

## I

*(Legislative acts)*

## REGULATIONS

**REGULATION (EU) No 462/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 21 May 2013****amending Regulation (EC) No 1060/2009 on credit rating agencies****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

(1) Regulation (EC) No 1060/2009 of the European Parliament and of the Council <sup>(4)</sup> requires credit rating agencies to comply with rules of conduct in order to mitigate possible conflicts of interest, and to ensure high quality and sufficient transparency of credit ratings and the rating process. Following the amendments introduced by Regulation (EU) No 513/2011 of the European Parliament and of the Council <sup>(5)</sup>, the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(6)</sup>, has been empowered to register

and supervise credit rating agencies. This Regulation complements the current regulatory framework for credit rating agencies. Some of the most important issues, such as conflicts of interest due to the issuer-pays model and disclosure for structured finance instruments, have been addressed and the framework will need to be reviewed after having been in place for a reasonable period of time to assess whether it fully resolves those issues. Meanwhile the need to review transparency, procedural requirements and the timing of publication specifically for sovereign ratings was highlighted by the current sovereign debt crisis.

(2) The European Parliament's resolution of 8 June 2011 on credit rating agencies: future perspectives <sup>(7)</sup>, called for enhanced regulation of credit rating agencies. At its informal meeting of 30 September and 1 October 2010, the Ecofin Council acknowledged that further efforts should be made to address a number of issues related to credit rating activities, including the risk of over-reliance on credit ratings and the risk of conflicts of interest stemming from the remuneration model of credit rating agencies. The European Council of 23 October 2011 concluded that progress is needed on reducing over-reliance on credit ratings.

(3) At the international level, the Financial Stability Board (FSB), of which the European Central Bank (ECB) is a member institution, endorsed on 20 October 2010 principles to reduce the reliance of authorities and of financial institutions on credit ratings ('the FSB principles'). The FSB principles were endorsed by the G20 Seoul Summit in November 2010. It is therefore appropriate that the sectoral competent authorities assess market participants' practices and encourage those market participants to mitigate the impact of such practices. The sectoral competent authorities should decide upon the measures for encouragement. ESMA, where appropriate in cooperation with the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No 1093/2010 of the

<sup>(1)</sup> OJ C 167, 13.6.2012, p. 2.

<sup>(2)</sup> OJ C 181, 21.6.2012, p. 68.

<sup>(3)</sup> Position of the European Parliament of 16 January 2013 (not yet published in the Official Journal) and decision of the Council of 13 May 2013.

<sup>(4)</sup> OJ L 302, 17.11.2009, p. 1.

<sup>(5)</sup> OJ L 145, 31.5.2011, p. 30.

<sup>(6)</sup> OJ L 331, 15.12.2010, p. 84.

<sup>(7)</sup> OJ C 380 E, 11.12.2012, p. 24.

European Parliament and of the Council <sup>(1)</sup>, and with the European Supervisory Authority (European Insurance and Occupational Pensions Authority), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council <sup>(2)</sup>, should take action to facilitate convergence of supervisory practices in accordance with Regulation (EU) No 1095/2010, and within the framework of this Regulation.

- (4) Credit rating agencies should make investors aware of the data on the probability of default of credit ratings and rating outlooks based on historical performance, as published on the central repository created by ESMA.
- (5) Pursuant to the FSB principles, 'central banks should reach their own credit judgments on the financial instruments that they will accept in market operations, both as collateral and as outright purchases. Central bank policies should avoid mechanistic approaches that could lead to unnecessarily abrupt and large changes in the eligibility of financial instruments and the level of haircuts that may exacerbate cliff effects'. Furthermore, the ECB stated in its opinion of 2 April 2012 that it is committed to supporting the common objective of reducing over-reliance on credit ratings. In that respect, the ECB reports regularly on the various measures taken by the Eurosystem to reduce reliance on credit ratings. Pursuant to Article 284(3) of the Treaty on the Functioning of the European Union (TFEU), the ECB is to address an annual report on the activities of the European System of Central Banks (ESCB) and on the monetary policy of both the previous and current years to the European Parliament, the Council and the Commission, and also to the European Council. The President of the ECB is to present that report to the European Parliament, which may hold a general debate on that basis, and to the Council. Further, the ECB could, in such reports, describe how it has implemented the FSB principles and the alternative assessment mechanisms it uses.
- (6) The Union is working towards reviewing, at a first stage, whether any references to credit ratings in Union law trigger or have the potential to trigger sole or mechanistic reliance on such credit ratings and, at a second stage, all references to credit ratings for regulatory purposes with a view to deleting them by 2020, provided that appropriate alternatives to credit risk assessment are identified and implemented.
- (7) The relevance of rating outlooks for investors and issuers and their effects on markets are comparable to the relevance and effects of credit ratings. Therefore, all the requirements of Regulation (EC) No 1060/2009 which aim at ensuring that rating actions are accurate, transparent and free from conflicts of interest should also apply to rating outlooks. According to current supervisory practice, a number of requirements of that Regulation apply to rating outlooks. This Regulation should clarify the rules and provide legal certainty by introducing a definition of rating outlooks and clarifying which specific provisions apply to such rating outlooks. The definition of rating outlooks should also encompass opinions regarding the likely direction of a credit rating in the short term, commonly referred to as credit watches.
- (8) In the medium term, further action should be evaluated to delete references to credit ratings for regulatory purposes from financial regulation and to eliminate the risk-weighting of assets by means of credit ratings. However, for the time being, credit rating agencies are important participants in the financial markets. As a consequence, the independence and integrity of credit rating agencies and their credit rating activities are of particular importance in guaranteeing their credibility vis-à-vis market participants, in particular investors and other users of credit ratings. Regulation (EC) No 1060/2009 provides that credit rating agencies are to be registered and supervised as their services have considerable impact on the public interest. Credit ratings, unlike investment research, are not mere opinions about a value or a price for a financial instrument or a financial obligation. Credit rating agencies are not mere financial analysts or investment advisors. Credit ratings have regulatory value for regulated investors, such as credit institutions, insurance companies and other institutional investors. Although the incentives to rely excessively on credit ratings are being reduced, credit ratings still drive investment choices, in particular because of information asymmetries and for efficiency purposes. In that context, credit rating agencies must be independent and must be perceived as such by market participants, and their rating methods must be transparent and be perceived as such.
- (9) Over-reliance on credit ratings should be reduced and all the automatic effects deriving from credit ratings should be gradually eliminated. Credit institutions and investment firms should be encouraged to put in place internal procedures in order to make their own credit risk assessment and should encourage investors to perform a due diligence exercise. Within that framework, this Regulation provides that financial institutions should not solely or mechanistically rely on credit ratings. Therefore, those institutions should avoid entering into contracts where they solely or mechanistically rely on

<sup>(1)</sup> OJ L 331, 15.12.2010, p. 12.

<sup>(2)</sup> OJ L 331, 15.12.2010, p. 48.

credit ratings and should avoid using them in contracts as the only parameter to assess the creditworthiness of investments or to decide whether to invest or divest.

(10) Regulation (EC) No 1060/2009 already provided a first round of measures to address the question of independence and integrity of credit rating agencies and their credit rating activities. The objectives of guaranteeing the independence of credit rating agencies and of identifying, managing and, to the extent possible, avoiding any conflicts of interest that could arise were already underpinning several provisions of that Regulation. The selection and remuneration of the credit rating agency by the rated entity (the issuer-pays model) engenders inherent conflicts of interest. Under that model, there are incentives for credit rating agencies to issue complacency ratings on the issuer in order to secure a long-standing business relationship in order to guarantee revenues or to secure additional work and revenues. Moreover, relationships between the shareholders of credit rating agencies and the rated entities may cause conflicts of interest, which are not sufficiently dealt with by the existing rules. As a result, credit ratings issued under the issuer-pays model may be perceived as the credit ratings that suit the issuer rather than the credit ratings needed by the investor. It is essential to reinforce the conditions of independence applying to credit rating agencies in order to increase the level of credibility of credit ratings issued under the issuer-pays model.

(11) In order to increase competition in a market that has been dominated by three credit rating agencies, measures should be taken to encourage the use of smaller credit rating agencies. It has been the practice in recent times for issuers or related third parties to seek credit ratings from two or more credit rating agencies, and therefore, where two or more credit ratings are sought, the issuer or a related third party should consider appointing at least one credit rating agency which does not have more than 10 % of the total market share and which could be evaluated by the issuer or a related third party as capable of rating the relevant issuance or entity.

(12) The credit rating market shows that, traditionally, credit rating agencies and rated entities enter into long-lasting relationships. This raises the risk of familiarity, as the

credit rating agency may become too sympathetic to the desires of the rated entity. In those circumstances, the impartiality of credit rating agencies could, over time, become questionable. Indeed, credit rating agencies appointed and paid by a corporate issuer have an incentive to issue overly favourable ratings on that rated entity or on its debt instruments in order to maintain the business relationship with such issuer. Issuers are also subject to incentives that favour long-lasting relationships, such as the lock-in effect whereby an issuer refrains from changing credit rating agency as this could raise concerns of investors regarding the issuer's creditworthiness. This problem was already identified in Regulation (EC) No 1060/2009, which required credit rating agencies to apply a rotation mechanism providing for gradual changes in analytical teams and credit rating committees so that the independence of the rating analysts and persons approving credit ratings would not be compromised. The success of those rules, however, was highly dependent on a behavioural solution internal to the credit rating agency, namely the actual independence and professionalism of the employees of the credit rating agency vis-à-vis the commercial interests of the credit rating agency itself. Those rules were not designed to provide a sufficient guarantee towards third parties that the conflicts of interest arising from the long-lasting relationship would effectively be mitigated or avoided. A way to achieve this could be by limiting the period during which a credit rating agency can continuously provide credit ratings on the same issuer or its debt instruments. Setting out a maximum duration of the contractual relationship between the issuer which is rated or which issued the rated debt instruments and the credit rating agency should remove the incentive for issuing favourable credit ratings with respect to that issuer. Additionally, requiring the rotation of credit rating agencies as a normal and regular market practice should also effectively mitigate the problem of the lock-in effect. Finally, the rotation of credit rating agencies should have positive effects on the credit rating market, as it would facilitate new market entries and offer existing credit rating agencies the opportunity to extend their business to new areas.

(13) It is, however, important that the implementation of a rotation mechanism is designed in such a way that the benefits of the mechanism more than outweigh its possible negative consequences. For example, frequent rotation could result in increased costs for issuers and credit rating agencies because the cost associated with rating a new entity or financial instrument is typically higher than the cost of monitoring a credit rating that has already been issued. It also takes a considerable amount of time and resources to get established as a credit rating agency, whether as a niche player or covering all asset classes. Further, ongoing rotation of credit rating agencies could have a significant impact on the quality and continuity of credit ratings. Equally important, a rotation mechanism should be implemented

with sufficient safeguards to allow the market to adapt gradually before possibly enhancing the mechanism in the future. This could be achieved by limiting the scope of the mechanism to re-securitisations, which is a limited source of bank funding, while allowing credit ratings that are already issued to continue to be monitored upon request even after rotation becomes mandatory. Thus, as a general rule, rotation should only affect new re-securitisations with underlying assets from the same originator. The Commission should review whether it is appropriate to maintain a limited rotation mechanism or to apply it to other asset classes as well and, if so, whether other classes warrant different treatment with respect to, for example, the length of the maximum duration of the contractual relationship. If the rotation mechanism is established for other asset classes, the Commission should evaluate whether it is necessary to introduce an obligation on the credit rating agency to provide, at the end of the maximum duration period of the contractual relationship, information on the issuer and on the rated financial instruments (a handover file), to the incoming credit rating agency.

credit ratings and ultimately improve the assessment of the creditworthiness of re-securitisations. For such diversity to play a role and to avoid complacency of both originators and credit rating agencies, the maximum period during which the credit rating agency is allowed to rate re-securitisations from the same originator must be restricted to a level that guarantees regular fresh assessments of creditworthiness. Those factors, together with the need to provide certain continuity of approach to credit ratings, mean that a period of four years is appropriate. Where at least four credit rating agencies are appointed, the objectives for a rotation mechanism have already been achieved so the requirement to rotate should not apply. In order to ensure real competition, such an exemption should only be applicable where at least four of the appointed credit rating agencies rate a certain proportion of the outstanding financial instruments of the originator.

- (14) It is appropriate to introduce rotation on the credit rating market for re-securitisations. First, that is the segment of the European securitisations market that has underperformed since the financial crisis, and it is therefore the one in which the need to address conflicts of interest is greatest. Second, while the credit risk on debt instruments issued by, for instance, corporates to a high degree depends on the debt servicing capacity of the issuer itself, the credit risk on re-securitisations is generally unique to each transaction. Therefore, when a re-securitisation is created the risk of knowledge being lost by hiring a new credit rating agency is not high. In other words, although there is currently only a limited number of credit rating agencies active in the credit rating market for re-securitisations, that market is more naturally open to competition and a rotation mechanism could be a driver for creating more dynamics in that market. Finally, the credit rating market for re-securitisations is dominated by a few large credit rating agencies but there are other players who have been building up expertise in this area.
- (15) Regular rotation of credit rating agencies issuing credit ratings on re-securitisations should bring more diversity to the assessment of creditworthiness. Multiple and different views, perspectives and methodologies applied by credit rating agencies should produce more diverse
- (16) It is appropriate to structure a rotation mechanism for re-securitisations around the originator. Re-securitisations are issued out of special-purpose vehicles without any significant capacity to service the debt. Therefore, structuring rotation around the issuer would render the mechanism ineffective. Conversely, structuring rotation around the sponsor would mean that the exemption would almost always apply.
- (17) A rotation mechanism could be an important tool for lowering the barriers to entry to the credit rating market for re-securitisations. At the same time, however, it could make it more difficult for new market players to secure a foothold in the market because they would not be allowed to hold on to their clients. It is therefore appropriate to introduce an exemption from the rotation mechanism for small credit rating agencies.
- (18) In order to be effective, the rotation mechanism needs to be enforced in a credible manner. The rotation requirement would not achieve its objectives if the outgoing credit rating agency were allowed to rate re-securitisations from the same originator again within too



short a period. Therefore, it is important to provide for an appropriate period within which the outgoing credit rating agency cannot be appointed to rate re-securitisations from the same originator again. That period should be sufficiently long to allow the incoming credit rating agency to provide its credit rating services effectively, to ensure that the re-securitisations are truly exposed to a new scrutiny under a different approach, and to guarantee that the credit ratings issued by the new credit rating agency provide enough continuity. At the same time, for a rotation mechanism to function properly, the length of the period is constrained by the supply of credit rating agencies with sufficient expertise in the area of re-securitisations. Therefore, the length of the period should be proportionate, should generally be equal to the length of the expired contract of the outgoing credit rating agency but should not exceed four years.

- (19) Requiring a regular rotation of credit rating agencies is proportionate to the objective pursued. The requirement only applies to registered credit rating agencies, which are regulated and which provide a service affecting the public interest (credit ratings that can be used for regulatory purposes) under the issuer-pays model and for a particular asset class (re-securitisations). The privilege of having its services recognised as playing an important role in the regulation of the financial services market and being approved to carry out this function, gives rise to the need to respect certain obligations in order to guarantee independence and the perception of independence in all circumstances. A credit rating agency which is prevented from rating re-securitisations from a particular originator would still be allowed to rate re-securitisations from other originators as well as rating other asset classes. In a market context where the rotation rule applies to all participants, business opportunities will arise since all credit rating agencies would need to rotate. Moreover, credit rating agencies can always issue unsolicited credit ratings on re-securitisations from the same originator capitalising on their experience. Unsolicited credit ratings are not constrained by the issuer-pays model and therefore are theoretically less affected by potential conflicts of interest. For the clients of credit rating agencies, the maximum duration of the contractual relationship with a credit rating agency and the requirement to employ more than one credit rating agency also represent restrictions on their freedom to conduct their own business. However, those restrictions are necessary on public-interest grounds considering the interference by the issuer-pays model with the necessary independence of credit rating agencies to guarantee independent credit ratings that can be used by investors for regulatory purposes. At the same time, those restrictions do not go beyond what is necessary and should rather be seen as increasing the creditworthiness of re-securitisations towards other parties, and ultimately the market.
- (20) The independence of a credit rating agency vis-à-vis a rated entity is also affected by possible conflicts of interest of any of its significant shareholders with the rated entity. A shareholder of a credit rating agency could be a member of the administrative or supervisory board of a rated entity or a related third party. Regulation (EC) No 1060/2009 addresses this type of situation only as regards the conflicts of interest caused by rating analysts, persons approving the credit ratings or other employees of the credit rating agency. That Regulation is, however, silent as regards potential conflicts of interest caused by shareholders or members of credit rating agencies. With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, it is appropriate to extend the existing rules set out in that Regulation on conflicts of interest caused by employees of the credit rating agencies to those caused by shareholders or members holding a significant position within the credit rating agency. Hence, the credit rating agency should abstain from issuing credit ratings, or should disclose that the credit rating may be affected, where a shareholder or member holding 10 % of the voting rights of that agency is also a member of the administrative or supervisory board of the rated entity or has invested in the rated entity when the investment reaches a certain size. Furthermore, the fact that a shareholder or member holding at least 5 % of the voting rights of that credit rating agency has invested in the rated entity or is a member of the administrative or supervisory board of the rated entity should be disclosed to the public, at least if the investment reaches a certain size. Moreover, where a shareholder or member is in a position to exercise significant influence on the business activity of the credit rating agency, that person should not provide consultancy or advisory services to the rated entity or a related third party regarding its corporate or legal structure, assets, liabilities or activities.
- (21) In order to ensure a workable application of the rules on independence and prevention of conflicts of interest set out in Regulation (EC) No 1060/2009 and to prevent them from becoming ineffective, there is a need for a sufficiently high number of credit rating agencies, unconnected with both the outgoing credit rating agency in case of rotation and the credit rating agency providing credit rating services in parallel to the same issuer. It is appropriate to require a strict separation of the outgoing agency from the incoming credit rating agency in the case of rotation as well as of the two credit rating agencies providing credit rating services in parallel to the same issuer. The credit rating agencies concerned should not be linked to each other by control, by being part of the same group of credit rating agencies, by being a shareholder or a member of or being able to exercise voting rights in any of the other credit rating

agencies, or by being able to appoint members of the administrative or supervisory boards of any of the other credit rating agencies.

- (22) Credit rating agencies should establish, maintain, enforce and document an effective internal control structure governing the implementation of policies and procedures for the prevention and control of possible conflicts of interest and for ensuring the independence of credit ratings, rating analysts and rating teams regarding shareholders, administrative and management bodies and sales and marketing activities. Standard Operating Procedures (SOPs) should be put in place relating to corporate governance, organisational matters, and the management of conflicts of interest. SOPs should be periodically reviewed and monitored to evaluate their effectiveness and whether they should be updated.
- (23) The perception of independence of credit rating agencies would be particularly affected should the same shareholders or members be investing in different credit rating agencies not belonging to the same group of credit rating agencies, at least if such investment reaches a certain size that could allow those shareholders or members to exercise a certain influence on the credit rating agency's business. Therefore, in order to ensure the independence (and the perception of independence) of credit rating agencies, it is appropriate to provide for stricter rules regarding the relations between the credit rating agencies and their shareholders or members. For that reason, no person should simultaneously hold a participation of 5 % or more in more than one credit rating agency, unless the credit rating agencies concerned belong to the same group.
- (24) The objective of ensuring sufficient independence of credit rating agencies requires that investors not hold simultaneously investments of 5 % or more in more than one credit rating agency. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>(1)</sup> provides that those persons controlling at least 5 % of the voting rights in a listed company disclose that fact to the public, because, inter alia, the investors have an interest in knowing about changes in the voting structure of such a company. The 5 % level is therefore considered to be a major holding capable of influencing the voting structure in a company. It is therefore appropriate to use the 5 % level for the purposes of restricting the simultaneous investment in more than one credit rating agency. The measure cannot be considered to be disproportionate, given that all registered credit rating agencies in the Union are non-listed undertakings and, therefore, not subject to the transparency and procedural rules that apply to listed companies in the Union in accordance with Directive 2004/109/EC. Often unlisted undertakings are governed by shareholders' protocols or agreements and the number of shareholders or members is usually low. Therefore, even a minority position in an unlisted credit rating agency could be influential. Nevertheless, in order to ensure that purely economic investments in credit rating agencies are still possible, this limitation to simultaneous investments in more than one credit rating agency should not be extended to investments channelled through collective investment schemes managed by third parties independent from the investor and not subject to the investor's influence.
- (25) The provisions in this Regulation regarding conflicts of interest with regard to the shareholder structure should not only refer to direct but also to indirect shareholdings as otherwise those rules could be easily circumvented. Credit rating agencies should make all efforts to know their indirect shareholders so that they can avoid any potential conflicts of interest in this respect.
- (26) The effectiveness of the rules on independence and prevention of conflicts of interest which require that credit rating agencies not provide credit rating services to the same issuer for a long period of time could be undermined if credit rating agencies were allowed to become significant shareholders or members of other credit rating agencies.
- (27) It is important to ensure that modifications to the rating methodologies do not result in less rigorous methodologies. For that purpose, issuers, investors and other interested parties should have the opportunity to comment on any intended change to rating methodologies. This will help them to understand the reasons behind new methodologies and for the change in question. Comments provided by issuers and investors on the draft methodologies may provide valuable input for the credit rating agencies in defining the methodologies. ESMA should also be notified of intended changes. Although Regulation (EC) No 1060/2009 confers on ESMA the power to verify that methodologies used by credit rating agencies are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing, that verification process should

<sup>(1)</sup> OJ L 390, 31.12.2004, p. 38.

not grant ESMA any power to judge the appropriateness of the proposed methodology or of the credit ratings issued following the application of the methodologies. Where appropriate, rating methodologies should take into account financial risks deriving from environmental hazards.

(28) Due to the complexity of structured finance instruments, credit rating agencies have not always succeeded in ensuring a sufficiently high quality of credit ratings issued on such instruments. This has led to a loss of market confidence in this type of credit ratings. In order to regain confidence it would be appropriate to require issuers or related third parties to engage at least two different credit rating agencies for the provision of credit ratings on structured finance instruments, which could lead to different and competing assessments. This could also reduce the over-reliance on a single credit rating.

(29) The proposal for a directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and the proposal for a regulation on prudential requirements for credit institutions and investment firms, which are to replace Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>(1)</sup> and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions<sup>(2)</sup>, introduce a requirement for credit institutions and investment firms to assess the credit risk of entities and financial instruments in which they invest themselves and not simply to rely in this respect on credit ratings. That requirement should be extended to other financial market participants regulated under Union law, including investment managers. For all financial market participants, however, that requirement should be enforced in a proportional manner taking into account the nature, scale, and complexity of the participant in question. Member States should not be entitled to impose or maintain rules that allow stricter reliance by those investors on credit ratings.

(30) Furthermore, the ability of investors to make an informed assessment of the creditworthiness of structured finance instruments would be improved if investors were provided with sufficient information on those instruments. For example, as the risk on structured finance instruments to a large extent depends on the

quality and performance of the underlying assets, investors should be provided with more information on the underlying assets. This would reduce investors' dependence on credit ratings. Moreover, disclosing relevant information on structured finance instruments is likely to reinforce the competition between credit rating agencies, because it could lead to an increase in the number of unsolicited credit ratings. The Commission should, by January 2016, review and report on the appropriateness of extending the scope of that disclosure requirement to other financial products. For example, there are other financial products, such as covered bonds and other secured debt, where the risk to a large extent depends on the characteristics of any underlying collateral and where it could be relevant to provide investors with more information about the collateral.

(31) Investors, issuers and other interested parties should have access to up-to-date rating information on a central website. A European rating platform should be established by ESMA and should allow investors to easily compare all credit ratings that exist with regard to a specific rated entity. It is important that the European rating platform website shows all available credit ratings per instrument in order to allow investors to consider the whole variety of opinions before taking their own investment decision. However, in order not to undermine the ability of credit rating agencies to operate under the investor-pays model, such credit ratings should not be included in the European rating platform. The European rating platform should help smaller and new credit rating agencies to gain visibility. The European rating platform should incorporate ESMA's central repository with a view to creating a single platform for all available credit ratings per instrument and for information on historical performance data, published on the central repository. The European Parliament supported the establishment of such publication of credit ratings in its resolution on credit rating agencies of 8 June 2011.

(32) Credit ratings, whether issued for regulatory purposes or not, have a significant impact on investment decisions and on the image and financial attractiveness of issuers. Hence, credit rating agencies have an important responsibility towards investors and issuers in ensuring that they comply with Regulation (EC) No 1060/2009 so that their credit ratings are independent, objective and of adequate quality. However, investors and issuers are not always in a position to enforce credit rating agencies' responsibility towards them. It can be particularly difficult to establish the civil liability of a credit rating agency in the absence of a contractual relationship between a credit rating agency and, for instance, an investor or an issuer rated on an unsolicited basis. Issuers can also face difficulties in enforcing credit rating agencies' civil liability towards them even when

<sup>(1)</sup> OJ L 177, 30.6.2006, p. 1.

<sup>(2)</sup> OJ L 177, 30.6.2006, p. 201.

they have a contractual relationship with the credit rating agency concerned: for instance, a downgrade of a credit rating, decided on the basis of an infringement of Regulation (EC) No 1060/2009 committed intentionally or with gross negligence, can impact negatively the reputation and funding costs of an issuer, therefore causing this issuer damage even if it is not covered by contractual liability. Therefore, it is important to provide for an adequate right of redress for investors who have reasonably relied on a credit rating issued in breach of Regulation (EC) No 1060/2009 as well as for issuers who suffer damage because of a credit rating issued in breach of Regulation (EC) No 1060/2009. The investor and issuer should be able to hold the credit rating agency liable for damages caused by an infringement of that Regulation which had an impact on the rating outcome. While investors and issuers who have a contractual relationship with a credit rating agency may choose to base a claim against that credit rating agency on a breach of contract, the possibility of claiming damages for an infringement of Regulation (EC) No 1060/2009 should be available for all investors and issuers, regardless of whether there is a contractual relationship between the parties.

- (33) It should be possible for credit rating agencies to be held liable if they infringe intentionally or with gross negligence any obligations imposed on them by Regulation (EC) No 1060/2009. This standard of fault is appropriate because the activity of credit rating involves a certain degree of assessment of complex economic factors and the application of different methodologies may lead to different rating results, none of which can be considered as incorrect. Also, it is appropriate to expose credit rating agencies to potentially unlimited liability only where they breach Regulation (EC) No 1060/2009 intentionally or with gross negligence.
- (34) The investor or issuer claiming damages for an infringement of Regulation (EC) No 1060/2009 should present accurate and detailed information indicating that the credit rating agency has committed such an infringement of that Regulation. This should be assessed by the competent court, taking into consideration that the investor or issuer may not have access to information that is purely within the sphere of the credit rating agency.
- (35) Regarding matters concerning the civil liability of a credit rating agency which are not covered by or defined in this Regulation, including causation and the concept of gross negligence, such matters should be governed by the applicable national law as determined by the relevant rules of private international law. In particular, Member States should be able to maintain national civil liability regimes which are more favourable to investors or issuers or which are not based on an infringement of Regulation (EC) No 1060/2009. The competent court to decide on a claim for civil liability brought by an investor or issuer should be determined by the relevant rules on private international law.
- (36) The fact that institutional investors including investment managers are obliged to carry out their own assessment of the creditworthiness of assets should not prevent courts from finding that an infringement of Regulation (EC) No 1060/2009 by a credit rating agency has caused damage to an investor for which that credit rating agency is liable. While this Regulation will improve the possibilities of investors to make an own risk assessment they will continue to have more limited access to information than the credit rating agencies themselves. Furthermore, in particular smaller investors may lack the capability to review a credit rating provided by a credit rating agency critically.
- (37) Member States and ESMA should ensure that any penalties imposed pursuant to Regulation (EC) No 1060/2009 are publicly disclosed only where such public disclosure would be proportionate.
- (38) In order to further mitigate conflicts of interest and facilitate fair competition in the credit rating market, it is important to ensure that the fees charged by credit rating agencies to clients are not discriminatory. Differences in fees charged for the same type of service should only be justifiable by a difference in the actual costs in providing this service to different clients. Moreover, the fees charged for credit rating services to a given issuer should not depend on the results or outcome of the work performed or on the provision of related (ancillary) services. Furthermore, in order to allow for the effective supervision of those rules, credit rating agencies should disclose to ESMA the fees received from each of their clients and their general pricing policy.
- (39) In order to contribute to the issuance of up-to-date and credible sovereign ratings and to facilitate users' understanding, it is important to regularly review those ratings. It is also important to increase transparency about the research work carried out, the staff allocated to the preparation of sovereign ratings and the underlying assumptions behind the credit ratings made by credit rating agencies in relation to sovereign debt.



- (40) It is essential that investors have appropriate information to assess the creditworthiness of Member States. In the framework of its surveillance of economic and fiscal policies of Member States, the Commission collects and processes data on the economic, financial and fiscal situation and performance of all Member States, most of which are published by the Commission and which can therefore be used by investors to assess the potential creditworthiness of Member States. Where appropriate and available, and subject to the relevant confidentiality rules applicable in the framework of its surveillance of economic and fiscal policies of Member States, the Commission should complement existing reporting on economic performance of Member States by possible additional elements or indicators, which may help investors to assess the creditworthiness of Member States. Those elements should be made available to the public, complementing the existing publications and other publicly disclosed information, with a view to providing investors with further data in order to help them assess the creditworthiness of sovereign entities and their debt information. Bearing this in mind, the Commission should examine the possibility of developing a European creditworthiness assessment, to allow investors to make an impartial and objective assessment of Member States' creditworthiness, taking into account the specific economic and social development. If necessary, the Commission should submit appropriate legislative proposals.
- (41) The current rules provide for credit ratings to be announced to the rated entity 12 hours before their publication. In order to avoid such notification taking place outside working hours and to leave the rated entity sufficient time to verify the correctness of data underlying the credit rating, the rated entity should be notified a full working day before publication of the credit rating or of a rating outlook. A list of the persons entitled to receive such notification should be limited and should be clearly identified by the rated entity.
- (42) In view of the specificities of sovereign ratings and in order to reduce the risk of volatility, it is appropriate and proportionate to require credit rating agencies to publish those ratings only after close of business of the trading venues established in the Union and at least one hour before their opening. On the same basis, it is also appropriate and proportionate that, at the end of December, credit rating agencies should publish a calendar for the following 12 months setting the dates for the publication of sovereign ratings and, corresponding thereto, the dates for the publication of related rating outlooks where applicable. Such dates should be set on a Friday. Only for unsolicited sovereign ratings should the number of publications in the calendar be limited between two and three. Where this is necessary to comply with their legal obligations, credit rating agencies should be allowed to deviate from their announced calendar, while explaining in detail the reasons for such deviation. However, such deviation should not happen routinely.
- (43) On the basis of the evolution of the market, the Commission should submit a report to the European Parliament and the Council exploring the appropriateness of, and ways to, support a European public credit rating agency dedicated to assessing the creditworthiness of Member States' sovereign debt and/or a European credit rating foundation for all other credit ratings. If necessary, the Commission should submit appropriate legislative proposals.
- (44) In view of the specificities of sovereign ratings and in order to avoid a risk of contagion across the Union, statements announcing a revision of a given group of countries should be prohibited if not accompanied by individual country reports. Furthermore with the view to enhancing the validity and accessibility of sources of information used by credit rating agencies in public communications on potential changes in sovereign ratings, other than credit ratings, rating outlooks and accompanying press releases, such communications should always be based on information within the sphere of the rated entity which has been disclosed with the consent of the rated entity unless that information is available from generally accessible sources. Where the legal framework governing the rated entity provides that the rated entity must not disclose such information, such as in the case of inside information as defined in point (1) of Article 1 of Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) <sup>(1)</sup>, the rated entity must not give its consent.
- (45) For the purpose of transparency, when publishing their sovereign ratings, credit rating agencies should explain in their press releases or reports the key elements underlying those credit ratings. However, transparency for sovereign ratings should not be conclusive to the direction of national policies (economic, labour or other). Therefore, whilst those policies may serve as an element for the credit rating agency to assess creditworthiness of a sovereign entity or its financial instruments,

<sup>(1)</sup> OJ L 96, 12.4.2003, p. 16.

and may be used in explaining the main reasons for a sovereign rating, direct or explicit requirements or recommendations from credit rating agencies to sovereign entities as regards those policies should not be allowed. Credit rating agencies should refrain from any direct or explicit policy recommendations on policies of sovereign entities.

- (46) Technical standards in the financial services sector should ensure an adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.
- (47) The Commission should adopt the draft regulatory technical standards developed by ESMA regarding the content, frequency and presentation of the information to be provided by issuers on structured finance instruments, the presentation of the information, including structure, format, method and timing of reporting, that credit rating agencies should disclose to ESMA in relation to the European rating platform and the content and format of the periodic reporting on fees charged by credit rating agencies for the purposes of ongoing supervision by ESMA. The Commission should adopt those standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.
- (48) Regulation (EC) No 1060/2009 allows credit ratings issued in third countries to be used for regulatory purposes if they are issued by credit rating agencies certified in accordance with that Regulation or endorsed by credit rating agencies established in the Union in accordance with that Regulation. Certification requires that the Commission has adopted an equivalence decision regarding the third country's regulatory regime for credit rating agencies and endorsement requires that the conduct of the third-country credit rating agency fulfils requirements which are at least as stringent as the relevant Union rules. Some of the provisions introduced by this Regulation should not apply to the equivalence and endorsement assessments. This is the case for those provisions that only establish obligations on issuers but not on credit rating agencies. In addition, provisions that relate to the structure of the credit rating market within the Union rather than establishing rules of conduct for credit rating agencies should not be considered in this context. In order to grant third countries sufficient time to review their regulatory frameworks regarding the remaining new substantive provisions, the latter should only apply for the purpose of the equivalence and endorsement assessments as of 1 June 2018. It is important to recall in this respect that a third-country regulatory regime does not have to have identical rules as those provided for in this Regulation. As already provided for in Regulation (EC) No 1060/2009, in order to be considered equivalent to or as stringent as the Union regulatory regime, it should be sufficient that the third-country regulatory regime achieve the same objectives and effects in practice.
- (49) Since the objectives of this Regulation, namely to reinforce the independence of credit rating agencies, to promote sound credit rating processes and methodologies, to mitigate the risks associated with sovereign ratings, to reduce the risk of over-reliance on credit ratings by market participants, and to ensure a right of redress for investors, cannot be sufficiently achieved by the Member States and can therefore, by reason of the pan-Union structure and impact of the credit rating activities to be supervised, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (50) The Commission should put forward, by the end of 2013, a report regarding the feasibility of a network of smaller credit rating agencies in order to increase competition in the market. That report should evaluate Union financial and non-financial support and incentives for the creation of such a network, taking into consideration the potential conflicts of interest arising from such public funding.
- (51) The European Data Protection Supervisor has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(1)</sup> and has adopted an opinion <sup>(2)</sup>.
- (52) Regulation (EC) No 1060/2009 should therefore be amended accordingly,

<sup>(1)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(2)</sup> OJ C 139, 15.5.2012, p. 6.

HAVE ADOPTED THIS REGULATION:

(ii) the following points are inserted:

*Article 1*

**Amendments to Regulation (EC) No 1060/2009**

Regulation (EC) No 1060/2009 is amended as follows:

(1) Article 1 is replaced by the following:

*'Article 1*

**Subject matter**

This Regulation introduces a common regulatory approach in order to enhance the integrity, transparency, responsibility, good governance and independence of credit rating activities, contributing to the quality of credit ratings issued in the Union and to the smooth functioning of the internal market, while achieving a high level of consumer and investor protection. It lays down conditions for the issuing of credit ratings and rules on the organisation and conduct of credit rating agencies, including their shareholders and members, to promote credit rating agencies' independence, the avoidance of conflicts of interest, and the enhancement of consumer and investor protection.

This Regulation also lays down obligations for issuers, originators and sponsors established in the Union regarding structured finance instruments.;

(2) in Article 2(1), Article 3(1)(m), Article 4(2), Article 4(3), introductory part, Article 4(4), first and second subparagraphs, Article 5(1), introductory part, Article 14(1), and Annex II, point (1) 'Community' is replaced by 'Union';

(3) Article 3 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (g) is replaced by the following:

'(g) "regulatory purposes" means the use of credit ratings for the specific purpose of complying with Union law, or with Union law as implemented by the national legislation of the Member States;';

'(pa) "credit institution" means a credit institution as defined in point (1) of Article 4 of Directive 2006/48/EC;

(pb) "investment firm" means an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC;

(pc) "insurance undertaking" means an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (\*);

(pd) "reinsurance undertaking" means a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

(pe) "institution for occupational retirement provision" means an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC;

(pf) "management company" means a management company as defined in Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (\*\*);

(pg) "investment company" means an investment company authorised in accordance with Directive 2009/65/EC;

(ph) "alternative investment fund manager" means an AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (\*\*\*);

(pi) “central counterparty” means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories<sup>(\*\*\*\*)</sup> which is authorised in accordance with Article 14 of that Regulation;

(pj) “prospectus” means a prospectus published under Directive 2003/71/EC and Regulation (EC) No 809/2004;

(\*) OJ L 335, 17.12.2009, p. 1.

(\*\*) OJ L 302, 17.11.2009, p. 32.

(\*\*\*) OJ L 174, 1.7.2011, p. 1.

(\*\*\*\*) OJ L 201, 27.7.2012, p. 1.;

(iii) points (q) and (r) are replaced by the following:

(q) “sectoral legislation” means the legislative acts of the Union referred to in points (pa) to (pj);

(r) “sectoral competent authorities” means the national competent authorities designated under the relevant sectoral legislation for the supervision of credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers, central counterparties and prospectuses.;

(iv) the following points are added:

(s) “issuer” means an issuer as defined in Article 2(1)(h) of Directive 2003/71/EC;

(t) “originator” means an originator as defined in point (41) of Article 4 of Directive 2006/48/EC;

(u) “sponsor” means a sponsor as defined in point (42) of Article 4 of Directive 2006/48/EC;

(v) “sovereign rating” means:

(i) a credit rating where the entity rated is a State or a regional or local authority of a State;

(ii) a credit rating where the issuer of the debt or financial obligation, debt security

or other financial instrument is a State or a regional or local authority of a State, or a special purpose vehicle of a State or of a regional or local authority;

(iii) a credit rating where the issuer is an international financial institution established by two or more States which has the purpose of mobilising funding and providing financial assistance for the benefit of the members of that international financial institution which are experiencing or threatened by severe financing problems;

(w) “rating outlook” means an opinion regarding the likely direction of a credit rating over the short term, the medium term or both;

(x) “unsolicited credit rating” and “unsolicited sovereign rating” mean, respectively, a credit rating or a sovereign rating assigned by a credit rating agency other than upon request;

(y) “credit score” means a measure of creditworthiness derived from summarising and expressing data based only on a pre-established statistical system or model, without any additional substantial rating-specific analytical input from a rating analyst;

(z) “regulated market” means a regulated market as defined in point (14) of Article 4(1) of Directive 2004/39/EC and established in the Union;

(aa) “re-securitisation” means re-securitisation as defined in point (40a) of Article 4 of Directive 2006/48/EC.;

(b) the following paragraph is added:

‘3. For the purposes of this Regulation, the term “shareholder” includes beneficial owners, as defined in point (6) of Article 3 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (\*).

(\*) OJ L 309, 25.11.2005, p. 15.;



(4) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers and central counterparties may use credit ratings for regulatory purposes only if they are issued by credit rating agencies established in the Union and registered in accordance with this Regulation.'

Where a prospectus contains a reference to a credit rating or credit ratings, the issuer, offeror, or person asking for admission to trading on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether or not such credit ratings are issued by a credit rating agency established in the Union and registered under this Regulation.;

(b) in paragraph 3, point (b) is replaced by the following:

'(b) the credit rating agency has verified and is able to demonstrate on an ongoing basis to the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*), that the conduct of the credit rating activities by the third-country credit rating agency resulting in the issuing of the credit rating to be endorsed fulfils requirements which are at least as stringent as the requirements set out in Articles 6 to 12 and Annex I, with the exception of Articles 6a, 6b, 8a, 8b, 8c and 11a, point (ba) of point 3 and points 3a and 3b of Section B of Annex I.'

(\*) OJ L 331, 15.12.2010, p. 84.;

(5) Article 5 is amended as follows:

(a) in paragraph 6, second subparagraph, point (b) is replaced by the following:

'(b) credit rating agencies in that third country are subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 and Annex I, with the exception of Articles 6a, 6b, 8a, 8b, 8c and 11a, point (ba) of point 3 and points 3a and 3b of Section B of Annex I; and';

(b) paragraph 8 is replaced by the following:

'8. Articles 20, 23b and 24 shall apply to credit rating agencies certified in accordance with Article 5(3) and to credit ratings issued by them.;

(6) the following Articles are inserted in Title I:

*Article 5a*

**Over-reliance on credit ratings by financial institutions**

1. The entities referred to in the first subparagraph of Article 4(1) shall make their own credit risk assessment and shall not solely or mechanically rely on credit ratings for assessing the creditworthiness of an entity or financial instrument.

2. Sectoral competent authorities in charge of supervising the entities referred to in the first subparagraph of Article 4(1) shall, taking into account the nature, scale and complexity of their activities, monitor the adequacy of their credit risk assessment processes, assess the use of contractual references to credit ratings and, where appropriate, encourage them to mitigate the impact of such references, with a view to reducing sole and mechanistic reliance on credit ratings, in line with specific sectoral legislation.

*Article 5b*

**Reliance on credit ratings by the European Supervisory Authorities and the European Systemic Risk Board**

1. The European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (\*), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (\*\*) and ESMA shall not refer to credit ratings in their guidelines, recommendations and draft technical standards where such references have the potential to trigger sole or mechanistic reliance on credit ratings by the competent authorities, the sectoral competent authorities, the entities referred to in the first subparagraph of Article 4(1) or other financial market participants. Accordingly, by 31 December 2013, EBA, EIOPA and ESMA shall review and remove, where appropriate, all such references to credit ratings in existing guidelines and recommendations.

2. The European Systemic Risk Board (ESRB) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (\*\*\*) shall not refer to credit ratings in its warnings and recommendations where such references have the potential to trigger sole or mechanistic reliance on credit ratings.

#### Article 5c

##### **Over-reliance on credit ratings in Union law**

Without prejudice to its right of initiative, the Commission shall continue to review whether references to credit ratings in Union law trigger or have the potential to trigger sole or mechanistic reliance on credit ratings by the competent authorities, the sectoral competent authorities, the entities referred to in the first subparagraph of Article 4(1) or other financial market participants with a view to deleting all references to credit ratings in Union law for regulatory purposes by 1 January 2020, provided that appropriate alternatives to credit risk assessment have been identified and implemented.

(\*) OJ L 331, 15.12.2010, p. 12.

(\*\*) OJ L 331, 15.12.2010, p. 48.

(\*\*\*) OJ L 331, 15.12.2010, p. 1.;

(7) Article 6 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A credit rating agency shall take all necessary steps to ensure that the issuing of a credit rating or a rating outlook is not affected by any existing or potential conflicts of interest or business relationship involving the credit rating agency issuing the credit rating or the rating outlook, its shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the credit rating agency, or any person directly or indirectly linked to it by control.’;

(b) in paragraph 3, the introductory part is replaced by the following:

‘3. At the request of a credit rating agency, ESMA may exempt a credit rating agency from complying with the requirements of points 2, 5, 6 and 9 of

Section A of Annex I and Article 7(4) if the credit rating agency is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of issue of credit ratings and that’;

(c) the following paragraph is added:

‘4. Credit rating agencies shall establish, maintain, enforce and document an effective internal control structure governing the implementation of policies and procedures to prevent and mitigate possible conflicts of interest and to ensure the independence of credit ratings, rating analysts and rating teams regarding shareholders, administrative and management bodies and sales and marketing activities. Credit rating agencies shall establish standard operating procedures (SOPs) with regard to corporate governance, organisation, and the management of conflicts of interest. They shall periodically monitor and review those SOPs in order to evaluate their effectiveness and assess whether they should be updated.’;

(8) the following articles are inserted:

#### ‘Article 6a

##### **Conflicts of interest concerning investments in credit rating agencies**

1. A shareholder or a member of a credit rating agency holding at least 5 % of either the capital or the voting rights in that credit rating agency or in a company which has the power to exercise control or a dominant influence over that credit rating agency, shall be prohibited from:

- (a) holding 5 % or more of the capital of any other credit rating agency;
- (b) having the right or the power to exercise 5 % or more of the voting rights in any other credit rating agency;
- (c) having the right or the power to appoint or remove members of the administrative or supervisory board of any other credit rating agency;
- (d) being a member of the administrative or supervisory board of any other credit rating agency;
- (e) exercising or having the power to exercise control or a dominant influence over any other credit rating agency.

The prohibition referred to in point (a) of the first subparagraph does not apply to holdings in diversified collective investment schemes, including managed funds such as pension funds or life insurance, provided that the holdings in such schemes do not put the shareholder or member of a credit rating agency in a position to exercise significant influence on the business activities of those schemes.

2. This Article does not apply to investments in other credit rating agencies belonging to the same group of credit rating agencies.

#### Article 6b

##### **Maximum duration of the contractual relationship with a credit rating agency**

1. Where a credit rating agency enters into a contract for the issuing of credit ratings on re-securitisations, it shall not issue credit ratings on new re-securitisations with underlying assets from the same originator for a period exceeding four years.

2. Where a credit rating agency enters into a contract for rating re-securitisations, it shall request that the issuer:

- (a) determine the number of credit rating agencies which have a contractual relationship for the issuing of credit ratings on re-securitisations with underlying assets from the same originator;
- (b) calculate the percentage of the total number of outstanding rated re-securitisations with underlying assets from the same originator for which each credit rating agency issues credit ratings.

Where at least four credit rating agencies each rate more than 10 % of the total number of outstanding rated re-securitisations, the limitations set out in paragraph 1 shall not apply.

The exemption set out in the second subparagraph shall continue to apply at least until the credit rating agency enters into a new contract for rating re-securitisations with underlying assets from the same originator. Where the criteria set out in the second subparagraph are not met when entering into such a contract, the period referred to in paragraph 1 shall be calculated from the date on which the new contract was entered into.

3. As from the expiry of a contract pursuant to paragraph 1, a credit rating agency shall not enter into a new contract for the issuing of credit ratings on re-securitisations with underlying assets from the same originator for a period equal to the duration of the expired contract but not exceeding four years.

The first subparagraph shall also apply to:

- (a) a credit rating agency belonging to the same group of credit rating agencies as the credit rating agency referred to in paragraph 1;
- (b) a credit rating agency which is a shareholder or member of the credit rating agency referred to in paragraph 1;
- (c) a credit rating agency in which the credit rating agency referred to in paragraph 1 is a shareholder or member.

4. Notwithstanding paragraph 1, where a credit rating of a re-securitisation is issued before the end of the maximum duration of the contractual relationship as referred to in paragraph 1, a credit rating agency may continue to monitor and update those credit ratings, on a solicited basis, for the duration of the re-securitisation.

5. This Article shall not apply to credit rating agencies that have fewer than 50 employees at group level involved in the provision of credit rating activities, or that have an annual turnover generated from credit rating activities of less than EUR 10 million at group level.

6. Where a credit rating agency enters into a contract for the issuing of credit ratings on re-securitisations before 20 June 2013, the period referred to in paragraph 1 shall be calculated from that date.;

(9) Article 7(5) is replaced by the following:

'5. Compensation and performance evaluation of employees involved in the credit rating activities or rating outlooks, as well as persons approving the credit ratings or rating outlooks, shall not be contingent on the amount of revenue that the credit rating agency derives from the rated entities or related third parties.;

(10) Article 8 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. A credit rating agency shall adopt, implement and enforce adequate measures to ensure that the credit ratings and the rating outlooks it issues are based on a thorough analysis of all the information that is available to it and that is relevant to its analysis according to the applicable rating methodologies. It shall adopt all necessary measures so that the information it uses in assigning credit ratings and rating outlooks is of sufficient quality and from reliable sources. The credit rating agency shall issue credit ratings and rating outlooks stipulating that the rating is the agency's opinion and should be relied upon to a limited degree.

2a. Changes in credit ratings shall be issued in accordance with the credit rating agency's published rating methodologies.;

(b) in paragraph 5, the following subparagraph is added:

'Sovereign ratings shall be reviewed at least every six months.;

(c) the following paragraph is inserted:

'5a. A credit rating agency that intends to make a material change to, or use, new rating methodologies, models or key rating assumptions which could have an impact on a credit rating shall publish the proposed material changes or proposed new rating methodologies on its website inviting stakeholders to submit comments for a period of one month together with a detailed explanation of the reasons for and the implications of the proposed material changes or proposed new rating methodologies.;

(d) paragraph 6 is amended as follows:

(i) the introductory part is replaced by the following:

'6. Where rating methodologies, models or key rating assumptions used in credit rating activities are changed in accordance with Article 14(3), a credit rating agency shall.;

(ii) the following points are inserted:

'(aa) immediately inform ESMA and publish on its website the results of the consultation and the new rating methodologies together with a detailed explanation thereof and their date of application;

'(ab) immediately publish on its website the responses to the consultation referred to in paragraph 5a except in cases where confidentiality is requested by the respondent to the consultation.;

(e) the following paragraph is added:

'7. Where a credit rating agency becomes aware of errors in its rating methodologies or in their application it shall immediately:

(a) notify those errors to ESMA and all affected rated entities explaining the impact on its ratings including the need to review issued ratings;



- (b) where errors have an impact on its credit ratings, publish those errors on its website;
- (c) correct those errors in the rating methodologies; and
- (d) apply the measures referred to in points (a), (b) and (c) of paragraph 6.;

(11) the following Articles are inserted:

*Article 8a*

**Sovereign ratings**

1. Sovereign ratings shall be issued in a manner which ensures that the individual specificity of a particular Member State has been analysed. A statement announcing revision of a given group of countries shall be prohibited if it is not accompanied by individual country reports. Such reports shall be made publicly available.

2. Public communications other than credit ratings, rating outlooks, or accompanying press releases or reports as referred to in point 5 of Part I of Section D of Annex I, which relate to potential changes in sovereign ratings shall not be based on information within the sphere of the rated entity that has been disclosed without the consent of the rated entity, unless it is available from generally accessible sources or unless there are no legitimate reasons for the rated entity not to give its consent to the disclosure of the information.

3. A credit rating agency shall, taking into consideration the second subparagraph of Article 8(5), publish on its website and submit to ESMA on an annual basis, in accordance with point 3 of Part III of Section D of Annex I, a calendar at the end of December for the following 12 months, setting a maximum of three dates for the publication of unsolicited sovereign ratings and related rating outlooks and setting the dates for the publication of solicited sovereign ratings and related rating outlooks. Such dates shall be set on a Friday.

4. Deviation of the publication of sovereign ratings or related rating outlooks from the calendar shall only be possible where necessary for the credit rating agency to comply with its obligations under Article 8(2), Article 10(1) and Article 11(1) and shall be accompanied by a detailed

explanation of the reasons for the deviation from the announced calendar.

*Article 8b*

**Information on structured finance instruments**

1. The issuer, the originator and the sponsor of a structured finance instrument established in the Union shall, on the website set up by ESMA pursuant to paragraph 4, jointly publish information on the credit quality and performance of the underlying assets of the structured finance instrument, the structure of the securitisation transaction, the cash flows and any collateral supporting a securitisation exposure as well as any information that is necessary to conduct comprehensive and well-informed stress tests on the cash flows and collateral values supporting the underlying exposures.

2. The obligation under paragraph 1 to publish information shall not extend to where such publication would breach national or Union law governing the protection of confidentiality of information sources or the processing of personal data.

3. ESMA shall develop draft regulatory technical standards to specify:

- (a) the information that the persons referred to in paragraph 1 must publish in order to comply with the obligation resulting from paragraph 1 in accordance with paragraph 2;
- (b) the frequency with which the information referred to in point (a) is to be updated;
- (c) the presentation of the information referred to in point (a) by means of a standardised disclosure template.

ESMA shall submit those draft regulatory technical standards to the Commission by 21 June 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ESMA shall set up a website for the publication of the information on structured finance instruments as referred to in paragraph 1.

*Article 8c***Double credit rating of structured finance instruments**

1. Where an issuer or a related third party intends to solicit a credit rating of a structured finance instrument, it shall appoint at least two credit rating agencies to provide credit ratings independently of each other.

2. The issuer or a related third party as referred to in paragraph 1 shall ensure that the appointed credit rating agencies comply with the following conditions:

- (a) they do not belong to the same group of credit rating agencies;
- (b) they are not a shareholder or a member of any of the other credit rating agencies;
- (c) they do not have the right or the power to exercise voting rights in any of the other credit rating agencies;
- (d) they do not have the right or the power to appoint or remove members of the administrative or supervisory board of any of the other credit rating agencies;
- (e) none of the members of their administrative or supervisory boards are a member of the administrative or supervisory boards of any of the other credit rating agencies;
- (f) they do not exercise, or have the power to exercise, control or a dominant influence over any of the other credit rating agencies.

*Article 8d***Use of multiple credit rating agencies**

1. Where an issuer or a related third party intends to appoint at least two credit rating agencies for the credit rating of the same issuance or entity, the issuer or a related third party shall consider appointing at least one credit rating agency with no more than 10 % of the total market share, which can be evaluated by the issuer or a related third party as capable of rating the relevant issuance or entity, provided that, based on ESMA's list referred to in paragraph 2, there is a credit rating agency

available for rating the specific issuance or entity. Where the issuer or a related third party does not appoint at least one credit rating agency with no more than 10 % of the total market share, this shall be documented.

2. With a view to facilitating the evaluation by the issuer or a related third party under paragraph 1, ESMA shall annually publish on its website a list of registered credit rating agencies, indicating their total market share and the types of credit ratings issued, which can be used by the issuer as a starting point for its evaluation.

3. For the purposes of this Article, total market share shall be measured with reference to annual turnover generated from credit rating activities and ancillary services, at group level.;

(12) in Article 10, paragraphs 1 and 2 are replaced by the following:

'1. A credit rating agency shall disclose any credit rating or rating outlook, as well as any decision to discontinue a credit rating, on a non-selective basis and in a timely manner. In the event of a decision to discontinue a credit rating, the information disclosed shall include full reasons for the decision.

The first subparagraph shall also apply to credit ratings that are distributed by subscription.

2. Credit rating agencies shall ensure that credit ratings and rating outlooks are presented and processed in accordance with the requirements set out in Section D of Annex I and shall not present factors other than those related to the credit ratings.

2a. Until disclosure to the public of credit ratings, rating outlooks and information relating thereto, they shall be deemed to be inside information as defined in, and in accordance with, Directive 2003/6/EC.

Article 6(3) of that Directive shall apply *mutatis mutandis* to credit rating agencies as regards their duty of confidentiality and their obligation to maintain a list of persons who have access to their credit ratings, rating outlooks or related information before disclosure.

The list of persons to whom credit ratings, rating outlooks and information relating thereto are communicated before being disclosed shall be limited to persons identified by each rated entity for that purpose.;

(13) in Article 10(5), the first subparagraph is replaced by the following:

‘5. Where a credit rating agency issues an unsolicited credit rating, it shall state prominently in the credit rating, using a clearly distinguishable different colour code for the rating category, whether or not the rated entity or a related third party participated in the credit rating process and whether the credit rating agency had access to the accounts, management and other relevant internal documents for the rated entity or a related third party.;

(14) Article 11(2) is replaced by the following:

‘2. A registered or certified credit rating agency shall make available in a central repository established by ESMA information on its historical performance data, including the ratings transition frequency, and information about credit ratings issued in the past and on their changes. Such a credit rating agency shall provide information to that repository on a standard form as provided for by ESMA. ESMA shall make that information accessible to the public and shall publish summary information on the main developments observed on an annual basis.;

(15) the following Article is inserted:

‘Article 11a

#### **European rating platform**

1. A registered or certified credit rating agency shall, when issuing a credit rating or a rating outlook, submit to ESMA rating information, including the credit rating and rating outlook of the rated instrument, information on the type of credit rating, the type of rating action, and date and hour of publication.

2. ESMA shall publish the individual credit ratings submitted to it pursuant to paragraph 1 on a website (“European rating platform”).

The central repository referred to in Article 11(2) shall be incorporated in the European rating platform.

3. This Article shall not apply to credit ratings or rating outlooks which are exclusively produced for and disclosed to investors for a fee.;

(16) in Article 14(3), the following subparagraph is added:

‘Without prejudice to the second subparagraph, the credit rating agency shall notify ESMA of the intended material changes to the rating methodologies, models or key rating assumptions or the proposed new rating methodologies, models or key rating assumptions when the credit rating agency publishes the proposed changes or proposed new rating methodologies on its website in accordance with Article 8(5a). After the expiry of the consultation period, the credit rating agency shall notify ESMA of any changes due to the consultation.;

(17) Article 18(2) is replaced by the following:

‘2. ESMA shall communicate to the Commission, EBA, EIOPA, the competent authorities and the sectoral competent authorities, any decision under Article 16, 17 or 20.;

(18) Article 19(1) is replaced by the following:

‘1. ESMA shall charge credit rating agencies fees in accordance with this Regulation and with the Commission regulation referred to in paragraph 2. Those fees shall fully cover ESMA’s necessary expenditure relating to the registration, certification and supervision of credit rating agencies and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 30.;

(19) Article 21 is amended as follows:

(a) paragraph 4 is amended as follows:

(i) the introductory part is replaced by the following:

‘4. ESMA shall develop draft regulatory technical standards to specify.;

(ii) point (e) is replaced by the following:

'(e) the content and format of ratings data periodic reporting to be requested from registered and certified credit rating agencies for the purpose of ongoing supervision by ESMA.');

(iii) the following subparagraphs are added after point (e):

'ESMA shall submit those draft regulatory technical standards to the Commission by 21 June 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.;

(b) the following paragraphs are inserted:

'4a. ESMA shall develop draft regulatory technical standards to specify:

(a) the content and the presentation of the information, including structure, format, method and timing of reporting that credit rating agencies are to disclose to ESMA in accordance with Article 11a(1); and

(b) the content and format of periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by ESMA.

ESMA shall submit those draft regulatory technical standards to the Commission by 21 June 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

4b. ESMA shall report on the possibility of establishing one or more mappings of credit ratings submitted in accordance with Article 11a(1) and submit that report to the Commission by 21 June 2015. The report shall, in particular, assess:

(a) the possibility, cost, and benefit of establishing one or more mappings;

(b) how one or more mappings can be created without misrepresenting credit ratings in light of different rating methodologies;

(c) any effects mappings could have on the regulatory technical standards developed to date in relation to Article 21(4a)(a) and (b).

ESMA shall consult EBA and EIOPA in regard to points (a) and (b) of the first subparagraph.;

(c) paragraph 5 is replaced by the following:

'5. ESMA shall publish an annual report on the application of this Regulation. That report shall contain, in particular, an assessment of the implementation of Annex I by the credit rating agencies registered under this Regulation and an assessment of the application of the endorsement mechanism referred to in Article 4(3).';

(20) in Article 22a, the title is replaced by the following:

*'Examination of compliance with methodology requirements';*

(21) Article 25a is replaced by the following:

*'Article 25a*

**Sectoral competent authorities responsible for the supervision and enforcement of Article 4(1) and Articles 5a, 8b, 8c and 8d**

The sectoral competent authorities shall be responsible for the supervision and enforcement of Article 4(1) and Articles 5a, 8b, 8c and 8d in accordance with the relevant sectoral legislation.;

(22) the following title is inserted:

*'TITLE IIIA*

**CIVIL LIABILITY OF CREDIT RATING AGENCIES**

*Article 35a*

**Civil liability**

1. Where a credit rating agency has committed, intentionally or with gross negligence, any of the infringements listed in Annex III having an impact on a credit rating, an investor or issuer may claim damages from that credit rating agency for damage caused to it due to that infringement.



An investor may claim damages under this Article where it establishes that it has reasonably relied, in accordance with Article 5a(1) or otherwise with due care, on a credit rating for a decision to invest into, hold onto or divest from a financial instrument covered by that credit rating.

An issuer may claim damages under this Article where it establishes that it or its financial instruments are covered by that credit rating and the infringement was not caused by misleading and inaccurate information provided by the issuer to the credit rating agency, directly or through information publicly available.

2. It shall be the responsibility of the investor or issuer to present accurate and detailed information indicating that the credit rating agency has committed an infringement of this Regulation, and that that infringement had an impact on the credit rating issued.

What constitutes accurate and detailed information shall be assessed by the competent national court, taking into consideration that the investor or issuer may not have access to information which is purely within the sphere of the credit rating agency.

3. The civil liability of credit rating agencies, as referred to in paragraph 1, shall only be limited in advance where that limitation is:

- (a) reasonable and proportionate; and
- (b) allowed by the applicable national law in accordance with paragraph 4.

Any limitation that does not comply with the first subparagraph, or any exclusion of civil liability shall be deprived of any legal effect.

4. Terms such as “damage”, “intention”, “gross negligence”, “reasonably relied”, “due care”, “impact”, “reasonable” and “proportionate” which are referred to in this Article but are not defined, shall be interpreted and applied in accordance with the applicable national law as determined by the relevant rules of private international law. Matters concerning the civil liability of a credit rating agency which are not covered by this Regulation shall be governed by the applicable national law as determined by the relevant rules of private international law. The court that is competent to decide on a claim for civil liability brought by an investor or issuer shall be determined by the relevant rules of private international law.

5. This Article does not exclude further civil liability claims in accordance with national law.

6. The right of redress set out in this Article shall not prevent ESMA from fully performing its powers as laid down in Article 36a.;

(23) In Article 36a(2), the first subparagraph is amended as follows:

(a) points (a) and (b) are replaced by the following:

- ‘(a) for the infringements referred to in points 1 to 5, 11 to 15, 19, 20, 23, 26a to 26d, 28, 30, 32, 33, 35, 41, 43, 50, 51 and 55 to 62 of Section I of Annex III, the fines shall amount to at least EUR 500 000 and shall not exceed EUR 750 000;
- (b) for the infringements referred to in points 6, 7, 8, 16, 17, 18, 21, 22, 22a, 24, 25, 27, 29, 31, 34, 37 to 40, 42, 42a, 42b, 45 to 49a, 52, 53 and 54 of Section I of Annex III, the fines shall amount to at least EUR 300 000 and shall not exceed EUR 450 000;’;

(b) points (d) and (e) are replaced by the following:

- ‘(d) for the infringements referred to in points 1, 6, 7, 8 and 9 of Section II of Annex III, the fines shall amount to at least EUR 50 000 and shall not exceed EUR 150 000;
- (e) for the infringements referred to in points 2, 3a to 5 of Section II of Annex III, the fines shall amount to at least EUR 25 000 and shall not exceed EUR 75 000;’;

(c) point (h) is replaced by the following:

- ‘(h) for the infringements referred to in point 20a of Section I of Annex III, points 4 to 4c, 6, 8 and 10 of Section III of Annex III, the fines shall amount to at least EUR 90 000 and shall not exceed EUR 200 000;’;

(24) Article 39 is amended as follows:

- (a) paragraphs 1 and 3 are deleted;
- (b) the following paragraphs are added:

‘4. The Commission shall, after obtaining technical advice from ESMA, review the situation in the credit rating market for structured finance instruments, in particular the credit rating market for re-securitisations. Following that review, the Commission shall, by 1 July 2016, submit a report to the European Parliament and to the Council, accompanied by a legislative proposal if appropriate, assessing, in particular:

- (a) the availability of sufficient choice in order to comply with the requirements set out in Articles 6b and 8c;
- (b) whether it is appropriate to shorten or extend the maximum duration of the contractual relationship referred to in Article 6b(1) and the minimum period before the credit rating agency may re-enter into a contract with an issuer or a related third party for the issuing of credit ratings on re-securitisations referred to in Article 6b(3);

(c) whether it is appropriate to amend the exemption referred to in the second subparagraph of Article 6b(2).

5. The Commission shall, after obtaining technical advice from ESMA, review the situation in the credit rating market. Following that review, the Commission shall, by 1 January 2016, submit a report to the European Parliament and to the Council, accompanied by a legislative proposal if appropriate, assessing, in particular:

(a) whether there is a need to extend the scope of the obligations referred to in Article 8b to include any other financial credit products;

(b) whether the requirements referred to in Articles 6, 6a and 7 have sufficiently mitigated conflicts of interest;

(c) whether the scope of the rotation mechanism referred to in Article 6b should be extended to other asset classes and whether it is appropriate to use differentiated lengths of periods across asset classes;

(d) the appropriateness of existing and alternative remuneration models;

(e) whether there is a need to implement other measures to foster competition in the credit rating market;

(f) the appropriateness of additional initiatives to promote competition in the credit rating market against the background of the evolution of the structure of the sector;

(g) whether there is a need to propose measures to address contractual over-reliance on credit ratings;

(h) the market concentration levels, the risks arising from high concentration, and the impact on the overall stability of the financial sector.

6. The Commission shall, at least annually, inform the European Parliament and the Council of any new equivalence decisions referred to in Article 5(6) that have been adopted during the reporting period.;

(25) Article 39a is replaced by the following:

*'Article 39a*

**ESMA's staffing and resources**

By 21 June 2014, ESMA shall assess its staffing and resources needs arising from the assumption of its powers and duties under this Regulation and shall submit a report to the European Parliament, the Council and the Commission.;

(26) the following Article is inserted:

*'Article 39b*

**Reporting obligations**

1. By 31 December 2015, the Commission shall submit a report to the European Parliament and to the Council on:

(a) the steps taken as regards the deletion of references to credit ratings which trigger or have the potential to trigger sole or mechanistic reliance thereon; and

(b) alternative tools to enable investors to make their own credit risk assessment of issuers and of financial instruments,

with a view to deleting all references to credit ratings in Union law for regulatory purposes by 1 January 2020, subject to appropriate alternatives being identified and implemented. ESMA shall provide technical advice to the Commission within the framework of this paragraph.

2. Taking into consideration the situation of the market, the Commission shall, by 31 December 2014, submit a report to the European Parliament and to the Council on the appropriateness of the development of a European creditworthiness assessment for sovereign debt.

Taking into consideration the findings of the report referred to in the first subparagraph and the situation of the market, the Commission shall, by 31 December 2016, submit a report to the European Parliament and to the Council, on the appropriateness and feasibility of supporting a European credit rating agency dedicated to assessing the creditworthiness of Member States' sovereign debt and/or a European credit rating foundation for all other credit ratings.

3. The Commission shall, by 31 December 2013, submit a report to the European Parliament and to the Council regarding the feasibility of a network of smaller credit rating agencies in order to increase competition in the market. That report shall evaluate financial and non-financial support for the creation of such a network, taking into consideration the potential conflicts of interest arising from such public funding. In light of the findings of that report and following ESMA's technical advice, the Commission may re-evaluate and suggest amending Article 8d.;

(27) Annex I is amended in accordance with Annex I to this Regulation;

(28) Annex III is amended in accordance with Annex II to this Regulation.

#### Article 2

##### 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 Strasbourg, 21 May 2013.

*For the European Parliament*  
*The President*  
M. SCHULZ

*For the Council*  
*The President*  
L. CREIGHTON

Notwithstanding the first paragraph,

(1) points 7(a), 9 and 10, point 11 in relation to Article 8d of Regulation (EC) No 1060/2009 and points 12 and 27 of Article 1 of this Regulation shall apply from 1 June 2018 for the purposes of the assessment referred to in:

(a) Article 4(3)(b) of Regulation (EC) No 1060/2009 as to whether third-country requirements are at least as stringent as the requirements referred to in that point; and

(b) point (b) of the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009 as to whether credit rating agencies in third countries are subject to legally binding rules which are equivalent to those referred to in that point;

(2) point 8 of Article 1 of this Regulation in relation to Article 6a(1)(a) of Regulation (EC) No 1060/2009 shall apply from 21 June 2014 as regards any shareholder or member of a credit rating agency which on 15 November 2011 held 5 % or more of the capital of more than one credit rating agency;

(3) point 15 of Article 1 shall apply from 21 June 2015.

## ANNEX I

Annex I to Regulation (EC) No 1060/2009 is amended as follows:

(1) Section B is amended as follows:

(a) point 1 is replaced by the following:

- '1. A credit rating agency shall identify, eliminate, or manage and disclose, clearly and prominently, any actual or potential conflicts of interest that may influence the analyses and judgments of its rating analysts, employees, or any other natural person whose services are placed at the disposal or under the control of the credit rating agency and who are directly involved in credit rating activities and persons approving credit ratings and rating outlooks.'

(b) point 3 is amended as follows:

(i) in the first subparagraph, the introductory part is replaced by the following:

- '3. A credit rating agency shall not issue a credit rating or a rating outlook in any of the following circumstances, or shall, in the case of an existing credit rating or rating outlook, immediately disclose where the credit rating or rating outlook is potentially affected by the following:'

(ii) the following point is inserted after point (a):

- '(aa) a shareholder or member of a credit rating agency holding 10 % or more of either the capital or the voting rights of that credit rating agency or being otherwise in a position to exercise significant influence on the business activities of the credit rating agency, holds 10 % or more of either the capital or the voting rights of the rated entity or of a related third party, or of any other ownership interest in that rated entity or third party, excluding holdings in diversified collective investment schemes and managed funds such as pension funds or life insurance, which do not put him in a position to exercise significant influence on the business activities of the scheme;'

(iii) the following point is inserted after point (b):

- '(ba) the credit rating is issued with respect to a rated entity or a related third party which holds 10 % or more of either the capital or the voting rights of that credit rating agency;'

(iv) the following point is inserted after point (c):

- '(ca) a shareholder or member of a credit rating agency holding 10 % or more of either the capital or the voting rights of that credit rating agency or being otherwise in a position to exercise significant influence on the business activities of the credit rating agency, is a member of the administrative or supervisory board of the rated entity or a related third party;'

(v) the second subparagraph is replaced by the following:

- 'A credit rating agency shall also immediately assess whether there are grounds for re-rating or withdrawing the existing credit rating or rating outlook.'

(c) the following points are inserted:

- '3a. A credit rating agency shall disclose where an existing credit rating or rating outlook is potentially affected by either of the following:

- (a) a shareholder or member of a credit rating agency holding 5 % or more of either the capital or the voting rights of that credit rating agency or being otherwise in a position to exercise significant influence on the business activities of the credit rating agency, holds 5 % or more of either the capital or the voting rights of the rated entity or of a related third party, or of any other ownership interest in that rated entity or third party. This excludes holdings in diversified collective investment schemes and managed funds such as pension funds or life insurance, which do not put him in a position to exercise significant influence on the business activities of the scheme;

- (b) a shareholder or member of a credit rating agency holding 5 % or more of either the capital or the voting rights of that credit rating agency or being otherwise in a position to exercise significant influence on the business activities of the credit rating agency, is a member of the administrative or supervisory board of the rated entity or a related third party.
- 3b. Provided that the information is known or should be known by the credit rating agency, the obligations in point 3(aa), (ba) and (ca) and point 3a shall also relate to:
- (a) indirect shareholders covered by Article 10 of Directive 2004/109/EC; and
- (b) companies that control or exercise a dominant influence, directly or indirectly, on the credit rating agency, and which are covered by Article 10 of Directive 2004/109/EC.
- 3c. A credit rating agency shall ensure that fees charged to its clients for the provision of credit rating and ancillary services are not discriminatory and are based on actual costs. Fees charged for credit rating services shall not depend on the level of the credit rating issued by the credit rating agency or on any other result or outcome of the work performed.;
- (d) in point 4, the first subparagraph is replaced by the following:
- ‘4. Neither a credit rating agency nor any person holding, directly or indirectly, at least 5 % of either the capital or voting rights of the credit rating agency or being otherwise in a position to exercise significant influence on the business activities of the credit rating agency shall provide consultancy or advisory services to the rated entity or a related third party regarding the corporate or legal structure, assets, liabilities or activities of that rated entity or related third party.;
- (e) point 7 is amended as follows:
- (i) point (a) is replaced by the following:
- ‘(a) for each credit rating and rating outlook decision, the identity of the rating analysts participating in the determination of the credit rating or rating outlook, the identity of the persons who have approved the credit rating or rating outlook, information as to whether the credit rating was solicited or unsolicited, and the date on which the credit rating action was taken.;
- (ii) point (d) is replaced by the following:
- ‘(d) the records documenting the established procedures and rating methodologies used by the credit rating agency to determine credit ratings and rating outlooks.;
- (iii) point (e) is replaced by the following:
- ‘(e) the internal records and files, including non-public information and work papers, used to form the basis of any credit rating and rating outlook decision taken.;
- (2) Section C is amended as follows:
- (a) in point 2, the introductory part is replaced by the following:
- ‘2. No person referred to in point 1 shall participate in or otherwise influence the determination of a credit rating or rating outlook of any particular rated entity if that person.;
- (b) in point 3, point (b) is replaced by the following:
- ‘(b) do not disclose any information about credit ratings, possible future credit ratings or rating outlooks of the credit rating agency, except to the rated entity or a related third party.;



(c) point 7 is replaced by the following:

'7. A person referred to in point 1 shall not take up a key management position with the rated entity or a related third party within six months of the issuing of a credit rating or rating outlook.'

(d) point 8 is replaced by the following:

'8. For the purposes of Article 7(4):

(a) credit rating agencies shall ensure that the lead rating analysts shall not be involved in credit rating activities related to the same rated entity or a related third party for a period exceeding four years;

(b) credit rating agencies other than those appointed by an issuer or a related third party and all credit rating agencies issuing sovereign ratings shall ensure that:

(i) the rating analysts shall not be involved in credit rating activities related to the same rated entity or a related third party for a period exceeding five years;

(ii) the persons approving credit ratings shall not be involved in credit rating activities related to the same rated entity or a related third party for a period exceeding seven years.

The persons referred to in points (a) and (b) of the first subparagraph shall not be involved in credit rating activities related to the rated entity or a related third party referred to in those points within two years of end of the periods set out in those points.;

(3) the title of Section D is replaced by the following:

'Rules on the presentation of credit ratings and rating outlooks';

(4) Part I of Section D is amended as follows:

(a) point 1 is replaced by the following:

'1. A credit rating agency shall ensure that any credit rating and rating outlook states clearly and prominently the name and job title of the lead rating analyst in a given credit rating activity and the name and position of the person primarily responsible for approving the credit rating or rating outlook.;

(b) point 2 is amended as follows:

(i) point (a) is replaced by the following:

'(a) all substantially material sources, including the rated entity or, where appropriate, a related third party, which were used to prepare the credit rating or rating outlook are indicated together with an indication as to whether the credit rating or rating outlook has been disclosed to that rated entity or related third party and amended following that disclosure before being issued.;

(ii) points (d) and (e) are replaced by the following:

'(d) the date at which the credit rating was first released for distribution and when it was last updated including any rating outlooks is indicated clearly and prominently;

(e) information is given as to whether the credit rating concerns a newly issued financial instrument and whether the credit rating agency is rating the financial instrument for the first time; and

(f) in the case of a rating outlook, the time horizon is provided during which a change in the credit rating is expected.

When publishing credit ratings or rating outlooks, credit rating agencies shall include a reference to the historical default rates published by ESMA in a central repository in accordance with Article 11(2), together with an explanatory statement of the meaning of those default rates.;

- (c) the following point is inserted:
- ‘2a. A credit rating agency shall accompany the disclosure of rating methodologies, models and key rating assumptions with guidance which explains assumptions, parameters, limits and uncertainties surrounding the models and rating methodologies used in credit ratings, including simulations of stress scenarios undertaken by the credit rating agency when establishing the credit ratings, credit rating information on cash-flow analysis it has performed or is relying upon and, where applicable, an indication of any expected change in the credit rating. Such guidance shall be clear and easily comprehensible.’;
- (d) point 3 is replaced by the following:
- ‘3. The credit rating agency shall inform the rated entity during working hours of the rated entity and at least a full working day before publication of the credit rating or the rating outlook. That information shall include the principal grounds on which the credit rating or rating outlook is based in order to give the rated entity an opportunity to draw attention of the credit rating agency to any factual errors.’;
- (e) the first subparagraph of point 4 is replaced by the following:
- ‘4. A credit rating agency shall state clearly and prominently when disclosing credit ratings or rating outlooks any attributes and limitations of the credit rating or rating outlook. In particular, a credit rating agency shall prominently state when disclosing any credit rating or rating outlook whether it considers satisfactory the quality of information available on the rated entity and to what extent it has verified information provided to it by the rated entity or a related third party. If a credit rating or a rating outlook involves a type of entity or financial instrument for which historical data is limited, the credit rating agency shall make clear, in a prominent place, such limitations.’;
- (f) the first subparagraph of point 5 is replaced by the following:
- ‘5. When announcing a credit rating or a rating outlook, a credit rating agency shall explain in its press releases or reports the key elements underlying the credit rating or the rating outlook.’;
- (g) the following point is added:
- ‘6. A credit rating agency shall disclose on its website, and notify ESMA on an ongoing basis, information about all entities or debt instruments submitted to it for their initial review or for preliminary rating. Such disclosure shall be made whether or not issuers contract with the credit rating agency for a final rating.’;
- (5) points 3 and 4 of Part II of Section D are deleted;
- (6) in Section D, the following Part is added:
- ‘III. Additional obligations in relation to sovereign ratings
1. Where a credit rating agency issues a sovereign rating or a related rating outlook, it shall simultaneously provide a detailed research report explaining all the assumptions, parameters, limits and uncertainties and any other information taken into account in determining that sovereign rating or rating outlook. That report shall be publicly available, clear and easily comprehensible.
  2. A publicly available research report accompanying a change compared to the previous sovereign rating or related rating outlook shall include at least the following:
    - (a) a detailed evaluation of the changes to the quantitative assumption justifying the reasons for the rating change and their relative weight. The detailed evaluation should include a description of the following: per capita income, GDP Growth, inflation, fiscal balance, external balance, external debt, an indicator for economic development, an indicator for default and any other relevant factor taken into account. This should be complemented with the relative weight of each factor;
    - (b) a detailed evaluation of the changes to the qualitative assumption justifying the reasons for the rating change and their relative weight;
    - (c) a detailed description of the risks, limits and uncertainties related to the rating change; and
    - (d) a summary of minutes of the meeting of the rating committee that decided on the rating change.

3. Without prejudice to point 3 of Part I of Section D of Annex I, where a credit rating agency issues sovereign ratings or related rating outlooks, it shall publish them in accordance with Article 8a, after the close of business hours of regulated markets and at least one hour before their opening.
  4. Without prejudice to point 5 of Part I of Section D of Annex I, in accordance with which, when announcing a credit rating, a credit rating agency is to explain in its press releases or reports the key elements underlying the credit rating and although national policies may serve as an element underlying a sovereign rating, policy recommendations, prescriptions or guidelines to rated entities, including States or regional or local authorities of States, shall not be part of sovereign ratings or rating outlooks.;
- (7) in Part I of Section E, point 3 is replaced by the following:
- '3. the policy of the credit rating agency concerning the publication of credit ratings and other related communications including rating outlooks.;
- (8) in the first subparagraph of point 2 of Part II of Section E, point (a) is replaced by the following:
- (a) list of fees charged to each client for individual credit ratings and any ancillary services;
  - (aa) its pricing policy, including the fees structure and pricing criteria in relation to credit ratings for different asset classes.;
- (9) Part III of Section E is amended as follows:
- (a) point 3 is replaced by the following:
    - '3. statistics on the allocation of its staff to new credit ratings, credit rating reviews, methodology or model appraisal and senior management, and on the allocation of staff to rating activities with regard to the different asset classes (corporate — structured finance — sovereign).;
  - (b) point 7 is replaced by the following:
    - '7. financial information on the revenue of the credit rating agency, including total turnover, divided into fees from credit rating and ancillary services with a comprehensive description of each, including the revenues generated from ancillary services provided to clients of credit rating services and the allocation of fees to credit ratings of different asset classes. Information on total turnover shall also include a geographical allocation of that turnover to revenues generated in the Union and revenues worldwide.;
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## ANNEX II

Annex III to Regulation (EC) No 1060/2009 is amended as follows:

(1) Section I is amended as follows:

(a) points 19 to 22 are replaced by the following:

- ‘19. The credit rating agency infringes Article 6(2), in conjunction with point 1 of Section B of Annex I, by not identifying, eliminating, or managing and disclosing, clearly or prominently, any actual or potential conflicts of interest that may influence the analyses or judgments of its rating analysts, employees, or any other natural person whose services are placed at the disposal or under the control of the credit rating agency and who are directly involved in credit rating activities or persons approving credit ratings and rating outlooks.
20. The credit rating agency infringes Article 6(2), in conjunction with the first paragraph of point 3 of Section B of Annex I, by issuing a credit rating or rating outlook in any of the circumstances set out in the first paragraph of that point or, in the case of an existing credit rating or rating outlook, by not disclosing immediately that the credit rating or rating outlook is potentially affected by those circumstances.
- 20a. The credit rating agency infringes Article 6(2), in conjunction with point 3a of Section B of Annex I, by not disclosing that an existing credit rating or rating outlook is potentially affected by any of the circumstances set out in letters (a) and (b) of that point.
21. The credit rating agency infringes Article 6(2), in conjunction with the second paragraph of point 3 of Section B of Annex I, by not immediately assessing whether there are grounds for re-rating or withdrawing an existing credit rating or rating outlook.
22. The credit rating agency infringes Article 6(2), in conjunction with the first paragraph of point 4 of Section B of Annex I, by rating entities where the credit rating agency itself or any person holding, directly or indirectly, at least 5 % of either the capital or the voting rights of the credit rating agency, or being otherwise in a position to exercise significant influence on the business activities of the credit rating agency, provides consultancy or advisory services to that rated entity or a related third party regarding the corporate or legal structure, assets, liabilities or activities of that rated entity or related third party.’;

(b) the following point is inserted:

- ‘22a. The credit rating agency infringes Article 6a(1) when one of its shareholders or members holding at least 5 % of the capital or the voting rights in that credit rating agency or in a company which has the power to exercise control or a dominant influence over that credit rating agency, is in breach of one of the prohibitions set out in points (a) to (e) of that paragraph, with the exception of that set out in point (a) for holdings in diversified collective investment schemes, including managed funds such as pension funds or life insurance, provided that the holdings in such schemes do not put the shareholder or member of a credit rating agency in a position to exercise significant influence on the business activities of those schemes.’;

(c) the following points are inserted:

‘26a. The credit rating agency which entered into a contract for the issuing of credit ratings on re-securitisations infringes Article 6b(1) by issuing credit ratings on new re-securitisations with underlying assets from the same originator for a period exceeding four years.

26b. The credit rating agency which entered into a contract for the issuing of credit ratings on re-securitisations infringes Article 6b(3) by entering into a new contract for the issuing of credit ratings on re-securitisations with underlying assets from the same originator for a period equal to the duration of the expired contract referred to in paragraphs 1 and 2 of Article 6b but not exceeding four years.’;

(d) point 33 is replaced by the following:

‘33. The credit rating agency infringes Article 7(3), in conjunction with point 2 of Section C of Annex I, by not ensuring that a person referred to in point 1 of that Section does not participate in or otherwise influence the determination of a credit rating or rating outlook as set out in point 2 of that Section.’;

(e) point 36 is replaced by the following:

‘36. The credit rating agency infringes Article 7(3), in conjunction with point 7 of Section C of Annex I, by not ensuring that a person referred to in point 1 of that Section does not take up a key management position with the rated entity or a related third party within six months of the issuing of a credit rating or rating outlook.’;

(f) points 38, 39 and 40 are replaced by the following:

‘38. The credit rating agency infringes Article 7(4), in conjunction with point (i) of point (b) of the first paragraph of point 8 Section C of Annex I, by not ensuring that, where it provides unsolicited credit ratings or sovereign ratings, a rating analyst is not involved in credit rating activities related to the same rated entity or a related third party for a period exceeding five years.

39. The credit rating agency infringes Article 7(4), in conjunction with point (ii) of point (b) of the first paragraph of point 8 of Section C of Annex I, by not ensuring that, where it provides unsolicited credit ratings or sovereign ratings, a person approving credit ratings is not involved in credit rating activities related to the same rated entity or a related third party for a period exceeding seven years.

40. The credit rating agency infringes Article 7(4), in conjunction with the second paragraph of point 8 of Section C of Annex I, by not ensuring that a person referred to in points (a) and (b) of the first paragraph of that point is not involved in credit rating activities related to the rated entity or a related third party referred to in those points within two years of the end of the periods set out in those points.’;

(g) point 42 is replaced by the following:

‘42. The credit rating agency infringes Article 8(2) by not adopting, implementing or enforcing adequate measures to ensure that the credit ratings and rating outlooks it issues are based on a thorough analysis of all the information that is available to it and that is relevant to its analysis according to the applicable rating methodologies.’;

(h) the following points are inserted:

‘42a. The credit rating agency infringes Article 8(2) by using information falling outside the scope of Article 8(2).



42b. The credit rating agency infringes Article 8(2a) by issuing changes in credit ratings that do not comply with its published rating methodologies.;

(i) point 46 is replaced by the following:

'46. The credit rating agency infringes the first sentence of the first subparagraph of Article 8(5) by not monitoring its credit ratings other than sovereign ratings or by not reviewing its credit ratings other than sovereign ratings or rating methodologies on an ongoing basis or at least annually.;

(j) the following point is inserted:

'46a. The credit rating agency infringes the second subparagraph of Article 8(5), in conjunction with the first sentence of the first subparagraph of Article 8(5), by not monitoring its sovereign ratings or by not reviewing its sovereign ratings on an ongoing basis or at least every six months.;

(k) the following point is inserted:

'49a. The credit rating agency infringes point (c) of Article 8(6), in conjunction with point (c) of Article 8(7), by not re-rating a credit rating where errors in the rating methodologies or in their application affect that credit rating.;

(l) the following points are added:

'55. The credit rating agency infringes Article 8a(3) by not publishing on its website, or by not submitting to ESMA on an annual basis, in accordance with point 3 of Part III of Section D of Annex I, a calendar at the end of December for the following 12 months, setting a maximum of three dates that fall on a Friday for the publication of unsolicited sovereign ratings and related rating outlooks and setting dates that fall on a Friday for the publication of solicited sovereign ratings and related rating outlooks.

56. The credit rating agency infringes Article 8a(4) by deviating from the announced calendar where this is not necessary to fulfil its obligations under Article 8(2), Article 10(1) or Article 11(1) or by not providing a detailed explanation of the reasons for the deviation from the announced calendar.

57. The credit rating agency infringes Article 10(2), in conjunction with point 3 of Part III of Section D of Annex I, by publishing a sovereign rating or a related rating outlook during business hours of regulated markets or less than one hour before their opening.

58. The credit rating agency infringes Article 10(2), in conjunction with point 4 of Part III of Section D of Annex I, by including policy recommendations, prescriptions or guidelines to rated entities, including States or regional or local authorities of States, as part of a sovereign rating or a related rating outlook.

59. The credit rating agency infringes Article 8a(2) by basing its public communications relating to changes in sovereign ratings, and which are not credit ratings, rating outlooks or accompanying press releases, as referred to in point 5 of Part I of Section D of Annex I, on information within the sphere of the rated entity, where such information has been disclosed without the consent of the rated entity, unless it is available from generally accessible sources or unless there are no legitimate reasons for the rated entity not to give its consent to the disclosure of the information.

60. The credit rating agency infringes Article 8a(1) by not issuing individual publicly available country reports when announcing the revision of a given group of countries.
  61. The credit rating agency infringes point 1 of Part III of Section D of Annex I by issuing a sovereign rating or a related rating outlook without simultaneously providing a detailed research report explaining all the assumptions, parameters, limits and uncertainties and any other information taken into account in determining that sovereign rating or rating outlook or by not making that report publicly available, clear and easily comprehensible.
  62. The credit rating agency infringes point 2 of Part III of Section D of Annex I by not issuing a publicly available research report accompanying a change compared to the previous sovereign rating or related rating outlook or by not including in that report at least the information referred to in point 2(a) to (d) of Part III of Section D of Annex I;
- (2) Section II is amended as follows:
- (a) the following points are inserted:
    - ‘3a. The credit rating agency infringes the third subparagraph of Article 14(3) by not notifying ESMA of the intended material changes to the existing rating methodologies, models or key rating assumptions or of the proposed new rating methodologies, models or key rating assumptions when it publishes the rating methodologies on its website in accordance with Article 8(5a).
    - 3b. The credit rating agency infringes the first subparagraph of Article 8(5a) by not publishing on its website the proposed new rating methodologies or the proposed material changes to the rating methodologies that could have an impact on a credit rating together with an explanation of the reasons for and the implications of the changes.
    - 3c. The credit rating agency infringes point (a) of Article 8(7) by not notifying ESMA of discovered errors in its rating methodologies or in their application or by not explaining their impact on its credit ratings, including the need to review its issued credit ratings.’;
  - (b) the following point is inserted:
    - ‘4a. The credit rating agency infringes Article 11a(1) by not making available the required information or by not providing that information in the required format as referred to in that paragraph.’;
  - (c) point 7 is replaced by the following:
    - ‘7. The credit rating agency infringes Article 23b(1) by failing to provide information in response to a decision requiring information pursuant to Article 23b(3), or by providing incorrect or misleading information in response to a simple request for information or a decision.’;
  - (d) point 8 is replaced by the following:
    - ‘8. The credit rating agency infringes point (c) of Article 23c(1) by failing to provide an explanation, or by providing an incorrect or misleading explanation, on facts or documents related to the subject matter and purpose of an inspection.’;

(3) Section III is amended as follows:

(a) the following points are inserted:

- '4a. The credit rating agency infringes point (aa) of Article 8(6), where it intends to use new rating methodologies, by not informing ESMA or by not publishing immediately on its website the results of the consultation and those new rating methodologies together with a detailed explanation thereof and their date of application.
- 4b. The credit rating agency infringes point (a) of Article 8(7) by not notifying affected rated entities of discovered errors in its rating methodologies or in their application, or by not explaining the impact on its credit ratings, including the need to review its issued credit ratings.
- 4c. The credit rating agency infringes point (b) of Article 8(7) by not publishing on its website discovered errors in its rating methodologies or in their application where such errors have an impact on the credit rating agency's credit ratings.;

(b) points 6 and 7 are replaced by the following:

- '6. The credit rating agency infringes Article 10(2), in conjunction with point 1 or 2, the first paragraph of point 4 or points 5 or 6, of Part I of Section D of Annex I, or Parts II or III of Section D of Annex I, by not providing the information as required by those provisions when presenting a credit rating or a rating outlook.
  - 7. The credit rating agency infringes Article 10(2), in conjunction with point 3 of Part I of Section D of Annex I, by not informing the rated entity during working hours of the rated entity and at least a full working day before publication of the credit rating or the rating outlook.;
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