



Représentant les avocats d'Europe
Representing Europe's lawyers

**CCBE PROPOSED AMENDMENTS TO COMMISSION PROPOSAL FOR
A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL ON CREDIT RATING AGENCIES, COM(2008) 704 FINAL**

Conseil des barreaux européens – Council of Bars and Law Societies of Europe

association internationale sans but lucratif

Avenue de la Joyeuse Entrée 1-5 – B 1040 Brussels – Belgium – Tel.+32 (0)2 234 65 10 – Fax.+32 (0)2 234 65 11/12 – E-mail ccbe@ccbe.eu – www.ccbe.eu

**CCBE PROPOSED AMENDMENTS TO COMMISSION PROPOSAL
FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON CREDIT RATING AGENCIES, COM(2008) 704 FINAL**

(Changes are highlighted in bold and italic.)

Commission proposal

Article 20

Powers of competent authorities

1. In carrying out their duties under this Regulation competent authorities of Member States shall not interfere with the content of credit ratings.

2. In order to fulfil their duties competent authorities shall have all the supervisory and investigatory powers that are necessary for the exercise of their functions. They shall exercise their powers:
(a) directly;
(b) in collaboration with other authorities; or
(c) by application to the competent judicial authorities.

3. The competent authorities of Member States shall have the following powers:
(a) have access to any document in any form and to receive or take a copy thereof;
(b) demand information from any person and if necessary to summon and question a person with a view to obtaining information;
(c) carry out on-site inspections with or without announcement;
(d) require records of telephone and data traffic.

Justification

Professional secrecy/legal professional privilege of lawyers is a generally recognised principle in all Member States (1). Everyone has the right to consult a lawyer in order to ask advice which is provided on the basis of strict confidentiality. The obligation of a lawyer to professional secrecy serves the interest of judicial administration. The European Court of Justice in the AM&S case (2) and the Wouters case (3) expressed the importance of professional secrecy/legal professional privilege for the maintenance of the rule of law. A competent authority with the powers specified in Article 20 would seriously undermine professional secrecy/legal professional privilege.

(1) Judgement of the Court of 19 February 2002, Case C-309/99, Wouters and others v. Algemene Raad van de Nederlandse Orde van Advocaten, [2002] ECR 1577.

(2) Judgement of the Court of 18 May 1982, Case 155/79, Australian Mining and Smelting Europe Ltd. (AM and S Europe Ltd.) v. Commission, [1982] ECR 1575.

(3) See footnote 1 above.

CCBE proposed amendments

Article 20

Powers of competent authorities

1. (no changes)

2. In order to fulfil their duties competent authorities shall have all the supervisory and investigatory powers that are necessary for the exercise of their functions. ***Competent authorities will, however, need to observe national rules on professional secrecy and legal professional privilege.*** They shall exercise their powers:
(a) directly;
(b) in collaboration with other authorities; or
(c) by application to the competent judicial authorities.

3. The competent authorities of Member States shall have the following powers:
(a) have access to any document in any form and to receive or take a copy thereof;
(b) demand information from any person and if necessary to summon and question a person with a view to obtaining information;
(c) carry out on-site inspections with or without announcement;
(d) require records of telephone and data traffic.

When exercising these powers, the competent authorities will need to observe national rules on professional secrecy and legal professional privilege.