

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 III

**SURVEILLANCE OF CREDIT RATING ACTIVITIES**

CHAPTER I

**Registration procedure**

*Article 14*

**Requirement for registration**

1 A credit rating agency shall apply for registration for the purposes of Article 2(1) provided that it is a legal person established in the Community.

2 The registration shall be effective for the entire territory of the Community once the registration decision issued by the competent authority of the home Member State as referred to in Article 16(7) or Article 17(7) has taken effect under the relevant national law.

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

A credit rating agency shall, without undue delay, notify CESR, the competent authority of its home Member State and the facilitator of any material changes to the conditions for initial registration, including any opening or closing of a branch within the Community.

4 Without prejudice to Articles 16 or 17, the competent authority of the home Member State shall register the credit rating agency if it concludes from the examination of the application that the credit rating agency complies with the conditions for the issuing of credit ratings set out in this Regulation, taking into consideration Articles 4 and 6.

5 Competent authorities shall not impose requirements regarding registration which are not provided for in this Regulation.

*Article 15*

**Application for registration**

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

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

3 A credit rating agency shall submit its application in the language which is required under the law of its home Member State and also in a language customary in the sphere of international finance.

An application for registration sent by CESR to the competent authority of the home Member State shall be considered to be an application submitted by the credit rating agency concerned.

4 Within five working days of receipt of the application, CESR shall transmit copies of the application to the competent authorities of all Member States.

Within 10 working days of receipt of the application, CESR shall provide advice to the competent authority of the home Member State on the completeness of the application.

5 Within 25 working days of receipt of the application, the competent authority of the home Member State and the members of the relevant college shall assess whether the application is complete, taking into account the advice of CESR referred to in paragraph 4. If the application is not complete, the competent authority of the home Member State shall set a deadline by which the credit rating agency is to provide additional information to it and to CESR and shall notify the members of the college and CESR accordingly.

After assessing an application as complete, the competent authority of the home Member State shall notify the credit rating agency, the members of the college and CESR accordingly.

6 Within five working days of receipt of the additional information referred to in paragraph 5, CESR shall transmit the additional information to the competent authorities of all other Member States.

#### *Article 16*

#### **Examination of the application for registration of a credit rating agency by the competent authorities**

1 The competent authority of the home Member State and the competent authorities which are members of the relevant college shall, within 60 working days of the notification referred to in the second subparagraph of Article 15(5):

- a jointly examine the application for registration; and
- b do everything reasonable within their power to reach an agreement on whether to grant or refuse registration of the credit rating agency based on the compliance of the credit rating agency with the conditions set out in this Regulation.

2 The facilitator may extend the period of examination by 30 working days, in particular if the credit rating agency:

- a envisages endorsing credit ratings as referred to in Article 4(3);
- b envisages using outsourcing; or
- c requests exemption from compliance in accordance with Article 6(3).

3 The facilitator shall coordinate the examination of the application submitted by the credit rating agency and shall ensure that all information necessary to carry out the examination of the application is shared among the members of the relevant college.

4 The competent authority of the home Member State shall prepare a fully reasoned draft decision following the agreement referred to in paragraph 1(b) and shall submit it to the facilitator.

In the absence of agreement among the members of the relevant college, the competent authority of the home Member State shall prepare a fully reasoned draft refusal decision based on the written opinions of the members of the college who oppose registration and shall submit it to the facilitator. The members of the college who are in favour of registration shall prepare and submit a detailed explanation of their opinions to the facilitator.

5 Within 60 working days of the notification referred to in the second subparagraph of Article 15(5), and in any event within 90 working days thereof in the event that paragraph 2 applies, the facilitator shall communicate to CESR a fully reasoned draft registration or refusal decision accompanied by the detailed explanations referred to in the second subparagraph of paragraph 4.

6 Within 20 working days of receipt of the communication referred to in paragraph 5, CESR shall provide its advice on the compliance of the credit rating agency with the requirements for the registration to the members of the relevant college. Following receipt of CESR's advice, the members of the college shall re-examine the draft decision.

7 The competent authority of the home Member State shall adopt a fully reasoned registration or refusal decision within 15 working days of receipt of CESR's advice. If the competent authority of the home Member State departs from CESR's advice, it shall provide full reasons. If CESR has provided no advice, the competent authority of the home Member State shall adopt its decision within 30 working days of the communication to CESR of the draft decision in accordance with paragraph 5.

In the event of a continued absence of agreement among the members of the relevant college, the competent authority of the home Member State shall adopt a fully reasoned refusal decision, which shall identify the dissenting competent authorities and shall include a description of their opinions.

#### *Article 17*

### **Examination of the applications for registration of a group of credit rating agencies by the competent authorities**

1 The facilitator and the competent authorities who are members of the relevant college shall, within 60 working days of the notification referred to in the second subparagraph of Article 15(5):

- a jointly examine the applications for registration; and
- b do everything reasonable within their power to reach an agreement on whether to grant or refuse registration of the members of the group of credit rating agencies based on the compliance of those credit rating agencies with the conditions set out in this Regulation.

2 The facilitator may extend the period of examination by 30 working days, in particular if any of credit rating agencies in the group:

- a envisages endorsing credit ratings as referred to in Article 4(3);
- b envisages using outsourcing; or
- c requests exemption from compliance in accordance with Article 6(3).

3 The facilitator shall coordinate the examination of the applications submitted by the group of credit rating agencies and shall ensure that all information necessary to carry out the examination of the applications is shared among the members of the relevant college.

4 The competent authorities of the home Member States shall prepare individual fully reasoned draft decisions for each credit rating agency of the group following the agreement referred to in paragraph 1(b) and shall submit it to the facilitator.

In the absence of agreement among the members of the relevant college, the competent authorities of the home Member States shall prepare fully reasoned draft refusal decisions based on the written opinions of the members of the college who oppose registration and shall submit them to the facilitator. The members of the college who are in favour of registration shall prepare and submit a detailed explanation of their opinions to the facilitator.

5 Within 60 working days of the notification as referred to in the second subparagraph of Article 15(5), and in any event within 90 working days thereof in the event that paragraph 2 applies, the facilitator shall communicate to CESR fully reasoned individual draft registration or refusal decisions accompanied by the detailed explanations referred to in the second subparagraph of paragraph 4.

6 Within 20 working days of receipt of the communication referred to in paragraph 5, CESR shall provide its advice on the compliance of the credit rating agencies of the group with the requirements for the registration to the members of the relevant college. Following receipt of CESR's advice, the members of the college shall re-examine the draft decisions.

7 The competent authorities of the home Member States shall adopt fully reasoned registration or refusal decisions within 15 working days of receipt of the advice of CESR. If the competent authorities of the home Member States depart from CESR's advice, they shall provide full reasons. If CESR has provided no advice, the competent authorities of the home Member States shall adopt their decisions within 30 working days of the communication to CESR of the draft decisions in accordance with paragraph 5.

In the event of continued absence of agreement among the members of the relevant college on whether to register any of the credit rating agencies of the group, the competent authority of the home Member State of such credit rating agency shall adopt a fully reasoned refusal decision, which shall identify the dissenting competent authorities and shall include a description of their opinions.

### *Article 18*

#### **Notification of the decision on the registration, refusal of registration or the withdrawal of registration of a credit rating agency**

1 Within five working days of the adoption of a decision under Articles 16 or 17 the competent authority of the home Member State shall notify the credit rating agency concerned whether or not it has been registered. Where the competent authority of the home Member State refuses to register the credit rating agency, it shall provide full reasons in its decision.

2 The competent authority of the home Member State shall notify the Commission, CESR and the other competent authorities of any decision under Article 16, 17 or 20.

3 The Commission shall publish in the *Official Journal of the European Union* and on its website a list of credit rating agencies registered in accordance with this Regulation. That list shall be updated within 30 days of the notification referred to in paragraph 2.

## Article 19

### Registration and supervisory fees

The competent authority of the home Member State may charge registration and/or supervisory fees to the credit rating agency. The registration and/or supervisory fees shall be proportionate to the cost incurred by the competent authority of the home Member State.

## Article 20

### Withdrawal of registration

1 The competent authority of the home Member State shall withdraw the registration of a credit rating agency where the credit rating agency:

- a expressly renounces the registration or has provided no credit ratings for the preceding six months;
- b has obtained the registration by making false statements or by any other irregular means;
- c no longer meets the conditions under which it was registered; or
- d has seriously or repeatedly infringed the provisions of this Regulation governing the operating conditions for credit rating agencies.

2 Where the competent authority of the home Member State considers that one of the conditions referred to in paragraph 1 has been met, it shall notify the facilitator and closely cooperate with members of the relevant college in order to decide whether or not to withdraw the registration of the credit rating agency.

The members of the college shall carry out a joint assessment and do everything reasonable within their power to reach an agreement on the necessity to withdraw the registration to the credit rating agency.

In the absence of agreement, the competent authority of the home Member State shall, at the request of any of the other members of the college or on its own initiative, request advice from CESR. CESR shall provide its advice within 15 working days of receipt of such request.

The competent authority of each home Member State shall adopt an individual withdrawal decision on the basis of the agreement reached within the college.

In the absence of an agreement between the members of the college within 30 working days of notification to the facilitator as referred to in the first subparagraph, the competent authority of the home Member State may adopt an individual withdrawal decision. Any deviation of its decision from the opinions expressed by the other members of the college and, where appropriate, the advice provided by CESR shall be fully reasoned.

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

4 The decision on the withdrawal of registration shall take immediate effect throughout the Community, subject to the transitional period for the use of credit ratings referred to in Article 24(2).

## CHAPTER II

### **CESR and competent authorities**

#### *Article 21*

#### **Committee of European Securities Regulators**

1 CESR shall provide advice to the competent authorities in the cases provided for in this Regulation. The competent authorities shall consider that advice before taking any final decision under this Regulation.

2 By 7 June 2010, CESR shall issue guidance on:

- a the registration process and coordination arrangements between competent authorities and with CESR, including on the information set out in Annex II, and language regime for applications submitted to CESR;
- b the operational functioning of the colleges, including on the modalities for determining the membership to the colleges, the application of the criteria for the selection of the facilitator referred to in Article 29(5)(a) to (d), the written arrangements for the operation of colleges and the coordination arrangements between colleges;
- c the application of the endorsement regime under Article 4(3) by competent authorities; and
- d common standards on the presentation of the information, including structure, format, method and period of reporting, that credit rating agencies shall disclose in accordance with Article 11(2) and point 1 of Part II of Section E of Annex I.

3 By 7 September 2010, CESR shall issue guidance on:

- a enforcement practices and activities to be conducted by competent authorities under this Regulation;
- b common standards for assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3);
- c types of measures referred to in Article 24(1)(d) to ensure that credit rating agencies continue to comply with legal requirements; and
- d information that the credit rating agency must provide for the application for certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5.

4 CESR shall publish, annually and for the first time by 7 December 2010, 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.

5 CESR shall cooperate with the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC<sup>(1)</sup> and the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC<sup>(2)</sup> and shall consult those Committees before publishing guidance referred to in paragraphs 2 and 3.

## Article 22

### Competent authorities

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

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

## Article 23

### Powers of competent authorities

1 In carrying out their duties under this Regulation, neither the competent authorities nor any other public authorities of a Member State shall interfere with the content of credit ratings or methodologies.

2 In order to carry out their duties under this Regulation, the competent authorities shall, in conformity with national law, have all the supervisory and investigatory powers that are necessary for the exercise of their functions. They shall exercise their powers:

- a directly;
- b in collaboration with other authorities; or
- c by application to the competent judicial authorities.

3 In order to carry out their duties under this Regulation, the competent authorities shall, in conformity with national law, have the power in their supervisory capacity to:

- a access any document in any form and to receive or take a copy thereof;
- b demand information from any person and if necessary to summon and question a person with a view to obtaining information;
- c carry out on-site inspections with or without announcement; and
- d require records of telephone and data traffic.

The competent authorities may use the powers referred to in the first subparagraph only in relation to credit rating agencies, persons involved in credit rating activities, rated entities and related third parties, third parties to whom the credit rating agencies have outsourced certain functions or activities, and persons otherwise related or connected to credit rating agencies or credit rating activities.

## Article 24

### Supervisory measures by the competent authorities of the home Member State

1 Where the competent authority of the home Member State has established that a registered credit rating agency breaches the obligations arising from this Regulation, it may take the following measures:

- a withdraw the registration of that credit rating agency in accordance with Article 20;
- b temporarily prohibit that credit rating agency from issuing credit ratings with effect throughout the Community;

- c suspend the use, for regulatory purposes, of the credit ratings issued by that credit rating agency with effect throughout the Community;
- d take appropriate measures to ensure that credit rating agencies continue to comply with legal requirements;
- e issue public notices;
- f refer matters for criminal prosecution to its relevant national authorities.

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

- a ten working days if there are credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation; or
- b three months if there are no credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation.

A competent authority may extend the period referred to in point (b) of the first subparagraph by three months in exceptional circumstances relating to the potential for market disruption or financial instability.

3 Before taking any measures referred to in paragraph 1, the competent authority of the home Member State shall notify the facilitator and shall consult the members of the relevant college. The members of the college shall do everything reasonable within their power to reach an agreement on the necessity to take any measures referred to in paragraph 1.

In the absence of agreement between the members of the college, the competent authority of the home Member State shall, at the request of any member of the college or on its own initiative, request advice from CESR. CESR shall provide its advice within 10 working days of receipt of such request.

In the absence of agreement between the members of the college on whether to take any measures referred to in paragraph 1 within 15 working days after the matter was notified to the facilitator as referred to in the first subparagraph, the competent authority of the home Member State may adopt a decision. Any deviation of that decision from the opinions expressed by the other members of the college and, where appropriate, the advice provided by CESR shall be fully reasoned. The competent authority of the home Member State shall notify its decision, without undue delay, to the facilitator and CESR.

This paragraph shall apply without prejudice to Article 20.

### *Article 25*

#### **Supervisory measures by competent authorities other than the competent authority of the home Member State**

1 Where the competent authority of a Member State has established that a registered credit rating agency whose ratings are used within its territory breaches the obligations arising from this Regulation, it may take the following measures:

- a adopt the supervisory measures referred to in Article 24(1)(e) and (f);
- b adopt measures referred to in Article 24(1)(d) within its jurisdiction and, where so doing, duly consider the measures already taken or envisaged by the competent authority of the home Member State;
- c impose the suspension of the use of credit ratings of that credit rating agency for regulatory purposes by institutions referred to in Article 4(1) whose registered office



is located within its jurisdiction, subject to the transitional period referred to in Article 24(2);

- d request the relevant college to examine whether the measures referred to in points (b), (c) or (d) of Article 24(1) are needed.

2 Before the adoption of measures referred to in points (a), (b) or (c) of paragraph 1, the competent authority shall notify the facilitator and consult the members of the relevant college. The members of the college shall do everything reasonable within their power to reach an agreement on the necessity to take any measures referred to in points (a) and (b) of paragraph 1. In the event of disagreement, the facilitator shall, at the request of any of the members of the college or on its own initiative, request advice from CESR. CESR shall provide its advice within 10 working days of receipt of such request.

3 In the absence of an agreement between the members of the relevant college within 15 working days of the matter being notified to the facilitator in accordance with paragraph 2, the competent authority of the Member State concerned may adopt a decision. Any deviation of its decision from the opinions expressed by the other members of the college and, where appropriate, the advice provided by CESR shall be fully reasoned. The competent authority of the Member State concerned shall notify its decision, without undue delay, to the facilitator and CESR.

4 This Article shall apply without prejudice to Article 20.

## CHAPTER III

### Cooperation between competent authorities

#### *Article 26*

#### **Obligation to cooperate**

1 The competent authorities shall cooperate where it is necessary for the purposes of this Regulation, including in cases where the conduct under investigation does not constitute an infringement of any legislative or regulatory provision in force in the Member State concerned.

2 The competent authorities shall also cooperate closely with the competent authorities responsible for supervision of the undertakings referred to in Article 4(1).

#### *Article 27*

#### **Exchange of information**

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

2 The competent authorities may transmit to the competent authorities responsible for supervising the undertakings referred to in Article 4(1), central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks. Similarly, such authorities or bodies shall not be prevented from communicating to the competent authorities

information that the competent authorities may need in order to carry out their duties under this Regulation.

### *Article 28*

#### **Cooperation in case of a request with regard to on-site inspections or investigations**

1 The competent authority of one Member State may request the assistance of the competent authority of another Member State with regard to on-site inspections or investigations.

The competent authority making such request shall inform CESR of any request referred to in the first subparagraph. In the event of an investigation or inspection with cross-border effect, the competent authorities may request CESR to assume coordination of the investigation or inspection.

2 Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it shall:

- a carry out the on-site inspection or investigation itself;
- b allow the competent authority which submitted the request to participate in an on-site inspection or investigation;
- c allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;
- d appoint auditors or experts to carry out the on-site inspection or investigation; or
- e share specific tasks related to supervisory activities with the other competent authorities.

### *Article 29*

#### **Colleges of competent authorities**

1 Within 10 working days of receipt of an application for registration under Article 15, the competent authority of the home Member State, or, in the case of a group of credit rating agencies, the competent authority of the home Member State of the credit rating agency mandated under Article 15(2), shall establish a college of competent authorities in order to facilitate the exercise of the tasks referred to in Articles 4, 5, 6, 16, 17, 20, 24, 25 and 28.

2 The college shall comprise the competent authority of the home Member State and the competent authorities referred to in paragraph 3 in the case of a single agency, or the competent authorities of the home Member States and the competent authorities referred to in paragraph 3 in the case of a group of rating agencies.

3 A competent authority other than the competent authority of the home Member State may at any time decide to become a member of the college provided that:

- a a branch which is a part of the credit rating agency or of one of the undertakings in the group of credit rating agencies is established within its jurisdiction; or
- b the use for regulatory purposes of credit ratings issued by the credit rating agency or the group of credit rating agencies concerned is widespread or has or is likely to have a significant impact within its jurisdiction.

4 The competent authorities other than the members of the college as referred to in paragraph 3 in the jurisdictions of which the credit ratings issued by the credit rating agency

or by the group of credit rating agencies concerned are used may participate in a meeting or in an activity of the college.

5 Within 15 working days of the establishment of the college, its members shall select a facilitator, consulting CESR in the absence of agreement. For that purpose, at least the following criteria shall be taken into account:

- a the relationship between the competent authority and the credit rating agency or the group of credit rating agencies;
- b the extent to which credit ratings will be used for regulatory purposes in a particular territory or territories;
- c the place in the Community where the credit rating agency or group of credit rating agencies pursues or is planning to pursue the most important part of its credit rating activities; and
- d administrative convenience, burden optimisation, and an appropriate distribution of the workload.

Members of the college shall review the selection of the facilitator at least every five years to ensure the selected facilitator remains the most appropriate following the criteria referred to in the first subparagraph.

6 The facilitator shall chair the meetings of the college, coordinate the actions of the college and ensure efficient exchange of information among members of the college.

7 In order to ensure close cooperation between competent authorities within the college, the facilitator shall, within 10 working days of his or her selection, establish written coordination arrangements within the framework of the college regarding the following matters:

- a information to be exchanged between competent authorities;
- b the decision-making process between the competent authorities, without prejudice to Articles 16, 17, and 20;
- c cases in which the competent authorities must consult each other;
- d cases in which the competent authorities must apply the mediation mechanism referred to in Article 31; and
- e cases in which the competent authorities may delegate supervisory tasks in accordance with Article 30.

8 In the absence of agreement concerning the written coordination arrangements under paragraph 7, any member of the college may refer the matter to CESR. The facilitator shall give due consideration to any advice provided by CESR concerning the written coordination arrangements before agreeing their final text. The written coordination arrangements shall be set out in a single document containing full reasons for any significant deviation from the advice of CESR. The facilitator shall transmit the written coordination arrangements to the members of the college and to CESR.

### *Article 30*

#### **Delegation of tasks between competent authorities**

The competent authority of the home Member State may delegate any of its tasks to the competent authority of another Member State subject to the agreement of that authority. Delegation of tasks shall not affect the responsibility of the delegating competent authority.

### *Article 31*

#### **Mediation**

1 CESR shall establish a mediation mechanism to assist in finding a common view among the competent authorities concerned.

2 In the event of disagreement between competent authorities concerning an examination or action under this Regulation, they shall refer the matter to CESR for mediation. The competent authorities concerned shall give due consideration to the advice of CESR and shall provide full reasons for any deviation from that advice.

### *Article 32*

#### **Professional secrecy**

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

2 All the information exchanged between CESR and the competent authorities and between competent authorities under this Regulation shall be considered confidential, except where CESR or the competent authority concerned states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.

### *Article 33*

#### **Disclosure of information from another Member State**

The competent authority of a Member State may disclose the information received from a competent authority of another Member State only if it has obtained the express agreement of the competent authority that transmitted the information and, where applicable, the information is disclosed only for the purposes for which that competent authority gave its agreement, or where such disclosure is necessary for legal proceedings.

## CHAPTER IV

### **Cooperation with third countries**

#### *Article 34*

#### **Agreement on exchange of information**

The competent authorities may conclude cooperation agreements on exchange of information with the competent authorities of third countries only if the information

disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 32.

Such exchange of information shall be intended for the performance of the tasks of those competent authorities.

With regard to transfer of personal data to a third country, Member States shall apply Directive 95/46/EC.

#### *Article 35*

#### **Disclosure of information from third countries**

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

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**Status:** This is the original version (as it was originally adopted).

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- (1) OJ L 25, 29.1.2009, p. 23.
- (2) OJ L 25, 29.1.2009, p. 28.