

Public Notice

S&P Global Ratings Europe Limited ('S&P') is a registered credit rating agency ('CRA') incorporated in Ireland and one of the largest CRA groups in terms of revenues and size.

The CRA Regulation (Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, the 'Regulation') lays down obligations for CRAs in the conduct of their activities. In conjunction with its role as supervisor of CRAs under Article 21 of the Regulation, the European Securities and Markets Authority ('ESMA') has functions and powers to take enforcement actions in relation to infringements of the Regulation by CRAs.

According to the Regulation, a CRA shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

According to the Regulation, a CRA shall disclose any credit rating or rating outlook, as well as any decision to discontinue a credit rating, on a non-selective basis and in a timely manner. In the event of a decision to discontinue a credit rating, the information disclosed shall include full reasons for the decision.

According to the Regulation, a CRA shall submit rating information to ESMA, including the credit rating and rating outlook of the rated instrument, information on the type of credit rating, the type of rating action, and the date and hour of publication. Further, the Commission Delegated Regulation (EU) 2015/2 supplementing the Regulation with regard to regulatory technical standards for the presentation of the information that credit rating agencies make available to ESMA ('Commission Delegated Regulation (EU) 2015/2') clarifies that a CRA shall ensure the accuracy, completeness and availability of the data reported to ESMA and that where a CRA identifies factual errors in data that have been reported, it shall correct the relevant data without undue delay.

In January 2022, following preliminary investigations, ESMA's Supervisors found that with respect to S&P, there were serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annex III to the Regulation.

The matter was then referred to an Independent Investigating Officer (the 'IIO') who, after having conducted an independent investigation, submitted his findings to the Board of Supervisors (the 'Board').

Having considered the evidence, the Board found that S&P negligently committed the following infringements of the Regulation.

First infringement

By failing to have internal control mechanisms adequate to ensure compliance with its obligations regarding the timely disclosure of credit ratings, S&P negligently committed the infringement set out at Point 12 of Section I of Annex III of the Regulation.

A) Relevant legal provisions

Article 6 of the Regulation provides:

“1. A credit rating agency shall take all necessary steps to ensure that the issuing of a credit rating or a rating outlook is not affected by any existing or potential conflicts of interest or business relationship involving the credit rating agency issuing the credit rating or the rating outlook, its shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the credit rating agency, or any person directly or indirectly linked to it by control.

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

Annex I, Section A, Point 4 of the Regulation provides:

“A credit rating agency shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

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

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

Annex III, Section 1, Point 12 of the Regulation provides:

“The credit rating agency infringes Article 6(2), in conjunction with point 4 of Section A of Annex I, by not having sound administrative or accounting procedures, internal control mechanisms, effective procedures for risk assessment, or effective control or safeguard arrangements for information processing systems; or by not implementing or maintaining decision-making procedures or organisational structures as required by that point.”

B) Factual findings

S&P has in place a number of procedures related to the publication of credit ratings and their reporting to ESMA. Between 5 June 2019 and 8 September 2021, flaws in these procedures

and their implementation led S&P to prematurely release ratings (i.e. before the issuance of the securities to which those ratings relate and their announcement to the market) regarding securities issued by six issuers. S&P subsequently removed these ratings from its public platforms, and republished them later. Moreover, this led S&P to submit inaccurate and out-of-date information to ESMA. There were also shortcomings regarding S&P's compliance function.

C) Finding of the infringement

On the basis of the assessment of the complete file and the arguments raised by S&P in its written submissions, the Board found that S&P failed to comply with its obligation under Article 6(2), read in conjunction with point 4 of Section A of Annex I of the Regulation, by not having internal control mechanisms ensuring compliance with the Regulation regarding the timely disclosure of credit ratings, therefore committing the infringement set out at Point 12 of Section I of Annex III of the Regulation.

Furthermore, the Board found that S&P did not meet the special care expected from a CRA as a professional firm in the financial services sector. Therefore, the Board found that S&P had committed the infringement negligently and was liable to a fine.

The basic amount of the fine was calculated pursuant to Article 36a of the Regulation. In addition, the Board applied the relevant aggravating (the infringement has been committed for more than six months) and mitigating (the CRA has voluntarily taken measures to ensure that similar infringements cannot be committed in the future) factors prescribed by Annex IV of the Regulation and therefore fined S&P EUR 825,000.

D) Supervisory measure and fine

Public notice

Pursuant to Article 24 of the Regulation, the Board decided that the infringement warranted a supervisory measure in a form of the publication of this public notice.

Fine

The fine imposed on S&P is EUR 825,000.

Second infringement

By failing to disclose on a non-selective basis and in a timely manner six decisions to discontinue a credit rating, S&P committed negligently the infringement set out at Point 5 of Section III of Annex III of the Regulation.

A) Relevant legal provisions

Article 10(1) of the Regulation provides:

“1. A credit rating agency shall disclose any credit rating or rating outlook, as well as any decision to discontinue a credit rating, on a non-selective basis and in a timely manner. In the event of a decision to discontinue a credit rating, the information disclosed shall include full reasons for the decision.”

Annex III, Section III, Point 5 of the Regulation provides:

“The credit rating agency infringes Article 10(1) by not disclosing on a non-selective basis or in a timely manner a decision to discontinue a credit rating, including full reasons for the decision.”

B) Factual findings

Between 5 June 2019 and 8 September 2021, in six instances, S&P removed credit ratings from its public platforms, without providing any reasoning.

C) Finding of the infringement

On the basis of the assessment of the complete file and the arguments raised by S&P in its written submissions, the Board found that when it decided to remove credit ratings from its public platforms, S&P proceeded to the discontinuation of those credit ratings. By not disclosing on a non-selective basis and in a timely manner the decisions to discontinue those credit ratings, including giving full reasons for the decisions, S&P thus failed to comply with its obligations under Article 10(1) of the Regulation. Therefore, S&P committed the infringement set out at Point 5 of Section III of Annex III.

Furthermore, the Board found that S&P did not meet the special care expected from a CRA as a professional firm in the financial services sector. Therefore, the Board found that S&P had committed the infringement negligently and was liable to a fine.

The basic amount of the fine was calculated pursuant to Article 36a of the Regulation. In addition, the Board applied the relevant aggravating (the infringement has been committed repeatedly and no remedial action has been taken since the breach has been identified) and mitigating (the infringement has been committed for fewer than 10 working days) factors prescribed by Annex IV of the Regulation and therefore fined S&P EUR 210,000.

D) Supervisory measure and fine

Public notice

Pursuant to Article 24 of the Regulation, the Board decided that the infringement warranted a supervisory measure in a form of the publication of this public notice.

Fine

The fine imposed on S&P is EUR 210,000.

Third infringement

By not submitting up-to-date rating information to ESMA, S&P committed negligently the infringement set out at Point 4a of Section II of Annex III of the Regulation.

A) Relevant legal provisions

Article 11a(1) of the Regulation provides:

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

Article 1(2) of Commission Delegated Regulation (EU) 2015/2 provides:

“Credit rating agencies shall ensure the accuracy, completeness and availability of the data reported to ESMA and shall ensure that reports are submitted in accordance with Articles 8, 9 and 11 using appropriate systems developed on the basis of technical instructions provided by ESMA”.

Article 13(3) of Commission Delegated Regulation (EU) 2015/2 provides:

“Where a credit rating agency identifies factual errors in data that have been reported, it shall correct the relevant data without undue delay according to the technical instructions provided by ESMA”.

Annex III, Section II, Point 4a of the Regulation provides:

“The credit rating agency infringes Article 11a(1) by not making available the required information or by not providing that information in the required format as referred to in that paragraph.”

B) Factual findings

In 2019, S&P did not ensure that the information about a credit rating communicated to ESMA via the European Rating Platform was correct and up-to-date for 19 full days.

C) Finding of the infringement

On the basis of the assessment of the complete file and the arguments raised by S&P in its written submissions, the Board found that S&P failed to comply with its obligations under Article 11a(1) of the Regulation, to submit to ESMA up-to-date rating information, including the credit rating and rating outlook of the rated instrument, information on the type of credit rating, the type of rating action, and date and hour of publication. Moreover, the Board found that S&P did not correct the relevant data without undue delay where it had identified factual errors in

the data reported. Therefore, S&P committed the infringement set out at Point 4a of Section II of Annex III of the Regulation.

Furthermore, the Board found that S&P did not meet the special care expected from a CRA as a professional firm in the financial services sector. Therefore, the Board found that S&P had committed the infringement negligently and was liable to a fine.

The basic amount of the fine was calculated pursuant to Article 36a of the Regulation. As there were no relevant aggravating or mitigating factors prescribed by Annex IV of the Regulation, the Board fined S&P EUR 75,000.

D) Supervisory measure and fine

Public notice

Pursuant to Article 24 of the Regulation, the Board decided that the infringement warranted a supervisory measure in a form of the publication of this public notice.

Fine

The fine imposed on S&P is EUR 75,000.

Overall fine

The overall fine to be imposed on S&P for three infringements committed with negligence amounts to EUR 1,110,000.