Legislative resolution of the European Parliament on the proposal amending Regulation nº 1060/2009, on Credit Rating Agencies. March 2013.

The EP approved, the 16 January, at first reading the new rules proposed by the Council on when and how Credit Rating Agencies (forward CRAs))may rate state debts and private firms´ financial health to improve quality of ratings. Those proposals will constitute an EP and Council Regulation (to be issued during 2013) and will amend the EC Regulation nº 1060/2009 on CRAs with the aim of improving relevant aspects such as the lack of transparency in sovereign debt ratings, overreliance on credit ratings, conflicts of interest due to the issuer´s pays remuneration model that threaten independency, high market concentration and absence of liability of CRAs.
1. Improve ratings transparency, specially sovereign debt ratings transparency.

A CRA shall disclose on its website, and notify ESMA on an ongoing basis, information about all entities and debt instruments submitted to it for their initial review or for preliminary rating. Such disclosure shall be made whether or not issuers contract with the CRA for a final rating.

Any CRA shall, when issuing a credit rating or a rating outlook, submit to ESMA rating information that ESMA will publish in the European Rating Platform; ratings or rating outlooks which are exclusively produced for an disclosed to investors for a fee will not be published. CRAs also shall make available information on its historical performance in a central repository that will be part of the European Rating Platform; ESMA shall make that information accessible to the public and shall publish summary information on the main developments observed on an annual basis. Until disclosure to the market of credit ratings, rating outlooks and information relating to them, they shall be considered inside information. The CRA shall inform the rated entity at least a full working day before publication of the credit rating or the rating outlook, so that rated entities have more time to react.

A CRA, when announcing a credit rating or a rating outlook, shall explain in its press releases o reports the key factors underlying the credit rating or the rating outlook. CRAs should refrain from any direct or explicit policy recommendations on policies of sovereign entities so that, although national policies may serve as a factor underlying a sovereign rating, policy recommendations, prescriptions or guidelines to rated, entities, including states or regional or local authorities, shall not be part of credit ratings or rating outlooks.

CRAs will schedule, at the end of December and for the next 12 months, a calendar setting a maximum of three dates (always on Fridays) for the publication of unsolicited sovereign ratings and related outlooks, and setting the dates (should be on Friday too) for the publication of solicited sovereign ratings or rating outlooks. Deviation of the publication of sovereign rating or related rating outlooks from the calendar shall be accompanied by a detailed explanation of the reasons for the deviation from the announced calendar. CRAs shall inform the rated entity during working hours of the rated entity and at least a full working day before publication and should be revised at least every six months.

3. Reduce overreliance on credit ratings.

Financial Entities shall make their own credit risk assessment and shall not solely or mechanistically rely on credit ratings for assessing the creditworthiness of an entity or financial instrument.

The European Supervisory Authorities shall not refer to credit rating in their guidelines, recommendations and draft technical standards where such references have the potential to trigger mechanistic reliance on credit ratings by competent authorities or market participants.

The EC, without prejudice to its right of initiative, shall continue to review references to credit ratings in EU law which trigger or have the potential to trigger sole or mechanistic reliance on credit ratings with a view to eliminating all references to ratings in EU law by 1 January 2020, provided that appropriate alternatives to credit

risk assessment have been identified and implemented.

4. Reduce conflicts of interest and improve ratings independence.

To mitigate the risk of conflicts of interest, CRAs will have to disclose publicly if a shareholder with 5% or more of the capital or voting rights holds 5% or more of a rated entity or a related third party or is member of the administrative or supervisory board of the rated entity or related third party. If the percentage reaches the 10% or more of the capital or voting rights, CRAs would prohibit its shareholder from holding 10% or more of a rated entity or related third party.

To ensure the diversity and independence between CRAs, the proposal would prohibit ownership of 5% or more of the capital or the voting rights in more than one CRA, unless the CRAs concerned belong to the same group.

For structured finance products, if the issuer or its related third party intends to solicit a credit rating, is shall mandate at least two CRAs to provide credit ratings independently of each other.

A rotation mechanism is implemented so that if a CRA has entered into a contract for the issuing or credit ratings on re-securitisations, it shall issue no credit ratings on new re-securitisations with underlying assets from the same originator for a period exceeding 4 years. This will no apply where at least 4 CRAs each rate more than 10% of the total number of outstanding rated re-securitisations or if there are fewer than 50 employees or with an annual turnover of less than EUR 10 millions at the group level being involved in the provisions of credit rating activities. By the end of 2016, the EC will inform the EP on the convenience of the scope of the rotation mechanism.

5. Increase of competition.

Small and medium size CRAs (different from the 3 CRAs that have dominated the global market) are promoted because, when a issuer (or a related third party) intends to mandate at least two CRAs –which is a recent common practice- for the credit rating of the same issuance or entity, the issuer shall consider the possibility to mandate at least one CRA which does not have more than 10% of the total market share and which can be evaluated by the issuer as capable for rating the relevant issuance or entity. The cases where the issuer does not mandate al least a CRA with 10% or less of the total market share shall be recorded.

6. Civil liability in front of issuers and investors.

CRAs are accountable if, intentionally or with gross negligence, have committed any of the infringements listed in Annex III having an impact on a credit rating and, due to that infringement, an investor or issuer may claim from that CRA for damages caused to them. An issuer may claim damages when it or its financial instruments are covered by that credit rating and the infringement was not caused by misleading and inaccurate information provided by itselt to the CRA, directly or through information publicly available. An investor may claim damages when has reasonably relied on a credit rating for a decision to invest into, hold onto or divest form a financial instrument covered by that credit rating.

If you want to read the Position of the EP adopted at first reading on 16 January 2013 with a view to the adoption of a Regulation amending Regulation 1060/2009 on Credit Rating Agencies, please, do click on: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0012+0+DOC+XML+V0//EN&language=EN#BKMD-6

If you want to read the frequently asked questions, please, do click on: http://europa.eu/rapid/press-release_MEMO-13-13_en.htm?locale=en

If you want t oread the Statement by commissioner Michel Barnier, please, do click on: http://europa.eu/rapid/press-release_MEMO-13-14_en.htm?locale=en