

Regulation (EU) No 462/2013 of the European Parliament and
of the Council of 21 May 2013 amending Regulation (EC) No
1060/2009 on credit rating agencies (Text with EEA relevance)

Article 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 and to the smooth functioning of the internal market, while achieving a high level of consumer and investor protection. It lays down conditions for the issuing of credit ratings and rules on the organisation and conduct of credit rating agencies, including their shareholders and members, to promote credit rating agencies' independence, the avoidance of conflicts of interest, and the enhancement of consumer and investor protection.

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

- (2) in Article 2(1), Article 3(1)(m), Article 4(2), Article 4(3), introductory part, Article 4(4), first and second subparagraphs, Article 5(1), introductory part, Article 14(1), and Annex II, point (1) 'Community' is replaced by 'Union';
- (3) Article 3 is amended as follows:
- (a) paragraph 1 is amended as follows:
 - (i) point (g) is replaced by the following:
 - (g) "regulatory purposes" means the use of credit ratings for the specific purpose of complying with Union law, or with Union law as implemented by the national legislation of the Member States;;
 - (ii) the following points are inserted:
 - (pa) "credit institution" means a credit institution as defined in point (1) of Article 4 of Directive 2006/48/EC;
 - (pb) "investment firm" means an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC;
 - (pc) "insurance undertaking" means an insurance undertaking as defined in point (1) of Article 13 of Directive

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2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)⁽¹⁾;

(pd) “reinsurance undertaking” means a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

(pe) “institution for occupational retirement provision” means an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC;

(pf) “management company” means a management company as defined in Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)⁽²⁾;

(pg) “investment company” means an investment company authorised in accordance with Directive 2009/65/EC;

(ph) “alternative investment fund manager” means an AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers⁽³⁾;

(pi) “central counterparty” means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁽⁴⁾ which is authorised in accordance with Article 14 of that Regulation;

(pj) “prospectus” means a prospectus published under Directive 2003/71/EC and Regulation (EC) No 809/2004;;

(iii) points (q) and (r) are replaced by the following:

(q) “sectoral legislation” means the legislative acts of the Union referred to in points (pa) to (pj);

(r) “sectoral competent authorities” means the national competent authorities designated under the relevant sectoral legislation for the supervision of credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers, central counterparties and prospectuses.;

(iv) the following points are added:

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- (s) “issuer” means an issuer as defined in Article 2(1)(h) of Directive 2003/71/EC;
 - (t) “originator” means an originator as defined in point (41) of Article 4 of Directive 2006/48/EC;
 - (u) “sponsor” means a sponsor as defined in point (42) of Article 4 of Directive 2006/48/EC;
 - (v) “sovereign rating” means:
 - (i) a credit rating where the entity rated is a State or a regional or local authority of a State;
 - (ii) a credit rating where the issuer of the debt or financial obligation, debt security or other financial instrument is a State or a regional or local authority of a State, or a special purpose vehicle of a State or of a regional or local authority;
 - (iii) a credit rating where the issuer is an international financial institution established by two or more States which has the purpose of mobilising funding and providing financial assistance for the benefit of the members of that international financial institution which are experiencing or threatened by severe financing problems;
 - (w) “rating outlook” means an opinion regarding the likely direction of a credit rating over the short term, the medium term or both;
 - (x) “unsolicited credit rating” and “unsolicited sovereign rating” mean, respectively, a credit rating or a sovereign rating assigned by a credit rating agency other than upon request;
 - (y) “credit score” means a measure of creditworthiness derived from summarising and expressing data based only on a pre-established statistical system or model, without any additional substantial rating-specific analytical input from a rating analyst;
 - (z) “regulated market” means a regulated market as defined in point (14) of Article 4(1) of Directive 2004/39/EC and established in the Union;
 - (aa) “re-securitisation” means re-securitisation as defined in point (40a) of Article 4 of Directive 2006/48/EC.;
- (b) the following paragraph is added:
3. For the purposes of this Regulation, the term “shareholder” includes beneficial owners, as defined in point (6) of Article 3 of Directive

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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⁽⁵⁾;

(4) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers and central counterparties may use credit ratings for regulatory purposes only if they are issued by credit rating agencies established in the Union and registered in accordance with this Regulation.

Where a prospectus contains a reference to a credit rating or credit ratings, the issuer, offeror, or person asking for admission to trading on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether or not such credit ratings are issued by a credit rating agency established in the Union and registered under this Regulation.;

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

(b) the credit rating agency has verified and is able to demonstrate on an ongoing basis to the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽⁶⁾, that the conduct of the credit rating activities by the third-country credit rating agency resulting in the issuing of the credit rating to be endorsed fulfils requirements which are at least as stringent as the requirements set out in Articles 6 to 12 and Annex I, with the exception of Articles 6a, 6b, 8a, 8b, 8c and 11a, point (ba) of point 3 and points 3a and 3b of Section B of Annex I.;

(5) Article 5 is amended as follows:

(a) in paragraph 6, second subparagraph, point (b) 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, 8c and 11a, point (ba) of point 3 and points 3a and 3b of Section B of Annex I; and;

(b) paragraph 8 is replaced by the following:

8. Articles 20, 23b and 24 shall apply to credit rating agencies certified in accordance with Article 5(3) and to credit ratings issued by them.;

(6) the following Articles are inserted in Title I:

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Article 5a

Over-reliance on credit ratings by financial institutions

- 1 The entities referred to in the first subparagraph of Article 4(1) shall make their own credit risk assessment and shall not solely or mechanistically rely on credit ratings for assessing the creditworthiness of an entity or financial instrument.
- 2 Sectoral competent authorities in charge of supervising the entities referred to in the first subparagraph of Article 4(1) shall, taking into account the nature, scale and complexity of their activities, monitor the adequacy of their credit risk assessment processes, assess the use of contractual references to credit ratings and, where appropriate, encourage them to mitigate the impact of such references, with a view to reducing sole and mechanistic reliance on credit ratings, in line with specific sectoral legislation.

Article 5b

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

- 1 The European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽⁷⁾, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁽⁸⁾ and ESMA shall not refer to credit ratings in their guidelines, recommendations and draft technical standards where such references have the potential to trigger sole or mechanistic reliance on credit ratings by the competent authorities, the sectoral competent authorities, the entities referred to in the first subparagraph of Article 4(1) or other financial market participants. Accordingly, by 31 December 2013, EBA, EIOPA and ESMA shall review and remove, where appropriate, all such references to credit ratings in existing guidelines and recommendations.
- 2 The European Systemic Risk Board (ESRB) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board⁽⁹⁾ shall not refer to credit ratings in its warnings and recommendations where such references have the potential to trigger sole or mechanistic reliance on credit ratings.

Article 5c

Over-reliance on credit ratings in Union law

Without prejudice to its right of initiative, the Commission shall continue to review whether references to credit ratings in Union law trigger or have the potential to trigger sole or mechanistic reliance on credit ratings by the competent authorities, the sectoral competent authorities, the entities referred to in the first subparagraph of Article 4(1) or other financial market participants with a view to deleting all references to credit ratings in Union law for regulatory purposes by 1 January 2020,

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provided that appropriate alternatives to credit risk assessment have been identified and implemented.;

(7) Article 6 is amended as follows:

(a) paragraph 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 conflicts of interest or business relationship involving the credit rating agency issuing the credit rating or the rating outlook, its shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the credit rating agency, or any person directly or indirectly linked to it by control.;

(b) in paragraph 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.;

(c) the following paragraph is added:

4. Credit rating agencies shall establish, maintain, enforce and document an effective internal control structure governing the implementation of policies and procedures to prevent and mitigate possible conflicts of interest and to ensure the independence of credit ratings, rating analysts and rating teams regarding shareholders, administrative and management bodies and sales and marketing activities. Credit rating agencies shall establish standard operating procedures (SOPs) with regard to corporate governance, organisation, and the management of conflicts of interest. They shall periodically monitor and review those SOPs in order to evaluate their effectiveness and assess whether they should be updated.;

(8) the following articles 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 either the capital or the voting rights in that credit rating agency or in a company which has the power to exercise control or a dominant influence over that credit rating agency, shall be prohibited from:

- a holding 5 % or more of the capital of any other credit rating agency;
- b having the right or the power to exercise 5 % or more of the voting rights in any other credit rating agency;
- c having the right or the power to appoint or remove members of the administrative or supervisory board of any other credit rating agency;
- d being a member of the administrative or supervisory board of any other credit rating agency;

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- e exercising or having the power to exercise control or a dominant influence over any other credit rating agency.

The prohibition referred to in point (a) of the first subparagraph does not apply to holdings in diversified collective investment schemes, including managed funds such as pension funds or life insurance, provided that the holdings in such schemes do not put the shareholder or member of a credit rating agency in a position to exercise significant influence on the business activities of those schemes.

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

Article 6b

Maximum duration of the contractual relationship with a credit rating agency

- 1 Where a credit rating agency enters into a contract for the issuing of credit ratings on re-securitisations, it shall not issue credit ratings on new re-securitisations with underlying assets from the same originator for a period exceeding four years.

- 2 Where a credit rating agency enters into a contract for rating re-securitisations, it shall request that the issuer:
 - a determine the number of credit rating agencies which have a contractual relationship for the issuing of credit ratings on re-securitisations with underlying assets from the same originator;
 - b calculate the percentage of the total number of outstanding rated re-securitisations with underlying assets from the same originator for which each credit rating agency issues credit ratings.

Where at least four credit rating agencies each rate more than 10 % of the total number of outstanding rated re-securitisations, the limitations set out in paragraph 1 shall not apply.

The exemption set out in the second subparagraph shall continue to apply at least until the credit rating agency enters into a new contract for rating re-securitisations with underlying assets from the same originator. Where the criteria set out in the second subparagraph are not met when entering into such a contract, the period referred to in paragraph 1 shall be calculated from the date on which the new contract was entered into.

- 3 As from the expiry of a contract pursuant to paragraph 1, a credit rating agency shall not enter into a new contract for the issuing of credit ratings on re-securitisations with underlying assets from the same originator for a period equal to the duration of the expired contract but not exceeding four years.

The first subparagraph shall also apply to:

- a a credit rating agency belonging to the same group of credit rating agencies as the credit rating agency referred to in paragraph 1;
- b a credit rating agency which is a shareholder or member of the credit rating agency referred to in paragraph 1;
- c a credit rating agency in which the credit rating agency referred to in paragraph 1 is a shareholder or member.

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- 4 Notwithstanding paragraph 1, where a credit rating of a re-securitisation is issued before the end of the maximum duration of the contractual relationship as referred to in paragraph 1, a credit rating agency may continue to monitor and update those credit ratings, on a solicited basis, for the duration of the re-securitisation.
- 5 This Article shall not apply to credit rating agencies that have fewer than 50 employees at group level involved in the provision of credit rating activities, or that have an annual turnover generated from credit rating activities of less than EUR 10 million at group level.
- 6 Where a credit rating agency enters into a contract for the issuing of credit ratings on re-securitisations before 20 June 2013, the period referred to in paragraph 1 shall be calculated from that date.;
- (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.

2a Changes in credit ratings shall be issued in accordance with the credit rating agency's published rating methodologies.;
 - (b) in paragraph 5, the following subparagraph is added:

Sovereign ratings shall be reviewed at least every six months.;
 - (c) the following paragraph is inserted:

5a. A credit rating agency that intends to make a material change to, or use, new rating methodologies, models or key rating assumptions which could have an impact on a credit rating shall publish the proposed material changes or proposed new rating methodologies on its website inviting stakeholders to submit comments for a period of one month together with a detailed explanation of the reasons for and the implications of the proposed material changes or proposed new rating methodologies.;
 - (d) paragraph 6 is amended as follows:
 - (i) the introductory part is replaced by the following:

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6. Where rating methodologies, models or key rating assumptions used in credit rating activities are changed in accordance with Article 14(3), a credit rating agency shall;
- (ii) the following points are inserted:
- (aa) immediately inform ESMA and publish on its website the results of the consultation and the new rating methodologies together with a detailed explanation thereof and their date of application;
- (ab) immediately publish on its website the responses to the consultation referred to in paragraph 5a except in cases where confidentiality is requested by the respondent to the consultation;;
- (e) the following paragraph is added:
7. Where a credit rating agency becomes aware of errors in its rating 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 errors have an impact on its credit ratings, publish those errors on its website;
- c correct those errors in the rating methodologies; and
- d apply the measures referred to in points (a), (b) and (c) of paragraph 6.;
- (11) the following Articles are inserted:

Article 8a

Sovereign ratings

- 1 Sovereign ratings shall be issued in a manner which ensures that the individual specificity of a particular Member State has been analysed. A statement announcing revision of a given group of countries shall be prohibited if it is not accompanied by individual country reports. Such reports shall be made publicly available.
- 2 Public communications other than credit ratings, rating outlooks, or accompanying press releases or reports as referred to in point 5 of Part I of Section D of Annex I, which relate to potential changes in sovereign ratings shall not be based on information within the sphere of the rated entity that has been disclosed without the consent of the rated entity, unless it is available from generally accessible sources or unless there are no legitimate reasons for the rated entity not to give its consent to the disclosure of the information.
- 3 A credit rating agency shall, taking into consideration the second subparagraph of Article 8(5), publish on its website and submit to ESMA on an annual basis, in accordance with point 3 of Part III of Section D of Annex I, a calendar at the end of December for the following 12 months, setting a maximum of three dates for the publication of unsolicited sovereign ratings and related rating outlooks and setting

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the dates for the publication of solicited sovereign ratings and related rating outlooks. Such dates shall be set on a Friday.

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

Article 8b

Information on structured finance instruments

- 1 The issuer, the originator and the sponsor of a structured finance instrument established in the Union shall, on the website set up by ESMA pursuant to paragraph 4, jointly publish information on the credit quality and performance of the underlying assets of the structured finance instrument, the structure of the securitisation transaction, the cash flows and any collateral supporting a securitisation exposure as well as any information that is necessary to conduct comprehensive and well-informed stress tests on the cash flows and collateral values supporting the underlying exposures.

- 2 The obligation under paragraph 1 to publish information shall not extend to where such publication would breach national or Union law governing the protection of confidentiality of information sources or the processing of personal data.

- 3 ESMA shall develop draft regulatory technical standards to specify:
- a the information that the persons referred to in paragraph 1 must publish in order to comply with the obligation resulting from paragraph 1 in accordance with paragraph 2;
 - b the frequency with which the information referred to in point (a) is to be updated;
 - c the presentation of the information referred to in point (a) by means of a standardised disclosure template.

ESMA shall submit those draft regulatory technical standards to the Commission by 21 June 2014.

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

- 4 ESMA shall set up a website for the publication of the information on structured finance instruments as referred to in paragraph 1.

Article 8c

Double credit rating of structured finance instruments

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

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- 2 The issuer or a related third party as referred to in paragraph 1 shall ensure that the appointed credit rating agencies comply with the following conditions:
- a they do not belong to the same group of credit rating agencies;
 - b they are not a shareholder or a member of any of the other credit rating agencies;
 - c they do not have the right or the power to exercise voting rights in any of the other credit rating agencies;
 - d they do not have the right or the power to appoint or remove members of the administrative or supervisory board of any of the other credit rating agencies;
 - e none of the members of their administrative or supervisory boards are a member of the administrative or supervisory boards of any of the other credit rating agencies;
 - f they do not exercise, or have the power to exercise, control or a dominant influence over any of the other credit rating agencies.

Article 8d

Use of multiple credit rating agencies

- 1 Where an issuer or a related third party intends to appoint at least two credit rating agencies for the credit rating of the same issuance or entity, the issuer or a related third party shall consider appointing at least one credit rating agency with no more than 10 % of the total market share, which can be evaluated by the issuer or a related third party as capable of rating the relevant issuance or entity, provided that, based on ESMA's list referred to in paragraph 2, there is a credit rating agency available for rating the specific issuance or entity. Where the issuer or a related third party does not appoint at least one credit rating agency with no more than 10 % of the total market share, this shall be documented.
- 2 With a view to facilitating the evaluation by the issuer or a related third party under paragraph 1, ESMA shall annually publish on its website a list of registered credit rating agencies, indicating their total market share and the types of credit ratings issued, which can be used by the issuer as a starting point for its evaluation.
- 3 For the purposes of this Article, total market share shall be measured with reference to annual turnover generated from credit rating activities and ancillary services, at group level.;
- (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 credit ratings.

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- 2a Until disclosure to the public of credit ratings, rating outlooks and information relating thereto, they shall be deemed to be inside information as defined in, and in accordance with, Directive 2003/6/EC.

Article 6(3) of that Directive shall apply mutatis mutandis to credit rating agencies as regards their duty of confidentiality and their obligation to maintain a list of persons who have access to their credit ratings, rating outlooks or related information before disclosure.

The list of persons to whom credit ratings, rating outlooks and information relating thereto are communicated before being disclosed shall be limited to persons identified by each rated entity for that purpose.;

- (13) in Article 10(5), the first subparagraph is replaced by the following:

5. Where a credit rating agency issues an unsolicited credit rating, it shall state prominently in the credit rating, using a clearly distinguishable different colour code for the rating category, whether or not the rated entity or a related third party participated in the credit rating process and whether the credit rating agency had access to the accounts, management and other relevant internal documents for the rated entity or a related third party.;

- (14) Article 11(2) is replaced by the following:

2. A registered or certified credit rating agency shall make available in a central repository established by ESMA information on its historical performance data, including the ratings transition frequency, and information about credit ratings issued in the past and on their changes. Such a credit rating agency shall provide information to that repository on a standard form as provided for by ESMA. ESMA shall make that information accessible to the public and shall publish summary information on the main developments observed on an annual basis.;

- (15) the following Article is inserted:

Article 11a

European rating platform

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

- 2 ESMA shall publish the individual credit ratings submitted to it pursuant to paragraph 1 on a website (“European rating platform”).

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

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

- (16) in Article 14(3), the following subparagraph is added:

Without prejudice to the second subparagraph, the credit rating agency shall notify ESMA of the intended material changes to the rating methodologies, models or

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key rating assumptions or the proposed new rating methodologies, models or key rating assumptions when the credit rating agency publishes the proposed changes or proposed new rating methodologies on its website in accordance with Article 8(5a). After the expiry of the consultation period, the credit rating agency shall notify ESMA of any changes due to the consultation.;

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

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

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

1. ESMA shall charge credit rating agencies fees in accordance with this Regulation and with the Commission regulation referred to in paragraph 2. Those fees shall fully cover ESMA's necessary expenditure relating to the registration, certification and supervision of credit rating agencies and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 30.;

(19) Article 21 is amended as follows:

(a) paragraph 4 is amended as follows:

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

4. 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 21 June 2014.

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

(b) the following paragraphs are inserted:

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

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

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- b the content and format of periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by ESMA.

ESMA shall submit those draft regulatory technical standards to the Commission by 21 June 2014.

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

4b ESMA shall report on the possibility of establishing one or more mappings of credit ratings submitted in accordance with Article 11a(1) and submit that report to the Commission by 21 June 2015. The report shall, in particular, assess:

- a the possibility, cost, and benefit of establishing one or more mappings;
- b how one or more mappings can be created without misrepresenting credit ratings in light of different rating methodologies;
- c any effects mappings could have on the regulatory technical standards developed to date in relation to Article 21(4a)(a) and (b).

ESMA shall consult EBA and EIOPA in regard to points (a) and (b) of the first subparagraph.;

- (c) paragraph 5 is replaced by the following:

5. ESMA shall publish an annual report on the application of this Regulation. That report shall contain, in particular, an assessment of the implementation of Annex I by the credit rating agencies registered under this Regulation and an assessment of the application of the endorsement mechanism referred to in Article 4(3).;

- (20) in Article 22a, the title is replaced by the following:

Examination of compliance with methodology requirements;

- (21) Article 25a is replaced by the following:

Article 25a

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

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

- (22) the following title is inserted:

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TITLE IIIA

CIVIL LIABILITY OF CREDIT RATING AGENCIES

Article 35a

Civil liability

- 1 Where a credit rating agency has committed, intentionally or with gross negligence, any of the infringements listed in Annex III having an impact on a credit rating, an investor or issuer may claim damages from that credit rating agency for damage caused to it due to that infringement.

An investor may claim damages under this Article where it establishes that it has reasonably relied, in accordance with Article 5a(1) or otherwise with due care, on a credit rating for a decision to invest into, hold onto or divest from a financial instrument covered by that credit rating.

An issuer may claim damages under this Article where it establishes that it or its financial instruments are covered by that credit rating and the infringement was not caused by misleading and inaccurate information provided by the issuer to the credit rating agency, directly or through information publicly available.

- 2 It shall be the responsibility of the investor or issuer to present accurate and detailed information indicating that the credit rating agency has committed an infringement of this Regulation, and that that infringement had an impact on the credit rating issued.

What constitutes accurate and detailed information shall be assessed by the competent national court, taking into consideration that the investor or issuer may not have access to information which is purely within the sphere of the credit rating agency.

- 3 The civil liability of credit rating agencies, as referred to in paragraph 1, shall only be limited in advance where that limitation is:
- a reasonable and proportionate; and
 - b allowed by the applicable national law in accordance with paragraph 4.

Any limitation that does not comply with the first subparagraph, or any exclusion of civil liability shall be deprived of any legal effect.

- 4 Terms such as “damage”, “intention”, “gross negligence”, “reasonably relied”, “due care”, “impact”, “reasonable” and “proportionate” which are referred to in this Article but are not defined, shall be interpreted and applied in accordance with the applicable national law as determined by the relevant rules of private international law. Matters concerning the civil liability of a credit rating agency which are not covered by this Regulation shall be governed by the applicable national law as determined by the relevant rules of private international law. The court that is competent to decide on a claim for civil liability brought by an investor or issuer shall be determined by the relevant rules of private international law.

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

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- 6 The right of redress set out in this Article shall not prevent ESMA from fully performing its powers as laid down in Article 36a.;
- (23) In Article 36a(2), the first subparagraph is amended as follows:
- (a) points (a) and (b) are replaced by the following:
 - (a) for the infringements referred to in points 1 to 5, 11 to 15, 19, 20, 23, 26a to 26d, 28, 30, 32, 33, 35, 41, 43, 50, 51 and 55 to 62 of Section I of Annex III, the fines shall amount to at least EUR 500 000 and shall not exceed EUR 750 000;
 - (b) for the infringements referred to in points 6, 7, 8, 16, 17, 18, 21, 22, 22a, 24, 25, 27, 29, 31, 34, 37 to 40, 42, 42a, 42b, 45 to 49a, 52, 53 and 54 of Section I of Annex III, the fines shall amount to at least EUR 300 000 and shall not exceed EUR 450 000;;
 - (b) points (d) and (e) are replaced by the following:
 - (d) for the infringements referred to in points 1, 6, 7, 8 and 9 of Section II of Annex III, the fines shall amount to at least EUR 50 000 and shall not exceed EUR 150 000;
 - (e) for the infringements referred to in points 2, 3a to 5 of Section II of Annex III, the fines shall amount to at least EUR 25 000 and shall not exceed EUR 75 000;;
 - (c) point (h) is replaced by the following:
 - (h) for the infringements referred to in point 20a of Section I of Annex III, points 4 to 4c, 6, 8 and 10 of Section III of Annex III, the fines shall amount to at least EUR 90 000 and shall not exceed EUR 200 000;;
- (24) Article 39 is amended as follows:
- (a) paragraphs 1 and 3 are deleted;
 - (b) the following paragraphs are added:

4. The Commission shall, after obtaining technical advice from ESMA, review the situation in the credit rating market for structured finance instruments, in particular the credit rating market for re-securitisations. Following that review, the Commission shall, by 1 July 2016, submit a report to the European Parliament and to the Council, accompanied by a legislative proposal if appropriate, assessing, in particular:

 - a the availability of sufficient choice in order to comply with the requirements set out in Articles 6b and 8c;
 - b whether it is appropriate to shorten or extend the maximum duration of the contractual relationship referred to in Article 6b(1) and the minimum period before the credit rating agency may re-enter into a contract with an issuer or a related third party for the issuing of credit ratings on re-securitisations referred to in Article 6b(3);
 - c whether it is appropriate to amend the exemption referred to in the second subparagraph of Article 6b(2).

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5 The Commission shall, after obtaining technical advice from ESMA, review the situation in the credit rating market. Following that review, the Commission shall, by 1 January 2016, submit a report to the European Parliament and to the Council, accompanied by a legislative proposal if appropriate, assessing, in particular:

- a whether there is a need to extend the scope of the obligations referred to in Article 8b to include any other financial credit products;
- b whether the requirements referred to in Articles 6, 6a and 7 have sufficiently mitigated conflicts of interest;
- c whether the scope of the rotation mechanism referred to in Article 6b should be extended to other asset classes and whether it is appropriate to use differentiated lengths of periods across asset classes;
- d the appropriateness of existing and alternative remuneration models;
- e whether there is a need to implement other measures to foster competition in the credit rating market;
- f the appropriateness of additional initiatives to promote competition in the credit rating market against the background of the evolution of the structure of the sector;
- g whether there is a need to propose measures to address contractual over-reliance on credit ratings;
- h the market concentration levels, the risks arising from high concentration, and the impact on the overall stability of the financial sector.

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

(25) Article 39a is replaced by the following:

Article 39a

ESMA's staffing and resources

By 21 June 2014, ESMA shall assess its staffing and resources needs arising from the assumption of its powers and duties under this Regulation and shall submit a report to the European Parliament, the Council and the Commission.;

(26) the following Article is inserted:

Article 39b

Reporting obligations

1 By 31 December 2015, the Commission shall submit a report to the European Parliament and to the Council on:

- a the steps taken as regards the deletion of references to credit ratings which trigger or have the potential to trigger sole or mechanistic reliance thereon; and

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- b alternative tools to enable investors to make their own credit risk assessment of issuers and of financial instruments,

with a view to deleting all references to credit ratings in Union law for regulatory purposes by 1 January 2020, subject to appropriate alternatives being identified and implemented. ESMA shall provide technical advice to the Commission within the framework of this paragraph.

- 2 Taking into consideration the situation of the market, the Commission shall, by 31 December 2014, submit a report to the European Parliament and to the Council on the appropriateness of the development of a European creditworthiness assessment for sovereign debt.

Taking into consideration the findings of the report referred to in the first subparagraph and the situation of the market, the Commission shall, by 31 December 2016, submit a report to the European Parliament and to the Council, on the appropriateness and feasibility of supporting a European credit rating agency dedicated to assessing the creditworthiness of Member States' sovereign debt and/or a European credit rating foundation for all other credit ratings.

- 3 The Commission shall, by 31 December 2013, submit a report to the European Parliament and to the Council regarding the feasibility of a network of smaller credit rating agencies in order to increase competition in the market. That report shall evaluate financial and non-financial support for the creation of such a network, taking into consideration the potential conflicts of interest arising from such public funding. In light of the findings of that report and following ESMA's technical advice, the Commission may re-evaluate and suggest amending Article 8d.;

- (27) Annex I is amended in accordance with Annex I to this Regulation;

- (28) Annex III is amended in accordance with Annex II to this Regulation.

Article 2

Entry into force

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

Notwithstanding the first paragraph,

- (1) points 7(a), 9 and 10, point 11 in relation to Article 8d of Regulation (EC) No 1060/2009 and points 12 and 27 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) of Regulation (EC) No 1060/2009 as to whether third-country requirements are at least as stringent as the requirements referred to in that point; 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;
- (2) point 8 of Article 1 of this Regulation in relation to Article 6a(1)(a) of Regulation (EC) No 1060/2009 shall apply from 21 June 2014 as regards any shareholder or member

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of a credit rating agency which on 15 November 2011 held 5 % or more of the capital of more than one credit rating agency;

(3) point 15 of Article 1 shall apply from 21 June 2015.

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

Done at Strasbourg, 21 May 2013.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

L. CREIGHTON

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- (1) [OJ L 335, 17.12.2009, p. 1.](#)
- (2) [OJ L 302, 17.11.2009, p. 32.](#)
- (3) [OJ L 174, 1.7.2011, p. 1.](#)
- (4) [OJ L 201, 27.7.2012, p. 1.](#)’;
- (5) [OJ L 309, 25.11.2005, p. 15.](#)’;
- (6) [OJ L 331, 15.12.2010, p. 84.](#)’;
- (7) [OJ L 331, 15.12.2010, p. 12.](#)
- (8) [OJ L 331, 15.12.2010, p. 48.](#)
- (9) [OJ L 331, 15.12.2010, p. 1.](#)’;

Changes to legislation:

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Changes and effects yet to be applied to :

- Regulation power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 1](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 1](#)