EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
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Opinion

Title **DG MARKT - Impact Assessment on: Proposal for Amending Regulation 1060/2009 on Credit Rating Agencies**

(draft version of 9 February 2010)

(A) Context

Regulation (EC) N° 1060 / 2009 was one of the Commission's first initiatives in response to the financial crisis. It established a system for the registration and supervision of credit rating agencies (CRAs). It left supervisory responsibility with the competent authority of the home Member State, but set out mechanisms to facilitate decision making in colleges of supervisors overseen by the Committee for European Securities Regulators (CESR). Given expected changes in the architecture for financial market supervision at EU and global level, the Regulation (Art 29.2) envisaged the possibility of changes in the supervisory provisions before the introduction of the new regime in December 2010. This Report considers the implications of such changes in the light of later statements by both the European Council and the European Parliament in favour of a centralised European supervision of CRAs, and of the Commission's proposal of 23 September 2009 for a Regulation establishing a European Securities and Markets Authority (ESMA). ESMA would replace CESR and could be given exclusive supervisory powers over entities or economic activities with Community-wide reach. Both these Commission documents were subject to separate Impact Assessment Reports.

(B) Overall assessment

Notwithstanding the widespread political support for centralised supervision, the Board is of the view that the impact assessment as it stands does not provide a sufficiently solid analysis of its impacts. Strengthening this analysis would provide greater clarity on the reasons why this impact assessment reaches a different conclusion from previous impact assessments dealing with financial supervision. The report should: provide more evidence of the specificities of CRAs services that justify centralised supervision, the weaknesses of the current supervisory regime and the issues raised by how it allocates sanctioning powers; provide a more comprehensive analysis of the cost-effectiveness of centralized supervision by ESMA compared to the Colleges of Supervisors; reinforce the analysis of subsidiarity and proportionality, particularly with regard to smaller CRAs which grant ratings with a relevance largely limited to national issuers and investors;

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explain more clearly the "Meroni concerns" and better justify the proposed sanctioning regime. The report should also clarify the extent of the consultation carried out.

Given the fundamental nature of the concerns raised above, the IAB invites DG Market to resubmit a new version of the IA report, on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Present a clearer and more evidence-based discussion of the problems. The report should explain more clearly why CRA services are considered to be different from other financial services, notably in terms of 'Community-wide reach', and clarify whether this is relevant for all CRAs or only for a sub-group. A clearer presentation of the industry structure would facilitate this. The report should also identify more clearly and, whenever possible give broad orders of magnitude for, the costs and risks implied by the current supervisory regime. The problems for the level playing field and consistency of application implied by the current sanctioning regime should also be better substantiated. This analysis should be moved forward to section 3 to allow a better overview of all problems identified.

(2) Provide a more comprehensive analysis of the subsidiarity, proportionality and cost-effectiveness of centralized supervision by ESMA. In particular, the report should pay greater attention to the case of small CRAs located in one country providing services to national issuers of instruments traded primarily among national investors (such as Bulgarian CRAs rating local municipal bonds). The report should also consider more explicitly possible inefficiencies of the preferred solution such as the availability of skills, the knowledge of local conditions and the ease of interactions between supervisors and CRAs. Any planned cooperation between ESMA and national supervisors and the role of the latter in ESMA's decision-making should be taken into account. Finally, given the emphasis that the report puts on cost-effectiveness as a justification for centralised supervision, it should demonstrate more clearly that the preferred option would cost less than the situation under Regulation 1060/2009. It could, for instance, provide broad estimates of the costs of co-ordination among multiple supervisors, the likelihood of supervisory disputes, the number of CRA-to-competent authority relationships, the time required to perform the main supervisory duties and, to the extent possible, the different budgetary implications for the Member States and the Community under the different options.

(3) Provide a clearer justification for the proposed sanctioning regime. The report should give a fuller presentation of Meroni issues and explain why they only arise with regards to sanctioning and not other powers that might be delegated to ESMA (for instance, registration of CRAs and power of inspection). Against this background, the report should regard compatibility with Meroni as an additional objective and restructure the analysis of the options accordingly. In the case of sanctions, this analysis should also consider issues related to the transparency, accountability, costliness and speed of procedures. Against the background of similar regimes in the financial area, the report should also better justify the proposed set of sanctioning instruments and explain how the ranges and upper limits for fines were identified and what impact they would have on different types of CRAs. The challenges of establishing a common set (and ranges) of fines should be discussed given that these currently vary significantly in Member States

regimes.

(4) Clarify the extent of consultation carried out. The report should make clear that the public consultations were carried out for the impact assessment of the original CRA Regulation, which nevertheless also addressed the issue of a centralised supervisor. The report should recall any relevant findings emerging from this consultation and summarize the outcome of any further targeted consultation. The reasons for the lack of a second round of public consultation should be provided.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The main report is 30 pages without annexes and provides sufficient information to be read as a stand alone document. However, it would benefit from an annex explaining more fully the Meroni ruling and its implications. Information on the structure of the CRA industry and its specificities from a supervisory point of view could be succinctly provided in the main text together with clear references to annexes or previous Commission documents. The presentation of the problems raised by the current sanctioning regime should be consolidated into the main analysis of problems. Parts of section 9 and annex II may have to be brought into the main text as a result of the recommendations above. A short section on third country impacts should be added, particularly with regard to any relevant spill-over to or from parallel reforms in the US. Finally, an annex on the findings of the public consultation with regard to allocating supervisory responsibility should be added, along with a list of acronyms used.

(E) IAB scrutiny process	
Reference number	[None at present]
External expertise used	No
Date of Board Meeting	24 February 2010