



# EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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## REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CREDIT RATING AGENCIES

**REGULATION (EC) No .../2009 OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL**

**of 16 September 2009**

**on credit rating agencies**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the European Central Bank<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

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<sup>1</sup> Opinion of 13 May 2009 (not yet published in the Official Journal).

<sup>2</sup> OJ C 115, 20.5.2009, p. 1.

<sup>3</sup> Opinion of the European Parliament of 23 April 2009 (not yet published in the Official Journal) and Council Decision of 27 July 2009.

Whereas:

- (1) Credit rating agencies play an important role in global securities and banking markets, as their credit ratings are used by investors, borrowers, issuers and governments as part of making informed investment and financing decisions. Credit institutions, investment firms, insurance undertakings, assurance undertakings, reinsurance undertakings, undertakings for collective investment in transferable securities (UCITS) and institutions for occupational retirement provision may use those credit ratings as the reference for the calculation of their capital requirements for solvency purposes or for calculating risks in their investment activity. Consequently, credit ratings have a significant impact on the operation of the markets and on the trust and confidence of investors and consumers. It is essential, therefore, that credit rating activities are conducted in accordance with the principles of integrity, transparency, responsibility and good governance in order to ensure that resulting credit ratings used in the Community are independent, objective and of adequate quality.

- (2) Currently, most credit rating agencies have their headquarters outside the Community. Most Member States do not regulate the activities of credit rating agencies or the conditions for the issuing of credit ratings. Despite their significant importance for the functioning of the financial markets, credit rating agencies are subject to Community law only in limited areas, notably under Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation<sup>1</sup>. Moreover, Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>2</sup> and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions<sup>3</sup> refer to credit rating agencies. It is therefore important to lay down rules ensuring that all credit ratings issued by the credit rating agencies registered in the Community are of adequate quality and issued by credit rating agencies subject to stringent requirements. The Commission will continue to work with its international partners to ensure convergence of the rules applying to credit rating agencies. It should be possible to exempt certain central banks issuing credit ratings from this Regulation provided that they fulfil the relevant applicable conditions which ensure the independence and integrity of their credit rating activities and which are as stringent as the requirements provided for in this Regulation.

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<sup>1</sup> OJ L 96, 12.4.2003, p. 16.

<sup>2</sup> OJ L 177, 30.6.2006, p. 1.

<sup>3</sup> OJ L 177, 30.6.2006, p. 201.

- (3) This Regulation should not create a general obligation for financial instruments or financial obligations to be rated under this Regulation. In particular, it should not require undertakings for collective investment in transferable securities (UCITS) as defined in Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)<sup>1</sup> or institutions for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision<sup>2</sup> to invest only in financial instruments which are rated under this Regulation.
- (4) This Regulation should not create a general obligation for financial institutions or investors to invest only in securities for which a prospectus has been published in accordance with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading<sup>3</sup> and Commission Regulation (EC) No 809/2004/EC of 29 April 2004 implementing Directive 2003/71/EC as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements<sup>4</sup> and which are rated under this Regulation. In addition, this Regulation should not require the issuers or offerors or persons asking for admission to trading on a regulated market to obtain credit ratings for securities which are subject to the requirement to publish a prospectus under Directive 2003/71/EC and Regulation (EC) No 809/2004.

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<sup>1</sup> OJ L 375, 31.12.1985, p. 3. Directive replaced, with effect from 1 July 2011, by Directive 2009/65/EC of the European Parliament and of the Council (OJ L ...).

<sup>2</sup> OJ L 235, 23.9.2003, p. 10.

<sup>3</sup> OJ L 345, 31.12.2003, p. 64.

<sup>4</sup> OJ L 149, 30.4.2004, p. 1.

- (5) A prospectus published under Directive 2003/71/EC and Regulation (EC) No 809/2004 should contain clear and prominent information on whether or not the credit rating of the respective securities is issued by a credit rating agency established in the Community and registered under this Regulation. However, nothing in this Regulation should prevent persons responsible for publishing a prospectus under Directive 2003/71/EC and Regulation (EC) No 809/2004 from including any material information in the prospectus, including credit ratings issued in third countries and related information.
- (6) In addition to issuing credit ratings and performing credit rating activities, credit rating agencies should also be able to perform ancillary activities on a professional basis. The performance of ancillary activities should not compromise the independence or integrity of credit rating agencies' credit rating activities.
- (7) This Regulation should apply to credit ratings issued by credit rating agencies registered in the Community. The principal aim of this Regulation is to protect the stability of financial markets and investors. Credit scores, credit scoring systems and similar assessments related to obligations arising from consumer, commercial or industrial relationships should not fall within the scope of this Regulation.

- (8) Credit rating agencies should, on a voluntary basis, apply the Code of Conduct Fundamentals for credit rating agencies issued by the International Organisation of Securities Commissions (IOSCO Code). In 2006, a Communication from the Commission on Credit Rating Agencies<sup>1</sup> invited the Committee of European Securities Regulators (CESR), established by Commission Decision 2001/527/EC<sup>2</sup>, to monitor compliance with the IOSCO Code and report back to the Commission on an annual basis.
- (9) The European Council of 13 and 14 March 2008 agreed to a set of conclusions to respond to the main weaknesses identified in the financial system. One of the objectives was to improve market functioning and incentive structures, including the role of credit rating agencies.
- (10) Credit rating agencies are considered to have failed, first, to reflect early enough in their credit ratings the worsening market conditions, and second, to adjust their credit ratings in time following the deepening market crisis. The most appropriate manner in which to correct those failures is by measures relating to conflicts of interest, the quality of the credit ratings, the transparency and internal governance of the credit rating agencies, and the surveillance of the activities of the credit rating agencies. The users of credit ratings should not rely blindly on credit ratings but should take utmost care to perform own analysis and conduct appropriate due diligence at all times regarding their reliance on such credit ratings.

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<sup>1</sup> OJ C 59, 11.3.2006, p. 2.

<sup>2</sup> OJ L 191, 13.7.2001, p. 43.

- (11) It is necessary to lay down a common framework of rules regarding the enhancement of the quality of credit ratings, in particular the quality of credit ratings to be used by financial institutions and persons regulated by harmonised rules in the Community. In the absence of such a common framework, there is a risk that Member States take diverging measures at national level having a direct negative impact on, and creating obstacles to, the good functioning of the internal market, since the credit rating agencies issuing credit ratings for the use of financial institutions in the Community would be subject to different rules in different Member States. Moreover, diverging quality requirements as regards credit ratings could lead to different levels of investor and consumer protection. Users should, furthermore, be able to compare credit ratings issued in the Community with credit ratings issued internationally.
- (12) This Regulation should not affect the use made of credit ratings by persons other than those referred to in this Regulation.

- (13) It is desirable to provide for the use of credit ratings issued in third countries for regulatory purposes in the Community provided that they comply with requirements which are as stringent as the requirements provided for in this Regulation. This Regulation introduces an endorsement regime allowing credit rating agencies established in the Community and registered in accordance with its provisions to endorse credit ratings issued in third countries. When endorsing a credit rating issued in a third country, credit rating agencies should determine and monitor, on an ongoing basis, whether credit rating activities resulting in the issuing of such a credit rating comply with requirements for the issuing of credit ratings which are as stringent as those provided for in this Regulation, achieving the same objective and effects in practice.
- (14) In order to respond to concerns that lack of establishment in the Community may be a serious impediment to effective supervision in the best interests of the financial markets in the Community, such an endorsement regime should be introduced for credit rating agencies that are affiliated or work closely with credit rating agencies established in the Community. Nevertheless, it may be necessary to adjust the requirement of physical presence in the Community in certain cases, notably as regards smaller credit rating agencies from third countries with no presence or affiliation in the Community. A specific regime of certification for such credit rating agencies should therefore be established, in so far as they are not systemically important for the financial stability or integrity of the financial markets of one or more Member States.

- (15) Certification should be possible after determination by the Commission of the equivalence of the legal and supervisory framework of a third country to the requirements of this Regulation. The equivalence mechanism envisaged should not grant automatic access to the Community but should offer the possibility for qualifying credit rating agencies from a third country to be assessed on a case-by-case basis and be granted an exemption from some of the organisational requirements for credit rating agencies active in the Community, including the requirement of physical presence in the Community.
- (16) This Regulation should also require a third-country credit rating agency to meet criteria which are general prerequisites for the integrity of its credit rating activities in order to prevent interference with the content of credit ratings by the competent authorities and other public authorities of that third country, and to provide for an adequate conflict of interests policy, rotation of rating analysts and periodic and ongoing disclosure.
- (17) Another important prerequisite for a sound endorsement regime and an equivalence system is the existence of sound cooperation arrangements between competent authorities of home Member States and the relevant competent authorities of third-country credit rating agencies.

- (18) A credit rating agency that has endorsed credit ratings issued in a third country should be fully and unconditionally responsible for such endorsed credit ratings and for the fulfilment of the relevant conditions referred to in this Regulation.
- (19) This Regulation should not apply to credit ratings that a credit rating agency produces pursuant to an individual order and provides exclusively to the person who ordered it and which are not intended for public disclosure or distribution by subscription.
- (20) Investment research, investment recommendations and other opinions about a value or a price for a financial instrument or a financial obligation should not be considered to be credit ratings.
- (21) An unsolicited credit rating, namely a credit rating not initiated at the request of the issuer or rated entity, should be clearly identified as such and should be distinguished from solicited credit ratings by appropriate means.
- (22) In order to avoid potential conflicts of interest, credit rating agencies focus in their professional activity on the issuing of credit ratings. A credit rating agency should not be allowed to carry out consultancy or advisory services. In particular, a credit rating agency should not make proposals or recommendations regarding the design of a structured finance instrument. However, credit rating agencies should be able to provide ancillary services where this does not create potential conflicts of interest with the issuing of credit ratings.

- (23) Credit rating agencies should use rating methodologies that are rigorous, systematic, continuous and subject to validation including by appropriate historical experience and back-testing. Such a requirement should not, however, provide grounds for interference with the content of credit ratings and methodologies by the competent authorities and the Member States. Similarly, the requirement that credit rating agencies review credit ratings at least annually should not compromise the obligation on credit rating agencies to monitor credit ratings on a continuous basis and review credit ratings as necessary. Those requirements should not be applied in such a way as to prevent new credit rating agencies from entering the market.
- (24) Credit ratings should be well-founded and solidly substantiated, in order to avoid rating compromises.
- (25) Credit rating agencies should disclose information to the public on the methodologies, models and key rating assumptions which they use in their credit rating activities. The level of detail concerning the disclosure of information concerning models should be such as to give adequate information to the users of credit ratings in order to perform their own due diligence when assessing whether to rely or not on those credit ratings. Disclosure of information concerning models should not, however, reveal sensitive business information or seriously impede innovation.

- (26) Credit rating agencies should establish appropriate internal policies and procedures in relation to employees and other persons involved in the credit rating process in order to prevent, identify, eliminate or manage and disclose any conflicts of interest and ensure at all times the quality, integrity and thoroughness of the credit rating and review process. Such policies and procedures should, in particular, include the internal control mechanisms and compliance function.
- (27) Credit rating agencies should avoid situations of conflict of interest and manage those conflicts adequately when they are unavoidable in order to ensure their independence. Credit rating agencies should disclose conflicts of interest in a timely manner. They should also keep records of all significant threats to the independence of the credit rating agency and that of its employees and other persons involved in the credit rating process, as well as the safeguards applied to mitigate those threats.
- (28) A credit rating agency or group of credit rating agencies should maintain arrangements for sound corporate governance. In determining its corporate governance arrangements, the credit rating agency or group of credit rating agencies should have regard to the need to ensure that it issues credit ratings that are independent, objective and of adequate quality.

- (29) In order to ensure the independence of the credit rating process from the business interest of the credit rating agency as a company, credit rating agencies should ensure that at least one third, but no less than two, of the members of the administrative or supervisory board are independent in a manner consistent with point 13 in Section III of Commission Recommendation 2005/162/EC of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board<sup>1</sup>. Moreover, it is necessary that the majority of the senior management, including all independent members of the administrative or supervisory board, have sufficient expertise in appropriate areas of financial services. The compliance officer should report regularly on the carrying out of his or her duties to the senior management and the independent members of the administrative or supervisory board.
- (30) In order to avoid conflicts of interest, the compensation of independent members of the administrative or supervisory board should not depend on the business performance of the credit rating agency.
- (31) A credit rating agency should allocate a sufficient number of employees with appropriate knowledge and experience to its credit rating activities. In particular, the credit rating agency should ensure that adequate human and financial resources are allocated to the issuing, monitoring and updating of credit ratings.

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<sup>1</sup> OJ L 52, 25.2.2005, p. 51.

- (32) In order to take account of the specific condition of credit rating agencies that have fewer than 50 employees, the competent authorities should be able to exempt such credit rating agencies from some of the obligations laid down by this Regulation as regards the role of the independent members of the board, the compliance function and the rotation mechanism, and provided that those credit rating agencies are able to demonstrate that they comply with specific conditions. The competent authorities should examine, in particular, whether the size of a credit rating agency has been determined in such a way as to avoid compliance with the requirements of this Regulation by the credit rating agency or by a group of credit rating agencies. The application of the exemption by competent authorities of Member States should be made in such a way as to avoid the risks of fragmenting the internal market and to guarantee the uniform application of Community law.
- (33) Long-lasting relationships with the same rated entities or their related third parties could compromise the independence of rating analysts and persons approving credit ratings. Those analysts and persons should therefore be subject to an appropriate rotation mechanism which should provide for a gradual change in analytical teams and credit rating committees.

- (34) Credit rating agencies should ensure that methodologies, models and key rating assumptions such as mathematical or correlation assumptions used for determining credit ratings are properly maintained, up-to-date and subject to a comprehensive review on a periodic basis and that their descriptions are published in a manner permitting comprehensive review. In cases where the lack of reliable data or the complexity of the structure of a new type of financial instrument, in particular structured finance instruments, raises serious questions as to whether the credit rating agency can produce a credible credit rating, the credit rating agency should not issue a credit rating or should withdraw an existing credit rating. Changes in the quality of information available for monitoring an existing credit rating should be disclosed with that review and, if appropriate, a revision of the credit rating should be made.
- (35) In order to ensure the quality of credit ratings, a credit rating agency should take measures to ensure that the information it uses in assigning a credit rating is reliable. For that purpose, a credit rating agency should be able to envisage, inter alia, reliance on independently audited financial statements and public disclosures; verification by reputable third-party services; random sampling examination of the information received; or contractual provisions clearly stipulating liability for the rated entity or its related third parties, if the information provided under the contract is knowingly materially false or misleading or if the rated entity or its related third parties fail to conduct reasonable due diligence regarding the accuracy of the information as specified under the terms of the contract.

- (36) This Regulation is without prejudice to the duty of credit rating agencies to protect the right to privacy of natural persons with respect to the processing of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>.
- (37) It is necessary for credit rating agencies to establish proper procedures for the regular review of methodologies, models and key rating assumptions used by the credit rating agency in order to be able to properly reflect the changing conditions in the underlying asset markets. With a view to ensuring transparency, disclosure of any material modification to the methodologies and practices, procedures and processes of credit rating agencies should be made prior to their coming into effect, unless extreme market conditions require an immediate change in the credit rating.

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<sup>1</sup> OJ L 281, 23.11.1995, p. 31.

- (38) A credit rating agency should indicate any appropriate risk warning, including a sensitivity analysis of the relevant assumptions. That analysis should explain how various market developments that move the parameters built into the model may influence the credit rating changes (for example volatility). The credit rating agency should ensure that the information on historical default rates of its rating categories is verifiable and quantifiable and provides a sufficient basis for interested parties to understand the historical performance of each rating category and if and how rating categories have changed. If the nature of the credit rating or other circumstances makes a historical default rate inappropriate, statistically invalid, or otherwise likely to mislead the users of the credit rating, the credit rating agency should provide appropriate clarification. That information should, to the extent possible, be comparable with any existing industry patterns in order to assist investors in drawing performance comparisons between different credit rating agencies.
- (39) In order to reinforce transparency of credit ratings and contribute to the protection of investors, CESR should maintain a central repository where information on the past performances of credit rating agencies and information about credit ratings issued in the past should be kept. Credit rating agencies should provide information to that repository in standardised form. CESR should make that information available to the public and should, annually, publish summary information on the main developments observed.

- (40) Under certain circumstances structured finance instruments may have effects which are different from traditional corporate debt instruments. It could be misleading for investors to apply the same rating categories to both types of instruments without further explanation. Credit rating agencies should play an important role in raising awareness of the users of credit ratings about the specificities of the structured finance products in relation to traditional ones. Credit rating agencies should therefore clearly differentiate between rating categories used for rating structured finance instruments on the one hand, and rating categories used for other financial instruments or financial obligations on the other, by adding an appropriate symbol to the rating category.
- (41) Credit rating agencies should take measures to avoid situations where issuers request the preliminary rating assessment of the structured finance instrument concerned from a number of credit rating agencies in order to identify the one offering the best credit rating for the proposed structure. Issuers should also avoid applying such practices.
- (42) A credit rating agency should keep records of the methodology for credit ratings and regularly update changes thereto and also keep a record of the substantial elements of the dialogue between the rating analyst and the rated entity or its related third parties.

- (43) In order to ensure a high level of investor and consumer confidence in the internal market, credit rating agencies which issue credit ratings in the Community should be subject to registration. Such a registration is the principal prerequisite for credit rating agencies to issue credit ratings intended to be used for regulatory purposes in the Community. It is therefore necessary to lay down the harmonised conditions and the procedure for the granting, suspension and withdrawal of such registration.
- (44) This Regulation should not replace the established process of recognising External Credit Assessment Institutions (ECAIs) in accordance with Directive 2006/48/EC. The ECAIs already recognised in the Community should apply for registration in accordance with this Regulation.
- (45) A credit rating agency registered by the competent authority of the relevant Member State should be allowed to issue credit ratings throughout the Community. It is therefore necessary to establish a single registration procedure for each credit rating agency which is effective throughout the Community. The registration of a credit rating agency should become effective once the registration decision issued by the competent authority of the home Member State has taken effect under relevant national law.

- (46) It is necessary to establish a single point of entry for the submission of applications for registration. CESR should receive applications for registration and effectively inform the competent authorities in all the Member States. CESR should also provide advice in respect of the completeness of the application to the competent authority of the home Member State. The examination of applications for registration should be carried out at national level by the relevant competent authority. In order to deal efficiently with credit rating agencies, competent authorities should set up operational networks (colleges) supported by an efficient information technology infrastructure. CESR should establish a subcommittee specialised in the field of credit ratings of each of the asset classes rated by credit rating agencies.
- (47) Some credit rating agencies are composed of several legal entities which, together, form a group of credit rating agencies. When registering each of the credit rating agencies being part of such a group, the competent authorities of the Member States concerned should coordinate the examination of the applications submitted by credit rating agencies belonging to the same group and the decision-making concerning the granting of registration. It should be possible, however, to refuse registration to a credit rating agency within a group of credit rating agencies when such a credit rating agency does not meet the requirements for registration while other members of such a group comply with all of the requirements for registration under this Regulation. As the college should not be entrusted with power to issue legally binding decisions, the competent authorities of home Member States of the members of the group of credit rating agencies should each issue an individual decision in respect of the credit rating agency established on the territory of the Member State concerned.

- (48) The college should represent the effective platform for an exchange of supervisory information among competent authorities, coordination of their activities and supervisory measures necessary for the effective supervision of credit rating agencies. In particular, the college should facilitate the monitoring of the fulfilment of conditions for the endorsement of credit ratings issued in third countries, certification, outsourcing arrangements, and exemptions provided for in this Regulation. The activities of the college should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices.
- (49) In order to enhance the practical coordination of activities of the college, its members should select among themselves a facilitator. The facilitator should chair the meetings of the college, establish its written coordination arrangements and coordinate its actions. During the registration process, the facilitator should assess the need to extend the period for examination of applications, coordinate such examination, and liaise with CESR.
- (50) In November 2008, the Commission set up a high level group with the task of examining the future European supervisory architecture in the field of financial services, including the role of CESR.

- (51) The current supervisory architecture should not be considered as the long-term solution for the oversight of credit rating agencies. Colleges of competent authorities, which are expected to streamline supervisory cooperation and convergence in this area in the Community, are a considerable step forward, but may not substitute all the advantages of more consolidated supervision of the credit rating industry. The crisis in international financial markets has clearly demonstrated that it is appropriate to examine further the need for wide-ranging reforms of the regulatory and supervisory model of the Community financial sector. In order to achieve the necessary level of Community supervisory convergence and cooperation and to underpin the stability of the financial system, further wide-ranging reforms of the regulatory and supervisory model of the Community financial sector are highly needed and should be put forward swiftly by the Commission with due consideration to the conclusions presented by the group of experts chaired by Jacques de Larosière on 25 February 2009. The Commission should, as soon as possible, and in any event by 1 July 2010, report to the European Parliament, the Council and other institutions concerned any findings in this respect and should put forward any legislative proposal needed to tackle the shortcomings identified as regards supervisory coordination and cooperation arrangements.
- (52) Significant changes in the endorsement regime, outsourcing arrangements as well as the opening and closing of branches should, *inter alia*, be considered as material changes to the conditions for initial registration of a credit rating agency.

- (53) The supervision of a credit rating agency should be carried out by the competent authority of the home Member State in cooperation with the competent authorities of the other Member States concerned, using the relevant college and keeping CESR appropriately involved.
- (54) The ability of the competent authority of the home Member State and other members of the relevant college to assess and monitor compliance of a credit rating agency with the obligations provided for under this Regulation should not be limited by any outsourcing arrangements entered into by the credit rating agency. The credit rating agency should remain responsible for any of its obligations under this Regulation in the event of the use of outsourcing arrangements.
- (55) In order to maintain a high level of investor and consumer confidence and enable the ongoing supervision of credit ratings issued in the Community, credit rating agencies whose headquarters are located outside the Community should be required to set up a subsidiary in the Community in order to allow for the efficient supervision of their activities in the Community and the effective use of the endorsement regime. The emergence of new actors on the credit rating agency market should also be encouraged.
- (56) The competent authorities should be able to use powers defined in this Regulation 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 other persons otherwise related or connected to credit rating agencies or credit rating activities. Such persons should include shareholders or members of the supervisory or administrative boards of the credit rating agencies and rated entities.

- (57) The provisions of this Regulation regarding supervisory fees should be without prejudice to relevant provisions of national law governing supervisory or similar fees.
- (58) It is appropriate to create a mechanism to ensure the effective enforcement of this Regulation. The competent authorities of the Member States should have at their disposal the necessary means to ensure that ratings issued in the Community are issued in compliance with this Regulation. The use of these supervisory measures should always be coordinated within the relevant college. Measures such as the withdrawal of registration or the suspension of the use for regulatory purposes of credit ratings should be imposed when they are considered to be proportionate to the significance of the breach of the obligations arising from this Regulation. In exercising their supervisory powers, competent authorities should have due regard to the interests of investors and market stability. Since the independence of a credit rating agency in the process of issuing its credit ratings should be preserved, neither the competent authorities nor the Member States should interfere in relation to the substance of credit ratings and the methodologies by which a credit rating agency determines credit ratings in order to avoid credit ratings to be compromised. In the event that a credit rating agency is subjected to pressure, it should notify the Commission and CESR. The Commission should examine on a case-by-case basis whether further action is to be taken against the Member State concerned for failure to comply with its obligations under this Regulation.

- (59) It is desirable to ensure that decision-making referred to in this Regulation be based on close cooperation between the Member States' competent authorities, and the adoption of the registration decisions should therefore take place on the basis of an agreement. This is a necessary prerequisite for the efficient process of registration and performance of supervision. The decision-making should be effective, expeditious and consensual.
- (60) For the efficiency of supervision and in order to avoid duplication of tasks, the competent authorities of the Member States should cooperate.
- (61) It is also important to provide for exchange of information between competent authorities responsible for supervision of credit rating agencies under this Regulation and competent authorities supervising financial institutions, in particular those responsible for prudential supervision or financial stability in the Member States.
- (62) The competent authorities of Member States other than the competent authority of the home Member State should be able to intervene and take appropriate supervisory measures, after informing CESR and the competent authority of the home Member State and after consulting the relevant college in the event that they have established that a registered credit rating agency whose ratings are used within their territory breaches the obligations arising from this Regulation.

- (63) Unless this Regulation provides for a specific procedure as regards registration, certification or withdrawal thereof, the adoption of supervisory measures or the performance of supervisory powers, the national law governing such procedures including linguistic regimes, professional secrecy and legal professional privilege, should apply and the rights of the credit rating agencies and other persons under that law should not be affected.
- (64) It is necessary to enhance convergence of the powers at the disposal of the competent authorities in order to achieve an equivalent intensity of enforcement across the internal market.
- (65) CESR should ensure coherence in the application of this Regulation. It should enhance and facilitate the cooperation and coordination of competent authorities in supervisory activities and issue guidance where appropriate. CESR should therefore establish a mediation mechanism and peer review in order to facilitate a coherent approach by the competent authorities.
- (66) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive and should at least cover cases of gross professional misconduct and lack of due diligence. It should be possible for Member States to provide for administrative or criminal penalties. CESR should establish guidelines on the convergence of practices relating to such penalties.

- (67) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be in accordance with the rules on transfer of personal data as laid down in Directive 95/46/EC.
- (68) This Regulation should also provide for rules relating to exchange of information with competent authorities in third countries, particularly with those responsible for the supervision of the credit rating agencies involved in endorsement and certification.
- (69) Without prejudice to the application of Community law, any claim against credit rating agencies in relation to any infringement of the provisions of this Regulation should be made in accordance with the applicable national law on civil liability.
- (70) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>1</sup>.

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<sup>1</sup> OJ L 184, 17.7.1999, p. 23.

- (71) In particular, the Commission should be empowered, while taking account of international developments, to amend Annexes I and II, which lay down the specific criteria for assessing the compliance of a credit rating agency with its duties in terms of internal organisation, operational arrangements, rules on employees, presentation of credit ratings and disclosure, and to specify or amend the criteria for determining the equivalence of the regulatory and supervisory legal framework of third countries with the provisions of this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (72) With a view to taking into account further developments in the financial markets, the Commission should submit a report to the European Parliament and the Council assessing the application of this Regulation, in particular the regulatory reliance on credit ratings as well as the appropriateness of the remuneration of the credit rating agency by the rated entity. In the light of that assessment, the Commission should put forward appropriate legislative proposals.
- (73) The Commission should also submit a report to the European Parliament and the Council assessing incentives for issuers to use credit rating agencies established in the Community for a proportion of their ratings, possible alternatives to the "issuer-pays" model including the creation of a public Community credit rating agency, and convergence of national rules concerning infringements of the provisions of this Regulation. In the light of that assessment, the Commission should put forward appropriate legislative proposals.

- (74) The Commission should also submit a report to the European Parliament and the Council assessing developments in the regulatory and supervisory framework for credit rating agencies in third countries and the effects of those developments and of transitional provisions referred to in this Regulation on the stability of the financial markets in the Community.
- (75) Since the objective of this Regulation, namely to ensure a high level of consumer and investor protection by laying down a common framework with regard to the quality of credit ratings to be issued in the internal market, cannot be sufficiently achieved by the Member States, given the current scarcity of national legislation in this field and the fact that the majority of existing credit rating agencies are established outside the Community, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

# 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 point (d) of paragraph 2, 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 point (d) of paragraph 2 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 point (d) of paragraph 2 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<sup>1</sup>, 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<sup>2</sup>;
- (l) "structured finance instrument" means a financial instrument or other assets resulting from a securitisation transaction or scheme referred to in point (36) of Article 4 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 point (a) of Article 4(3), a group of credit rating agencies shall also include credit rating agencies established in third countries;

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<sup>1</sup> OJ L 193, 18.7.1983, p. 1.

<sup>2</sup> OJ L 145, 30.4.2004, p. 1.

- (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 point (a) of paragraph 1, 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<sup>1</sup>;
- (b) investment research as defined in Article 24(1) of Directive 2006/73/EC<sup>2</sup> 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.

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<sup>1</sup> OJ L 339, 24.12.2003, p. 73.

<sup>2</sup> 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).

*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<sup>1</sup>, assurance undertakings as defined in Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance<sup>2</sup>, reinsurance undertakings as defined in Directive 2005/68/EC of the European Parliament and the Council of 16 November 2005 on reinsurance<sup>3</sup>, 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.

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<sup>1</sup> OJ L 228, 16.8.1973, p. 3.  
<sup>2</sup> OJ L 345, 19.12.2002, p. 1.  
<sup>3</sup> OJ L 323, 9.12.2005, p. 1.

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 point (g) of paragraph 3 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 point (b) of Article 29(3). The competent authorities that have decided to become members of the college shall notify CESR accordingly within ten 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 ten 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.

## **TITLE II**

### **ISSUING OF CREDIT RATINGS**

#### *Article 6*

#### *Independence and avoidance of conflicts of interest*

1. A credit rating agency shall take all necessary steps to ensure that the issuing of a credit rating is not affected by any existing or potential conflict of interest or business relationship involving the credit rating agency issuing the credit rating, its managers, rating analysts, employees, any other natural person whose services are placed at the disposal or under the control of the credit rating agency, or any person directly or indirectly linked to it by control.
2. In order to ensure compliance with paragraph 1, a credit rating agency shall comply with the requirements set out in Sections A and B of Annex I.

3. At the request of a credit rating agency, the competent authority of the home Member State may exempt a credit rating agency from complying with the requirements of points 2, 5 and 6 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:
- (a) the credit rating agency has fewer than 50 employees;
  - (b) the credit rating agency has implemented measures and procedures, in particular internal control mechanisms, reporting arrangements and measures ensuring independence of rating analysts and persons approving credit ratings, which ensure the effective compliance with the objectives of this Regulation; and
  - (c) the size of the credit rating agency is not determined in such a way as to avoid compliance with the requirements of this Regulation by a credit rating agency or a group of credit rating agencies.

In the case of a group of credit rating agencies, competent authorities shall ensure that at least one of the credit rating agencies in the group is not exempted from complying with the requirements of points 2, 5 and 6 of Section A of Annex I and Article 7(4).

*Article 7*  
*Rating analysts, employees and other persons*  
*involved in the issuing of credit ratings*

1. A credit rating agency shall ensure that rating analysts, its employees and any other natural person whose services are placed at its disposal or under its control and who are directly involved in credit rating activities have appropriate knowledge and experience for the duties assigned.
2. A credit rating agency shall ensure that persons referred to in paragraph 1 shall not be allowed to initiate or participate in negotiations regarding fees or payments with any rated entity, related third party or any person directly or indirectly linked to the rated entity by control.
3. A credit rating agency shall ensure that persons referred to in paragraph 1 meet the requirements set out in Section C of Annex I.
4. A credit rating agency shall establish an appropriate gradual rotation mechanism with regard to the rating analysts and persons approving credit ratings as defined in Section C of Annex I. That rotation mechanism shall be undertaken in phases on the basis of individuals rather than of a complete team.
5. Compensation and performance evaluation of rating analysts and persons approving the credit ratings shall not be contingent on the amount of revenue that the credit rating agency derives from the rated entities or related third parties.

*Article 8*

*Methodologies, models and key rating assumptions*

1. A credit rating agency shall disclose to the public the methodologies, models and key rating assumptions it uses in its credit rating activities as defined in point 5 of Part I of Section E of Annex I.
2. A credit rating agency shall adopt, implement and enforce adequate measures to ensure that the credit ratings it issues are based on a thorough analysis of all the information that is available to it and that is relevant to its analysis according to its rating methodologies. It shall adopt all necessary measures so that the information it uses in assigning a credit rating is of sufficient quality and from reliable sources.
3. A credit rating agency shall use rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing.
4. Where a credit rating agency is using an existing credit rating prepared by another credit rating agency with respect to underlying assets or structured finance instruments, it shall not refuse to issue a credit rating of an entity or a financial instrument because a portion of the entity or the financial instrument had been previously rated by another credit rating agency.

A credit rating agency shall record all instances where in its credit rating process it departs from existing credit ratings prepared by another credit rating agency with respect to underlying assets or structured finance instruments providing a justification for the differing assessment.

5. A credit rating agency shall monitor credit ratings and review its credit ratings and methodologies on an ongoing basis and at least annually, in particular where material changes occur that could have an impact on a credit rating. A credit rating agency shall establish internal arrangements to monitor the impact of changes in macroeconomic or financial market conditions on credit ratings.
6. When methodologies, models or key rating assumptions used in credit rating activities are changed, a credit rating agency shall:
  - (a) immediately, using the same means of communication as used for the distribution of the affected credit ratings, disclose the likely scope of credit ratings to be affected;
  - (b) review the affected credit ratings as soon as possible and no later than six months after the change, in the meantime placing those ratings under observation; and
  - (c) re-rate all credit ratings that have been based on those methodologies, models or key rating assumptions if, following the review, the overall combined effect of the changes affects those credit ratings.

*Article 9*  
*Outsourcing*

Outsourcing of important operational functions shall not be undertaken in such a way as to impair materially the quality of the credit rating agency's internal control and the ability of the competent authorities to supervise the credit rating agency's compliance with obligations under this Regulation.

*Article 10*  
*Disclosure and presentation of credit ratings*

1. A credit rating agency shall disclose any credit rating, 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 are presented and processed in accordance with the requirements set out in Section D of Annex I.

3. When a credit rating agency issues credit ratings for structured finance instruments, it shall ensure that rating categories that are attributed to structured finance instruments are clearly differentiated using an additional symbol which distinguishes them from rating categories used for any other entities, financial instruments or financial obligations.
4. A credit rating agency shall disclose its policies and procedures regarding unsolicited credit ratings.
5. When a credit rating agency issues an unsolicited credit rating, it shall state prominently in the credit rating whether or not the rated entity or related third party participated in the credit rating process and whether the credit rating agency had access to the accounts and other relevant internal documents of the rated entity or a related third party.

Unsolicited credit ratings shall be identified as such.

6. A credit rating agency shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the credit ratings or any credit rating activities of the credit rating agency.

### *Article 11*

#### *General and periodic disclosures*

1. A credit rating agency shall fully disclose to the public and update immediately information relating to the matters set out in Part I of Section E of Annex I.

2. A credit rating agency shall make available in a central repository established by CESR information on its historical performance data including the ratings transition frequency and information about credit ratings issued in the past and on their changes. A credit rating agency shall provide information to that repository on a standard form as provided for by CESR. CESR shall make that information accessible to the public and shall publish summary information on the main developments observed on an annual basis.
3. A credit rating agency shall provide annually to the competent authority of its home Member State and to CESR information relating to matters set out in point 2 of Part II of Section E Annex I. The competent authority of the home Member State shall disclose that information to the members of the relevant college.

#### *Article 12*

##### *Transparency report*

A credit rating agency shall publish annually a transparency report which includes information on matters set out in Part III of Section E of Annex I. The credit rating agency shall publish its transparency report at the latest three months after the end of each financial year and shall ensure that it remains available on the website of the agency for at least five years.

#### *Article 13*

##### *Public disclosure fees*

A credit rating agency shall not charge a fee for the information provided in accordance with Articles 8 to 12.

**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 ten 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 point (b) of paragraph 1 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 point (b) of paragraph 1 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 ...\*, 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 points (a) to (d) of Article 29(5), the written arrangements for the operation of colleges and the coordination arrangements between colleges;

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

- (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 ...<sup>\*</sup>, 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 point (d) of Article 24(1) 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.

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<sup>\*</sup> OJ please insert date: nine months after the entry into force of this Regulation.

4. CESR shall publish, annually and for the first time by ...<sup>\*</sup>, 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 ...<sup>\*\*</sup>, 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.

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<sup>\*</sup> OJ please insert date: one year after the entry into force of this Regulation.

<sup>1</sup> OJ L 25, 29.1.2009, p. 23.

<sup>2</sup> OJ L 25, 29.1.2009, p. 28.

<sup>\*\*</sup> OJ please insert date: six months after the entry into force of 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 ten 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 points (e) and (f) of Article 24(1);
  - (b) adopt measures referred to in point (d) of Article 24(1) 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 ten 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 ten 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 ten 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.

**TITLE IV**  
**PENALTIES, COMMITTEE PROCEDURE,**  
**REPORTING AND TRANSITIONAL**  
**AND FINAL PROVISIONS**

**CHAPTER I**  
**Penalties, committee procedure and reporting**

*Article 36*

*Penalties*

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Member States shall ensure that the competent authority disclose to the public every penalty that has been imposed for infringement of this Regulation, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

By ...\*, the Member States shall notify the rules referred to in the first subparagraph to the Commission. They shall notify the Commission without delay of any subsequent amendment thereto.

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

*Article 37*  
*Amendments to Annexes*

The Commission may amend the Annexes in order to take account of developments, including international developments, on financial markets, in particular in relation to new financial instruments and with regard to convergence of supervisory practice.

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).

*Article 38*  
*Committee procedure*

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC<sup>1</sup>.
2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Article 5 and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

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<sup>1</sup> OJ L 191, 13.7.2001, p. 45.

*Article 39*

*Reports*

1. By ...<sup>\*</sup>, the Commission shall make an assessment of the application of this Regulation, including an assessment of the reliance on credit ratings in the Community, the impact on the level of concentration in the credit rating market, the cost and benefit of impacts of the Regulation and of the appropriateness of the remuneration of the credit rating agency by the rated entity (issuer-pays model), and submit a report thereon to the European Parliament and the Council.
2. By ...<sup>\*\*</sup>, the Commission shall, in the light of discussions with the competent authorities, assess the application of Title III of this Regulation, in particular of the cooperation of the competent authorities, the legal status of CESR and supervisory practices. The Commission shall present a report on those matters to the European Parliament and to the Council, accompanied, where appropriate, by proposals for a review of that Title.

That report shall include a reference to the Commission proposal of 12 November 2008 for a regulation on Credit Rating Agencies and to the report of the Committee on Economic and Monetary Affairs of the European Parliament of 23 March 2009 relating to that proposal.

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\* OJ please insert date: three years after the entry into force of this Regulation.

\*\* OJ please insert date: one year after the entry into force of this Regulation.

3. By ...<sup>\*</sup>, the Commission shall, in the light of developments in the regulatory and supervisory framework for credit rating agencies in third countries, present a report to the European Parliament and to the Council concerning the effects of those developments and of the transitional provisions referred to in Article 40 on the stability of financial markets in the Community.

## **CHAPTER II**

### **Transitional and final provisions**

#### *Article 40*

##### *Transitional provision*

Credit rating agencies operating in the Community before ...<sup>\*\*</sup> (existing credit rating agencies), which intend to apply for registration under this Regulation, shall adopt all necessary measures to comply with its provisions by ...<sup>\*\*\*</sup>.

Credit rating agencies shall submit their application for registration no earlier than ...<sup>\*\*</sup>. Existing credit rating agencies shall submit their application for registration by ...<sup>\*\*\*</sup>.

Existing credit rating agencies may continue issuing credit ratings which may be used for regulatory purposes by the financial institutions referred to in Article 4(1) unless registration is refused. Where registration is refused, Article 24(2) shall apply.

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<sup>\*</sup> OJ please insert date: one year after the entry into force of this Regulation.

<sup>\*\*</sup> OJ please insert date: six months after the entry into force of this Regulation.

<sup>\*\*\*</sup> OJ please insert date: nine months after the entry into force of this Regulation.

*Article 41*  
*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*.

It shall apply from its date of entry into force. However:

- Article 4(1) shall apply from ...<sup>\*</sup>; and
- points (f), (g) and (h) of Article 4(3) shall apply from ...<sup>\*\*</sup>.

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

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>\*</sup> OJ please insert date: 12 months after the entry into force of this Regulation.

<sup>\*\*</sup> OJ please insert date: 18 months after the entry into force of this Regulation.

## ANNEX I

### INDEPENDENCE AND AVOIDANCE OF CONFLICTS OF INTEREST

#### Section A

##### Organisational requirements

1. The credit rating agency shall have an administrative or supervisory board. Its senior management shall ensure that:
  - (a) credit rating activities are independent, including from all political and economic influences or constraints;
  - (b) conflicts of interest are properly identified, managed and disclosed;
  - (c) the credit rating agency complies with the remaining requirements of this Regulation.
2. A credit rating agency shall be organised in a way that ensures that its business interest does not impair the independence or accuracy of the credit rating activities.

The senior management of a credit rating agency shall be of good repute and sufficiently skilled and experienced, and shall ensure the sound and prudent management of the credit rating agency.

At least one third, but no less than two, of the members of the administrative or supervisory board of a credit rating agency shall be independent members who are not involved in credit rating activities.

The compensation of the independent members of the administrative or supervisory board shall not be linked to the business performance of the credit rating agency and shall be arranged so as to ensure the independence of their judgement. The term of office of the independent members of the administrative or supervisory board shall be for a pre-agreed fixed period not exceeding five years and shall not be renewable. The dismissal of independent members of the administrative or supervisory board shall take place only in case of misconduct or professional underperformance.

The majority of members of the administrative or supervisory board, including its independent members, shall have sufficient expertise in financial services. Provided that the credit rating agency issues credit ratings of structured finance instruments, at least one independent member and one other member of the board shall have in-depth knowledge and experience at a senior level of the markets in structured finance instruments.

In addition to the overall responsibility of the board, the independent members of the administrative or supervisory board shall have the specific task of monitoring:

- (a) the development of the credit rating policy and of the methodologies used by the credit rating agency in its credit rating activities;

- (b) the effectiveness of the internal quality control system of the credit rating agency in relation to credit rating activities;
- (c) the effectiveness of measures and procedures instituted to ensure that any conflicts of interest are identified, eliminated or managed and disclosed; and
- (d) the compliance and governance processes, including the efficiency of the review function referred to in point 9 of this Section.

Opinions of the independent members of administrative or supervisory board issued on the matters referred to in points (a) to (d) shall be presented to the board periodically and shall be made available to the competent authority on request.

- 3. A credit rating agency shall establish adequate policies and procedures to ensure compliance with its obligations under this Regulation.
- 4. A credit rating agency shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

Those internal control mechanisms shall be designed to secure compliance with decisions and procedures at all levels of the credit rating agency.

A credit rating agency shall implement and maintain decision-making procedures and organisational structures which clearly and in a documented manner specify reporting lines and allocate functions and responsibilities.

5. A credit rating agency shall establish and maintain a permanent and effective compliance function department (compliance function) which operates independently. The compliance function shall monitor and report on compliance of the credit rating agency and its employees with the credit rating agency's obligations under this Regulation. The compliance function shall:
- (a) monitor and, on a regular basis, assess the adequacy and effectiveness of the measures and procedures put in place in accordance with point 3, and the actions taken to address any deficiencies in the credit rating agency's compliance with its obligations;
  - (b) advise and assist the managers, rating analysts, employees as well as 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 who is responsible for carrying out credit rating activities, to comply with the credit rating agency's obligations under this Regulation.
6. In order to enable the compliance function to discharge its responsibilities properly and independently, a credit rating agency shall ensure that the following conditions are satisfied:
- (a) the compliance function has the necessary authority, resources, expertise and access to all relevant information;

- (b) a compliance officer is appointed and is responsible for the compliance function and for any reporting with regard to compliance required by point 3;
- (c) the managers, rating analysts, employees and 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 who is involved in the compliance function is not involved in the performance of credit rating activities they monitor;
- (d) the compensation of the compliance officer is not linked to the business performance of the credit rating agency and is arranged so as to ensure the independence of his or her judgement.

The compliance officer shall ensure that any conflicts of interest relating to the persons placed at the disposal of the compliance function are properly identified and eliminated.

The compliance officer shall report regularly on the carrying out of his or her duties to senior management and the independent members of the administrative or supervisory board.

7. A credit rating agency shall establish appropriate and effective organisational and administrative arrangements to prevent, identify, eliminate or manage and disclose any conflicts of interest referred to in point 1 of Section B. It shall arrange for records to be kept of all significant threats to the independence of the credit rating activities, including those to the rules on rating analysts referred to in Section C, as well as the safeguards applied to mitigate those threats.
8. A credit rating agency shall employ appropriate systems, resources and procedures to ensure continuity and regularity in the performance of its credit rating activities.
9. A credit rating agency shall establish a review function responsible for periodically reviewing its methodologies, models and key rating assumptions, such as mathematical or correlation assumptions, and any significant changes or modifications thereto as well as the appropriateness of those methodologies, models and key rating assumptions where they are used or intended to be used for the assessment of new financial instruments.

That review function shall be independent of the business lines which are responsible for credit rating activities and report to the members of the administrative or supervisory board referred to in point 2 of this Section.

10. A credit rating agency shall monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this Regulation and take appropriate measures to address any deficiencies.

## Section B

### Operational requirements

1. A credit rating agency shall identify, eliminate or manage and disclose, clearly and prominently, any actual or potential conflicts of interest that may influence the analyses and judgments of its rating analysts, employees, or any other natural person whose services are placed at the disposal or under the control of the credit rating agency and who are directly involved in the issuing of credit rating and persons approving credit ratings.
2. A credit rating agency shall disclose to the public the names of the rated entities or related third parties from which it receives more than 5 % of its annual revenue.
3. A credit rating agency shall not issue a credit rating in any of the following circumstances, or shall, in the case of an existing credit rating, immediately disclose where the credit rating is potentially affected by the following:
  - (a) the credit rating agency or persons referred to in point 1, directly or indirectly owns financial instruments of the rated entity or a related third party or has any other direct or indirect ownership interest in that entity or party, other than holdings in diversified collective investment schemes, including managed funds such as pension funds or life insurance;

- (b) the credit rating is issued with respect to the rated entity or a related third party directly or indirectly linked to the credit rating agency by control;
- (c) a person referred to in point 1 is a member of the administrative or supervisory board of the rated entity or a related third party; or
- (d) a rating analyst who participated in determining a credit rating, or a person who approved a credit rating, has had a relationship with the rated entity or a related third party which may cause a conflict of interests.

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

4. A credit rating agency shall not provide consultancy or advisory services to the rated entity or a related third party regarding the corporate or legal structure, assets, liabilities or activities of that rated entity or related third party.

A credit rating agency may provide services other than issue of credit ratings (ancillary services). Ancillary services are not part of credit rating activities; they comprise market forecasts, estimates of economic trends, pricing analysis and other general data analysis as well as related distribution services.

A credit rating agency shall ensure that the provision of ancillary services does not present conflicts of interest with its credit rating activities and shall disclose in the final ratings reports any ancillary services provided for the rated entity or any related third party.

5. A credit rating agency shall ensure that rating analysts or persons who approve ratings do not make proposals or recommendations, either formally or informally, regarding the design of structured finance instruments on which the credit rating agency is expected to issue a credit rating.
6. A credit rating agency shall design its reporting and communication channels so as to ensure the independence of the persons referred to in point 1 from the other activities of the credit rating agency carried out on a commercial basis.
7. A credit rating agency shall arrange for adequate records and, where appropriate, audit trails of its credit rating activities to be kept. Those records shall include:
  - (a) for each credit rating decision, the identity of the rating analysts participating in the determination of the credit rating, the identity of the persons who have approved the credit rating, information as to whether the credit rating was solicited or unsolicited, and the date on which the credit rating action was taken;
  - (b) the account records relating to fees received from any rated entity or related third party or any user of ratings;
  - (c) the account records for each subscriber to the credit ratings or related services;
  - (d) the records documenting the established procedures and methodologies used by the credit rating agency to determine credit ratings;

- (e) the internal records and files, including non-public information and work papers, used to form the basis of any credit rating decision taken;
  - (f) credit analysis reports, credit assessment reports and private credit rating reports and internal records, including non-public information and work papers, used to form the basis of the opinions expressed in such reports;
  - (g) records of the procedures and measures implemented by the credit rating agency to comply with this Regulation; and
  - (h) copies of internal and external communications, including electronic communications, received and sent by the credit rating agency and its employees, that relate to credit rating activities.
8. Records and audit trails referred to in point 7 shall be kept at the premises of the registered credit rating agency for at least five years and be made available upon request to the competent authorities of the Member States concerned.
- Where the registration of a credit rating agency is withdrawn, the records shall be kept for an additional term of at least three years.
9. Records which set out the respective rights and obligations of the credit rating agency and the rated entity or its related third parties under an agreement to provide credit rating services shall be retained for at least the duration of the relationship with that rated entity or its related third parties.

## Section C

### Rules on rating analysts and other persons directly involved in credit rating activities

1. Rating analysts, employees of the credit rating agency as well as any other natural person whose services are placed at the disposal or under the control of the credit rating agency and who is directly involved in credit rating activities, and persons closely associated with them within the meaning of Article 1(2) of Directive 2004/72/EC<sup>1</sup>, shall not buy or sell or engage in any transaction in any financial instrument issued, guaranteed, or otherwise supported by any rated entity within their area of primary analytical responsibility other than holdings in diversified collective investment schemes, including managed funds such as pension funds or life insurance.
2. No person referred to in point 1 shall participate in or otherwise influence the determination of a credit rating of any particular rated entity if that person:
  - (a) owns financial instruments of the rated entity, other than holdings in diversified collective investment schemes;
  - (b) owns financial instruments of any entity related to a rated entity, the ownership of which may cause or may be generally perceived as causing a conflict of interest, other than holdings in diversified collective investment schemes;

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<sup>1</sup> Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions (OJ L 162, 30.4.2004, p. 70).

- (c) has had a recent employment, business or other relationship with the rated entity that may cause or may be generally perceived as causing a conflict of interest.

3. Credit rating agencies shall ensure that persons referred to in point 1:

- (a) take all reasonable measures to protect property and records in possession of the credit rating agency from fraud, theft or misuse, taking into account the nature, scale and complexity of their business and the nature and range of their credit rating activities;
- (b) do not disclose any information about credit ratings or possible future credit ratings of the credit rating agency, except to the rated entity or its related third party;
- (c) do not share confidential information entrusted to the credit rating agency with rating analysts and employees of any person directly or indirectly linked to it by control, as well as with any other natural person whose services are placed at the disposal or under the control of any person directly or indirectly linked to it by control, and who is directly involved in the credit rating activities; and
- (d) do not use or share confidential information for the purpose of trading financial instruments, or for any other purpose except the conduct of the credit rating activities.

4. Persons referred to in point 1 shall not solicit or accept money, gifts or favours from anyone with whom the credit rating agency does business.
5. If a person referred to in point 1 considers that any other such person has engaged in conduct that he or she considers to be illegal, he or she shall report such information immediately to the compliance officer without negative consequences to him or herself.
6. Where a rating analyst terminates his or her employment and joins a rated entity, which he or she has been involved in rating, or a financial firm, with which he or she has had dealings as part of his or her duties at the credit rating agency, the credit rating agency shall review the relevant work of the rating analyst over two years preceding his or her departure.
7. A person referred to in point 1 shall not take up a key management position with the rated entity or its related third party within six months of the credit rating.
8. For the purpose of Article 7(4), credit rating agencies shall ensure that:
  - (a) the lead rating analysts shall not be involved in credit rating activities related to the same rated entity or its related third parties for a period exceeding four years;
  - (b) the rating analysts shall not be involved in credit rating activities related to the same rated entity or its related third parties for a period exceeding five years;

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

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

## Section D

### Rules on the presentation of credit ratings

#### I. General obligations

1. A credit rating agency shall ensure that any credit rating states clearly and prominently the name and job title of the lead rating analyst in a given credit rating activity and the name and position of the person primarily responsible for approving the credit rating.
2. A credit rating agency shall ensure that at least:
  - (a) all substantially material sources, including the rated entity or, where appropriate, a related third party, which were used to prepare the credit rating are indicated together with an indication as to whether the credit rating has been disclosed to that rated entity or its related third party and amended following that disclosure before being issued;

- (b) the principal methodology or version of methodology that was used in determining the rating is clearly indicated, with a reference to its comprehensive description; where the credit rating is based on more than one methodology, or where reference only to the principal methodology might cause investors to overlook other important aspects of the credit rating, including any significant adjustments and deviations, the credit rating agency shall explain this fact in the credit rating and indicate how the different methodologies or these other aspects are taken into account in the credit rating;
- (c) the meaning of each rating category, the definition of default or recovery and any appropriate risk warning, including a sensitivity analysis of the relevant key rating assumptions, such as mathematical or correlation assumptions, accompanied by worst-case scenario credit ratings as well as best-case scenario credit ratings are explained;
- (d) the date at which the credit rating was first released for distribution and when it was last updated is indicated clearly and prominently; and
- (e) information is given as to whether the credit rating concerns a newly issued financial instrument and whether the credit rating agency is rating the financial instrument for the first time.

3. The credit rating agency shall inform the rated entity at least 12 hours before publication of the credit rating and of the principal grounds on which the rating is based in order to give the entity an opportunity to draw attention of the credit rating agency to any factual errors.
4. A credit rating agency shall state clearly and prominently when disclosing credit ratings any attributes and limitations of the credit rating. In particular, a credit rating agency shall prominently state when disclosing any credit rating whether it considers satisfactory the quality of information available on the rated entity and to what extent it has verified information provided to it by the rated entity or its related third party. If a credit rating involves a type of entity or financial instrument for which historical data is limited, the credit rating agency shall make clear, in a prominent place, such limitations of the credit rating.

In a case where the lack of reliable data or the complexity of the structure of a new type of financial instrument or the quality of information available is not satisfactory or raises serious questions as to whether a credit rating agency can provide a credible credit rating, the credit rating agency shall refrain from issuing a credit rating or withdraw an existing rating.

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

Where the information laid down in points 1, 2 and 4 would be disproportionate in relation to the length of the report distributed, it shall suffice to make clear and prominent reference in the report itself to the place where such disclosures can be directly and easily accessed, including a direct web link to the disclosure on an appropriate website of the credit rating agency.

## II. Additional obligations in relation to credit ratings of structured finance instruments

1. Where a credit rating agency rates a structured finance instrument, it shall provide in the credit rating all information about loss and cash-flow analysis it has performed or is relying upon and an indication of any expected change in the credit rating.
2. A credit rating agency shall state what level of assessment it has performed concerning the due diligence processes carried out at the level of underlying financial instruments or other assets of structured finance instruments. The credit rating agency shall disclose whether it has undertaken any assessment of such due diligence processes or whether it has relied on a third-party assessment, indicating how the outcome of such assessment impacts on the credit rating.
3. Where a credit rating agency issues credit ratings of structured finance instruments, it shall accompany the disclosure of methodologies, models and key rating assumptions with guidance which explains assumptions, parameters, limits and uncertainties surrounding the models and rating methodologies used in such credit ratings, including simulations of stress scenarios undertaken by the agencies when establishing the ratings. Such guidance shall be clear and easily comprehensible.

4. A credit rating agency shall disclose, on an ongoing basis, information about all structured finance products submitted to it for their initial review or for preliminary rating. Such disclosure shall be made whether or not issuers contract with the credit rating agency for a final rating.

## Section E

### Disclosures

#### I. General disclosures

A credit rating agency shall generally disclose the fact that it is registered in accordance with this Regulation and the following information:

1. any actual and potential conflicts of interest referred to in point 1 of Section B;
2. a list of its ancillary services;
3. the policy of the credit rating agency concerning the publication of credit ratings and other related communications;
4. the general nature of its compensation arrangements;
5. the methodologies, and descriptions of models and key rating assumptions such as mathematical or correlation assumptions used in its credit rating activities as well as their material changes;

6. any material modification to its systems, resources or procedures; and
7. where relevant, its code of conduct.

## II. Periodic disclosures

A credit rating agency shall periodically disclose the following information:

1. every six months, data about the historical default rates of its rating categories, distinguishing between the main geographical areas of the issuers and whether the default rates of these categories have changed over time;
2. annually, the following information:
  - (a) a list of the largest 20 clients of the credit rating agency by revenue generated from them; and
  - (b) a list of those clients of the credit rating agency whose contribution to the growth rate in the generation of revenue of the credit rating agency in the previous financial year exceeded the growth rate in the total revenues of the credit rating agency in that year by a factor of more than 1,5 times. Any such client shall be included on the list only where, in that year, it accounted for more than 0,25 % of the worldwide total revenues of the credit rating agency at global level.

For the purposes of this point, "client" means an entity, its subsidiaries, and associated entities in which the entity has holdings of more than 20 %, as well as any other entities in respect of which it has negotiated the structuring of a debt issue on behalf of a client and where a fee was paid, directly or indirectly, to the credit rating agency for the rating of that debt issue.

### III. Transparency report

A credit rating agency shall make available annually the following information:

1. detailed information on legal structure and ownership of the credit rating agency, including information on holdings within the meaning of Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>1</sup>;
2. a description of the internal control mechanisms ensuring quality of its credit rating activities;
3. statistics on the allocation of its staff to new credit ratings, credit rating reviews, methodology or model appraisal and senior management;
4. a description of its record-keeping policy;

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<sup>1</sup> OJ L 390, 31.12.2004, p. 38.

5. the outcome of the annual internal review of its independent compliance function;
6. a description of its management and rating analyst rotation policy;
7. financial information on the revenue of the credit rating agency divided into fees from credit rating and non-credit-rating activities with a comprehensive description of each; and
8. a governance statement within the meaning of Article 46a(1) of Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies<sup>1</sup>. For the purposes of that statement, the information referred to in Article 46a(1)(d) of that Directive shall be provided by the credit rating agency irrespective of whether it is subject to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids<sup>2</sup>.

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<sup>1</sup> OJ L 222, 14.8.1978, p. 11.

<sup>2</sup> OJ L 142, 30.4.2004, p. 12.

## ANNEX II

### Information to be provided in the application for registration

1. Full name of the credit rating agency, address of the registered office within the Community
2. Name and contact details of a contact person and of the compliance officer
3. Legal status
4. Class of credit ratings for which the credit rating agency is applying to be registered
5. Ownership structure
6. Organisational structure and corporate governance
7. Financial resources to perform credit rating activities
8. Staffing of credit rating agency and its expertise
9. Information regarding subsidiaries of credit rating agency
10. Description of the procedures and methodologies used to issue and review credit ratings
11. Policies and procedures to identify, manage and disclose any conflicts of interests

12. Information regarding rating analysts
  13. Compensation and performance evaluation arrangements
  14. Services other than credit rating activities, which the credit rating agency intends to provide
  15. Programme of operations, including indications of where the main business activities are expected to be carried out, branches to be established, and setting out the type of business envisaged
  16. Documents and detailed information related to the expected use of endorsement
  17. Documents and detailed information related to the expected outsourcing arrangements including information on entities assuming outsourcing functions.
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