REPORT

on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies

Committee on Economic and Monetary Affairs

Rapporteur: Jean-Paul Gauzès
Symbols for procedures

* Consultation procedure
  *majority of the votes cast*

**I Cooperation procedure (first reading)
  *majority of the votes cast*

**II Cooperation procedure (second reading)
  *majority of the votes cast, to approve the common position*
  *majority of Parliament’s component Members, to reject or amend the common position*

*** Assent procedure
  *majority of Parliament’s component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*

***I Codecision procedure (first reading)
  *majority of the votes cast*

***II Codecision procedure (second reading)
  *majority of the votes cast, to approve the common position*
  *majority of Parliament’s component Members, to reject or amend the common position*

***III Codecision procedure (third reading)
  *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in **bold italics**. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0704),

– having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0397/2008),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A6-0191/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Credit rating agencies play an important role in global securities and banking markets, as their ratings are used by investors, borrowers, issuers and governments to make informed investment and financing decisions. Credit institutions, investment firms, insurance undertakings, reinsurance undertakings, undertakings for collective investment in transferable securities (UCITS) and institutions for occupational retirement provision, may use those ratings

Amendment

(1) Credit rating agencies play an important role in global securities and banking markets, as their credit ratings are used by investors, borrowers, issuers and governments as part of making informed investment and financing decisions. Credit institutions, investment firms, insurance undertakings, reinsurance undertakings, undertakings for collective investment in transferable securities (UCITS) and institutions for occupational retirement provision may use
as the reference for the calculation of their capital requirements for solvency purposes or for calculating risks in their investment activity. Consequently, credit ratings have a significant impact on the trust and confidence of investors and consumers. It is essential, therefore, that credit ratings used in the Community are independent, objective and of the highest quality.

Amendment 2

Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) Currently, most credit rating agencies have their headquarters outside the Community. Most Member States do not regulate the activities of credit rating agencies or the conditions for the issuance of credit ratings. Despite their significant importance for the functioning of the financial markets, credit rating agencies are only to a limited extent subject to Community legislation, notably Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation. Moreover, Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions refer to credit rating agencies. It is therefore important to lay down rules ensuring that all ratings used by financial institutions governed by those credit ratings as the reference for the calculation of their capital requirements solvency purposes or for calculating risks in their investment activity. Consequently, credit ratings have a significant impact on the operation of the markets and on the trust and confidence of investors and consumers. It is essential, therefore, that credit rating agencies observe the principles of integrity, transparency, responsibility, good governance, and institutional cooperation in order to ensure that resulting credit ratings used in the Community are independent, objective and of the highest quality.

Amendment

(2) Currently, most credit rating agencies have their headquarters outside the Community. Most Member States do not regulate the activities of credit rating agencies or the conditions for the issuance of credit ratings. Despite their significant importance for the functioning of the financial markets, credit rating agencies are subject to Community legislation only in limited areas, notably Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation. Moreover, Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions refer to credit rating agencies. It is therefore important to lay down rules ensuring that all credit ratings used by financial institutions
Community legislation are of high quality and issued by credit rating agencies subject to stringent requirements. The Commission will continue to work with its international partners to ensure convergence of the rules applying to credit rating agencies.

governed by Community legislation are of high quality and issued by credit rating agencies subject to stringent requirements. The Commission will continue to work with its international partners to ensure convergence of the rules applying to credit rating agencies.

Justification

This clarifies that credit rating agencies are only subject to a very small number of Community legislation.

Amendment 3
Proposal for a regulation
Recital 3

Text proposed by the Commission

(3) Credit rating agencies may apply on a voluntary basis the Code of Conduct Fundamentals for credit rating agencies issued by the International Organisation of Securities Commissions, hereinafter the "IOSCO code". In 2006 a Communication from the Commission on Credit Rating Agencies invited the Committee of European Securities Regulators, hereinafter "CESR", to monitor compliance with the IOSCO Code and report back to the Commission on an annual basis.

Amendment

(3) Credit rating agencies should apply the Code of Conduct Fundamentals for credit rating agencies issued by the International Organisation of Securities Commissions, hereinafter the "IOSCO code". In 2006 a Communication from the Commission on Credit Rating Agencies invited the Committee of European Securities Regulators, hereinafter "CESR", to monitor compliance with the IOSCO Code and report back to the Commission on an annual basis.

Amendment 4
Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) Credit rating agencies are considered to have failed to reflect early enough in their credit ratings the worsening market conditions. This failure can be best corrected by measures related to conflicts of interest, the quality of the credit ratings,

Amendment

(5) Credit rating agencies are considered to have failed, on the one hand, to reflect early enough in their credit ratings the worsening market conditions and, on the other, to adjust their ratings in time following the deepening market crisis.
the transparency of the credit rating agencies, their internal governance and surveillance of the activities of the credit rating agencies. The users of credit ratings should not rely blindly on credit ratings. They should take utmost care to perform own analysis and conduct due diligence regarding their reliance on such credit ratings.

This failure can be best corrected by measures related to conflicts of interest, the quality of the credit ratings, the transparency of the credit rating agencies, their internal governance and surveillance of the activities of the credit rating agencies. The users of credit ratings should be able to rely to a reasonable extent, though not blindly, on credit ratings. They should take utmost care to perform own analysis and conduct due diligence at all times regarding their reliance on such credit ratings.

Amendment 5
Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

(5a) The rating of sovereign debt should be considered to be a public good and should therefore be undertaken by separate actors in parallel, such as the national courts of auditors and the European Court of Auditors.

Justification

The current crisis has unveiled speculation and hedging activities on sovereign debt. These phenomena are highly detrimental and should be banned. Giving the responsibility of rating the sovereign debt to another actor might be a solution.

Amendment 6
Proposal for a regulation
Recital 5 b (new)

Text proposed by the Commission

(5b) The possibility of establishing a European public rating agency should be considered.
Justification

The current crisis has shown that credit rating agencies have failed and calls for new actors in this field. This is the position the EP has already adopted when voting the “report with recommendations to the Commission on Hedge funds and private equity” by Poul Nyrup Rasmussen on 11 September 2008.

Amendment 7

Proposal for a regulation
Recital 5 c

Text proposed by the Commission

(5c) It is appropriate to carry out a reform of the CESR, either by expanding the CESR itself into an independent European agency, or by establishing a centralised European agency which issues credit ratings.

Amendment

Amendment 8

Proposal for a regulation
Recital 6

Text proposed by the Commission

(6) It is necessary to lay down a common framework of rules regarding the quality of credit ratings to be used by financial institutions regulated by harmonised rules in the Community. Otherwise, there would be a risk that Member States would take diverging measures at national level. This would have a direct negative impact on and create obstacles to the good functioning of the internal market, since the credit rating agencies issuing credit ratings for the use of financial institutions in the Community, would be subject to different rules in different Member States. Moreover, diverging quality requirements on credit ratings could lead to different levels of investor and consumer protection.

Amendment

(6) It is necessary to lay down a common framework improving the quality of credit ratings to be used by financial institutions regulated by harmonised rules in the Community. Otherwise, there would be a risk that Member States would take diverging measures at national level. This would have a direct negative impact on and create obstacles to the good functioning of the internal market, since the credit rating agencies issuing credit ratings for the use of financial institutions in the Community, would be subject to different rules in different Member States. Moreover, diverging quality requirements on credit ratings could lead to different levels of investor and consumer protection.
Amendment 9

Proposal for a regulation
Recitals 6 a, 6 b and 6 c (new)

Text proposed by the Commission

Amendment

(6a) It is desirable that credit ratings of entities or products located in a third country, prepared or issued by credit rating agencies established and authorised in a third-country, can be used in the Community provided that they comply with requirements that are as stringent as those provided for in this Regulation.

(6b) This Regulation should introduce an endorsement regime allowing credit rating agencies established in the Community and registered in accordance with this Regulation to endorse credit ratings issued in third countries provided that the Commission has recognised the legal and supervisory framework regulating the third-country credit rating activities resulting in the issuance of credit ratings to be endorsed as equivalent to this Regulation. In order to ensure investor protection and facilitate the remediing of any breach of this Regulation, the requirements set out in this Recital are essential for providing a point of reference in the European Union, namely a credit rating agency established in the Community and registered in accordance with this Regulation.

(6c) A credit rating agency that has endorsed credit ratings issued in a third country should be fully and unconditionally responsible for the endorsed credit ratings.

Amendment 10
Proposal for a regulation
Recital 8

Text proposed by the Commission
(8) Credit rating agencies should establish appropriate internal policies and procedures in relation to employees involved in the credit rating process in order to prevent conflicts of interest and ensure at all times the quality, integrity and thoroughness of the rating and review process.

Amendment
(8) Credit rating agencies should establish appropriate internal policies and procedures in relation to employees and other persons involved in the credit rating process in order to identify, eliminate or manage and disclose conflicts of interest and ensure at all times the quality, integrity and thoroughness of the credit rating and review process. An internal control system and a compliance function should, in particular, feature among such policies and procedures.

Justification
Technical amendment. It reflects the new wording of the respective article in terms of elimination or identification, management and disclosure of conflict of interests.

Amendment 11

Proposal for a regulation
Recital 10

Text proposed by the Commission
(10) In order to ensure the independence of the credit rating process from the business interest of the credit rating agency as a company, the credit rating agencies should ensure that the administrative or supervisory board shall include at least three nonexecutive members, who should be independent along the lines of point 13 in Section III of Commission Recommendation 2005/162/EC on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board. Moreover, it is necessary that the majority of members of the administrative or supervisory board, including all independent members have sufficient

Amendment
(10) In order to ensure the independence of the credit rating process from the business interest of the credit rating agency as a company, the credit rating agencies should ensure that the administrative or supervisory board is independent when monitoring and reporting on proper compliance with this Regulation with regard to the maintenance of the independence and quality of credit ratings. Moreover, members of the administrative or supervisory board should have sufficient expertise in appropriate areas of financial services.
expertise in financial services.

**Justification**

There is no need for the monitoring function to be by non-executive directors, and in some Member States such directorships do not exist or do not exist in an appropriate form. Also there may be conflict of interest with shareholder responsibilities. This ‘function’ formulation allows the best option to be selected.

**Amendment 12**

**Proposal for a regulation**

**Recital 11**

<table>
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<td>(11) In order to avoid conflicts of interest the remuneration of independent members of the administrative or supervisory board should not depend on the business performance of the agency.</td>
<td>(11) In order to avoid conflicts of interest the remuneration of the members of the administrative or supervisory board should not depend on the business performance of the agency.</td>
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**Amendment 13**

**Proposal for a regulation**

**Recital 13**

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<td>(13) Long lasting relationships with the same rated entities or its related third parties could compromise independence of analysts and persons approving credit ratings. Therefore those analysts and persons should be subject to a rotation mechanism.</td>
<td>(13) Long lasting relationships with the same rated entities or its related third parties could compromise independence of analysts that are in direct contact with issuers. Therefore those analysts should be subject to a mandatory rotation mechanism.</td>
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**Amendment 14**

**Proposal for a regulation**

**Recital 14**

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<td>(14) Credit rating agencies should use</td>
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rating methodologies that are rigorous, systematic, and continuous and result in ratings that may be subject to validation based on historical experience. Credit rating agencies should ensure that methodologies, models and key rating assumptions used for determining credit ratings are properly maintained, up-to-date and subject to a comprehensive review on a periodic basis. In cases where the lack of reliable data or the complexity of the structure of a new type, in particular structured finance instruments, raises serious questions as to whether the credit rating agency can produce a credible credit rating, the credit rating agency should refrain from issuing a credit rating or withdraw an existing credit rating.

Amendment 15

Proposal for a regulation
Recital 14 a (new)

Text proposed by the Commission

(14a) Issuers should make available information provided to credit rating agencies to those who request it for the purpose of independent analysis. Recipients of such information should agree in advance neither to relay it to the public nor to trade in the relevant securities.

Justification

The regulation should require issuers to make available to others the same information as is used by the credit rating agencies in reaching their judgement. Making the information
available would create the opportunity for a market to develop in truly independent ratings not paid for by the issuer. Increasing the availability of information is the course of regulatory action most likely to result in genuine competition to the credit rating agencies.

Amendment 16

Proposal for a regulation
Recital 15

Text proposed by the Commission Amendment

(15) In order to ensure the quality of ratings, a credit rating agency should take measures to ensure that the information it use in assigning a rating is reliable. For this purpose, a credit rating agency may envisage, among other elements reliance on independently audited financial statements and public disclosures; verification by reputable third party services; random sampling examination by the credit rating agency of the information received; or contractual provisions clearly stipulating liability for the rated entity or its related third parties, if the information provided under the contract is knowingly materially false or misleading or if the rated entity or its related third parties fail to conduct reasonable due diligence regarding the accuracy of the information as specified under the terms of the contract.

Justification

There is a need to avoid confusion over the role of rating agencies with respect to the due diligence conducted by other parties and on which the rating agencies rely. What is relevant is for appropriate measures of assessment and for these to be understood through transparency. The final point appears to be liability rather than re-liability.

Amendment 17
Proposal for a regulation  
Recital 16

Text proposed by the Commission

(16) It is necessary that methodologies, models and key rating assumptions used by the credit rating agency are regularly reviewed in order to be able to properly reflect the changing conditions in the underlying asset markets. With a view to ensuring transparency, disclosure of any material modification to the methodologies and practices, procedures and processes of credit rating agency should be made prior to their coming into effect, unless extreme market conditions require an immediate change in the credit rating.

Amendment

(16) It is necessary that credit rating agencies establish proper procedures for the regular review of methodologies, models and key rating assumptions used by the credit rating agency in order to be able to properly reflect the changing conditions in the underlying asset markets. With a view to ensuring transparency, disclosure of any material modification to the methodologies and practices, procedures and processes of credit rating agency should be made prior to their coming into effect, unless extreme market conditions require an immediate change in the credit rating.

Justification

This wording clarifies that it is the task of the credit rating agency to review the methods and models used.

Amendment 18

Proposal for a regulation  
Recital 17 a (new)

Text proposed by the Commission

(17a) In order to reinforce transparency and enhance the information and protection provided to investors, the CESR should monitor the past performances of credit rating agencies on the basis of statistical results and should publish its findings.

Amendment 19
Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) Under certain circumstances structured finance instruments may have effects which are different from traditional corporate debt instruments. It could be misleading for investors to apply the same rating categories to both types of instruments without further explanation. Credit rating agencies should play an important role in raising awareness of the users of ratings about the specificities of the structured finance products in relation to traditional ones. Therefore credit rating agencies should either use different rating categories when rating structured finance instruments or provide additional information on the different risk characteristics of these products.

Amendment

(18) Under certain circumstances structured finance instruments may have effects which are different from traditional corporate debt instruments. It could be misleading for investors to apply the same rating categories to both types of instruments without further explanation. Credit rating agencies should play an important role in raising awareness of the users of ratings about the specificities of the structured finance products in relation to traditional ones. Therefore credit rating agencies should use different rating categories when rating structured finance instruments, for example by carrying a supplemental annotation, and provide additional information on the different risk characteristics of these products. They should also indicate when they are rating a product for the first time and when they are rating a newly-created product.

Amendment 20

Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) Credit rating agencies should take measures to avoid situations where issuers request the preliminary rating assessment of the structured finance instrument concerned from a number of credit rating agencies in order to identify the one offering the best credit rating for the proposed structure. Issuers should also avoid applying such practices.

Amendment

(19) When issuing a credit rating, credit rating agencies should state in their final report, where applicable, that issuers have requested the preliminary rating assessment of the structured finance instrument concerned from a number of credit rating agencies in order to identify the one offering the best credit rating for the proposed structure. Issuers should avoid applying such practices.
Justification

Issuers of structured instruments must be allowed to seek a range of offers. However, to ensure that the fact of enquiring in several quarters is not taken to imply that there are no sufficient guarantees as to the quality of rating agency assessment – given that the agency appointed to handle the finance product was the one most likely to produce a favourable assessment – the final report on the product should state that the credit rating agency concerned was in competition with rival bidders, which should be listed by name, and hired on that basis.

Amendment 21

Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) A credit rating agency registered by the competent authority of the relevant Member State should be allowed to issue credit ratings throughout the Community. It is therefore necessary to establish a single registration for each credit rating agency which is valid throughout the Community.

Amendment

(22) A credit rating agency registered by the CESR should be allowed to issue credit ratings throughout the Community. It is therefore necessary to establish a single registration for each credit rating agency which is valid throughout the Community.

Amendment 22

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) Some credit rating agencies are composed of several legal entities which together form a group of credit rating agencies. When registering each of the credit rating agencies being part of such a group, the competent authorities of the Member States concerned should coordinate the assessment of the applications submitted by credit rating agencies belonging to the same group.

Amendment

deleted
Amendment 23
Proposal for a regulation
Recital 24

Text proposed by the Commission

(24) It is necessary to establish a single point for submission of applications for registration. The CESR should receive and process applications for registration and effectively inform competent authorities in all Member States. Nevertheless, the examination of applications for registration should be carried out at national level by the relevant competent authority. In order to efficiently deal with credit rating agencies competent authorities within CESR should set up an operational network supported by an efficient information technology infrastructure and establish a subcommittee specialised in the field of credit ratings of each of the asset classes rated by credit rating agencies.

Amendment

(24) It is necessary to establish a single point for submission of applications for registration. The CESR should receive and process applications for registration and effectively inform competent authorities in all Member States. The CESR should ensure the application of a level playing field throughout the European Union, thus avoiding regulatory arbitrage.

Amendment 24
Proposal for a regulation
Recital 25 a (new)

Text proposed by the Commission

(25a) Further wide-ranging reforms of the regulatory and supervisory model of the European Union's financial sector are needed. In particular, the Commission announced in its Communication of 29 October 2008 entitled 'From financial crisis to recovery: A European framework for action', that it had set up a group of experts, chaired by Mr Jacques de Larosière. That group was to consider the modalities of further reforms including the organisation of European financial institutions to ensure prudential soundness, the orderly functioning of
markets and stronger European co-
operation on financial stability oversight, 
which may include an integrated financial 
supervisor for all the financial sectors. 
The group was also to report on early 
warning mechanisms and crisis 
management, including the management 
of cross-border and cross-sectoral risks, 
and cooperation between the European 
Union and other major jurisdictions to 
help safeguard financial stability at the 
global level. On the basis of the work 
undertaken by the group, the Commission 
should, as soon as possible, and in any 
event by 1 July 2010, report to the 
European Parliament, the Council and 
other institutions concerned, any findings 
in this respect and should put forward any 
legislative proposal needed to tackle the 
shortcomings identified as regards 
supervisory cooperation arrangements.

Justification

It should be ensured that the conclusions of the de Larosière group affecting supervisory 
aspects of this regulation will be implemented through a review of this regulation and that 
this will be done in coherence with other financial sector regulation.

Amendment 25

Proposal for a regulation
Recital 26

Text proposed by the Commission

Amendment

(26) The supervision of a credit rating 
agency should be carried out by the 
competent authority of the home Member 
State, and, in case of a group of credit 
rating agencies, in cooperation with the 
competent authorities of the other Member 
States concerned and under coordination 
of CESR.

(26) The supervision of credit rating 
agencies should be carried out by the 
CESR in cooperation with the competent 
authorities of the Member States.
Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) In order to maintain a high level of investor and consumer confidence and enable an on-going control of credit ratings used by financial institutions in the Community, credit rating agencies whose headquarters are located outside the Community should be required to set up a subsidiary in the Community in order to allow for an efficient supervision of their activities in the Community.

Amendment

(27) In order to maintain a high level of investor and consumer confidence and enable an on-going supervision of credit ratings used by financial institutions in the Community, credit rating agencies whose headquarters are located outside the Community should be required to set up a subsidiary in the Community in order to allow for an efficient supervision of their activities in the Community and the effective use of the endorsement and equivalence regime. The emergence of new actors on the credit rating agency market should also be encouraged.

Amendment 27

Proposal for a regulation
Recital 28

Text proposed by the Commission

(28) It is appropriate to create a mechanism to ensure the effective enforcement of the provisions of this Regulation. The competent authorities of the Member States should have at their disposal necessary means to ensure that ratings for use within the Community are issued in compliance with this Regulation. Since the analytical independence of a credit rating agency in the process of issuing its credit ratings should be preserved, the competent authorities should not interfere in relation to the substance of credit ratings and the methodologies by which a credit rating agency determines credit ratings.

Amendment

(28) It is appropriate to create a mechanism to ensure the effective enforcement of the provisions of this Regulation. The competent authorities of the Member States should have at their disposal necessary means to ensure that ratings for use within the Community are issued in compliance with this Regulation. Since the analytical independence of a credit rating agency in the process of issuing its credit ratings should be preserved, neither the competent authorities nor Member States should interfere in relation to the substance of credit ratings and the methodologies by which a credit rating agency determines credit ratings. In the event that a credit rating agency is subjected to pressure it should notify the Commission and the CESR. Credit ratings should be well-founded and solidly substantiated and...
they should avoid rating compromises, and be comparable to those issued internationally.

Amendment 28
Proposal for a regulation
Recital 30

Text proposed by the Commission

(30) In case the competent authority of the home Member State does not take the necessary measures in order to eliminate irregularities committed by a credit rating agency, competent authorities of other Member States should be able to intervene and take appropriate measures.

Amendment

deleted

Amendment 29
Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) CESR should ensure coherence in the application of this Regulation. It should enhance and facilitate the cooperation of competent authorities in supervisory activities and assume a coordination role in day-to-day supervisory practice. Therefore CESR should establish a mediation mechanism in order to facilitate a coherent approach by the competent authorities.

Amendment

(32) CESR should ensure coherence in the application of this Regulation. It should enhance and facilitate the cooperation of competent authorities in supervisory activities and assume a coordination role in day-to-day supervisory practice. Therefore CESR should establish a mediation mechanism and peer review in order to facilitate a coherent approach by the competent authorities.

Justification

The peer review mechanism suggested could be modelled on that between the national statistical offices and Eurostat.

Amendment 30
Proposal for a regulation
Recital 33

**Text proposed by the Commission**

(33) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that they are implemented. The sanctions should be effective, proportionate and dissuasive.

**Amendment**

(33) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that they are implemented. The sanctions should be effective, proportionate and dissuasive but also consistent with ensuring an orderly market. The Commission, with the advice of the CESR, should establish guidelines relating to such sanctions.

**Justification**

With the CESR responsible for registration and oversight, it must play a bigger, if still advisory, role in identifying infringements and setting sanctions.

Amendment 31

Proposal for a regulation
Recital 34 a (new)

**Text proposed by the Commission**

(34a) The future rules governing the liability of credit rating agencies should be comparable with those applicable to auditors. The Commission should put forward an appropriate legislative proposal in this regard.

**Amendment**

Amendment 32

Proposal for a regulation
Recital 35

**Text proposed by the Commission**

(35) The stricter and clearer legal framework within which credit rating agencies will operate should also facilitate recourse to civil actions in respect of

**Amendment**

(35) An infringement of the provisions of this Regulation should not give rise to any claim for damages by third-party litigants per se. Where a user of ratings suffers
credit rating agencies in appropriate cases, in accordance with the applicable regimes of liability of the Member States.

economic damage as a result of an infringement of the provisions of this Regulation, it should be possible to make a claim for damages only in accordance with the applicable national law for civil liability.

Amendment 33
Proposal for a regulation
Recital 35 a (new)

Text proposed by the Commission

(35a) Credit rating agencies should work with public institutions in the European Union in the performance of their tasks, and their senior managers should appear before the appropriate committee of the European Parliament whenever invited to do so.

Amendment 34
Proposal for a regulation
Recital 37

Text proposed by the Commission

(37) In particular the Commission should be empowered to amend Annex I and II of the Regulation which lay down the specific criteria for assessing the compliance of a credit rating agency with its duties in terms of internal organisation, operational arrangements, rules on employees, presentation of credit ratings and disclosure. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

Amendment

(37) In particular the Commission should be empowered, while taking account of international developments, to adopt measures to define criteria assessing equivalence of regulation in the context of the use of credit ratings issued by credit rating agencies established in third countries, to adopt measures to define ancillary services, to adopt guidelines for sanctions, and to amend Annex I and II of the Regulation which lay down the specific criteria for assessing the compliance of a credit rating agency with its duties in terms of internal organisation, operational arrangements, rules on employees, presentation of credit ratings and disclosure. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation,
by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

Amendment 35

Proposal for a regulation
Recital 37 a (new)

Text proposed by the Commission

(37a) The Commission should assess the regulatory reliance on credit ratings as well as the appropriateness of the remuneration of the credit rating agency by the rated entity. In the light of that assessment, the Commission should put forward appropriate legislative proposals.

Amendment 36

Proposal for a regulation
Article 1

Text proposed by the Commission

This Regulation introduces a common approach to ensuring the high quality of credit ratings to be used in the Community, thereby contributing to the smooth functioning of the internal market while achieving a high level of consumer and investor protection. It lays down conditions for the issuance of credit ratings and rules on the organisation and conduct of credit rating agencies to ensure in practice their independence and avoidance of conflicts of interest.

Amendment

This Regulation introduces measures to ensure the integrity, transparency, responsibility, good governance and institutional cooperation of credit rating activities resulting in credit ratings of high quality to be used in, or having an impact in the Community, thereby contributing to the smooth functioning of the internal market while achieving a high level of consumer and investor protection. It lays down conditions for the issuance of credit ratings and rules on the organisation and conduct of credit rating agencies to ensure in practice their independence and avoidance of conflicts of interest.
Amendment 37

Proposal for a regulation
Article 2 – paragraph 1

Text proposed by the Commission


Amendment


\(^1\) OJ L 345, 31.12.2003, p. 64.
Amendment 38
Proposal for a regulation
Article 2 – paragraph 2

Text proposed by the Commission

2. This Regulation shall not apply to private credit ratings. It shall not apply to credit ratings issued by public bodies whose credit ratings are not publicly disclosed and are not paid by the rated entity.

Amendment

2. This Regulation does not apply to:

(a) private credit ratings provided exclusively to the person that ordered them and which are not intended for public disclosure or distribution by subscription;

(b) credit ratings produced by export credit agencies as described in Annex VI Part 1 of Directive 2006/48/EC; or

(c) credit ratings issued by public bodies whose credit ratings are not publicly disclosed and are not paid by the rated entity.

Amendment 39
Proposal for a regulation
Article 3 – paragraph 1 – point c

Text proposed by the Commission

c) "home Member State" means a Member State in which the credit rating agency has its registered office;

Amendment

deleted

Amendment 40
Proposal for a regulation
Article 3 – paragraph 1 – point d a (new)

Text proposed by the Commission

(da) 'lead analyst' means a person with primary responsibility for communicating with the issuer with respect to a particular
credit rating or, generally, with respect to the rating of instruments emanating from that issuer and, where relevant, for preparing recommendations to the rating committee in relation thereto;

Justification

Definition of "lead analyst" is required in view of key role such persons play in credit rating agencies, and for the purposes of the rotation mechanism established in Article 6.

Amendment 41

Proposal for a regulation
Article 3 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ec) 'regulatory purposes' means the use of credit ratings for the specific purpose of complying with Community law, as implemented by the national legislation of the Member States;

Amendment 42

Proposal for a regulation
Article 3 – paragraph 1 – point k

Text proposed by the Commission

Amendment

(k) "group of credit rating agencies" means a group of undertakings consisting of a parent undertaking and its subsidiaries within the meaning of Article 1 and 2 of Directive 83/349/EEC, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC and whose regular and principal occupation is the issuance of credit ratings.

(k) "group of credit rating agencies" means a group of undertakings established in the Community consisting of a parent undertaking and its subsidiaries within the meaning of Article 1 and 2 of Directive 83/349/EEC, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC and whose regular and principal occupation is the issuance of credit ratings.

Amendment 43
Proposal for a regulation
Article 3 – paragraph 1 – point k a (new)

Text proposed by the Commission

(ka) ‘private credit rating’ means a rating that will not be made public because it is issued at the request of an economic operator for a previously established private purpose.

Amendment

Amendment 44

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

Credit institutions, investments firms, insurance, assurance and reinsurance undertakings, undertakings for collective investment in transferable securities (UCITS) and institutions for occupational retirement provision referred to in Article 2 may only use for regulatory purposes credit ratings which are issued by credit rating agencies established in the Community and registered in accordance with this Regulation.

Amendment

Credit institutions, investments firms, insurance, assurance and reinsurance undertakings, undertakings for collective investment in transferable securities (UCITS), institutions for occupational retirement provision and issuers or offerors referred to in Article 2 may only use for regulatory purposes credit ratings which are issued or endorsed by credit rating agencies established in the Community and registered in accordance with this Regulation.

Amendment 45

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

Investment firms and credit institutions referred to in Art. 1 of Directive 2004/39/EC should not execute orders on behalf of their clients with respect to financial instruments which have been rated, unless the credit rating has been issued by a credit rating agency registered in accordance with this Regulation.

Amendment

2. The rating of entities or products that are located in a third country and that are prepared or issued by a credit rating agency that is established and authorised or registered in a third country, may be used within the Community where:
(a) those ratings are endorsed by a credit rating agency that is established in the Community and registered in accordance with this Regulation; and

(b) the third-country credit rating activities resulting in the issuance of the credit rating to be endorsed are subject to a legal and supervisory framework deemed to be equivalent to the measures provided for in this Regulation.

The Commission shall establish and publish a list of third-country legislation deemed to be equivalent to this Regulation. That list shall be updated on an ongoing basis.

3. A credit rating endorsed in accordance with paragraph 2 shall be deemed to be equivalent to a credit rating issued by a credit rating agency established in the Community and registered in accordance with this Regulation. A credit rating agency registered in the Community shall include a statement to that effect in its rating announcement.

4. A credit rating agency established in the Community and registered in accordance with this Regulation shall not use that endorsement for the purpose of avoiding the requirements of this Regulation.

A credit rating agency that has endorsed a credit rating prepared or issued by a third-country credit rating agency shall remain fully responsible for that credit rating and for the fulfilment of the conditions of that endorsement.

5. Once an international regulatory and supervisory framework for credit rating agencies and their activities is established, the European Parliament and the Council shall review this Regulation.

6. The Commission, assisted by the CESR, shall establish transitional measures for existing third-country credit ratings
already used within the Community. Those measures, design to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 33(2).

7. Without prejudice to the competition rules, Member States shall ensure that issuers use credit rating agencies that have their head office in the Community for a proportion of their ratings.

Amendment 46

Proposal for a regulation
Article 5 – paragraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A credit rating agency shall ensure that the issuance of a credit rating is not affected by any existing or potential conflict of interest or business relationship involving the credit rating agency issuing the credit rating, its managers, employees or any person directly or indirectly linked to it by control.</td>
<td>1. A credit rating agency shall take all necessary steps to ensure that the issuance of a credit rating is not affected by any existing or potential conflict of interest or business relationship involving the credit rating agency issuing the credit rating, its managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the credit rating agency or any person directly or indirectly linked to it by control.</td>
</tr>
</tbody>
</table>

Justification

The text of the regulation should provide specific criteria for exemption of credit rating agencies with small number of employees from compliance with certain obligations under the proposed regulation following certain criteria.
Amendment 47
Proposal for a regulation
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. A credit rating agency shall disclose the nature of its compensation arrangements as regards rated entities.

Amendment 48
Proposal for a regulation
Article 5 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. A credit rating agency shall appoint a person responsible for the compliance of the credit rating agency and its employees with this Regulation.

Amendment 49
Proposal for a regulation
Article 5 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. A credit rating agency shall separate, legally and operationally, its credit rating business from its ancillary services.

The Commission shall define such ancillary services. That measure, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 33(2).
Amendment 50

Proposal for a regulation
Article 5 – paragraph 2

Text proposed by the Commission

2. In order to ensure compliance with paragraph 1, the credit rating agency shall comply with the requirements set out in Sections A and B of Annex I.

Amendment

2. In order to ensure compliance with paragraphs 1, 1a, 1b, and 1c, the credit rating agency shall comply with the requirements set out in Sections A and B of Annex I.

Amendment 51

Proposal for a regulation
Article 5 – paragraph 2 a (new)

Text proposed by the Commission

2a. The CESR may, upon the request of the credit rating agency, exempt a credit rating agency from the requirements of Article 6(4) or of point 2 of Section A of Annex I where that credit rating agency is able to demonstrate that those requirements are not proportionate to the nature, scale and complexity of its business, and the nature and range of issuance of its credit ratings, and that that credit rating agency:

(a) employs fewer than 25 analysts;

(b) has implemented measures and procedures, in particular an internal control system, reporting arrangements and a rotation mechanism for analysts and persons approving credit ratings, which ensure the effective compliance with the regulatory objectives set out in this Regulation; and

(c) has not determined its size in order to avoid compliance with the requirements of this Regulation by a credit rating agency or by a group of thereof.

As regards groups of credit rating

Amendment

2a. The CESR may, upon the request of the credit rating agency, exempt a credit rating agency from the requirements of Article 6(4) or of point 2 of Section A of Annex I where that credit rating agency is able to demonstrate that those requirements are not proportionate to the nature, scale and complexity of its business, and the nature and range of issuance of its credit ratings, and that that credit rating agency:

(a) employs fewer than 25 analysts;

(b) has implemented measures and procedures, in particular an internal control system, reporting arrangements and a rotation mechanism for analysts and persons approving credit ratings, which ensure the effective compliance with the regulatory objectives set out in this Regulation; and

(c) has not determined its size in order to avoid compliance with the requirements of this Regulation by a credit rating agency or by a group of thereof.
agencies, the CESR shall ensure that at least one of the credit rating agencies in such a group is not exempted from complying with the requirements of Article 6(4) or of point 2 of Section A of Annex I.

A credit rating agency that is the member of a group of credit rating agencies shall be deemed to comply with Section A of Annex I if that group as a whole meets those requirements. In such cases, the references in Annex I to the administrative or supervisory board and senior management of the credit rating agency shall be construed as references to the administrative or supervisory board and senior management of the parent undertaking.

Amendment 52
Proposal for a regulation
Article 6 – title

*Text proposed by the Commission*

Employees

*Amendment*

Analysts and other employees

Amendment 53
Proposal for a regulation
Article 6 – paragraph 1

*Text proposed by the Commission*

1. A credit rating agency shall ensure that employees directly involved in the credit rating process have appropriate knowledge and experience for the duties assigned.

*Amendment*

1. A credit rating agency shall ensure that analysts and other employees directly involved in the credit rating process have appropriate knowledge and experience for the duties assigned.
### Amendment 54

**Proposal for a regulation**  
**Article 6 – paragraph 2**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. A credit rating agency shall ensure that employees who are directly involved in the credit rating process shall not be allowed to initiate or participate in negotiations regarding fees or payments with any rated entity, related third party or any person directly or indirectly linked to the rated entity by control.</td>
<td>2. A credit rating agency shall ensure that analysts and other employees who are directly involved in the credit rating process shall not be allowed to initiate or participate in negotiations regarding fees or payments with any rated entity, related third party or any person directly or indirectly linked to the rated entity by control.</td>
</tr>
</tbody>
</table>

### Amendment 55

**Proposal for a regulation**  
**Article 6 – paragraph 3**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. A credit rating agency shall ensure that employees who are directly involved in the credit rating process meet the requirements set out in Section C of Annex I.</td>
<td>3. A credit rating agency shall ensure that analysts and other employees who are directly involved in the credit rating process meet the requirements set out in Section C of Annex I.</td>
</tr>
</tbody>
</table>

### Amendment 56

**Proposal for a regulation**  
**Article 6 – paragraph 4**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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</thead>
<tbody>
<tr>
<td>4. A credit rating agency shall ensure that analysts and persons approving credit ratings shall not be involved in providing the credit rating services to the same rated entity or its related third parties for a period exceeding four years. For that purpose it shall establish a rotation mechanism with regard to those analysts and persons.</td>
<td>4. A credit rating agency shall ensure that analysts that are in direct contact with issuers shall be involved in providing the credit rating services to the same rated entity, to its related third parties or to entities under common ownership, for a period not exceeding five years. For that purpose it shall establish a rotation mechanism with regards to those analysts.</td>
</tr>
</tbody>
</table>
The period after which the analysts and persons approving credit ratings may be involved in providing the credit rating services to the rated entity or related third parties referred to in the first subparagraph may not be shorter than two years.

The period after which those analysts may be in direct contact again to provide for credit rating services with the rated entity or related third parties referred to in the first subparagraph shall be no shorter than two years.

*Any rotation of analysts shall be undertaken in phases on the basis of individual rating analysts rather than a complete team.*

**Amendment 57**

**Proposal for a regulation**

**Article 6 – paragraph 6**

**Text proposed by the Commission**

6. Compensation and performance evaluation of analysts and persons approving the credit ratings shall not be contingent on the amount of revenue that the credit rating agency derives from the rated entities or related third parties to which the analyst or persons approving the credit ratings provide services.

**Amendment**

6. Compensation and performance evaluation of lead analysts making the credit ratings shall not be contingent on the amount of revenue that the credit rating agency derives from the rated entities or related third parties to which the lead analysts making the credit ratings provide services.

*Justification*

The lead analyst is the key contact person with the rated entity. It is not necessary and would be unduly disruptive to rotate all his back-up team in the same way.

**Amendment 58**

**Proposal for a regulation**

**Article 7 – paragraph 1**

**Text proposed by the Commission**

1. A credit rating agency shall disclose to the public the methodologies, models and key rating assumptions it uses in the rating process.

**Amendment**

1. A credit rating agency shall disclose to the public the methodologies, models and key rating assumptions it uses in its credit rating activities as defined in Section E of Annex I.
Justification

The exact methodologies, models and key rating assumptions should not be disclosed to the public. It is appropriate to disclose the general principles, which may help investors in understanding the rating.

Amendment 59

Proposal for a regulation
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Credit rating agencies shall make available on a dedicated page of their websites, free of charge and accessible at any time, information on structured finance products, which explains assumptions, parameters, limits and uncertainties surrounding their models and rating methodologies, including simulations of stress scenarios undertaken by the agency when establishing the ratings. That information shall be clear and easily comprehensible.

Amendment 60

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. A credit rating agency shall ensure that the credit ratings it produces and disseminates are based on an analysis of all information available to it that is of relevance according to its rating methodologies. It shall adopt all necessary measures so that the information it uses in assigning a credit rating is of sufficient quality and from reliable sources.

2. Credit rating agencies shall adopt, implement and enforce written procedures to ensure that the credit ratings they produce and disseminate are based on a thorough analysis of all information known to the credit rating agency that is relevant to its analysis according to its rating methodologies. They shall adopt all appropriate measures so that the information they use in assigning a credit rating is of sufficient quality and from reliable sources.
Justification

Original text risks leading regulators to challenge individual methodologies, which in turn would result in an interference with the analytical independence of credit rating agencies. Instead, this provision should require credit rating agencies to maintain procedures for their review of their methodologies, so that regulators can then monitor compliance with those procedures. The reference to "all information available to" a credit rating agency is disproportionate and would cover all information within the public domain, no matter how obscure.

Amendment 61

Proposal for a regulation
Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Credit rating agencies shall take adequate steps to assess the credibility, robustness and accuracy of data and information provided to them by issuers or related parties (e.g. originators, underwriter or lawyers, in the case of structured finance products). Credit rating agencies shall indicate to which extent they have verified information provided to them.

Amendment 62

Proposal for a regulation
Article 7 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. A credit rating agency shall adopt procedures and mechanisms to protect the confidential nature of information it obtains from issuers.

Amendment 63
Proposal for a regulation
Article 7 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Justification

Credit rating agencies must provide justifications for more or less favourable assessments.

Amendment 64

Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission

4. A credit rating agency shall monitor credit ratings and review its credit ratings where necessary. A credit rating agency shall establish internal arrangements to monitor the impact of changes in macroeconomic or financial market conditions on credit ratings.

Amendment

4. A credit rating agency shall monitor credit ratings and review its credit ratings and methodologies on an ongoing basis, in particular where material changes occur that could impact on the rating of an instrument. A credit rating agency shall establish internal arrangements to monitor the impact of changes in macroeconomic or financial market conditions on credit ratings. It shall also issue a warning in the event of general adverse and extreme market conditions.

Amendment 65

Proposal for a regulation
Article 7 – paragraph 5 a (new)

Text proposed by the Commission

5a. Where a credit rating agency issues or

Amendment

5a. Where a credit rating agency issues or
endorses a credit rating issued by a third-country credit rating agency, the Community credit rating agency shall be liable for the accuracy of all the information used and for the methodology applied.

Amendment 66

Proposal for a regulation
Article 7 – paragraph 5 b (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>5b. A credit rating agency shall, on the request of a competent authority, explain, ex post, its methodologies, models and key rating assumptions. Such an explanation shall not prejudice the content of the rating or the independence of the credit rating agency.</td>
<td></td>
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</tbody>
</table>

Justification

A credit rating agency needs to be able to explain ex post their methodology, models and key assumptions to competent authorities. This principle forces CRA to have full understanding of their rating methodologies, models and rating assumptions. Nonetheless, the independence of the CRAs and the ratings itself need to be fully respected by competent authorities.

Amendment 67

Proposal for a regulation
Article 7 – paragraph 5 c (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>5c. A credit rating agency established in the Community and registered in accordance with this Regulation shall be deemed to have issued a credit rating when the credit rating has been published on that credit rating agency’s website or by other means or when it has been distributed by subscription and presented and disclosed in accordance with Article 8, clearly identifying that the credit</td>
<td></td>
</tr>
</tbody>
</table>
rating is endorsed.

Justification

It is necessary to enable third country ratings to be used in the EU provided that two sets of criteria are met: 1) assessment of compliance of a third country CRA with high level standards on integrity of credit rating activities and on going monitoring of such compliance by the EU CRA, 2) establishment of cooperation arrangements with competent authorities of the third countries, assessment of compliance prerequisites of the endorsement process during the registration and ongoing supervision.

Amendment 68

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A credit rating agency shall disclose any credit rating, as well as any decisions to discontinue a credit rating on a non-selective basis and in a timely manner.</td>
<td>1. A credit rating agency shall disclose any credit rating, as well as any decisions to discontinue a credit rating on a non-selective basis and in a timely manner. In making such disclosure, a credit rating agency shall set out the grounds and reasons for the disclosure.</td>
</tr>
</tbody>
</table>

Amendment 69

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The first subparagraph shall not apply to credit ratings that are distributed by subscription.</td>
<td>The first subparagraph shall also apply to credit ratings that are distributed by subscription.</td>
</tr>
</tbody>
</table>

Amendment 70

Proposal for a regulation
Article 8 – paragraph 1 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a. A credit rating agency shall disclose,</td>
<td></td>
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</tbody>
</table>
on ongoing basis, information about all structured finance products submitted for their initial review or a preliminary rating. Such disclosure shall be made whether or not issuers contract with the credit rating agency for a final rating.

Justification

This will enable investors to determine whether issuers sought, but subsequently decided not to use, ratings from a credit rating agency. This may avoid "rating picking" by issuers.

Amendment 71
Proposal for a regulation
Article 8 – paragraph 1 b (new)

Text proposed by the Commission

1b. The credit rating agency shall inform the entity subject to rating 12 hours before publication of the result of the rating and of the principal grounds on which the rating is based in order to give the entity an opportunity to draw attention to any factual errors.

Justification

Prior notification of the rated entity has already been included in the IOSCO Code of Conduct as provision 3.7. In this way, incorrect information or misunderstandings can quickly be clarified before inaccurate ratings are traded on the market.

Amendment 72
Proposal for a regulation
Article 8 – paragraph 2

Text proposed by the Commission

2. Credit ratings shall be presented in accordance with the requirements set out in Section D of Annex I.

Amendment

2. Credit ratings shall reflect homogeneous criteria within the internal market, avoid regulatory arbitration and be comparable with those issued internationally by related entities. They shall be presented in accordance with the
requirements set out in Section D of Annex I.

Amendment 73
Proposal for a regulation
Article 8 – paragraph 3 – point a

**Text proposed by the Commission**
(a) credit rating categories that may be attributed to structured finance instruments are clearly differentiated from rating categories that may be used to rate other types of rated entities or financial instruments;

**Amendment**
(a) credit rating categories that may be attributed to structured finance instruments are clearly differentiated from rating categories that may be used to rate other types of rated entities or financial instruments. Separate rating categories shall be used for structured, complex instruments;

**Justification**
*Increased transparency and better protection of investors.*

Amendment 74
Proposal for a regulation
Article 8 – paragraph 5 – subparagraph 1

**Text proposed by the Commission**
5. When a credit rating agency issues an unsolicited credit rating it shall state in the credit rating *that* the rated entity or related third party *did not participate* in the credit rating process and *that* the credit rating agency *did not have* access to the accounts and other relevant internal documents of the rated entity or its related third party.

**Amendment**
5. When a credit rating agency issues an unsolicited credit rating it shall state *prominently* in the credit rating *whether or not* the rated entity or related third party *participated* in the credit rating process and *whether* the credit rating agency *had* access to the accounts and other relevant internal documents of the rated entity or its related third party. *The rated entity or related third party may require that any reservations be explicitly recorded in the rating and that any such reservation be made available in the information disclosed by the rating agency.*

Amendment 75
Proposal for a regulation
Article 8 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. A credit rating agency shall document and disclose all the steps, information and factors which have given rise to a rating.

Justification

Increased transparency and better protection of investors.

Amendment 76

Proposal for a regulation
Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Transparency of information

Issuers providing information to a registered credit rating agency, for the purpose of establishing a rating, shall provide the same information, on request, to any bona fide analysis service. Such an analysis service shall undertake to respect confidentiality in the use of that information. Employees of such an analysis service shall also undertake not to trade in securities issued by the issuer concerned.

Justification

The regulation should require issuers to make available to others the same information as is used by the credit rating agencies in reaching their judgement. Making the information available would create the opportunity for a market to develop in truly independent ratings not paid for by the issuer. Increasing the availability of information is the course of regulatory action most likely to result in genuine competition to the credit rating agencies.
2. Credit rating agencies shall make available in a central repository established by CESR information on their historical performance data and information about past credit rating activities. The repository shall be open to the public.

The CESR shall provide guidance on the format, detail and period that is to be covered. On the basis of the information contained in the repository, the CESR shall monitor past performances of credit ratings on the basis of statistical results. The CESR shall subsequently publish statistics on credit rating agencies and their performances, inter alia as regards the reliability of their ratings.

Amendment 78

Proposal for a regulation
Article 9 – paragraph 3

3. A credit rating agency shall make available annually to the competent authority of the home Member State the information on matters set out in Annex I, Section E, Part II, point 2. Competent authorities of home Member States shall not disclose that information.

Amendment 79

3. A credit rating agency shall make available annually to the CESR the information on matters set out in Annex I, Section E, Part II, point 2. The CESR shall disclose that information.
Proposal for a regulation
Article 10

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

Amendment
A credit rating agency shall publish annually a transparency report which includes the information on matters set out in Annex I, Section E, Part III. The credit rating agency shall publish its annual report at the latest three months after the end of each financial year and shall ensure that it remains available on the website of the agency for at least five years. Those publications and websites may be on a group basis and need not be exclusively related to the Community.

Amendment 80
Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission
1. A credit rating agency may apply for registration in order to ensure that its credit ratings can be used for regulatory purposes by credit institutions, investments firms, insurance, assurance and reinsurance undertakings, undertakings for collective investment in transferable securities (UCITS) and institutions for occupational retirement provision referred to in Article 2 provided that it is a legal person established in the Community.

Amendment
1. A credit rating agency or a group of credit rating agencies may apply for registration in order to ensure that its credit ratings can be used for regulatory purposes by credit institutions, investments firms, insurance, assurance and reinsurance undertakings, undertakings for collective investment in transferable securities (UCITS) and institutions for occupational retirement provision referred to in Article 2 provided that it is a legal person established in the Community.

Amendment 81
Proposal for a regulation
Article 12 – paragraph 3 – subparagraph 2

Text proposed by the Commission
Credit rating agencies shall notify the

Amendment
Credit rating agencies shall notify the
**Amendment 82**

**Proposal for a regulation**  
**Article 12 – paragraph 4**

**Text proposed by the Commission**

4. The **competent authority of the home Member State** shall register the credit rating agency if it complies with the conditions for the issuance of credit ratings set out in this Regulation.

**Amendment**

4. The **CESR** shall register the credit rating agency if it complies with the conditions for the issuance of credit ratings set out in this Regulation.

**Amendment 83**

**Proposal for a regulation**  
**Article 12 – paragraph 5**

**Text proposed by the Commission**

5. **Competent authorities may** not impose additional requirements on the registration which are not provided for in this Regulation.

**Amendment**

5. The **CESR shall** not impose additional requirements on the registration which are not provided for in this Regulation.

**Amendment 84**

**Proposal for a regulation**  
**Article 13 – paragraph 3**

**Text proposed by the Commission**

3. Within 10 days of receipt of the application, CESR shall transmit the application to the competent authority of the home Member State and inform the competent authorities of the other Member States of that transmission.

**Amendment**

3. Within 10 days of receipt of the application, the CESR shall inform the competent authorities of the Member States thereof.
Amendment 85
Proposal for a regulation
Article 14 – paragraph 1 – subparagraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Within 10 days of receipt of the application for registration, the competent authority of the home Member State shall check whether the application is complete.</td>
<td>1. Within 10 days of receipt of the application for registration, the CESR shall check whether the application is complete.</td>
</tr>
</tbody>
</table>

Amendment 86
Proposal for a regulation
Article 14 – paragraph 1 – subparagraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>In case the application is not complete, the competent authority of the home Member State shall set a deadline by which the credit rating agency shall provide additional information.</td>
<td>In case the application is not complete, the CESR shall set a deadline by which the credit rating agency shall provide additional information.</td>
</tr>
</tbody>
</table>

Amendment 87
Proposal for a regulation
Article 14 – paragraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Upon receipt of a complete application, the competent authority of the home Member State shall transmit the application to the competent authorities of the other Member States and CESR.</td>
<td>2. Upon receipt of a complete application, the CESR shall transmit the application to the competent authorities of the Member States.</td>
</tr>
</tbody>
</table>
Amendment 88

Proposal for a regulation
Article 14 – paragraph 3

Text proposed by the Commission

Amendment

3. In case an application for registration is submitted by a group of credit rating agencies the competent authorities of the home Member States concerned shall closely co-operate in the registration process. They shall select among themselves a facilitator taking into account the following criteria:

(a) the place where the group of credit rating agencies carries out or is planning to carry out the most important part of its credit rating activity within the Community;

(b) the place where the group of credit rating agencies generates or can be expected to generate the major part of the revenue of the group.

Amendment 89

Proposal for a regulation
Article 14 – paragraph 4

Text proposed by the Commission

Amendment

4. The facilitator shall coordinate the examination of the application submitted by the group of credit rating agencies and ensure that all information necessary to carry out the examination of the application is shared among the competent authorities.
Amendment 90

Proposal for a regulation
Article 14 – paragraph 5

Text proposed by the Commission

5. In case of an application for registration by a credit rating agency the competent authority of the home Member State shall examine the application and prepare an opinion on whether to grant or refuse registration.

In the case of an application submitted by a group of credit rating agencies, the competent authorities of the home Member States concerned shall jointly examine the application for registration and shall reach agreement on whether to grant or to refuse registration.

Amendment 91

Proposal for a regulation
Article 15 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Within 40 days of receipt of the complete application and before registration, the competent authority of the home Member State shall communicate to CESR a motivated draft registration decision or draft refusal decision. In case of an application submitted by a group of credit rating agencies the facilitator shall communicate the outcome of the joint assessment to CESR.

Amendment

1. Within 40 days of receipt of the complete application and before registration, the CESR shall prepare a reasoned draft registration or refusal decision. The CESR shall transmit the draft registration or refusal to the Member States' competent authorities, informing them of the deadline within which they are required to submit an opinion in regard to the draft registration or refusal.
Amendment 92

Proposal for a regulation
Article 15 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Within 15 days of receipt of that communication, CESR shall express its views on the application. CESR may request the competent authority of the home Member State concerned to re-examine the draft registration decision in case it considers that the conditions necessary for the registration as set out in Title II are not met or to re-examine its draft refusal decision in case it considers that the conditions necessary for the registration as set out in this Regulation are met.

Amendment

deleted

Amendment 93

Proposal for a regulation
Article 15 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. The competent authority of the home Member State shall adopt its decision within 15 days after receipt of the opinion of CESR. In case the competent authority of the home Member State departs from the opinion of CESR it shall motivate its decision. In case no opinion is submitted, the competent authority of the home Member State shall adopt its decision within 30 days after the draft registration decision, as referred to in paragraph 1, has been communicated to CESR. Where a group of credit rating agencies is concerned the competent authority of each home Member State shall take its decision on the basis of the outcome of the joint assessment referred to in Article 14(5).

Amendment

2. The CESR shall adopt its decision within 15 days after expiry of the deadline for submitting the opinion referred to in paragraph 1.
Amendment 94

Proposal for a regulation
Article 15 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Within 10 days following the adoption or refusal of the registration decision the credit rating agencies concerned shall be informed, whether or not they have been registered. Where the competent authority of the home Member State refuses to register the credit rating agency, it shall give reasons in the decision for its refusal to the credit rating agency concerned.

Amendment

Within 10 days following the adoption of the registration decision or refusal the credit rating agencies concerned shall be informed, whether or not they have been registered. Where the CESR refuses to register the credit rating agency, it shall give reasons in the decision for its refusal to the credit rating agency concerned and shall notify the Commission and the Member States' competent authorities accordingly.

Amendment 95

Proposal for a regulation
Article 15 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. The competent authority of the home Member State shall notify the European Commission, CESR and the other competent authorities of the registration it has carried out.

Amendment

3. The CESR shall notify the Commission and the Member States’ competent authorities, of the registration that it has carried out.

Amendment 96

Proposal for a regulation
Article 15 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The European Commission shall publish in the Official Journal of the European Union an updated list of credit rating agencies registered in accordance with this Regulation within 30 days of the notification by the competent authority of the home Member State.

Amendment

The Commission shall publish in the Official Journal of the European Union an updated list of credit rating agencies registered in accordance with this Regulation within 30 days of the notification by the CESR.
### Amendment 97

**Proposal for a regulation**  
**Article 15 – paragraph 3 – subparagraph 2 a (new)**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit rating agencies shall publish their code of conduct and their registration number under this Regulation on the homepage of their websites.</td>
<td></td>
</tr>
</tbody>
</table>

### Amendment 98

**Proposal for a regulation**  
**Article 16**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The competent authority of the home Member State may charge a registration fee to the credit rating agency. The registration fee shall be proportionate to the cost of the procedures in that Member State.</td>
<td>The CESR may charge a registration fee to the credit rating agency. The registration fee shall be proportionate to the cost of the procedures.</td>
</tr>
</tbody>
</table>

### Amendment 99

**Proposal for a regulation**  
**Article 17 – paragraph 1 – introductory part**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The competent authority of the home Member State shall withdraw the registration of a credit rating agency where the credit rating agency:</td>
<td>1. The CESR shall withdraw the registration of a credit rating agency where the credit rating agency:</td>
</tr>
</tbody>
</table>

### Amendment 100
Proposal for a regulation  
Article 17 – paragraph 1 – point a

Text proposed by the Commission
(a) expressly renounces the registration or has provided no credit ratings for the preceding six months;

Amendment
deleted

Justification
Simplification.

Amendment 101
Proposal for a regulation
Article 17 – paragraph 2

Text proposed by the Commission
2. The competent authorities of the home Member State of the credit rating agencies belonging to a group shall closely cooperate with each other. They shall carry out a joint assessment coordinated by the facilitator. They shall reach an agreement on the necessity to withdraw the registration. The competent authority of each home Member State shall take its decision on the basis of the agreement.

Amendment 102
Proposal for a regulation
Article 17 – paragraph 3

Text proposed by the Commission
3. CESR or a competent authority from another Member State, in which the credit ratings issued by the credit rating agency concerned are used, may request the competent authority of the home Member State to examine whether the conditions for withdrawal of registration are met. In case the competent authority of the home

Amendment
3. The CESR may be asked by the Member States’ competent authorities to examine whether the conditions for withdrawal of registration are met. In the event that the CESR decides not to withdraw the registration of the credit rating agency concerned, it shall provide reasons
Member State decides not to withdraw the registration of the credit rating agency concerned, it shall motivate its decision.

Amendment 103
Proposal for a regulation
Article 17 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. The competent authority of the home Member State shall notify the European Commission, CESR and the other competent authorities of the withdrawal of the registration, which shall take immediate effect throughout the Community.

Amendment

4. The CESR shall notify the Commission and the Member States’ competent authorities of the withdrawal of the registration, which shall take immediate effect throughout the Community.

Amendment 104
Proposal for a regulation
Article 17 – paragraph 4 – subparagraph 2

Text proposed by the Commission

The European Commission shall publish in the Official Journal of the European Union an updated list of credit rating agencies the registration of which has been withdrawn within 30 days of the notification by the competent authority of the home Member State.

Amendment

The Commission shall publish in the Official Journal of the European Union an updated list of credit rating agencies the registration of which has been withdrawn within 30 days of the notification by the CESR.

Amendment 105
Proposal for a regulation
Article 17 – paragraph 4 a (new)

Text proposed by the Commission

4a. In the event of withdrawal of registration the competent authorities shall provide for a transition for ratings previously made by the deregistered
agency whereby those ratings stand for 12 months with appropriate qualification attached thereto by the competent authorities.

Justification

It is important that deregistration of an agency does not destabilise the market by undermining or deleting valid opinions previously made by said agency.

Amendment 106

Proposal for a regulation
Article 18 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The CESR, which is the authority in charge of the registration of credit ratings agencies, shall obtain the opinions of the Member States’ competent authorities under Article 15(1). The CESR shall consider those opinions before taking any final decision under this Regulation.

Amendment 107

Proposal for a regulation
Article 18 – paragraph 1 a (new)

Text proposed by the Commission

1a. The CESR shall work closely together with the Committee of European Banking Supervisors (CEBS) established by Commission Decision 2004/5/EC of 5 November 20031 and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) established by Commission Decision 2004/6/EC of 5 November 20032, in view of the role of credit rating agencies and credit ratings in the context of capital and solvency requirements. This applies, in particular, to circumstances or recommendations for instances of
withdrawal of registration of a credit rating agency.


Justification

The close cooperation between the 3 Level 3 Committees in this respect is vital.

Amendment 108

Proposal for a regulation
Article 18 – paragraph 2 – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. By <em>within one year after entry into force of this Regulation</em> CESR shall issue guidance on:</td>
<td>2. By ... <em>the</em> CESR shall issue guidance on:</td>
</tr>
<tr>
<td></td>
<td>* OJ please insert date: 6 months after entry into force of this Regulation.</td>
</tr>
</tbody>
</table>

Justification

CESR has to issue is guidance before credit rating agencies have to apply for registration, see Article 35.

Amendment 109

Proposal for a regulation
Article 18 – paragraph 2 – point a

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the registration process and coordination arrangements between competent authorities <em>and with CESR</em>;</td>
<td>(a) the registration process and coordination arrangements between <em>the CESR and the Member States</em>’ competent authorities;</td>
</tr>
</tbody>
</table>

* OJ please insert date: 6 months after entry into force of this Regulation.
Amendment 110
Proposal for a regulation
Article 18 – paragraph 2 – point b

Text proposed by the Commission
(b) enforcement practices and activities by competent authorities;

Amendment
(b) enforcement practices and activities by the Member States’ competent authorities;

Amendment 111
Proposal for a regulation
Article 18 – paragraph 3

Text proposed by the Commission
3. CESR shall publish by *within one year after entry into force of this Regulation* and every year thereafter a report on the application of this Regulation.

Amendment
3. The CESR shall publish, by ...* and every year thereafter, a report on the application of this Regulation. That report shall contain, in particular, an assessment of the implementation of Annex I by the credit rating agencies registered under this Regulation.

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

Amendment 112
Proposal for a regulation
Article 18 – paragraph 4

Text proposed by the Commission
4. CESR shall cooperate, where appropriate, with the Committee of European Banking Supervisors established by Commission Decision 2004/5/EC and the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2004/6/EC.

Amendment
deleted

Justification
Covered elsewhere
Amendment 113

Proposal for a regulation
Article 18 a (new)

Text proposed by the Commission

Amendment

Article 18a

Reform of the CESR

By...*, the CESR shall submit a business plan detailing how a European agency should be operated. The Commission shall subsequently put forward a corresponding proposal, on the basis, inter alia, that the start-up capital for such a future agency is provided, on a pro rata basis, from the budget of the European Union, by the European finance industry and by rated entities. The agency shall receive additional, current revenue in the form of charges for issued ratings to be paid by the client or the applicant. The agency shall operate in such a way as to cover its own costs

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

Justification

An independent European agency with sufficient human and financial resources is necessary, given that the cross-border tasks required by the regulation cannot be satisfactorily carried out by 27 or more individual national agencies.

Amendment 114

Proposal for a regulation
Article 18 b (new)

Text proposed by the Commission

Amendment

Article 18b

Non-profit-making organisation

For the purposes of implementing this Regulation, a new, independent non-
profit-making organisation shall be established to issue credit ratings. That organisation shall have a start-up capital of EUR 200 million, which shall be provided, on a pro rata basis, from the budget of the European Union, the European finance industry and by rated entities. The organisation shall receive additional, current revenue in the form of charges for issued ratings to be paid by the customer or the applicant. The organisation shall operate in such a way as to cover its costs.

The Commission shall put forward a corresponding proposal.

Justification

A non-profit-making organisation with sufficient human and financial resources is necessary, given that the cross-border tasks required by the regulation cannot be satisfactorily carried out by 27 or more individual national agencies.

Amendment 115

Proposal for a regulation
Article 19 – paragraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Competent authorities shall be adequately staffed in order to be able to apply this Regulation.</td>
<td>2. Competent authorities shall be staffed in sufficient capacity and expertise in order to be able to apply this Regulation.</td>
</tr>
</tbody>
</table>

Justification

In order to allow for adequate supervision, national supervisory bodies need to be staffed with enough personnel that have the necessary expertise to judge and understand financial markets.

Amendment 116
 Proposal for a regulation
Article 20 – paragraph 1

Text proposed by the Commission

1. In carrying out their duties under this Regulation competent authorities of Member States shall not interfere with the content of credit ratings.

Amendment

1. In carrying out their duties under this Regulation neither competent authorities of Member States nor Member States shall interfere with the content of credit ratings or the methodologies by which a credit rating agency determines credit ratings.

Justification

Credit rating agencies should perform their rating task without interference from supervisory bodies or the government. This also includes methodologies.

Amendment 117

Proposal for a regulation
Article 20 – paragraph 3 – point a

Text proposed by the Commission

(a) have access to any document in any form and to receive or take a copy thereof;

Amendment

(a) have access to any document in any form and to receive or take a copy thereof for use in their supervisory capacity;

Amendment 118

Proposal for a regulation
Article 20 – paragraph 3 – point b

Text proposed by the Commission

(b) demand information from any person and if necessary to summon and question a person with a view to obtaining information;

Amendment

(b) demand information from any person and if necessary to summon and question a person with a view to obtaining information for use in their supervisory capacity;
Amendment 119

Proposal for a regulation
Article 20 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

When exercising the powers set out in this paragraph, the same rules concerning professional secrecy and legal professional privilege shall apply under the laws of the Member State as apply in comparable supervisory procedures for financial markets.

Amendment

Amendment 120

Proposal for a regulation
Article 21 – paragraph 1 – introductory part

Text proposed by the Commission

1. The competent authority of the home Member State may take the following measures:

Amendment

1. The CESR may take the following measures in the event of a breach of this Regulation:

Amendment 121

Proposal for a regulation
Article 21 – paragraph 1 – point b

Text proposed by the Commission

(b) impose temporary prohibition of issuing credit ratings with effect throughout the Community;

Amendment

(b) impose temporary prohibition of issuing new credit ratings with effect throughout the Community;

Justification

This is a clarifying addition.

Amendment 122
Proposal for a regulation
Article 21 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The CESR shall give notice to credit rating agencies to rectify any errors before it takes measures under points a, b or c.

Justification

Credit rating agencies should be given the opportunity to rectify errors. It should be at the discretion of the competent authority to set a timeframe for action.

Amendment 123

Proposal for a regulation
Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. Competent authorities shall not make use of the powers provided for in paragraph 1 and Article 22 before communicating a motivated draft decision to CESR. CESR shall express its views on the draft decision within 15 days of receipt of that communication.

The first subparagraph shall not apply in cases of urgency, notably in the presence of a situation threatening the orderly functioning of financial markets. In this case, the competent authority shall immediately inform CESR of the decision taken.

Amendment 124

Proposal for a regulation
Article 21 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In the interests of investors and market stability, competent authorities shall take
all possible measures to ensure the review and, where appropriate, the re-issue of ratings.

Justification

Credit rating agencies should be given the opportunity to rectify errors. It should be at the discretion of the competent authority to set a timeframe for action.

Amendment 125

Proposal for a regulation
Article 21 – paragraph 2 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2a. Without prejudice to exceptional circumstances, in particular when the good functioning of financial markets is at threat, before making use of powers laid down in paragraph 1 of this Article and in Article 22, the CESR shall communicate a reasoned draft decision to the Member States' competent authorities. The Member States' competent authorities shall communicate their opinions on that draft decision to the CESR within 15 days of receipt. Following expiry of that deadline, the CESR shall adopt its decision, taking into account the opinions communicated.</td>
<td></td>
</tr>
</tbody>
</table>

Amendment 126

Proposal for a regulation
Article 22 – title

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action by competent authorities other than the competent authority of the home Member State</td>
<td>Action by competent authorities of the Member States</td>
</tr>
</tbody>
</table>
Amendment 127

Proposal for a regulation
Article 22 – paragraph 1

Text proposed by the Commission

Where the competent authority of a Member State has grounds for believing that a registered credit rating agency acting within its territory is in breach of the obligations arising from this Regulation, it shall inform the competent authority of the home Member State.

Amendment

Where the competent authority of a Member State has grounds for believing that a registered credit rating agency acting within its territory is in breach of the obligations arising from this Regulation, it shall inform the CESR so that appropriate action can be taken.

Amendment 128

Proposal for a regulation
Article 22 – paragraph 2

Text proposed by the Commission

If, after discussions between the competent authorities concerned, the competent authority of the home Member State refuses to act or is unable to adopt effective measures or if, despite the measures taken by the competent authority of the home Member State such measures prove inadequate to protect the interests of the investors of the Member State concerned or the orderly functioning of markets, the competent authority of that Member State, after informing the competent authority of the home Member State may take all appropriate measures except for the measures referred to in point (a), (b) and (c) of Article 21(1). CESR shall be consulted before the adoption of such measures.

Amendment

deleted
Amendment 129

Proposal for a regulation
Article 24 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 130

Proposal for a regulation
Article 24 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

In the event of an investigation or inspection with cross-border effects, the CESR shall assume coordination of the investigation or inspection.

Amendment 131

Proposal for a regulation
Article 24 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

2. Where a competent authority receives a request from the CESR or a competent authority of another Member State to carry out an on-site inspection or an investigation, it shall do any of the following:
Amendment 132
Proposal for a regulation
Article 25

Text proposed by the Commission

Amendment

Article 25 deleted

Cooperation of competent authorities in case of a group of credit rating agencies

1. In case of a group of credit rating agencies referred to in Article 14(3) the competent authorities of the home Member States concerned shall consult each other before taking measures in accordance with this Regulation.

2. The facilitator referred to in Article 14(3) shall plan and coordinate the actions of the competent authorities of the home Member States concerned.

3. The facilitator and the competent authorities of the Member States concerned shall establish coordination arrangements regarding the following matters:

a) the information to be exchanged between competent authorities;

b) cases in which competent authorities have to consult each other;

c) cases in which competent authorities delegate supervisory tasks in accordance with Article 24.

Amendment 133
Proposal for a regulation
Article 26

Text proposed by the Commission

Amendment

Article 26 deleted

Delegation of tasks between competent authorities
The competent authority of the home Member State may delegate any of its tasks to the competent authority of another Member State subject to the agreement of that authority. Delegation of tasks is not intended to affect the responsibility of the designated competent authority.

Amendment 134
Proposal for a regulation
Article 27

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 27 deleted</td>
<td></td>
</tr>
</tbody>
</table>

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

2. In case of disagreement between competent authorities of Member States on an assessment or action under this Regulation, competent authorities shall refer the matter to CESR for mediation. The competent authorities shall take into account the opinion of CESR.

Amendment 135
Proposal for a regulation
Article 28 – paragraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority or for any authority or person to whom the competent authority has delegated tasks, including auditors and experts contracted by the competent authority. Information</td>
<td>1. The obligation of professional secrecy shall apply to all persons who work or who have worked for the CESR, for the competent authority or for any authority or person to whom the competent authority has delegated tasks, including auditors and experts contracted by the competent authority. Information</td>
</tr>
</tbody>
</table>

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Amendment 136

Proposal for a regulation
Article 28 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 137

Proposal for a regulation
Article 29 – paragraph 1

Text proposed by the Commission

The competent authorities may conclude cooperation agreements on exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 28. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

Amendment

The CESR may conclude cooperation agreements on exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 28. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

Amendment 138
Motion for a regulation
Article - 31 (new)

Texte proposé par la Commission

Amendement

Article -31

Complaints
The CESR shall ensure that procedures are set up which allow issuers, investors and other interested parties to register complaints about the fulfillment of the requirements and conditions laid down in this Regulation. All complaints shall be dealt with carefully and while respecting confidentiality.

Justification

Instead of undue litigation procedures, effective complaints procedures should be stimulated and established. CESR should be the authority in charge in order to prevent arbitrage.

Amendement 139

Motion for a regulation
Article - 31 a (new)

Texte proposé par la Commission

Amendement

Article -31a

Out-of-court settlements

1. Member States shall encourage the setting-up of appropriate and effective complaints procedures for the out-of-court settlement of disputes between credit rating agencies and issuers, investors and other interested parties where appropriate about the fulfillment of the requirements and conditions laid down in this Regulation.

2. Member States shall encourage those bodies to cooperate in the resolution of cross-border disputes.

3. The CESR shall promote convergence of national complaints and redress
procedures.

Justification

Instead of undue litigation procedures, effective complaints procedures should be stimulated and established.

Amendment 140

Motion for a regulation
Article 31 – paragraph 1

Texte proposé par la Commission

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. Penalties shall, at least, cover cases of gross professional misconduct and lack of due diligence. The penalties provided for must be effective, proportionate and dissuasive.

Amendment

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. Penalties shall, at least, cover cases of gross professional misconduct and lack of proper care and attention in the rating procedures. The penalties provided for must be effective, proportionate and dissuasive.

Amendment 141

Proposal for a regulation
Article 31 – paragraphs 2 a, 2 b and 2 c (new)

Text proposed by the Commission

2a. The CESR shall promote convergence of national rules applicable to infringements of the provisions of this Regulation.

2b. An infringement of the provisions of this Regulation shall not, alone, give rise to a right of action for damages by a third-party litigant.

2c. Paragraph 2 shall not exclude the civil liability of credit rating agencies where a user of ratings has suffered economic damage as a result of an infringement of the provisions of this Regulation. A civil claim for compensation for such damage
shall be made in accordance with the applicable national law for civil liability.

Justification

CESR should work towards convergence in the rules applicable to infringements of the provisions of this Regulation so as to avoid arbitrage.

Amendment 142

Proposal for a regulation
Article 31 a (new)

Text proposed by the Commission

Amendment

Article 31a
Liability

The Commission shall develop a comparable liability scheme for credit rating agencies and auditors.

Justification

As in the case of auditors, it must be possible for credit rating agencies to be held liable and taken to court.

Amendment 143

Motion for a regulation
Article 32 – paragraph 1

Texte proposé par la Commission

Amendement

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

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

Justification

A global approach needs to be ensured. When reviewing this Regulation the Commission duly consider developments in international regulation.
Amendment 144

Proposal for a regulation  
Article 34

Text proposed by the Commission

By [three years after the entry into force of this Regulation] the Commission shall make an assessment of the application of this Regulation, including an assessment of the reliance on credit ratings in the Community and of the appropriateness of the remuneration of the credit rating agency by the rated entity ("issuer-pays model"), and submit a report to the European Parliament and the Council of the European Union.

Amendment

By ... * the Commission shall make an assessment of the application of this Regulation, including an assessment of the reliance on credit ratings in the Community and of the appropriateness of the remuneration of the credit rating agency by the rated entity ("issuer-pays model"), and submit a report to the European Parliament and the Council of the European Union.

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

Amendment 145

Motion for a regulation  
Article 35

Texte proposé par la Commission

Credit rating agencies operating in the Community before [the date of entry into force of this Regulation] shall adopt all necessary measures to comply with this Regulation and shall submit an application for registration by [six months after the entry into force of this Regulation].

Amendement

I. Credit rating agencies operating in the Community before ... * shall adopt all necessary measures to comply with this Regulation and shall submit an application for registration by ... **.

2. The credit rating agencies referred to in the first paragraph may continue issuing credit ratings for the purposes of Article 2(1). Those credit ratings may be used for regulatory purposes by financial institutions as referred to in Article 4(1) unless registration is refused.
The CESR shall issue guidance concerning the effect on existing ratings and on any further transitional measures that may be required.

In the event of a refusal of registration, credit ratings issued by such credit rating agency already used remain valid but shall no longer be used under the terms of this Regulation.

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

Amendment 146

Proposal for a regulation
Article 35 a and Article 35 b (new)

Text proposed by the Commission

Amendment

Article 35 a

Commission report

As soon as possible, and in any event by 1 July 2010, the Commission shall present to the European Parliament, the Council and other institutions concerned, a report on further reform of the supervisory regime under this Regulation and, in accordance with the applicable procedure under the Treaty, any appropriate legislative proposal.

Article 35 b

International developments

In proposing amendments to this Regulation, the Commission should take account of international developments.

Justification

This clause aims at ensuring that the present regulation is reviewed in the light of the
conclusions of the de Larosière group.

**Amendment 147**

**Proposal for a regulation**

Annex I – Section A – point 1 – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The credit rating agency shall have an administrative or supervisory board that is responsible for ensuring:</td>
<td>1. A credit rating agency or group of credit rating agencies shall maintain arrangements for sound corporate governance. In determining its corporate governance arrangements, the credit rating agency or group of credit rating agencies shall have regard to the need to ensure that it provides ratings that are independent, objective and of high quality.</td>
</tr>
</tbody>
</table>

The credit rating agency **or the group of credit rating agencies** shall have an administrative or supervisory board that is responsible for ensuring:

**Justification**

There should be no need to have a number of boards for one group of credit rating agencies.

**Amendment 148**

**Proposal for a regulation**

Annex I – Section A – point 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. A credit rating agency shall be organised in a way that ensures that the business interest of the company does not impair the independence and accuracy of the rating process. The senior management, <em>as defined in Article 2(9) of Commission Directive 2006/73/EC</em> of a credit rating agency shall be of good repute and sufficiently skilled</td>
<td>2. A credit rating agency shall be organised in a way that ensures that the business interest of the company does not impair the independence and accuracy of the rating process. The senior management of a credit rating agency <em>who exercise responsibility for directing its business</em> shall be of good repute and sufficiently skilled and</td>
</tr>
</tbody>
</table>

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

The majority of members of the administrative or supervisory board, including all independent members, shall have sufficient expertise in financial services. At least one independent member of this board shall have in-depth knowledge and experience at a senior level of the structured credit and securitisation markets.

In addition to the overall responsibility of the board, the independent members of administrative or supervisory board shall have the specific task of monitoring the development of the credit rating policy, the effectiveness of the internal quality control system of the credit rating agency on the credit rating process to ensure that there are no conflicts of interest and the compliance and governance processes including the efficiency of the review function referred to in point 7 of this Section. Opinions of the independent directors issued on these matters shall be presented to the board periodically and made available to the competent authority, whenever the latter requests it. The compliance function may

and experienced, and shall ensure the sound and prudent management of the credit rating agency.

The administrative or supervisory board of a credit rating agency shall include non-executive members who shall be independent. The administrative or supervisory board shall establish a compliance function which will operate independently. The purpose of the compliance function shall be to monitor and report on proper compliance of the credit rating agency and its employees with this Regulation and the credit rating agency's policies and procedures.
requests it.

be fulfilled by non-executive directors.

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

The majority of members of the administrative or supervisory board, including all of the persons involved in the compliance function shall have sufficient expertise in financial services. At least one independent member of this board and all persons involved in the compliance function shall have in-depth knowledge and, where relevant, experience at a senior level of the structured credit and securitisation markets.

Amendment 149

Proposal for a regulation
Annex I – Section A – point 5

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. A credit rating agency shall establish organisational and administrative arrangements to identify, prevent and...</td>
<td>5. A credit rating agency shall establish appropriate and effective organisational and administrative arrangements to...</td>
</tr>
</tbody>
</table>
manage, conflicts of interest referred to in point 1 of Section B. **It shall keep a record of** all significant threats to its independence and that of its employees involved in the credit rating process, as well as the safeguards applied to mitigate those threats.

**It shall keep a record of** all significant threats to its independence and that of its employees involved in the credit rating process, as well as the safeguards applied to mitigate those threats **shall be recorded.**

### Amendment 150

**Proposal for a regulation**

**Annex I – Section A – point 7 – paragraph 1**

*Text proposed by the Commission*

7. A credit rating agency shall establish a review function responsible for periodically reviewing the methodologies, models and significant changes to methodologies and models it uses, as well as the appropriateness of those methodologies and models for the assessment of new financial instruments.

*Amendment*

7. A credit rating agency shall establish an independent review function responsible for periodically reviewing the methodologies, models and key mathematical, correlation and other assumptions and any significant changes or modifications to them as well as the appropriateness of those methodologies, models and assumptions in the event of their use or proposed use for the assessment of new financial instruments.

### Amendment 151

**Proposal for a regulation**

**Annex I – Section B – point 1 a (new)**

*Text proposed by the Commission*

1a. Credit rating agencies shall separate the decision-making process in regard to the original rating from the decision-making process in regard to the review and possible up or downgrading of the original rating of structured finance products. The analysts responsible for the original rating shall be different from those responsible for monitoring the rating.

*Amendment*

1a. Credit rating agencies shall separate the decision-making process in regard to the original rating from the decision-making process in regard to the review and possible up or downgrading of the original rating of structured finance products. The analysts responsible for the original rating shall be different from those responsible for monitoring the rating.
Amendment 152
Proposal for a regulation
Annex I – Section B – point 3 – introductory part

Text proposed by the Commission
3. A credit rating agency shall not issue a credit rating or shall withdraw an existing credit rating in the following cases:

Amendment
3. A credit rating agency shall not issue a credit rating or shall, in the case of an existing credit rating, immediately disclose its relationship or its employees’ relationship with the rated entity affecting such an existing credit rating where:

Amendment 153
Proposal for a regulation
Annex I – Section B – point 3 – point c a (new)

Text proposed by the Commission
(ca) an analyst who participated in determining a credit rating, or a person who approved a credit ratings, has recently been employed or has had another significant business relationship with the rated entity, which may cause or may be perceived to cause a conflict of interests;

Amendment
Justification
Consistency with the IOSCO code should be ensured.

Amendment 154
Proposal for a regulation
Annex I – Section B – point 3 – point c b (new)

Text proposed by the Commission
(cb) a credit rating is not based on sufficient and reliable data or the available information is not sufficient for a reliable credit rating to be given;

Amendment
Amendment 155

Proposal for a regulation
Annex I – Section B – point 3 – point c c (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(cc) an analyst who participated in determining a credit rating, or a person who approved a credit rating, has had any relationship with the rated entity or any related entity thereof, which may cause or may be perceived to cause a conflict of interests.</td>
<td></td>
</tr>
</tbody>
</table>

Justification

Consistency with the IOSCO code should be ensured.

Amendment 156

Proposal for a regulation
Annex I – Section B – point 3 – paragraph 1 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where a credit rating already exists, the credit rating agency shall immediately review and, if appropriate, revise the existing credit rating in accordance with point 1.</td>
<td></td>
</tr>
</tbody>
</table>

Justification

Withdrawal of existing ratings in not an appropriate response and could ultimately damage investors. Where doubt emerges over the quality of information that supports the current rating or complexity of the financial instrument appropriate disclosure and rating review would be the most appropriate response.

Amendment 157

Proposal for a regulation
Annex I – Section B – point 4 – paragraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>A credit rating agency may provide A credit rating agency may provide</td>
<td></td>
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</tbody>
</table>

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services other than issuance of credit ratings, hereinafter "ancillary services". A credit rating agency shall determine what it considers as ancillary services. It shall ensure that the provision of ancillary services does not present conflicts of interest with its credit rating activity.

Such ancillary services shall not be deemed to be ratings but, rather, inter alia, market forecasts and estimates of economic trends, for which purpose the finding of previous ratings shall be used only subject to compliance with confidentiality and data protection requirements. The credit rating agency shall ensure that the provision of ancillary services does not present conflicts of interest with its credit rating activity and shall disclose, in its final ratings reports, any ancillary services provided for the company.

Justification

In order to avoid uncertainty and ensure the confidence of stakeholders, it is necessary to define the term ancillary services. This also makes matters clearer for the credit rating agencies.

Amendment 158

Proposal for a regulation
Annex I – Section B – point 7

Text proposed by the Commission

7. A credit rating agency shall keep records and audit trails of all its activities, including records of agreements between the credit rating agency and the rated entity or related third party and all significant elements of the dialogue with the rated entity and its related third parties, as well as records in relation to the obligations set out in Articles 5, 6 and 7.

Amendment

7. A credit rating agency shall arrange for adequate records of its credit rating activities to be kept. Those records shall include:

(a) for each credit rating decision, the identity of the credit analysts participating in the determination of the credit rating, the identity of the persons who have approved the credit rating, details of whether the credit rating was solicited or unsolicited and the date on which the
credit rating action was taken;

(b) the account records relating to fees received from any issuer, obligor, underwriter or other user of ratings;

(c) the account records for each subscriber to the credit ratings or related services;

(d) the records documenting the established procedures and methodologies used by the credit rating agency to determine ratings;

(e) the internal records and files, including non-public information and work papers, used to form the basis of any credit rating decision taken;

(f) credit analysis reports, credit assessment reports and private credit rating reports and internal records, including non-public information and work papers, used to form the basis of the opinions expressed in such reports;

(g) records of the procedures maintained by the credit rating agency to comply with the provisions of this Regulation; and

(h) copies of internal and external communications, including electronic communications, received and sent by the credit rating agency and its employees, that relate to initiating, determining, maintaining, changing or withdrawing a credit rating.

*Justification*

The record keeping requirements under the current text are too vague and broad (for example, the reference to all "activity" would potentially include all aspects of a credit rating agency's business and operations). They should instead be replaced by more specific, detailed provisions that would provide clarity as to exactly what types of records should be maintained – consistent with other Community financial legislation.

*Amendment 159*
**Proposal for a regulation**  
Annex I – Section C – point 4

*Text proposed by the Commission*

4. An employee directly involved in the credit rating process shall not solicit or accept money, gifts or favours from anyone with whom the credit rating agency does business.

*Amendment*

4. An employee or other person directly involved in the credit rating process shall not solicit or accept money, gifts or favours from anyone with whom the credit rating agency does business.

*Justification*

The scope of this provision should be widened.

**Amendment 160**

**Proposal for a regulation**  
Annex I – Section D – part I – point 3 – paragraph 1

*Text proposed by the Commission*

3. A credit rating agency shall ensure that any credit rating states clearly and prominently any attributes and limitations of the credit rating. In particular, a credit rating agency shall prominently state in any credit rating whether it considers satisfactory the quality of information available on the rated entity and to what extent it has verified information provided to it by the rated entity or its related third party. If a credit rating involves a type of entity or financial instrument for which historical data is limited, the credit rating agency shall make clear, in a prominent place, the limitations of the credit rating.

*Amendment*

3. A credit rating agency shall ensure that any credit rating states clearly and prominently any attributes and limitations of each credit rating. In particular, a credit rating agency shall adopt appropriate measures so that the information it uses in assigning a rating is of sufficient quality to support a credible rating. If a credit rating involves a type of entity or financial instrument for which historical data is limited, the credit rating agency shall make clear, in a prominent place, the limitations of the credit rating.

*Justification*

The provision in its current form would be difficult to implement in practice. Data verification obligations should remain with the entities that have first-hand knowledge of the information and the expertise to verify it, including through the use of third party auditors.

**Amendment 161**
Proposal for a regulation  
Annex I – Section D – part I – point 3 – paragraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>In case where the lack of reliable data or the complexity of the structure of a new type of instrument or the quality of information available is not satisfactory or raises serious questions as to whether a credit rating agency can provide a credible credit rating, the credit rating agency shall refrain from issuing a credit rating or <strong>withdraw an existing rating</strong>.</td>
<td>In case where the lack of reliable data or the complexity of the structure of a new type of instrument or the quality of information available is not satisfactory or raises serious questions as to whether a credit rating agency can provide a credible credit rating, the credit rating agency shall refrain from issuing a credit rating.</td>
</tr>
</tbody>
</table>

**Justification**

Withdrawal of existing ratings in not an appropriate response and could ultimately damage investors. Where doubt emerges over the quality of information that supports the current rating or complexity of the financial instrument appropriate disclosure and rating review would be the most appropriate response.

**Amendment 162**

Proposal for a regulation  
Annex I – Section D – part I – point 3 – paragraph 2 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>A credit rating agency shall differentiate ratings of structured finance products from traditional bond ratings. A credit rating agency shall also indicate when they are rating a product for the first time and when they are rating a newly-created product.</td>
<td></td>
</tr>
</tbody>
</table>

**Amendment 163**

Proposal for a regulation  
Annex I – Section D – part I – point 3 – paragraph 2 b (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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</thead>
<tbody>
<tr>
<td>Changes in the quality of information available for monitoring an existing credit</td>
<td></td>
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</tbody>
</table>

EN
rating shall be made public and the credit rating shall be reviewed and, if appropriate, revised.

Justification

Withdrawal of existing ratings in not an appropriate response and could ultimately damage investors. Where doubt emerges over the quality of information that supports the current rating or complexity of the financial instrument appropriate disclosure and rating review would be the most appropriate response.

Amendment 164

Proposal for a regulation
Annex I – Section D – part II – point 1

Text proposed by the Commission

1. Where a credit rating agency rates a structured finance instrument, it shall provide in the credit rating information about loss and cash-flow analysis it has performed.

Amendment

1. Where a credit rating agency rates a structured finance instrument, it shall provide in the credit rating all information about loss and cash-flow analysis it has performed or is relying upon and an indication of any expected change of the credit rating (credit stability indicator).

Amendment 165

Proposal for a regulation
Annex I – Section E – part I – point 5

Text proposed by the Commission

5. Methodologies, models and key rating assumptions as well as their material changes;

Amendment

5. Methodologies, and descriptions of models and key mathematical, correlation and other assumptions as well as their material changes;

Amendment 166
Proposal for a regulation
Annex I – Section E – part II – point 2

Text proposed by the Commission

2. On a yearly basis the following information:

a) a list of the largest 20 clients of the credit rating agency by revenue;

b) a list of those clients of the credit rating agency whose contribution to the growth rate in the revenue of the credit rating agency in the previous financial year exceeded the growth rate in the total revenues of the credit rating agency in that year by a factor of more than 1.5 times; each such client shall only be included on this list where in that year it accounted for more than 0.25 % of the worldwide total revenues of the credit rating agency at global level.

For the purposes of the first subparagraph of point 2 "client" shall mean a company, its subsidiaries, and associated companies in which the company has holdings of more than 20 %, as well as any other entities in respect of which it has negotiated the structuring of a debt issue on behalf of a client and where a fee was paid, directly or indirectly, to the credit rating agency for the rating of that debt issue.

Amendment 167

Proposal for a regulation
Annex II – paragraph 2

Text proposed by the Commission

2. name and contact details of a contact person;

Amendment

2. name and contact details of the compliance officer as defined in Annex I;
EXPLANATORY STATEMENT

It has been made necessary to draw up a regulation on credit rating agencies because of the inadequacies and failures noted in the issuing and monitoring of credit ratings issued by credit rating agencies.

It is clear that these inadequacies and failures have partially contributed to the current global financial crisis.

Credit rating agencies, which constitute a de facto oligopoly, have clearly underestimated the credit risk inherent particularly in structured credit products and have not adapted their ratings when the markets have fallen.

The reasons for these failures, which have had such momentous consequences, are certainly many and varied: inadequate models, laxity, conflicts of interest, analysts' qualifications, method of governance, absence of real monitoring of credit ratings' quality.

Yet, in practice, whatever the main agencies try to argue, the credit ratings given are not regarded by finance professionals and investors as mere opinions intended to inform them, but as serious - and indeed often unique - references which for them are the most important information for investment decisions.

In addition, credit ratings have a regulatory function, recognised by the Community texts applicable to credit and insurance institutions etc.

Against this background, it is timely and justified that credit rating agencies should be subject to strict regulation and no longer simply to a code of conduct.

Even before the crisis, the Parliament had wanted the activity of credit rating agencies to be better regulated. The Commission's proposal is therefore welcome.

It is, on the whole, satisfactory as regards the detail of the regulation.

However, it appears unsatisfactory on one essential point: the choice of the method of registration and supervision.

The Commission's proposal, the grounds for which can be understood on an institutional level, suggests a complicated procedure for registration and surveillance.

The rapporteur doubts its real effectiveness from the point of view of the objectives pursued.

It is important not to lose sight of the fact that the reason for this regulation is the serious financial crisis that we are experiencing. This crisis demonstrates that supervision and regulation of financial institutions has not always been as effective as one would have wished.

Today, it is a question of drawing lessons from experience, including in the areas which until
now have not been regulated.

As regards credit rating agencies, it is important to ensure, as far as possible, that the regulation will have the positive effects that are expected.

It cannot be denied that credit rating agencies are very few in number, that they have a global field of activity and that their head offices are mostly located outside of the Community.

This raises various questions, the first being that of the effectiveness of strictly European regulation. It is clear that cooperation between the Community and third countries will have to be pursued and enhanced in order to lay down a harmonised regulatory foundation.

European regulation must centralise responsibility for registration and supervision, at the same time as establishing good cooperation between the European regulator and the relevant authorities in the Member States. Consequently, the rapporteur proposes that the CESR be made the linchpin of the regulation's implementation.

For the rest, the regulation should clearly define the various obligations of the credit rating agencies to guarantee their independence, transparency, good governance and the prevention and handling of conflicts of interest. On the whole, these points are addressed in a satisfactory way in the proposal for a regulation.

However, two questions deserve particular attention.

Bearing in mind the importance of credit ratings, it seems advantageous not to limit the regulation to regulatory purposes and to lay down general rules for all issuing of credit ratings with the only exception being the exclusions explicitly stated in the regulation.

In addition, it is a good principle that credit ratings that are published and can be used in the Community must indeed be drawn up by agencies with a legal base in the Community and consequently subject to European regulation.

Nevertheless, we should be realistic. Agencies established in the Community and subject to European regulation are not necessarily the best-equipped to issue credit ratings on entities or on financial credits or instruments in third countries.

Pending harmonised global rules, one could adopt the rule that ratings issued by credit agencies not subject to European regulation can be used as long as these ratings are confirmed and endorsed by an agency based within the European Union, in the sense of its assuming responsibility and certifying that the agency that issued the rating is bound by regulation equivalent to that which exists in the Community.

Finally, it seems an opportune moment to promote healthy competition in the field of credit rating agencies, by favouring the establishment of credit rating agencies with a head office in Europe. To this end, it could be specified that the Member States will encourage entities to be rated to use agencies which have their head office located in the Community for a proportion of the ratings to be obtained.
10.3.2009

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies

Rapporteur: Sharon Bowles

SHORT JUSTIFICATION

The Commission proposal seeks to establish a legally binding registration and surveillance regime for credit rating agencies issuing credit ratings mainly intended for use for regulatory purposes by credit institutions, investment firms, insurance, assurance and reinsurance undertakings, collective investment schemes and pension funds. The main objective of the proposal is to ensure that credit ratings used in the Community are independent, objective and of the highest quality.

The draughtsperson raises the following main points within the JURI usual sphere of competences:

Is it correct for the proposal be based on article 95 of the Treaty establishing the European Community as proposed, or should it be based on its article 47(2)?

Article 95 relates to the establishment and functioning of the internal market.

Article 47(2) of the Treaty, which is part of Chapter 2 on Freedom of establishment, relates to 'Free circulation of persons, services and capital' and the entirety of the harmonising measures for financial services in the European Union have hitherto been adopted on the legal basis of article 47(2). This is in particular the case for credit institutions (Directive 2006/48/EC), investment firms (Directive 2004/39/EC), assurance undertakings (Directive 2002/83), reinsurance undertakings (Directive 2005/68/EC), undertakings for collective investment in transferable securities (UCITS-under recast), institutions for occupational retirement (Directive 2003/41/EC).

For consistency, the objective of the current proposal, to set up the conditions under which credit rating agencies can establish and operate within the European Union, would also appear to fall under article 47(2).

Should the proposal be in the form of a Regulation or a Directive?
The reasons for preferring a Regulation to a Directive in the current context and financial climate, and in order to get a consistent and rapid implementation are understood. However article 47.2 prescribes that the coordination concerning the taking-up and pursuit of the stipulated activities or professions be enacted solely by way of Directives, and excludes the use of Regulations.

If the case for having a Regulation in this particular instance is thought compelling, and therefore Article 95 is maintained as the basis, its implications should be considered.

**Governance Criteria**

Within the governance criteria in Section A of the annex it is proposed that non-executive directors undertake certain responsibilities aimed at ensuring independence of ratings. This is a role in essence to protect external parties: investors and markets. It is not clear whether this is in all circumstances a proper function for a non-executive director who also represents the shareholders. In some Member States it may be possible for non-executive directors to have such a function, but there is no need to be so prescriptive and the draughtsperson proposes that the administrative or supervisory board be subject to persons performing an independent monitoring function. This could be non-executive directors if that is appropriate. For a group of rating agencies there is no need for duplication, the function could be for the whole group.

**Civil Liability**

The present proposal suggests that the regulation will facilitate litigation. The draughtsperson considers that there is no reason to extend the current civil liabilities available within Member States which in general already cover cases of gross negligence and malpractice. Indeed it would be dangerous to encourage, or facilitate, litigation that might influence rating decisions and give rise to a route to blackmail and undermine the very independence that it is sought to ensure and maintain. Caution is urged in this area and amendment is proposed to clarify that there is no intention to extend the current regime of liability.

**AMENDMENTS**

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

**Amendment 1**

Proposal for a regulation
Recital 13

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>(13) Long lasting relationships with the same rated entities or <em>its</em> related third</td>
<td>(13) Long lasting relationships with the same rated entities or related third parties</td>
</tr>
</tbody>
</table>
parties could compromise independence of analysts and persons approving credit ratings. Therefore those analysts and persons should be subject to a rotation mechanism.

could compromise the independence of analysts who are in direct contact with issuers. Therefore those analysts should be subject to a mandatory rotation mechanism.

**Justification**

Conflict of interests for analysts that are in frequent contact with issuers should be prevented. The rating committees are not in direct contact and have valuable sectoral expertise.

**Amendment 2**

**Proposal for a regulation**

**Recital 15**

**Text proposed by the Commission**

(15) In order to ensure the quality of ratings, a credit rating agency should take measures to ensure that the information it use in assigning a rating is reliable. For this purpose, a credit rating agency may envisage, among other elements reliance on independently audited financial statements and public disclosures; verification by reputable third party services; random sampling examination by the credit rating agency of the information received; or contractual provisions clearly stipulating liability for the rated entity or its related third parties, if the information provided under the contract is knowingly materially false or misleading or if the rated entity or its related third parties fail to conduct reasonable due diligence regarding the accuracy of the information as specified under the terms of the contract.

**Amendment**

(15) In order to ensure the quality of ratings, a credit rating agency should take measures to ensure that the information it uses in assigning a rating is reliable. The role of a credit rating agency is not to audit data produced and due diligence conducted by issuers and third parties, but rather it must satisfy itself that the sources that it relies upon justify that trust, for example, due to their professional independence or reputation. For this purpose, a credit rating agency may envisage, among other elements reliance on independently audited financial statements and public disclosures; verification by reputable third party services; random sampling examination by the credit rating agency of the information received; or contractual provisions in the transaction documents clearly stipulating liability for the rated entity or its related third parties, if the information provided under the contract is knowingly materially false or misleading or if the rated entity or its related third parties fail to conduct reasonable due diligence regarding the accuracy of the information as specified under the terms of the contract.
Justification

There is a need to avoid confusion over the role of rating agencies with respect to the due diligence conducted by other parties and on which the rating agencies rely.

Amendment 3

Proposal for a regulation
Recital 35

Text proposed by the Commission

(35) **The stricter and clearer legal framework within which credit rating agencies will operate should also facilitate recourse to civil actions in respect of credit rating agencies in appropriate cases, in accordance with the applicable regimes of liability of the Member States.**

Amendment

(35) **This Regulation is without prejudice to national law governing the right of civil action in respect of credit rating agencies.**

Amendment 4

Proposal for a regulation
Article 2 – paragraph 1

Text proposed by the Commission


Amendment

European Parliament and of the Council
and are disclosed publicly or distributed by
subscription.

Justification

The regulation's scope of application must be clearly defined by use for regulatory purposes. The most adversely impacted by too wide a scope will be investors and other users.

Amendment 5

Proposal for a regulation
Article 6 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. A credit rating agency shall ensure that analysts and persons approving credit ratings shall not be involved in providing the credit rating services to the same rated entity or its related third parties for a period exceeding four years. For that purpose it shall establish a rotation mechanism with regard to those analysts and persons.

Amendment

4. A credit rating agency shall ensure that analysts who are in direct contact with issuers shall not be involved in providing the credit rating services to the same rated entity or its related third parties for a period exceeding four years. For that purpose it shall establish a rotation mechanism.

Justification

Conflict of interests for analysts that are in frequent contact with issuers should be prevented. The rating committees are not in direct contact and have valuable sectoral expertise.

Amendment 6

Proposal for a regulation
Article 6 – paragraph 4 – subparagraph 2

Text proposed by the Commission

The period after which the analysts and persons approving credit ratings may be involved in providing the credit rating services to the rated entity or related third parties referred to in the first subparagraph may not be shorter than two years.

Amendment

The period after which the analysts may be in direct contact again with the rated entity or related third parties referred to in the first subparagraph, in order to provide credit rating services, may not be shorter than two years.
Justification

Conflict of interests for analysts that are in frequent contact with issuers should be prevented. The rating committees are not in direct contact and have valuable sectoral expertise.

Amendment 7

Proposal for a regulation
Article 20 – paragraph 3 – point a

Text proposed by the Commission
(a) have access to any document in any form and to receive or take a copy thereof;

Amendment
(a) have access to any document in any form and to receive or take a copy thereof for use in their supervisory capacity;

Amendment 8

Proposal for a regulation
Article 20 – paragraph 3 – point b

Text proposed by the Commission
(b) demand information from any person and if necessary to summon and question a person with a view to obtaining information;

Amendment
(b) demand information from any person and if necessary to summon and question a person with a view to obtaining information for use in their supervisory capacity;

Amendment 9

Proposal for a regulation
Article 20 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission
When exercising these powers the same rules concerning professional secrecy and legal professional privilege shall apply under the laws of the Member State as apply in other supervisory procedures for financial markets.

Amendment

Amendment 10

Proposal for a regulation
Article 21 – paragraph 1 – introductory part

Text proposed by the Commission

1. The competent authority of the home Member State may take the following measures:

Amendment

1. The competent authority of the home Member State may take the following measures in the event of a breach of this Regulation:

Amendment 11

Proposal for a regulation
Article 28 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 12

Proposal for a regulation
Article 31 – paragraph 1 a (new)

Text proposed by the Commission

An infringement of the provisions of this Regulation does not of itself give any right of action for damages by third party litigants and such claims may only be made in accordance with the applicable national law on civil liability.

Amendment
The new paragraph which follows the first paragraph is introduced for the avoidance of doubt. The test should be that expounded in the first paragraph as implemented in national law.

Amendment 13
Proposal for a regulation
Article 31 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

The CESR shall promote convergence in the rules applicable to infringements of the provisions of this Regulation.

Justification

CESR should work towards convergence in the rules applicable to infringements of the provisions of this Regulation so to avoid arbitrage.

Amendment 14
Proposal for a regulation
Article 31 a (new)

Text proposed by the Commission

Amendment

Article 31a
Complaints

The CESR shall ensure that procedures are set up which allow issuers, investors and other interested parties to submit complaints about the fulfilment of the requirements and conditions laid down in this Regulation. All complaints shall be dealt with diligently and in confidence.

Justification

Instead of undue litigation procedures, effective complaints procedures should be stimulated and established. CESR should be authority in charge in order to prevent arbitrage.
Proposal for a regulation
Article 31 b (new)

Text proposed by the Commission

Amendment

Article 31b
Out-of-court redress
1. Member States shall encourage the setting-up of appropriate and effective complaints and redress procedures for the out-of-court settlement of disputes between credit rating agencies and issuers, investors and, where appropriate, other interested parties concerning the fulfilment or non-fulfilment of the requirements and conditions laid down in this Regulation.
2. Member States shall encourage these bodies to cooperate in the resolution of cross-border disputes.
3. The CESR shall promote convergence of national complaints and redress procedures.

Justification

Instead of undue litigation procedures, effective complaints procedures should be stimulated and established.

Amendment 16

Proposal for a regulation
Annex I - Section D - Chapter I - point 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In the event of changes in the quality of information available for monitoring an existing rating, this shall be publicised and appropriate revision to the rating shall be made.
## PROCEDURE

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<tr>
<th><strong>Title</strong></th>
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<tr>
<td><strong>Committee responsible</strong></td>
<td>ECON</td>
</tr>
<tr>
<td><strong>Opinion by</strong></td>
<td>JURI</td>
</tr>
<tr>
<td><strong>Date announced in plenary</strong></td>
<td>20.11.2008</td>
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<tr>
<td><strong>Rapporteur</strong></td>
<td>Sharon Bowles</td>
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<tr>
<td><strong>Date appointed</strong></td>
<td>19.1.2009</td>
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<tr>
<td><strong>Discussed in committee</strong></td>
<td>12.2.2009</td>
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<td><strong>Date adopted</strong></td>
<td>9.3.2009</td>
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| **Result of final vote** | +: 16  
-: 0  
0: 0 |
| **Members present for the final vote** | Monica Frassoni, Giuseppe Gargani, Neena Gill, Klaus-Heiner Lehne, Manuel Medina Ortega, Eva-Riitta Siitonen, Francesco Enrico Speroni, Diana Wallis, Tadeusz Zwiefka |
| **Substitute(s) present for the final vote** | Vicente Miguel Garcés Ramón, Jean-Paul Gauzès, Kurt Lechner, Georgios Papastamkos, Gabriele Stauner, Ieke van den Burg |
| **Substitute(s) under Rule 178(2) present for the final vote** | Bill Newton Dunn |
### PROCEDURE

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<td>20.11.2008</td>
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<td>Rapporteur(s)</td>
<td>Jean-Paul Gauzès</td>
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<td>Date appointed</td>
<td>24.9.2008</td>
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<td>Mariela Velichkova Baeva, Paolo Bartolozzi, Zsolt László Becsey, Pervenche Berès, Slavi Binev, Sharon Bowles, Udo Bullmann, Elisa Ferreira, Jean-Paul Gauzès, Donata Gottardi, Benoît Hamon, Karsten Friedrich Hoppenstedt, Sophia in ‘t Veld, Wolf Klinz, Christoph Konrad, Gay Mitchell, Sirpa Pietikäinen, John Purvis, Bernhard Rapkay, Dariusz Rosati, Eoin Ryan, Antolín Sánchez Presedo, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Ieke van den Burg</td>
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<td>Substitute(s) present for the final vote</td>
<td>Daniel Dăianu, Harald Ettl, Thomas Mann, Gianni Pittella, Margaritis Schinas, Eva-Riitta Siitonen</td>
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