Credit rating agencies: supervision

2010/0160(COD) - 22/11/2010

The Committee on Economic and Monetary Affairs adopted the report by Jean-Paul GAUZÈS (EPP, FR) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies.

The committee recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Scope of the competences of the ESMA: the amendments seek to provide further details or clarifications concerning the powers of the European Supervisory Authority (European Securities and Markets Authority - ESMA) in its relations with the competent national authorities:

- European Supervisory Authority (European Securities and Markets Authority) should be **exclusively responsible** for the registration and ongoing supervision of registered credit rating agencies;
- to reinforce competition between credit rating agencies, to help avoid possible conflicts of interest under the issuer-pays model, and to enhance transparency and the quality of ratings for finance instruments, registered or certified credit rating agencies should be able to access information on finance instruments that are being rated by their appointed competitors in order to be in a position to **provide unsolicited ratings**;
- Member States' authorities should be obliged to assist the ESMA in enforcing such requests and should ensure that the requisite information can be **made available without delay**;
- in order effectively to exercise its supervisory powers, the ESMA should have the right to conduct **unannounced investigations** and on-site-inspections;
- competent authorities should communicate any information required pursuant to this Regulation to, and cooperate with, the ESMA. For credit rating agencies whose turnover is below a certain amount, the ESMA should also be able to **delegate part of its supervisory functions** to the competent authorities. The functions relating to registration should not be subject to such delegation;
- the ESMA should have **the power to impose fines**. Moreover, for deterrence purposes and to compel credit rating agencies to comply with the Regulation, the ESMA should also be able to impose fines where, intentionally or negligently, specific provisions of the Regulation have been breached.

Registration: the registration of a credit rating agency granted by a competent authority should remain valid throughout the Union after the transition of supervisory powers from competent authorities to the ESMA. This is to make explicit that there will be no requirement for a re-registration or second registration once ESMA takes up its duties in January 2011.

A credit rating agency shall submit its application in any of the official languages of the Union and in a language customary in the sphere of international finance. The ESMA shall, within **45 working days** (rather than 30) of the notification.

Information regarding structured financial instruments (Article 8a):by 1 July 2012, the Commission shall assess and report on the functioning of this article, including its costs and benefits, its impacts on the level of concentration in the credit rating market, on the reliance on credit ratings in the Union, on investors and on issuers. The Commission shall submit its report to the European Parliament and the Council.

By 1 July 2014, the ESMA shall review the functioning of this article and shall, on the basis of that review, issue an opinion to the European Parliament, the Council and the Commission. In the light of that opinion, the Commission shall, if appropriate, make proposals to amend the article.

Ongoing revision of credit ratings: Members introduced a new article stipulating that during the day-to-day operation of credit rating agencies, the ESMA shall, without notice and on the basis of random samples, review credit ratings issued by credit rating agencies registered under this Regulation. For that purpose, the ESMA shall request that credit rating agency concerned submit to it all the information used to establish relevant credit ratings and a detailed report on the method of rating. The credit rating agency shall submit the information and report within three working days of such request.

If, when reviewing ratings the ESMA identifies breaches of the Regulation, it may, in accordance with the gravity of such breaches: i) call on the credit rating agency to explain the circumstances; ii) ask the credit rating agency for further information; iii) review other credit ratings issued by the credit rating agency; or iv) take more extensive measures such as a comprehensive inspection of the credit rating agency.

ESMA Report: by 31 December 2011, the ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.

By 1 July 2014 and within the scope of its on-going supervision, the ESMA shall conduct at least one investigation of all credit rating agencies falling under its supervisory competences.

Delegated acts: when preparing and drawing-up delegated acts, the Commission should ensure early and continuous transmission of information of relevant documents to the European Parliament and the Council.

The European Parliament and the Council should have three months from the date of notification to object to a delegated act. On the initiative of the European Parliament or the Council, it should be possible to prolong that period by three months in regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.