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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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INTRODUCTION

This report responds to several reporting obligations set out in Regulation (EC) No 1060/2009 on Credit Ratings Agencies (CRA), as amended[1] (CRA Regulation). In particular, this report:

- analyses references to external credit ratings in EU legislation and in private contracts among parties in financial markets. It also assesses potential alternatives to external credit ratings that are currently being used by market participants across the EU (**Section I**);[2]

- assesses the impact and effectiveness of the CRA Regulation's measures concerning competition in the credit rating industry (**Section II**);[3]

- evaluates the impact of the CRA Regulation on governance and internal procedures of CRAs, in particular the prevention of conflict of interests and the use of alternative remuneration models. The report also analyses the provisions relating to Structured Finance Instruments (SFIs) and their potential extension to other asset classes (**Section III**);[4]

- considers the feasibility of the establishment of a European CRA for the assessment of sovereign debt and a European credit rating foundation for all other credit ratings (**Section IV**).[5]

This report assesses inter alia many of the key provisions introduced in the last amendment of the CRA Regulation. It draws from the Technical Advice of the European Securities and Markets Authority (ESMA) on reducing sole and mechanistic reliance on external credit ratings[6], the study conducted by ICF Consulting Services on the Feasibility of alternatives to credit ratings[7], the ESMA Technical Advice on competition, choice and conflict of interest in the credit rating

[1] Regulation No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009) as amended by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 (OJ L 145, 31.5.2011), by Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 (OJ L 174, 1.7.2011), by Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 (OJ L 146, 31.5.2013), and by Directive 2014/51/EU of the European Parliament and of the Council of 18 April 2014 (OJ L 153, 22.5.2014).

[2] Article 39b(1) CRA Regulation.

[3] Article 39(4)(5) CRA Regulation.

[4] Article 39(4)(5) CRA Regulation.

[5] Article 39b(2) CRA Regulation.

[6] ESMA/2015/1471 – ESMA Technical Advice on reducing sole and mechanistic reliance on external credit ratings – publication available at https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-1471_technical_advice_on_reducing_sole_and_mechanistic_reliance_on_external_credit_ratings.pdf

[7] MARKT/2014/257/F4/ST/OP-LOT1 available at http://ec.europa.eu/finance/rating-agencies/index_en.htm

industry[8] and the study conducted by Europe Economics on the state of the credit rating market[9]. Stakeholders were extensively consulted through workshops, questionnaires and interviews in the course of the preparation of these technical advice and studies.[10]

I. Risk of over-reliance on external credit ratings and available alternatives

1. Over-reliance on external credit ratings

The international response to the global financial crisis included efforts to reduce reliance on external credit ratings, in particular to *"reduce the financial stability-threatening herding and cliff effects that currently arise from CRA rating thresholds being hard-wired into laws, regulations and market practices".*[11] The EU has responded to these efforts, including by adopting legislative changes (see below). However, it remains necessary to assess to what extent remaining references to external credit ratings in EU legislation may trigger over-reliance. In addition, over-reliance may also arise through the use of external credit ratings by market participants in private contracts.

Several EU legal acts in the area of financial services refer to the use of external credit ratings. Some of these (AIFMD[12], UCITS[13] and IORPs[14]) were amended by Directive 2013/14/EU[15], which introduced additional rules for management or investment companies of UCITS and AIFMs requiring risk-management processes to avoid relying solely and mechanistically on external credit ratings. This was in order to avoid over-reliance on ratings in the measurement of credit risk. One such rule

[8] ESMA/2015/1472 – ESMA Technical Advice on competition, choice and conflicts of interest in the credit rating industry – publication available at https://www.esma.europa.eu/sites/default/files/library/esma-2015-1472_technical_advice_on_competition_choice_and_conflicts_of_int.pdf

[9] MARKT/2014/257/F/Lot 2 available at http://ec.europa.eu/finance/rating-agencies/index_en.htm.

[10] For more information see p. 5 of ESMA's Technical Advice on reducing sole and mechanistic reliance on external credit ratings, p. 5 et seq. of the ICF study, p. 10 of ESMA's Technical Advice on competition, choice and conflict of interest in the credit rating industry, p. 7 of Europe Economics study.

[11] See in particular p. 1 of the Financial Stability Board's (FSB) *Principles for Reducing Reliance on CRA Ratings*, available at http://www.fsb.org/2010/10/r_101027/. See also the FSB's *Roadmap for Reducing Reliance on CRA Ratings*, available at http://www.fsb.org/2012/11/r_121105b/.

[12] 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) No 1060/2009 and (EU) No 1095/2010.

[13] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast).

[14] Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision.

[15] Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013, 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.

introduced by Directive 2013/14/EU was the requirement to ensure that competent authorities supervise the adequacy of credit assessment processes.

EMIR [16], the legislation on Central Counter Parties (CCPs), allows assessments carried out by CRAs to establish the level of risk but does not require nor necessarily incentivise CCPs to do so. If external ratings are employed, CCPs must provide some counter-analysis or supplement their assessment with their own analysis.

CRR [17] and CRD IV [18] contain several provisions which allow for different treatments of risks associated with an exposure, depending on whether these exposures are rated or not.[19] As a result, the capital requirements associated with an exposure may vary considerably depending on whether such exposure is rated by a CRA or not and the rating provided.[20] The Basel Committee on Banking Supervision (BCBS) is currently in the process of revising the standardised approach for credit risk and has considered various alternatives to replace external ratings.[21] The Committee proposes to maintain references to external ratings while complementing its use with banks' due diligence processes, as well as enhancing the requirements surrounding the use of external ratings, so as to ensure that banks undertake their own due diligence and internal risk management and do not rely mechanistically on external ratings.

A similar mechanism is employed by Solvency II,[22] which provides for different risk considerations depending on whether an external rating is available or not (and what rating is assigned to such exposure). To mitigate the risk of over-reliance on ratings, Solvency II provides that insurers, when they use an external credit rating assessment in the calculation of technical provisions and the Solvency Capital Requirement, shall assess the appropriateness of those external credit assessments as part of their risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments [23]. In addition, the

[16] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

[17] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

[18] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

[19] The methodology is designated in the legislative text as the "standardised approach" and is currently the most commonly used methodology under CRR and CRD for banks.

[20] For example, in the case of exposures to corporates, if the rating by a CRA is available and the exposure receives the highest rating (e.g. AAA) the risk weight applied is 20%. Therefore the bank will be required to hold regulatory capital equal to 20% of the values of the exposure. If, however, a rating is not available, the risk weight to be applied would be at least 100%.

[21] Basel Committee on Banking Supervision, Second consultative document, Standards Revisions to the Standardised Approach for credit risk, Issued for comment by 11 March 2016, December 2015, available at http://www.bis.org/bcbs/publ/d347.htm

[22] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance.

[23] Article 44(4a) of Solvency II, and Commission Implementing Regulation (EU) 2015/2015 of 11 November 2015 laying down implementing technical standards on the procedures for assessing external credit assessments in accordance with Directive 2009/138/EC of the European Parliament and of the Council, OJ L 295, 12.11.2015, p.16.

Solvency II Delegated Act[24] sets out detailed rules on the use of external credit assessments, such as the requirement to produce internal credit assessments for larger or more complex exposures, which also contribute to reducing the risk of over-reliance.

Whilst mitigating rules are in place to avoid sole and mechanistic reliance on external ratings, the use of ratings in critical areas of the CRR and Solvency II frameworks, notably those relating to calculations of regulatory capital or solvency requirements, may create an incentive for financial institutions and insurance companies to rely on assessments from rating agencies. The Commission will therefore continue monitoring the impact of these requirements and provide input to relevant bodies, such as the Basel Committee, to mitigate any risks of excessive reliance on credit ratings in the prudential framework for credit institutions and insurance undertakings.

Avoidance of over-reliance on contractual references could be achieved through prohibition provisions or further disclosure requirements. However, while the latter appears not to be suitable for rating triggers provided by investment policies or guidelines, the former would constitute a restriction to contractual freedom and would necessarily have to be justified by imperative reasons of public interest. In any case, references to ratings should not be an excuse for managers to avoid undertaking their own due diligence before investment decisions. The Commission will continue to monitor market practices to identify any risks due to contractual over-reliance on external credit ratings.

2. Available alternatives to external ratings

The main available alternatives to external ratings are market-based measurement of credit risk, internal credit risk assessment tools, and third-party assessments.

Market-based measurement (e.g. default swaps spreads and bond pricing information) are objective and transparent in terms of accessibility and allow for specific risk weightings to be assigned to a given asset. They can be used to measure the default risk probability for a wide range of different asset classes, such as sovereign debt, corporate debt and structured products. However, these measurement tools may be subject to important limitations. The two main risks identified by ESMA and the ICF study are the high volatility of these measurement tools and their inability to express more nuanced indications of the risk associated with an investment. In particular, market-based measures are exposed to the risk of manipulation, i.e. the risk of market participants strategically influencing prices in order to generate and benefit from a regulatory consequence.

Internal credit-risk assessment tools are used as a tool for risk assessment for prudential purposes, particularly for the calculation of regulatory capital under the Basel III framework and CRR (specifically under the Internal Ratings Based (IRB) approach) and under the Solvency II framework for insurance companies. Internal methodologies are more likely to correctly reflect the risk profile of a specific

[24] Article 3-6 of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

borrower or security and can be customised on the basis of each market participant's needs. They can potentially also be used for any category of financial instruments and investment.

The main drawback of using internal credit assessment models as alternatives to external credit ratings is the high costs involved. These include the costs related to the development of the analytical tools and the collection of data – possibly including subscription fees to access databases of relevant financial data - as well as hiring qualified staff to perform the judgemental part of the analysis and to perform validation and quality control of the models.

Moreover, internal credit risk assessment methodologies might not offer the same level of comparability provided by external ratings when it comes to various types of contractual arrangements, while CRAs provide an objective and clear way of defining the acceptable level of risk (by means of a standardised ranking systems such as AAA/AA, etc.).

In addition, they also do not ensure a high level of transparency towards the market. This is mainly due to the fact that such models are not publicly available and there is an objective difficulty for their standardisation since the subjective risk factors and business model taken into consideration to perform the internal assessments vary from one market player to another. Therefore they can be considered useful for the single investor performing the analysis but they do not provide the market with a clear picture and outlook of certain products such as sovereigns.

Third party assessments are carried out by parties that are not involved in the investment. Examples are accounting-based measures, OECD Country Risk classification, scorings by Central Banks and scorings offered by private companies and based on computational models.

i. *Accounting-based measures*

Accounting-based measures can provide useful and easily comparable information on basic financial ratios, which may help in assessing the creditworthiness of an investment. However, they are also subject to a number of important limitations and cannot be considered as a full alternative to external ratings. One of the disadvantages of accounting-based measures is that while they cover all corporate asset classes they are not suitable for sovereign debt and for many structured products. Moreover, access to information, as highlighted by some of the stakeholders interviewed in the context of the ICF study, is still problematic since accounting-based measures may in some countries still not be easily available for non-listed companies because of lower or not harmonised reporting standards or obligations.

Also, specific skills as well as sectorial experience are necessary to effectively use these tools and obtain reliable assessments. Interpretation and judgment plays a key role with the accounting-based measures particularly when comparisons are needed. For example, different analysts may apply different ratios for the same firm which in turn may lead to diverging results. While this is not in itself a negative aspect, it implies that interpretation of ratios without an adequate expertise and contextual knowledge may be difficult.

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ii. OECD Country Risk classification

The OECD Country Risk Classifications offer both greater geographical coverage than external credit ratings and the relevant data is made publicly available. However, the OECD assessments have a narrow focus and take into account only specific categories of risk (political risks and others directly associated with it) while failing to include other relevant economic risk indicators which could be potentially useful for investors and investment decisions. Therefore, OECD country risk classifications can be considered as a valid tool to assess certain types of risk. Although they encounter some limitations, they could provide a good complement to, and a possible means for verification of, external ratings of sovereign debt.

iii. Scorings by Central Banks

Central Credit Registers (CCR) and Central Financial Statements Databases (CFSD) are relevant examples of scoring tools which are either owned or managed by central banks. CCRs and CFSDs' techniques are largely applied to corporate debt instruments but their geographical and sectoral coverage vary from country to country depending on parameters such as the eligibility of the instruments as collateral for monetary policy operations. The main drawback of CCRs and CFSDs is their limited country and asset class coverage as well as limited access to data. They are also limited in their application to corporate debt and their coverage of non-financial corporations in some countries is negligible. Scorings can be an important tool for smaller companies, as they allow a cheaper means of obtaining a credit assessment (compared to credit ratings by CRAs). However, scorings do not seem sufficient to provide a feasible full alternative to external credit rating systems but should rather be employed as a useful complementary source of information about the creditworthiness of a financial product.

The technical analysis carried out to prepare this report shows that there are currently no feasible alternatives in the market to entirely replace external credit ratings. Some of the above mentioned tools and measures might to a certain extent be considered as valid substitutes for CRAs' assessments but entail substantial costs which in particular could be prohibitive for smaller players in the financial markets. Other tools might only be used as a complement to CRAs' assessments. Only a few EU legislative provisions that relate to external ratings - such as the relevant provisions in CRR/CRD IV and Solvency II - may create an incentive for financial institutions and insurance companies to rely on assessments from rating agencies, which is why the further monitoring should be focused on these two frameworks.

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II. State of the CR market and assessment of CRA Regulation provisions to boost competition in the credit rating market

1. Analysis of the CRA market

Current state of the market

The rating industry is currently dominated by three US-based firms (S&P, Moody's and Fitch), with a global geographic coverage[25] of all asset classes (corporate bonds, sovereign bonds, SFIs and covered bonds[26]) (see also Table 1) and a cumulative market share in revenues of approximately 92% percent in the EU (Table 2)[27]. Although new firms have entered the European credit rating market - which currently consists of 26 registered and 4 certified credit rating agencies[28] - most of the smaller CRAs rate a limited set of asset classes and have limited cross-border activities and geographical scope.

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[25] With reference to the location of the issuer or instrument rated.
[26] See categories of assets classes in the CEREP database.
[27] Market shares calculated on the basis of the 2014 financial statements.
[28] See updated list of registered and certified CRAs available at https://www.esma.europa.eu/supervision/credit-rating-agencies/risk

Table 1: Categories of credit ratings offered by EU registered credit rating agencies 2011-2015 (source ESMA, CEREP)

CRA	2011									2012									2013									2014									2015 (First Semester)								
	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB
AM Best Europe-Rating Services Ltd. (AMBERS)		IN	CO								IN	CO								IN	CO								IN	CO								IN	CO						
ARC Ratings, S.A.			CO							FI		CO									CO									CO	SV								CO	SV				SF	
ASSEKURATA Assekuranz Rating-Agentur GmbH		IN									IN									IN									IN									IN							
Axesor SA												CO									CO									CO									CO					SF	
BCRA-Credit Rating Agency AD	FI	IN	CO		SS					FI	IN	CO		SS					FI	IN	CO		SS					FI	IN	CO	SV	SS					FI	IN	CO	SV	SS				
Capital Intelligence (Cyprus) Ltd	FI		CO	SV						FI		CO	SV						FI		CO	SV						FI		CO	SV						FI		CO	SV					
CERVED Group S.p.A.			CO									CO									CO									CO									CO						
Creditreform Rating AG			CO						CB			CO					SF	CB			CO					SF	CB			CO					SF	CB			CO					SF	CB
CRIF S.p.A.			CO									CO									CO									CO									CO						
Dagong Europe Credit Rating Srl (Dagong Europe)																			FI									FI	IN	CO							FI	IN	CO						
DBRS Ratings Limited	FI	IN	CO	SV	SS	PE		SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB
The Economist Intelligence Unit Ltd																						SV									SV									SV					
Euler Hermes Rating GmbH	FI		CO							FI		CO							FI		CO							FI		CO							FI		CO						
European Rating Agency, a.s.					SS									SS									SS									SS									SS				
EuroRating Sp. zo.o.																												FI		CO							FI		CO						
Feri EuroRating Services AG				SV									SV						FI		CO	SV						FI		CO	SV						FI		CO	SV				SF	
Fitch Ratings Limited	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB
GBB-Rating Gesellschaft für Bonitätsbeurteilung mbH	FI		CO							FI		CO							FI		CO							FI		CO							FI		CO						
ICAP Group SA			CO									CO									CO									CO									CO						
INC Rating Sp. zo.o.																																									SS				
modeFinance S.r.l.																																							CO						
Moody's Investors Service Ltd	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB
Rating-Agentur Expert RA GmbH																																					FI	IN	CO	SV		PE			
Scope Ratings AG			CO									CO									CO					SF		FI		CO					SF		FI		CO					SF	
Spread Research SAS																					CO									CO									CO						
Standard & Poor's Credit Market Servics Europe	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB	FI	IN	CO	SV	SS	PE	SN	SF	CB

Legend:

FI	Corporate – Financial	SN	Supranational
IN	Corporate – Insurance	SF	Structured Finance
CO	Corporate – Non Financial	CB	Covered Bonds
SV	Sovereign		Non registered
SS	Sub-Sovereign		
PE	Public Entities		

Table 2: Market share calculation based on 2014 turnover from credit rating activities and ancillary services at group level in the EU

Registered Credit Rating Agency	Market Share
AM Best Europe-Rating Services Ltd. (AMBERS)	0.79%
ARC Ratings, S.A.	0.02%
ASSEKURATA Assekuranz Ratings-Agentur GmbH	0.21%
Axesor S.A.	0.61%
BCRA-Credit Rating Agency AD	0.02%
Capital Intelligence (Cyprus) Ltd.	0.12%
CERVED Group S.p.A.	1.20%
Creditreform Rating AG	0.50%
CRIF S.p.A.	0.33%
Dagong Europe Credit Rating Srl	0.02%
DBRS Ratings Limited	1.47%
Euler Hermes Rating GmbH	0.20%
European Rating Agency, a.s.	0.00%
EuroRating Sp. Zo.o.	0.00%
Feri EuroRating Services AG	0.64%
Fitch Group[29]	16.80%
GBB-Rating Gesellschaft für Bonitätsbeurteilung mbH	0.32%
ICAP Group SA	0.55%
INC Rating Sp. Zo.o.[30]	0.00%
ModeFinance S.A.[31]	0.00%
Moody's Group[32]	34.67%
Rating-Agentur Expert RA GmbH[33]	0.00%
Scope Credit Rating GmbH	0.14%
Spread Research SAS	0.11%
Standard & Poor's Group[34]	40.42%
The Economist Intelligence Unit Ltd.	0.87%
Total	**100%**

Source: ESMA

The oligopolistic and highly concentrated structure of the CRA industry – both overall and at the individual product category level – suggests that the largest CRAs operating globally may in principle be able to exercise market power to profitably raise prices above competitive levels over time or restrict the choice or quality of the services provided.

Each CRA operates as a platform, which offers access to a network of issuers and investors and in which supply and demand are interdependent: issuers prefer to use those CRAs that are recognised by the largest number of relevant investors and

[29] Fitch France S.A.S; Fitch Deutschland GmbH; Fitch Italia S.p.A.; Fitch Polska S.A.; Fitch Ratings España S.A.U.; Fitch Ratings Limited and Fitch Ratings CIS Limited.
[30] Registered with effect from 27 October 2015.
[31] Registered with effect from 10 July 2015.
[32] Moody's Investors Service Cyprus Ltd; Moody's France S.A.S.; Moody's Deutschland GmbH; Moody's Italia S.r.l.; Moody's Investors Service España S.A.; Moody's Investors Service Ltd; and Moody's Investors Services EMEA Ltd.
[33] Registered with effect from 1 December 2015.
[34] Standard & Poor's Credit Market Services France S.A.S.; Standard & Poor's Credit Market Services Italy S.r.l.; and Standard & Poor's Credit Market Services Europe Limited.

investors want to use the CRAs who can offer the greatest coverage of the issuers and instruments they are interested in.

Notwithstanding the 2013 amendments to the CRA Regulation, a slight increase in concentration in the overall CRA market has been observed, the calculation being based on revenues from rating activity only. Measures of market share based on total revenues (revenues from rating activity and ancillary services) show lower levels of concentration compared to measures based on revenue from credit rating activity alone. However, the calculation of market shares on the basis of total revenues is made more complex by a lack of universal definition and treatment of "ancillary services". This could indicate that ancillary services constitute an important activity for smaller CRAs, while larger CRAs rely more on rating revenues. Furthermore, with regard to the type of rating, concentration has increased for corporate bonds (the most concentrated market), while it has decreased in the sovereign ratings and in SFIs.

The majority of issuers tend to use one or two CRAs only rather than a range and their choice is largely driven by a CRA's acceptability among investors, regulators and central banks[35]. In addition, there seems to be a strong preference for CRAs which have a global coverage, reflecting the fact that the credit rating business is of a highly reputational nature. Presumably, the choice of CRAs therefore highly depends on their name recognition.

A highly concentrated market constitutes a risk for financial stability if CRAs observe each other's behaviour and respond by posting similar opinions about creditworthiness of issuers, as demonstrated during the latest financial and sovereign debt crisis.

Barriers to market entry

Market entry may be inhibited by the presence of regulatory and market related barriers.

On the regulatory barriers, the European Association of Credit Rating Agencies (EACRA) has expressed concern about the exclusion of the majority of the registered CRAs from the list of External Credit Assessment Institutions (ECAIs) under the Eurosystem's Credit Assessment Framework (ECAF) for the acceptance of collateral, as this might stifle competition[36]. ECAIs must indeed meet several operational criteria and provide relevant coverage: in particular, they must comply with the minimum coverage requirements defined by the Eurosystem in terms of rated assets, rated issuers and rated volume diversified across the eligible asset classes and euro area countries. As a result, only CRAs of systemic importance to the financial system are currently recognised as ECAIs by the ECB – namely S&P, Moody's, Fitch and DBRS - and this could limit competition in the rating market. As pointed out in ESMA's Technical Advice, "*credit ratings remain a factor within the collateral*

[35] For instance, since the ECB decided to include DBRS in the list of ECAIs in the ECAF, DBRS has started to have better access to the market.

[36] EACRA –, Position Paper, Reference: ECB criteria for acceptance of Credit Rating Agencies as ECAI sources for ECAF purposes, 26 February 2016.

assessment frameworks of some central banks in the EU that may have significant knock on effects for financial market participants' own internal assessment procedures". One way to mitigate this barrier to market entry could be to reduce the reliance on ratings within the ECB's European Credit Assessment Framework (ECAF).

In addition, some of the claims in the Call for Evidence[37] refer to compliance cost constituting another barrier for new entrants, especially for smaller CRAs. In order to be registered as a CRA, firms need to demonstrate compliance with the requirements of the CRA Regulation. Despite exemptions from certain requirements for smaller CRAs, industry stakeholders consider that the regulatory requirements favour the dominant CRAs, as meeting compliance requirements[38] is very costly for small CRAs. Moreover, where thresholds exist above which additional regulations are applicable, these are seen as potential barriers to expansion for small CRAs (particularly in the context of corporate bonds but also for SFIs). Overall a balance has to be found between the proportionality of the standards that should apply to smaller CRAs and the necessity to ensure the quality and transparency of the ratings they produce.

The recent adoption of the Implementing Technical Standards (ITSs) on ECAI mapping[39] by the Commission, following ESAs' technical advice, will finally allow European banks and insurers to use smaller CRAs in the regulatory capital frameworks. This mapping might create some future opportunities for the use of smaller CRA and could stimulate market development.

On the market dynamics related barriers, the main obstacle for new entrants – besides the fact that there seems to be insufficient demand for additional CRAs - is the highly reputational nature of the credit rating market. Therefore, new entrants – that usually have low to zero reputation among investors – find it difficult to compensate for their lack of historical track-records, as well as their insufficient geographical coverage. Moreover, new entrants must establish a customer base to overcome the "network effects" in the industry, which favour bigger CRAs to the detriment of small CRAs since the ratings of the biggest CRAs facilitate the access to the market for rated products.

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[37] The consultation document and the results of the Call for Evidence are available at http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm

[38] E.g. to have an independent review board made up of full-time employees, a full-time compliance officer, reporting and disclosure requirements, requirement to inform rated entities before the formal release of ratings.

[39] Commission Implementing Regulation (EU) laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for credit risk in accordance with Articles 136(1) and 136(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council; Commission Implementing Regulation (EU) laying down implementing technical standards with regard to the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with Directive 2009/138/EC of the European Parliament and of the Council and Commission Implementing Regulation (EU) on laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council.

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Fees

The 2013 amendments to the CRA Regulation introduced a provision requiring fees charged to CRAs' clients for the provision of credit ratings and ancillary services to not be discriminatory and based on actual costs.

In response to the call for evidence, some insurers argued that CRAs seem to be charging market participants additional costs (up to 80% higher) for the use of the credit rating information in their reporting to National Competent Authorities, leading to an increase in Solvency II implementation costs (as reported by The Association of Mutual Insurers and Insurance Cooperatives in Europe).

Under the CRA Regulation, ESMA has the power to supervise CRAs to ensure that fees charged to client are not discriminatory and based on actual cost. The Commission invites ESMA to ensure strict compliance with the CRA Regulation of fees charged to insurers.

Expected developments in the CRA market

In the following years, a number of measures will be introduced with a view to increasing competition in the CRA market, namely the European Rating Platform - which will improve visibility for credit ratings issued by smaller CRAs and enhance the comparability of ratings of the same instrument by different CRAs. The mappings of external credit ratings recently adopted in the context of CRR and Solvency II are also intended to ensure a fair treatment of ratings issued by all CRAs, independently of their size, while allowing prudential supervisors to ensure that systemically important CRAs are subject to effective safeguards.

2. Impact and assessment of CRA Regulation provisions concerning competition

The general aim of the 2013 amendments to CRA Regulation with regard to competition was to increase competition between CRAs and encourage the use of smaller CRAs. In particular, these amendments introduced a mandatory double rating for SFIs (**Article 8c**), an incentive to appoint at least one small CRA in the case of double rating (**Article 8d**), general and periodic disclosures (**Article 11(2)**) and the establishment of a European Rating Platform (ERP) (**Article 11(a)**).

Article 8c
Under Article 8c, issuers are required to solicit double credit ratings for SFIs in order to ensure an independent second rating.

This provision could impact the market only if the second rating is published or known to investors; in that case investors and issuers would be able to compare ratings of the same financial instrument and, as a consequence, CRAs' reputational costs would increase as large differences between ratings from different CRAs might raise doubts about the quality of the ratings themselves.

Moreover, if investors are aware that issuers are required to obtain the second rating, then even if there is no legal requirement to publish it, investors might request it.

Therefore financial instruments, for which the second rating is not disclosed, might be perceived as lower quality.

Overall, the number of CRAs rating SFIs has increased, which means that issuers do seek additional ratings not only from large CRAs - which already rated SFIs - but also from small CRAs. Therefore this measure seems to be beneficial for the structured finance market segment.

Article 8d

Under Article 8d, where an issuer or related third party intends to appoint at least 2 CRAs to an issuance or entity, the issuer or related third party is required to consider appointing at least one credit rating agency with less than 10% market share, provided that the issuer or related third party considers it as capable of rating the relevant issuance or entity, and that one of these smaller CRAs is available to provide a rating. In addition, where an issuer or related third party does not intend to appoint at least one smaller CRA, this should be documented.

This measure has yet to be fully implemented and enforced at national level. As a consequence, is not yet possible to assess the impact of Article 8d. Moreover, the number of entities and instruments which have multiple ratings cannot yet be identified through the CEREP[40] database (but ERP will allow investors to see which CRAs have issued a credit rating on a particular entity or instrument).

Small CRAs might not have sufficient experience and reputation for issuers to voluntarily choose them for the second rating (and such a second rating is not mandatory unless the issuance is a SFI). The impact depends on whether issuers would choose to solicit the second rating from a smaller CRA or whether they would choose to explain why they do not.

Moreover, there might be a lack of incentive for individual issuers to change CRAs under the "comply or explain" provision, as Article 8d is not mandatory. In order to improve the effectiveness of this provision, ESMA has approved the mandate for a temporary Task Force on information to be documented and reported when considering the appointment of multiple CRAs in order to assist Sectoral Competent Authorities in their supervisory responsibilities under Article 8d and 8c of the CRA Regulation[41].

Finally, the use and effectiveness of the market share calculation required by the Article has raised concerns as they are calculated not only on the basis of revenues from credit ratings, but also on the revenues from ancillary services. Such calculations may also be misleading due to the absence of a clear definition of ancillary services. Small CRAs and new entrants claimed indeed a lack of awareness regarding the implementation of such Article and called for guidance to be issued at EU or Member State level.

[40] The CEREP database collects data on credit ratings issued by registered and certified CRAs, and on credit ratings endorsed by registered CRAs, as well as on credit ratings issued in a third country by CRAs not certified or registered in the EU but belonging to the same group. Some of the information within the CEREP database is available to the public through the ESMA website.

[41] See also Q&A, Guidance and other ESMA tool, as well as a common reporting template with related instructions.

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Article 11(2)

Under Article 11(2), CRAs are required to report data about the credit ratings that they issue – including unsolicited ratings - to ESMA's Central Repository (the CEREP database). This is in order to enable investors to compare data between CRAs and to examine the performance of the ratings issued by a single CRA.

Article 11(2) might benefit sophisticated investors more than trusting ones because, even if all information is publicly available, comparing CRAs' performance still requires time and skills.

Publishing such data can increase the visibility of small CRAs and help them overcome the reputational barrier to entry.

Article 11a

Under Article 11a, CEREP will be incorporated in the European Rating Platform ("ERP"), a website operated by ESMA which will publish all available credit ratings issued by registered and certified CRAs.

The ERP has been established in order to increase the amount of information available to investors and to provide visibility to smaller CRAs, as publishing all ratings on a website might increase investors' awareness and trust towards small CRAs. However, the use of different methodologies between CRAs does not allow simple comparisons among the ratings.

It should also be noted that "investor-paid ratings" – which are exclusively produced for and disclosed to investors for a fee - are not included in the ERP so as not to undermine such business models.

The ERP has not become fully operational yet and therefore it is too soon to assess its impact on competition. As visibility and reputation are very important in the rating industry, the effects of this provision on competition should be further monitored once the platform is fully implemented.

3. Overall assessment

It appears that small CRAs and new entrants are not yet issuing a significant number of credit ratings in all asset classes and there seems to be little competition amongst CRAs, considering the frequent fee increases and the high fees charged by the largest CRAs.

However, it must also be highlighted that the credit rating market is a special market, mainly driven by reputation amongst investors and issuers. Given the highly reputational nature of the market, measures that force the selection of CRAs beyond what would be chosen by issuers and valued by investors can lead to unintended consequences while having limited effectiveness in promoting additional market entry.

The CRA Regulation created a positive framework for enhancing competition in the CRA sector.

Overall, Article 8c, in conjunction with Article 8d, 11(2) and 11a might lead to an increase in the demand for small CRAs for SFI ratings. Moreover, the implementation of Articles 11a and 11(2) - which make the information about the second rating publicly accessible – might favour the impact of Article 8c, through which investors may be able to put more pressure on CRAs to compete on quality.

In addition, the CRA Regulation has given greater visibility to CRAs operating in the EU, for example through registration with ESMA and the public disclosure of information about credit ratings issued. Moreover, increased transparency measures have raised awareness of the existence of small CRAs. Finally, the issuance – and publication - of unsolicited ratings appears to be an effective tool to increase visibility of small CRAs and allow them to build a reputation.

In conclusion, while there are some measures which are in the process of being implemented, the Commission does not expect a rapid change in the oligopolistic rating industry. However, the analysis and ESMA's Technical Advice show that more time is needed in order to fully assess the impact of the recently introduced measures of the CRA Regulation on competition in the CRA market.

III. Impact and assessment of CRA provisions concerning governance

Considering that the current credit rating market is still being dominated by three big CRAs and new CRAs have to face various barriers to market entry, it is of the utmost importance to ensure the good conduct of CRAs, in particular of incumbent CRAs, and high quality ratings. This can only be achieved through proper regulatory constraints which in the end will also be beneficial to the production of high quality ratings and therefore market stability.

The recent financial crisis highlighted - inter alia - issues around the quality and independence of credit ratings. In particular, there were concerns over potential conflict of interests between issuers and credit rating agencies due to the issuer pays remuneration model and the strong and longstanding relations between issuers. In addition, there were concerns about the independence of CRAs when rating instruments issued by their shareholders and the independence and qualifications of rating analysts. Moreover, following the financial crisis, there was a need to enhance transparency on structured finance products, in order to enable investors to carry out their own assessment of the creditworthiness of these complex products. To address these issues, a number of provisions were introduced in the last revision of the CRA Regulation on conflicts of interest (**1**), SFIs (**2**) and remuneration models (**3**). The objective of this section is to identify if these provisions are effective or if there is any need for further improvement.

1. Conflict of interests

The CRA Regulation provides for several provisions dealing with the avoidance and management of situations of conflict of interests. The overall aim is to ensure the independence of CRAs and consequently the quality of their ratings as well as to strengthen the investors' confidence in the functioning of the financial market in general.

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The establishment of independent non-executive directors (INEDS) in the CRA Regulation has been a key factor in ensuring the effectiveness of internal control systems and the identification of conflict of interests. By appointing persons to this function, it is very important to ensure minimum standards of knowledge and good repute. ESMA has expressed its wish to be more proactive in this regard in order to ensure consistently high levels of governance across CRAs.

The CRA Regulation sets internal rules and procedures for analysts and other persons involved in the credit rating process in order to identify and manage any conflict of interest arising during the rating process. These provisions are complemented by the detailed requirements in Annex I of the CRA Regulation. Exemption rules for small CRAs help to ensure that the impact of the CRA Regulation on CRAs of different size is proportionate.

Shareholders' pressure on CRAs has the potential to undermine their independence where a CRA rates its own shareholders or financial instruments issued by the shareholders. This is mitigated through shareholding limitation provisions which ensure the CRAs independence and the quality of their ratings. The practical application of these provisions remains unclear, however, as there is currently no common definition on the term "shareholder" at a European level.

The CRA Regulation provides for a set of requirements related to knowledge, skills and behaviour of ratings analysts and other employees of a CRA who are involved in the rating process. By establishing a gradual rotation mechanism for those people, independence of ratings can be ensured. However, due to staff rotation, costs of transferring an analyst to another portfolio might arise.

ESMA's current work on guidelines on the validation and review of Credit Rating Agencies' methodologies[42] could give further clarity on the internal compliance and risk procedures of a CRA and thus a clearer definition of the notion "rating methodology" taking into account the 2015 IOSCO Code[43] definition.

The current level of sanctions does not seem to be proportionate to the turnover of CRAs, especially to the large ones. The possible fines that can be imposed by ESMA at present do not have a deterrent or dissuasive effect in practice[44]. The Commission will therefore further reflect on the sanctioning regime of the CRA Regulation that is different from the regimes under more recent European legislation.

[42] See the consultation paper on ESMA's website https://www.esma.europa.eu/press-news/esma-news/esma-consults-validation-and-review-cras%E2%80%99-methodologies-guidelines.

[43] IOSCO Code of Conduct Fundamentals for Credit Rating Agencies Final Report 2015 available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD482.pdf

[44] In comparison, the U.S. Securities and Exchange Commission (SEC) imposed in January 2015 aggregated penalties of US $77 million for a series of federal securities law violations by Standard & Poor's, https://www.sec.gov/news/pressrelease/2015-10.html

2. Provisions related to SFIs and potential extension to other financial products

The CRA Regulation provision on mandatory rotation between a CRA and an issuer (Article 6b) is limited to the issuing of re-securitisations complemented by a cooling off-period of maximum four years during which a CRA is not allowed to issue ratings on re-securitisations with underlying assets from the same originator. Potentially burdensome effects for small CRAs are softened by an exemption.

Article 8b of the CRA Regulation requires the establishment by ESMA of a website for the purposes of disclosure of information on SFIs. ESMA recently announced that, due to a number of difficulties faced in the preparatory work for the setup of the website, it is unlikely that it will be available to reporting entities by the legal deadline of 1 January 2017.

Both Article 6b and Article 8b have yet to be implemented and applied in practice. In conjunction with the mandatory double credit rating provision for SFIs in Article 8c, it appears that there is currently not sufficient choice among CRAs rating different asset classes to allow competition to work effectively. Given the above, a potential extension of the mandatory rotation mechanism and the disclosure provisions of information on SFIs to other financial products appear to be premature at this stage as there is currently insufficient data available to analyse the impact of these provisions on the credit rating practice. The Commission will continue to monitor market developments as the relevant provisions of the CRA Regulation become applicable.

3. Alternative remuneration models

There has been little change observed in the rating industry since the implementation of the CRA Regulation concerning remuneration models, especially in the ratings for corporate bonds and SFIs. The dominant and most frequently used remuneration model in the CRA market is the issuer-pays model, where the CRAs are paid by issuers who wish to solicit credit ratings for their investment products.

Other examples of remuneration models are the Skin-in-the-game model - where investors produce ratings for projects they partially fund by holding the issued instruments, or where CRAs are remunerated in the instruments they rate which they would hold to maturity [45] and the Platform-pays model introducing an intermediary in the market in order to fund and produce the rating. The Pay-for-performance compensation-model requires each CRA to pay a fixed percentage of its revenue to a common fund, which is then paid out to the best performing CRA that provides an incentive for CRAs to improve the accuracy of their ratings, while potentially leading to uncertainty concerning the effectiveness of the incentive mechanism. Credit ratings could also be produced by non-profit organisations or be funded by governments. Government involvement in the allocation of CRAs to issuers could raise the risk of segmenting markets along national lines and could also potentially trigger conflict of interests within the industry, especially with regard to the issuance of sovereign and sub-sovereign ratings.

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[45] The model is based on the assumption that the entity producing the rating – which is also an investor in the securities being rated – has a clear interest in the accuracy of the rating.

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As identified in the Commission's 2011 Impact Assessment, all potential remuneration models could entail possible conflict of interest. The CRA Regulation therefore does not mandate the use of one particular remuneration model as there is no essential need to favour one model over another.

Currently, alternative remuneration models are hardly used as stand-alone solutions in practice as CRAs tend to use hybrid models instead. Credit ratings are issued to some clients under the issuer pays model and others under the investor pays model or on a subscription basis. ESMA's analysis concludes that this flexibility in the choice of the remuneration model should be maintained so that market players remain free to choose the most suitable model with regard to their market strategy.

4. Overall Assessment

Given the analysis above, the provisions of the CRA Regulation on governance appear to have a predominantly preventive nature while making an important contribution to ensure the independence of CRAs. Although, according to ESMA's Technical Advice, some provisions might create implementation costs for CRAs by imposing changes on IT systems, training, compliance and legal procedures, the recent framework on CRAs' governance is expected to bring benefits overall in the long-term.

Although changes might not be immediately visible in the credit rating practice, the provisions are effective in giving regulators the necessary tools to supervise CRAs that do not comply with the governance provisions of the CRA Regulation. However, the sanctioning regime in the CRA Regulation may need revision to ensure that it is credible and proportionate as a deterrent.

IV. Appropriateness and feasibility of supporting a European credit rating agency

Due to issues relating to procyclicality in the publication of ratings revealed by the recent EU sovereign debt crisis, the CRA Regulation was amended in 2013 by introducing additional measures to increase the transparency of sovereign debt ratings. Article 8a of the CRA Regulation requires now CRAs to publish annually a calendar where the dates for the publication of their respective sovereign credit ratings have to be set.

In addition to that, the Commission analysed in a report of 2015[46] the appropriateness of the development of a European creditworthiness assessment and whether there are sufficient and adequate sources of information for investors allowing them to carry out their own credit risk assessment of sovereigns. In its report the Commission came to the conclusion that the introduction of such a European creditworthiness assessment would add little additional value to the already existing information that is provided by various sources of the fiscal and macro-economic surveillance regime

[46] Report from the Commission to the European Parliament and the Council on the appropriateness of the development of a European creditworthiness assessment for sovereign debt, Brussels, 23.10.2015, COM(2015), available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0515

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(e.g. the reports issued in the context of the European Semester). There would also be no improvement of information achieved for institutional investors since they already have sufficient data through public and private channels. Furthermore, investors operating in the global sovereign bond market tend to rely more on information provided by international institutions such as the International Monetary Fund (IMF) or the World Bank.

CONCLUSION

External credit ratings continue to play an important role in some parts of the EU's regulatory framework for the financial sector, especially for banks and insurance companies. However, the Commission is of the view that there are currently no feasible alternatives that could entirely replace external credit ratings. Against this background, supervisors should continue to promote the mitigation of mechanistic reliance on credit ratings by ensuring that market participants use alternative tools, such as those referred to in Section I.2, as a complement to external credit ratings. On its side, the Commission will continue to monitor the developments in the market.

As for competition, the Commission will also continue monitoring the development of the market in response to the implementation of the CRA Regulation before considering the adoption of further measures. This is particularly relevant as some of the provisions are still in the process of implementation and would require some time to assess the benefits.

Ensuring that the regulatory framework is proportionate and does not impose undue costs is a pre-requisite to promoting market entry and greater competition in the market for CRAs. As a follow-up to its Call for Evidence, the Commission will continue to monitor the application of the CRA Regulation on smaller CRAs, in particular the issue of proportionality.

More generally, the Commission will seek to avoid and further reduce regulatory barriers to market entry, as it recently did by amending the draft ITSs on the mapping of credit ratings proposed by the ESAs. It will also promote the broadest possible acceptance of smaller CRAs, including in the context of the ESCB's European Credit Assessment Framework (ECAF).

Notwithstanding these efforts to stimulate greater competition, recent developments suggest that the market for credit ratings may remain a highly concentrated oligopoly for the foreseeable future. In this context, it is essential to ensure that incumbent CRAs are subject to a robust regulatory framework backed-up by a credible sanctioning regime with proportionate levels of fines that act as an effective deterrent. Moreover, effective internal governance and compliance procedures play an especially important role to ensure the quality of external credit ratings in a market characterised by limited competitive market pressure and the CRA Regulation introduced important requirements to strengthen these arrangements.

With regard to SFIs, it is too early to assess the impact of the CRA Regulation, as certain relevant provisions have not yet been applied in practice. In this context, it does not seem appropriate at the moment to consider extending the respective CRA Regulation provisions to other financial products.

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As regards the reporting obligation in Article 39b para 2 subpara 2 CRA Regulation, and considering the Commission's 2015 report on the appropriateness of the development of a European creditworthiness assessment for sovereign debt, the Commission considers there to be no need at present for a European credit rating agency specialized in sovereign debt or a European credit rating foundation for other credit ratings. In addition, the establishment of such common agencies would be likely to add more costs than any additional value to the rating market in practice.

In general, the provisions of the CRA Regulation are considered to have a long-term positive impact on the credit rating market. There is currently no evidence related to potential negative consequences for CRAs or issuers. Since not all provisions of the CRA Regulation have yet been implemented, the credit rating market needs to be further monitored for an assessment of the full impact of this legislative framework.

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