Basic information

2010/0160(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Credit rating agencies: supervision Amending Regulation (EC) No 1060/2009 2008/0217(COD) **Subject** 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	GAUZÈS Jean-Paul (PPE)	15/06/2010

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	LEHNE Klaus-Heiner (PPE)	23/06/2010

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	3045	2010-11-17
Justice and Home Affairs (JHA)	3081	2011-04-11

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
02/06/2010	Legislative proposal published	COM(2010)0289	Summary
23/06/2010	Committee referral announced in Parliament, 1st reading		
17/11/2010	Debate in Council		Summary
22/11/2010	Vote in committee, 1st reading		Summary
25/11/2010	Committee report tabled for plenary, 1st reading	A7-0340/2010	

14/12/2010	Debate in Parliament		
15/12/2010	Decision by Parliament, 1st reading	T7-0478/2010	Summary
15/12/2010	Results of vote in Parliament		
11/04/2011	Act adopted by Council after Parliament's 1st reading		
11/05/2011	Final act signed		
11/05/2011	End of procedure in Parliament		
31/05/2011	Final act published in Official Journal		

Technical information

Procedure reference	2010/0160(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 1060/2009 2008/0217(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 114-p1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/03092

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE448.895	23/09/2010	
Amendments tabled in committee		PE450.763	28/10/2010	
Committee opinion	JURI	PE448.812	18/11/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0340/2010	25/11/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0478/2010	15/12/2010	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00070/2010/LEX	11/05/2011	

European Commission

Document type	Reference	Date	Summary
	COM(2010)0289		

Legislative proposal		02/06/2010	Summary
Document attached to the procedure	SEC(2010)0678	02/06/2010	
Document attached to the procedure	SEC(2010)0679	02/06/2010	
Commission response to text adopted in plenary	SP(2011)1477	23/02/2011	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	IT_SENATE	COM(2010)0289	06/08/2010	
Contribution	IT_CHAMBER	COM(2010)0289	06/08/2010	
Contribution	IT_CHAMBER	COM(2010)0289	06/08/2010	
Contribution	EL_PARLIAMENT	COM(2010)0289	17/09/2010	
Contribution	PT_PARLIAMENT	COM(2010)0289	17/09/2010	
Contribution	CZ_SENATE	COM(2010)0289	10/11/2010	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
ECB	European Central Bank: opinion, guideline, report	CON/2010/0082 OJ C 337 14.12.2010, p. 0001	19/11/2010	Summary

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2011/0513
OJ L 145 31.05.2011, p. 0030 Summary

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.

Credit rating agencies: supervision

2010/0160(COD) - 19/11/2010 - European Central Bank: opinion, guideline, report

OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies.

The ECB broadly welcomes the measures introduced by the proposed regulation with a view to strengthening the regulatory framework of credit rating agencies (CRAs), in particular with a view to: (a) attributing comprehensive powers to the European Securities and Markets Authority (ESMA) as regards the registration and surveillance of CRAs; and (b) introducing increased transparency and competition in the market for ratings of structured finance instruments.

The ECB considers that a single entity approach to supervision of CRAs is preferable to dispersed supervision from the perspective of ensuring coordination and a level playing field.

In this context, the ECB welcomes the attribution to ESMA of a number of tasks related to the registration and surveillance of CRAs. The ECB understands that the regulatory framework will preserve the national supervisory authorities' right to recognise CRAs as external credit assessment institutions.

The ECB broadly supports the transparency arrangements set out in the proposed new Articles 8a and 8b of the proposed regulation which require issuers of structured finance instruments to grant access to the information which they provide to their appointed CRA also to certain other CRAs.

However, the ECB wishes to point out certain potential concerns related to the implementation of the new disclosure requirements.

(1) Under the proposed arrangements, the CRA appointed to issue a credit rating in a given case is expected to be subject to increased competition from other eligible CRAs (non-appointed CRAs). Specifically, it may be easier for non-appointed CRAs to issue unsolicited credit ratings, since they will be given access to information provided by the issuer to the appointed CRA. However, there may be considerable barriers to market entry for the non-appointed CRAs related to: (a) the statutory eligibility criteria for access to the issuer's information; and (b) informal knowledge available to the appointed CRA as a result of its long-standing relations with the issuer. Indeed, experience with the transparency rules introduced by the SEC has not yet conclusively confirmed that such rules have a substantive effect on CRA practices, in particular by increasing the number of unsolicited credit ratings.

(2) The possibility of obtaining multiple credit ratings could allow issuers to select the most favourable one ('rating shopping'), which might lead to competition between CRAs for provision of the most attractive ratings. This might negatively impact the quality of the ratings issued.

(3) The situation of the issuer itself will also need to be examined, taking into account such elements as: (a) the burden related to allowing information access for non-appointed CRAs; and (b) protection against any potential misuse of the information received by the non-appointed CRA.

The ECB understands that the transparency arrangements have received broad support in the context of the preparatory work on the proposed regulation. Hence, the ECB proposes only limited amendments.

Increased transparency of the rating process

The proposed regulation requires that each appointed CRA delivers to its competitors a list of the structured finance instruments currently being rated by it, together with a link to the website where the issuer stores the information used in the preparation of credit ratings. Non-appointed CRAs may obtain access to this information provided that specific criteria are respected.

The ECB recommends that the proposed regulation defines more clearly, first, the method of verification by ESMA of compliance with these criteria.

Moreover, the ECB makes the following **recommendations**:

(1) CRAs should be required to report every six months to ESMA data on the number of credit ratings which they have issued in a given period, breaking this down to show:

a) credit ratings requested by a rated entity or a related third party; and

b) unsolicited credit ratings, together with data indicating the proportion of such unsolicited credit ratings which were higher, equal to, or lower than the relevant credit ratings issued by the relevant appointed CRA. Such reporting should be included in periodic disclosures made by CRAs to ESMA.

(2) ESMA should be mandated to monitor the implementation of the proposed new Articles 8a and 8b with a view to identifying:

a) the impact of these provisions on the amount and quality of issued credit ratings, including unsolicited credit ratings;

b) any possible need to amend the eligibility criteria for non-appointed CRAs, with a view to avoiding excessive barriers to market entry;

c) the burden imposed on issuers; and

d) any possible need to protect issuers against misuse of the information provided by them to non-appointed CRAs.

At the same time, the ECB recommends that developments in the abovementioned areas should be closely monitored by ESMA in connection with the implementation of the proposed regulation, so that appropriate adjustments may be put forward by the Commission in view of the experience gained.

Provision of information to ESMA and the Eurosystem

The ECB notes that CRAs will be required to provide their historical performance data to a central repository established by ESMA. The ECB recommends that these data should be in a comparable format, and consistent with the Union statistical framework.

Moreover, the new framework for regulating CRAs should allow for an appropriate level of cooperation between supervisory authorities and the Eurosystem. The ECB appreciates the arrangements for the exchange of information set out in the proposed regulation. Nevertheless, it recommends that this provision should expressly ensure the access by the ESCB and the ECB, as well as the specified Member State authorities, to the information relevant for the exercise of their statutory tasks.

Credit rating agencies: supervision

2010/0160(COD) - 17/11/2010

The Council took note of concerns expressed by the United Kingdom delegation concerning a proposal for a regulation aimed at modifying Regulation (EC) No 1060/2009 on credit rating agencies.

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.

Credit rating agencies: supervision

2010/0160(COD) - 02/06/2010 - Legislative proposal

PURPOSE: to improve the supervision carried out by credit rating agencies.

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

BACKGROUND: experience of the financial crisis has exposed important failures in financial supervision, both in particular cases and in relation to the financial system as a whole. Building on the findings of the group of high level experts, chaired by Mr Jacques de Larosière, the European Commission has piloted a fundamental overhaul of financial supervision in Europe with the objective of establishing a more efficient, integrated and sustainable European system of supervision.

The Group presented its report on 25 February 2009 and its recommendations were endorsed by the Commission in its Communication to the Spring European Council of March 2009. The key elements of the reform proposed by the Commission are :

- the establishment of a European System of Financial Supervisors (ESFS), consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESAs), created by transforming the existing European supervisory committees in a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA), and
- the establishment of a European Systemic Risk Board (ESRB), which shall monitor and assess potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole.

In its Communication of 27 May 2009, the Commission proposed that a European Supervisory Authority should be given the responsibility for the authorisation and supervision of certain entities with pan-European reach, e.g., credit rating agencies. These responsibilities would be defined in the Regulation (EC) No 1060/2009 on Credit Rating Agencies of the European Parliament and of the Council (Credit rating Agencies Regulation).

The Commission's suggestion was endorsed by the European Council, at its meeting in June 2009, stating clearly that ESMA should also have supervisory powers for credit rating agencies. The European Parliament and the Council requested the Commission to put forward, by 1 July 2010, a report and any legislative proposal needed to tackle the shortcomings identified as regards supervisory coordination and cooperation arrangements.

IMPACT ASSESSMENT: the Commission analysed several options:

Option 1: status quo: the key elements of the current supervisory set-up, agreed in the course of the negotiation of the CRA Regulation, would be maintained;

Option 2: college structure and ESMA: the ESMA Regulation is adopted as proposed by the Commission on 23 September 2009 and that the supervisory framework as provided by the current CRA Regulation is maintained;

Option 3 - ESMA to assume direct oversight of groups of CRAs or all EU-based CRAs: the CRA Regulation would be revised in order to introduce centralised oversight of credit rating agencies operating in the EU.

- *Option 3a:* ESMA's authority would be limited to the supervision of CRAs (groups of CRAs) with legal presence in more than one Member State.
- *Option 3b:* ESMA would be the sole supervisor of all EU-based CRAs.

The European Commission therefore considers that it is appropriate **to present a proposal amending the Regulation on credit rating agencies**.

LEGAL BASE: Article 114 of the TFEU. Community action can address the weaknesses highlighted by the crisis and provide a system that is in line with the objective of a stable and single EU financial market for financial services.

CONTENT: this proposal seeks to amend Regulation (EC) No 1060/2009 on Credit Rating Agencies which is to be revised in order to introduce centralised oversight of credit rating agencies operating in the EU. ESMA is to assume general competence in matters relating to the registration and on-going supervision of registered credit rating agencies as well as matters related to ratings issued by rating agencies established in third countries that operate in the EU under the certification or endorsement regimes.

This proposal does not introduce any changes to the Regulation on credit rating agencies concerning the substantive conditions that CRAs have to fulfil in order to be registered and later on an ongoing basis. Similarly, the conditions under which ratings issued from credit rating agencies located in third countries may be used in the Union (via the endorsement and certification mechanisms, as foreseen in the CRA Regulation) are not subject of the proposed amendments but will remain as provided for in the current CRA Regulation.

The main amendments proposed are the following:

Subject matter, scope and definitions: in order to align the Regulation with the new proposal for a Directive on Alternative Investment Fund Managers, **alternative investment funds** have been listed in order to treat them in the same way as the other EU financial institutions with regard to the use of credit ratings. This implies that in case alternative investment funds use credit ratings for regulatory purposes, those credit ratings must have been issued by a credit rating agency registered or certified under this Regulation.

Issuing of Credit Ratings: in order to avoid possible conflicts of interest arising for the CRA under the issuer-pays model which are particularly virulent regarding the rating of structured finance instruments, to enhance transparency and to increase competition among CRAs, issuers of structured finance instruments or related third parties should be required to give **access to the information** which they have given to the CRA they hired for the purpose of rating structured finance instruments to competing CRAs.

Provided they satisfy certain organisational and confidentiality conditions, competing CRAs should be given access, upon request, by the rated entity or a related third party to the information given for the purposes of rating structured finance instruments to the CRAs it hires. The competing CRA being granted access to information should not use it for any other purposes than for the rating and should be required to provide a minimum number of unsolicited ratings, in order to ensure that the request for access to this information does not pursue other purposes.

Contrasting to the other substantive requirements in the CRA Regulation which are addressed to credit rating agencies and its staff, this rule imposes **disclosure requirements to issuers of structured finance instruments**. All registered credit rating agencies will have the possibility to access the information necessary for issuing unsolicited ratings of structured finance instruments. This will lead to more competition in the rating market and increase the number of ratings per instrument so that users of ratings will be able to rely on more than one rating for the same instrument.

Registration procedure: as a result of introduction of the new, single supervisory authority for the oversight of credit rating agencies, existing provisions, which envisage a college type of supervisory coordination and ultimate, formal decision-making by a competent authority of the home Member State, are to be eliminated. The creation of ESMA will improve and streamline the procedure for registration, making it simpler (as a result of eliminating redundant consultation steps between authorities in the college and with CESR) and thus it is possible to reduce the time limits in the different stages of the registration process.

Surveillance by ESMA: in order to facilitate day-to-day application of the Regulation, ESMA should be **empowered to propose draft technical standards** to be endorsed by the Commission on: i) the registration process, including on the information set out in Annex II; ii) the information that the credit rating agency must provide for the application for certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets; and iii) the presentation of the information, including structure, format, method and period of reporting, that credit rating agencies shall disclose.

ESMA is to be empowered **to require all necessary information** from CRAs and other persons related to credit rating activity. It will be able to start investigations into the potential breaches of the Regulation and in the remit of those it must be able to exercise supervisory powers such as examining records and other relevant material and taking copies/extracts thereof, requiring oral explanations, hearing a person, requiring records of telephone and data traffic.

The ESMA must also be able to conduct **on-site inspections**. The rights of defence of the persons concerned shall be fully respected in the proceedings. In particular, ESMA must give the persons concerned the opportunity of being heard on the matters to which ESMA has taken objection.

Cooperation between ESMA and competent authorities: competent authorities are to keep the oversight responsibilities regarding the use of credit ratings by the supervised entities (like credit institutions, or insurance undertakings) which employ those credit ratings for regulatory purposes. National supervisory authorities must also contribute to the supervisory activity of ESMA, by ensuring all necessary information exchange and co-operation, which may be required in the exercise of supervisory and enforcement powers of ESMA.

Where necessary or appropriate for reasons of efficiency, in its supervisory activity ESMA must be able to **seek the assistance** of a competent supervisory authority at national level. Assistance by competent authorities should be provided when ESMA is carrying out investigations and on site inspections.

ESMA may also **delegate specific supervisory tasks** to competent national authorities. Possible tasks that may be delegated include the carrying out of specific investigatory tasks and on-site inspections, the assessment of an application for registration, but also tasks related to day-to-day supervision. Delegation of tasks will not affect the responsibility of ESMA which may give instructions to the authority to which it has delegated a task.

Penalties, Committee procedure and reporting: ESMA may propose to the Commission to impose **periodic penalty payments**. This coercive measure is to help achieve that: i) an infringement is put to an end, ii) complete and correct information which ESMA has requested is supplied; iii) credit rating agencies and other persons submit to an investigation. ESMA may also propose **fines** to be adopted by the Commission, where, intentionally or negligently, some of the provisions of the Regulation on credit rating agencies have been breached. Detailed criteria for establishing the amount of the fines as well as procedural aspects related to fines will be set out in a delegated act.

In addition to proposing sanctions, ESMA shall also be empowered to adopt supervisory measures where a credit rating agency has committed a breach of the Regulation. Those measures include the **temporary prohibition** of the issuing of credit ratings and the **suspension of the use of the credit ratings** concerned until the infringement has been put to an end. As a last resort measure, ESMA is empowered to withdraw the registration of a credit rating agency.

In addition, ESMA has the power to require the credit ratings agencies to bring an infringement to an end and to issue public notices. Those measures shall be applied in cases which do not justify the adoption of a sanction or more severe supervisory measure, taking account of the principle of proportionality.

The committee procedures have been aligned with the Lisbon Treaty.

Transitional and final provisions: once ESMA will be in place and operational, the competent authorities of the Member States will have to terminate their competences and duties related to the supervisory and enforcement activity in the field of credit rating agencies which had been conferred to them by the Regulation on credit rating agencies.

BUDGETARY IMPACT: an overall overview of the budgetary implications of the proposals setting up ESMA was presented in September 2009 in the impact assessment report and accompanying legislative financial statements accompanying such legislative proposals (*see the legislative financial statement added to the proposal on the setting up of the European Securities Markets Authority*).

The specific implications on ESMA concerning the direct supervision and oversight of credit rating agencies are specified in the legislative financial statements accompanying this proposal. The impact for the 2011-2013 are the following:

- Operating appropriations: EUR1.001 million
- Human resources and other administrative expenditure: EUR 1.464 million
- Total appropriations: **EUR 2.465 million**.

The proposal provides for co-funding estimated at EUR 1.501 million in 2011 (60% of total needs by Member States, via EU National Supervisors – proposed ESMA standard financing mechanism).