

Public Notice

Scope Ratings GmbH (“Scope”) is a registered credit rating agency (‘CRA’) headquartered in Germany, with branch offices in Germany, France, Italy, Norway, Poland and Spain.

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

According to the CRA Regulation, a CRA shall establish adequate policies and procedures to ensure compliance with its obligations under the CRA Regulation.

According to the CRA 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 CRA Regulation, a CRA shall establish appropriate and effective organisational and administrative arrangements to prevent, identify, eliminate or manage and disclose any conflicts of interest.

According to the CRA Regulation, a CRA shall identify, eliminate, or manage and disclose, clearly and prominently, any actual or potential conflicts of interest that may influence the analyses and judgments of its rating analysts, employees, or any other natural person whose services are placed at the disposal or under the control of the CRA and who are directly involved in credit rating activities and persons approving credit ratings and rating outlooks.

According to the CRA Regulation, a CRA shall ensure that the provision of ancillary services does not present conflicts of interest with its credit rating activities and shall disclose in the final ratings reports any ancillary services provided for the rated entity or any related third party.

In October 2022, following preliminary investigations, ESMA’s Supervisors found that with respect to Scope, 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 CRA Regulation.

The matter was then referred to an Independent Investigating Officer 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 Scope negligently committed the following infringements of the CRA Regulation.

First infringement

By not having policies and procedures adequate to ensure compliance with its conflict of interest obligations under the CRA Regulation, Scope negligently committed the infringement set out at Point 11 of Section I of Annex III to the CRA Regulation.

A) Relevant legal provisions

Article 6 of the CRA 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.”

Point 3 of Section A of Annex I to the CRA Regulation provides:

“A credit rating agency shall establish adequate policies and procedures to ensure compliance with its obligations under this Regulation.”

Point 11 of Section I of Annex III to the CRA Regulation provides:

“The credit rating agency infringes Article 6(2), in conjunction with point 3 of Section A of Annex I, by not establishing adequate policies or procedures to ensure compliance with its obligations under this Regulation.”

B) Factual findings

Scope had policies and procedures concerning avoidance and management of conflicts of interest and other aspects of its structure and business. However, these policies and procedures were not adequate to ensure compliance with the CRA Regulation.

In particular, it was not clear how the policies and procedures complemented, supplemented or replaced each other, many important terms were undefined, and it was not clear to whom the policies and procedures applied and what steps needed to be taken if a person suspected violations of the relevant policies.

There were also shortcomings specifically related to conflicts of interest, including the fact that there was no clarity on the exact functions and roles involved at each step of the process to ensure the identification, management, and disclosure of potential and existing conflicts of interest in any of the relevant policies and procedures. Further, the policies failed to refer to situations in which an entity holds 5% or more of Scope’s capital or voting rights or of a rated entity or of its related third party. Lastly, Scope failed to address the question of the provision of ancillary services in its policies and procedures.

C) Finding of the infringement

On the basis of the assessment of the complete file and the arguments raised by Scope in its written submissions, the Board found that Scope failed to comply with Article 6(2) of the CRA Regulation, read in conjunction with Point 3 of Section A of Annex I to the CRA Regulation, by not having policies and procedures adequate to ensure compliance with its obligations under the CRA Regulation, therefore committing the infringement set out at Point 11 of Section I of Annex III to the CRA Regulation.

Furthermore, the Board found that Scope did not meet the special care expected from a CRA as a professional firm in the financial services sector. Therefore, the Board found that Scope 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 CRA 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 to the CRA Regulation and therefore fined Scope EUR 687,500.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on Scope is EUR 687,500.

Second infringement

By not having internal control mechanisms adequate to ensure compliance with its obligations regarding conflicts of interest, Scope negligently committed the infringement set out at Point 12 of Section I of Annex III to the CRA Regulation.

A) Relevant legal provisions

Article 6 of the CRA 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.”

Point 4 of Section A of Annex I to the CRA 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.”

Point 12 of Section I of Annex III to the CRA 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

Scope’s internal control mechanisms had substantial shortcomings because its guidance to staff on how to comply with the relevant requirements on conflicts of interest was unclear, as well as the procedure of reporting any breaches of the guidance.

Additionally, Scope’s internal control mechanisms did not adequately identify the type of control activities to be carried out and the persons in charge of them.

Finally, there were numerous deficiencies in Scope’s processes for documenting controls and recording the checks carried out.

C) Finding of the infringement

On the basis of the assessment of the complete file and the arguments raised by Scope in its written submissions, the Board found that Scope failed to comply with Article 6(2) of the CRA Regulation, read in conjunction with Point 4 of Section A of Annex I to the CRA Regulation, by not having internal control mechanisms adequate to ensure compliance with its obligations regarding conflicts of interest, therefore committing the infringement set out at Point 12 of Section I of Annex III to the CRA Regulation.

Furthermore, the Board found that Scope did not meet the special care expected from a CRA as a professional firm in the financial services sector. Therefore, the Board found that Scope 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 CRA 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 to the CRA Regulation and therefore fined Scope EUR 687,500.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on Scope is EUR 687,500.

Third infringement

By not having appropriate and effective organisational and administrative arrangements adequate to ensure compliance with its obligations regarding conflicts of interest, Scope negligently committed the infringement set out at Point 15 of Section I of Annex III to the CRA Regulation.

A) Relevant legal provisions

Article 6 of the CRA 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.”

Point 7 of Section A of Annex I to the CRA Regulation provides:

“A credit rating agency shall establish appropriate and effective organisational and administrative arrangements to prevent, identify, eliminate or manage and disclose any conflicts of interest [...]”

Point 15 of Section I of Annex III to the CRA Regulation provides:

“The credit rating agency infringes Article 6(2), in conjunction with point 7 of Section A of Annex I, by not establishing appropriate and effective organisational or administrative arrangements to prevent, identify, eliminate or manage and disclose any conflicts of interest [...]”

B) Factual findings

Scope’s organisational and administrative arrangements related to conflicts of interest were not appropriate nor effective as they were not capable of preventing, identifying, eliminating or managing and disclosing conflicts of interest.

In particular, the procedures related to conflicts at the level of Scope’s shareholding structure did not explain how the notion of “significant influence” should be understood or assessed and there were no monitoring arrangements in place for the assessment of changes in the shareholding structure which might lead to a conflict of interest.

Additionally, Scope’s organisational and administrative arrangements regarding gathering of information were insufficient and ineffective and relied only on public information and contacts with shareholders.

Lastly, many employees of Scope were unaware of how various lists of shareholders who had or might have conflicts of interest operate.

C) Finding of the infringement

On the basis of the assessment of the complete file and the arguments raised by Scope in its written submissions, the Board found that Scope failed to comply with Article 6(2) of the CRA Regulation, read in conjunction with Point 7 of Section A of Annex I to the CRA Regulation, by not having appropriate and effective organisational and administrative arrangements adequate to ensure compliance with its obligations regarding conflicts of interest, therefore committing the infringement set out at Point 15 of Section I of Annex III to the CRA Regulation.

Furthermore, the Board found that Scope did not meet the special care expected from a CRA as a professional firm in the financial services sector. Therefore, the Board found that Scope 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 CRA 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 to the CRA Regulation.

D) Supervisory measure

Public notice

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

Fine

The Board considered that based on the facts of the case, Article 36a(4) second paragraph of the CRA Regulation, which protects CRAs from being fined twice for the same act or omission, was applicable regarding the infringement set out at Point 15 of Section I of Annex III. On this basis, no fine shall be applied in relation to this infringement.

Fourth infringement

By failing to identify, eliminate, or manage and disclose in a clear and prominent manner any existing or potential conflicts of interest, Scope negligently committed the infringement set out at Point 19 of Section I of Annex III to the CRA Regulation.

A) Relevant legal provisions

Article 6 of the CRA 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.”

Point 1 of Section B of Annex I to the CRA Regulation provides:

“A credit rating agency shall identify, eliminate, or manage and disclose, clearly and prominently, any actual or potential conflicts of interest that may influence the analyses and judgments of its rating analysts, employees, or any other natural person whose services are placed at the disposal or under the control of the credit rating agency and who are directly involved in credit rating activities and persons approving credit ratings and rating outlooks.”

Point 19 of Section I of Annex III to the CRA Regulation provides:

“The credit rating agency infringes Article 6(2), in conjunction with point 1 of Section B of Annex I, by not identifying, eliminating, or managing and disclosing, clearly or prominently, any actual or potential conflicts of interest that may influence the analyses or judgments of its rating analysts, employees, or any other natural person whose services are placed at the disposal or under the control of the credit rating agency and who are directly involved in credit rating activities or persons approving credit ratings and rating outlooks.”

B) Factual findings

There were several relevant interactions between a specific individual, a group of entities to which Scope provided rating and ancillary services and companies of Scope’s group, which gave rise to a potential conflict of interest.

The individual held high seniority positions in the mentioned group of entities, such as non-executive chairman and chairman of a supervisory board. At the same time, the individual held a minority stake in Scope’s parent company and was a member of its Advisory Board. The individual also played a role in bringing these entities as a client to Scope’s group and was paid for this by Scope’s group. Regarding the rating activities performed for this group of entities, Scope issued in particular a rating and some rating actions on one of the entities of

the group. In relation to this, the individual had interactions with Scope's staff involved in rating activities.

Against this background, Scope failed to adequately identify and properly manage potential conflicts of interest relating to this specific individual.

C) Finding of the infringement

On the basis of the assessment of the complete file and the arguments raised by Scope in its written submissions, the Board found that Scope failed to comply with Article 6(2) of the CRA Regulation, read in conjunction with Point 1 of Section B of Annex I to the CRA Regulation, by failing to identify, eliminate, or manage and / or disclose in a clear and prominent manner any existing or potential conflicts of interest, therefore committing the infringement set out at Point 19 of Section I of Annex III to the CRA Regulation.

Furthermore, the Board found that Scope did not meet the special care expected from a CRA as a professional firm in the financial services sector. Therefore, the Board found that Scope 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 CRA 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 to the CRA Regulation and therefore fined Scope EUR 687,500.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on Scope is EUR 687,500.

Fifth infringement

By failing to comply with its obligation to disclose the provision of ancillary services, Scope negligently committed the infringement set out at Point 2 of Section III of Annex III to the CRA Regulation.

A) Relevant legal provisions

Article 6 of the CRA 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.”

The third paragraph of Point 4 of Section B of Annex I to the CRA Regulation provides:

“A credit rating agency shall ensure that the provision of ancillary services does not present conflicts of interest with its credit rating activities and shall disclose in the final ratings reports any ancillary services provided for the rated entity or any related third party.”

Point 2 of Section III of Annex III to the CRA Regulation provides:

“The credit rating agency infringes Article 6(2), in conjunction with the second part of the third paragraph of point 4 of Section B of Annex I, by not disclosing in the final rating report an ancillary service provided for the rated entity or any related third party.”

B) Factual findings

Scope published a credit rating for an entity to which it also provided ancillary services and failed to mention the provision of ancillary services in the final rating report.

C) Finding of the infringement

On the basis of the assessment of the complete file and the arguments raised by Scope in its written submissions, the Board found that Scope failed to comply with Article 6(2) of the CRA Regulation, read in conjunction with the second part of the third paragraph of Point 4 of Section B of Annex I to the CRA Regulation, by failing to disclose in the final rating report the provision of ancillary services provided for the rated entity, therefore committing the infringement set out at Point 2 of Section III of Annex III to the CRA Regulation.

Furthermore, the Board found that Scope did not meet the special care expected from a CRA as a professional firm in the financial services sector. Therefore, the Board found that Scope 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 CRA Regulation. In addition, the Board considered that none of the aggravating factors was applicable to this

infringement and applied one mitigating factor (the CRA has voluntarily taken measures to ensure that similar infringements cannot be committed in the future) prescribed by Annex IV to the CRA Regulation and therefore fined Scope EUR 135,000.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on Scope is EUR 135,000.

Overall fine

The overall fine to be imposed on Scope for five infringements committed with negligence amount to EUR 2,197,500.