COUNCIL OF THE EUROPEAN UNION

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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion prop.:	17308/11 EF 162 ECOFIN 814
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies - political agreement

Delegations will find attached the text of the political agreement on the abovementioned proposal.

REGULATION (EU) No .../2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

amending Regulation (EC) No 1060/2009 on credit rating agencies

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

[1] OJ C , , p.
[2] OJ C , , p.

(1) Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies[1] requires credit rating agencies to comply with rules of conduct in order to mitigate possible conflicts of interest, ensure high quality and sufficient transparency of ratings and the rating process. Following the amendments introduced by Regulation (EU) No 513/2011 of the European Parliament and of the Council[2], the European Supervisory Authority (European Securities and Markets Authority) (ESMA) has been empowered to register and supervise credit rating agencies. This amendment complements the current regulatory framework for credit rating agencies. Some of the most important issues (conflicts of interests due to the issuer-pays model, disclosure for structured finance instruments) have been addressed and the framework will need to be reviewed after having been in place for a reasonable period of time to assess whether it fully resolves these issues. Meanwhile the need to review transparency, procedural requirements and the timing of the publication specifically for sovereign ratings was highlighted by the current sovereign debt crisis.

(2) The European Parliament issued a resolution on credit ratings agencies on 8 June 2011 calling for enhanced regulation on credit rating agencies[3]. At an informal ECOFIN meeting of September 30 and October 1, 2010, the Council of the European Union acknowledged that further efforts should be made to address a number of issues related to credit rating activities, including the risk of over-reliance on credit ratings and the risk of conflict of interests stemming from the remuneration model of rating agencies. The European Council of 23 October 2011 concluded that progress is needed on reducing overreliance on credit ratings.

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1 OJ L 302, 17.11.2009, p.1.
2 OJ L 145, 31.5.2011, p.30.
3 2010/2302/INI.

(3) At the international level the Financial Stability Board (FSB) endorsed on 20 October 2010 principles to reduce authorities' and financial institutions' reliance on CRA ratings. Those principles were endorsed by the G20 Seoul Summit in November 2010. It is therefore appropriate that the national sectoral supervisors assess market participants' practices and encourage those market participants to mitigate the impact of such practices. National sectoral supervisors should decide upon the measures for encouragement. ESMA, and where appropriate with EBA and EIOPA, should act towards facilitating convergence of supervisory practices in accordance with Regulation 1095/2010, and within the framework of the present Regulation.

(3a) Credit rating agencies should make investors aware of the data on the probability of default of ratings and rating outlooks based on historical performance reflected on the central repository created by ESMA.

(3b) The Financial Stability Board (FSB), to which the European Central Bank is a member institution, issued in October 2010 a set of principles for reducing reliance on credit ratings. Pursuant to the FSB principles "central banks should reach their own credit judgments on the financial instruments that they will accept in market operations, both as collateral and as outright purchases. Central bank policies should avoid mechanistic approaches that could lead to unnecessarily abrupt and large changes in the eligibility of financial instruments and the level of haircuts that may exacerbate cliff effects".

Furthermore, the European Central Bank has stated in its Opinion CON/2012/24, that it is committed to supporting the common objective of reducing overreliance on external credit ratings. In this respect, the ECB reports regularly on the various measures taken by the Eurosystem to reduce reliance on credit ratings.

According to Article 284(3) of the TFEU the European Central Bank shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

In accordance with Article 284(3) of the TFEU, the ECB could, in its annual reports on the activities of the ESCB and on monetary policy presented to the European Parliament and the Council, describe how the ECB has implemented the FSB principles on reducing reliance on credit ratings and alternative assessment mechanisms it uses.

(3c) The European Union is working towards reviewing references to external ratings in Union law whenever they trigger or have the potential to trigger sole or mechanistic reliance at a first stage and all references to external ratings at a second stage, with a view to eliminating all such references by 2020, subject to appropriate alternatives to credit risk assessment being identified and implemented.

(4) The relevance of rating outlooks for investors and issuers and their effects on markets are comparable to the relevance and effects of credit ratings. Therefore, all the requirements of Regulation (EC) No 1060/2009 which aim at ensuring that rating actions are free from conflicts of interest, accurate and transparent should also apply to rating outlooks. According to current supervisory practice a number of requirements of the Regulation apply to rating outlooks. This Regulation introduces a definition of rating outlooks and clarifies which specific provisions apply to such outlooks. This should clarify the rules and provide legal certainty. The definition of rating outlooks according to this Regulation should also encompass opinions regarding the likely direction of a credit rating in the short term, commonly referred to as credit watches.

(5) In the medium term, further actions should be evaluated to take ratings out of financial regulation and to eliminate risk-weighting of assets through external ratings. However for the time being credit rating agencies are important participants in the financial markets. As a consequence, the independence and integrity of credit rating agencies and their credit rating activities are of particular importance to guarantee their credibility vis-à-vis market participants, in particular investors and other users of ratings. Regulation 1060/2009 provides that credit rating agencies have to be registered and supervised as their services have considerable impact on the public interest. Credit ratings, unlike investment research, are not mere opinions about a value or a price for a financial instrument or a financial obligation. Credit rating agencies are not mere financial analysts or investment advisors. Credit ratings have regulatory value for regulated investors, such as credit institutions, insurance companies and other institutional investors. Although the incentives to excessively rely on credit ratings are being reduced, credit ratings still drive investment choices, notably because of information asymmetries and for efficiency purposes. In this context, credit rating agencies must be independent and perceived as such by market participants, and their rating methods must be transparent and perceived as such.

(5a) Overreliance on external credit ratings should be reduced and all the automatic effects deriving from ratings should be gradually eliminated. Credit institutions and investment firms should be encouraged to put in place internal procedures in order to make their own credit risk assessment and should encourage investors to perform a due diligence exercise.

Within this framework, this Regulation foresees that financial institutions should not solely or mechanistically rely on ratings. Therefore, those institutions should avoid entering into contracts where they solely or mechanistically rely on ratings and should avoid using external ratings in contracts as the only parameter to evaluate the creditworthiness of investments or decide whether to invest or divest.

(6) Regulation (EC) No 1060/2009 already provided a first round of measures to address the question of independence and integrity of credit rating agencies and their credit rating activities. The objectives of guaranteeing the independence of credit rating agencies and of identifying, managing and, to the extent possible, avoiding any conflict of interest that could arise were already underlying several provisions of that Regulation in 2009. The selection and remuneration of the credit rating agency by the rated entity (issuer-pays model) engenders inherent conflicts of interest . Under this model, there are incentives for credit rating agencies to issue complacency ratings on the issuer in order to secure a long-standing business relationship guaranteeing revenues or in order to secure additional work and revenues. Moreover, relationships between the shareholders of credit rating agencies and the rated entities may cause conflicts of interest, which are not sufficiently dealt with by the existing rules. As a result, credit ratings issued under the issuer-pays model may be perceived as the credit ratings that suit the issuer rather than the credit ratings needed by the investor. Without prejudice to the conclusions of the report to be submitted by the Commission on the issuer-pays model by December 2012 pursuant to Article 39(1) of Regulation (EC) No 1060/2009, it is essential to reinforce the conditions of independence applying to credit rating agencies in order to increase the level of credibility of credit ratings issued under the issuer-pays model.

(6a) In order to increase competition in a market that has been dominated by three credit rating agencies, measures should be taken to encourage the use of smaller credit rating agencies. It has been practice in recent times for issuers to seek ratings from two or more rating agencies, and therefore when two or more ratings are sought, the issuer should consider the possibility to mandate at least one credit rating agency which does not have more than 10 % of the total market share and which could be evaluated by the issuer as capable for rating the relevant issuance or entity.

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

(7a) It is, however, important that the implementation of a rotation mechanism is designed in a way so that the benefits of such a mechanism more than outweigh the negative consequences that a rotation mechanism could also have. For example, frequent rotation could result in increased costs for issuers and credit rating agencies because the cost associated with rating a new entity or instrument is typically higher than the cost of monitoring an already issued rating. Also, it should be taken into consideration that it takes a considerable amount of time and resources to get established, whether as a niche player or as a credit rating agency covering all asset classes. Further, ongoing rotation of credit rating agencies could have a significant impact on the quality and continuity of ratings. Equally important, a rotation mechanism must be implemented with sufficient safeguards to allow the market to gradually adapt before possibly enhancing the mechanism in the future. This could be achieved by limiting the scope of the rotation mechanism to re-securitisations, which is a limited source of bank funding, while allowing already issued ratings to continue to be monitored on a solicited basis even after rotation becomes mandatory. Thus, as a general rule, rotation would only affect new re-securitisations with underlying assets from the same originator. It should then be reviewed at a later point if it is appropriate to maintain the rotation mechanism or to also apply it for other asset classes and, if so, whether other classes warrant a different treatment with respect to for example the length of the maximum duration of the business relationship. In case the rotation mechanism was established for other asset classes, it shall be evaluated the need to introduce an obligation for the agency at the end of the maximum duration period of the contractual relationship to provide a set of information, on the issuer and on the rated financial instruments (handover file), to the incoming agency.

(7b) The market for re-securitisations is an appropriate place to first introduce rotation. Firstly, this is the area of the European securitisations market that has underperformed since the financial crisis, and therefore the need to address conflicts of interest is most relevant for this market segment. Secondly, while the credit risk on debt instruments issued by, for instance, corporates to a high degree depends on the debt servicing capacity of the issuer itself, the credit risk on re-securitisations is generally unique to each transaction. Therefore, when a new re-securitisation is created there is not a great risk of knowledge being lost by hiring a new credit rating agency. In other words, although there is currently only a limited number of credit rating agencies active in the market for rating re-securitisations, this market is more naturally open to competition and a rotation mechanism could be a driver for creating more dynamics in this market. Finally, the market for rating re-securitisations is dominated by a few large credit rating agencies but there are other players who have been building expertise in this area.

(8) Regular rotation of credit rating agencies issuing credit ratings on re-securitisations should bring more diversity to the evaluation of the creditworthiness . Multiple and different views, perspectives and methodologies applied by credit rating agencies should produce more diverse credit ratings and ultimately improve the assessment of the creditworthiness of the re-securitisations. For this diversity to play a role and to avoid complacency of both originators and credit rating agencies, the maximum duration which the credit rating agency is allowed to rate re-securitisations from the same originator must be restricted to a level guaranteeing regular fresh looks at the creditworthiness. A time period of four years would seem appropriate, also considering the need to provide certain continuity within the credit ratings. Where more than three credit rating agencies are mandated, the objectives for a rotation mechanism have already been achieved so the requirement to rotate should not apply. To ensure real competition an exemption should only be available where at least four of the mandated credit rating agencies rate a certain proportion of the outstanding instruments of the originator.

(8a) It is appropriate to structure a rotation mechanism for re-securitisations around the originator. Re-securitisations are issued out of special purpose vehicles without any significant capacity to service the debt. Therefore, structuring rotation around the issuer would leave the rotation mechanism ineffective. Conversely, structuring rotation around the sponsor would mean that the exemption would virtually always apply.

(8b) A rotation mechanism could be an important tool for lowering the barriers to entry to the market for rating re-securitisations. At the same time, however, it could make it more difficult for new market players to secure foothold in the market because they would not be allowed to hold on to the clients they had managed to get a contract with. It is therefore appropriate to introduce an exemption from the rotation mechanism for small credit rating agencies.

(9) The rule requiring rotation of credit rating agencies needs to be enforced in a credible manner to be meaningful. The rotation rule would not achieve its objectives if the outgoing credit rating agency were allowed to rate re-securitisations from the same originator again within a too short period of time. Therefore, it is important to provide for an appropriate period within which such credit rating agency may not be mandated to rate re-securitisations from the same originator again. That period should be sufficiently long to allow the incoming credit rating agency to effectively provide its rating services, to ensure that the re-securitisations are truly exposed to a new scrutiny under a different approach and to guarantee that the credit ratings issued by the new credit rating agency provide enough continuity. At the same time, for a rotation mechanism to function properly, the length of the period is constrained by the supply of credit rating agencies with sufficient expertise in the area of re-securitisations. Therefore, the length of the period should be proportionate and should generally be set to the length of the outgoing credit agency's expired contract but not exceeding four years.

(11) Requiring regular change of credit rating agencies is proportionate to the objective pursued. This requirement only applies to certain regulated institutions (registered credit rating agencies), which provide a service affecting the public interest (credit ratings that can be used for regulatory purposes) under certain conditions (issuer-pays model) and for a particular asset class (re-securitisations). The privilege of having its services recognised as playing an important role in the regulation of the financial services market and being approved to carry out this function, entails the need to respect certain obligations in order to guarantee independence and the perception of independence in all circumstances. A credit rating agency which is prevented from rating re-securitisations from a particular originator would still be allowed to rate re-securitisations from other originators as well as rating other asset classes. In a market context where the rotation rule applies to all players, business opportunities will arise since all credit rating agencies would need to rotate. Moreover, credit rating agencies may always issue unsolicited credit ratings on re-securitisations from the same originator capitalising on their experience. Unsolicited ratings are not constrained by the issuer-pays model and therefore theoretically are less affected by potential conflicts of interests. For credit rating agencies' clients, the maximum duration of the business relationship with a credit rating agency or the rule on the employment of more than one credit rating agency also represents a restriction on their freedom to conduct their own business. However, this restriction is necessary on public-interest grounds considering the interference of the issuer-pays model with the necessary independence of credit rating agencies to guarantee independent credit ratings that can be used by investors for regulatory purposes. At the same time, these restrictions do not go beyond what is necessary and should rather be seen as an element increasing the re-securitisations' creditworthiness towards other parties, and ultimately the market.

(13) The independence of a credit rating agency vis-à-vis a rated entity is also affected by possible conflict of interests of any of its significant shareholders with the rated entity: A shareholder of a credit rating agency could be a member of the administrative or supervisory board of a rated entity or a related third party. The rules of Regulation (EC) No 1060/2009 addressed this type of situation only as regards the conflicts of interest caused by rating analysts, persons approving the credit ratings or other employees of the credit rating agency. The Regulation was, however, silent as regards potential conflicts of interest caused by shareholders or members of credit rating agencies. With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, it is appropriate to extend the existing rules applying to conflicts of interest caused by employees of the credit rating agencies also to those caused by shareholders or members holding a significant position within the credit rating agency. Hence, the credit rating agency should abstain from issuing credit ratings, or should disclose that the credit rating may be affected, where a shareholder or member holding 10 % of the voting rights of that agency is also a member of the administrative or supervisory board of the rated entity or has invested in the rated entity when the investment reaches a certain size.. Furthermore, where a shareholder or member holding 5 % of the voting rights of that agency has invested in the rated entity or is a member of the administrative or supervisory board of the rated entity, it should be disclosed to the public, at least if the investment reaches a certain size. Moreover, where a shareholder or member is in a position to significantly influence the business activity of the credit rating agency, that person should not provide consultancy or advisory services to the rated entity or a related third party regarding its corporate or legal structure, assets, liabilities or activities.

(14) The rules on independence and prevention of conflicts of interest could become ineffective if credit rating agencies were not independent from each other. A sufficiently high number of credit rating agencies, unconnected with both the outgoing credit rating agency in case of rotation and with the credit rating agency providing credit rating services in parallel to the same issuer, is necessary for a workable application of those rules. In the absence of sufficient choice of credit rating agencies for the issuer in the current market, the implementation of these rules aimed at enhancing independence conditions would risk becoming ineffective. Therefore, it is appropriate to require a strict separation of the outgoing agency from the incoming credit rating agency in case of rotation as well as of the two credit rating agencies providing rating services in parallel to the same issuer. The credit rating agencies concerned should not be linked to each other by control, by being part of the same group of credit rating agencies, by being shareholder or member of or being able to exercise voting rights in any of the other agencies, or by being able to appoint members of the administrative, management or supervisory boards of any of the other credit rating agencies.

(14b) Credit rating agencies should establish, maintain, enforce, and document an effective internal control structure governing the implementation of policies and procedures to the prevention and control of possible conflicts of interest and to ensure the independence of ratings, analysts and rating teams regarding shareholders, administrative and management bodies and sales and marketing activities. Standard Operating Procedures (SOPs) should be put in place on the topic of corporate governance, organisational, and management of conflict of interest. SOPs should be periodically reviewed and monitored to evaluate the effectiveness of the internal control structure and whether it should be updated.

(15) The perception of independence of credit rating agencies would be particularly affected should the same shareholders or members be investing in different credit rating agencies not belonging to the same group of credit rating agencies, at least if this investment reaches a certain size that could allow these shareholders or members to exercise a certain influence on the agency's business. Therefore, in order to ensure the independence (and the perception of independence) of credit rating agencies, it is appropriate to provide for stricter rules regarding the relations between the credit rating agencies and their shareholders. For this reason, no person should simultaneously hold a participation of 5 % or more in more than one credit rating agency, unless the agencies concerned belong to the same group.

(16) The objective of ensuring sufficient independence of credit rating agencies entails that investors should not hold simultaneously investments of 5 % or more in more than one credit rating agency. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market[1] requests that those persons controlling 5 % of the voting rights in a listed company should disclose it to the public, because, inter alia, of the interest for investors to know about changes in the voting structure of such company. 5 % of the voting rights is considered therefore to be a major holding capable of influencing the voting structure in a company. It is therefore appropriate to use the 5% level for the purposes of restricting the simultaneous investment in more than one credit rating agency. This measure cannot be considered disproportionate, given that all registered credit rating agencies in the Union are non-listed undertakings therefore not subject to the transparency and procedural rules that apply to listed companies in the EU.

[1] OJ L 390, 31.12.2004, p.38.

Often unlisted undertakings are governed by shareholders' protocols or agreements and the number of shareholders or members is usually low. Therefore, even a minority position in an unlisted credit rating agency could be influential. Nevertheless, in order to ensure that purely economic investments in credit rating agencies are still possible, this limitation to simultaneously investments in more than one credit rating agency should not be extended to investments channelled through collective investment schemes managed by third parties independent from the investor and not subject to his or her influence.

(16a) The provisions regarding conflicts of interest with regard to the shareholder structure should not only refer to direct shareholdings but also to indirect shareholdings as otherwise these rules could be easily circumvented. Credit rating agencies should make all efforts to know their indirect shareholders so that they can avoid any potential conflict of interests in this respect.

(18) The effectiveness of the rules on independence and prevention of conflict of interest which require that credit rating agencies should not provide for a long period of time credit rating services to the same issuer could be undermined if credit rating agencies were allowed to become significant shareholders or members of other credit rating agencies.

(19) It is important to ensure that modifications to the rating methodologies do not result in less rigorous methodologies. For that purpose, issuers, investors and other interested parties should have the opportunity to comment on any intended change of rating methodologies. This will help them to understand the reasons behind new methodologies and for the change in question. Comments provided by issuers and investors on the draft methodologies may provide valuable input for the credit rating agencies in defining the methodologies. ESMA should also be notified of intended changes. Provided that the Regulation attributes to ESMA the power to verify that methodologies used by credit rating agencies are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing, this verification process should not grant ESMA any power to judge the appropriateness of the proposed methodology or of the credit ratings issued following the application of the methodologies. Where appropriate, rating methodologies should take into account financial risks deriving from environmental hazards.

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

(21) Directive xxxx/xx/EU of the European Parliament and of the Council of […] on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms[1] has introduced a provision requiring banks and investment firms to assess the credit risk of entities and financial instruments in which they invest themselves and not to simply rely in this respect on external ratings. This rule should be extended to other financial firms regulated under Union law, including investment managers. For all financial firms, however, this requirement should be enforced in a proportional manner taking into account the nature, scale, and complexity of the financial firm in question. Member States should not be entitled to impose or maintain rules that allow stricter reliance of these investors on external ratings.

(22) Furthermore, the investors' possibilities to make an informed assessment of the credit worthiness of structured finance instruments would be improved if investors were provided with sufficient information on these instruments. For example, as the risk on structured finance instruments to a large extent depends on the quality and performance of the underlying assets it would be relevant to provide investors with more information on the underlying assets. This will reduce investors' dependence on credit ratings. Moreover, disclosing relevant information on structured finance instruments is likely to reinforce the competition between credit rating agencies, because it could lead to an increase in the number of unsolicited ratings. It should be reviewed by January 2016 if it is relevant to extend the scope of this disclosure requirement to other financial products. For example, there are other financial products, such as covered bonds and other secured debt, where the risk to a large extent depends on the characteristics of any underlying collateral and where it could be relevant to provide investors with more information about the collateral.

[1] OJ C , , p.

(23) Investors, issuers and other interested parties should have access to up to date rating information on a central webpage. A European Rating Platform established by ESMA should allow investors to easily compare all ratings that exist with regard to a specific rated entity. It is important that the European Rating Platform webpage shows all available ratings per instrument in order to allow investors to consider the whole variety of opinions before taking their own investment decision. However, in order to not undermine the possibility for credit rating agencies to operate under the investor-pays model, such credit ratings should not be included in the European Rating Platform. The European Rating Platform should help smaller and new credit rating agencies to gain visibility. The European Rating Platform should incorporate ESMA's central repository in order to create one platform, which will include the abovementioned data and the information on historical performance data published by the central repository. The European Parliament supported the establishment of such publication of ratings in its resolution on credit rating agencies of 8 June 2011[1].

[1] 2010/2302(INI).

(24) Credit ratings, whether issued for regulatory purposes or not, have a significant impact on investment decisions and on the image and financial attractiveness of issuers. Hence, credit rating agencies have an important responsibility towards investors and issuers in ensuring that they comply with the rules of Regulation (EC) No 1060/2009 so that their ratings are independent, objective and of adequate quality. However, investors and issuers are not always in a position to enforce the agency's responsibility towards them. It can be particularly difficult to establish civil liability of a CRA in the absence of a contractual relationship between a credit rating agency and, for instance, an investor or an issuer rated on an unsolicited basis. Issuers can also face difficulties in enforcing the agencies' civil liability towards them even when they have a contractual relationship with the credit rating agency: for instance, a downgrade of a credit rating, decided on the basis of an infringement to the CRA regulation committed intentionally or with gross negligence, can impact negatively the reputation and funding costs of an issuer, therefore causing this issuer a damage even if it is not covered by the contractual liability.

Therefore, it is important to provide for an adequate right of redress for investors who have reasonably relied on a credit rating issued in breach of the rules of Regulation (EC) No 1060/2009 as well as for issuers who suffer civil damages because of a credit rating issued in breach of the rules of Regulation (EC) No 1060/2009. The investor and issuer should be able to hold the credit rating agency liable for damages caused by an infringement of that Regulation which had an impact on the rating outcome. While investors and issuers who have a contractual relationship with a credit rating agency may choose to base a claim against a credit rating agency on a breach of contract, the possibility to claim damages for an infringement of the rules in Regulation (EC) No 1060/2009 should be available for all investors and issuers, regardless of whether or not there is a contractual relationship between the parties.

(25) It should be possible for credit rating agencies to be held liable if they infringe intentionally or with gross negligence any obligations imposed on them by Regulation (EC) No 1060/2009. This standard of fault is appropriate because the activity of credit rating involves a certain degree of assessment of complex economic factors and the application of different methodologies may lead to different rating results, none of which can be qualified as incorrect. Also, it is only appropriate to expose credit rating agencies to potentially unlimited liability where they breach the Regulation intentionally or with gross negligence.

(26) The investor or issuer claiming damages for an infringement of the rules in Regulation (EC) No 1060/2009 should put forward accurate and detailed elements indicating that the credit rating agency has committed such an infringement of this Regulation. This should be assessed by the competent court, taking into consideration that the investor or issuer may not have access to information that is purely within the sphere of the credit rating agency.

(27) Regarding matters concerning the civil liability of a credit rating agency, which are not covered or defined by this Regulation, including causation and the concept of gross negligence, such matters should be governed by the applicable national law determined by the relevant rules of International Private Law. In particular, Member States should be able to maintain national civil liability regimes which are more favourable to investors or which are not based on an infringement of this Regulation. The competent court to decide on a claim for civil liability brought by an investor should be determined by the relevant rules on International Jurisdiction.

(28) The fact that institutional investors including investment managers are obliged to carry out their own assessment of the creditworthiness of assets should not prevent courts from finding that an infringement of this Regulation by a credit rating agency has caused damage to an investor for which that credit rating agency is liable. While this Regulation will improve the possibilities of investors to make an own risk assessment they will continue to have more limited access to information than the credit agencies themselves. Furthermore, in particular smaller investors may lack the capability to critically review an external rating provided by a credit rating agency.

(28a) Member States and ESMA should ensure that any penalties imposed in accordance with Regulation (EC) No. 1060/2009 are publicly disclosed only when this public disclosure would be proportionate.

(29) In order to further mitigate conflicts of interest and facilitate fair competition in the credit rating market, it is important to ensure that the fees charged by credit rating agencies to customers are not discriminatory. Differences in fees charged for the same type of service should only be justifiable by a difference in the actual costs in providing this service to different customers. Moreover, the fees charged for rating services to a given issuer should not depend on the results or outcome of the work performed or on the provision of related (ancillary) services. Furthermore, in order to allow for the effective supervision of those rules, credit rating agencies should disclose to ESMA the fees received from each of their clients and their general pricing policy.

(30) In order to contribute to the issuance of up to date and credible sovereign ratings and to facilitate users' understanding, it is important to regularly review ratings. It is also important to increase the transparency about the research work carried out, the staff allocated to the preparation of ratings and the underlying assumptions behind the credit ratings made by credit rating agencies in relation to sovereign debt.

(30a) It is essential that investors have appropriate information to assess the creditworthiness of Member States. In the framework of its surveillance of economic and fiscal policies of Member States, the Commission collects, processes and publishes data on the economic, financial and fiscal situation and performance of all Member States, which are largely published by the Commission and which can therefore be used by investors to assess the potential creditworthiness of Member States. Where appropriate and available, and subject to the relevant confidentiality rules applicable in the framework of its surveillance of economic and fiscal policies of Member States, the Commission should complement existing reporting on economic performance of Members States, with possible additional elements or indicators, which may help investors to evaluate the creditworthiness of Member States. Those elements should be made available to the public, complementing the existing publications and other publicly disclosed information, with a view to providing investors with further data, to help them assess the creditworthiness of sovereign entities and their debt information. Bearing in mind the above, the Commission should examine the possibility of developing a European creditworthiness assessment, to allow investors to make an impartial and objective assessment of Member States' creditworthiness, taking into account the specific economic and social development. If necessary, the Commission should submit appropriate legislative proposals.

(31) The current rules already provide for ratings to be announced to the rated entity 12 hours before their publication. In order to avoid that this notification takes place outside working hours and to leave the rated entity sufficient time to verify the correctness of data underlying the rating, it should be clarified that the rated entity should be notified a full working day before publication of the rating or of a rating outlook. A list of the persons able to receive this notification a full working day before publication of a rating or of a rating outlook should be limited and clearly identified by the rated entity.

(32) In view of the specificities of sovereign ratings and in order to reduce the risk of volatility, it is appropriate and proportionate to require credit rating agencies to only publish these ratings after the close of business of the trading venues established in the Union and at least one hour before their opening. On the same basis, it is also proportionate that at the end of December, credit rating agencies should publish a calendar for the next 12 months setting the dates for the publication of sovereign ratings and corresponding to these, the dates for the publication of related outlooks where applicable. Such dates should be set on a Friday. Only for unsolicited sovereign credit ratings the number of publications in the calendar should be limited between two and three. Where this is necessary to comply with their legal obligations, credit rating agencies should be allowed to deviate from their announced calendar explaining in detail the reasons for such deviation. However, this deviation may not happen routinely.

(32a) On the basis of the evolution in the market, the Commission should submit a report to the European Parliament and the Council exploring the appropriateness and ways to support a European public credit rating agency, dedicated to assessing the creditworthiness of Members States' sovereign debt, and/or a European Credit Rating Foundation for all other ratings. The report may be followed by appropriate legislative proposals.

(32b) In view of the specificities of sovereign debt ratings and in order to avoid a risk of contagion across Member States, statements announcing revision of a given group of countries should be prohibited if not accompanied by individual country reports. Furthermore with the view to enhance the validity and accessibility of sources of information used by credit rating agencies in public communications on potential changes of sovereign ratings, other than credit ratings, rating outlooks and accompanying press releases, such communications shall always stem from information from the sphere of the rated entity which has been released upon the consent of the rated entity unless the information is available from generally accessible sources. Where it stems from the legal framework governing the rated entity that the rated entity must not release such information, one example being inside information under the provisions of Directive 2003/6/EC, the rated entity must not give its consent.

(32c) For the purpose of transparency, when publishing their ratings, credit rating agencies are bound to explain in their press releases or reports the key elements underlying those credit ratings. However, transparency for ratings should not be conclusive to the direction of national policies (economic, labour or other). Therefore, whilst those policies may serve as an element for the rating agency to assess credit worthiness of a sovereign entity or its instruments, and may be used in explaining the main reasons of a credit rating, direct or explicit requirements or recommendations from rating agencies to sovereign entities as regards those policies should not be allowed. Rating agencies should refrain from any direct or explicit policy recommendations on policies of sovereign entities.

(33) Technical standards in financial services should ensure an adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.

(34) The Commission should adopt the draft regulatory technical standards developed by ESMA regarding the content, frequency and presentation of the information to be provided by issuers on structured finance instruments, the presentation of the information, including structure, format, method and timing of reporting, that credit rating agencies should disclose to ESMA in relation to the European Rating Platform and the content and format of the periodic reporting on fees charged by credit rating agencies for the purposes of ongoing supervision by ESMA. The Commission should adopt those standards by means of delegated acts pursuant to Article 290 of the Treaty and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(35) Regulation (EU) No 1060/2009 allows ratings issued in third countries to be used for regulatory purposes if they are issued by credit rating agencies certified in accordance with Article 5 or endorsed by credit rating agencies established in the Union in accordance with Article 4 (3) of that Regulation. Certification requires that the Commission has adopted an equivalence decision regarding the third country's regulatory regime for credit rating agencies and endorsement requires that the conduct of the third country credit rating agency fulfils requirements which are at least as stringent as the relevant EU rules. Some of the provisions introduced by this Regulation should not apply for the equivalence and endorsement assessments: This is the case for those provisions that only establish obligations on issuers but not on credit rating agencies. In addition, articles that relate to the structure of the rating market within the EU rather than establishing rules of conduct for credit rating agencies should not be considered in this context.. In order to grant third countries sufficient time to review their regulatory frameworks regarding the remaining new substantive provisions, the latter should only apply for the purpose of the equivalence and endorsement assessments as of 1 June 2018. It is important to recall in this respect that a third country regulatory regime does not have to have identical rules as those provided for in this Regulation. As already spelled out in Regulation No 1060/2009, in order to be considered equivalent to or as stringent as the EU regulatory regime it should be sufficient that the third country regulatory regime achieves the same objectives and effects in practice.

(36) Since the objectives of this Regulation, namely to reinforce the independence of credit rating agencies, to promote sound credit rating processes and methodologies, to mitigate the risks associated to sovereign ratings, to reduce the risk of over-reliance on credit ratings by market participants, and to ensure a right of redress for investors, cannot be sufficiently achieved at the Member State level and can therefore, by reason of the pan-Union structure and impact of the credit rating activities to be supervised, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(36a) The Commission should put forward, by the end of 2013, a report regarding the feasibility of a network of smaller credit rating agencies in order to increase competition in the market. That report should evaluate Union financial and non-financial support and incentives for the creation of such a network, taking into consideration the potential conflict of interests arising from such public funding.

(37) Regulation (EC) No 1060/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 1060/2009

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

1) Article 1 is replaced by the following:

”Article 1

Subject matter

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

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

2) in the first paragraph of Article 2, "Community" is replaced by "Union";

3) Article 3(1) is amended as follows:

(a) in point (g) of paragraph 1, "Community" is replaced by "Union";

(b) in point (m) of paragraph 1, "Community" is replaced by "Union";

(ba) in point (r) of paragraph 1, “and alternative investment funds” is replaced by “, alternative investment funds and prospectuses to be published when securities are offered to the public or admitted to trading”;

(c) in paragraph 1, the following points are added:

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

(t) "originator" means 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 for states, 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 provide financial assistance to the benefit of its members that 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 and medium term.;

(wa) “unsolicited rating” means a credit rating assigned by a credit rating agency, other than upon the request;

(x) "credit score" means a measure of creditworthiness derived from summarizing and expressing data based only on a pre-set statistical system or model, without any additional substantial rating-specific analytical input from a rating analyst.

(y) "regulated market" means a regulated market as defined in point 14 of Article 4(1) in Directive 2004/39/EC and established in the Union '

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

ca) The following paragraph is added to Article 3:

”2a. For the purposes of this Regulation, the term "shareholder" shall also refer to beneficial owners, as defined in 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”;

(4) Article 4 is amended as follows:

(-a) the first subparagraph of paragraph 1 is replaced by the following:

"1. Credit institutions as defined in Directive 2006/48/EC, investment firms as defined in Directive 2004/39/EC, insurance undertakings subject to the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the take-up and pursuit of the business of direct insurance other than life assurance*, assurance undertakings as defined in Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance**, reinsurance undertakings as defined in Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance***, UCITS as defined in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)****, institutions for occupational retirement provision as defined in Directive 2003/41/EC, alternative investment funds as defined in Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers***** and central counterparties authorised in accordance with Regulation (EU) No xx/201x of the European Parliament and of the Council of xx xxx 201x on OTC derivatives, central counterparties and trade repositories****** 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.

* OJ L 228, 16.8.1973, p. 3

** OJ L 345, 19.12.2002, p . 1.

*** OJ L 323, 9.12.2005, p. 1.

**** OJ L 302, 17.11.2009, p. 32.

***** OJ L 174, 1.7.2011, p. 1.

****** OJ L … … …";

(a) in the second subparagraph of paragraph 1, "Community" is replaced by "Union";

(b) in paragraph 2, "Community" is replaced by "Union";

(c) paragraph 3 is amended as follows:

(i) in the introductory sentence, "Community" is replaced by "Union";

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

"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) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*) (ESMA), 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, with the exception of Articles 6a, 6b, 8a, 8b, 8ba, 11a, and point (ba) of point (3), and points 3aa and 3ab of Section B of Annex 1.

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

(d) in paragraph 4, "Community" is replaced by "Union";

5) Article 5 is amended as follows:

(a) in paragraph 1, "Community" is replaced by "Union";

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

'(b) credit rating agencies in that third country are subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 and Annex I, with the exception of Articles 6a, 6b, 8a, 8b, 8ba, 11a and point (ba) of point (3), and points 3aa and 3ab of Section B of Annex 1; and';

(c) paragraph 8 is replaced by the following:

'Articles 20, 23b and 24 shall apply to certified credit rating agencies and to credit ratings issued by them.';

6) The following Articles are inserted in Title I:

"Article 5a

Over-reliance on credit ratings by financial institutions

Credit institutions, investment firms, insurance and reinsurance undertakings, institutions for occupational retirement provisions, management and investment companies, alternative investment fund managers and central counterparties as referred to in 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.

Competent authorities in charge of supervising these undertakings, taking into account the nature, scale and complexity of those undertakings' activities, shall monitor the adequacy of undertakings credit assessment processes as well as assess the use of contractual references to credit ratings and, where appropriate encourage mitigation of the impact of such references, with a view to reduce sole and mechanistic reliance on ratings, in line with specific sectoral regulations.

Article 5b

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

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

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

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* OJ L , , p. .

** OJ L 331, 15.12.2010, p.48.

*** OJ L 331, 15.12.2010, p. 1.

Article 5ba

Over-reliance on credit ratings in Union law

Without prejudice to its right of initiative, the Commission shall continue reviewing references to credit ratings in Union law which trigger or have the potential to trigger sole or mechanistic reliance on credit ratings by competent authorities or financial market participants, with a view to eliminate all references to ratings in Union law by 1st of January 2020, provided that appropriate alternatives to credit risk assessment have been identified and implemented.";

7) Article 6(1) is replaced by the following:

”1. A credit rating agency shall take all necessary steps to ensure that the issuing of a credit rating or a rating outlook is not affected by any existing or potential conflict of interest or business relationship involving the credit rating agency issuing the credit rating or the rating outlook, its shareholders, its managers, rating analysts, employees, 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.”;

7a) In Article 6(3), the introductory part is replaced by the following:

”3. At the request of a credit rating agency, ESMA may exempt a credit rating agency from complying with the requirements of points 2, 5, 6 and 9 of Section A of Annex I and Article 7(4) if the credit rating agency is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of issue of credit ratings and that:”;

7b) In Article 6, the following paragraph is added:

”3a. Credit rating agencies shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of policies and procedures to the prevention and control of possible conflicts of interest and to ensure the independence of ratings, analysts and rating teams regarding shareholders, administrative and management bodies and sales and marketing activities. Standard operating procedures (SOPs) shall be put in place with regard to corporate governance, organisation, and the management of conflict of interest. SOPs shall be periodically monitored and reviewed in order to evaluate their effectiveness and assess whether they should be updated.”;

8) The following Articles 6a and 6b are inserted:

”Article 6a

Conflicts of interest concerning investments in credit rating agencies

1. A shareholder or a member of a credit rating agency holding at least 5 % of the capital or the voting rights in that agency or in a company which has the power to exercise dominant influence or control over the registered credit rating agency, shall not

(a) hold 5 % or more of the capital of any other credit rating agency. This prohibition 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 diversified collective investment schemes do not put him or her in a position to exercise significant influence on the business activities of those schemes;

(b) have the right or the power to exercise 5 % or more of the voting rights in any other credit rating agency;

(c) have the right or the power to appoint or remove members of the administrative, management or supervisory body of any other credit rating agency;

(d) be member of the administrative, management or supervisory body of any other credit rating agency;

(e) have the power to exercise, or actually exercise, dominant influence or control over any other credit rating agency.

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

Article 6b

Maximum duration of the contractual relationship with a credit rating agency

1. Where a credit rating agency has entered 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. When a credit rating agency enters into a contract for rating re-securitisations it shall request the issuer to calculate:

(a) 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) the percentage of the total number of outstanding rated re-securitisations with underlying assets from the same originator that each credit rating agency issues credit ratings for.

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.

Where a credit rating agency is exempted from the requirements in paragraph 1 in accordance with the criteria in the previous subparagraph, this exemption 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. If the criteria in the previous subparagraph are not met when entering into such a new contract the period mentioned in paragraph 1 shall be calculated from the date of entering into the new contract.

4. 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.

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

4b. This Article shall not apply to credit rating agencies with fewer than 50 employees at the group level being involved in the provision of credit rating activities, or with an annual turnover of less than EUR 10 million at the group level generated from credit rating activities.

4c. Where a credit rating agency entered into a contract for the issuing of credit ratings on re-securitisations before the entry into force of this Regulation, the period mentioned in paragraph 1 shall be calculated from the entry into force of this Regulation."

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

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

10) Article 8 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

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

(b) in paragraph 5, a second subparagraph is added:

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

(c) the following paragraph 5a is inserted:

"5a. A credit rating agency that intends to change materially existing or use any new rating methodologies, models or key rating assumptions that could have an impact on a credit rating shall publish the proposed changes or proposed new 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 methodologies.";

(d) paragraph 6 is amended as follows:

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

”6. When methodologies, models or key assumptions used in credit rating activities are changed in accordance with paragraph 3 of Article 14, a credit rating agency shall:”;

(ii) the following points (aa) and (aaa) are inserted:

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

(aaa) immediately publish on its website the responses to the consultation referred to in Article 8(5a) except in the cases where confidentiality is requested by the respondent to the consultation;";

(e) the following paragraph 7 is added:

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

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

(b) where an error had an impact on its ratings, it shall publish those errors on its website;

(c) correct those errors in the methodologies; and

(d) apply the measures referred to in points (a) to (c) of paragraph 6.”;

10a) The following article is inserted after Article 8:

"Article -8a

Sovereign debt ratings

1. Sovereign debt 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 not accompanied by individual country reports. Those reports shall be made publicly available.

2. Public communications other than credit ratings, rating outlooks or accompanying press releases, as referred to in Annex I Section D Chapter I point 5 of Regulation (EC) No 1060/2009, which relate to potential changes of sovereign ratings shall not be based on information stemming from the sphere of the rated entity, where such information has been released 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 release of the information.

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

4. Deviation of the publication of sovereign rating or related rating outlooks from the calendar shall only be possible in as much as this is necessary for the credit rating agency to comply with its obligations under Articles 8(2), 10(1) and 11(1) and shall be accompanied by a detailed explanation of the reasons for the deviation from the announced calendar."

11) The following Articles 8a, 8b and 8ba are inserted:

”Article 8a

Information on structured finance instruments

1. The issuer, the originator and the sponsor of a structured finance instrument established in the Union shall jointly disclose to the public, in accordance with paragraph 4, information on the credit quality and performance of the underlying assets of the structured finance instrument, the structure of the securitization 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 to disclose information according to paragraph 1 shall not extend to the provision of such information that would breach any national or Union legislation governing the protection of confidentiality of information sources or the processing of personal data.

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

(a) the information that the persons referred to in paragraph 1 shall disclose in order to comply with the obligation resulting from paragraph 1 taking into account the requirement of paragraph 2;

(b) the frequency with which such information shall be updated;

(c) the presentation of the information by means of a standardised disclosure template.

ESMA shall submit those draft regulatory technical standards to the Commission by [1 year after the entry into force of this Regulation].

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 webpage for the publication of the information on structured finance instruments in accordance with paragraph 1.

Article 8b

Double credit rating of structured finance instruments

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

2. An issuer or its related third parties referred to in paragraph 1 shall ensure that the mandated credit rating agencies comply with the following conditions:

   (a) the credit rating agencies shall not belong to the same group of credit rating agencies;

   (b) none of the credit rating agencies shall be a shareholder or member of any of the other credit rating agencies;

   (c) none of the credit rating agencies shall have the right or the power to exercise voting rights in any of the other credit rating agencies;

   (d) none of the credit rating agencies shall have the right or the power to appoint or remove members of the administrative, management or supervisory body of any of the other credit rating agencies;

   (e) none of the members of the administrative, management or supervisory body in a credit rating agency is a member of the of the administrative, management or supervisory body of any of the other credit rating agencies;

   (f) none of the credit rating agencies shall have the power to exercise, or actually exercises, dominant influence or control over any of the other credit rating agencies.

Article 8ba

Use of multiple credit rating agencies

1. Where an issuer or a related third party intends to mandate at least two credit rating agencies for the credit rating of the same issuance or entity, the issuer shall consider the possibility to mandate at least one credit rating agency which does not have more than 10 % of the total market share and which can be evaluated by the issuer as capable for rating the relevant issuance or entity, provided that, based on the list of ESMA mentioned in paragraph 2, there is a credit rating agency available for rating the specific issuance or entity. In the case where the issuer decides not to mandate at least one credit rating agency which does not have more than 10 % of the total market share, this shall be documented.

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

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

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

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

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

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

2a. Until disclosure to the market of credit ratings, rating outlooks and information relating to them, they shall be considered inside information as defined in Directive 2003/6/EC.

Directive 2003/6/EC shall, therefore, apply to credit ratings, rating outlooks and information relating to them. In particular, Article 6(3) of that Directive shall apply to credit rating agencies as regards their duty of confidentiality, their obligation to maintain a list of persons with access to the rating, rating outlook or related information before disclosure.

The list of persons to whom the rating is communicated in advance of being released should be limited to persons identified by each rated entity for that purpose.";

12a) In Article 10(5), the first subparagraph is replaced by the following:

"5. When a credit rating agency issues an unsolicited credit rating, it shall state prominently in the credit rating and using a clearly distinguishable different colour code for the rating category, whether or not the rated entity or 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."

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

"2. Any registered and any 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. 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.";

14) the following Article 11a is inserted:

”Article 11a

European Rating Platform

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

2. ESMA shall publish the individual credit ratings submitted to ESMA pursuant to paragraph 1 on a website.

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

2a. This Article shall not apply to ratings or rating outlooks which are exclusively produced for and disclosed to investors, for a fee.”;

15) Article 14 is amended as follows:

(a) in paragraph 1 , "Community" is replaced by "Union";

(b) in paragraph 3, the following subparagraph is added:

”Without prejudice to the previous subparagraph, the credit rating agency shall notify ESMA of the intended changes to or proposed new rating methodologies when the credit rating agency publishes the proposed changes or proposed new 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.“

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

“2. ESMA shall communicate to the Commission, to EBA, to EIOPA, the competent authorities and the sectoral competent authorities, any decision under Articles 16, 17 or 20.”

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

”1. ESMA shall charge fees to the credit rating agencies in accordance with this Regulation and the regulation on fees 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.”;

18) Article 21 is amended as follows:

(a) paragraph 4 is amended as follows:

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

”ESMA shall develop draft regulatory technical standards to specify:”

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

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

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

”ESMA shall submit those draft regulatory technical standards to the Commission by [1 year after the entry into force of this Regulation].

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

(b) the following paragraph 4a is inserted:

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

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

(c) the content and format of periodic reporting on fees charged by credit rating agencies to be requested from the credit rating agencies for the purpose of ongoing supervision by ESMA.

ESMA shall submit those draft regulatory technical standards to the Commission by [1 year after the entry into force of this Regulation].

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.”;

(ba) the following paragraph 4b is inserted:

”4b. ESMA shall report on the possibility of establishing one or more mappings of ratings submitted in accordance with Article 11a(1) and submit this report to the Commission by [2 years after the entry into force of this Regulation]. 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 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), points b and c.

For the purpose of points a and b ESMA shall consult EBA and EIOPA.

(c) paragraph 5 is replaced by the following:

”5. ESMA shall publish annually a 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).”;

19) Article 22a is amended as follows:

(a) the title of the Article is replaced by the following:

”Examination of compliance with methodology requirements”;

19a) Article 25a is replaced by the following

”Sectoral competent authorities responsible for the supervision and enforcement of Article 4(1), Article 5a and Articles 8a, 8b and 8ba.

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

20) The following Title IIIa is inserted after Article 35:

'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 damages caused to them due to that infringement.

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

In the case of an issuer, it may claim damages under this Article where it establishes that it or its financial instruments are covered by that 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.

4. It shall be the investor's or issuer's responsibility to put forward accurate and detailed elements 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 elements shall be assessed by the competent 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.

5. The civil liability referred to in paragraph 1 may only be limited in advance when all the following conditions are complied with:

a) the limitation is reasonable and proportionate; and

b) the limitation is allowed by the relevant national law as determined in accordance with paragraph 6.

Any limitation, which does not comply with the above conditions, or any exclusion of civil liability shall be deprived of any legal effect.

5a. Terms, such as those of damage, intention, gross negligence, reasonable reliance, due care and impact, as well as the reasonability and proportionality mentioned in paragraph 5, which are used in this Article but are not defined by this Regulation, shall be interpreted and applied in accordance with the applicable national law as determined by the relevant rules of International Private Law. Matters concerning the civil liability of a credit rating agency and which are not at all covered by this Regulation shall be governed by the applicable national law as determined by the relevant rules of International Private Law. The competent court to decide on a claim for civil liability brought by an investor shall be determined by the relevant rules on International Jurisdiction.

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

5c. The right of redress set out in this Article shall not prevent ESMA from fully performing its powers laid down in Article 36a.';

21) Article 36a is amended as follows:

(a) in paragraph 2, points (a) to (e) are replaced by the following:

”(a) for 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 54a to 54h 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 to 8, 16 to 18, 21, 22, 24, 25, 27, 29, 31, 34, 37 to 40, 42, 45 to 49a, 52 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, 26e, 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;

(d) for the infringements referred to in points 1, 6, 7 and 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, 3b, 4, 4a and 5 of Section II of Annex III, the fines shall amount to at least EUR 25 000 and shall not exceed EUR 75 000;”;

(b) in paragraph 2, points (g) and (h) are replaced by the following:

”(g) for the infringements referred to in points 1 to 3a 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;

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

24) Article 39 is amended as follows:

(a) paragraph 1 is deleted.

(aa) paragraph 3 is deleted

(b) the following paragraphs are added:

”4. The Commission shall, following 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 send a report to the European Parliament and to the Council by 1 July 2016, which shall assess, in particular:

i) the availability of sufficient choice in order to comply with the requirements set out in Articles 6b and 8b;

ii) whether it is appropriate to shorten or extend the maximum length of the contractual relationship mentioned in Article 6b(1) and the minimum period before the credit rating agency may re-enter into a contract with an issuer or its related third parties for the issuing of credit ratings on re-securitisations mentioned in Article 6b(4) ;

iii) whether it is appropriate to amend the exemption in Article 6b(2)

The report may be followed by appropriate legislative proposals.

4a. By 1 January 2016, the Commission shall, following technical advice from ESMA, review the situation in the credit rating market. Following that review, the Commission shall send a report to the European Parliament and to the Council, which shall assess, in particular:

i) the need to extend the scope of the obligations in Article 8a to include any other financial credit products ;

ii) whether the requirements in Articles 6 and 7 have sufficiently mitigated conflicts of interest;

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

iv) the appropriateness of existing and alternative remuneration models

v) the need to implement other measures to foster competition in the credit rating market;

vi) the appropriateness of additional initiatives to promote competition in the rating market against the background of the evolution of the structure of the sector.

vii) the need to propose measures to address contractual overreliance on credit ratings.

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

The report may be followed by appropriate legislative proposals.

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

24a) Article 39a is replaced by the following:

‘ESMA staffing and resources

By ...*, 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.

_____

* OJ please insert date: 12 months after the date of entry into force of this Regulation.’

24b) The following article is inserted:

‘Article 39aa

Reporting obligations

1. By 31.12. 2015 the Commission shall report to the European Parliament and the Council on:

(i) the steps taken as regards elimination in Union law of references to ratings which trigger or have the potential to trigger sole or mechanistic reliance, and

(ii) on alternative tools enabling investors to make their own credit risk assessment of issuers and financial instruments,

with a view to eliminating all references to ratings in Union law by 1st 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 at that stage, the Commission shall report by 31 December 2014 to the European Parliament and the Council on the appropriateness of the development of a European creditworthiness assessment for sovereigns.

Taking into consideration the findings of the report referred to in the first subparagraph and the situation of the market at that stage, the Commission shall report by 31 December 2016 to the European Parliament and the Council, on the appropriateness and on the possibility to support a European credit rating agencydedicated to assessing the creditworthiness of Member States' sovereign debt and/or a European Credit Rating Foundation for all other ratings.

3. The Commission shall put forward, by the end of 2013, a report regarding the feasibility of a network of smaller credit rating agencies in order to increase competition in the market. That report shall evaluate financial and non-financial support for the creation of such a network, taking into consideration the potential conflict of interests arising from such public funding. In light of the findings of this report and following ESMA's technical advice, the Commission may re-evaluate and suggest the amendment, of the provisions in Article 8ba.'

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

26) Annex II is amended in accordance with Annex II to this Regulation;

27) Annex III is amended in accordance with Annex III to this Regulation.

Article 2

Entry into force

This Regulation shall enter into force 20 days following that of its publication in the Official Journal of the European Union.

However, points (7), (9), (10), (11a), (12) and (25) of Article 1 of this Regulation shall apply from 1 June 2018 for the purposes of the assessment referred to in:

a) Article 4(3)(b) as to whether third country requirements are at least as stringent as the requirements referred to in that Article; and

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

Point (8) of Article 1 of this Regulation in relation to Article 6a(1)(a) of Regulation (EC) No 1060/2009 shall apply from [1 year after the entry into force of this Regulation] as regards any shareholder or member of a credit rating agency which on 15 November 2011 held 10 % or more of the capital of more than one credit rating agency.

Point (14) of Article 1 of this Regulation shall apply from [2 years after the entry into force of this Regulation].

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

Done at Brussels,

For the European Parliament *For the Council*

The President *The President*

ANNEX I

Annex I to Regulation (EC) 1060/2009 is amended as follows:

1) Section B is amended as follows:

(a) point 1 is replaced by the following:

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

(b) point 3 is amended as follows:

(i) the introductory sentence of the first subparagraph is replaced by the following:

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

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

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

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

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

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

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

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

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

(ba) the following point 3-a is inserted:

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

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

(b) a shareholder or member of a credit rating agency holding 5 % or more of either the capital or the voting rights of that credit rating agency or being otherwise in a position to exercise significant influence on the business activities of the credit rating agency, is a member of the administrative or supervisory board of the rated entity or a related third party;';

bb) the following point 3ab is inserted:

'3ab. Provided that the information is known or should be known by the credit rating agency, the obligations in points 3(aa), 3(ba), 3(ca) and point 3-a shall also relate to:

indirect shareholders, within the meaning of Article 10 of Directive 2004/109/EC, and;

companies that control or exercise a dominant influence, directly or indirectly on the credit rating agency within the meaning of Article 10 of Directive 2004/109/EC.';

(c) the following point 3a is inserted:

'3a. A credit rating agency shall ensure that fees charged to its clients for the provision of rating and ancillary services are not discriminatory and are based on actual costs. Fees charged for rating services shall not depend on the level of the credit rating issued by the credit rating agency or on any other result or outcome of the work performed.';

(d) in point 4, the first subparagraph is replaced by the following:

'4. Neither a credit rating agency nor any person holding, directly or indirectly, at least 5 % of the capital or voting rights of the credit rating agency or otherwise in a position to significantly influence the business activities of the credit rating agency shall provide consultancy or advisory services to the rated entity or a related third party regarding the corporate or legal structure, assets, liabilities or activities of that rated entity or related third party.';

(e) point 7 is amended as follows:

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

'(a) for each credit rating and rating outlook decision, the identity of the rating analysts participating in the determination of the credit rating or rating outlook, the identity of the persons who have approved the credit rating or rating outlook, information as to whether the credit rating was solicited or unsolicited, and the date on which the credit rating action was taken;';

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

'(d) the records documenting the established procedures and methodologies used by the credit rating agency to determine credit ratings and rating outlooks;';

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

'(e) the internal records and files, including non-public information and work papers, used to form the basis of any credit rating and rating outlook decision taken;';

2) Section C is amended as follows:

(a) in point 2, the introductory sentence is replaced by the following:

'2. No person referred to in point 1 shall participate in or otherwise influence the determination of a credit rating or rating outlook of any particular rated entity if that person:';

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

'(b) do not disclose any information about credit ratings, possible future credit ratings or rating outlooks of the credit rating agency, except to the rated entity or its related third party;';

(c) point 7 is replaced by the following:

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

(d) point 8 is replaced by the following:

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

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

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

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

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

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

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

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

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

(a) point 1 is replaced by the following:

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

(b) point 2 is amended as follows:

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

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

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

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

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

(iii) the following points are added:

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

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

(c) the following point 2a is inserted:

”2a. A credit rating agency shall accompany the disclosure of methodologies, models and key rating assumptions with guidance which explains assumptions, parameters, limits and uncertainties surrounding the models and rating methodologies used in credit ratings, including simulations of stress scenarios undertaken by the agency when establishing the ratings, credit rating information on cash-flow analysis it has performed or is relying upon and, where applicable, an indication of any expected change in the credit rating. Such guidance shall be clear and easily comprehensible.”;

(d) point 3 is replaced by the following:

”3. The credit rating agency shall inform the rated entity during working hours of the rated entity and at least a full working day before publication of the credit rating or the rating outlook. This information shall include the principal grounds on which the rating or outlook is based in order to give the entity an opportunity to draw attention of the credit rating agency to any factual errors.”;

(e) the first subparagraph of point 4 is replaced by the following:

”4. A credit rating agency shall state clearly and prominently when disclosing credit ratings or rating outlooks any attributes and limitations of the credit rating or rating outlook. In particular, a credit rating agency shall prominently state when disclosing any credit rating or rating outlook whether it considers satisfactory the quality of information available on the rated entity and to what extent it has verified information provided to it by the rated entity or its related third party. If a credit rating or an outlook involves a type of entity or financial instrument for which historical data is limited, the credit rating agency shall make clear, in a prominent place, such limitations.”;

(f) the first subparagraph of point 5 is replaced by the following:

”5. When announcing a credit rating or a rating outlook, a credit rating agency shall explain in its press releases or reports the key elements underlying the credit rating or the rating outlook.”;

(g) the following point 6 is added:

”6. A credit rating agency shall disclose on its website, and notify ESMA on an ongoing basis, information about all entities or debt instruments submitted to it for their initial review or for preliminary rating. Such disclosure shall be made whether or not issuers contract with the credit rating agency for a final rating.”;

5) points 3 and 4 of Part II of Section D are deleted;

6) in Section D, the following Part III is added:

”III. Additional obligations in relation to sovereign ratings

1. Where a credit rating agency issues a sovereign rating or a related rating outlook, it shall accompany the rating or rating outlook with a detailed research report explaining all the assumptions, parameters, limits and uncertainties and any other element taken into account in determining that rating or outlook. That report shall be publicly available, clear and easily comprehensible.

2. A publicly available research report accompanying a change compared to the previous sovereign rating or related rating outlook shall include at least the following elements:

(a) A detailed evaluation of the changes of the quantitative assumption justifying the reasons for the rating change and their relative weight. The detailed evaluation should include a description of the following elements: per capita income, GDP Growth, inflation, fiscal balance, external balance, external debt, an indicator for economic development, an indicator for default and any other relevant factor taken into account. This should be complemented with the relative weight of each factor;

(b) A detailed evaluation of the changes of the qualitative assumption justifying the reasons for the rating change and their relative weight;

(c) A detailed description of the risks, limits and uncertainties related to the rating change; and

(d) A summary of meeting minutes of the rating committee that decided of the rating change.

3. Where a credit rating agency issues sovereign ratings or related rating outlooks, it shall publish these ratings in accordance with Article -8a, after the close of business hours of regulated markets and at least one hour before their opening. Point 3 of Part I of Section D of Annex I. remains unaffected.

Without prejudice to Annex I, Section D, point 5, under which, when announcing a credit rating, a credit rating agency shall explain in its press releases or reports the key elements underlying the credit rating and although national policies may serve as an element underlying a sovereign rating, policy recommendations, prescriptions or guidelines to rated entities, including States or regional or local authorities of States, shall not be part of credit ratings or rating outlooks as such.';

7) Part I of Section E is amended as follows:

(a) point 3 is replaced by the following:

”3. the policy of the credit rating agency concerning the publication of credit ratings and other related communications including rating outlooks;”;

(b) point 6 is replaced by the following:

”6. any material modification to its systems, resources or procedures;”;

8) the first subparagraph of point 2 of Part II of Section E is amended as follows:

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

”(a) list of fees charged to each client for individual rating and any ancillary services;”

(b) the following point (aa) is inserted:

”(aa) its pricing policy, including the fees structure and pricing criteria in relation to ratings for different asset classes;”;

9) Part III of Section E is amended as follows:

(a) point 3 is replaced by the following:

”3. statistics on the allocation of its staff to new credit ratings, credit rating reviews, methodology or model appraisal and senior management, and on the allocation of staff to rating activities with regard to the different asset classes (corporate - structured finance - sovereign);”;

(b) point 7 is replaced by the following:

”7. financial information on the revenue of the credit rating agency, including total turnover, divided into fees from credit rating and ancillary services with a comprehensive description of each, including the revenues generated from ancillary services provided to clients of rating services and the allocation of fees to ratings of different asset classes. Information on total turnover shall also include a geographical allocation of that turnover to revenues generated in the Union and revenues worldwide;”.

ANNEX II

In point 1 of Annex II to Regulation (EC) 1060/2009, "Community" is replaced by "Union".

ANNEX III

Annex III to Regulation (EC) 1060/2009 is amended as follows:

1) Part I is amended as follows:

(a) points 19, 20 and 21 are replaced by the following:

”19. The credit rating agency infringes Article 6(2), in conjunction with point 1 of Section B of Annex I, by not identifying, eliminating or managing and disclosing, clearly or prominently, any actual or potential conflicts of interest that may influence the analyses or judgments of its rating analysts, employees, or any other natural person whose services are placed at the disposal or under the control of the credit rating agency and who are directly involved in the issuing of a credit rating or persons approving credit ratings and rating outlooks.

20. The credit rating agency infringes Article 6(2), in conjunction with the first paragraph of point 3 of Section B of Annex I, by issuing a credit rating or rating outlook in any of the circumstances set out in the first paragraph of that point or, in the case of an existing credit rating, by not disclosing immediately that the credit rating or rating outlook is potentially affected by those circumstances.

21. The credit rating agency infringes Article 6(2), in conjunction with the second paragraph of point 3 of Section B of Annex I, by not immediately assessing whether there are grounds for re-rating or withdrawing an existing credit rating or rating outlook.”;

(b) the following points are inserted:

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

26d. The credit rating agency which entered into a contract for the issuing of credit ratings on re-securitisations infringes Article 6b(4) by not respecting the prohibition to enter into a new contract for issuing of credit ratings on re-securitisations for a period equal to the duration of the expired contract referred to in paragraphs1 and 2 of Article 6b.”;

(c) point 33 is replaced by the following:

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

(d) point 36 is replaced by the following:

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

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

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

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

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

(f) point 42 is replaced by the following:

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

(fa) the following point 42a is inserted:

"42a. The credit rating agency infringes, Article 8(2) or Article 8(2b) by requesting information falling outside the scope of Article 8(2) or because its rating changes do not comply with its published methodologies.”;

(g) point 46 is replaced by the following:

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

(h) the following point 46a is inserted:

”46a. The credit rating agency infringes the second subparagraph of Article 8(5) in conjunction with the first sentence of the first subparagraph of Article 8(5) by not monitoring its sovereign ratings or by not reviewing its sovereign ratings on an ongoing basis and at least every 6 months.”;

(i) the following point 49a is inserted:

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

(ia) the following points are added:

”54a. A credit rating agencies infringes article -8a (3) by not publishing on its Website and sending to ESMA on an annual basis, in accordance with Annex I section D part III, point 3, a calendar at the end of the month of December for the next 12 months, setting up a maximum of three dates that fall on a Friday for the publication of unsolicited sovereign ratings and related outlooks and setting the dates for the publication of solicited sovereign ratings and related outlooks.

54b. The credit rating agency infringes Article -8a(4) by deviating from the announced calendar when this is not necessary to fulfil its obligations under Articles 8 (2), 10(1) and 11(1), and by not providing a detailed explanation of the reasons for the deviation from the announced calendar.

54c. The credit rating agency infringes Article 10(2) in connection with Annex I Section D, Part III, point 3 by publishing a rating or a rating outlook related to a sovereign during business hours of regulated markets or less than one hour before their opening.

54d. The credit rating agency infringes Annex I, Section D, Part III, point 4 when it issues and discloses credit ratings and rating outlooks for sovereign debt containing a policy recommendation, prescription or guideline to rated entities, including States or regional or local authorities of States.

54e. The credit rating agency infringes Article -8a(2) when it bases its public communications relating to changes of sovereign ratings, and which are not credit ratings, rating outlooks or accompanying press releases, as referred to in Annex I, Section D, Part I, point 5, on information stemming from the sphere of the rated entity, where such information has been released 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 release of the information.

54f. new. A credit rating agency infringes Article -8a (1) when announcing the revision of a given group of countries if not accompanied by individual publicly available country report.

54g. A credit rating agency infringes Annex I, Section D, Part III (new), point 1 by issuing a sovereign rating or a related rating outlook, without accompanying them with a detailed research report explaining all the assumptions, parameters, limits and uncertainties and any other element taken into account in determining that rating or outlook, and by not making that report publicly available, clear and easily comprehensible.

54h. A credit rating agency infringes Annex I, Section D Part III (new), point 2, by not issuing a publicly available research report accompanying a change compared to the previous sovereign rating or related rating outlook, and where that report that does include at least the information enumerated in letters (a) to (d) of Annex I, Section D Part III(new), point 2.";

2) Part II is amended as follows:

(a) the following points 3a and 3b are inserted:

"3a. The credit rating agency infringes the third subparagraph of Article 14(3) or the first subparagraph of Article 8(5a) by not notifying ESMA of the intended material changes to the existing rating methodologies, models or key assumptions or of the proposed new methodologies, models or key assumptions when it publishes on its website in accordance with Article 8(5a) or by not publishing on its website the proposed new methodologies or the proposed changes of the methodologies that could have an impact on a credit rating together with an explanation of the reasons for and the implications of the changes.

3b. The credit rating agency infringes point (a) of Article 8(7) by not notifying ESMA of discovered errors in its methodologies or in their application.";

(b) the following point 4a is inserted:

"4a. The credit rating agency infringes Article 11a(1) by not making available the required information or by not providing that information in the required format as referred to in that paragraph.";

3) Part III, is amended as follows:

(b) the following points 4a, 4b and 4c are inserted:

”4a. The credit rating agency infringes point (aa) of Article 8(6), where it intends to use new methodologies, by not informing ESMA or by not publishing immediately on its website the new methodologies together with a detailed explanation thereof as well as the date of application of the new methodologies.

4b. The credit rating agency infringes point (a) of Article 8(7) by not notifying affected rated entities of discovered errors in its methodologies or in their application.

4c. The credit rating agency infringes point (b) of Article 8(7) by not publishing on its website discovered errors in its methodologies or in their application, or publishing those without explaining the impact on its ratings including the need to revise issued ratings.”;

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

”6. The credit rating agency infringes Article 10(2), in conjunction with point 1 or 2 , the first paragraph of point 4 or points 5 or 6, of Part I of Section D of Annex I, or Parts II or III of Section D of Annex I, by not providing the information as required by those provisions when presenting a credit rating or a rating outlook.

7. The credit rating agency infringes Article 10(2), in conjunction with point 3 of Part I of Section D of Annex I, by not informing the rated entity during working hours of the rated entity and at least a full working day before publication of the credit rating or the rating outlook.”