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Herr Per WESTERBERG
Talmannen
Riksdagen
Sveriges riksdag
SE – 100 12 STOCKHOLM

Dear President,

The Commission would like to thank the Riksdag for its reasoned Opinion on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies – CRA III {COM(2011) 747 final}.

The Commission takes the view that EU action is necessary as the business of credit rating agencies is global. Ratings issued by a credit rating agency based in one Member State are used and relied upon by market participants throughout the EU. Deficiencies in the regulatory framework for credit rating agencies – or its absence – in one Member State could adversely affect market participants and financial markets EU-wide. Therefore, sound and harmonised regulatory rules applicable throughout the EU are necessary to protect investors and markets from possible shortcomings.

The objective of ensuring a sufficient right of redress for investors vis-à-vis CRAs can also be better achieved at Union level. As the impact assessment accompanying the CRA III proposal shows, currently there are considerable differences between the legal systems of Member States as to whether and under what conditions investors can claim damage from CRAs¹. The Commission has duly noted that the Riksdag opposes EU wide harmonisation of this aspect, while underlining the variety of existing national legal systems. However, in some Member States it is very difficult if not impossible for investors to claim damage from CRAs. Differences between Member States' civil liabilities regimes applicable to CRAs lead to a different level of protection for investors and could incentivise forum shopping whereby CRAs seek to ensure that their activities are subject to the law of a Member State where civil liability for infringements of the CRA Regulation is less likely to be triggered.

According to the proposed Article 35a in the CRA III proposal, a CRA could be liable towards investors in every Member State in the event that the CRA infringes, intentionally or due to gross negligence, the CRA Regulation, thereby causing damage to an investor that has relied on a credit rating of such a CRA, provided the infringement in question affected the credit rating.

¹ Impact Assessment accompanying CRA III, SEC(2011) 1354, Annex VI, 2.4. p. 141 ff, available at http://ec.europa.eu/internal_market/securities/docs/agencies/SEC_2011_1354_en.pdf

The proposed Article 35a in the CRA III proposal only covers elements of civil liability which are necessary to ensure a sufficient right of redress for investors in the Union. All other matters not explicitly mentioned, including procedural aspects, remain governed by the applicable national law. This will allow specificities of national civil law orders in the areas which are not covered by the proposed rule to be taken into account, while at the same time ensuring a sufficient right of redress for investors throughout the Union.

I hope that this reply serves to address the concerns raised in your reasoned Opinion and look forward to continuing the political dialogue with the Riksdag in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*