



STATUTORY INSTRUMENTS.

**S.I. No. 247 of 2010**



EUROPEAN COMMUNITIES (CREDIT RATING AGENCIES)  
REGULATIONS 2010

**(Prn. A10/0761)**

EUROPEAN COMMUNITIES (CREDIT RATING AGENCIES)  
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I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 3 (as amended by the European Communities Act 2007 (No. 18 of 2007)) of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Regulation (EC) No. 1016/2009 of the European Parliament and of the Council of 16 September 2009<sup>1</sup>, hereby make the following regulations:

*Citation.*

1. These Regulations may be cited as the European Communities (Credit Rating Agencies) Regulations 2010.

*Commencement.*

2. (1) Regulation 4 comes into operation on 7 June 2010.

(2) Regulations 5 to 7 come into operation on 7 December 2010.

*Interpretation.*

3. (1) In these Regulations—

“Bank” means the Central Bank and Financial Services Authority of Ireland;

“EC Regulation” means Regulation (EC) No. 1016/2009<sup>1</sup> of the European Parliament and of the Council.

(2) A word or expression used in these Regulations and also in the EC Regulation has the same meaning in these Regulations as in the EC Regulation, unless the contrary intention appears.

*Bank to be competent authority.*

4. The Bank is designated as the competent authority in the State for the purposes of the EC Regulation.

*Supervisory levies and fees.*

5. (1) The powers of the Chief Executive of the Bank to prescribe supervisory levies under section 33J of the Central Bank Act 1942 (No. 22 of 1942) extend to the prescription of a supervisory levy to be paid by a credit rating agency that is established in the State as if the EC Regulation were a designated enactment.

(2) The powers of the Chief Executive of the Bank to prescribe fees under section 33K of the Central Bank Act 1942 extend to the prescription of fees to

<sup>1</sup>OJ L 302 of 17.11.2009, p.1

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 4th June, 2010.*

be paid by a credit rating agency that is established, or seeks to become established, in the State as if the EC Regulation were an enactment.

(3) A supervisory levy or fee prescribed pursuant to paragraph (1) or (2) shall be proportionate to the costs incurred by the Bank in relation to credit rating agencies.

(4) In this Regulation “fee” includes a registration fee.

*Offences and penalties.*

6. (1) A credit rating agency established in the State that contravenes a requirement imposed on a credit rating agency by the EC Regulation commits an offence.

(2) A person (other than a credit rating agency established in the State) who contravenes a requirement imposed on the person by the EC Regulation commits an offence.

(3) A person guilty of an offence under paragraph (1) or (2) is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years or both.

(4) Where the contravention in respect of which a person is convicted of an offence under paragraph (1) or (2) continues after the conviction, the person commits an offence for each day on which the contravention continues and for each such further offence is liable—

(a) on summary conviction, to a fine not exceeding €1,000 or imprisonment for a term not exceeding 1 month or both, or

(b) on conviction on indictment, to a fine not exceeding €10,000.

(5) Where an offence referred to in paragraph (1) or (2) is proved to have been committed with the consent, connivance or approval of, or to be attributable to the wilful neglect of, a person—

(a) who is a director, manager, secretary or other officer of the body corporate, or

(b) who purported to act in any such capacity,

that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) A person may be charged with an offence under paragraph (5) even if the body corporate concerned is not charged with any offence under these Regulations in relation to the same matter.

(7) Summary proceedings in relation to an offence under this Regulation may be prosecuted by the Bank.

*Publication of convictions and penalties.*

7. (1) Subject to paragraph (2), where a person (including a credit rating agency) has been convicted of an offence pursuant to Regulation 6, the Bank shall publish a statement of the conviction including such details as the Bank considers appropriate of the offence and the penalty imposed.

(2) Paragraph (1) does not apply where publication would seriously jeopardise the financial markets or cause disproportionate damage to any party involved.



GIVEN under my Official Seal,  
26 May 2010.

BRIAN LENIHAN,  
Minister for Finance.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

These Regulations give effect to certain aspects of the Regulation of the European Parliament and of the Council on Credit Rating Agencies (CRAs). The remaining provisions in the Regulation apply directly to Member States and do not require to be transposed into national law.

Article 22 of the EU Regulation requires Member States to appoint a competent authority. This is achieved in Regulation 4.

Article 19 allows competent authorities to charge registration or supervisory fees to CRAs which establish in their jurisdiction. This is achieved in Regulation 5.

Article 36 of the Regulation requires Member States to provide penalties in the event of breaches of the Regulation's provisions. This is addressed in Regulation 6.

Since the enactment of the Regulation, proposals to establish the European Securities and Markets Authority (ESMA) were announced and these proposals are currently being negotiated between the EU institutions (European Council, European Parliament and European Commission).

The ESMA proposals contain a provision whereby it will become the competent authority throughout the EU for CRAs and will have the power to directly impose penalties. ESMA is expected to assume responsibility for the supervision of CRAs in early 2011. Therefore, the level of penalties imposed in these Regulations can be considered as being a temporary measure.

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