



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

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Opinion

Title

DG MARKT - Impact Assessment on: Proposal for Amending Regulation 1060/2009 on Credit Rating Agencies (Resubmitted draft: version of 8 April 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

The report has strengthened the arguments for action in this area in line with the IAB's first opinion. A number of elements nevertheless need further work. In particular, some of the weaknesses of the current supervisory regime should be better substantiated and the budgetary costs of the centralized supervision by ESMA compared to the Colleges of Supervisors should be further analysed. Although somewhat improved, the justification for the proposed sanctioning regime needs to be developed further.

(C) Main recommendations for improvements

(1) Further substantiate some of the identified problems. The revised report presents more clearly the differences between CRA services and other financial services as well as the potential 'Community-wide reach' of small CRAs. It should, however, provide explicit examples of the "competing supervisory interests" for CRAs supervisors as well as of the problems posed by optimisation of regulatory burden by larger CRAs, as opposed to regulatory avoidance (see box on p. 8). While the report does not give broad orders of magnitude for the higher costs implied by the current regime, it provides more solid reasoning on the cost of interactions with multiple supervisors. It should, however, further substantiate the risks identified in the current supervisory regime - for instance by referring to stakeholders' concerns or providing examples of the potential conflicts of competences among supervisors (p.12) and of interests within CRAs (p.13) - as well as the problems for the level playing field and consistency of application implied by the current sanctioning regime. The analysis of the latter should be integrated in section 3 to allow a better overview of all problems identified. Section 4 should explain why the use of smaller CRAs' ratings beyond their traditional local markets would constitute a problem in the presence of the uniform EU registration standards set by Regulation 1060 / 2009.

(2) Further strengthen the analysis of costs. Thanks to a more illustrative presentation of the planned interactions between CRAs and supervisors under the current and proposed regime, the report now considers more explicitly the possible inefficiencies of the preferred solution. However, the analysis of costs should be further strengthened in particular with respect to the different budgetary implications for the Member States and the Union under the different options (making use of clearly spelled out assumptions as necessary). The report should thus substantiate the statement that "considerable savings are expected for Member States" (p.24). It should provide consistent information on the estimated budgetary impact of the preferred option (already estimated by the previous Impact Assessment report according to p. 5 but only partially according to p.36).

(3) Provide a clearer justification for the proposed sanctioning regime. Since all options are to be compatible with the "acquis communautaire", the report should discuss in section 6 how policy options are designed to avoid potential Meroni issues. The report should therefore bring forward to this section the explanation of the provision for Commission control under option 2 (p.30) as well as explain why Meroni concerns 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). The report should also consider issues related to the transparency, accountability, costliness and speed of procedures of sanctioning under the different options. Finally, the report should discuss the challenges of establishing a common set (and ranges) of fines given the divergence characterising similar regimes in the financial area. Against this background, the report should explain how the ranges and upper limits for fines were identified and what impact they would have on different types of CRAs.

(D) Procedure and presentation

The presentation of the CRA industry has been strengthened in the main text. However, further economic data could usefully complement annex I. The presentation of the problems raised by the current sanctioning regime should be consolidated into the main analysis of problems. The new section on third country impacts should briefly discuss the adequacy of the various options on a global level and any relevant spill-over to or from parallel reforms in the US (or the lack thereof). The reasons why a second public consultation was not considered necessary should be briefly provided and an annex summarizing the findings of the public consultation with regard to allocating supervisory responsibility should be added. A list of acronyms used should also be provided.

(E) IAB scrutiny process

Reference number	2010/MARKT/036
External expertise used	No
Date of Board Meeting	Written procedure. The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 26 February 2010