Basic information

2011/0360(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Institutions for occupational retirement provision, undertakings of collective investment in transferable securities (UCITS) and Alternative Investment Funds Managers: risk management Amending Directive 2003/41/EC 2000/0260(COD) Amending Directive 2009/65/EC 2008/0153(COD) Amending Directive 2011/61/EU 2009/0064(COD) **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.05 Insurance, pension funds 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
JURI Legal Affairs	BODU Sebastian Valentin (PPE)	19/12/2011

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

Commission DG	Commissioner

European Commission		
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
15/11/2011	Legislative proposal published	COM(2011)0746	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
28/06/2012	Committee report tabled for plenary, 1st reading	A7-0220/2012	Summary
15/01/2013	Debate in Parliament		
16/01/2013	Decision by Parliament, 1st reading	T7-0013/2013	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	2011/0360(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2003/41/EC 2000/0260(COD) Amending Directive 2009/65/EC 2008/0153(COD) Amending Directive 2011/61/EU 2009/0064(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 053-p1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/07818

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE480.851	07/02/2012	

Amendments tabled in committee		PE486.063	29/03/2012	
Committee opinion	JURI	PE483.524	27/04/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0220/2012	28/06/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0013/2013	16/01/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00069/2012/LEX	21/05/2013	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0746	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	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2011)0746	23/01/2012	
Contribution	IT_SENATE	COM(2011)0746	23/11/2012	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
ECB	European Central Bank: opinion, guideline, report	CON/2012/0024 OJ C 167 13.06.2012, p. 0002	02/04/2012	Summary
EESC	Economic and Social Committee: opinion, report	CES1296/2012	23/05/2012	

Additional information

Source	Document	Date
National parliaments	IPEX	

European Commission	EUR-Lex	

Final act	
Directive 2013/0014 OJ L 145 31.05.2013, p. 0001	Summary

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

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

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

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

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

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

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

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

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

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

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

LEGAL BASIS: Article 53 (1) TFEU.

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

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

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

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

- § it introduces a requirement for the AIF Manager not to solely or mechanistically rely on external credit ratings for assessing the creditworthiness of the AIF assets. External credit ratings may be used as one factor among others in this process but shall not prevail;

- § it proposes corresponding amendments to the existing powers of the Commission to adopt delegated acts with a view to specifying the provisions of Article 15(1) of Directive 2011/61/EU.

The proposal provides for a transposition period of 12 months.

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

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

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

2011/0360(COD) - 16/01/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 599 votes to 27, with 68 abstentions, a legislative resolution on the proposal for a Directive of the European Parliament and of the Council 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.

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:

Introduction of a reference to Directive 2003/41/EC of the European Parliament and of the Council: the new Directive also seeks to amend Directive 2003/41/EC which provides for regulation at Union level of institutions for occupational retirement provision (IORPs).

Excessive reliance on credit ratings: the amended text underlines the need to require IORPs, managers of UCITS and managers of Alternative Investment Funds (AIFs) to avoid relying exclusively and automatically on external credit ratings or **using them as the only parameter when assessing the risk** involved in the investments made by IORPs, by managers of UCITS and by managers of AIFs.

More specifically, Directives 2003/41/EC, 2009/65/EC and 2011/61/EU are amended in order to make provision for the competent authorities, taking into account the nature, scale and complexity of the investments of UCITS to monitor the adequacy of their credit assessment processes of the management companies, assess the use of references to credit ratings in their investment policies and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on ratings.

Delegated acts: the Commission shall publish the results of consultations it carries out in the course of its preparatory work with a view to the adoption of delegated acts.

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

2011/0360(COD) - 21/05/2013 - Final act

PURPOSE : to amend EU rules on credit rating agencies.

LEGISLATIVE ACT : Directive 2013/14/EU of the European Parliament and of the Council

amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings.

CONTENT : the Directive – adopted at the same time as Regulation (EU) n° 462/2013 of the European Parliament and of the Council xisting legislation on credit rating agencies (CRAs) on the activities and supervision of institutions for occupational retirement provision, on undertakings of collective investment in transferable securities (UCITS) and on alternative investment funds managers (AIFM) in order to reduce the institutions' reliance on external credit ratings when assessing the creditworthiness of their assets.

In order to protect investors in those funds, the Directive requires IORPs, management and investment companies with regard to UCITS, and AIFMs to avoid relying solely or mechanistically on credit ratings or using them as the only parameter when assessing the risk involved in the investments made by IORPs, UCITS and AIFs.

ENTRY INTO FORCE: 20/06/2013.

TRANSPOSITION : 21/12/2014.

DELEGATED ACTS : the Commission may adopt delegated acts to ensure that management and investment companies with regard to UCITS, and AIFMs are effectively prevented from over-reliance on credit ratings for assessing the creditworthiness of the assets held.

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

2011/0360(COD) - 02/04/2012

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.

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

2011/0360(COD) - 22/06/2012

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

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

2011/0360(COD) - 28/06/2012 - 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 Directive of the European Parliament and of the Council 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 Committee recommended that the European Parliament's position at first reading under the ordinary legislative procedure should be to amend the Commission's proposal as follows:

Placement rules: institutions shall not adopt investment rules that would result in the automatic sale of assets in the event of a downgrade of their creditworthiness by an external credit rating agency.

Definitions: Members propose incorporating in Directive 2004/109/EC definitions of "financial instrument", "securitisation", "structured finance instrument", "originator" and "sponsor".

Additional information requirements for issuers whose structured finance instruments are admitted to trading on a regulated market: an amendment stipulates that the issuer shall ensure that either the originator or the sponsor of a structured finance instrument established in the Union shall disclose to the public:

- **information on the credit quality** and performance of the individual underlying assets of that structured finance instrument, the structure of the securitisation transaction, the cash flows and any collateral supporting a securitisation exposure
- **as well as any information that is necessary to conduct comprehensive and well-informed stress tests** on the cash flows and collateral values supporting the underlying exposures.

This obligation to disclose information shall not extend to the provision of such information that would breach statutory provisions governing the **protection of confidentiality** of information sources or the processing of personal data.

Moreover, the European Securities and Markets Authority (ESMA) shall develop **draft regulatory technical standards** to specify: (i) the information that the persons are to disclose; (ii) the frequency with which such information is to be updated; and (iii) a template by which to disclose the information.

Members call for ESMA to submit those draft regulatory technical standards to the Commission by 1 January 2013 and to set up a webpage for the publication of the information on structured finance instruments.

Method of risk management (Directive 2009/65/EC): a UCITS shall not include in its fund rules any rule that would result in the automatic sale of its assets in the event of a downgrade of its creditworthiness by an external credit rating agency.

Use of external ratings (Directive 2011/61/EU): Members consider that investment firms, management companies and insurance undertakings shall not suggest that their customers insert, in their standard investment agreements, fund rules or insurance contracts, references to reliance on ratings.

Members feel that in the medium term, further initiatives should be evaluated with a view to taking **ratings out of financial regulation**.

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

2011/0360(COD) - 06/07/2012

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.