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# REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies

## 1. Introduction

Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies[1] was adopted as one of the measures following the financial crisis to restore market confidence and increase investor protection. This Regulation, as subsequently revised in 2011[2] and 2013[3], introduced registration and authorisation requirements for credit rating agencies (CRAs) with a sole supervisor in the EU, the European Securities and Markets Authority (ESMA) as well as rules on conflicts of interest, transparency and disclosure requirements for CRAs.

Regulation (EC) No 1060/2009, as amended in 2011, empowers the Commission to adopt delegated acts with respect to:

- Fees to be paid to the European Securities and Markets Authority (ESMA) by credit rating agencies (CRAs) for registration and supervision (Article 19(2));
- Rules of procedure for the exercise of the power to impose fines or periodic penalty payments by ESMA (Article 23e(7));
- Measures to specify further or amend the criteria for third country equivalence (Article 5(6)); and
- Amendment of the Annexes of Regulation (EC) No 1060/2009 (Article 37).

## 2. Legal basis

This report is required under Article 38a(1) of Regulation (EC) No 1060/2009. Pursuant to this provision, the power to adopt delegated acts is conferred on the Commission for a period of four years from 1 June 2011 and the Commission is required to draw up a report in respect of the delegation of power at the latest six months before the end of the four-year period.

## 3. Exercise of the delegation

### A) Fees for registration and supervision

In accordance with Article 19(1) of Regulation (EC) No 1060/2009, ESMA shall charge CRAs fees in accordance with that Regulation and with the Commission Delegated Regulation. Those fees shall fully cover ESMA's necessary expenditure relating to the registration, certification and supervision of credit rating agencies and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 30 of Regulation (EC) No 1060/2009.

Pursuant to Article 19(2) of Regulation 1060/2009, the Commission shall adopt a delegated act on fees, determining in particular the type of fees and the matters for which fees are due, the amount of the fees, the way in which they are to be paid and the way in which ESMA is to reimburse competent authorities in respect of any costs that they may incur carrying out work pursuant to Regulation (EC) No 1060/2009, in particular as a result of any delegation of tasks in accordance with Article 30 thereof. The amount of a fee charged to a credit rating agency shall cover all administrative costs and be proportionate to the turnover of the credit rating agency concerned.

[1] OJ L 302, 17.11.2009, p.1
[2] Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies, OJ L 145, 31.5.2011, p. 30.
[3] Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies, OJ L 146, 31.5.2013, p. 1.

The European Commission requested the Technical Advice from the European Securities and Markets Authority on 24 February 2011, which it received on 17 May 2011. In the course of preparing its Technical Advice, ESMA conducted a public consultation from 14 until 27 April 2011. The parties subsequently consulted by the Commission on the draft Delegated Regulation include national experts. The members of the Expert Group of the European Securities Committee were consulted by written procedure at the end of November 2011.

The Commission adopted the Delegated Regulation[4] on 7 February 2012 and notified the European Parliament and the Council. The European Parliament and the Council informed the Commission of their intention not to raise any objections in March 2012. The delegated act was then published in the *Official Journal of the European Union* on 28 March 2012.

**B) Rules of procedure**

Regulation (EC) No 1060/2009 stipulates when the ESMA Board of Supervisors shall adopt a decision imposing a fine or a periodic penalty payment on a credit rating agency.

Pursuant to Article 23e(7), the European Commission shall adopt further rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and shall adopt detailed rules on the limitation periods for the imposition and enforcement of penalties.

The members of the Expert Group of the European Securities Committee were consulted by the Commission in the preparation of this Delegated Act and were also consulted on the draft Delegated Regulation by written procedure in June 2012.

The Commission adopted the Delegated Regulation[5] on 12 July 2012 and notified the European Parliament and the Council. Neither the European Parliament nor the Council issued any objection during the objection period, nor was the objection period extended by either Institution. The delegated act was then published in the *Official Journal of the European Union* on 16 October 2012.

**C) Criteria for equivalence**

The Commission is empowered to adopt by means of a delegated act, in order to take account of developments on financial markets, measures to specify further or amend the criteria set out in the second subparagraph of Article 5(6) for the determination of whether a third-country legal and supervisory framework may be considered equivalent to Regulation (EC) No 1060/2009. Amongst others, CRAs in those third countries shall be subject to legally binding rules equivalent to those in place in the EU[6].

The 2013 amendment of Regulation (EC) No 1060/2009 also further specified with which provisions of Regulation (EU) No 1060/2009 the legally binding rules in the third countries shall be equivalent[7]. Article 2 paragraph 2(1) of Regulation (EC) No 462/2013 furthermore foresees that a number of the legal requirements introduced for CRAs in 2013 would only become part of the conditions for the equivalence determination as from 1 June 2018.

[4] Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies, OJ L 90, 28.3.2012, p. 6.
[5] Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions, OJ L 282, 16.10.2012, p. 23.
[6] Article 5(6) paragraph 2 (b), Regulation (EU) No 1060/2009.
[7] Article 1(5)(a), Regulation (EC) No 462/2013.

In light of this and as that Commission has not, since the empowerment to adopt the delegated act was introduced into Regulation (EC) No 1060/2009 in 2011[8], observed any developments on financial markets which necessitated further specifications or amendment of the criteria for equivalence, no delegated act was adopted to date.

The Commission has adopted implementing decisions on the recognition of the legal and supervisory frameworks of nine jurisdictions as equivalent to the requirements of Regulation (EC) No 1060/2009, in accordance with the procedure referred to in Article 38(3) of that Regulation. The jurisdictions concerned are: Japan[9], the United States of America[10], Canada[11], Australia[12], Argentina[13], Brazil[14], Mexico[15], Hong Kong[16] and Singapore[17].

**D) Annexes of Regulation (EC) No 1060/2009**

In order to take account of developments, including international developments, on financial markets, in particular in relation to new financial instruments, Article 37 of Regulation (EC) No 1060/2009 provides that the Commission may adopt, by means of delegated acts, measures to amend the Annexes, excluding Annex III.

Since the empowerment to adopt a delegated act was introduced into Regulation (EC) No 1060/2009 in 2011[18], this Regulation was amended through Regulation (EU) No 462/2013 in 2013, which included amendments to the Annexes. First the impact of these amended rules on the financial markets has to be observed, prior to any potential future use of the empowerment.

## 4. Conclusion

The Commission has exercised its delegated powers correctly and in a timely manner to ensure that the necessary provisions were in place for ESMA to carry out its tasks fully as supervisor of credit rating agencies in the EU.

Going forward, the Commission considers that the delegation of power should be retained. This would be particularly relevant in the event that a revision of the Commission Delegated Regulations on fees and on procedural rules for fines and periodic penalty payments should become necessary in the future once further experience has been obtained on how these rules operate in practice.

[8] Article 1(3)(e), Regulation (EU) No 513/2011.
[9] Commission Decision of 28 September 2010 on the recognition of the legal and supervisory framework of Japan as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 254, 29.9.2010, p. 46.
[10] Commission Implementing Decision of 5 October 2012 on the recognition of the legal and supervisory framework of the United States of America as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 274, 9.10.2012, p. 32.
[11] Commission Implementing Decision of 5 October 2012 on the recognition of the legal and supervisory framework of Canada as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 278, 12.10.2012, p. 17
[12] Commission Implementing Decision of 5 October 2012 on the recognition of the legal and supervisory framework of Australia as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 274, 9.10.2012, p. 30.
[13] Commission Implementing Decision of 28 April 2014 on the recognition of the legal and supervisory framework of Argentina as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 132, 3.5.2014, p. 68.
[14] Commission Implementing Decision of 28 April 2014 on the recognition of the legal and supervisory framework of Brazil as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 132, 3.5.2014, p. 65.
[15] Commission Implementing Decision of 28 April 2014 on the recognition of the legal and supervisory framework of Mexico as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 132, 3.5.2014, p. 71.
[16] Commission Implementing Decision of 28 April 2014 on the recognition of the legal and supervisory framework of Hong Kong as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 132, 3.5.2014, p. 76.
[17] Commission Implementing Decision of 28 April 2014 on the recognition of the legal and supervisory framework of Singapore as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies, OJ L 132, 3.5.2014, p. 73.
[18] Article 1(19), Regulation (EU) No 513/2011.

The Commission invites the European Parliament and the Council to take note of this report.