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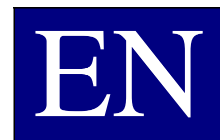

Brussels, 21 May 2012
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PRESSE 214

Credit rating agencies: General approach agreed ahead of talks with EP

The Permanent Representatives Committee today agreed the Council's position[1] on two proposals amending the EU's rules on credit rating agencies ("CRA 3"), with a view to negotiations with the European Parliament.

It mandated the presidency to start negotiations with the Parliament, on the basis of the Council's general approach, so as to enable adoption of the texts at first reading.

The proposals for a directive and a regulation set out to amend existing legislation on credit rating agencies (CRAs) in order to reduce investors' over-reliance on external credit ratings, mitigate the risk of conflicts of interest in credit rating activities and increase transparency and competition in the sector.

Specifically, the draft directive amends current directives on undertakings of collective investment in transferable securities (UCITS)[2] and on alternative investment funds managers (AIFM)[3] in order to reduce these funds' reliance on external credit ratings when assessing the creditworthiness of their assets.

The draft regulation[4] would introduce a mandatory rotation rule forcing issuers of financial instruments who pay CRAs for their ratings ("issuer pays model") to switch to a different agency every four years. The proposal agreed today would limit mandatory rotation to ratings of structured finance products with underlying re-securitised assets. An outgoing CRA would not be allowed to rate re-securitised products of the same issuer for a period equal to the duration of the expired contract, though not exceeding four years.

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1 General approach
2 Directive 2009/65/EC
3 Directives 2009/65/EC and 2011/61/EU
4 Regulation amending regulation 1060/2009

But mandatory rotation would not apply to small CRAs, or to issuers employing at least four CRAs each rating more than 10% of the total number of outstanding rated structured finance instruments.

A review clause would provide the possibility for mandatory rotation to be extended to other instruments in the future. Mandatory rotation would not be a requirement for endorsement by the EU of third country CRAs.

Due to the complexity of structured finance instruments and their role in contributing to the financial crisis, the draft regulation would also require issuers to engage at least two different CRA for the rating of structured finance instruments.

To mitigate the risk of conflicts of interest, the proposal would require CRAs to disclose publicly if a shareholder with 25% or more of the capital or voting rights holds 25% or more of the rated entity.

And to ensure the diversity and independence of credit ratings and opinions, the proposal would prohibit ownership of 25% or more of the capital or the voting rights in more than one CRA. Moreover, a shareholder holding at least 5% of the capital or the voting rights in a CRA would have to publicly disclose ownership of 5% or more of the capital or voting rights of any other CRA.

Under the rules agreed today, investors or issuers would be able to claim damages from a CRA if they suffered a loss due to an infringement committed by the agency intentionally or with gross negligence.

Moreover, sovereign ratings would have to be reviewed at least every six months (rather than every 12 months as currently applicable under general rules).

The agreed text calls on the Commission to prepare a report by 1 July 2016, reviewing the situation in the credit rating market, and if necessary to follow it up with appropriate legislative proposals on some of the new provisions.

Based respectively on articles 114 and 53(1) of the Treaty on the Functioning of the European Union, the regulation and the directive require qualified majority for adoption by the Council, in agreement with the European Parliament.