
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 35a of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (“the EC Regulation”) by defining certain terms, providing for how certain terms will be interpreted and applied, applying a limitation period for claims under Article 35a, and determining which courts have jurisdiction to hear a claim brought under Article 35a.

Article 35a was inserted into Regulation 1060/2009 by Regulation (EU) No 462/2013, and provides for the civil liability of credit rating agencies when an agency, either intentionally or with gross negligence, commits any of the infringements listed in Annex III to the EC Regulation. Article 35a(4) permits Member States to interpret and apply certain terms used in Article 35a which are not defined therein.

The terms “intention”, “gross negligence”, “impact”, “reasonably relied”, “due care”, and “caused” are defined in regulations 3 to 8.

Regulation 9 provides that where a determination is to be made of whether a limitation of liability is “reasonable and proportionate”, regard shall be had to those of the factors referred to regulations 10 to 12 that the court considers relevant. If any such factors are considered relevant, that indicates that a limitation is reasonable and proportionate.

Regulations 13 to 15 provide for how damages shall be determined where a claimant is successful in a claim made under Article 35a. Where a contract exists between an investor or issuer and a credit rating agency, regulations 13(a) and 14(a) limit the level of damages recoverable under Article 35a to that recoverable under the contract. Where there is no such contract, regulation 13(b) limits the damages recoverable by an issuer of a financial instrument to the increase in the issuer’s financing costs resulting from the affected credit rating, and regulation 14(b) limits the damages recoverable by an investor to those which the investor would recover if the investor had succeeded in a claim in tort. Regulation 15 applies to damages assessed under regulations 13 and 14 the common law principle that a claimant’s damages may be reduced if the claimant fails to mitigate their loss and the provisions of the Law Reform (Contributory Negligence) Act 1954.

Regulation 16 establishes a limitation period of one year during which claims must be brought. Regulation 17 requires that cases under Article 35a be brought in the High Court (in England, Wales and Northern Ireland) or the Court of Session (in Scotland). Regulation 18 requires the Treasury to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. Further information is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and on the HM Treasury website (www.hm-treasury.gov.uk).

Changes to legislation:

There are currently no known outstanding effects for the The Credit Rating Agencies (Civil Liability) Regulations 2013.