

Public Notice

Scope Ratings GmbH (formerly Scope Ratings AG – from now on ‘Scope’) is a German-based credit rating agency (CRA), registered since 24 May 2011, with branch offices in the UK, Italy, France and Norway.

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 of 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 Article 8(3) of the Regulation, the CRAs shall use rating methodologies that are systematic. The provision is supplemented by Article 5(1) of the Delegated Regulation No 447/2012, that further clarifies that the CRAs shall use credit rating methodologies which are applied systematically in the formulation of all credit ratings in a given asset class or market segment unless there is an objective reason for diverging from the established methodology. Pursuant to Article 2 of the Delegated Regulation, the CRAs shall at all times be able to demonstrate to ESMA the compliance with the requirements set in Article 8(3) of the Regulation.

Moreover, according to Article 8(5)(a), Article 8(6)(aa), Article 8(6)(ab) and Article 14(3) third subparagraph of the Regulation, when a CRA intends to make material changes to any of its rating methodologies, it must publish the proposed material changes on its website, inviting stakeholders to submit comments for a period of one month, together with a detailed explanation of the reasons for and the implications of the proposed material changes. The CRA must also notify ESMA of the intended material changes to the rating methodology. After the expiry of the consultation period, the CRA shall inform ESMA about the results of the consultation and publish them on its website (including the individual responses). Finally, the CRA shall notify ESMA of any changes to the methodology due to the consultation.

In 2018, ESMA’s Supervisory Department concluded, following preliminary investigations, 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 Regulation (EC) No 1060/2009.

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

Having considered the evidence, the Board of Supervisors has found that Scope negligently committed the following infringements of the Regulation.

First Infringement

Scope negligently committed the infringement set out at Point 43 of Section I of Annex III of the Regulation (by not having applied the 2015 CB Methodology in a systematic way).

A) Relevant legal provisions

CRA Regulation

Article 8 (*Methodologies, models and key rating assumptions*)

Para. 3. *A credit rating agency shall use rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing.*

Delegated Regulation (EU) No 447/2012

Article 2 (*Demonstration of compliance*)

A credit rating agency shall at all times be able to demonstrate to ESMA its compliance with the requirements set out in Article 8(3) of Regulation (EC) No. 1060/2009 relating to the use of credit rating methodologies.

Article 5 (*Assessing that a credit rating methodology is systematic*)

Para. 1. *A credit rating agency shall use a credit rating methodology and its associated analytical models, key credit rating assumptions and criteria that are applied systematically in the formulation of all credit ratings in a given asset class or market segment unless there is an objective reason for diverging from it.*

Annex III - *List of infringements referred to in Article 24(1) and Article 36a(1)*

Section I - *Infringements related to conflicts of interest, organisational or operational requirements*

Point 43. *The credit rating agency infringes Article 8(3) by not using rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing.*

B) Factual findings and analysis of the Board

In 2015, Scope adopted a Covered Bond Methodology, which foresaw, in addition to an analysis of the issuer credit strength, an analysis constituted of two further elements: the first building block consisted of the analysis of the legal framework and the resolution regime, whereas the second building block consisted of the analysis of the cover pool. The 2015 Covered Bond Methodology also specified that a thorough analysis of the cover pool had to be performed for all rated covered bonds.

The 2015 Covered Bond Methodology was applied by Scope for issuing ratings to 17 covered bond programmes, which amounted to a total of 622 ratings. The cover pool was only analysed in two of these covered bond programmes. On the contrary, the ratings issued in September and November 2015 did not comprise the type of analysis of the cover pool which was foreseen by the 2015 Covered Bond Methodology.

The Board therefore found that the 2015 Covered Bond Methodology was not applied systematically. In addition, the Board found that there were no objective reasons for divergence from the systematic application of the 2015 Covered Bond Methodology.

Furthermore, the Board noted that the ratings without the foreseen cover pool analysis constitute 559 ratings out of the 622 ratings which were assigned on the basis of the 2015 Covered Bond Methodology, i.e. they were not an exception.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised in the written submissions, the Board found that Scope failed to comply with the requirements of Articles 8(3) of the Regulation as supplemented by Article 5(1) of the Delegated Regulation No 447/2012 and thus committed the infringement set out at Point 43 of Section I of Annex III, of the 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 Regulation, which, *inter alia*, takes into account the size of the CRA. In addition, the Board applied the relevant aggravating and mitigating factors prescribed by Annex IV of the Regulation and therefore fined Scope EUR 550 000.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on Scope Ratings GmbH is EUR 550 000.

Second set of Infringements

Scope negligently committed the infringements set out at: Point 3a of Section II of Annex III of the Regulation (by not having notified ESMA of the intended material changes to the 2015 CB Methodology); Point 3b of Section II of Annex III of the Regulation (by not having published on its website the proposed material changes to the 2015 CB Methodology); Point 4a of Section III of Annex III of the Regulation (by not having informed ESMA and not having published immediately on its website the results of a consultation about the 2015 CB Methodology).

B) Relevant legal provisions

CRA Regulation

Article 8 (*Methodologies, models and key rating assumptions*)

Para. 5a. A credit rating agency that intends to make a material change to, or use, new rating methodologies, models or key rating assumptions which could have an impact on a credit rating shall publish the proposed material changes or proposed new rating methodologies on its website inviting stakeholders to submit comments for a period of one month together with a detailed explanation of the reasons for and the implications of the proposed material changes or proposed new rating methodologies.

Article 8 (*Methodologies, models and key rating assumptions*)

Para. 6 Where rating methodologies, models or key rating assumptions used in credit rating activities are changed in accordance with Art. 14(3), a credit rating agency shall:

(aa) immediately inform ESMA and publish on its website the results of the consultation and the new rating methodologies together with a detailed explanation thereof and their date of application;

(ab) immediately publish on its website the responses to the consultation referred to in paragraph 5a except in cases where confidentiality is requested by the respondent to the consultation; (...)."

Article 14 (*Requirement for registration*)

Para. 3 (3) Without prejudice to the second subparagraph, the credit rating agency shall notify ESMA of the intended material changes to the rating methodologies, models or key rating assumptions or the proposed new rating methodologies, models or key rating assumptions when the credit rating agency publishes the proposed changes or proposed new rating methodologies on its website in accordance with Article 8(5a). After the expiry

of the consultation period, the credit rating agency shall notify ESMA of any changes due to the consultation.

Annex III - *List of infringements referred to in Article 24(1) and Article 36a(1)*

Section II - *Infringements related to obstacles to the supervisory activities*

Point 3a. The credit rating agency infringes the third subparagraph of Article 14(3) by not notifying ESMA of the intended material changes to the existing rating methodologies, models or key rating assumptions or of the proposed new rating methodologies, models or key rating assumptions when it publishes the rating methodologies on its website in accordance with Article 8(5a).

Point 3b. The credit rating agency infringes the first subparagraph of Article 8(5a) by not publishing on its website the proposed new rating methodologies or the proposed material changes to the rating methodologies that could have an impact on a credit rating together with an explanation of the reasons for and the implications of the changes.

Section III - *Infringements related to disclosure provisions*

Point 4a. The credit rating agency infringes point (aa) of Article 8(6), where it intends to use new rating methodologies, by not informing ESMA or by not publishing immediately on its website the results of the consultation and those new rating methodologies together with a detailed explanation thereof and their date of application.

B) Factual findings and analysis of the Board

In 2016, Scope introduced changes to its 2015 Covered Bond Methodology.

However, Scope did not publish on its website the proposed material changes and did not invite stakeholders to submit comments for a period of one month; it was therefore unable to publish on its website the results of this consultation; it also did not notify ESMA of the intended material changes at the time of the consultation and did not notify ESMA of changes due to this consultation.

The Board found that the changes introduced in 2016 to the 2015 Covered Bond Methodology were material, because they modified the way in which an assessment of the cover pool had to be performed under this methodology.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised in the written submissions, the Board found that Scope failed to comply with the requirements of Articles 8(5a), 8(6) (aa) and 14(3) third subparagraph of the Regulation, and thus it committed the infringements set out at Point 3b of Section II of Annex III, Point 4a of Section III of Annex III, Point 3a of Section II of Annex III.

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 Regulation, which, *inter alia*, takes into account the size of the CRA. Therefore:

- i) the fine to be imposed for the negligent infringement set out at Point 3a of Section II of Annex III of the Regulation amounts to EUR 25 000 (there being no applicable aggravating or mitigating factors).
- ii) The fine to be imposed for the negligent infringement set out at Point 3b of Section II of Annex III of the Regulation amounts to EUR 25 000 (there being no applicable aggravating or mitigating factors).
- iii) The fine to be imposed for the negligent infringement set out at Point 4a of Section III of Annex III of the Regulation amounts to EUR 90 000 (there being no applicable aggravating or mitigating factors).

Nevertheless, the Board considered that the infringements of Points 3a and 3b of Section II of Annex III and Point 4a of Section III of Annex III stem by the same act. In accordance with Article 36a(4) of the Regulation, only the highest fine of EUR 90 000 related to the infringement of Point 4a of Section III of Annex III is applicable in this investigation regarding these three infringements.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on Scope Ratings GmbH is EUR 90 000.

Overall fine

The overall fine to be imposed on Scope Ratings GmbH for four infringements committed with negligence amount to EUR 640 000 (EUR 550 000 + EUR 90 000).