

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.