

Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (Text with EEA relevance)

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

[^{F1}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.]

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\)](#).

Article 2

Scope

1 This Regulation applies to credit ratings issued by credit rating agencies registered in the [^{F1}Union] and which are disclosed publicly or distributed by subscription.

- 2 This Regulation does not apply to:
- a private credit ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription;
 - b credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships;
 - c credit ratings produced by export credit agencies in accordance with point 1.3 of Part 1 of Annex VI to Directive 2006/48/EC; or
 - d credit ratings produced by the central banks and which:
 - (i) are not paid for by the rated entity;
 - (ii) are not disclosed to the public;

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Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- (iii) are issued in accordance with the principles, standards and procedures which ensure the adequate integrity and independence of credit rating activities as provided for by this Regulation; and
- (iv) do not relate to financial instruments issued by the respective central banks' Member States.

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4 In order to ensure the uniform application of paragraph 2(d), the Commission may, upon submission of a request by a Member State, in accordance with the regulatory procedure referred to in Article 38(3) and in accordance with paragraph 2(d) of this Article, adopt a decision stating that a central bank falls within the scope of that point and that its credit ratings are therefore exempt from the application of this Regulation.

The Commission shall publish on its website the list of central banks falling within the scope of paragraph 2(d) of this Article.

Textual Amendments

F1 Substituted by 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).

F2 Deleted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Article 3

Definitions

- 1 For the purpose of this Regulation, the following definitions shall apply:
- a 'credit rating' means an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories;
 - b 'credit rating agency' means a legal person whose occupation includes the issuing of credit ratings on a professional basis;
 - c 'home Member State' means the Member State in which the credit rating agency has its registered office;
 - d 'rating analyst' means a person who performs analytical functions that are necessary for the issuing of a credit rating;
 - e 'lead rating analyst' means a person with primary responsibility for elaborating a credit rating or for communicating with the issuer with respect to a particular credit rating or, generally, with respect to the credit rating of a financial instrument issued by that issuer and, where relevant, for preparing recommendations to the rating committee in relation to such rating;

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- f 'rated entity' means a legal person whose creditworthiness is explicitly or implicitly rated in the credit rating, whether or not it has solicited that credit rating and whether or not it has provided information for that credit rating;
- [^{F1}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;]
- h 'rating category' means a rating symbol, such as a letter or numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the types of rated entities, issuers and financial instruments or other assets;
- i 'related third party' means the originator, arranger, sponsor, servicer or any other party that interacts with a credit rating agency on behalf of a rated entity, including any person directly or indirectly linked to that rated entity by control;
- j 'control' means the relationship between a parent undertaking and a subsidiary, as described in Article 1 of Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts⁽¹⁾, or a close link between any natural or legal person and an undertaking;
- k 'financial instrument' means any of the instruments listed in Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments⁽²⁾;
- l 'structured finance instrument' means a financial instrument or other assets resulting from a securitisation transaction or scheme referred to in Article 4(36) of Directive 2006/48/EC;
- m 'group of credit rating agencies' means a group of undertakings established in the [^{F1}Union] consisting of a parent undertaking and its subsidiaries within the meaning of Articles 1 and 2 of Directive 83/349/EEC as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC and whose occupation includes the issuing of credit ratings. For the purposes of Article 4(3)(a), a group of credit rating agencies shall also include credit rating agencies established in third countries;
- n 'senior management' means the person or persons who effectively direct the business of the credit rating agency and the member or members of its administrative or supervisory board;
- o 'credit rating activities' means data and information analysis and the evaluation, approval, issuing and review of credit ratings[^{F3};
- [^{F4}p 'competent authorities' means the authorities designated by each Member State in accordance with Article 22;]
- [^{F5}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)⁽³⁾;
- 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

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- 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)⁽⁴⁾;
- 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⁽⁵⁾;
- 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⁽⁶⁾ 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;]
- [^{F1}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;]
- [^{F5}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.]

2 For the purposes of paragraph 1(a), the following shall not be considered to be credit ratings:

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- a recommendations within the meaning of Article 1(3) of Commission Directive 2003/125/EC⁽⁷⁾;
- b investment research as defined in Article 24(1) of Directive 2006/73/EC⁽⁸⁾ and other forms of general recommendation, such as ‘buy’, ‘sell’ or ‘hold’, relating to transactions in financial instruments or to financial obligations; or
- c opinions about the value of a financial instrument or a financial obligation.

[^{F53} 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⁽⁹⁾.]

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\)](#).
- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).
- F4** Inserted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).
- F5** Inserted by [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 \(Text with EEA relevance\)](#).

Article 4

Use of credit ratings

[^{F11} 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.]

2 A credit rating agency established in the [^{F1}Union] and registered in accordance with this Regulation shall be deemed to have issued a credit rating when the credit rating has been published on the credit rating agency’s website or by other means or distributed by subscription and presented and disclosed in accordance with the obligations of Article 10, clearly identifying that the credit rating is endorsed in accordance with paragraph 3 of this Article.

3 A credit rating agency established in the [^{F1}Union] and registered in accordance with this Regulation may endorse a credit rating issued in a third country only when credit rating activities resulting in the issuing of such a credit rating comply with the following conditions:

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- a the credit rating activities resulting in the issuing of the credit rating to be endorsed are undertaken in whole or in part by the endorsing credit rating agency or by credit rating agencies belonging to the same group;
- [^{F1}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⁽¹⁰⁾, 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.]
- [^{F3}c the ability of ESMA to assess and monitor the compliance of the credit rating agency established in the third country with the requirements referred to in point (b) is not limited;
- d the credit rating agency makes available on request to ESMA all the information necessary to enable ESMA to supervise on an ongoing basis the compliance with the requirements of this Regulation;]
- e there is an objective reason for the credit rating to be elaborated in a third country;
- f the credit rating agency established in the third country is authorised or registered, and is subject to supervision, in that third country;
- g the regulatory regime in that third country prevents interference by the competent authorities and other public authorities of that third country with the content of credit ratings and methodologies; and
- [^{F3}h there is an appropriate cooperation arrangement between ESMA and the relevant supervisory authority of the credit rating agency established in a third country. ESMA shall ensure that such a cooperation arrangement shall specify at least:
 - (i) the mechanism for the exchange of information between ESMA and the relevant supervisory authority of the credit rating agency established in a third country; and
 - (ii) the procedures concerning the coordination of supervisory activities in order to enable ESMA to monitor credit rating activities resulting in the issuing of the endorsed credit rating on an ongoing basis.]

4 A credit rating endorsed in accordance with paragraph 3 shall be considered to be a credit rating issued by a credit rating agency established in the [^{F1}Union] and registered in accordance with this Regulation.

A credit rating agency established in the [^{F1}Union] and registered in accordance with this Regulation shall not use such endorsement with the intention of avoiding the requirements of this Regulation.

5 The credit rating agency that has endorsed a credit rating issued in a third country in accordance with paragraph 3 shall remain fully responsible for such a credit rating and for the fulfilment of conditions set out therein.

6 Where the Commission has recognised, in accordance with Article 5(6), the legal and supervisory framework of a third country as equivalent to the requirements of this Regulation and the cooperation arrangements referred to in Article 5(7) are operational, the credit rating agency endorsing credit ratings issued in that third country shall no longer be required to verify or demonstrate that the condition laid down in paragraph 3(g) of this Article is fulfilled.

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Textual Amendments

- F1** Substituted by 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).
- F3** Substituted by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies (Text with EEA relevance).

Article 5

Equivalence and certification based on equivalence

1 The credit ratings that are related to entities established or financial instruments issued in third countries and that are issued by a credit rating agency established in a third country may be used in the [F1Union] under Article 4(1) without being endorsed in accordance with Article 4(3), provided that:

- a the credit rating agency is authorised or registered in and is subject to supervision in that third country;
- b the Commission has adopted an equivalence decision in accordance with paragraph 6 of this Article, recognising the legal and supervisory framework of that third country as equivalent to the requirements of this Regulation;
- c the cooperation arrangements referred to in paragraph 7 of this Article are operational;
- d the credit ratings issued by the credit rating agency and its credit rating activities are not of systemic importance to the financial stability or integrity of the financial markets of one or more Member States; and
- e the credit rating agency is certified in accordance with paragraph 2 of this Article.

[F32 The credit rating agency referred to in paragraph 1 may apply for certification. The application shall be submitted to ESMA in accordance with the relevant provisions of Article 15.]

[F33 ESMA shall examine and decide on the application for certification in accordance with the procedure set out in Article 16. The certification decision shall be based on the criteria set out in points (a) to (d) of paragraph 1 of this Article.]

The certification decision shall be notified and published in accordance with Article 18.

[F34 The credit rating agency referred to in paragraph 1 may also apply to be exempted:

- a on a case-by-case basis from complying with some or all of the requirements set out in Section A of Annex I and Article 7(4) if the credit rating agency is able to demonstrate that the requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings;
- b from the requirement of physical presence in the Union where such a requirement would be too burdensome and disproportionate in view of the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings.

An application for an exemption under point (a) or (b) of the first subparagraph shall be submitted by the credit rating agency together with the application for certification. When assessing such an application, ESMA shall take into consideration the size of the credit rating agency referred to in paragraph 1, having regard to the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings, as

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well as the impact of the credit ratings issued by the credit rating agency on the financial stability and integrity of the financial markets of one or more Member States. On the basis of those considerations, ESMA may grant such exemption to the credit rating agency referred to in paragraph 1.]

^{F65}

6 The Commission may adopt an equivalence decision in accordance with the regulatory procedure referred to in Article 38(3), stating that the legal and supervisory framework of a third country ensures that credit rating agencies authorised or registered in that third country comply with legally binding requirements which are equivalent to the requirements resulting from this Regulation and which are subject to effective supervision and enforcement in that third country. A third-country legal and supervisory framework may be considered equivalent to this Regulation if that framework fulfils at least the following conditions:

- a credit rating agencies in that third country are subject to authorisation or registration and are subject to effective supervision and enforcement on an ongoing basis;
- ^{F1b} 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]
- c the regulatory regime in that third country prevents interference by the supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies.

^{F3}In order to take account of developments on financial markets, the Commission shall adopt, by means of delegated acts in accordance with Article 38a, and subject to the conditions of Articles 38b and 38c, measures to specify further or amend the criteria set out in points (a), (b) and (c) of the second subparagraph of this paragraph.]

^{F37} ESMA shall establish cooperation agreements with the relevant supervisory authorities of third countries whose legal and supervisory frameworks have been considered equivalent to this Regulation in accordance with paragraph 6. Such arrangements shall specify at least:

- a the mechanism for the exchange of information between ESMA and the relevant supervisory authorities of the third countries concerned; and
- b the procedures concerning the coordination of supervisory activities.]

^{F18} 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.]

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\)](#).
- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).
- F6** Deleted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

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[^{F5}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 mechanistically 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.

Textual Amendments

F5 Inserted by [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 \(Text with EEA relevance\)](#).

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⁽¹¹⁾, 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⁽¹²⁾ 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⁽¹³⁾ 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.

Textual Amendments

F5 Inserted by [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 \(Text with EEA relevance\)](#).

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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.]

Textual Amendments

- F5** Inserted by [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 \(Text with EEA relevance\)](#).

TITLE II

ISSUING OF CREDIT RATINGS

Article 6

Independence and avoidance of conflicts of interest

[^{F1} 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.]

2 In order to ensure compliance with paragraph 1, a credit rating agency shall comply with the requirements set out in Sections A and B of Annex I.

[^{F13} 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:]

- a the credit rating agency has fewer than 50 employees;
- b the credit rating agency has implemented measures and procedures, in particular internal control mechanisms, reporting arrangements and measures ensuring independence of rating analysts and persons approving credit ratings, which ensure the effective compliance with the objectives of this Regulation; and
- c the size of the credit rating agency is not determined in such a way as to avoid compliance with the requirements of this Regulation by a credit rating agency or a group of credit rating agencies.

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[^{F3}In the case of a group of credit rating agencies, ESMA shall ensure that at least one of the credit rating agencies in the group is not exempted from complying with the requirements of points 2, 5 and 6 of Section A of Annex I and Article 7(4).]

[^{F54} 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.]

Textual Amendments

- F1** Substituted by 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).
- F3** Substituted by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies (Text with EEA relevance).
- F5** Inserted by 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).

[^{F5}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.

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Textual Amendments

- F5** Inserted by [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 \(Text with EEA relevance\)](#).

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.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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.]

Textual Amendments

F5 Inserted by [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 \(Text with EEA relevance\)](#).

Article 7

Rating analysts, employees and other persons involved in the issuing of credit ratings

1 A credit rating agency shall ensure that rating analysts, its employees and any other natural person whose services are placed at its disposal or under its control and who are directly involved in credit rating activities have appropriate knowledge and experience for the duties assigned.

2 A credit rating agency shall ensure that persons referred to in paragraph 1 shall not be allowed to initiate or participate in negotiations regarding fees or payments with any rated entity, related third party or any person directly or indirectly linked to the rated entity by control.

3 A credit rating agency shall ensure that persons referred to in paragraph 1 meet the requirements set out in Section C of Annex I.

4 A credit rating agency shall establish an appropriate gradual rotation mechanism with regard to the rating analysts and persons approving credit ratings as defined in Section C of Annex I. That rotation mechanism shall be undertaken in phases on the basis of individuals rather than of a complete team.

[^{F15} 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.]

Textual Amendments

F1 Substituted by [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 \(Text with EEA relevance\)](#).

Article 8

Methodologies, models and key rating assumptions

1 A credit rating agency shall disclose to the public the methodologies, models and key rating assumptions it uses in its credit rating activities as defined in point 5 of Part I of Section E of Annex I.

[^{F12} 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

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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.]

3 A credit rating agency shall use rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing.

4 Where a credit rating agency is using an existing credit rating prepared by another credit rating agency with respect to underlying assets or structured finance instruments, it shall not refuse to issue a credit rating of an entity or a financial instrument because a portion of the entity or the financial instrument had been previously rated by another credit rating agency.

A credit rating agency shall record all instances where in its credit rating process it departs from existing credit ratings prepared by another credit rating agency with respect to underlying assets or structured finance instruments providing a justification for the differing assessment.

5 A credit rating agency shall monitor credit ratings and review its credit ratings and methodologies on an ongoing basis and at least annually, in particular where material changes occur that could have an impact on a credit rating. A credit rating agency shall establish internal arrangements to monitor the impact of changes in macroeconomic or financial market conditions on credit ratings.

[^{F5}Sovereign ratings shall be reviewed at least every six months.]

[^{F5a} 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.]

[^{F16} 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:]

a immediately, using the same means of communication as used for the distribution of the affected credit ratings, disclose the likely scope of credit ratings to be affected;

[^{F5aa} 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;]

b review the affected credit ratings as soon as possible and no later than six months after the change, in the meantime placing those ratings under observation; and

c re-rate all credit ratings that have been based on those methodologies, models or key rating assumptions if, following the review, the overall combined effect of the changes affects those credit ratings.

[^{F57} Where a credit rating agency becomes aware of errors in its rating methodologies or in their application it shall immediately:

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Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- 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.]

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\)](#).
- F5** Inserted by [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 \(Text with EEA relevance\)](#).

[^{F5} 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.

Textual Amendments

- F5** Inserted by [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 \(Text with EEA relevance\)](#).

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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:

- 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;
- the frequency with which the information referred to in point (a) is to be updated;
- 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.

Textual Amendments

F5 Inserted by [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 \(Text with EEA relevance\)](#).

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:

- they do not belong to the same group of credit rating agencies;
- they are not a shareholder or a member of any of the other credit rating agencies;

Status: Point in time view as at 21/06/2015.

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- 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.

Textual Amendments

- F5** Inserted by [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 \(Text with EEA relevance\)](#).

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.]

Textual Amendments

- F5** Inserted by [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 \(Text with EEA relevance\)](#).

[^{F3}Article 9

Outsourcing

Outsourcing of important operational functions shall not be undertaken in such a way as to impair materially the quality of the credit rating agency's internal control and the ability of ESMA to supervise the credit rating agency's compliance with obligations under this Regulation.]

Status: Point in time view as at 21/06/2015.

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Textual Amendments

- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 10

Disclosure and presentation of credit ratings

[^{F1} 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.]

3 When a credit rating agency issues credit ratings for structured finance instruments, it shall ensure that rating categories that are attributed to structured finance instruments are clearly differentiated using an additional symbol which distinguishes them from rating categories used for any other entities, financial instruments or financial obligations.

4 A credit rating agency shall disclose its policies and procedures regarding unsolicited credit ratings.

[^{F15} 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.]

Unsolicited credit ratings shall be identified as such.

[^{F36} A credit rating agency shall not use the name of ESMA or any competent authority in such a way that would indicate or suggest endorsement or approval by ESMA or any competent authority of the credit ratings or any credit rating activities of the credit rating agency.]

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\)](#).
- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 11

General and periodic disclosures

1 A credit rating agency shall fully disclose to the public and update immediately information relating to the matters set out in Part I of Section E of Annex I.

[^{F12} 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.]

[^{F33} A credit rating agency shall provide annually, by 31 March, to ESMA information relating to matters set out in point 2 of Part II of Section E of Annex I.]

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\)](#).
- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

[^{F5} 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.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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

Textual Amendments

F5 Inserted by [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 \(Text with EEA relevance\).](#)

Article 12

Transparency report

A credit rating agency shall publish annually a transparency report which includes information on matters set out in Part III of Section E of Annex I. The credit rating agency shall publish its transparency report at the latest three months after the end of each financial year and shall ensure that it remains available on the website of the agency for at least five years.

Article 13

Public disclosure fees

A credit rating agency shall not charge a fee for the information provided in accordance with Articles 8 to 12.

TITLE III

SURVEILLANCE OF CREDIT RATING ACTIVITIES

CHAPTER I

Registration procedure

Article 14

Requirement for registration

1 A credit rating agency shall apply for registration for the purposes of Article 2(1) provided that it is a legal person established in the [^{F1}Union].

[^{F32} The registration shall be effective for the entire territory of the Union once the decision to register a credit rating agency adopted by ESMA as referred to in Article 16(3) or Article 17(3) has taken effect.]

3 A registered credit rating agency shall comply at all times with the conditions for initial registration.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

[^{F3}A credit rating agency shall, without undue delay, notify ESMA of any material changes to the conditions for initial registration, including any opening or closing of a branch within the Union.]

[^{F5}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.]

[^{F34} Without prejudice to Article 16 or 17, ESMA shall register the credit rating agency if it concludes from the examination of the application that the credit rating agency complies with the conditions for the issuing of credit ratings set out in this Regulation, taking into consideration Articles 4 and 6.

5 ESMA shall not impose requirements regarding registration which are not provided for in this Regulation.]

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\)](#).
- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).
- F5** Inserted by [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 \(Text with EEA relevance\)](#).

[^{F3} Article 15

Application for registration

1 The credit rating agency shall submit an application for registration to ESMA. The application shall contain information on the matters set out in Annex II.

2 Where a group of credit rating agencies applies for registration, the members of the group shall mandate one of their number to submit all the applications to ESMA on behalf of the group. The mandated credit rating agency shall provide the information on the matters set out in Annex II for each member of the group.

3 A credit rating agency shall submit its application in any of the official languages of the institutions of the Union. The provisions of Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community⁽¹⁴⁾ shall apply *mutatis mutandis* to any other communication between ESMA and the credit rating agencies and their staff.

4 Within 20 working days of receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the credit rating agency is to provide additional information.

After assessing an application as complete, ESMA shall notify the credit rating agency accordingly.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 16

Examination of the application for registration of a credit rating agency by ESMA

- 1 ESMA shall, within 45 working days of the notification referred to in the second subparagraph of Article 15(4), examine the application for registration of a credit rating agency based on the compliance of the credit rating agency with the conditions set out in this Regulation.
- 2 ESMA may extend the period of examination by 15 working days, in particular if the credit rating agency:
 - a envisages endorsing credit ratings as referred to in Article 4(3);
 - b envisages using outsourcing; or
 - c requests exemption from compliance in accordance with Article 6(3).
- 3 Within 45 working days of the notification referred to in the second subparagraph of Article 15(4), or within 60 working days thereof where paragraph 2 of this Article applies, ESMA shall adopt a fully reasoned decision to register or refuse registration.
- 4 The decision adopted by ESMA pursuant to paragraph 3 shall take effect on the fifth working day following its adoption.

Textual Amendments

- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 17

Examination of the applications for registration of a group of credit rating agencies by ESMA

- 1 ESMA shall, within 55 working days of the notification referred to in the second subparagraph of Article 15(4), examine the applications for registration of a group of credit rating agencies based on the compliance of those credit rating agencies with the conditions set out in this Regulation.
- 2 ESMA may extend the period of examination by 15 working days, in particular if any of the credit rating agencies in the group:
 - a envisages endorsing credit ratings as referred to in Article 4(3);
 - b envisages using outsourcing; or
 - c requests exemption from compliance in accordance with Article 6(3).

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

3 Within 55 working days of the notification as referred to in the second subparagraph of Article 15(4), or within 70 working days thereof where paragraph 2 of this Article applies, ESMA shall adopt a fully reasoned individual decision to register or refuse registration for each credit rating agency of the group.

4 The decision adopted by ESMA pursuant to paragraph 3 shall take effect on the fifth working day following its adoption.

Textual Amendments

F3 Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 18

Notification of a decision to register, refuse or withdraw registration, and publication of the list of registered credit rating agencies

1 Within five working days of the adoption of a decision under Article 16, 17 or 20 ESMA shall notify its decision to the credit rating agency concerned. Where ESMA refuses to register the credit rating agency or withdraws the registration of the credit rating agency, it shall provide full reasons in its decision.

[^{F12} ESMA shall communicate to the Commission, EBA, EIOPA, the competent authorities and the sectoral competent authorities, any decision under Article 16, 17 or 20.]

3 ESMA shall publish on its website a list of credit rating agencies registered in accordance with this Regulation. That list shall be updated within five working days following the adoption of a decision under Article 16, 17 or 20. The Commission shall publish that updated list in the *Official Journal of the European Union* within 30 days following such update.

Textual Amendments

F1 Substituted by [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 \(Text with EEA relevance\)](#).

F3 Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 19

Registration and supervisory fees

[^{F11} 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.]

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

2 The Commission shall adopt a regulation on fees. That regulation shall determine in particular the type of fees and the matters for which fees are due, the amount of the fees, the way in which they are to be paid and the way in which ESMA is to reimburse competent authorities in respect of any costs that they may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 30.

The amount of a fee charged to a credit rating agency shall cover all administrative costs and be proportionate to the turnover of the credit rating agency concerned.

The Commission shall adopt the regulation on fees referred to in the first subparagraph by means of a delegated act in accordance with Article 38a and subject to the conditions of Articles 38b and 38c.

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\).](#)
- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\).](#)

Article 20

Withdrawal of registration

1 Without prejudice to Article 24, ESMA shall withdraw the registration of a credit rating agency where the credit rating agency:

- a expressly renounces the registration or has provided no credit ratings for the preceding six months;
- b obtained the registration by making false statements or by any other irregular means; or
- c no longer meets the conditions under which it was registered.

2 The competent authority of a Member State in which credit ratings issued by the credit rating agency concerned are used and which considers that one of the conditions referred to in paragraph 1 has been met may request that ESMA examine whether the conditions for the withdrawal of the registration of the credit rating agency concerned are met. If ESMA decides not to withdraw the registration of the credit rating agency concerned, it shall provide full reasons.

3 The decision on the withdrawal of registration shall take immediate effect throughout the Union, subject to the transitional period for the use of credit ratings referred to in Article 24(4).

Textual Amendments

- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\).](#)

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

CHAPTER II

Supervision by ESMA

Article 21

ESMA

1 Without prejudice to Article 25a, ESMA shall ensure that this Regulation is applied.

2 In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall issue and update guidelines on the cooperation between ESMA, the competent authorities and the sectoral competent authorities for the purposes of this Regulation and for those of the relevant sectoral legislation, including the procedures and detailed conditions relating to the delegation of tasks.

3 In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall, in cooperation with EBA and EIOPA, issue and update guidelines on the application of the endorsement regime under Article 4(3) of this Regulation by 7 June 2011.

[^{F14} ESMA shall develop draft regulatory technical standards to specify:]

- a the information to be provided by a credit rating agency in its application for registration as set out in Annex II;
- b information that the credit rating agency must provide for the application for certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5;
- c the presentation of the information, including structure, format, method and period of reporting, that credit rating agencies shall disclose in accordance with Article 11(2) and point 1 of Part II of Section E of Annex I;
- d the assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3);

[^{F1e} 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.]

[^{F5} 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.]

[^{F5a} 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.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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.]

[^{F15} 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).]

6 ESMA shall present annually to the European Parliament, the Council and the Commission a report on supervisory measures taken and penalties imposed by ESMA under this Regulation, including fines and periodic penalty payments.

7 ESMA shall cooperate with EBA and EIOPA in performing its tasks and shall consult EBA and EIOPA before issuing and updating guidelines and submitting draft regulatory technical standards referred to in paragraphs 2, 3 and 4.]

Textual Amendments

- F1** Substituted by 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).
- F5** Inserted by 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).

Article 22

Competent authorities

1 By 7 June 2010, each Member State shall designate a competent authority for the purpose of this Regulation.

2 Competent authorities shall be adequately staffed, with regard to capacity and expertise, in order to be able to apply this Regulation.

[^{F4}Article 22a

[^{F1}Examination of compliance with methodology requirements]

1 In the exercise of its ongoing supervision of credit rating agencies registered under this Regulation, ESMA shall examine regularly compliance with Article 8(3).

2 Without prejudice to Article 23, ESMA shall also in the framework of the examination referred to in paragraph 1:

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Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- a verify the execution of back-testing by credit rating agencies;
- b analyse the results of that back-testing; and
- c verify that the credit rating agencies have processes in place to take into account the results of the back-testing in their rating methodologies.]

Textual Amendments

- F1** Substituted by 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).
- F4** Inserted by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies (Text with EEA relevance).

[^{F3} Article 23

Non-interference with content of ratings or methodologies

In carrying out their duties under this Regulation, ESMA, the Commission or any public authorities of a Member State shall not interfere with the content of credit ratings or methodologies.

Article 23a

Exercise of the powers referred to in Articles 23b to 23d

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 23b to 23d shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 23b

Requests for information

1 ESMA may by simple request or by decision require credit rating agencies, persons involved in credit rating activities, rated entities and related third parties, third parties to whom the credit rating agencies have outsourced operational functions or activities and persons otherwise closely and substantially related or connected to credit rating agencies or credit rating activities to provide all information that is necessary in order to carry out its duties under this Regulation.

- 2 When sending a simple request for information under paragraph 1, ESMA shall:
- a refer to this Article as the legal basis for the request;
 - b state the purpose of the request;
 - c specify what information is required;
 - d set a time-limit within which the information is to be provided;
 - e inform the person from whom the information is requested that there is no obligation to provide the information but that any reply to the request for information must not be incorrect or misleading;

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- f indicate the fine provided for in Article 36a, in conjunction with point 7 of Section II of Annex III, where the answers to questions asked are incorrect or misleading.
- 3 When requiring the supply of information under paragraph 1 by decision, ESMA shall:
- a refer to this Article as the legal basis for the request;
 - b state the purpose of the request;
 - c specify what information is required;
 - d set a time-limit within which the information is to be provided;
 - e indicate the periodic penalty payments provided for in Article 36b where the production of the required information is incomplete;
 - f indicate the fine provided for in Article 36a, in conjunction with point 7 of Section II of Annex III, where the answers to questions asked are incorrect or misleading; and
 - g indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.
- 4 The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.
- 5 ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 who are concerned by the request for information are domiciled or established.

Article 23c

General investigations

- 1 In order to carry out its duties under this Regulation, ESMA may conduct all necessary investigations of persons referred to in Article 23b(1). To that end, the officials of and other persons authorised by ESMA shall be empowered to:
- a examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;
 - b take or obtain certified copies of or extracts from such records, data, procedures and other material;
 - c summon and ask any person referred to in Article 23b(1) or their representatives or staff for oral or written explanations on facts or documents related to the subject matter and purpose of the inspection and to record the answers;
 - d interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
 - e request records of telephone and data traffic.
- 2 The officials of and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 36b where the production of the required records, data, procedures or any other material, or the answers to questions asked of the persons referred to in Article 23b(1) are not provided or are incomplete, and the fines provided for in Article 36a, in conjunction with point 8 of Section II of Annex III,

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Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

where the answers to questions asked of the persons referred to in Article 23b(1) are incorrect or misleading.

3 The persons referred to in Article 23b(1) shall submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 36b, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice of the European Union.

4 In good time before the investigation, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5 If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6 Where authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.

Article 23d

On-site inspections

1 In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 23b(1). Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on-site inspection without prior announcement.

2 The officials of and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 23c(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3 The officials of and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection, and the periodic penalty payments provided for in Article 36b where the persons concerned do not submit to the inspection. In good time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where it is to be conducted.

4 The persons referred to in Article 23b(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection,

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specify the date on which it is to begin and indicate the periodic penalty payments provided for in Article 36b, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice of the European Union. ESMA shall take such decisions after consulting the competent authority of the Member State where the inspection is to be conducted.

5 Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, upon the request of ESMA, actively assist the officials of and other persons authorised by ESMA. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the competent authority of the Member State concerned may also attend the on-site inspections upon request.

6 ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 23c(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 23c(1).

7 Where the officials of and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

8 If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

9 Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.

Article 23e

Procedural rules for taking supervisory measures and imposing fines

1 Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annex III, ESMA shall appoint an independent investigating officer within ESMA to investigate the matter. The investigating officer shall not be involved or have been involved in the direct or indirect supervision or registration process of the credit rating agency concerned and shall perform his functions independently from ESMA's Board of Supervisors.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

2 The investigating officer shall investigate the alleged infringements, taking into account any comments submitted by the persons subject to investigation, and shall submit a complete file with his findings to ESMA's Board of Supervisors.

In order to carry out his tasks, the investigating officer may exercise the power to require information in accordance with Article 23b and to conduct investigations and on-site inspections in accordance with Articles 23c and 23d. When using those powers, the investigating officer shall comply with Article 23a.

Where carrying out his tasks, the investigating officer shall have access to all documents and information gathered by ESMA in its supervisory activities.

3 Upon completion of his investigation and before submitting the file with his findings to ESMA's Board of Supervisors, the investigating officer shall give the persons subject to investigation the opportunity to be heard on the matters being investigated. The investigating officer shall base his findings only on facts on which the persons subject to investigation have had the opportunity to comment.

The rights of defence of the persons concerned shall be fully respected during investigations under this Article.

4 When submitting the file with his findings to ESMA's Board of Supervisors, the investigating officer shall notify that fact to the persons subject to investigation. The persons subject to investigation shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

5 On the basis of the file containing the investigating officer's findings and, when requested by the persons concerned, after having heard the persons subject to investigation in accordance with Articles 25 and 36c, ESMA's Board of Supervisors shall decide if one or more of the infringements listed in Annex III has been committed by the persons who have been subject to investigation, and in such case, shall take a supervisory measure in accordance with Article 24 and impose a fine in accordance with Article 36a.

6 The investigating officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.

7 The Commission shall adopt further rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and shall adopt detailed rules on the limitation periods for the imposition and enforcement of penalties.

The rules referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 38a and subject to the conditions of Articles 38b and 38c.

8 ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical facts, or from facts which are substantially the same, has acquired the force of *res judicata* as the result of criminal proceedings under national law.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Article 24

Supervisory measures by ESMA

1 Where, in accordance with Article 23e(5), ESMA's Board of Supervisors finds that a credit rating agency has committed one of the infringements listed in Annex III, it shall take one or more of the following decisions:

- a withdraw the registration of the credit rating agency;
- b temporarily prohibit the credit rating agency from issuing credit ratings with effect throughout the Union, until the infringement has been brought to an end;
- c suspend the use, for regulatory purposes, of the credit ratings issued by the credit rating agency with effect throughout the Union, until the infringement has been brought to an end;
- d require the credit rating agency to bring the infringement to an end;
- e issue public notices.

2 When taking the decisions referred to in paragraph 1, ESMA's Board of Supervisors shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

- a the duration and frequency of the infringement;
- b whether the infringement has revealed serious or systemic weaknesses in the undertaking's procedures or in its management systems or internal controls;
- c whether financial crime was facilitated, occasioned or otherwise attributable to the infringement;
- d whether the infringement has been committed intentionally or negligently.

3 Before taking the decisions referred to in points (a), (b) and (c) of paragraph 1, ESMA's Board of Supervisors shall inform EBA and EIOPA thereof.

4 Credit ratings may continue to be used for regulatory purposes following the adoption of the decisions referred to in points (a) and (c) of paragraph 1 during a period not exceeding:

- a 10 working days from the date ESMA's decision is made public under paragraph 5 if there are credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation; or
- b three months from the date ESMA's decision is made public under paragraph 5 if there are no credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation.

ESMA's Board of Supervisors may extend, including following a request by EBA or EIOPA, the period referred to in point (b) of the first subparagraph by three months in exceptional circumstances relating to the potential for market disruption or financial instability.

5 Without undue delay, ESMA's Board of Supervisors shall notify any decision adopted pursuant to paragraph 1 to the credit rating agency concerned and shall communicate any such decision to the competent authorities and the sectoral competent authorities, the Commission, EBA and EIOPA. It shall make public any such decision on its website within 10 working days from the date when it was adopted.

When making public its decision as referred to in the first subparagraph, ESMA's Board of Supervisors shall also make public the right for the credit rating agency concerned

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to appeal the decision, the fact, where relevant, that such an appeal has been lodged, specifying that such an appeal does not have suspensive effect, and the fact that it is possible for the Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

Article 25

Hearing of the persons concerned

1 Before taking any decision under Article 24(1), ESMA's Board of Supervisors shall give the persons subject to the proceedings the opportunity to be heard on ESMA's findings. ESMA's Board of Supervisors shall base its decisions only on findings on which the persons subject to the proceedings have had the opportunity to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA's Board of Supervisors may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2 The rights of defence of the persons subject to the proceedings shall be fully respected during the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information.

f¹ 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.]

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\)](#).

CHAPTER III

Cooperation between ESMA, competent authorities and sectoral competent authorities

Article 26

Obligation to cooperate

ESMA, EBA, EIOPA, the competent authorities and the sectoral competent authorities shall cooperate where it is necessary for the purposes of this Regulation and for those of the relevant sectoral legislation.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Article 27

Exchange of information

1 ESMA, the competent authorities, and the sectoral competent authorities shall, without undue delay, supply each other with the information required for the purposes of carrying out their duties under this Regulation and under the relevant sectoral legislation.

2 ESMA may transmit to the central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, to the European Systemic Risk Board and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks. Similarly, such authorities or bodies shall not be prevented from communicating to ESMA information that ESMA may need in order to carry out its duties under this Regulation.]

^{F6}Article 28

[^{F6}Cooperation in case of a request with regard to on-site inspections or investigations

.....

Textual Amendments

F6 Deleted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\).](#)

^{F6}Article 29

Colleges of competent authorities]

.....

Textual Amendments

F6 Deleted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\).](#)

[^{F3}Article 30

Delegation of tasks by ESMA to competent authorities

1 Where it is necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 21(2). Such specific supervisory tasks may, in particular, include the power to request information in accordance with Article 23b and to conduct investigations and on-site inspections in accordance with Article 23d(6).

2 Prior to the delegation of a task, ESMA shall consult the relevant competent authority. Such consultation shall concern:

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- a the scope of the task to be delegated;
- b the timetable for the performance of the task to be delegated; and
- c the transmission of necessary information by and to ESMA.

3 In accordance with the regulation on fees to be adopted by the Commission pursuant to Article 19(2), ESMA shall reimburse a competent authority for the costs incurred as a result of carrying out delegated tasks.

4 ESMA shall review the delegation referred to in paragraph 1 at appropriate intervals. A delegation of tasks may be revoked at any time.

A delegation of tasks shall not affect the responsibility of ESMA and shall not limit ESMA's ability to conduct and oversee the delegated activity. Supervisory responsibilities under this Regulation, including registration decisions, final assessments and follow-up decisions concerning infringements, shall not be delegated.

Article 31

Notifications and suspension requests by competent authorities

1 Where a competent authority of a Member State finds that acts contrary to this Regulation are being, or have been, carried out on the territory of its own or of another Member State, it shall give notice of that fact in as specific a manner as possible to ESMA. Where the competent authority considers it appropriate for investigatory purposes, the competent authority may also suggest to ESMA that it assess the need to use the powers under Articles 23b and 23c in relation to the credit rating agency involved in those acts.

ESMA shall take appropriate action. It shall inform the notifying competent authority of the outcome and, as far as possible, of any significant interim developments.

2 Without prejudice to the duty to notify set out in paragraph 1, where the notifying competent authority of a Member State considers that a registered credit rating agency, whose credit ratings are used within the territory of that Member State, breaches the obligations arising from this Regulation and the infringements are sufficiently serious and persistent to have a significant impact on the protection of investors or on the stability of the financial system in that Member State, the notifying competent authority may request that ESMA suspend the use, for regulatory purposes, of credit ratings of the credit rating agency concerned by the financial institutions and other entities referred to in Article 4(1). The notifying competent authority shall provide ESMA with full reasons for its request.

Where ESMA considers that the request is not justified, it shall inform the notifying competent authority in writing, setting out the reasons. Where ESMA considers that the request is justified, it shall take the appropriate measures to resolve the issue.

Article 32

Professional secrecy

1 The obligation of professional secrecy shall apply to ESMA, the competent authorities, and all persons who work or who have worked for ESMA, for the competent authorities or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA. Information covered by professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

2 All the information that, under this Regulation, is acquired by, or exchanged between, ESMA, the competent authorities, the sectoral competent authorities or other authorities and bodies referred to in Article 27(2), shall be considered confidential, except where ESMA or the competent authority or other authority or body concerned states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.]

^{F6}Article 33

[^{F6}Disclosure of information from another Member State]

Textual Amendments

F6 Deleted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

CHAPTER IV

Cooperation with third countries

^{F3}Article 34

Agreement on exchange of information

ESMA may conclude cooperation agreements on exchange of information with the supervisory authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 32.

Such exchange of information shall be intended for the performance of the tasks of ESMA or those supervisory authorities.

With regard to transfer of personal data to a third country, ESMA shall apply 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⁽¹⁵⁾.

Textual Amendments

F3 Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Article 35

Disclosure of information from third countries

ESMA may disclose the information received from supervisory authorities of third countries only if ESMA or a competent authority has obtained the express agreement of the supervisory authority that has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that supervisory authority gave its agreement or where such disclosure is necessary for legal proceedings.]

Textual Amendments

- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

[^{F5}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

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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.]

TITLE IV

PENALTIES, COMMITTEE PROCEDURE, REPORTING AND TRANSITIONAL AND FINAL PROVISIONS

CHAPTER I

[^{F3}Penalties, fines, periodic penalty payments, committee procedure, delegated powers and reporting]

Article 36

Penalties

[^{F3}Member States shall lay down the rules on penalties applicable to infringements of Article 4(1) and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Member States shall ensure that the sectoral competent authority disclose to the public every penalty that has been imposed for infringements of Article 4(1), unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.]

By 7 December 2010 the Member States shall notify the rules referred to in the first subparagraph to the Commission. They shall notify the Commission without delay of any subsequent amendment thereto.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

[^{F4}Article 36a

Fines

1 Where, in accordance with Article 23e(5), ESMA's Board of Supervisors finds that a credit rating agency has, intentionally or negligently, committed one of the infringements listed in Annex III, it shall adopt a decision imposing a fine in accordance with paragraph 2.

An infringement by a credit rating agency shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that the credit rating agency or its senior management acted deliberately to commit the infringement.

2 The basic amount of the fines referred to in paragraph 1 shall be included within the following limits:

- [^{F1}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;]
- c for the infringements referred to in points 9, 10, 26, 36, 44 and 53 of Section I of Annex III, the fines shall amount to at least EUR 100 000 and shall not exceed EUR 200 000;
- [^{F1}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;]
- f for the infringements referred to in point 3 of Section II of Annex III, the fines shall amount to at least EUR 10 000 and shall not exceed EUR 50 000;
- g for the infringements referred to in points 1 to 3 and 11 of Section III of Annex III, the fines shall amount to at least EUR 150 000 and shall not exceed EUR 300 000;
- [^{F1}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;]
- i for the infringements referred to in points 5, 7 and 9 of Section III of Annex III, the fines shall amount to at least EUR 40 000 and shall not exceed EUR 100 000.

In order to decide whether the basic amount of the fines should be set at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover in the preceding business year of the credit rating agency concerned. The basic amount shall be at the lower end of the limit for credit rating agencies whose annual turnover is below EUR 10 million, the middle of the limit for the credit rating agencies whose annual turnover is between EUR 10 and 50 million and the higher end of the limit for the credit rating agencies whose annual turnover is higher than EUR 50 million.

3 The basic amounts defined within the limits set out in paragraph 2 shall be adjusted, if need be, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in Annex IV.

The relevant aggravating coefficient shall be applied one by one to the basic amount. If more than one aggravating coefficient is applicable, the difference between the basic

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amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.

The relevant mitigating coefficient shall be applied one by one to the basic amount. If more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.

4 Notwithstanding paragraphs 2 and 3, the fine shall not exceed 20 % of the annual turnover of the credit rating agency concerned in the preceding business year and, where the credit rating agency has directly or indirectly benefitted financially from the infringement, the fine shall be at least equal to that financial benefit.

Where an act or omission of a credit rating agency constitutes more than one infringement listed in Annex III, only the higher fine calculated in accordance with paragraphs 2 and 3 and related to one of those infringements shall apply.

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\)](#).
- F4** Inserted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 36b

Periodic penalty payments

1 ESMA's Board of Supervisors shall by decision impose a periodic penalty payment in order to compel:

- a a credit rating agency to put an end to an infringement, in accordance with a decision taken pursuant to point (d) of Article 24(1);
- b a person referred to in Article 23b(1) to supply complete information which has been required by a decision pursuant to Article 23b;
- c a person referred to in Article 23b(1) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision taken pursuant to Article 23c;
- d a person referred to in Article 23b(1) to submit to an on-site inspection ordered by a decision taken pursuant to Article 23d.

2 A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed on a daily basis until the credit rating agency or person concerned complies with the relevant decision referred to in paragraph 1.

3 Notwithstanding paragraph 2, the amount of a periodic penalty payment shall be 3 % of the average daily turnover in the preceding business year or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4 A periodic penalty payment may be imposed for a period of no more than six months following the notification of ESMA's decision.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F4** Inserted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 36c

Hearing of the persons subject to the proceedings

1 Before taking any decision imposing a fine and/or periodic penalty payment under Article 36a or points (a) to (d) of Article 36b(1), ESMA's Board of Supervisors shall give the persons subject to the proceedings the opportunity to be heard on ESMA's findings. ESMA's Board of Supervisors shall base its decisions only on findings on which the persons subject to the proceedings have had the opportunity to comment.

2 The rights of defence of the persons subject to the proceedings shall be fully respected during the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of ESMA.

Textual Amendments

- F4** Inserted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 36d

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1 ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 36a and 36b, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

2 Fines and periodic penalty payments imposed pursuant to Articles 36a and 36b shall be of an administrative nature.

3 Fines and periodic penalty payments imposed pursuant to Articles 36a and 36b shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision without other formality than verification of the authenticity of the decision by the authority which the government of each Member State shall designate for that purpose and shall make known to ESMA and to the Court of Justice of the European Union.

When those formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Enforcement may be suspended only by a decision of the Court of Justice of the European Union. However, the courts of the Member State concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

4 The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Textual Amendments

F4 Inserted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\).](#)

Article 36e

Review by the Court of Justice of the European Union

The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.]

Textual Amendments

F4 Inserted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\).](#)

[^{F3} Article 37

Amendments to Annexes

In order to take account of developments, including international developments, on financial markets, in particular in relation to new financial instruments, the Commission may adopt, by means of delegated acts in accordance with Article 38a and subject to the conditions of Articles 38b and 38c, measures to amend the Annexes, excluding Annex III.]

Article 38

Committee procedure

1 The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC⁽¹⁶⁾.

^{F62}

3 Where reference is made to this paragraph, Article 5 and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F6** Deleted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

f^{F4} Article 38a

Exercise of the delegation

1 The power to adopt delegated acts referred to in the third subparagraph of Article 5(6), Article 19(2), Article 23e(7) and Article 37 shall be conferred on the Commission for a period of four years from 1 June 2011. The Commission shall draw up a report in respect of the delegated power at the latest six months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 38b.

2 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 38b and 38c.

Textual Amendments

- F4** Inserted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 38b

Revocation of the delegation

1 The delegation of power referred to in the third subparagraph of Article 5(6), Article 19(2), Article 23e(7) and Article 37 may be revoked at any time by the European Parliament or by the Council.

2 The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.

3 The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Textual Amendments

- F4** Inserted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Article 38c

Objections to delegated acts

1 The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification.

At the initiative of the European Parliament or the Council that period shall be extended by three months.

2 If, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3 If either the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 of the Treaty on the Functioning of the European Union, the institution which objects shall state the reasons for objecting to the delegated act.]

Textual Amendments

F4 Inserted by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies (Text with EEA relevance).

Article 39

Reports

F71

F62

F73

[F54 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).

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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.]

Textual Amendments

- F5** Inserted by [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 \(Text with EEA relevance\)](#).
- F6** Deleted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).
- F7** Deleted by [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 \(Text with EEA relevance\)](#).

f¹ 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.]

Textual Amendments

- F1** Substituted by [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 \(Text with EEA relevance\)](#).

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

F⁵ 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.]

Textual Amendments

- F5** Inserted by [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 \(Text with EEA relevance\).](#)

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

CHAPTER II

Transitional and final provisions

Article 40

Transitional provision

Credit rating agencies operating in the Community before 7 June 2010 (existing credit rating agencies), which intend to apply for registration under this Regulation, shall adopt all necessary measures to comply with its provisions by 7 September 2010.

Credit rating agencies shall submit their application for registration no earlier than 7 June 2010. Existing credit rating agencies shall submit their application for registration by 7 September 2010

[^{F3}Existing credit rating agencies may continue issuing credit ratings which may be used for regulatory purposes by the financial institutions and other entities referred to in Article 4(1) unless registration is refused. Where registration is refused, Article 24(4) and (5) shall apply.]

Textual Amendments

- F3** Substituted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

^{F4}Article 40a

Transitional measures related to ESMA

1 All competences and duties related to the supervisory and enforcement activity in the field of credit rating agencies, which were conferred on the competent authorities, whether acting as competent authorities of the home Member State or not, and on colleges where those have been established, shall be terminated on 1 July 2011.

However, an application for registration that has been received by the competent authorities of the home Member State or the relevant college by 7 September 2010 shall not be transferred to ESMA, and the decision to register or refuse registration shall be taken by those authorities and the relevant college.

2 Without prejudice to the second subparagraph of paragraph 1, any files and working documents related to the supervisory and enforcement activity in the field of credit rating agencies, including any ongoing examinations and enforcement actions, or certified copies thereof, shall be taken over by ESMA on the date as referred to in paragraph 1.

3 The competent authorities and colleges referred to in paragraph 1 shall ensure that any existing records and working papers, or certified copies thereof, shall be transferred to ESMA as soon as possible and in any event by 1 July 2011. Those competent authorities and colleges shall also render all necessary assistance and advice to ESMA to facilitate effective and efficient transfer and taking-up of supervisory and enforcement activity in the field of credit rating agencies.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

4 ESMA shall act as the legal successor of the competent authorities and colleges referred to in paragraph 1 in any administrative or judicial proceedings that result from supervisory and enforcement activity pursued by those competent authorities and colleges in relation to matters that fall under this Regulation.

5 Any registration of a credit rating agency, in accordance with Chapter I of Title III, by a competent authority referred to in paragraph 1 of this Article shall remain valid after the transfer of competences to ESMA.

6 By 1 July 2014 and within the scope of its ongoing supervision, ESMA shall conduct at least one verification of all credit rating agencies falling under its supervisory competences.]

Textual Amendments

- F4** Inserted by [Regulation \(EU\) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation \(EC\) No 1060/2009 on credit rating agencies \(Text with EEA relevance\)](#).

Article 41

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from its date of entry into force. However:

- Article 4(1) shall apply from 7 December 2010 and
- points (f), (g) and (h) of Article 4(3) shall apply from 7 June 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Status: Point in time view as at 21/06/2015.

Changes to legislation: There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- (1) OJ L 193, 18.7.1983, p. 1.
- (2) OJ L 145, 30.4.2004, p. 1.
- (3) [^{F5}OJ L 335, 17.12.2009, p. 1.]
- (4) [^{F5}OJ L 302, 17.11.2009, p. 32.]
- (5) [^{F5}OJ L 174, 1.7.2011, p. 1.]
- (6) [^{F5}OJ L 201, 27.7.2012, p. 1.]
- (7) OJ L 339, 24.12.2003, p. 73.
- (8) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).
- (9) [^{F5}OJ L 309, 25.11.2005, p. 15.]
- (10) [^{F1}OJ L 331, 15.12.2010, p. 84.]
- (11) [^{F5}OJ L 331, 15.12.2010, p. 12.]
- (12) [^{F5}OJ L 331, 15.12.2010, p. 48.]
- (13) [^{F5}OJ L 331, 15.12.2010, p. 1.]
- (14) [^{F3}OJ 17, 6.10.1958, p. 385/58.]
- (15) [^{F3}OJ L 8, 12.1.2001, p. 1.]
- (16) OJ L 191, 13.7.2001, p. 45.

Textual Amendments

- F1** Substituted by 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).
- F3** Substituted by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies (Text with EEA relevance).
- F5** Inserted by 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).

Status:

Point in time view as at 21/06/2015.

Changes to legislation:

There are outstanding changes not yet made to Regulation (EC) No 1060/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.