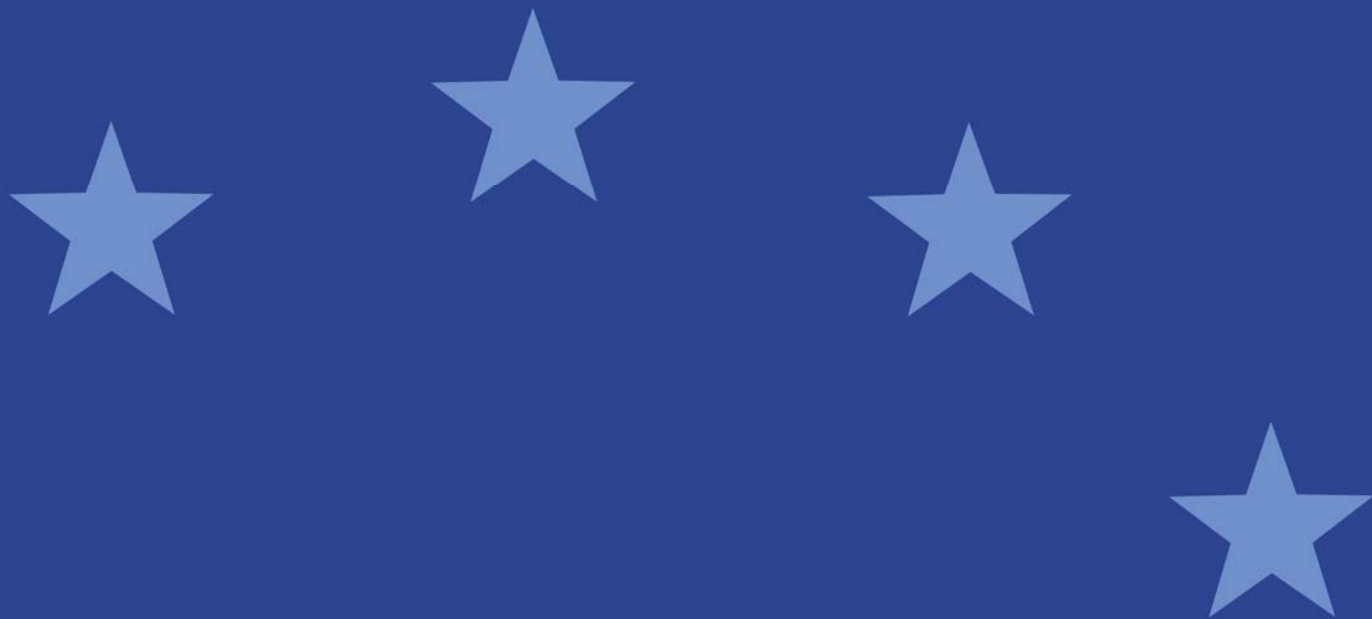


Consultation Paper

Regulatory technical standards on the information to be provided to ESMA by a credit rating agency in its application for registration and certification and for the assessment of its systemic importance



Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- (a) indicate the specific question to which the comment relates;
- (b) respond to the question stated;
- (c) contain a clear rationale; and
- (d) describe any alternatives ESMA should consider.

ESMA will consider all comments received by 21 October 2011.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Disclaimer'.

Who should read this paper

Although all stakeholders are invited to comment on this consultation paper, it would primarily be of interest to any market participant which intends to apply for registration or certification under Regulation (EC) No 1060/2009/ of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

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Acronyms used

CRA	Credit rating agency
RTS	Regulatory Technical Standards
ESMA	European Securities and Markets Authority
CESR	Committee of European Securities Regulators
CBA	Cost Benefit Analysis

Executive Summary

Reasons for publication

1. The Regulation (EU) No 1095/2010 establishing the European Securities and Markets Authority, empowered ESMA to develop draft regulatory technical standards where the European Parliament and the Council delegate power to the Commission to adopt regulatory standards by means of delegated acts under Article 290 TFEU.
2. With these RTS, ESMA discharges the mandate it was conferred in Article 21(4) of the Regulation 1060/2009/EC on credit rating agencies (hereafter the 'Regulation') as amended by Regulation 513/2011/EC, which mandates ESMA to "submit draft regulatory technical standards (hereafter "RTS") for endorsement by the Commission in accordance with Article 10 of Regulation (EU) No 1095/2010 on:(a)the information to be provided by a credit rating agency in its application for registration as set out in Annex II and (b)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."
3. While preparing the draft RTS ESMA has taken into consideration CESR's Guidance on the Registration Process and related issues (CESR/Ref. 10-347) (hereafter the 'Guidance'). The Guidance dealt with, among others, the information to be provided by credit rating agencies in their applications for registration or certification as well as the information to be provided for the assessment of the credit rating agency's systemic importance to the financial stability or integrity of financial markets referred to in Article 5 of the Regulation.

Contents

4. This Consultation Paper aims at presenting the draft RTS. For the purpose of preparing the RTS, ESMA carried out a Cost and Benefits Analysis (hereafter "CBA"). In the CBA, ESMA has analysed two options to establish the content of the RTS. These options consist of transforming the existing Guidance into draft RTS without any change in its content (baseline policy option) against the option to correct the weaknesses of the Guidance when drafting the RTS ("fine tuning" option). When analysing these two options, ESMA has taken into consideration the weaknesses of the Guidance, which has been the reference document used by the CRAs which applied for registration or certification.



5. Finally, following ESMA's decision to opt for the "fine tuning" option, the main changes of the draft RTS compared to the existing Guidance are described. Market participants are invited to comment on the changes proposed by ESMA. Annex III of the Consultation Paper consists of the full text of the draft RTS.

Next steps

6. ESMA will consider the feedback it will receive to this consultation before submitting draft regulatory technical standards on the information in the applications for registration and certification and for the assessment of the systemic importance of a credit rating agency for endorsement by the Commission in the fourth quarter 2011.

7. ESMA will publish a Feedback Statement addressing the main points raised in this Consultation as well as the draft RTS submitted to the Commission.

I Background

1. With the aim to ensure a high level of investor and consumer confidence in the internal market, the Regulation, adopted on 16 September 2009, subjects the credit rating agencies issuing credit ratings which are disclosed publicly or distributed by subscription in the Union to registration. The Regulation also provides for the certification of third country CRAs, whose credit ratings on entities established or financial instruments issued in third countries may be used in the EU for regulatory purposes pursuant to the provisions of Article 4 (1) of the Regulation, without being endorsed in accordance with Article 4 (3) of the Regulation.
2. The European Commission carried out a full impact assessment¹ with regard to the registration of the CRAs when the Regulation was first introduced. The following problems were identified in that exercise:

<i>Problem</i>	<i>Drivers of the problem</i>
Conflicts of interests	<ul style="list-style-type: none"> • Issuer pays model • Shopping of ratings • Conflicts of interests derives from non-rating activities
Quality of methodologies and ratings	<ul style="list-style-type: none"> • Unsatisfactory monitoring practice of ratings • Insufficient and inadequate rating staff • Inconsistent application of changes to methodologies • Insufficient quality of information and lack of application of analytical macro information in the rating process
Transparency	<ul style="list-style-type: none"> • Non-comparable information on CRAs activities • Structured and traditional ratings are not differentiated

3. Before the entry into force of the Regulation (EU) No 513/2011 amending the Regulation, the relevant colleges and competent authorities of the home Member States were responsible for the registration and certification decisions. The European Securities and Markets Authority (ESMA) and its predecessor, CESR, were entrusted to act as the single entry point for the submission of applications for registration, to provide advice on the completeness and compliance of the applications and to ensure coherence in the decisions on registration. With the aim to promote the harmonisation of the information used by the colleges and competent authorities of the home Member States for the assessment of the completeness and compliance of the applications, CESR issued a Guidance on the Registration process and certification² in June 2010.
4. The Guidance elaborates on the information set out in Annex II of the Regulation which shall be provided in the application for registration and on the information requested for certification. The Guidance has acted as the framework for the credit rating agencies when submitting their applications to ESMA and for ESMA when assessing the completeness of the applications.
5. However, following the entry into force of Regulation (EU) No 513/2011, the responsibilities for registration and supervision of the credit rating agencies have been conferred to ESMA. Thus, ESMA is exclusively responsible for receiving the applications for registration, assessing their completeness and requesting additional information, if necessary, and registering the credit rating agency, when it

¹Impact assessment accompanying the proposal for a Regulation of the European Parliament and of the council on credit rating agencies (SEC (2008)2475 of 12.11.2008).

²CESR's Guidance on registration process, functioning of colleges, mediation protocol, information set out in Annex II, information set for the application for certification and for the assessment of CRAs systemic importance. (CESR/10-437) 4 June 2010.

concludes, from the examination of the application, that the credit rating agency complies with the conditions set out in the Regulation. The EC carried out an impact assessment on these changes³.

6. The final conclusion of this impact assessment was that given the global nature of the rating activity a more centralised oversight would lead to streamlined decision-making process and to a public oversight of the CRA industry that would cover the EU territory without the risks of supervisory gaps or overlaps between national jurisdictions currently existing.
7. As a consequence of this centralised approach the registration process has been significantly shortened from the current 2 to 7 months to a maximum of 65 working days. Furthermore, CRAs no longer have to deal with several supervisors and the reduced registration timeline implies a substantial reduction of costs for CRAs as they will be able to start issuing credit ratings earlier.
8. In addition, there will be a decrease in administrative burden for ESMA due to the fact that some notification obligations (e.g. transmission of application copies to competent authorities) will no longer be necessary.
9. The Regulation (EU) No 1095/2010 establishing the European Securities and Markets Authority, empowered ESMA to develop draft regulatory technical standards where the European Parliament and the Council delegate power to the Commission to adopt regulatory standards by means of delegated acts under Article 290 TFEU.
10. Article 21 (4) of the Regulation, as amended, mandates ESMA to submit to the Commission draft regulatory technical standards (hereafter RTS) on the information to be provided by a credit rating agency in its application for registration as set out in Annex II of the Regulation respectively in its application for certification and for the assessment of the credit rating agency's systemic importance to the financial stability or integrity of financial markets referred to in Article 5 of the Regulation.
11. For the purpose of discharging its mandate, ESMA decided to enhance the existing Guidance when drafting the RTS. The costs and benefits of this option were given consideration as set out in section II hereafter.

³ Impact assessment accompanying the proposal for a Regulation of the European Parliament and of the council amending Regulation (EC) No 1060/2009 on credit rating agencies (SEC (2010)678 of 2.6.2010).

II Cost Benefit Analysis

1. Description of the problem

12. After the entry into force of the Regulation, any credit rating agency established in the Union wishing to issue credit ratings which are disclosed publicly or distributed by subscription and not exempted by Article 2 (2) of the Regulation, must apply for registration (Article 14 (1) of the Regulation). The credit rating agency shall submit its application for registration containing the information set out in Annex II of the Regulation to ESMA.
13. Furthermore, in accordance with Article 5 of the Regulation, credit rating agencies established in third countries may apply for certification so that their credit ratings which are related to entities established or financial instruments issued in third countries may be used in the EU for regulatory purposes without being endorsed.
14. For a CRA to be certified, Article 5 (1) (d) of the Regulation provides that the credit ratings issued by the CRA and its credit rating activities shall not be of systemic importance to the financial stability or integrity of the financial markets of one or more EU Member States.
15. At the time of the publication of this Consultation paper, 24 CRAs (including 4 groups) active in the EU have submitted their applications for registration, 7 CRAs have been registered and 1 CRA has been certified (the list of registered and certified CRAs is published on ESMA's webpage). The rest of the registration processes are still on-going. One group of CRAs and two CRAs active at national level have withdrawn their application for registration and the registration of a local CRA has been refused.
16. The EC adopted an equivalence decision on the Japanese regulatory regime in September 2010. Since then, 1 Japanese CRA has been certified (JCRA).
17. In sections VIII and IX of its Guidance, ESMA developed a detailed list of the information elements the CRAs should provide in their applications for registration under Annex II of the Regulation or in their applications for certification as well as the information required for the assessment of their systemic importance. The applicants have been using Sections VIII and IX of the Guidance as the framework for their applications. Similarly, the relevant colleges and the competent authorities of the home Member States have discharged their responsibility of assessing the completeness of the applications according to Article 15 of the Regulation against the Guidance.
18. On average, the colleges and competent authorities of the home Member States have requested additional information twice after receiving the application for registration. The fact that additional information was requested suggests that there are weaknesses in the information requirements contained in Sections VIII and IX of the Guidance, which have contributed to the extension of the completeness assessment period and thus, of the whole registration process.

1.1 Weaknesses in the information requirements contained in Sections VIII and IX of the Guidance

19. The following conclusions can be drawn from the experience of the colleges and national authorities on the assessment of the completeness of the applications:

a) Clarifications on the scope of the information requested

20. In the case of a CRA belonging to a group of CRAs, certain organisational arrangements might have been implemented at the group level. The tasks related to these arrangements are hence not fully carried out by the applying CRA but are shared with other EU or non-EU entities within the group. For such a CRA belonging to a group, information has been requested on the concrete tasks performed by each entity of the group and on the relevant reporting lines in order to fully assess the completeness of the information regarding the organisational arrangements.

21. It has been clarified to the CRAs that the information regarding outsourcing refers as well to any rating activity outsourced to other entities belonging to the CRA group, since CRAs only provided information on the services carried out by external service providers not belonging to the CRA group.

22. Where the non-rating (ancillary) services are provided by an entity of the CRA group, the applicant was requested to provide information on these services.

b) Additional information

23. Certain information which was not initially requested by the Guidance for the completeness assessment has been requested subsequently for the assessment of compliance. For instance, further indicators are needed to support the following:

- the assessment of the systemic importance of the certified CRA,
- the assessment of the fitness and appropriateness of the senior management, of the chairs of credit rating committees and of the officers responsible for internal audit, internal control, compliance function, risk assessment and the periodic review function.

24. The Guidance contains dispersed information on the types of activities the CRA intends to carry out and the types of credit ratings it intends to issue, its intention to establish branches and subsidiaries, etc. However, the Guidance does not elaborate on the content of the programme of operations provided in point 15 of Annex II of the Regulation.

25. Finally, certain information was requested for branches and subsidiaries, for instance, the organisational charts, the information on the experience and knowledge of the senior management of the branches, etc.

c) Reference numbers

26. From a practical point of view, in order to facilitate the assessment of the application by the regulator, documents provided by CRAs should be clearly identified. The CRAs should clearly highlight to the regulator any amendments to the previously provided documents.

d) Standardisation

27. Certain general information requested for registration in different sections of the Guidance could be put together into a form identifying the applicant.

e) Simplification

28. Certain requested information was too detailed and could be simplified, for instance, the statistics on the remuneration of employees.

1.2 Nature of the applicants

29. Since 7 September 2010, unless a CRA applied for registration before that date, any non-registered CRA established in the Union issuing public credit ratings is not in compliance with the Regulation. Therefore, the RTS should consider that, in the future, only newly established CRAs, newly established affiliates of non-European CRAs or entities which provided private ratings or credit scores prior to their application in accordance with Article 2 (2) (a) and Article 2 (2) (b) of the Regulation will apply for registration.

30. The programme of operations set out in point 15 of Annex II of the Regulation turns out to be especially relevant for the applicants who do not have any previous credit rating experience.

31. ESMA is aware that newly created CRAs might not be in a position to provide all the information contained in the draft RTS. For instance, regarding credit rating methodologies, ESMA is aware that information on the analysis of the results of the back-testing might not be robust enough due to the lack of historical data. Nevertheless, the CRAs should provide information on the policies and procedures put in place to comply with Article 22a of the Regulation.

2. Policy options

32. Any envisaged policy option has to take into account the fact that the Guidance is in place and is currently used by CRAs as well as competent authorities.

33. ESMA has identified two different policy options.

- a. The baseline policy option would be to transform the information listed in Sections VIII and IX of the Guidance into an RTS without any change in the content.
- b. The alternative policy option, the “fine tuning” option would be to address the weaknesses identified above in the RTS by including clarifications, adding relevant information to it and simplifying certain requirements.

3. Objectives of the draft RTS

34. The objectives of the RTS should be in accordance with the general objectives of the Regulation, i.e. contribution to the quality of credit ratings issued in the EU, financial stability and consumer and investor protection.⁴

35. In order to address the problems listed above, ESMA identified the following operational objectives:

- Harmonisation of certain information avoiding inconsistent interpretations
- Elaboration of a form for the most important basic information
- Elaboration on the content of the programme of operation
- Clarification on the scope of certain information (group level vs individual level)
- Elaboration of the definition of systemic importance

36. By meeting these objectives, ESMA expects to attain the following specific objectives in line with the Regulation objectives:

⁴Article 1 of the CRA Regulation.

- The consistency of the applications could be enhanced, therefore the treatment of the CRAs in the registration and certification will be harmonised, which will enhance the level playing field.
- The CRAs could use the RTS as a reference to implement the necessary arrangements and systems to be compliant with the Regulation before its application for registration.
- The registration timeline could be reduced; therefore, the cost of registration would decrease for all market participants.

4. Analysing the costs and benefits

37. The incremental costs and benefits of the “fine tuning option” compared to the baseline option have been considered throughout this cost and benefit analysis.

38. The following stakeholders have been taken into consideration in the assessment: CRAs, issuers, the regulator (ESMA) and investors.

4.1 Costs

39. Any additional information that would be requested under the “fine tuning” option compared to the baseline option, would translate into higher direct costs for the CRAs who would be conveyed to amend or create procedures, reshape internal infrastructures (IT, accounting, controlling etc), employ additional staff or pay for additional advisory fees in order to generate the information requested. The assessment of completeness of the incremental information would increase as well the costs for the regulator (ESMA). However, the regulator would pass this incremental cost to the CRAs in terms of higher registration fees, which are intended to fully cover the regulator’s necessary expenditure relating to the registration of the CRA, pursuant to the provisions of Article 19 of the Regulation.

40. Although the direct costs of any additional information requested under the “fine tuning” option would be borne by the CRAs, there is a probability that a part of the incremental costs would be passed on to issuers and other clients of the CRAs (subscribers), who would in turn pass them on to investors. As a consequence, investors would end up indirectly bearing a part of the incremental costs.

41. Newly established CRAs do not have past experience in the rating business, and probably neither in the field of compliance. Entities which provided private ratings or credit scores prior to their application as defined under Article 2 (2) (a) and Article 2 (2) (b) of the Regulation, might have experience in the organisation of activities similar to issuing credit ratings, but the lack of compliance experience shall expose them to incremental costs. Affiliates of non-European CRAs would probably have an easy access to the parent company’s know-how and can deploy its experience in their rating business; however they would not have compliance experience with EU legislation, i.e. the Regulation. Therefore, the incremental costs would have an effect on all kinds of expected applicants for registration.

4.2 Benefits

42. The benefits of the “fine tuning” option are linked to the operational and specific objectives presented above. The operational objectives would be met by the “fine tuning” option, as the RTS would provide clarifications on the content of the application, elaborate forms for the most important basic information, develop the content of the programme of operations, include further criteria for the purpose of assessing the systemic importance of certified CRAs and request more appropriate information.

43. Furthermore, through these operational objectives, the specific objectives are met. The registration and certification timeline would be reduced, which enables CRAs to access the market more easily and decreases the costs. Besides, as a consequence of the enhanced clarity and the standardisation of

information, the possibility of asking different information from different applicants would be decreased, and therefore, the objective of harmonisation would be fulfilled.

44. Most importantly, other benefits arise after the registration and certification process. The faster the registration and certification decision is made, the lower the cost for CRAs. In order to provide the information which would be additionally requested under the “fine tuning” option, the CRAs would have to adopt better practices which would lead to an increase of the quality of their ratings. Finally, the CRAs would be scrutinised under a robust filter to be authorised to issue ratings in the EU, contributing to the overall stability of the financial markets and enhancing investor protection.

45. The table below summarises the costs and benefits identified:

<i>Costs</i>	<i>Benefits</i>
<ul style="list-style-type: none"> • Increased advisory fees and/or staffing costs • Prepare/adjust procedures • Reshape organisation structure (compliance, internal review functions, etc.) • Reshape of infrastructure (IT, accounting...) 	<ul style="list-style-type: none"> • Facilitating the entry into the market • Reducing the time of the registration/certification process • Higher quality of ratings • Increased level of compliance • Enhance investor protection

5. Conclusion

46. Although the “fine tuning” policy option represents an increase of costs at the time of the application procedure, in ESMA’s view the benefits after the registration/certification decision outweigh these costs. The incremental benefits which would not come up under the baseline option, would transform into opportunity costs in the long run. For these reasons, ESMA proposes to follow the “fine tuning policy” option.

III The proposed draft RTS

47. Following the “fine tuning” policy option, ESMA proposes the draft RTS included in Annex III of this Consultation Paper. The purpose of this consultation is to gather market participants’ views on the changes proposed in the draft RTS compared to the existing Guidance.

1. Requirements about the information to be provided

48. The draft RTS provides that the CRAs give a reference number to any documentation submitted as part of their application so that ESMA easily and quickly identifies the information. A list of the provided documents accompanied by their reference number has to be provided by the CRA to ESMA using the form included in Annex I of the draft RTS.

2. Identification and general information

49. A form has been included in Annex II of the draft RTS so as to gather basic information which identifies the applicant, contact details, legal status, number of employees, types of credit ratings it intends to use, among others.

3. Programme of operations

50. Given the fact that the credit rating agencies applying for registration have not been active in the credit rating business previously, ESMA has included an Annex where the CRA has to elaborate on the programme of operations set out in point 15 of Annex II of the Regulation. The credit rating agencies will be requested to provide information on:

- the business activities they intend to carry out for the next three years, explaining the macroeconomic environment in which they expect to operate and informing on their intention to establish branches and/or subsidiaries;
- the types of credit ratings they intend to issue;
- the financial resources;
- the human resources they dedicate to certain important functions such as the compliance function, the review function set out in point 9 of Annex II Section A of the Regulation, the internal control mechanisms and risk assessment set out in point 4 of Annex II Section A of the Regulation and the internal audit laid down in point 10 of Annex II Section A of the Regulation;
- the expected use of outsourcing; and
- the human resources they plan to dedicate to the credit rating activities and their expected remuneration.

Q1: Would you agree that the content of the Programme of operations set out in Annex X of the draft RTS is appropriate? If not, please, indicate the reasons or provide ESMA with further elements which could be included in the Annex.

4. Curriculum vitae, diplomas, criminal record and self-declarations

51. In order to assess the fitness and appropriateness of the senior management, branch managers and officers responsible for the internal control/audit, compliance, internal review and risk assessment functions, the content of the curriculum vitae has been developed in Article 15(1) of the draft RTS.
52. CRAs should provide criminal records and a self-declaration of the good repute of its senior management. The content of the self-declaration is developed in Annex VI of the draft RTS.

Q2: Would you agree that the CRAs provide the criminal records of its senior management as set out in Article 15.2(a) of the draft RTS?

Q3: Would you agree with the content of the self-declaration that the senior management has to sign as set out in Annex VI of the draft RTS?

5. Outsourcing

53. The draft RTS include the obligation for the CRA to explain how it intends to identify, manage and monitor the risks posed by the outsourcing of important operational functions. ESMA needs this information to assess whether the outsourcing of these functions materially impairs the quality of the internal control of the CRA as set out in Article 9 of the Regulation.
54. The description of the outsourcing arrangements required by the Guidance has been replaced in Article 25 of the draft RTS by the request of a copy of the outsourcing agreements. On the one hand, this is more cost-efficient for the CRAs, and on the other hand, copies of these agreements provide ESMA with more appropriate information to assess the compliance of the outsourcing arrangements with the requirements laid down in Article 9 of the Regulation.

Q4: Would you agree that the CRAs provide a copy of the outsourcing agreements instead of a description of its content?

6. Business interests of the owners of the CRA

55. The draft RTS clarify that the CRA has to identify direct and indirect owners as well in order to allow ESMA to assess any existing or potential conflicts of interest.
56. The draft RTS request information on the holdings of the owners of the CRA, their activities and the activities of other entities in which they have a qualified interest so that the regulator (ESMA) is able to assess any conflicts of interest which might arise from the shareholder structure of the CRA.

Q5: Would you agree with the level of detail regarding the information on the activities of the owners of the CRA described in Annex III of the draft RTS?

7. Inventory of conflicts of interest

57. The content of the inventory of conflicts of interest has been developed in Article 21 of the draft RTS.

Q6: Would you agree with the proposed content of the inventory of conflicts of interest?

8. Information for the assessment of the systemic importance of certified CRAs

58. According to Article 5 (1) (d) of the Regulation a credit rating agency may apply for certification provided that, among others, the credit ratings it issues and its credit rating activities are not of systemic importance to the financial stability or integrity of the financial markets of one or more EU Member States.

59. When assessing whether the credit ratings issued by the credit rating agency and its credit rating activities are of systemic importance, ESMA will take into consideration the size, global activity, interconnectedness and substitutability of the CRA (concentration risk), as well as the complexity of the credit ratings it issues. ESMA has identified the following factors to measure these variables:

Systemic importance variable	Indicator/factor
Size of the CRA	<ul style="list-style-type: none"> • Volume of the outstanding issued credit ratings • Revenue broken down by rating vs non-rating (ancillary) services/businesses
Global activity	<ul style="list-style-type: none"> • Number, size and integrity of the financial market of countries in which the CRA issues ratings • Identification (name, industry of activity) of the rated entities broken down by place of issuance, nationality of the entity and rating type • Location of the CRA clients (issuers and subscribers) • Revenue broken down by country of origin
Complexity	<ul style="list-style-type: none"> • Volume of outstanding ratings broken down by type of rated entities and rated assets • Revenue broken down by type of credit ratings
Interconnectedness	<ul style="list-style-type: none"> • Exposure of financial institutions to the entities or instruments rated by the CRA if the ratings are used for regulatory purposes • Identification of the rated entities or related third parties from which

	it receives more that 5% of its annual revenue
Substitutability	<ul style="list-style-type: none"> Existence of other CRAs rating the same entities or instruments as a measure of the impact on the financial markets if the CRA fails or withdraws a credit rating

60. The indicators which can be requested from the applicant have been included in the draft RTS in Annex XII.

Q7: Would you agree that the content of the Programme of operations set out in Annex X of the draft RTS is appropriate? If not, please, indicate the reasons or provide ESMA with further elements which could be included in the Annex.

9. Clarifications on the scope or content of the information requested

61. Experience has demonstrated that the colleges have commonly requested additional information regarding certain elements of the existing Guidance. ESMA has interpreted this as an indication that further clarification was necessary on the scope and/or content of the concerned paragraphs in the Guidance. The draft RTS have addressed the following weaknesses:

- The scope of the ownership and the organisational chart have been clarified in Articles 9 and 10 of the draft RTS.
- The information to be provided in case the arrangements regarding certain functions (compliance, internal control, risk assessment, review function and internal audit) are shared between different entities of the group of CRAs has been set out in Annex IV(2) of the draft RTS.
- Regarding the financial resources, in case the applicant is not subject to statutory audit within the meaning of Directive 2006/43/EC,⁵ the draft RTS provide that the CRAs should provide its individual and consolidated financial reports.
- It has been clarified that, when completing the inventory of conflicts of interest, CRAs have to take into consideration any potential conflict of interest not only at the individual level but as well at the group level.

10. Deleted and simplified information

62. The RTS do not regulate the information regarding the exemptions from which the CRA applies because this information is not required in Annex II of the Regulation. For the purpose of assessing the requirements for exemptions set out in Article 6(3) of the Regulation, ESMA expects that the CRAs include in its application for registration the reasons why they apply for exemptions (as previously requested under paragraph 226 of the Guidance), as well as, information on the measures and procedures put in place in order to ensure compliance with the objectives of the Regulation.

⁵Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts

63. The request for submission of a copy of the policies and procedures regarding the disclosure obligations set out in Section E of Annex I of the Regulation, which was previously requested in section 13 of the Guidance, has been excluded from the draft RTS as this information is not covered in Annex II of the Regulation.

64. The statistics on the remuneration of employees requested under paragraph 215.b of the Guidance have been simplified. Article 14.2 (d) of the draft RTS provides for the submission of the average annual fixed and variable remuneration of the rating analysts, lead analysts and the compliance officer for each of the preceding three financial years.

Q8: Would you agree that the statistics concerning the remuneration of employees are simplified?

Q9: Please, provide any other comments on the proposed draft RTS.

IV Conclusion

65. ESMA is mandated by the Regulation (EC) No 1060/2009 as amended to draft RTS concerning the information to be provided by a credit rating agency in its application for registration as set out in Annex II of the Regulation or in its application for certification and the information regarding the assessment of the systemic importance of a credit rating agency to the financial stability or integrity of financial markets referred to in Article 5 of the Regulation.
66. After giving due consideration to the costs and benefits, ESMA decided to use the existing ESMA Guidance on registration process and certification as a base for drafting the RTS and, at the same time, enhance its content in order to correct weaknesses which were identified during the current registration and certification processes.
67. The purpose of this Consultation Paper is to give market participants the opportunity to comment on the amendments proposed to the existing Guidance which have been incorporated to the draft RTS presented in Annex III.

Annex I

Summary of questions

Q1: Would you agree that the content of the Programme of operations set out in Annex X of the draft RTS is appropriate? If not, please, indicate the reasons or provide ESMA with further elements which could be included in the Annex.

Q2: Would you agree that the CRAs provide the criminal records of its senior management as set out in Article 15.2 of the draft RTS?

Q3: Would you agree with the content of the self-declaration that the senior management has to sign as set out in Annex VI of the draft RTS?

Q4: Would you agree that the CRAs provide a copy of the outsourcing agreements instead of a description of its content?

Q5: Would you agree with the level of detail regarding the information on the activities of the owners of the CRA described in Annex III of the draft RTS?

Q6: Would you agree with the proposed content of the inventory of conflicts of interest?

Q7: Would you agree that the content of the Programme of operations set out in Annex IX of the draft RTS is appropriate? If not, please, indicate the reasons or provide ESMA

Q8: Would you agree that the statistics concerning the remuneration of employees are simplified?

Q9: Please, provide any other comments on the proposed draft RTS.

Annex II

Legislative mandate to develop technical standards

The Regulation (EU) No 1095/2010 establishing the European Securities and Markets Authority, empowered ESMA to develop draft regulatory technical standards where the European Parliament and the Council delegate power to the Commission to adopt regulatory standards by means of delegated acts under Article 290 TFEU.

Article 21(4) of the Regulation (EC) No 1060/2009 provided that: “ESMA shall submit draft regulatory technical standards for endorsement by the Commission in accordance with Article 10 of Regulation (EU) No 1095/2010 on:

- (a) the information to be provided by a credit rating agency in its application for registration as set out in Annex II;
- (b) 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.”

Annex III

Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) No xxxx/2012

supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies

of XXX

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, and in particular Article 21(4)(a) and (b) thereof,

Whereas:

(1) In June 2010, the Committee of European Securities Regulators (CESR) issued its Guidance on the Registration Process and related issues⁶ in order to promote the harmonisation of the information submitted by the credit rating agencies in their applications for registration and certification. This information is examined by the colleges and competent authorities of the home Member States when assessing the completeness of the credit rating agencies' applications and the credit rating agencies' compliance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies.

(2) In accordance with the general objectives of Regulation (EC) No 1060/2009, in particular the contribution to the quality of credit ratings issued in the European Union, financial stability, consumer and investor protection, this Regulation should ensure that the information to be submitted to ESMA during the registration and certification processes, is provided following uniform rules, so that ESMA is able to make an informed decision on the registration or certification of a credit rating agency.

(3) This Regulation should take into consideration that future applicants might not have previous experience in the credit rating business. The longer-term benefits of the additional information are expected to outweigh any additional short-term costs of registration, in terms of investor protection and financial stability.

(4) This Regulation should set out the information that ESMA is to receive as part of an application for registration by a credit rating agency. Certain information requested in this Regulation might not be applicable to a newly established credit rating agency because it might have applied for an exemption, lack of previous experience in the credit rating business, or other

⁶ CESR/Ref. 10-347

reasons. This Regulation should not create a barrier of entry to newly established credit rating agencies willing to enter the market. An applicant should provide a clear explanation for not submitting any specific information contained in that application.

(5) Any information submitted to ESMA should be provided in a durable medium which enables its storage for future use. In order to facilitate the identification of the information submitted by a credit rating agency, all documents should be identified by a reference number.

(6) In order for ESMA to assess if any conflicts of interest arising from the activities and business interests of the owners of a credit rating agency might affect the independence of a credit rating agency, a credit rating agency should be required to inform on its owners activities and the ownership of its parent undertaking.

(7) A credit rating agency should provide information on the composition, functioning and independence of its governing bodies in order to assess whether the corporate governance structure ensures the independence of the credit rating agency and the avoidance of conflicts of interest. For the purpose of demonstrating the independence of the members of its management or supervisory board, account should be taken of 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 board⁷.

(8) In order to assess the good repute as well as the experience and skills of the senior management, a credit rating agency should provide the curriculum vitae, recent criminal record and self-declarations on the good repute of its senior management.

(9) For the purposes of assessing how conflicts of interest are eliminated or managed and disclosed, a credit rating agency should provide ESMA with an up-to-date inventory of existing and potential conflicts of interest covering at least the conflicts arising from the carrying out of ancillary services, the outsourcing of rating activities and the interaction with related third parties. When identifying the conflicts of interest for the inventory, a credit rating agency should consider conflicts of interest which might arise from entities which belong to the global group of undertakings to which it belongs. Therefore, intra-group arrangements concerning allocation of tasks and the provision of ancillary services by different entities within the group of undertakings should be taken into consideration.

(10) Although the branches of a credit rating agency established in the European Union are not legal persons, those agencies should provide separate information as regards their branches so as to enable ESMA to clearly identify the position of the branches in the organisational structure, assess the fitness and appropriateness of the senior management of the branches and evaluate whether the control mechanisms, compliance and other functions in place, are considered to be robust enough to identify, evaluate and manage the branches' risks in an appropriate manner.

(11) The information requested regarding possible conflicts of interests with ancillary services should refer to all businesses of the credit rating agency which are not part of the rating activities.

(12) This Regulation should set out the information that a credit rating agency must provide in its 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 of the Regulation (EC) No 1060/2009. The systemic importance of the credit rating agency and its rating activities to the stability of one or more Member States is measured in this Regulation in terms of the size of its rating activities and interconnectedness of the users of its credit ratings in the European Union.

(13) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission pursuant to the procedure in Article 10 of Regulation (EU) No 1095/2010.

⁷ OJ L 52, 25.2.2005, p. 51. (i)

(15) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established under Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER

Article 1

Subject matter

1. This Regulation lays down the rules which determine the information to be provided to ESMA by a credit rating agency in an application for:

- (a) registration, as set out in Annex II of Regulation (EC) No 1060/2009;
- (b) certification or the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5 of Regulation (EC) No 1060/2009.

CHAPTER 2

REGISTRATION

SECTION 1 GENERAL

Article 2

Format of the application

1. An application for registration shall be provided in an instrument which stores information in a way accessible for future reference and which allows the unchanged reproduction of the information stored.
2. A credit rating agency shall give a unique reference number to each document it submits. It shall ensure that the information it submits clearly identifies to which specific requirement of this Regulation it refers and in which document is that information provided. The credit rating agency shall ensure that information submitted clearly identifies the specific requirements of this Regulation to which it corresponds. The credit rating agency shall submit the table set out in Annex I as part of its application to clearly identify the document in which information required under this Regulation is provided.
3. If a requirement of this Regulation does not apply to a credit rating agency's application, it shall state this in the table set out in Annex I and provide an explanation.
4. Where a group of credit rating agencies applies for registration, the application shall clearly identify each credit rating agency to which the information applies. When the same information applies to more than one credit rating agency within the group of credit rating agencies, for the purpose of filling in the table of Annex I, the same reference number shall be given for the common information.

Article 3

Attestation of the accuracy and completeness of the application

Any information submitted to ESMA during the registration or certification process shall be accompanied by a letter signed by a member of the credit rating agency's senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

Article 4

Number of employees

Any information regarding the number of employees shall be provided on a full time equivalent basis calculated as the total hours worked divided by the maximum number of hours subject to compensation within a working year as defined by the relevant national law.

Article 5

Class of credit ratings

Any information regarding the class of credit ratings shall be provided according to the following categories:

- (a) Sovereign and public finance ratings;
- (b) Structured finance ratings;
- (c) Corporate ratings:
 - (i) financial institution including credit institutions and investment firms;
 - (ii) insurance undertaking;
 - (iii) corporate issuer that is not considered a financial institution or an insurance undertaking.

Article 6

Policies and procedures

1. Policies and procedures provided in an application shall contain or be accompanied by:
 - (a) an indication of who is responsible for the approval and maintenance of the policies and procedures;
 - (b) a description of how compliance with the policies and procedures will be enforced and monitored and who is responsible for this;
 - (c) a description of the measures undertaken in the event of a breach of the policies;
 - (d) an indication of the procedure for reporting to ESMA a material breach of the policy or procedure which may result in a breach of the conditions for initial registration or certification.
2. A credit rating agency may fulfil the obligation to provide information regarding its policies and procedures under this Regulation by submitting a copy of the relevant policies and procedures.

Article 7

(Annex II Point 1, 2, 3 and 4 of Regulation (EC) No 1060/2009)

Identification, legal status and class of credit ratings

A credit rating agency shall provide ESMA with:

- (a) the information listed in Annex II of this Regulation;
- (b) an excerpt from the relevant commercial or court register, or other form of evidence of the place of incorporation and scope of business activity of the credit rating agency, as of the application date.

SECTION 2

OWNERSHIP STRUCTURE

Article 8

(Annex II Point 5 of Regulation (EC) No 1060/2009)

Owners and parent undertaking of a credit rating agency

1. A credit rating agency shall provide ESMA with:
 - (a) a list of each person that directly or indirectly holds 5% or more of its capital or of voting rights or whose holding makes it possible to exercise a significant influence over its management.
 - (b) the information set out in points 1 and 2 of Annex III in relation to each person.
2. A credit rating agency shall provide the following:
 - (a) a list of any undertakings in which the persons referred to in paragraph 1 hold 10% or more of the capital or voting rights or over whose management they exercise a significant influence;
 - (b) an identification of their business activity in the format set out in point 3 of Annex III.
3. Where a credit rating agency has a parent undertaking, it shall:
 - (a) identify the country where the parent undertaking is established;
 - (b) indicate whether the parent undertaking is authorised or registered and subject to supervision.

Article 9

(Annex II Point 5 of Regulation (EC) No 1060/2009)

Ownership chart

The application shall include a chart showing the ownership links between the parent undertaking, subsidiaries and any other associated entities established in the European Union and their branches. The undertakings shown in the chart shall be identified by their full name, legal status and address of the registered office and head office.

SECTION 3

ORGANISATIONAL STRUCTURE AND CORPORATE GOVERNANCE

Article 10

(Annex II Point 6 of Regulation (EC) No 1060/2009)

Organisational chart

A credit rating agency shall provide ESMA with an organisational chart detailing its organisational structure, including a clear identification of significant roles and the identity of the person responsible for each significant role. Significant roles shall at least include senior management, persons who direct the activities of the branches and senior rating analysts. Where the credit rating agency conducts ancillary services, the organisational chart shall also detail its organisational structure in respect of those services.

Article 11

(Annex II Point 6 of Regulation (EC) No 1060/2009)

Organisational structure

1. A credit rating agency shall provide to ESMA information regarding its policies and procedures in relation to its compliance function, review function and the arrangements implemented to meet the requirements set out in points 4 and 10 of Section A of Annex I to Regulation (EC) No 1060/2009 on internal control mechanisms, risk assessment, control and safeguard arrangements for information processing systems, and monitoring and evaluation of the adequacy and effectiveness of the credit rating agency's systems, internal control mechanisms and arrangement through its internal audit function.
2. The information provided under paragraph 1 shall include the information set out in Annex IV.

Article 12

(Annex II Point 6 of Regulation (EC) No 1060/2009)

Corporate governance

1. A credit rating agency shall provide ESMA with information regarding its internal corporate governance policies and the procedures and terms of reference which govern its senior

management, including the administrative or supervisory board, its independent members and committees.

2. Where a credit rating agency adheres to a recognised corporate governance code of conduct, it shall identify the code and provide an explanation for any situations where it deviates from the code.

3. A credit rating agency shall provide the information set out in points 1 and 2 of Annex V on the members of its administrative or supervisory board.

4. A credit rating agency shall provide to ESMA a copy of the documents referred to in point 3 of Annex V.

SECTION 4

FINANCIAL RESOURCES FOR THE PERFORMANCE OF CREDIT RATING ACTIVITIES

Article 13

(Annex II Point 7 of Regulation (EC) No 1060/2009)

Financial reports

1. A credit rating agency shall provide ESMA with a copy of its annual financial reports, including individual and consolidated financial statements where applicable, for the three financial years preceding the date of the submission of its application to the extent available. Where the financial statements of the credit rating agency are subject to statutory audit within the meaning given in Article 2.1 of the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, the financial reports shall include the audit report on the annual and consolidated financial statements.

2. Where the financial reports referred to in paragraph 1 are not available for the requested period of time, a credit rating agency shall provide ESMA with an interim financial report.

3. If that credit rating agency is a subsidiary of a group of undertakings, it shall provide the annual financial reports of the parent undertaking for the three financial years preceding the date of the submission of its application.

4. A credit rating agency shall provide ESMA with a description of the measures in place to ensure sound accounting procedures.

SECTION 5

STAFFING AND COMPENSATION

Article 14

(Annex II Points 8 and 13 of Regulation (EC) No 1060/2009)

Staffing policies and procedures

1. A credit rating agency shall provide ESMA with information regarding its policies and procedures on the following:
 - (a) reporting to the compliance officer of any situations where one of the persons referred to in point 1 of Section C of Annex I to Regulation (EC) No 1060/2009 considers that any other such person has engaged in conduct that he or she considers illegal, pursuant to the provisions of point 5 of Section C of Annex I to Regulation (EC) No 1060/2009;
 - (b) the rotation of lead rating analysts, rating analysts and persons approving credit ratings;
 - (c) the compensation and performance evaluation practices for rating analysts, persons approving credit ratings, senior management and the compliance officer;
 - (d) the training and development relevant to the rating process, including any exam or other type of formal assessment required for the conduct of rating activities.
2. A credit rating agency shall provide ESMA with:
 - (a) a description of the measures in place to mitigate the risk of over-reliance on individual employees;
 - (b) for each class of credit ratings, information on the size and experience of the quantitative teams responsible for developing and reviewing methodologies and models;
 - (c) an identification of any employee of the credit rating agency who has obligations, either individually or on behalf of the credit rating agency, to any other entity within the group of credit rating agencies;
 - (d) the average annual fixed and variable remuneration of the rating analysts, lead analysts and the compliance officer for each of the preceding three financial years.
3. A credit rating agency shall describe the arrangements in place to ensure that it is informed when a rating analyst terminates his or her employment and joins a rated entity as set

out in point 6 of Annex I of Regulation (EC) No 1060/2009. A credit rating agency shall describe the arrangements in place to ensure that the persons referred in paragraph 1 of Section C of Annex I of Regulation (EC) No 1060/2009 are aware of the prohibition established in point 7 of Annex I to Regulation (EC) No 1060/2009.

Article 15

(Annex II Point 8 of Regulation (EC) No 1060/2009)

Fitness and appropriateness

1. A credit rating agency shall provide ESMA with the curriculum vitae, including employment history with relevant dates, identification of positions held and a description of the functions occupied, for each of the following:

- (a) senior management;
- (b) persons appointed to direct the business of the branches;
- (c) officers responsible for internal audit, internal control, compliance function, risk assessment and internal review function;
- (d) heads of the quantitative teams responsible for developing and reviewing methodologies and models.

2. A credit rating agency shall provide to ESMA in respect of each member of the senior management:

- (a) a recent criminal record file from the country of origin of the relevant person;
- (b) a self-declaration of their good repute including at least the statements set out in Annex VI and signed by the individual.

SECTION 6

ISSUANCE AND REVIEW OF CREDIT RATINGS

Article 16

(Annex II Point 10 of Regulation (EC) No 1060/2009)

Development, validation, review and disclosure of rating methodologies

1. A credit rating agency shall provide ESMA, for each class of credit rating, with a high level description of the range of core models and methodologies used to determine credit ratings.
2. A credit rating agency shall provide ESMA with information regarding its policies and procedures on:
 - (a) the development, validation and review of its rating methodologies, including at least the information set out in Point 1 of Annex VII.
 - (b) the disclosure of the methodologies, and descriptions of models and key rating assumptions used in its credit rating activities as set out in point 5 of part I of Section E of Annex I to Regulation (EC) No 1060/2009.

Article 17

(Annex II Point 10 of Regulation (EC) No 1060/2009)

Issuance of credit ratings

1. A credit rating agency shall provide ESMA with the following information:
 - (a) the rating nomenclatures used for each class of credit rating;
 - (b) the definition of any rating action and statuses used by the credit rating agency;
 - (c) its policies and procedures regarding the issuance of credit ratings, including at least the information set out in Point 2 of Annex VII;
 - (d) the terms of reference of its rating committees, where applicable;
 - (e) a description of the arrangements in place for disclosing a rating decision, including at least the information set out in Point 3 of Annex VII;
 - (f) a description of the procedures in place to ensure that a methodology is applied and implemented consistently across classes of credit rating, offices and, where applicable, regions.

2. A credit rating agency shall identify any differences in the policies and procedures provided in paragraphs 1(c) and (e) between unsolicited and solicited ratings.
3. If the rating process is regularly audited by an independent third party, a credit rating agency shall provide ESMA with the last audit report.
4. A credit rating agency shall provide ESMA with the following details:
 - (a) details and criteria for the selection of data providers;
 - (b) details on the reliability of internal and external data input into rating models;
 - (c) details on the sources of the data used.

Article 18

(Annex II Point 10 of Regulation (EC) No 1060/2009)

Monitoring of credit ratings

1. A credit rating agency shall provide ESMA with information regarding its policies and procedures concerning:
 - (a) the monitoring of ratings, identifying any differences between solicited and unsolicited ratings, and including at least the information set out in Point 4 of Annex VII.
 - (b) the disclosure of the decision to review or change a rating;
 - (c) the monitoring of the impact of changes in macroeconomic or financial market conditions on credit ratings as described in Article 8 of Regulation (EC) No 1060/2009.

SECTION 7

DESCRIPTION OF ISSUE AND REVIEW PROCEDURES AND METHODOLOGIES

Article 19

(Annex II Point 10 of Regulation (EC) No 1060/2009)

Credit rating presentation requirements

1. A credit rating agency shall provide ESMA with information regarding the following items:
 - (a) policies and procedures with respect to the credit rating disclosure requirements laid down in the following provisions of Regulation (EC) No 1060/2009:
 - (i) paragraphs 1, 2 and 5 of Article 10;
 - (ii) part I of Section D of Annex 1;
 - (b) where the credit rating agency rates structured instruments, policies and procedures with respect to Article 10(3), paragraph 4 of Section B of Annex I and part II of section D of Annex I;
 - (c) a sample of typical credit rating reports or any other documents demonstrating how the credit rating agency meets or intends to meet these disclosure requirements;
 - (d) samples of typical rating letters for each class of credit rating produced by the credit rating agency.

SECTION 8

CONFLICTS OF INTEREST

Article 20

(Annex II Point 11 of Regulation (EC) No 1060/2009)

Independence and avoidance of conflicts of interest

1. A credit rating agency shall provide ESMA with information regarding its policies and procedures with respect to the identification, management and disclosure of conflicts of interest and the rules on rating analysts and other persons directly involved in credit rating activities covering at least the requirements set out in Annex VIII.
2. A credit rating agency shall describe the process used to ensure that the relevant persons are aware of the policies and procedures detailed in paragraph 1.3. A credit rating agency shall describe the arrangements in place to ensure that the review function responsible for reviewing the methodologies set out in point 9 of Section A of Annex I of Regulation (EC) No 1060/2009 is independent of the business lines which are responsible for credit rating activities.

3. A credit rating agency shall describe the controls put in place, including the controls implemented through information systems, in order to comply with the requirements of Articles 7(2) and 7(3) of Regulation (EC) No 1060/2009 on the negotiation of fees and the rules on persons involved in rating activities.

4. A credit rating agency shall describe any other measures and controls put in place to ensure the independence of its rating analysts.

Article 21

(Annex II Point 11 of Regulation (EC) No 1060/2009)

Inventory of conflicts of interest

1. A credit rating agency shall provide ESMA with an up-to-date inventory of existing and potential conflicts of interest relevant to it. Where a credit rating agency is part of a group of undertakings, it shall include in the inventory any conflicts of interest arising from other entities which belong to its group of undertakings.

2. The inventory of existing and potential conflicts of interest shall identify the following:

- (a) any potential conflicts of interest with related third parties;
- (b) any potential conflicts of interest arising from the carrying out of ancillary services and the outsourced rating activities;
- (c) explain how the potential conflicts of interest are eliminated or managed and disclosed.

Article 22

(Annex II Point 14 of Regulation (EC) No 1060/2009)

Conflicts of interest with respect to ancillary services

1. A credit rating agency shall provide ESMA with a description of the resources, both human and technical, shared by the rating and ancillary services of the credit rating agency or shared with the group of undertakings to which it belongs.

2. The credit rating agency shall describe the arrangements in place to prevent, disclose and mitigate any existing or potential conflicts of interest between the rating business and ancillary services.

3. A credit rating agency shall provide ESMA with a copy of the results of any internal assessment performed to identify any existing or potential conflict of interest between the rating business and ancillary services.

SECTION 9

PROGRAMME OF OPERATIONS

Article 23

(Annex II Point 15 of Regulation (EC) No 1060/2009)

1. A credit rating agency shall provide to ESMA the annual information described in Annex IX covering a period of 3 years following the date of registration.

2. A credit rating agency shall provide ESMA with the information set out in set out in Annex X.

SECTION 10

USE OF ENDORSEMENT

Article 24

(Annex II Point 16 of Regulation (EC) No 1060/2009)

Expected use of endorsement

Where a credit rating agency intends to endorse credit ratings issued in third countries as set out in Article 4(3) of Regulation (EC) No 1060/2009, it shall provide ESMA with the information set out in Annex XI.

SECTION 11

OUTSOURCING

Article 25

(Annex II Point 17 of Regulation (EC) No 1060/2009)

Outsourcing requirements

Where a credit rating agency outsources any important operational functions; in particular, rating review, lead analyst, rating methodology development and review, rating approval, compliance, internal quality control, data storage, IT systems, IT support and accounting; it shall provide ESMA with the following information:

- (a) its policies with respect to outsourcing;
- (b) an explanation on how it intends to identify, manage and monitor the risks posed by the outsourcing of important operational functions;
- (c) a copy of the outsourcing agreements between the credit rating agency and the entity to which the activities are outsourced;
- (d) a copy of any internal or external report on the outsourced activities.

CHAPTER 3 CERTIFICATION

SECTION 1 APPLICATION FOR CERTIFICATION

Article 26

(Article 5(2) of Regulation (EC) No 1060/2009)

Documents to provide for application for certification

1. A credit rating agency applying for certification shall provide ESMA with the following information:
 - (a) the general information requested in points 1 to 10 of Annex II;
 - (b) the information regarding its owners referred to in Article 8;
 - (c) the organisational chart referred to in Article 10;
 - (d) details on the arrangements in place to prevent, disclose and mitigate any existing or potential conflicts of interest between the rating business and ancillary services;

- (e) the information referred to in Article 13 regarding the credit rating agency's financial resources.

2. The credit rating agency applying for certification shall also provide ESMA with the following information regarding its business activities:

- (a) for the past three years, the number of employees contracted and involved in the rating and ancillary services both permanent and temporary;
- (b) if the applicant has a branch, the number of employees involved in the rating and ancillary business in each branch;
- (c) the number of rating analysts contracted to the applicant including, if the credit rating agency has a branch, the number of rating analysts contracted in each branch;
- (d) if a credit rating agency is planning to establish a new branch, a description of the type of business activities the new branch is expected to conduct, its full name and address and the timeframe for its establishment;
- (e) if a credit rating agency is planning to conduct any new ancillary services, a description of the new services and the timeframe for their commencement;
- (f) the revenue generated over the past three years by the credit rating agency from rating and ancillary services as a proportion of total revenue, presented on a financial year basis;
- (g) if the credit rating agency has one or several branches, the revenue generated over the past three years by each branch as a proportion of total revenue, presented on a financial year basis.

3. The credit rating agency applying for certification shall also provide ESMA with the following information regarding the credit ratings it issues or proposes to issue:

- (a) the class of credit ratings;
- (b) the rating nomenclatures used for each class of credit rating;
- (c) the definition of any rating action and statuses used by the credit rating agency;
- (d) details of whether the credit rating agency produces solicited or unsolicited ratings or both;
- (e) for each class of credit rating, the number of years of experience it has in producing these ratings;
- (f) for each class of credit rating, the current or expected proportion of public ratings and private ratings.

4. The credit rating agency shall indicate whether it currently holds, or expects to apply for, External Credit Assessment Institution (ECAI) status in one or more Member States and, if it is the case, it shall identify the relevant Member State.

Article 27
(Article 5(2) of Regulation (EC) No 1060/2009)

General requirements for the application for certification

A credit rating agency shall meet the obligations laid down in Articles 2 to 6 regarding the format of its application, the attestation of its accuracy, the class of credit ratings, number of employees and the policies and procedures provided to ESMA.

SECTION 2 SYSTEMIC IMPORTANCE

Article 28
(Article 5(1) (d) of Regulation (EC) No 1060/2009)

Systemic importance

A credit rating agency shall provide ESMA with the information set out in Annex XII regarding the systemic importance of its credit ratings and credit rating activities to the financial stability or integrity of the financial markets of one or more Member States.

CHAPTER 4 FINAL PROVISIONS

Article 29

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.



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

Done at Brussels,

[For the Commission
The President]

[For the Commission
On behalf of the President]

[Position]

ANNEX I

DOCUMENT REFERENCES

(Article 2)

Article or Annex of this Regulation	Credit rating agency reference number	Title of the document	Chapter or section or page of the document where the information is provided or reason why the information is not provided
...			
...			
...			
...			

ANNEX II

GENERAL INFORMATION

(Article 7)

1. Full name
2. Country of establishment
3. Address of registered office
4. Legal status
5. With respect to the contact person(s) for the purpose of the application:
 - (a) name;
 - (b) title;
 - (c) address;
 - (d) email address;
 - (e) telephone number.
6. With respect to the Compliance Officer:
 - (a) name;
 - (b) title;
 - (c) address;
 - (d) email address;
 - (e) telephone number.
7. Description of the business activities the credit rating agency conducts, including ancillary services, and if it has one or several branches or subsidiaries, the business conducted by each branch or subsidiary.
8. Identification of the class of credit ratings according to the categories specified in Article 5 for which the credit rating agency applies to be registered
9. Identification of the regulated markets where the credit rating agency is listed, if applicable.
10. Financial reports:
 - (a) indication on whether the credit rating agency is an audited entity;
 - (b) if the credit rating agency is audited, name of the external auditor and national registration number of the external auditor;
 - (c) date of the financial year end.
11. Number of employees (excluding employees located in branches) as at the date of application and as at the close of each of the three most recent financial years, reported in the following categories:
 - a. temporary employees;
 - b. permanent employees with under five years' service;
 - c. permanent employees with five years' or more service.
12. With respect to each branch of the credit rating agency:



- (a) full name;
- (b) legal status;
- (c) address;
- (d) number of temporary employees and of permanent employees

13. List of countries from which the credit rating agency intends to endorse credit ratings.

ANNEX III

INFORMATION TO BE PRESENTED WITH REGARD TO THE OWNERSHIP STRUCTURE

(Article 8)

1. Identification of the credit rating agency owners referred to in Article 8(1) with the following level of detail:

Owners	Percentage of capital	Nature of the holding: Direct or indirect	Percentage of voting rights	Nature of the holding: Direct or indirect
...	...			
...	...			
...	...			

2. Description of the business activities of the credit rating agency owners referred to in Article 8(1):

Owner	Business activities
...	...
...	...
...	...

3. Identification of the business activities of the companies in which the owners referred to in Article 8(1) have an interest according to Article 8(3):

Owner	Companies in which the owner has an interest according to Article 11(3)	Business activities
...	...	
...	...	
...	...	

4. Identification of the owners of the parent undertaking referred to in Article 8(3):

Owner	Percentage of capital	Nature of the holding: Direct or indirect	Percentage of voting rights	Nature of the holding: Direct or indirect
...	...			

...	...			
...	...			

ANNEX IV

ORGANISATIONAL STRUCTURE

(Article 11)

1. A credit rating agency shall provide the following information regarding policies and procedures referred to in Article 11 (1):
 - (a) a description of the roles and responsibilities of the employees;
 - (b) a description of the mechanisms to monitor the effectiveness of the policy or procedure;
 - (c) the number of employees, the ratio of temporary to permanent employees;
 - (d) information on the reporting lines and the frequency of reporting;
 - (e) a description of the interaction between the relevant function and employees directly involved in the rating process and between that function and any other functions.

2. Where the arrangements referred to in point 1 of this Annex are carried out at group of undertakings level, a credit rating agency shall provide ESMA with a copy of relevant service level agreements that it has entered into, or proposes to enter into, with other entities of the group of undertakings, and the following information:
 - (a) a description of the relevant tasks carried out by each group undertaking, including undertakings located in third countries;
 - (b) a clear identification of the undertaking involved in performing the task, specifying its location;
 - (c) information on the reporting lines and frequency of reporting of each entity involved and on the way information is collected from each entity;
 - (d) information on any dedicated resources located in the European Union. In the case of human resources, a credit rating agency shall specify the time devoted to the function on the basis of full time equivalence.

3. With respect to the compliance function department, a credit rating agency shall provide further detailed information as follows:

- (a) the policies and procedures on the reporting of information as described in Section C (5), Annex I of Regulation (EC) No 1060/2009;
- (b) a description on how it ensures the independence of the compliance function;
- (c) the last report of the compliance officer;
- (d) a work plan for the next three years.

4. With respect to the internal audit function carrying out the tasks described in point 10 of Section A of Annex I to Regulation (EC) No 1060/2009, a credit rating agency shall provide the following information:

- (a) an explanation of how its internal audit methodology is developed and applied in accordance with the special features of its activities and their extent, complexity and risks;
- (b) a work plan for the next three years.

ANNEX V

INFORMATION TO BE PRESENTED WITH REGARD CORPORATE GOVERNANCE

(Article 12)

1. Identification of the members of the administrative or supervisory board and other committees as established in Article 12 (3):

Identification of the member	Body (administrative board, supervisory board, audit committee, remunerations committee, etc.) and position (Chair, vice-chair, member)	Body of other undertakings where the person is a member and position
...	...	
...	...	
...	...	

2. Identification of the independent members of the administrative or supervisory board as established in Article 12 (3) and justification on their independence if they are independent members and on their in-depth knowledge and experience at a senior level of the market in structured finance instruments, where the credit agency applies to issue credit ratings of structured finance products, according to Section A(2) of Annex I of Regulation (EC) No 1060/2009:

Identification of the member	Body (administrative or supervisory board)	Independent member (YES/NO) and if YES, provided justification	Experience in structured finance instruments (YES/NO)
...	...		
...	...		
...	...		

3. A credit rating agency shall provide to ESMA a copy of the following documents as established in Article 12 (4):

- (a) the last three sets of minutes of the administrative and supervisory board;
- (b) the last minutes of the meetings of any other committees, such as the remuneration or strategy committees, where applicable;
- (c) the last three opinions presented to the administrative or supervisory board by the independent members.

ANNEX VI

SELF DECLARATION

(Article 15)

In the self-declaration to be provided under Article 15.2(b), each member of the senior management shall state whether the relevant person falls under any of the following categories:

- (a) has been convicted of any criminal offence;
- (b) has been subject to or has been notified of any proceedings of a disciplinary or criminal nature;
- (c) has been subject to any adverse finding in civil proceedings in connection with the provision of financial services, misconduct, fraud or the management of a legal entity;
- (d) has to his or her knowledge been subject to any existing or previous investigation by any regulatory authority or government bodies or agencies;
- (e) has been involved with an undertaking whose registration or authorisation was withdrawn;
- (f) has been refused the right to carry on activities which require registration or authorisation;
- (g) has been involved in the management of an undertaking which has gone into insolvency, liquidation or administration while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
- (h) has been involved with undertaking investigated or suspended by a regulatory body;
- (i) has been investigated, suspended or sanctioned by a regulatory body;
- (j) has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking.

ANNEX VII

ISSUANCE AND REVIEW OF CREDIT RATINGS

(Articles 16, 17 and 18)

1. The information regarding the policies and procedures referred to in Article 16.2(a) regarding the development, validation and review of its rating methodologies shall include:
 - (a) the responsibilities and process for rating methodology development and sign off, including details on the composition of the rating methodology committees and the procedures for members' selection;
 - (b) the responsibilities and process for rating methodology, model and key rating assumption review, including:
 - (i) the verification and validation of a rating methodology, model or key rating assumptions;
 - (ii) the validation of the rating methodology, model or key rating assumptions based on historical data, and if applicable, including how the results of the back-testing are taken into account. In addition, the credit rating agency shall also include the results of such validation/back-testing for the past three years, where quantitative data is available;
 - (iii) the reporting of the outcome of the rating methodology, model and key rating assumption review;
 - (iv) the implementation of a change in methodology, model or key rating assumptions within the rating methodology.
2. The information regarding the policies and procedures referred to in Article 17.1(c) regarding the issuance of credit ratings shall include:
 - (a) the sequence of steps followed for the production of ratings; the process for reviewing the documentation of issuers or securities to be rated. This shall include any benchmark used to facilitate the review;
 - (b) an assessment of the minimum information requirements to initiate and maintain a rating, including both, public and non-public information;

- (c) the controls mechanisms for the issuance of credit ratings, including the involvement of the issuer/arranger/investor/servicer within this process;
 - (d) the process for collation, analysis and assessment of the information used to determine a rating, including, where applicable, reliance on analysis by another credit rating agency or other third parties;
 - (e) the role and responsibilities of rating analysts, as well as the process and procedures for their selection on specific securities;
 - (f) the rating approval process, including the identification of the role and responsibilities of the persons approving the ratings as well as the process and procedures for their selection;
 - (g) the role and responsibilities of rating committee chairs, as well as the skills required and the process and procedures for their nomination;
 - (h) the minimum qualifications including education level or number of years of experience in the rating industry of the persons involved in the rating decision.
3. The information regarding the policies and procedures referred to in Article 17.1(e) regarding the disclosure of a rating decision shall include the following:
- (a) the process for notifying the rated entity, or the entity to which the rated securities or instruments relate, of the principal grounds on which the rating is based at least 12 hours before publication of the credit rating;
 - (b) a rating appeal process, if a credit rating agency has implemented it;
 - (c) the processes for determining which key elements underlying the credit rating shall be included in the press release or reports.
4. The information regarding the policies and procedures referred to in Article 18.1(a) regarding the monitoring of ratings shall include:
- (a) the monitoring process, including the role and responsibilities of rating committees monitoring process, including the role and responsibilities of rating committees and rating approval processes ;
 - (b) the role and responsibilities of rating analysts;
 - (c) the process for collation, analysis and assessment of the information used to monitor a rating, including, where applicable, reliance on analysis by another credit rating agency or other third parties;

- (d) the process, including the overview of the factors considered, and the responsibilities for deciding when a rating should be formally reviewed, including rating actions ;
- (e) the process and the responsibilities for deciding when a rating should be formally suspended or withdrawn;
- (f) the processes and controls with respect to credit rating reviews required by Article 8(6) (a), (b), (c) of Regulation (EC) No 1060/2009;
- (g) the policies, procedures and controls for the involvement of the issuer or/arranger within the process.

ANNEX VIII

INDEPENDENCE AND AVOIDANCE OF CONFLICTS OF INTEREST

(Article 20)

The policies and procedures established in Article 20 (1) regarding the identification, management and disclosure of conflicts of interest and the rules on rating analysts and other persons directly involved in credit rating activities shall cover:

- (a) the identification, prevention, disclosure and mitigation of conflicts of interests arising from the issuing of credit ratings or the provision of ancillary services as set out in point 1 of Section B of Annex I to Regulation (EC) No 1060/2009;
- (b) the segregation from the rating process of discussions related to fees received from rated entities and related third parties as set out in Article 7(2) of Regulation (EC) No 1060/2009;
- (c) the determination of fees charged by credit rating agencies to rated entities and related third parties; the control of the confidential information obtained from, or shared with, all rated entities, related third parties and other relevant individuals, as required by point 3 of Section C of Annex I to Regulation (EC) No 1060/2009;
- (d) the requirements set out in point 2 of Section C of Annex I to Regulation (EC) No 1060/2009 regarding the trading in securities rated by the credit rating agency or which are securities representing obligations of an entity rated by the credit rating agency, containing information on how the credit rating agency identifies, for each credit rating outstanding, the employees involved in the rating process at any level or function;
- (e) the requirement set out in point 4 of Section C of Annex I to Regulation (EC) No 1060/2009 regarding the acceptance of money, gifts or favours;
- (f) the rules on the termination of a rating analyst's employment set out in points 6 and 7 of Section C of Annex I to Regulation (EC) No 1060/2009.

ANNEX IX

PROGRAMME OF OPERATIONS

(Article 23)

Business concept/ Business development

1. The following information regarding its business activities:
 - (a) a description of the macroeconomic environment in which the credit rating agency is expected to operate;
 - (b) an indication of future plans for the establishment of subsidiaries or branches and their location;
 - (c) a description of the business activities which the credit rating agency plans to carry out, specifying the activities of subsidiaries and branches. The information shall include classes of credit ratings, potential clients and non-rating activities.

Class of credit ratings

2. The following information regarding the class of credit ratings:
 - (a) details of whether the credit rating agency plans to produce solicited or unsolicited ratings or both;
 - (b) for each class of credit ratings planned to issue by the credit rating agency, an estimation on the proportion of public ratings and private ratings:
 - (i) the number of public/sovereign ratings;
 - (ii) the number and volume (in billions of euros) of structured finance ratings;
 - (iii) the number and volume (in billions of euros) of corporate ratings, with the following detail: financial institutions, insurance, corporate issuers;
 - (c) the average number of credit ratings produced or monitored per employee presented by class of credit rating.

Financial plan

3. Projections for:
 - (a) balance sheet;
 - (b) income statement;

- (c) cash flow statement;
- (d) statement of changes in equity.

4. The credit rating agency shall separate the revenues of the rating activities from the ancillary services in the projections for the revenues. If the credit rating agency has, or plans to establish, branches, the revenue from each branch shall be indicated.

Corporate governance

5. Number of members of the following bodies:
- (a) administrative and supervisory board;
 - (b) independent members of the administrative and supervisory board.

Outsourcing

6. A description of the activities planned to be outsourced, and identification of the entities to which the activities are planned to be outsourced and an explanation of the reasons for outsourcing. If any activity is outsourced from a branch, this should be indicated.

Human Resources/Staffing

7. Number of permanent and temporary employees working for the following functions and their seniority:
- (a) senior management other than members of the board and persons appointed to direct the branches;
 - (b) audit function;
 - (c) internal control mechanism;
 - (d) compliance function department;
 - (e) review function;
 - (f) credit rating committee.
8. The following information regarding the number of employees:
- (a) the number of employees per functions/departments;
 - (b) the number of temporary employees and the number of permanent employees contracted to the credit rating agency and involved in the rating business;
 - (c) the number of temporary employees and the number of permanent employees contracted to the credit rating agency involved in the ancillary services;
 - (d) the number of employees approving ratings, such as committee chairs, rating analysts and lead rating analysts, together with information on:
 - (i) their seniority or rank;

- (ii) the type of rating analyst including, where relevant, whether the employee is a primary or surveillance analyst and a qualitative or quantitative analyst;
- (iii) the number of years of experience in the CRA, or rating industry when available.

ANNEX X

RECORD KEEPING, BUSINESS CONTINUITY PLANNING AND INFORMATION SYSTEMS

(Article 23)

Record keeping

1. The policies and procedures regarding the record keeping obligations set out in Article 8(4), point 7 of Section A of Annex I and points 7, 8 and 9 of Section B of Annex I of Regulation (EC) No 1060/2009:

- (a) an indication on which records are kept and for how long;
- (b) an identification of the recipients of confidential information for each rating issued.

Continuity and regularity of the activities

2. Information regarding the continuity and regularity in the performance of the credit rating activities as set out in point 8 of Section A of Annex I of Regulation (EC) No 1060/2009, including:

- (a) description of the procedures to ensure continuity and regularity in the performance of the credit rating activities, including, information on their applicability to outsourced service providers;
- (b) the types of business continuity planning tests expected to be conducted;
- (c) the frequency of testing.

Information processing systems

3. Information regarding the information processing systems as set out in point 8 of Section A of Annex I of Regulation (EC) No 1060/2009, including:

- (a) the identity of the senior manager responsible for the information processing systems;
- (b) a description of the information processing systems including any back-up systems;

- (c) a description of effective control and safeguard arrangements for the information processing systems in place as well as the mechanisms to monitor their effectiveness, including details of the procedures in place to ensure effective separation between the information processing systems used to report fees from those accessible to rating analysts and used to enter ratings and information about the rated entities or rated transactions.

ANNEX XI

USE OF ENDORSEMENT

(Article 24)

Third country credit rating agency

1. The following information for each relevant third country credit rating agency:
 - (a) its full name;
 - (b) its legal status, including an excerpt from the relevant commercial or court register, or other form of evidence of the place of incorporation and scope of business activity or other details of company registration;
 - (c) its country of establishment;
 - (d) the address of its registered office;
 - (e) evidence that the third country credit rating agency is authorised or registered and is subject to supervision in the relevant jurisdiction;
 - (f) the class of credit rating which the credit rating agency expects to endorse;
 - (g) the number of analysts it employs.
2. An organisational ownership chart of each credit rating agency, its subsidiaries, branches, parent undertaking and subsidiaries controlled by the parent undertaking involved in the process of issuing ratings for which endorsement is envisaged.

Assessment of the third country regulatory regime

3. In relation to each relevant third country jurisdiction, unless ESMA has published on its website that the requirements of the third country regime are as stringent as requirements set out in Articles 6 to 12 of Regulation (EC) No 1060/2009:
 - (a) detailed information, structured analysis and reasoning for each requirement set out in Articles 6 to 12 of Regulation (EC) No 1060/2009, including any reference to the relevant sections of the third country law/regulation. For this purpose, the credit rating agency shall use the table published in ESMA's web page;
 - (b) a description of the measures put in place by the endorsing credit rating agency to monitor that the third country credit rating agency is fulfilling such requirements and to monitor

any potential concerns identified by the endorsing credit rating agency with respect to the fulfilment of such requirements.

Objective reasons

4. An indication of objective reasons for credit ratings to be issued in a third country.

Legislation in the third country

5. Evidence that public authorities are not entitled to interfere with the content of credit ratings and methodologies used by credit rating agencies incorporated in each relevant third country jurisdiction.

ANNEX XII

SYSTEMIC IMPORTANCE INDICATORS

(Article 28)

1. A credit rating agency shall provide ESMA with the volume of outstanding credit ratings it has issued with the details set out in the following table. The information regarding the corporate rating and sovereign and public finance ratings shall be provided on the basis of number of credit ratings and the information regarding structured finance ratings shall be provided on the basis of the amount (in millions of euros) of issuing of the structured finance instruments.

	Total
Corporate ratings (number of credit ratings)	
Financial institution including credit institutions and investment firms	
Insurance undertaking	
Corporate issuer that is not considered a financial institution or an insurance undertaking	
Sovereign and public finance ratings (number of credit ratings)	
Structured Finance ratings (amount of the issuing in million euros)	

2. A credit rating agency shall provide information on the annual revenues generated in any European Union Member State and in other countries outside the European Union for the past 3 years with the following level of detail:

	EU Member State 1	EU Member State 2	EU Member State 3	(...)	Other non-EU countries	Total
Rating activities						
From rated entities or related third parties						
From subscribers						
Other sources						
Non-rating activities						

The European Union Member States shall be individually identified.