

Translation of Liechtenstein Law

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English title:	Law implementing Regulation (EC) No 1060/2009 on credit rating agencies (CRA Implementation Act; CRA-DG)
Original German title:	Gesetz zur Durchführung der Verordnung (EG) Nr. 1060/2009 über Ratingagenturen (CRA-Durchführungsgesetz; CRA-DG)
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Law

of 1 December 2016

**implementing Regulation (EC) No 1060/2009
on credit rating agencies
(CRA Implementation Act; CRA-DG)**

I hereby grant My consent to the following resolution adopted by Parliament:¹

Article 1

Purpose

1) This Act serves to implement Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (EEA Compendium of Laws: Annex IX - 31eb.01) as amended.

2) The amended version currently in force of the EEA legislation referred to in paragraph 1 is referenced in the promulgation of the decisions of the EEA Joint Committee in the Liechtenstein Law Gazette pursuant to Article 3(k) of the Promulgation Act.

Article 2

Designations

The designations of persons and functions contained in this Act shall apply to persons of female and of male gender.

¹ Report and Motion of the Government No. 100/2016, Statement of the Government No. 142/2016

Article 3

Competent and sectoral competent authorities

1) The FMA is the competent authority for Liechtenstein as referred to in Article 22 of Regulation (EU) No 1060/2009 and shall exercise the functions and powers assigned to a competent authority under Regulation (EU) No 1060/2009 and this Act.

2) As the sectoral competent authority within the meaning of Article 25a of Regulation (EC) No 1060/2009, the FMA shall enforce the provisions of Article 4(1) and Articles 5a, 8c and 8d of Regulation (EC) No 1060/2009 in accordance with the relevant sectoral legislation and shall take the necessary supervisory measures.²

Article 4

Legal remedies

1) Decisions of the FMA may be appealed within 14 days of service by way of complaint to the FMA Complaints Commission.

2) Decisions of the FMA Complaints Commission may be appealed within 14 days of service by way of complaint to the Administrative Court.

Article 5

Contraventions

1) Unless the act constitutes an offence falling within the jurisdiction of the courts, the FMA shall punish with a fine of up to 200 000 Swiss francs for committing a contravention anyone who:

- a) as an institution as referred to in Article 3(1)(pa) to (pi) of Regulation (EC) No 1060/2009 uses a credit rating contrary to Article 4(1)(1) of Regulation (EC) No 1060/2009;
- b) as an issuer, offeror, or person asking for admission to trading on a regulated market fails to comply with their obligation to provide information in the prospectus under Article 4(1)(2) of Regulation (EC) No 1060/2009;

² Article 3(2) amended by LGBL 2020 No. 508.

- c) as an institution as referred to in Article 3(1)(pa) to (pi) of Regulation (EC) No 1060/2009 fails to make their own credit risk assessment, contrary to Article 5a of Regulation (EC) No 1060/2009;
- d) Repealed³
- e) as an issuer or a related third party solicits credit ratings contrary to Article 8c of Regulation No 1060/2009;
- f) as an issuer or a related third party fails to comply with their documentation obligation under the second sentence of Article 8d(1) of Regulation No 1060/2009.

2) The FMA shall impose fines as referred to in paragraph 1 against a legal person if the contraventions are committed in the exercise of the business activities of the legal person (underlying offences) by persons, either acting alone or as a member of the board of directors, the general management, the management board or supervisory board of the legal person or on the basis of another leadership position within the legal person, on the basis of which they:

- a) are authorised to represent the legal person externally;
- b) exercise powers of control in a leading position; or
- c) otherwise exercise material influence over the management of the legal person.

3) For contraventions as referred to in paragraph 1 committed by employees of the legal person, even though not culpably, the legal person shall be responsible also if the contravention was made possible or significantly facilitated by the fact that the persons referred to in paragraph 2 failed to take necessary and reasonable measures to prevent such underlying offences.

4) The responsibility of the legal person for the underlying offence and the punishability of the persons referred to in paragraph 2 or of employees referred to in paragraph 3 for the same offence are not mutually exclusive. The FMA may refrain from punishing a natural person if a monetary fine has already been imposed on the legal person for the same infringement and there are no special circumstances preventing a waiver of the punishment.

5) Where the offences are committed with negligence, the maximum penalty set out in paragraph 1 shall be reduced by half.

³ Article 5(1)(d) repealed by LGBl. 2020 No. 508.

- 6) When imposing fines pursuant to paragraph 1, the FMA shall take the following into account:
- a) with reference to the infringement, in particular:
 - 1. its gravity and duration;
 - 2. the importance of profits gained or losses avoided, insofar as they can be determined;
 - 3. the losses sustained by third parties, insofar as they can be determined;
 - 4. possible systemically important impact;
 - b) with reference to the natural or legal persons responsible for the infringement, in particular:
 - 1. the degree of responsibility;
 - 2. the financial strength;
 - 3. the willingness to cooperate with the FMA;
 - 4. previous infringements and measures taken to prevent infringements from recurring.

Article 6

Publication of decisions

The FMA shall publish every final decision on a penalty imposed for an infringement under Article 5 on its website. It may publish these decisions on an anonymous basis where publication of the personal data:

- a) would be disproportionate, taking into account the damage to the party concerned; or
- b) would jeopardise the stability of the financial markets.

Article 7

Responsibility

Where violations are committed in the business operations of a legal person or a general or limited partnership or a sole proprietorship, then the penal provisions shall apply to the persons who acted or should have acted on its behalf; the legal person, partnership, or sole proprietorship shall, however, be jointly and severally liable for monetary penalties and fines.

Article 8

Entry into force

Subject to expiry of the referendum period without a referendum being called, this Act shall enter into force on 1 February 2017, otherwise on the day following its promulgation.

Representing the Reigning Prince:
signed *Alois*
Hereditary Prince

signed *Adrian Hasler*
Prime Minister