

Credit rating agencies: supervision

2010/0160(COD) - 15/12/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 611 votes to 15, with 26 abstentions, a legislative resolution 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 amendments are the result of a compromise between Council and Parliament.

The main 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 and amend the Commission's proposal as follows:

Registration and supervision of credit rating agencies: the European Supervisory Authority (European Securities and Markets Authority) should be exclusively responsible for the registration and ongoing supervision of registered credit rating agencies. In the event that it delegates specific tasks to the Member States' competent authorities, it remains legally responsible.

ESMA should have the exclusive power to conclude cooperation agreements on information exchange with competent authorities of third countries. To the extent that competent authorities participate in the decision-making process within ESA (ESMA) or when executing tasks on behalf of ESA (ESMA), they should be covered by those cooperation agreements.

Technical regulatory standards: ESMA should submit draft regulatory technical standards concerning the information to be provided by a credit rating agency in its application for registration. In areas not covered by technical standards, ESA (ESMA) should have the power to issue and update non-binding guidelines on issues related to the application of Regulation (EC) No 1060/2009.

Requests for information: in order to carry out its duties effectively, ESMA should have the right to request by simple request or by decision all necessary information from credit rating agencies, persons involved in credit rating activities, rated entities and related third parties, third parties to whom the credit rating agencies have outsourced operational functions and persons otherwise closely and substantially related or connected to credit rating agencies or credit rating activities.

If ESMA requests such information by simple request, the addressee is not obliged to provide the information but, in the event of a voluntary reply to the request, the information provided should not be incorrect or misleading. Such information should be made available without delay.

The powers conferred on ESMA may not be used to require the disclosure of information or documents which are subject to legal privilege.

General investigations: ESMA may conduct all necessary investigations of persons who are involved in credit rating activities. To that end, the officials and other persons authorised by ESMA shall be empowered to: i) summon and ask any person for oral or written explanations on facts or documents related to the subject matter and purpose of the inspection and to record the answers; ii) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation.

In order to carry out its duties, ESMA may conduct all necessary on-site inspections at the business premises of the legal persons covered by this Regulation. Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on-site inspection without prior announcement. Officials

of the competent authority of the Member State concerned may also attend the on-site inspections on request.

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

Examination of the respect of back-testing obligation: in the exercise of its ongoing supervision of credit rating agencies registered under this Regulation, ESMA shall examine regularly credit rating agencies' respect of the back-testing obligation.

ESMA shall also, in the framework of the examination, a) verify the execution of back-testing by credit rating agencies; b) analyse the results of that back-testing; and c) verify that the credit rating agencies have processes in place to take into account the results of the back-testing into their rating methodologies.

Fines and penalties: ESMA should also be able to impose fines on credit rating agencies, where it finds that they have committed, intentionally or negligently, an infringement of Regulation (EC) No 1060/2009. Fines should be imposed according to the level of seriousness of the infringements. These may range as high as EUR 750 000.

In order to fix the amount of the fine related to a specific infringement, ESMA should use a two-step methodology consisting of i) the setting of a basic amount for the fine and ii) the adjustment, if necessary, of that basic amount by certain coefficients. The basic amount should be established by taking into account the annual turnover of the credit rating agency concerned, and the adjustments should be made by increasing or decreasing the basic amount through the application of the relevant aggravating or mitigating coefficients in accordance with this Regulation. The basic amount shall be at the lower end of the limit for credit rating agencies whose annual turnover is below EUR 10 million, the middle of the limit for the credit rating agencies whose annual turnover is between EUR 10 and 50 million and the higher end of the limit for the credit rating agencies whose annual turnover is higher than EUR 50 million.

The amount of the fine shall not exceed 20% of the annual turnover of the credit rating agency concerned in the preceding business year and, where the credit rating agency has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

ESMA's Board of Supervisors shall by decision impose periodic penalty payments in order to compel a credit rating agency to put an end to an infringement or a person to supply complete information, compel a person to submit to an investigation or to submit to an on-site inspection.

The amount of the periodic penalty payments shall be 3% of the average daily turnover in the preceding business year or, in case of natural persons, 2% of the average daily income in the preceding calendar year.

The amended text introduces procedures for the adoption of supervisory measures and the imposition of fines. Where it finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements covered by the Regulation, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

ESMA shall present annually to the Commission, the European Parliament and the Council a report on penalties imposed including supervisory measures, fines and periodic penalty payments.

Transparency and competition: the amended text highlights that the transparency of information given by the issuer of a rated financial instrument to the appointed credit rating agency could have much

potential added value for the functioning of the market and investor protection. To strengthen competition between credit rating agencies and to help avoid possible conflicts of interest under the issuer pays model, the Parliament had asked that 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. This suggestion was rejected by the Member States but the adopted text calls on the Commission to analyse those issues further and to put forward appropriate legislative proposals. That further work should allow the definition of new transparency obligations in the manner most appropriate to meet the public interest, and most consistent with the protection of investors.

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.

ESMA report: by 31 December 2011, 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.