Basic information

2011/0361(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Credit rating agencies: integrity, transparency, responsibility, good governance and independence of activities 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	DOMENICI Leonardo (S&D)	10/05/2011
	Shadow rapporteur GAUZÈS Jean-Paul (PPE) KLINZ Wolf (ALDE) GIEGOLD Sven (Verts/ALE) FOX Ashley (ECR)	

Committee for opinion	Rapporteur for opinion	Appointed
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
JURI Legal Affairs	WIKSTRÖM Cecilia (ALDE)	21/11/2011

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	3205	2012-12-04
Economic and Financial Affairs ECOFIN	3178	2012-06-22
Agriculture and Fisheries	3237	2013-05-13

European Commission

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

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
15/11/2011	Legislative proposal published	COM(2011)0747	Summary
30/11/2011	Committee referral announced in Parliament, 1st reading		
19/06/2012	Vote in committee, 1st reading		
22/06/2012	Debate in Council		Summary
24/08/2012	Committee report tabled for plenary, 1st reading	A7-0221/2012	Summary
15/01/2013	Debate in Parliament		
16/01/2013	Decision by Parliament, 1st reading	T7-0012/2013	Summary
16/01/2013	Results of vote in Parliament		
13/05/2013	Act adopted by Council after Parliament's 1st reading		
21/05/2013	Final act signed		
21/05/2013	End of procedure in Parliament		
31/05/2013	Final act published in Official Journal		

Technical information

Procedure reference	2011/0361(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
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/07815

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE480.852	15/02/2012	
Amendments tabled in committee		PE486.062	17/04/2012	
Amendments tabled in committee		PE486.071	17/04/2012	

Committee opinion	JURI	PE483.717	03/05/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0221/2012	24/08/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0012/2013	16/01/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00070/2012/LEX	21/05/2013	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0747	15/11/2011	Summary
Document attached to the procedure	SEC(2011)1354	15/11/2011	
Document attached to the procedure	SEC(2011)1355	15/11/2011	
Document attached to the procedure	COM(2012)0367	06/07/2012	Summary
Commission response to text adopted in plenary	SP(2013)176	05/03/2013	
Follow-up document	COM(2014)0248	05/05/2014	Summary
Follow-up document	SWD(2014)0146	05/05/2014	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2011)0747	23/01/2012	
Contribution	DE_BUNDESRAT	COM(2011)0747	29/02/2012	
Contribution	IT_SENATE	COM(2011)0747	27/04/2012	
Contribution	CZ_SENATE	COM(2011)0747	10/07/2012	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0820/2012	29/03/2012	
ECB	European Central Bank: opinion, guideline, report	CON/2012/0024 OJ C 167 13.06.2012, p. 0002	02/04/2012	Summary

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Regulation 2013/0462 OJ L 146 31.05.2013, p. 0001	Summary

Credit rating agencies: integrity, transparency, responsibility, good governance and independence of activities

2011/0361(COD) - 16/01/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 579 votes to 58, with 60 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.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise reached between the European parliament and the Council. They amend the proposal as follows:

Aim of the Regulation: the common regulatory approach shall aim to enhance the integrity, transparency, responsibility, good governance and **independence** of credit rating activities.

Using credit ratings for regulatory purposes: credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, alternative investment funds and central counterparties as defined by EU legislation, may use credit ratings for regulatory purposes only if they are issued by credit rating agencies established in the Union and registered in accordance with this Regulation.

Excessive reliance on investment firms with regards to credit ratings: the Regulation stresses that overreliance on external credit ratings should be reduced and all the automatic effects deriving from ratings should be gradually eliminated. Credit institutions and investment firms should be encouraged to put in place internal procedures in order to make their own credit risk assessment and should encourage investors to perform a due diligence exercise.

Within this framework, this Regulation foresees that **financial institutions should not solely or mechanistically rely on ratings**. Therefore, those institutions should avoid entering into contracts where they solely or mechanistically rely on ratings and should avoid using external ratings in contracts as the only parameter to evaluate the creditworthiness of investments or decide whether to invest or divest.

Over-reliance on credit ratings in Union law: the Commission shall continue to review references to credit ratings in Union law which trigger or have the potential to trigger sole or mechanistic reliance on credit ratings by competent authorities or financial market participants, with a view to eliminating all references to ratings in Union law by 1 January 2020, provided that appropriate alternatives to credit risk assessment have been identified and implemented.

Conflicts of interest and the independence of ratings: credit rating agencies should establish, maintain, enforce, and document an **effective internal control structure** governing the implementation of policies and procedures to the prevention and control of possible conflicts of interest and to ensure the independence of ratings, analysts and rating teams regarding shareholders, administrative and management bodies and sales and marketing activities.

The amendments stipulate that the credit rating agency or any person holding, directly or indirectly, at least 5% of the capital or voting rights of the credit rating agency or otherwise in a position to influence significantly the business activities of the credit rating agency shall not hold 5% or more of the capital of any other credit rating agency. This prohibition does not apply to holdings in diversified collective investment schemes, including managed funds such as pension funds or life insurance, provided that the holdings in diversified collective investment schemes do not put him or her in a position to exercise significant influence on the business activities of those schemes.

Maximum duration of the contractual relationship with a credit rating agency: the Regulation states that the market for re-securitisations is an appropriate place to first introduce rotation. This is the area of the European securitisations market that has underperformed since the financial crisis.

The amended text stipulates that where a credit rating agency has entered into a contract for the issuing of credit ratings on re-securitisations, it shall issue no credit ratings on new re-securitisations with underlying assets from the same originator **for a period exceeding four years**. Where at least four credit rating agencies each rate more than 10% of the total number of outstanding rated re-securitisations, the limitations shall not apply.

As from the expiry of a contract, a credit rating agency shall not enter into a new contract for the issuing of credit ratings on re-securitisations with underlying assets from the same originator for a period equal to the duration of the expired contract but not exceeding four years.

Sovereign debt ratings: as requested by the Parliament, sovereign debt ratings shall be issued in a manner, which ensures that the individual specificity of a particular Member State has been analysed. **A statement announcing revision of a given group of countries shall be prohibited**, if not accompanied by individual country reports.

Where a credit rating agency issues sovereign ratings or related rating outlooks, it shall publish these ratings after the close of business hours of regulated markets and at least one hour before their opening.

On the same basis, it is also proportionate that at the **end of December, credit rating agencies should publish a calendar for the next 12 month**s setting the dates for the publication of sovereign ratings and corresponding to these, the dates for the publication of related outlooks where applicable. Such dates should be set on a Friday. Only for unsolicited sovereign credit ratings the number of publications in the calendar should be limited between two and three.

Double credit rating of structured finance instruments: where an issuer or its related third party intends to solicit a credit rating of a structured finance instrument, it shall mandate at least two credit rating agencies to provide credit ratings **independently of each other**.

An issuer or its related third parties shall ensure that the mandated credit rating agencies comply with the following conditions. In particular, (a) the credit rating agencies must not belong to the same group of credit rating agencies; (b) none of the credit rating agencies must be a shareholder or member of any of the other credit rating agencies.

Use of multiple credit rating agencies: where an issuer or a related third party intends to mandate at least two credit rating agencies for the credit rating of the same issuance or entity, the issuer shall consider the **possibility to mandate at least one credit rating agency which does not have more than 10% of the total market share** and which can be evaluated by the issuer as capable for rating the relevant issuance or entity, provided that, based on the list of ESMA, there is a credit rating agency available for rating the specific issuance or entity. With a view to facilitating the evaluation by the issuer, ESMA shall annually publish on its website a list of registered credit rating agencies, indicating their total market share and the types of ratings issued.

Disclosure of credit ratings: until disclosure to the market of credit ratings, rating outlooks and information relating to them, they shall be considered inside information as defined in Directive 2003/6/EC.

Where a credit rating agency issues an **unsolicited credit rating**, it shall state prominently in the credit rating and using a clearly distinguishable different **colour code** for the rating category, whether or not the rated entity or related third party participated in the credit rating process and whether the credit rating agency had access to the accounts, management and other relevant internal documents for the rated entity or a related third party.

Civil liability: the investor or issuer claiming damages for an infringement of the rules in Regulation (EC) No 1060/2009 should present **accurate and detailed information** indicating that the credit rating agency has committed such an infringement of this Regulation. This should be assessed by the competent court, taking into consideration that the investor or issuer may not have access to information that is purely within the sphere of the credit rating agency.

Reporting: the Commission shall, following technical advice from ESMA, review the situation in the credit rating market for structured finance instruments, in particular the credit rating market for re-securitisations. By 1 July 2016, following that review, the Commission shall send a report to the European Parliament and to the Council, accompanied by a legislative proposal if appropriate.

By 1 January 2016, the Commission shall review the situation in the credit rating market. Following that review, the Commission shall submit a report, accompanied by a legislative proposal if appropriate.

The Commission shall submit:

- by 31 December 2015, a report with a view to **eliminating all references to credit ratings in Union law by 1 January 2020**, subject to appropriate alternatives being identified and implemented;
- by 31 December 2014, a report on the appropriateness of the **development of a European creditworthiness assessment for sovereign debt**;
- by 31 December 2016, a report on the appropriateness and feasiblity of **establishing a European credit rating agency** dedicated to assessing the creditworthiness of Member States' sovereign debt and/or a European credit rating foundation for all other ratings;
- by 31 December 2013, a report regarding the **feasibility of a network of smaller credit rating agencies** in order to increase competition in the market.

ESMA shall publish an annual report on the application of this Regulation.

Credit rating agencies: integrity, transparency, responsibility, good governance and independence of activities

2011/0361(COD) - 21/05/2013 - Final act

PURPOSE : to amend EU rules on credit rating agencies.

LEGISLATIVE ACT : Regulation (EU) No 462/2013 of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies.

CONTENT : the Regulation introduces a **common regulatory approach** in order to enhance the integrity, transparency, responsibility, good governance and independence of credit rating activities. It aims to contribute to **the quality of credit ratings issued in the Union** and to the smooth functioning of the internal market, while achieving a high level of consumer and investor protection.

The Regulation - adopted at the same time as Directive 2013/14/EU of the European Parliament and of Council - lays down conditions for the issuing of credit ratings and rules on the organisation and conduct of credit rating agencies, including their shareholders and members, to promote credit rating agencies' independence, the avoidance of conflicts of interest, and the enhancement of consumer and investor protection.

The main points are as follows:

Excessive reliance on investment firms with regards to credit ratings: in order to reduce this reliance, the Regulation stresses that credit institutions and investment firms must **make their own credit risk assessment** and not solely or mechanistically rely on credit ratings for assessing the creditworthiness of an entity or financial instrument.

Conflicts of interest and the independence of ratings: acredit rating agency shall take all necessary steps to ensure that the issuing of a credit rating or a rating outlook is not affected by any existing or potential conflicts of interest. To this end, they must establish and document an **effective internal control structure**.

The Regulation prohibits a shareholder holding at least 5 % of either the capital or the voting rights in a credit rating agency **from holding 5 % or more of the capital of any other credit rating agency.** This does not apply to investments in other credit rating agencies belonging to the same group of credit rating agencies.

Maximum duration of the contractual relationship with a credit rating agency: the Regulation introduces a **mandatory rotation rule regarding re-securitised assets**. It stipulates that where a credit rating agency enters into a contract for the issuing of credit ratings on re-securitisations, it shall not issue credit ratings on new re-securitisations with underlying assets from the same originator **for a period exceeding four years**.

Where at least four credit rating agencies each rate more than 10 % of the total number of outstanding rated re-securitisations, the limitations do not apply.

As from the expiry of a contract, a credit rating agency shall not enter into a new contract for the issuing of credit ratings on re-securitisations with underlying assets from the same originator for a period equal to the duration of the expired contract but not exceeding four years.

Sovereign ratings: sovereign ratings shall be issued in a manner which ensures that the individual specificity of a particular Member State has been analysed. A statement announcing revision of a given group of countries shall be prohibited if it is not accompanied by individual country reports. **Sovereign ratings shall be reviewed at least every six months**.

A credit rating agency shall **publish a calendar at the end of December for the following 12 months,** setting the dates for the publication of sovereign ratings and, corresponding thereto, the dates for the publication of related rating outlooks where applicable.

Double credit rating of structured finance instruments: the Regulation provides that where an issuer or a related third party intends to solicit a credit rating of a structured finance instrument, it shall appoint **at least two credit rating agencies** to provide credit ratings independently of each other.

Use of multiple credit rating agencies: where an issuer or a related third party intends to appoint at least two credit rating agencies for the credit rating of the same issuance or entity, it shall consider appointing **at least one credit rating agency with no more than 10 % of the total market share**. This agency must be on ESMA's list as a credit rating agency available for rating the specific issuance or entity.

Unsolicited credit rating: where a credit rating agency issues an unsolicited credit rating, it shall state prominently in the credit rating, using a clearly distinguishable different colour code for the rating category, whether or not the rated entity or a related third party participated in the credit rating process and whether the credit rating agency had access to the accounts, management and other relevant internal documents for the rated entity or a related third party.

European rating platform: a registered or certified credit rating agency shall, when issuing a credit rating or a rating outlook, **submit to ESMA rating information**. ESMA shall publish the individual credit ratings submitted to it on a website ("European rating platform").

Civil liability: the Regulation provides that where a credit rating agency has committed, intentionally or with gross negligence, any of the infringements listed in the Regulation having an impact on a credit rating, an investor or issuer may **claim damages** from that credit rating agency for damage caused to it due to that infringement.

An investor may claim damages where it presents **accurate and detailed information** indicating that the credit rating agency has committed an infringement of the Regulation, and that that infringement had an impact on the credit rating issued.

Reports: the Commission shall, after obtaining technical advice from ESMA, review the situation in the credit rating market for structured finance instruments, in particular the credit rating market for re-securitisations. By 1 July 2016, it shall submit a report accompanied by a legislative proposal if appropriate.

Furthermore, the Commission shall, by 31 December 2016, submit a report on the appropriateness and feasibility of supporting **a European credit rating agency** dedicated to assessing the creditworthiness of Member States' sovereign debt and/or a European credit rating foundation for all other credit ratings.

ENTRY INTO FORCE : 20/06/2013.

Credit rating agencies: integrity, transparency, responsibility, good governance and independence of activities

2011/0361(COD) - 05/05/2014 - Follow-up document

The Commission presents a report on the feasibility of creating a network of smaller credit rating agencies (CRAs).

Purpose of the report: improving the conditions for **effective competition** on the concentrated market for credit rating agencies and thereby creating the pre-conditions for the emergence and growth of new market players is a key objective of the policy work of the European Commission in this area.

A number of distinctly smaller CRAs have emerged in Europe (their number has further increased after the introduction of European legislation on CRAs in 2009), operating with a clear focus on specific industry sectors (e.g. the insurance industry), financial market segments (e.g. municipal bonds) or specific geographical area, thus responding to specialised market needs.

The regulatory framework established by Regulation (EC) No 1060/2090 of the European Parliament and of the Council on credit rating agencies has played a role of quality assurance for CRAs' services on the market and has, in this way, helped them to evolve over time as serious market actors. Nevertheless, despite their good potential for growth, to **date these new market players often remain small** in terms of scope and geographical orientation.

Pursuant to Regulation (EU) No 462/2013 (CRA III Regulation) the Commission presents a report that identifies and analyses the feasibility of all possible policy options regarding the establishment of a network of smaller credit rating agencies. The analysis covers operational and financial aspects of such establishment.

Feasibility of a network of smaller credit rating agencies: on the basis of the impact assessment accompanying the CRA III Regulation and of a stakeholder consultation, the Commission assessed the added value of the creation of a network as well as the different possible options of the type of network which would best serve its purposes and be feasible to implement. Two types of networks have been envisaged, depending on the scope and nature of the proposed cooperation:

- **An integrated network**, which would have a wider scope and deeper level of cooperation, e.g : the development of a common data platform for underlying information used for developing ratings, design and use of common methodologies, sharing of expert knowledge and best practices on a wide range of topics such as internal controls, investor education, communication, methodologies and legal compliance.

- **A cooperation network** was assessed as an alternative to the integrated network approach, entailing a lighter form of cooperation. It could take the form of a forum for smaller CRAs, which would enable the establishment of a structure for regular exchange and cooperation among smaller CRAs.

Conclusions and next steps: the analysis of the feasibility of the options for the creation of a network of smaller CRAs has identified **multiple market obstacles** for the establishment of an integrated network as well as some obstacles limiting the potential scope of a cooperation network.

In addition, the **stakeholder consultation** has revealed that there is no support among industry representatives for establishing, under the current conditions, any form of network of smaller CRAs.

Smaller CRAs have rather **expressed the need for a structured dialogue or forum with the Commission** to discuss the state of the CRA market and regulation, in particular, issues affecting smaller CRAs.

Taking this into account, the report proposes a step by step assessment of the need to establish a network within the medium/long term.

- **Short term policy options:** the Commission proposes as an alternative to creating a network, the establishment of a regulatory dialogue as the most proportionate solution within the short term. This dialogue could consist of a periodic follow up of market developments in the rating industry and allow discussing on regulatory issues relating to the CRA regulation.

- **Medium/ long term policy options:** reflecting on the results of the work of the regulatory dialogue and the assessment of the effect of the measures adopted under the CRA III Regulation, the Commission will at a later stage assess the added value of a network of smaller CRAs and, if the latter are considered feasible, define measures to create the regulatory framework for networks to function effectively.

Credit rating agencies: integrity, transparency, responsibility, good governance and independence of activities

2011/0361(COD) - 02/04/2012 - European Central Bank: opinion, guideline, report

OPINION OF THE EUROPEAN CENTRAL BANK on a **proposal for a regulation** amending Regulation (EC) No 1060/2009 on credit rating agencies and a proposal for a directive amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings of collective investment in transferable securities (UCITS) and Directive 2011/61/EU on alternative investment funds managers in respect of the excessive reliance on credit ratings.

The ECB shares the general objective pursued under the proposed regulation and the proposed directive which is to contribute to reducing financial stability risks and restoring the confidence of investors and market participants in financial markets and ratings quality.

The ECB shares the Commission's specific objective of reducing excessive reliance on external credit ratings, which is in line with the principles established by the Financial Stability Board (FSB) in this field.

The ECB also supports the comprehensive powers entrusted to the European Securities and Markets Authority (ESMA) relating to authorisation and supervision of credit rating agencies (CRAs).

The ECB makes the following observations:

1. Excessive reliance on external credit ratings

- Credit risk assessment by financial institutions : the ECB supports the FSB's and the Commission's common objective of reducing overreliance on external credit ratings.

More specifically, the ECB notes that the proposal for a directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC (proposed CRD IV Directive) includes provisions addressing this issue.

The ECB also notes the corresponding amendments introduced in Directive 2009/65/EC and Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No1060/2009 and (EU) No 1095/2010.

Therefore, in order to ensure consistency between the proposed regulation and corresponding provisions in the sectoral legislation, the ECB recommends clarifying the nature of the obligation imposed on financial institutions in the proposed regulation.

- References to external ratings in Union legislation : the ECB understands that all the proposed amendments are aimed at implementing the FSB principles, which invite 'standard setters and authorities to assess references to CRA ratings in standards, laws and regulations and, wherever possible, **remove them or replace them** by suitable alternative standards of creditworthiness'. However, while it might be advisable to remove provisions imposing compulsory recourse to external ratings from Union and national legislation or even all references to external ratings to the extent that these requirements or references to external ratings might be perceived as encouraging 'mechanistic' recourse to such ratings, the ECB would recommend caution regarding the drafting proposed in the above provisions of the proposed regulation, as this could prove difficult to apply.

The ECB supports the gradual approach advocated by the FSB and notes that references to CRAs' ratings should be removed or replaced only once credible alternatives have been identified and can safely be implemented.

In this context, it is necessary that standard setters and authorities develop transition plans and timetables to enable the removal or replacement of references to CRAs' ratings wherever possible and the associated enhancement in risk management capabilities to be safely introduced.

The ECB recommends replacing Article 1(6) of the proposed regulation by a recital in the proposed regulation that reminds public authorities of the importance of contributing where appropriate to the abovementioned objective of reducing excessive reliance on external credit ratings. Moreover, the ECB recommends that the ESAs, after having taken account of the contributions of the ECB and of the ESRB, **report to the Commission on possible alternative or complementary solutions with regard to references to external ratings** in Union and national legislation.

2. Credit rating agencies and external credit assessment institutions (ECAIs)

- External credit assessments and eligibility of ECAIs : under the proposed CRD IV regulation, the procedure of ECAI recognition by competent authorities results in 'automatic' eligibility of CRAs that are registered or certified in accordance with Regulation (EC) No 1060/2009. This also applies to central banks issuing credit ratings which are exempt from that Regulation.

The ECB supports the new procedure contained in the proposed CRD IV regulation, as it will contribute to simplifying the recognition procedure for ECAIs and ensuring cross-sectoral consistency. For the sake of legal clarity and transparency, the ECB would however suggest further clarifying in a recital of the proposed regulation that the entry into force of the proposed CRD IV regulation will imply an automatic recognition of the above CRAs and central banks (as ECAIs) and that there is a need to define the correspondence between credit assessments and credit quality steps, i.e. mapping.

- ***Mapping and European rating index*** : whilst the ECB supports enhanced transparency, interoperability and comparability of ratings by market participants, it should however be ensured, in view of the possible negative effects on competition and on the diversity of rating methods, that a harmonised rating scale does not exert pressure on CRAs to harmonise methodologies and processes.

Moreover, the ECB notes that mapping procedures will be developed by EBA and EIOPA in the banking and in the insurance sectors. In view of the cross-sectoral nature of these issues, it would be appropriate to coordinate the mapping exercises, possibly through the Joint Committee of the ESAs. In this context, the ECB recommends deleting the reference to the harmonised rating scale and suggests that, by December 2015, ESMA, in cooperation with EBA, EIOPA and the ECB, reviews the feasibility of establishing a harmonised rating scale for ratings issued by registered and certified CRAs and reports to the Commission on this issue.

3. Other observations

- ***Sovereign ratings*** : the ECB supports the initiatives taken to enhance transparency and disclosure of the methodology and rating process in relation to sovereign debt. The proposed regulation introduces a special regime as regards the frequency of review and the procedure for the issuance of sovereign ratings. The ECB welcomes these proposed changes and notably the proposal to request CRAs to assess sovereign ratings more frequently. While ratings should only be published after the close of business and at least one hour before the opening of trading venues in the Union, the ECB considers that other initiatives could be taken to alleviate the potential pro-cyclical effects of changes in ratings.

The ECB recommends exploring ways of reducing the volatility induced by the timing of the rating changes, notably when an issuer is on ratings watch and is close to losing its investment grade status as well as when a potential downgrade of several notches is being contemplated.

- ***Independence of CRAs*** : since the current ‘issuer-pays’ financing model of ratings could be a source of conflict of interest and thus may have a distorting influence on ratings, more far-reaching solutions on alternative compensation models are warranted. The ECB welcomes therefore the Commission’s continued work on monitoring the appropriateness of CRAs’ remuneration models and looks forward to the submission of a report thereon to the European Parliament and the Council by the end of 2012. While the ECB supports the proposals for stricter rules as regards **shareholder structure** of CRAs, the ECB recommends that the Commission reviews the proposed threshold of 5 % in order to ensure its effectiveness.

- ***Rotation principles*** : while the ECB supports the Commission’s intention relating to the introduction of a rotation rule, i.e. that long-lasting relationships with the same rated entities could compromise the independence of ratings, possible unintended consequences may need to be further assessed.

- ***Methodologies*** : the ECB supports the proposed tasks conferred upon ESMA with regard to the compliance of new or amended CRAs methodologies. The ECB recommends clarifying that ESMA’s role is limited to verifying compliance of the methodologies with the applicable rules.

- ***Rules on structured finance instruments*** : with a view to ensuring cross-sectoral consistency and avoiding duplication of rules, the relationship between the disclosure requirements for issuers, originators and sponsors of structured finance products in the proposed regulation and similar disclosure requirements for securitisations in specific sectors should be clarified.

Second, the Eurosystem asset-backed securities (ABSs) loan-level information initiative establishes specific loan-by-loan information requirements for ABSs accepted as collateral in Eurosystem credit operations. It aims to increase transparency and make available more timely information on the underlying loans and their performance to market participants in a standardised format.

Lastly, the ECB welcomes initiatives contributing to the enhancement of transparency requirements in the structured finance instruments and covered bonds markets and the harmonisation of disclosure requirements in this area. It notes that initiatives related to the transparency of the covered bonds market are considered in other ongoing legislative initiatives, for instance in the proposed CRD IV regulation. Therefore, it is important to ensure the consistency of these various initiatives.

Credit rating agencies: integrity, transparency, responsibility, good governance and independence of activities

2011/0361(COD) - 22/06/2012

The Council took stock of progress on a draft regulation and draft directive on credit rating agencies ('CRA 3').

Credit rating agencies: integrity, transparency, responsibility, good governance and independence of activities

2011/0361(COD) - 24/08/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Leonardo DOMENICI (S&D, IT) 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 recommends that the position of the European Parliament adopted in first reading following the ordinary legislative proposal should amend the Commission's proposal as follows:

Aim of the Regulation: Members stress that the common regulatory approach should enhance the **independence** of credit rating activities.

The Regulation should apply to ratings concerning Member States and their **sovereign debt**.

"Credit rating": this means an **information service** provided to investors and consumers, issued using an established and defined ranking system of rating categories and subject to a liability regime.

Over-reliance on credit ratings by financial institutions: competent authorities in charge of supervising these undertakings shall:

- **closely monitor** the adequacy of undertakings' credit assessment processes, taking into account the nature, scale and complexity of those undertakings' activities;
- ensure that they agree neither to **contractual rules that result in the automatic sale of assets in the event of a downgrade of the creditworthiness by an external credit rating agency**, nor to a rule requiring the use of a specific credit rating agency.

Over-reliance on credit ratings in Union law: Members consider that Union law **shall not refer to credit ratings for regulatory purposes**. They require that all provisions contained in sectoral legislation that provide for an obligation to take into account external ratings before investing or advising others to invest shall be repealed.

One year after entry into force of the regulation, the Commission shall present a detailed report containing **recommendations on the development of own rating capacities** so as to avoid automatic pro-cyclical reactions to changes in ratings. ESMA shall also provide recommendations on the development of own rating capacities so as to avoid automatic pro-cyclical reactions to changes in ratings.

Due diligence obligations and internal risk management: the report notes that overreliance on external credit ratings occurs when financial institutions and institutional investors rely solely on ratings issued by credit rating agencies while neglecting their own due diligence and internal risk management obligations.

Members want to **reinforce the financial institutions' and institutional investors' due diligence obligations** and internal risk management obligations when acquiring financial products, especially complex or structured products.

Financial regulation should also increase the disclosure obligations for issuers of financial products, **especially for highly complex or structured products** .

When investors disregard intentionally or with gross negligence their due diligence and their internal risk management obligations, **credit rating agencies shall not be held liable** for damage or loss arising from such conduct.

Independence of ratings and conflict of interest: credit rating agencies should establish, an **effective internal control structure** governing the implementation of policies and procedures to the prevention and control of possible conflicts of interest and to ensure the independence of ratings, analysts and rating teams regarding shareholders, administrative and management bodies and sales and marketing activities.

The amendments aim to ensure: (i) **prohibition of cross-shareholding** where the management or control of more than one rating agency is concerned; (ii) prohibition on rating agencies holding shares, or have financial interests, in rated entities; (iii) **restrictions on the merger and acquisition activity** of rating agencies which have already generated more than 20 % of the total annual revenues for credit rating activities in the Union.

An amendment stipulates that a shareholder or a member of a credit rating agency holding at least 5% of the capital or the voting rights in that agency shall not be shareholder or member of another credit rating agency or otherwise have a direct or indirect ownership interest in such other credit rating agency.

Ensuring competition in the market for credit ratings: the Commission shall report annually on **competition in the market for credit ratings**, and shall publish figures on the percentage of the total market held by registered credit rating agencies, measured by revenue.

Risks taken into consideration: a credit rating agency shall adopt adequate measures to ensure that the credit ratings and the rating outlooks it issues are based on a thorough analysis of all the information concerning all types of financial risks, including environmental risks.

Sovereign debt ratings: Members state that sovereign debt ratings shall be issued in a manner which ensures that the individual specificity of a particular Member State has been analysed. **A statement announcing revision of a given group of countries shall be prohibited even if accompanied by individual country reports.**

Mandatory use of small agencies: where an issuer or a related third party intends to mandate at least two credit rating agencies for the credit rating of the same issuance or entity, the market share in the Union of **at least one of the credit rating agencies shall be below a threshold set by ESMA.** The latter shall set a threshold aiming to ensure the development of a market without oligopolistic tendencies.

Publication of ratings: a credit rating agency shall disclose any solicited credit rating or rating outlook, as well as any decision to discontinue a credit rating, on a non-selective basis and in a timely manner.

Until disclosure to the market of the information concerning the rating, the credit rating agency shall keep the information **confidential.**

Evaluation of agencies by ESMA: Members stipulate that ESMA shall analyse and assess the performances of credit rating agencies using the data collected on its central repository, and publish an **annual report** on its comparative assessment, including a rating system of the performance.

ESMA shall also ensure that a **certain variety of methodologies** is maintained in order to encourage competition for the best methodologies between the rating agencies and to avoid standardisation of methodologies. If ESMA detects any deviation, the credit rating agency shall remove that deviation within one month.

Penalties for rating agencies exceeding their remit: where the European System of Financial Supervisors establishes that a rating agency has exceeded its remit by issuing a **judgment regarding the economic policies of a government** or recommendations in this respect it shall action, e.g. (i) a temporary ban of the issuing by the credit rating agency of credit ratings throughout the Union; (ii) imposition of a fine on the ratings agency; (iii) removal of credit rating agency from register.

European creditworthiness assessment: Members specify that the Union shall internally assess the creditworthiness of the Member States. To this end, an **independent public European creditworthiness internal assessment should be developed** to provide investors with all relevant data on ratings regarding sovereign debt and other key macroeconomic indicators publicly disclosed. That European creditworthiness assessment should be ensured through the existing Union institutions competent for this task.

European credit ratings agency: Members want the Commission to **examine the possibility of creating an independent European credit rating agency** or of establishing rules to allow European credit rating agencies to make an impartial and objective assessment of their creditworthiness. If necessary, the Commission should submit appropriate legislative proposals.

Network of smaller ratings agencies: the Commission shall put forward, by the end of 2012, a report regarding the feasibility of a network of smaller credit rating agencies in order to increase competition in the market. A small credit rating agency means a credit rating agency that has fewer than 50 employees or has an annual turnover of less than EUR 10 million, at group level.

Report: by 31 December 2013, the Commission shall, in light of developments in the regulatory and supervisory framework of the Union, present a report concerning the tools enabling investors and the wider public to make their own credit risk assessment of issuers, and assessing the feasibility of alternative payment models, accompanied, where appropriate, by proposals.

Credit rating agencies: integrity, transparency, responsibility, good governance and independence of activities

2011/0361(COD) - 06/07/2012 - Document attached to the procedure

This Communication provides detailed information to the Budgetary Authority in the form of a legislative financial statement for the proposal on credit rating agencies and the proposal on the excessive reliance on credit ratings (CRA3). It also gives a general overview of the impact of all Commission proposals on ESMA's resources for 2013.

An impact assessment of the CRA3 proposal assessed cost implications of individual measures and stated: 'policy measures would not have an impact on the EU budget'. However, it has been estimated that the CRA3 proposal would result in a substantial increase in ESMA's workload, requiring more human resources at the agency. Accordingly, in its Draft General Budget of the European Union for the financial year 2013, the Commission proposed an increase of **15 posts** in the establishment plan for ESMA. They will be fully financed from fees paid by credit rating agencies, and hence, they will have no impact on the EU contribution to ESMA.

In addition, other tasks as described above will be covered by external staff, SNEs and contract agents over the period 2014–2015: 5.8 (man years) for 2014 and 5.5 (man years) for 2015.

Credit rating agencies: integrity, transparency, responsibility, good governance and independence of activities

2011/0361(COD) - 15/11/2011 - Legislative proposal

PURPOSE: to amend Regulation (EC) n° 1060/2009 on credit rating agencies in order to reduce the risks to financial stability and restoring the confidence of investors and other market participants in financial markets and ratings quality.

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

BACKGROUND: through Regulation (EC) No 1060/2009 on credit rating agencies, which entered into full application on 7 December 2010, credit rating agencies (CRAs) are required 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. An amendment to Regulation (EU) No 513/2011 entrusted the European Securities and Markets Authority (ESMA) with exclusive supervisory powers over the registration and supervision of CRAs.

Whilst providing a good basis, **a number of issues related to credit rating activities and the use of ratings have not been sufficiently addressed** in the existing CRA Regulation. These relate notably to: (i) the risk of overreliance on credit ratings by financial market participants, (ii) the high degree of

concentration in the rating market, (iii) civil liability of credit rating agencies vis-à-vis investors, (iv) conflicts of interests with regard to the issuer-pays model and CRAs' shareholder structure. The specifics of sovereign ratings which became evident during the current sovereign debt crisis are also not specifically addressed in the current CRA Regulation.

The Commission pointed to these open issues in its Communication of 2 June 2010 entitled "Regulating financial services for sustainable growth".

On 8 June 2011, the European Parliament adopted a non-legislative resolution supporting the need to enhance the regulatory framework for credit rating agencies. The European Council of 23 October 2011 concluded that progress is needed on reducing overreliance on credit ratings.

At the international level, in October 2010 the Financial Stability Board (FSB) issued principles to reduce authorities' and financial institutions' reliance on CRA ratings. Those principles were endorsed by the G20 Seoul Summit in November 2010.

Lastly, the Commission recently addressed the question of overreliance on ratings by financial institutions in the context of the reform of the banking legislation. It proposed a similar provision in the draft amendment to the Directives on UCITS and on managers of alternative investment funds, which are presented in parallel to this proposal for a Regulation.

IMPACT ASSESSMENT : different policy options were considered in order to address the problems identified and thus reach the corresponding specific objectives:

- to diminish the impact of "cliff" effects on financial institutions and markets by reducing reliance on external ratings;
- to mitigate the risks of contagion effects linked to sovereign ratings changes;
- to improve credit rating market conditions with a view to improving the quality of ratings;
- to ensure a right of redress for investors who have suffered losses due to a credit rating issued by a CRA that has infringed the CRA Regulation; and
- to improve the quality of ratings by reinforcing the independence of CRAs and promoting sound credit rating processes and methodologies.

Amongst the preferred policy options are the following: (i) reduction of overreliance by financial institutions on external ratings by reducing the importance of external ratings in financial services legislation; (ii) issuers' disclosure regarding the underlying asset pools of structured finance products to help investors to make their own credit risk assessment; (iii) quality of sovereign ratings to be improved through verification of underlying information and publication of the full research report accompanying the rating; (iv) comparison of ratings from distinct rating agencies, facilitated by promoting common standards for rating scales and a European Rating Index (EURIX), to improve choice; (v) mandatory rotation of CRAs; (vi) setting up a right of redress for investors against CRAs; (vii) strengthening the rules on the disclosure of rating methodologies.

Lastly, there would be additional costs for financial firms resulting from the requirements to enhance internal risk management and the use of internal rating models for regulatory purposes and for issuers due to enhanced disclosure requirements. CRAs will also incur additional recurring compliance costs to mitigate risks of contagion effects linked to sovereign ratings.

Neither the measures to improve competition nor the preferred options dealing with CRA independence would entail any significant costs.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union. (TFEU).

CONTENT: the proposal aims to amend Regulation No 1060/2009 on credit ratings agencies. **1) Use of credit ratings:** the proposal requires certain financial institutions to make their own credit risk assessment. They should therefore **avoid relying solely or mechanistically on external credit ratings** for assessing the creditworthiness of assets. Furthermore, ESMA, EBA and EIOPA should not refer to credit ratings in their guidelines, recommendations and draft technical standards where such references have the potential to trigger mechanistic reliance on credit ratings by competent authorities or financial market participants.

- Issuers are obliged to disclose specific information on structured finance products on a continuing basis, in particular on the main elements of underlying asset pools for structured finance products necessary for investors to make their own credit assessment and thus avoid the need to rely on external ratings. This information is to be disclosed through a centralised website operated by ESMA.
- Issuers (or their related third parties) who solicit a rating must engage two credit rating agencies, independent from each other, to issue two independent credit ratings in parallel on the same structured finance instruments.

2) Independence of credit ratings agencies: this group of amendments establishes stricter rules on independence which aim to address conflicts of interests with regard to the issuer-pays model and CRAs' shareholder structure:

- The proposal **prevents any member or shareholder** of a CRA that holds a participation of at least 5% to hold 5% or more in any other CRA, unless the CRAs in question are members of the same group;
- A new article introduces a **rotation rule** for the CRAs engaged by the issuer to either rate the issuer itself or its debt instruments. The CRA engaged should not be in place for **more than 3 years or for more than 1 year** if it rates more than ten consecutively rated debt instruments of the issuer.

This rotation rule is expected significantly to **mitigate the potential conflicts of interest issues** relating to the issuer-pays model. Moreover, the Commission will continue to monitor the appropriateness of credit rating agencies' remuneration models and will submit a report thereon to the European Parliament and the Council by 7 December 2012.

3) Disclosure of information on methodologies of CRAs, credit ratings and rating outlooks: this group of amendments strengthens the rules on the disclosure of rating methodologies, with a view to promoting sound credit rating processes and, in fine, improve rating quality.

- New provisions lay down **procedures for the preparation of new rating methodologies** or the modification of existing ones. They require the consultation of stakeholders on the new methodologies or the proposed changes and on their justification. Furthermore CRAs should submit the proposed methodologies to ESMA for the assessment of their compliance with existing requirements.

- Each CRA will be obliged to **correct errors in its methodologies** or in their application, as well as to inform ESMA, the rated entities and generally the public of such errors.

4) Sovereign ratings: rules applying specifically to sovereign ratings (the rating of a State, a regional or local authority of a State or of an instrument for which the issuer of the debt or financial obligation is a State or a regional or local authority of a State) are particularly reinforced:

- CRAs are required to assess sovereign ratings more frequently **(every six months instead of every twelve months);**

- CRAs must publish a **full research report** when issuing and amending sovereign ratings, in order to improve transparency and enhance users' understanding. Sovereign ratings should only be published **after the close of business** and **at least one hour before the opening of trading venues in the EU;**

- CRAs must be **transparent as to the allocation of staff** to the ratings of different asset classes (i.e. corporate, structured finance, sovereign ratings).

5) Comparability of credit ratings: these amendments promote the comparability of credit ratings and provide for more transparency on fees charged for credit ratings.

- CRAs must communicate their ratings to ESMA, which would ensure that all available ratings for a debt instrument are published in the form of a **European Rating Index (EURIX),** freely available to investors;

- ESMA is empowered to **develop draft technical standards**, for endorsement by the Commission, on a harmonised rating scale to be used by CRAs. All ratings would need to follow the same scale standards, ensuring that investors can compare ratings more easily.

- **fees charged by CRAs** to their clients for the provision of ratings (and ancillary services) should be non-discriminatory (i.e. based on actual cost and the transparency pricing criteria) and not based on any form of contingency (i.e. not depend on the result or outcome of the work performed).

- CRAs must annually disclose to ESMA **a list of fees charged** to each client, for individual ratings and any ancillary service.

- ESMA must undertake some **monitoring activities regarding market concentration** and the Commission will prepare a report on this issue.

6) Civil liability of credit rating agencies vis-à-vis investors: CRAs will bear such liability where they infringe, intentionally or with gross negligence, the CRA Regulation, thereby causing damage to an investor having relied on a credit rating of such CRA, provided the infringement in question affected the credit rating.

BUDGETARY IMPLICATIONS: the Commission's proposal has no impact on the European Union budget. In particular, tasks that would be entrusted to ESMA would not entail additional EU funding.

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.