

PUBLIC NOTICE

Fitch Ratings Limited (“Fitch”) is a credit rating agency (CRA) registered in the European Union and is part of the Fitch group of companies.

Regulation (EC) No 1060/2009 on credit rating agencies (the “CRA Regulation”) confers on ESMA the power to supervise and enforce the provisions of the CRA Regulation in relation to credit rating agencies registered in the European Union.

On foot of a thematic review of sovereign rating processes within certain CRAs in the period from 1 September 2010 to 25 February 2013, the team responsible for supervision of credit rating agencies in ESMA formed the view that there were serious indications of the possible existence of facts liable to constitute the commission by Fitch of one or more of the infringements listed in the CRA Regulation. The matter was accordingly referred to an independent investigating officer (the “IIO”). The IIO considered the evidence referred to him and conducted further investigations, before submitting his findings to ESMA’s Board of Supervisors (the “ESMA Board”).

Based on the findings of the IIO and the evidence put before it, the ESMA Board found that an examination of the facts showed that Fitch had committed the following infringements of the CRA Regulation.

Fitch committed an infringement of the CRA Regulation by failing to allow the Republic of Slovenia 12 hours to consider and respond to the downgrade of its sovereign rating in 2012

A) The relevant legal provisions

Article 10(2) of the CRA Regulation provides:

“Credit rating agencies shall ensure that credit ratings are presented and processed in accordance with the requirements set out in Section D of Annex I.”

Annex I, Section D, Part I, point 3, of the CRA Regulation provides:

“The credit rating agency shall inform the rated entity at least 12 hours before publication of the credit rating and of the principal grounds on which the rating is based in order to give the entity an opportunity to draw attention of the credit rating agency to any factual errors.”

Annex III, Section III, point 7, of the CRA Regulation provides:

“The credit rating agency infringes Article 10(2), in conjunction with point 3 of Part I of Section D of Annex I, by not informing the rated entity at least 12 hours before publication of the credit rating.”

B) The factual background

The evidence put before the ESMA Board showed the following. On 26 January 2012, Fitch informed the representatives of the Republic of Slovenia of its intention to downgrade its sovereign rating for that Member State, without offering any information on the grounds on which such intended downgrade was based. Only on the following day did Fitch transmit that information to the representatives of the Republic of Slovenia who, for their part, made it known that, in accordance with the CRA Regulation, they expected to be granted 12 hours as of that transmission in order to assess the information. Fitch nevertheless publicly announced the downgrade only some 3 hours after the latter transmission.

C) The infringement committed by Fitch

Based on the evidence put before it, the ESMA Board found that Fitch did not meet the requirement set out in the CRA Regulation that a CRA must, at least 12 hours prior to its publication of a credit rating for a rated entity, inform the entity of the rating and of the principal grounds on which the rating is based (‘the 12 hour requirement’) and that Fitch had thus committed the infringement specified at Annex III, Section III, point 7 of the CRA Regulation.

Based on the evidence put before it, the ESMA Board furthermore found that Fitch had committed the relevant infringement negligently and thus decided to impose a fine. Taking into account the mitigating factor that Fitch has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future, the fine imposed on Fitch was set at EUR 60,000.

Fitch committed an infringement of the CRA Regulation by not having sound internal controls enabling it to comply with ‘the 12 hour requirement’

A) The 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 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, 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 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.”

Annex III, Section I, point 12, of 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) The factual background

The evidence put before the ESMA Board showed, notably, that between 1 June 2011 and 14 February 2012, Fitch’s internal controls for the purpose of enabling compliance with the 12 hour requirement were affected by substantial shortcomings, namely:

- Fitch’s policy framework provided unclear guidance to staff on how to comply with the 12 hour requirement;
- At the business level, those responsible for supervising compliance with the 12 hour requirement within Fitch’s sovereign and international public finance group did not exercise their control functions;
- Fitch’s internal control functions did not detect the absence of control at the business level;
- Follow-up action taken by Fitch’s internal control functions did not detect and adequately address the above shortcomings.

C) The infringement committed by Fitch

Based on the evidence put before it, the ESMA Board found that, for the period between 1 June 2011 and 14 February 2012, Fitch did not meet the requirement set out in the CRA Regulation that a CRA must have sound internal controls and that Fitch had thus committed the infringement specified at Annex III, Section I, point 12 of the CRA Regulation.

Based on the evidence put before it, the ESMA Board furthermore found that Fitch had committed the relevant infringement negligently and thus decided to impose a fine. Taking into account the aggravating factor that the infringement was committed for more than six months and the mitigating factor that Fitch has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future, the fine imposed on Fitch was set at EUR 825,000.

Fitch committed an infringement of the CRA Regulation by making unauthorised disclosures of new and potential new sovereign ratings before that information was made public

A) The relevant legal provisions

Article 7 of the CRA Regulation provides:

“1. A credit rating agency shall ensure that rating analysts, its employees and any other natural person whose services are placed at its disposal or under its control and who are directly involved in credit rating activities have appropriate knowledge and experience for the duties assigned.

[...]

3. *A credit rating agency shall ensure that persons referred to in paragraph 1 meet the requirements set out in Section C of Annex I.*

[...]"

Annex I, Section C, of the CRA Regulation on “Rules on rating analysts and other persons directly involved in credit rating activities” provides:

“1. Rating analysts, employees of the credit rating agency as well as any other natural person whose services are placed at the disposal or under the control of the credit rating agency and who is directly involved in credit rating activities, and persons closely associated with them within the meaning of Article 1(2) of Directive 2004/72/EC [...]

3. *Credit rating agencies shall ensure that persons referred to in point 1:*

(a) [...]

(b) do not disclose any information about credit ratings or possible future credit ratings of the credit rating agency, except to the rated entity or a related third party;

(c) do not share confidential information entrusted to the credit rating agency with rating analysts and employees of any person directly or indirectly linked to it by control, as well as with any other natural person whose services are placed at the disposal or under the control of any person directly or indirectly linked to it by control, and who is not directly involved in the credit rating activities; and

(d) do not use or share confidential information [...] for any other purpose except the conduct of the credit rating activities.”

The above provisions applied to Fitch as of 7 September 2010.

Annex III, Section I, point 34 of the CRA Regulation, which applied to Fitch as of 1 June 2011, provides:

“The credit rating agency infringes Article 7(3), in conjunction with points (b), (c) and (d) of point 3 of Section C of Annex I, by not ensuring that a person referred to in point 1 of that Section does not disclose or use or share information, as referred to in these points.”

[...]

B) The factual background

The evidence put before the ESMA Board showed that, from 1 December 2010 to 7 June 2012, certain senior analysts in Fitch transmitted information about new and potential new sovereign ratings to certain senior persons in Fimalac S.A. At the time Fimalac S.A. was, alongside the Hearst Corporation, the ultimate parent company of Fitch.

Between 1 December 2010 and 7 June 2012, there were nine separate sets of email exchanges concerned actual or potential changes in at least eleven sovereign ratings relating to six countries (Greece, France, Ireland, Italy, Portugal and Spain).

Five of the nine sets of email exchanges took place in the period from 1 December 2010 to 1 June 2011. As indicated in Section B) above, from 7 September 2010, Fitch was subject to the requirement not to share or disclose information about new or potential new credit ratings with any person not involved in the production of the ratings. However, it was only for such sharing or disclosure of information that took place in the period from 1 June 2011 onwards that the ESMA Board could find an infringement of that requirement. Four of the nine email exchanges took place in the period from 1 June 2011 onwards.

C) The infringement committed by Fitch

Based on the evidence put before it, the ESMA Board found that Fitch had failed to meet the requirement of the CRA Regulation as regards not sharing or disclosing information about new or potential new credit ratings with persons not involved in the production of the ratings and that Fitch had thus committed the infringement specified at Annex III, Section I, point 34 of the CRA Regulation in the period from 1 June 2011 to 7 June 2012.

Based on the evidence put before it, the ESMA Board furthermore found that Fitch had committed the relevant infringement negligently and thus decided to impose a fine. Taking into account the aggravating factor that the infringement was committed for more than six months and the mitigating factor that Fitch has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future, the fine imposed on Fitch was set at EUR 495,000.



Supervisory measure and fine

Public notice

Based on the provisions of Article 24 of the CRA Regulation, the ESMA Board decided that the relevant infringements warranted a supervisory measure in the form of the publication of this public notice.

Fine

The overall fine imposed on Fitch in respect of the negligent infringements found to have been committed is EUR 1,380,000.