Credit rating agencies: supervision

2010/0160(COD) - 11/05/2011 - Final act

PURPOSE : to improve the supervision carried out by credit rating agencies by entrusting a single supervisory authority with the supervision of credit rating activities in the Union, providing a single point of contact for credit rating agencies and ensuring the consistent application of the rules for credit rating agencies.

LEGISLATIVE ACT: Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies.

CONTENT: following first reading agreement with the European Parliament, the Council adopted this Regulation amending Regulation (EC) 1060/2009 on credit rating agencies in order to introduce centralised oversight of credit rating agencies operating in the EU. The amendment is aimed in particular at entrusting the European Securities and Market Authority (EMSA) with the powers necessary to perform new tasks for the registration and oversight of credit rating agencies.

The main points of the Regulation are as follows:

Registration and supervision of credit rating agencies: ESMA is exclusively responsible for the registration and supervision of credit rating agencies in the Union. Where ESMA delegates specific tasks to competent authorities, ESMA continues to be legally responsible. The registration procedure is accordingly simplified and the time-limits reduced.

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

ESMA is responsible for the registration and ongoing supervision of credit rating agencies, but not for the oversight of the users of credit ratings.

Transparency and competition: 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. The Regulation does not reflect this request, but it invites the Commission to assess those issues in greater depth by giving further consideration to the appropriate scope of the disclosure obligation, having regard to the impact on local securitisation markets, further dialogue with interested parties, the monitoring of market and regulatory developments, and experience gained by other jurisdictions. In the light of that assessment, the Commission should put forward appropriate legislative proposals. The Commission's assessment and proposals 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.

Regulatory technical standards: ESMA should submit to the Commission draft regulatory technical standards concerning the information to be provided by a credit rating agency in its application for

registration, the information that a credit rating agency must provide for the application for certification and for an assessment of its systemic importance to the financial stability or integrity of financial markets. In areas not covered by regulatory technical standards, ESMA has the power to issue and update non-binding guidelines on issues related to the application of Regulation (EC) No 1060/2009.

Request for information: in order to carry out its duties effectively, ESMA is able to require, 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 to credit rating agencies or credit rating activities. If ESMA requires such information by simple request, the addressee is not obliged to provide the information but, in the event that it does so voluntarily, the information provided must not be incorrect or misleading. Such information must be made available without delay. The right of access does not extend to confidential information.

Investigations and inspections: in order to carry out its duties under the Regulation, ESMA may conduct all necessary on-site inspections. Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on- site inspection without prior announcement. The competent authorities should communicate any information required pursuant to Regulation (EC) No 1060/2009 and assist and cooperate with ESMA.

Fines and penalties: EMSA is 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 will be imposed according to the level of seriousness of the infringements. The infringements are divided into different groups for which specific fines are allocated. In order to calculate the fine related to a specific infringement, ESMA uses a two-step methodology (i) setting a basic amount and (ii) adjusting that basic amount, if necessary, by certain coefficients.

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 Regulation establishes coefficients linked to aggravating and mitigating circumstances in order to give the necessary tools to ESMA to decide on a fine which is proportionate to the seriousness of an infringement committed by a credit rating agency.

Before taking a decision to impose fines or periodic penalty payments, ESMA must give the persons subject to the proceedings the opportunity to be heard in order to respect their rights of defence.

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 benefitted financially from the infringement, the fine shall be at least equal to that financial benefit.

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

In the case of an infringement committed by a credit rating agency, ESMA is empowered to take a range of supervisory measures, including, but not limited to: (i) requiring the credit rating agency to bring the infringement to an end; (ii) suspending the use of credit ratings for regulatory purposes; (iii) temporarily prohibiting the credit rating agency from issuing credit ratings and, as a last resort (iv) withdrawing the registration when the credit rating agency has seriously or repeatedly infringed Regulation (EC) No 1060 /2009.

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

Report by EMSA: 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.

ENTRY INTO FORCE: 01/06/2011.

DELEGATED ACTS: the Commission is empowered to adopt delegated acts in assessing the equivalence of the regulatory and supervisory framework of a third country in order to take into account developments on financial markets. The powers to adopt such acts are conferred on the Commission for a period of 4 years beginning on 1 June 2011 (to be automatically extended for periods of an identical duration unless the delegation of powers is revoked by the European Parliament or the Council).The European Parliament or the Council may object to a delegated act within a period of 3 months from the date of notification (this may be extended by 3 months). If either of the two institutions objects, the delegated act shall not enter into force.