

Institutions for occupational retirement provision, undertakings of collective investment in transferable securities (UCITS) and Alternative Investment Funds Managers: risk management

2011/0360(COD) - 15/11/2011 - Legislative proposal

PURPOSE: to reduce the risk of over-reliance on credit ratings by financial market participants, including undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs).

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: [Regulation \(EC\) No 1060/2009](#) on credit rating agencies (CRA Regulation) entered into full application on 7 December 2010. It requires credit rating agencies (CRAs) to comply with rigorous rules of conduct in order to mitigate possible conflicts of interest, ensure high quality and sufficient transparency of ratings and the rating process. The Regulation was amended by [Regulation \(EU\) No 513/2011](#) which entrusted the European Securities and Markets Authority (ESMA) with exclusive supervisory powers over CRAs registered in the EU in order to centralise and simplify their registration and supervision at European level.

However, a number of issues related to credit rating activities and the use of ratings have not been sufficiently addressed in the existing CRA Regulation.

One of these issues is the risk of overreliance on credit ratings by financial market participants, including UCITS and AIFS who do not necessarily conducting their own assessments of the creditworthiness of issuers of such debt instruments.

The European Commission pointed to these open issues in its [Communication of 2 June 2010 on Regulating financial services for sustainable growth](#), and announced the need for a targeted review of the CRA Regulation. On 8 June 2011, the European Parliament adopted a non-legislative [resolution on CRAs](#), which supports the need to enhance the regulatory framework for credit rating agencies and to take measures to reduce the risk of over-reliance of ratings.

The European Council of 23 October 2011 concluded that progress is needed on reducing overreliance on credit ratings.

On the international level, the Financial Stability Board (FSB) issued in October 2010 principles to reduce authorities' and financial institutions' reliance on external ratings.

IMPACT ASSESSMENT: an impact assessment has been produced for this proposal. It can be found at http://ec.europa.eu/internal_market/securities/agencies/index_en.htm.

LEGAL BASIS: Article 53 (1) TFEU.

CONTENT: in order to reduce the risk of over-reliance of managers of UCITS and AIFs on credit ratings, the Commission proposes to introduce amendments to [Directive 2009/65/EC](#) on the coordination of law, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS) and [Directive 2011/61/EU](#) on Alternative Investment Fund Managers. The Commission is presenting in parallel a proposal of Regulation for the amendment of the CRA Regulation.

Amendment of Directive 2009/65/EC on UCITS: the proposal amends Article 51 of Directive 2009/65/EC as regards the risk management process:

- § it introduces a requirement for the management or investment company not to solely or mechanistically rely on external credit ratings for assessing the creditworthiness of the UCITS assets. External credit ratings may be used as one factor among others in this process but shall not prevail;
- § it proposes corresponding amendments to the existing powers of the Commission to adopt delegated acts with a view to specifying the provisions of Article 51(1) of 2009/65/EC.

Amendment of Directive 2011/61/EC on managers of AIFs: the proposal amends Article 15 of Directive 2011/61/EU as regards the risk management systems:

- § it introduces a requirement for the AIF Manager not to solely or mechanistically rely on external credit ratings for assessing the creditworthiness of the AIF assets. External credit ratings may be used as one factor among others in this process but shall not prevail;
- § it proposes corresponding amendments to the existing powers of the Commission to adopt delegated acts with a view to specifying the provisions of Article 15(1) of Directive 2011/61/EU.

The proposal provides for a transposition period of 12 months.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the EU.