months	1,5
Systemic weaknesses in the organisation revealed by the infringement	2,2
Negative impact respectively on the quality of the ratings, data maintained or activities and services of the CRA, TR, SR or TC-CCP concerned	1,5
Infringement committed intentionally	2
Lack of remedial action	1,7
Lack of cooperation with ESMA in carrying out its investigations	1,5
Mitigating factors	Coefficients
Infringement lasted less than 10 days	0,9
The senior management of the CRA, TR, SR or TC-CCP concerned can demonstrate that they have taken all the necessary measures to prevent the infringement	0,7
The infringement has been brought quickly, effectively and completely to ESMA's attention by the CRA, TR, SR or TC-CCP concerned	0,4
The CRA, TR, SR or TC-CCP concerned has voluntarily taken measures to ensure that similar infringement cannot be committed in the future	0,6

The relevant aggravating and mitigating coefficients shall be applied one by one to the basic amount:

- **If more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.**
- **If more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.**

To do so, ESMA has to apply the coefficients assigned to each applicable aggravating or mitigating factors following the methodology that is defined respectively in Article 36a(3) of the CRA Regulation and in Articles 65(3) and 25j(3) of EMIR.

Application of a maximum cap of the fine and disgorgement of profits

Once the basic amount has been adjusted to reflect the existence of aggravating or mitigating factors, ESMA has to verify that the adjusted fine does not exceed the maximum cap of the fine which is set at 20 % of annual turnover⁽¹⁾ in the preceding business year⁽²⁾ both in the CRA Regulation and in EMIR.

If the adjusted fine is higher, the fine to be imposed for the infringement shall be capped at this legal maximum.

However, if the concerned CRA, TR, SR or TC-CCP has directly or indirectly benefitted financially from the infringement, the fine to be imposed shall in any event be at least equal to the financial benefit derived from the infringement (even if this means going beyond the legal maximum), in order to offset it.

(1) The annual turnover includes also the turnover derived from the provision of ancillary services. In order to adopt reliable and stable decisions, ESMA relies on audited financial statements to identify the annual turnover.

(2) Following the decision adopted by the Joint Board of Appeal of the ESAs on 28 December 2020, the preceding business year is to be understood as the last full business year preceding that of the adoption of the enforcement decision by ESMA. When the audited financial statement of the last full business year is not available, the total annual turnover is identified according to the latest available audited financial statement.