

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

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation introduces a common regulatory approach in order to enhance the integrity, transparency, responsibility, good governance and reliability of credit rating activities, contributing to the quality of credit ratings issued in the Community, 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 to promote their independence and the avoidance of conflicts of interest.

Article 2

Scope

1 This Regulation applies to credit ratings issued by credit rating agencies registered in the Community and which are disclosed publicly or distributed by subscription.

2 This Regulation does not apply to:

- a private credit ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription;
- b credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships;
- c credit ratings produced by export credit agencies in accordance with point 1.3 of Part 1 of Annex VI to Directive 2006/48/EC; or
- d credit ratings produced by the central banks and which:
 - (i) are not paid for by the rated entity;
 - (ii) are not disclosed to the public;
 - (iii) are issued in accordance with the principles, standards and procedures which ensure the adequate integrity and independence of credit rating activities as provided for by this Regulation; and
 - (iv) do not relate to financial instruments issued by the respective central banks' Member States.

3 A credit rating agency shall apply for registration under this Regulation as a condition for being recognised as an External Credit Assessment Institution (ECAI) in accordance with Part 2 of Annex VI to Directive 2006/48/EC, unless it only issues the credit ratings referred to in paragraph 2.

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

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

Article 3

Definitions

- 1 For the purpose of this Regulation, the following definitions shall apply:
- a ‘credit rating’ means an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories;
 - b ‘credit rating agency’ means a legal person whose occupation includes the issuing of credit ratings on a professional basis;
 - c ‘home Member State’ means the Member State in which the credit rating agency has its registered office;
 - d ‘rating analyst’ means a person who performs analytical functions that are necessary for the issuing of a credit rating;
 - e ‘lead rating analyst’ means a person with primary responsibility for elaborating a credit rating or for communicating with the issuer with respect to a particular credit rating or, generally, with respect to the credit rating of a financial instrument issued by that issuer and, where relevant, for preparing recommendations to the rating committee in relation to such rating;
 - f ‘rated entity’ means a legal person whose creditworthiness is explicitly or implicitly rated in the credit rating, whether or not it has solicited that credit rating and whether or not it has provided information for that credit rating;
 - g ‘regulatory purposes’ means the use of credit ratings for the specific purpose of complying with Community law, as implemented by the national legislation of the Member States;
 - h ‘rating category’ means a rating symbol, such as a letter or numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the types of rated entities, issuers and financial instruments or other assets;
 - i ‘related third party’ means the originator, arranger, sponsor, servicer or any other party that interacts with a credit rating agency on behalf of a rated entity, including any person directly or indirectly linked to that rated entity by control;
 - j ‘control’ means the relationship between a parent undertaking and a subsidiary, as described in Article 1 of Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts⁽¹⁾, or a close link between any natural or legal person and an undertaking;
 - k ‘financial instrument’ means any of the instruments listed in Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments⁽²⁾;

- l ‘structured finance instrument’ means a financial instrument or other assets resulting from a securitisation transaction or scheme referred to in Article 4(36) of Directive 2006/48/EC;
- m ‘group of credit rating agencies’ means a group of undertakings established in the Community consisting of a parent undertaking and its subsidiaries within the meaning of Articles 1 and 2 of Directive 83/349/EEC as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC and whose occupation includes the issuing of credit ratings. For the purposes of Article 4(3) (a), a group of credit rating agencies shall also include credit rating agencies established in third countries;
- n ‘senior management’ means the person or persons who effectively direct the business of the credit rating agency and the member or members of its administrative or supervisory board;
- o ‘credit rating activities’ means data and information analysis and the evaluation, approval, issuing and review of credit ratings.
- 2 For the purposes of paragraph 1(a), the following shall not be considered to be credit ratings:
- a recommendations within the meaning of Article 1(3) of Commission Directive 2003/125/EC⁽³⁾;
 - b investment research as defined in Article 24(1) of Directive 2006/73/EC⁽⁴⁾ and other forms of general recommendation, such as ‘buy’, ‘sell’ or ‘hold’, relating to transactions in financial instruments or to financial obligations; or
 - c opinions about the value of a financial instrument or a financial obligation.

Article 4

Use of credit ratings

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 taking-up and pursuit of the business of direct insurance other than life assurance⁽⁵⁾, assurance undertakings as defined in Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance⁽⁶⁾, reinsurance undertakings as defined in Directive 2005/68/EC of the European Parliament and the Council of 16 November 2005 on reinsurance⁽⁷⁾, undertakings for collective investment in transferable securities (UCITS) as defined in Directive 85/611/EEC and institutions for occupational retirement provision as defined in Directive 2003/41/EC may use credit ratings for regulatory purposes only if they are issued by credit rating agencies established in the Community and registered in accordance with this Regulation.

Where a prospectus published under Directive 2003/71/EC and Regulation (EC) No 809/2004 contains a reference to a credit rating or credit ratings, the issuer, offeror, or person asking for admission to trading on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether or not such credit ratings are issued by a credit rating agency established in the Community and registered under this Regulation.

2 A credit rating agency established in the Community and registered in accordance with this Regulation shall be deemed to have issued a credit rating when the credit rating has been published on the credit rating agency’s website or by other means or distributed by subscription

and presented and disclosed in accordance with the obligations of Article 10, clearly identifying that the credit rating is endorsed in accordance with paragraph 3 of this Article.

3 A credit rating agency established in the Community and registered in accordance with this Regulation may endorse a credit rating issued in a third country only when credit rating activities resulting in the issuing of such a credit rating comply with the following conditions:

- a the credit rating activities resulting in the issuing of the credit rating to be endorsed are undertaken in whole or in part by the endorsing credit rating agency or by credit rating agencies belonging to the same group;
- b the credit rating agency has verified and is able to demonstrate on an ongoing basis to the competent authority of the home Member State that the conduct of 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;
- c the ability of the competent authority of the home Member State of the endorsing credit rating agency or the college of competent authorities referred to in Article 29 (college) to assess and monitor the compliance of the credit rating agency established in the third country with the requirements referred to in point (b) is not limited;
- d the credit rating agency makes available on request to the competent authority of the home Member State all the information necessary to enable that competent authority to supervise on an ongoing basis the compliance with the requirements of this Regulation;
- e there is an objective reason for the credit rating to be elaborated in a third country;
- f the credit rating agency established in the third country is authorised or registered, and is subject to supervision, in that third country;
- g the regulatory regime in that third country prevents interference by the competent authorities and other public authorities of that third country with the content of credit ratings and methodologies; and
- h there is an appropriate cooperation arrangement between the competent authority of the home Member State of the endorsing credit rating agency and the relevant competent authority of the credit rating agency established in a third country. The competent authority of the home Member State shall ensure that such cooperation arrangements shall specify at least:
 - (i) the mechanism for the exchange of information between the competent authorities concerned; and
 - (ii) the procedures concerning the coordination of supervisory activities in order to enable the competent authority of the home Member State of the endorsing credit rating agency to monitor credit rating activities resulting in the issuing of the endorsed credit rating on an ongoing basis.

4 A credit rating endorsed in accordance with paragraph 3 shall be considered to be a credit rating issued by a credit rating agency established in the Community and registered in accordance with this Regulation.

A credit rating agency established in the Community and registered in accordance with this Regulation shall not use such endorsement with the intention of avoiding the requirements of this Regulation.

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

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

Article 5

Equivalence and certification based on equivalence

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

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

2 The credit rating agency referred to in paragraph 1 may apply for certification. The application shall be submitted to the Committee of European Securities Regulators (CESR) in accordance with the relevant provisions of Article 15. Within five working days of receipt of the application for certification, CESR shall send the application to the competent authorities of all Member States, inviting them to consider becoming a member of the relevant college in accordance with Article 29(3)(b). The competent authorities that have decided to become members of the college shall notify CESR accordingly within 10 working days of receipt of CESR's invitation. The competent authorities that notify CESR in accordance with this paragraph shall be members of the college. Within twenty working days of receipt of the application for certification, CESR shall draw up and publish on its website a list of the competent authorities that are members of the college. Within 10 working days of the publication, the members of the college shall select a facilitator in accordance with criteria in Article 29(5). Following the establishment of the college, its composition and functioning shall be governed by Article 29.

3 The application for certification shall be examined in accordance with the procedure set out in Article 16. The certification decision shall be based on the criteria set out in points (a) to (d) of paragraph 1 of this Article.

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

4 The credit rating agency may also separately apply to be exempted:

- a on a case-by-case basis from complying with some or all of the requirements set out in Section A of Annex I and Article 7(4) if the credit rating agency is able to demonstrate that the requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings;

- b from the requirement of physical presence in the Community where such a requirement would be too burdensome and disproportionate in view of the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings.

When assessing that application, the competent authorities shall take into consideration the size of the applicant credit rating agency, having regard to the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings, as well as the impact of the credit ratings issued by the credit rating agency on the financial stability and integrity of the financial markets of one or more Member States. On the basis of those considerations, the competent authority may grant such exemption to the credit rating agency.

5 The decisions on the exemptions under paragraph 4 of this Article shall be subject to the relevant provisions and procedures set out in Article 16 with the exception of the second subparagraph of paragraph 7 of that Article. In the event of continued absence of agreement among the members of the relevant college on whether to grant an exemption to the credit rating agency, the facilitator shall adopt a fully reasoned decision.

For the purposes of certification, including the granting of exemptions, and supervision, the facilitator shall perform the tasks of the competent authority of the home Member State where relevant.

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

A third-country legal and supervisory framework may be considered equivalent to this Regulation if that framework fulfils at least the following conditions:

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

The Commission shall specify further or amend the criteria set out in points (a) to (c) of the second subparagraph in order to take account of developments on financial markets. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 38(2).

7 The facilitator shall establish cooperation agreements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been considered equivalent to this Regulation in accordance with paragraph 6. Such arrangements shall specify at least:

- a the mechanism for the exchange of information between the competent authorities concerned; and
- b the procedures concerning the coordination of supervisory activities.

CESR shall coordinate the development of cooperation agreements between the competent authorities of Member States and the relevant competent authorities of third countries whose legal and supervisory frameworks have been considered equivalent to this Regulation in accordance with paragraph 6.

8 Articles 20, 24 and 25 shall apply *mutatis mutandis* to certified credit rating agencies and to credit ratings issued by them.

- (1) [OJ L 193, 18.7.1983, p. 1.](#)
- (2) [OJ L 145, 30.4.2004, p. 1.](#)
- (3) [OJ L 339, 24.12.2003, p. 73.](#)
- (4) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ([OJ L 241, 2.9.2006, p. 26](#)).
- (5) [OJ L 228, 16.8.1973, p. 3.](#)
- (6) [OJ L 345, 19.12.2002, p. 1.](#)
- (7) [OJ L 323, 9.12.2005, p. 1.](#)