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Notebook on the Regulation and supervision of Credit Rating Agencies

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Background of the Credit Rating Agencies

Moody's

In 1909 John Moody devised a formula in order to rate objectively the interest rate of American railways. At that time, there were 200 enterprises in US and they competed for the promotion of routes and lines that were expanding.

In 1916, another enterprise, Standard Company which had merged with Poor's, entered the rating of interest rates. Their competition made them expand their turnover on other products (post office, telephones).
The banks hadn't been involved in this stockbroking of rating, because they would never allow mediators to intervene in the non-transparent way they used to operate. However that changed after the crisis that broke out in 1929 and the compulsory supervision of the banks by the American authorities. Moody's constitutes the subsidiary of the organization Moody's Corporation which provides rating services, research and risk assessment for a range of complex financial products. It consists of 17 bureaus around the world and provides ratings for public debt for more than 100 countries. Moody's, just as Standard's and Poor's, use a combination of quantitative and qualitative features for the rating procedure of enterprises and countries. It looks into four categories:

i. Economic structure and performance of a country (e.g. indicators of GDP, inflation, unemployment, importations and exportation).

ii. Fiscal Indicators (e.g. public revenue, expenditure, debt as a percentage of GDP).

iii. External payments and transactions of a country (e.g. exchange rate, labor costs, debt service ratio).

iv. Monetary stability and liquidity factor of a country (e.g. domestic credit, short-term level of interest rates, stockpile of a country etc.).

Until 1972, the Credit Rating Agencies became three with the addition of Goldman Sachs (an old bank of 1869)."They are so dominant because they were the first to be officially endorsed by the US financial watchdog, the Securities and Exchange Commission (SEC)", said Will Smale.

Fitch

From 1997 until today Fitch has been led by French Mark Ladreit de Lacharriere. He is the owner of 73,6% of Fimalac stocks which possesses the total stocks of the Fitch Group. He is also consultant of the French Central Bank. Fimalac bought out the American Fitch.
Fimalac draws the largest part of its revenue (81%) from the rating services and 19%

from the risk assessment. The 38% of its revenue comes from US, 23% from Europe (apart from England), 11% from Asia and 10% from Great Britain.

Fitch Ratings provides ratings and research for about 150 countries and promotes bond products which are offered to various organizations and enterprises, finance institutions, state businesses, insurance companies, public insurance funds etc. In 1979 Fimalac S.A, based in Paris, acquired the majority proportion of shareholding of Fitch Ratings.

Afterwards, in 2000, it acquired Duff and Phelps which was an American financial rating company. Fitch was gradually expanding in Central Europe and it developed alliances with Asian credit rating companies. It is one of the three credit rating agencies (along with Standard and Poor's and Moody's) that were acknowledged in 1975 by the SEC as Nationally Recognised Statistical Organisations.

Standard and Poor's

Standard and Poor's was created in 1941 when Standard Statistics and Poor's Publishing were merged by Henry Varnum Poor. To date, the company provides services that have to do with the extraction of expert information in complex financial products across the world. Standard & Poor's trades investment assets, carries out value assessments, financial analysis as well as provides advisories for enterprises, organizations and states. The main categories of its work include the estimation of political risk, the evaluation of public debt and credit gradation using complex quantitative and qualitative models along the lines of the credit rating of enterprises. The McGraw-Hill Companies purchased Standard and Poor's in 1966.

The credit rating agencies have created a system for the grading of state and enterprise bonds. Therefore, with the evaluation of countries' bonds across the world, they create a new economic world where they have the power. The evaluations of the three greater credit rating agencies form the economic, political and social data of countries, even of continents. All three are private companies, not government agencies. Moody's and Standard & Poor's both have their headquarters in New York, while Fitch has two official HQs, one in New York and the other in London.

"Big three in credit ratings still dominate business" was the title of an article published in Reuters explaining that credit rating agencies are still playing a significant role in the financial sphere of countries.
Why are they the '*Big three'*? There are hosts of other ratings agencies, but Standard and Poor's, Moody's and Fitch have about 95% of the global market. Standard and Poor's and Moody's have about 40% each, while Fitch has around 15%. In fact, three agencies account for 96% of all ratings according to U.S SEC.

Types of Securities:

Securities can be categorized into three types:

a. Debt Securities

b. Equity Securities

c. Hybrid Securities

Equity securities represent a claim on the earnings and assets of a corporation, while *debt securities* are investments into debt instruments. For example, a stock is an equity security, while a bond is a debt security. When an investor buys a corporate bond, he is essentially loaning the corporation money, and he has the right to be repaid the principal and interest on the bond. In contrast, when someone buys a stock from a corporation, he essentially buys a piece of the company. If the company profits, he profits as well, but if the company loses money, his stock also loses money. In the event that the corporation goes bankrupt, it pays bondholders before shareholders.

Debt Securities

There are several types of debt securities but the following are some of the main types.

Government Bonds	Corporate Bonds	Municipal Bonds	Certificates of Deposit (CDs)	Collateralized securities

A *debt security* represents money that is borrowed and must be repaid, with terms that stipulate the size of the loan, interest rate and maturity or renewal date. Debt security refers to a debt instrument, such as a **government bond**, **corporate bond, certificate of deposit** (CD), **municipal bond or preferred stock**, that can be bought or sold between two parties and has basic terms defined, such as notional amount (amount borrowed), interest rate, maturity and renewal date. It also includes **collateralized securities**, such as collateralized debt obligations (CDOs), collateralized mortgage obligations (CMOs), mortgage-backed securities issued by the Government National Mortgage Association (GNMAs) and zero-coupon securities.

The interest rate on a debt security is largely determined by the perceived repayment ability of the borrower; higher risks of payment default almost always

lead to higher interest rates to borrow capital. Also known as fixed-income securities, most debt securities are traded over-the-counter. The total dollar value of debt security trades conducted daily is much larger than that of stocks, as debt securities are held by many large institutional investors as well as governments and non-profit organizations.

Equity Securities

An equity security represents ownership interest held by shareholders in an entity (a company, partnership or trust), realized in the form of **shares of capital stock**, which includes shares of both **common** and **preferred stock**. Holders of equity securities are typically not entitled to regular payments (though equity securities often do pay out dividends), but they are able to profit from capital gains when they sell the securities (assuming they've increased in value, naturally). Equity securities do entitle the holder to some control of the company on a pro rata basis, via voting rights. In the case of bankruptcy, they share only in residual interest after all obligations have been paid out to creditors.

Hybrid Securities

Hybrid securities combine some of the characteristics of both debt and equity securities. Examples of hybrid securities include equity warrants (options issued by the company itself that give shareholders the right to purchase stock within a certain timeframe and at a specific price), convertible bonds (bonds that can be converted into shares of common stock in the issuing company) and preference shares (company stocks whose payments of interest, dividends or other returns of capital can be prioritized over those of other stockholders).

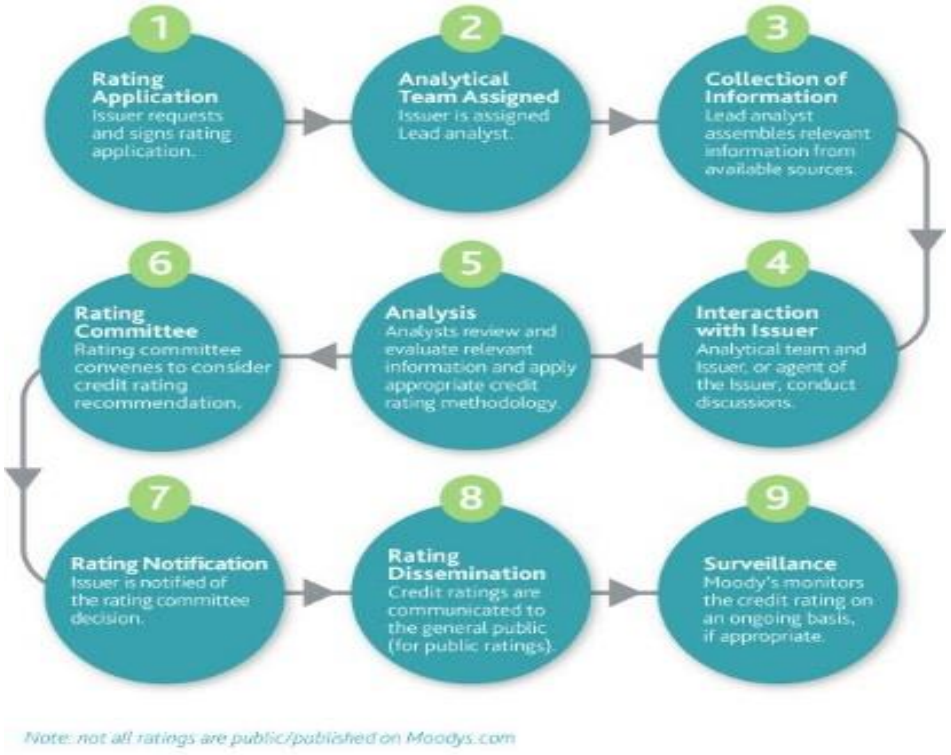
How to get rated in Moody's:

According to Regulation 1060/2009, Article 10, ¶ 4 & 5, a credit rating agency has to:

"...disclose its policies and procedures regarding unsolicited credit ratings. When a credit rating agency issues an unsolicited credit rating, it shall state prominently in the credit rating whether or not the rated entity or related third party participated in the credit rating process and whether the credit rating agency had access to the accounts and other relevant internal documents of the rated entity or a related third party. Unsolicited credit ratings shall be identified as such."

Credit Ratings

Sortable Table Key	Moody's	Fitch	S&P
Highest grade credit	Aaa	AAA	AAA
Very high grade credit	Aa1, Aa2, Aa3	AA+, AA, AA-	AA+, AA, AA-
High grade credit	A1, A2, A3	A+, A, A-	A+, A, A-
Good credit grade	Baa1, Baa2, Baa3, Baa4	BBB+, BBB, BBB-	BBB+, BBB, BBB-
Speculative grade credit	Ba1, Ba2, Ba3	BB+, BB, BB-	BB+, BB, BB-
Very speculative credit	B1, B2, B3	B+, B, B-	B+, B, B-
Substantial risks - In default	Caa1, Caa2, Caa3, Ca	CCC, CC, C, RD, D	CCC+, CCC, CCC-, CC, C, D



Note: not all ratings are public/published on Moodys.com

Before 1060/2009

Before Regulation 1060/2009 credit rating agencies were subject to Community law only in limited areas, notably under Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation. Also, Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions refer to credit rating agencies.

"In 2006 the Commission set out its regulatory approach to credit rating agencies and stated that it would monitor the developments in this area very carefully. Credit rating agencies active in the EU are mainly governed by the International Organisation of Securities Commissions (IOSCO) code of conduct, which is based on voluntary compliance, and are

subject to a yearly assessment by the Committee of European Securities Regulators (CESR). The Commission stated that it would consider new proposals if compliance with existing EU rules or the IOSCO Code was clearly unsatisfactory or if new circumstances were to arise — including serious problems of market failure.

In October 2007 EU Finance Ministers agreed to a set of conclusions on the crisis (the 'Ecofin Roadmap') which included a proposal to assess the role played by credit rating agencies and to address any relevant deficiencies. Specifically, the Commission was asked to examine possible conflicts of interest in the rating process, transparency of rating methods, time-lags in rating reassessments and regulatory approval processes. To clarify the role of the agencies and assess the need for regulatory measures, in autumn 2007 the Commission requested the advice of the CESR and the European Securities Markets Expert Group (ESME). At around the same time, other countries also started reforms in this field (US, Japan), and since then, important reports by IOSCO6, the Financial Stability Forum and the Committee on the Global Financial System have addressed the issue."

Many believe that the Big three were responsible for the crisis that emerged in 2007-2008. The Financial Crisis Inquiry Commission concluded in 2011 that *"This crisis could not have happened without the rating agencies".*

Introduction to the Credit Rating Agencies Problematic

Since their entry in the finance and securities industry CRAs have played a very important role in the way the markets function and it seems like their services will continue to influence the financial sector and those involved in it. The basic service provided by a CRA is the assessment of credit risk of an issuer, be it a sovereign or a corporation.

Every agency uses statistical and financial data, combined with the current political status and measures the capabilities of the issuer to pay capital and/or interest, to meet their financial obligations in general. This rating is used by investors in order to evaluate the level of safety of the practice of credit ratings and it has become a common standard in various investments, such as corporate bonds, but also more complex investments, which are harder to evaluate, such as structured finance products. The latter instruments' ratings played a big role in the creation of the 2008 financial crisis, since they were afterwards considered inaccurate and too optimistic, but also during the euro area debt crisis a lot of countries were faced with serious devaluation. This trend and its devastating results created questions as in whether CRAs need to operate in a more controlled environment, since their place in the market has such a big impact. This approach has led to a closer examination of the credit ratings market and some big issues were revealed: 1) huge concentration of

the market, up to 93% of the ratings globally, is published by the big-three CRAs and 2) conflict of interests issues, that derive from the very nature of the service provided, since the issuer of the financial instrument is the one paying to be "judged" by the CRA. The above issues led the European Union to take action by introducing two regulations: **Regulation (EC) No. 1060/2009 on credit rating agencies**, which set a supervision regime for the CRAs and the way they issue their ratings and Regulation (EU) No. 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), which authorised the creation of ESMA, the EU authority responsible for the supervision of CRAs and the implementation of Regulation 1060/2009 in general.

Regulation 1060/2009 – Summary

The EU has chosen to introduce a regulation to monitor the function of CRAs and their ratings' production. The proposal of the regulation includes the reasoning behind the Commission's choice to go forth with this legislation:

Subsidiarity and proportionality

"The Commission proposal to regulate Credit Rating Agencies is in line with the principle of subsidiary as laid down in Article 5(2) of the EC Treaty, which requires the Community to take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by Member States and can therefore, by reason of the scale of effects of the proposed action, be better achieved by the Community. 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. Failures or the lack of a regulatory framework for credit rating agencies in one specific Member State could adversely affect market participants and financial markets EU-wide. Therefore, sound regulatory rules applicable throughout the EU are necessary to protect investors and markets from possible shortcomings. It is necessary to lay down a common framework of rules regarding the quality of credit ratings to be used by financial institutions regulated by harmonised rules in the Community. Otherwise, there would be a risk that Member States would take diverging measures at national level. This would have a direct negative impact and create obstacles to the good functioning of the internal market, since the credit rating agencies issuing credit ratings for the use of financial institutions in the Community, would be subject to different rules in different Member States. Finally, given the global nature and worldwide effects of the rating business, convergence of the rules regulating the issuance of credit ratings on a global scale ensuring a equally high level of investor confidence and consumer protection is important. Different national regulations in the EU would complicate this convergence process and could weaken the position of the EU compared to important regimes elsewhere. The proposed regulation is also proportionate, as required by Article 5(3) of the EC Treaty. It

targets not all credit rating agencies but only those whose ratings are used for regulatory purposes by financial institutions, i.e. those with a potentially high impact on the financial system. Many of its substantive provisions are inspired by the IOSCO code. This will limit adaptation costs considerably, since many credit rating agencies already comply voluntarily with the code. The proposal takes into account regulation in place in major non-EU countries, to accommodate the business model of globally operating credit rating agencies, but also considers smaller agencies that follow a less complex business model."

Basic amendments

- → Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011
- → Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011
- → Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 (CRA3)
- → Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014

General purpose, scope and definitions (art. 1 - 5)

The purpose of this Regulation is best explained by its first article, indicating how all articles and measures included should be interpreted for the accomplishment of the individual goals set below:

"Article 1: This Regulation introduces a common regulatory approach in order to enhance the integrity, transparency, responsibility, good governance and independence of credit rating activities, contributing to the quality of credit ratings issued in the Union and to the smooth functioning of the internal market, while achieving a high level of consumer and investor protection. It lays down conditions for the issuing of credit ratings and rules on the organisation and conduct of credit rating agencies, including their shareholders and members, to promote credit rating agencies' independence, the avoidance of conflicts of interest, and the enhancement of consumer and investor protection.
This Regulation also lays down obligations for issuers, originators and sponsors established in the Union regarding structured finance instruments."

Scope of the Regulation:

In which occasion do the measures set forth by the Regulation apply? The Regulation does not apply to undisclosed ratings, those produced after an order given by the issuer of the rated financial instrument or the rated entity and only for the purpose

of personal use, without public disclosure. Also, the undisclosed and independent ratings produced by the central banks of European Member States, are excluded from the obligations set by the Regulation, if the integrity and responsibility standards of the Regulation are met by the central banks. The central banks requested their exemption from the Regulation and the Commission adopted a decision recognizing the exemption of its credit ratings from the Regulation.

Certain types of companies who offer financial services can use credit ratings only if they are produced by CRAs established in the EU and registered in accordance with the Regulation. Also, the issuance of a credit rating by a CRA, must be followed by the presentation of the credit rating on their website or its disclosure by other means, including the clear indication of endorsement by the registered CRA.

Credit ratings issued in third countries:

Such ratings can only be endorsed if the ratings are issued by the CRA itself or another agency of the same corporation group and the procedure followed meets the transparency and integrity standards that this Regulation sets for the issuing of ratings inside the Union. It is also required that ESMA has the ability to observe and supervise the CRA and the way it issues the ratings. Other requirements for third country ratings include: objective reason for the issuance of the rating in the third country instead of the EU, sufficient cooperation between ESMA and the third country's supervisory authority and registration of the CRA to that authority. If the above conditions are met, the rating is considered reliable and receives treatment as if it was issued by an agency established and registered in the EU. It is also possible for a rating of a third country entity or financial instrument, issued by a CRA established outside the EU, to be issued in the EU without endorsement from a registered agency. The basic requirements are a registration with the supervisory authority of the third country and a decision by the Commission, stating that this registration ensures that agencies recognized by that authority meet standards similar to those set by this Regulation and therefore are trustworthy enough to issue ratings inside the EU. These CRAs can also apply for registration to ESMA, by following the procedure set out in articles 14 - 18 of the Regulation. Of course the CRA would be exempt from the requirement of physical presence in the Union, if they can prove it is a burden they can't bear due to objective reasons.

One of the Regulation's goals is, except for organizing the way CRAs work and issue their ratings, to reduce the impact such ratings have in Europe's financial markets. According to the Regulation it is important for various financial institutions, to make their own risk assessments instead of blindly and mechanically following the ratings.

The idea behind this general encouragement is that the decisions made must be based on more than one sources, in order for the market to rely less on CRAs. Furthermore, the Regulation requires that the supervisory authorities for the aforementioned institutions encourage all companies to produce their own ratings or other risk assessment solutions.

Issuing of credit ratings (art. 6 - 13)

Conflicts of interest:

It is of massive importance for the purposes of this Regulation to ensure that there are no conflicts of interest inside the CRAs (shareholders, management, analysts etc.). Therefore, many measures are enforced by the Regulation, reforming the agencies in such a way that the ratings and their production have the necessary credibility and independence. In order to achieve the aforementioned quality of ratings, the rating teams and analysts need to be separated from the corporate management in order for the production of the ratings to be conducted in a manner that focuses on quality and not profit. Except for the organisational structure, certain Standard Operating Procedures (SOPs) need to be established by the agencies to ensure the avoidance of conflicts of interest. These SOPs must be periodically monitored, reviewed and changed if necessary by the agencies.

Shareholders of a certain CRA or a company that controls it, need to abstain from involvement in other CRAs in order for every agency to produce its ratings in a completely independent manner from each other. This measure can be considered even more important taking into consideration the fact that every CRA must avoid entering into a contractual relationship with a rated entity for more than four consecutive years and after the contract with the rated issuer has expired, it is prohibited to conduct any rating for the same issuer for the amount of time equal to the duration of the contract. This measure results to an interchange between the agencies rating the re-securitisations, which can effectively battle conflicts of interest that might have been formed in the contractual parties.

All rating analysts need to have scientific expertise and experience. Furthermore, the analysts and employees who approve of the ratings must avoid any contact with rated entities and their wages and compensation should in no way be a reflection of the revenue acquired from the ratings they have conducted. Rating analysts must rotate internally in the agency through a mechanism.

CRAs should publish the methodologies used to produce their ratings and ensure that the sources of information used for the production of ratings are reliable. Those methodologies need to be checked by the agencies annually in order to ensure reliability. For sovereign ratings the aforementioned time limit is six

months and the Regulation sets specific rules for the production and publication of such ratings, because of the unique nature of the issuers being countries instead of corporations.

Credit Ratings on Structured Finance Instruments:

Structured finance instruments such as CDOs and other types of asset - backed securities use complex legal and corporate entities and help to transfer risk to their buyers. This complexity makes it necessary for their issuers to provide detailed enough information for the CRAs, in order for the latter to produce accurate ratings. For the rating of such finance instruments the issuer needs to use at least two CRAs, completely independent from each other.
Also, an issuer is allowed to use more than one CRAs even if the rated entity is not a structured finance instrument and if so they are advised to hire at least one CRA that controls less than 10% of the total market share.

CRAs need to disclose their ratings in a timely manner, providing all the valuable and strictly related to the rating information. CRAs need to publicly acknowledge the discontinuance of a rating and its cause. Also, it is deemed necessary by the Regulation for the CRAs to clearly indicate with a symbol when a rating concerns a structured finance instrument instead of other entities and the use of a different colour when the rating is unsolicited. CRAs are not allowed to use the name of any competent authority in a manner that would suggest that the rating has been authorised by them.

Disclosure of information:

All CRAs shall provide information to ESMA according to their performance in total, but also all the specific details of a rating when it is completed. Such disclosure is followed by a publication of the information by ESMA on a website 'European rating platform'. CRAs also need to publish a transparency report annually.

Registration of Credit Rating Agencies (art. 14 - 20)

Every CRA needs to registrate to the ESMA database in order for them to operate inside the EU. After their registration, CRAs' activities are monitored and they need to cooperate with the ESMA. The registration and monitoring process (articles 14 - 18) is explained in simple terms by the ESMA itself on its official website:
https://www.esma.europa.eu/supervision/credit-rating-agencies/supervision

The Registration Process Explained

"The registration procedure is defined by Articles 14 to 18 of the CRA Regulation. The process is composed of two stages.
In the completeness phase, the applicant is requested to submit a substantial amount of information on, inter alia, its business plans, resourcing arrangements, governance structures, policies and procedures for ensuring compliance with the CRA Regulation, as well as their rating methodologies. Commission Delegated Regulation 449/2012 with regard to regulatory technical standards on information and certification of credit rating agencies sets out the information that applicants for registration should submit to ESMA.
The completeness phase is then followed by the compliance phase, when ESMA carries out a detailed analysis of whether the applicant's proposal fully meets the requirements of the CRA Regulation.
The specific timelines for both the completeness and the compliance phases are defined in Articles 15 to 18 the CRA Regulation. Commission Delegated Regulation 447/2012 laying down technical standards for the assessment of compliance of credit rating methodologies is used to assess applicants' compliance with Article 8(3) of the CRA Regulation.
At the end of the compliance assessment, the decision on whether the applicant is given registered status is made by ESMA's Board of Supervisors, which consists of senior representatives of the National Competent Authorities (NCAs) from each EU Member State."

Perimeter strategy

"Any firm that is established in the EU and is carrying out credit rating activities in the EU without prior registration is operating in breach of Articles 2(1) and 14(1) of the CRA Regulation. Action, leading to supervisory measures and fines will be systematically taken by ESMA against firms that conduct credit rating activities without registration or, where appropriate, certification in the EU."

Ongoing supervision and investigations

"The risk-based framework is the pillar of ESMA's supervision for CRAs. Following the registration, ESMA supervises the registered entities through a combination of desk-based supervisory activities and investigation. As part of its desk-based supervisory activities, ESMA:

- → Analyses the periodic information that CRAs submit to ESMA.
- → Analyses complaints received by market participants.
- → Reviews notifications of material changes to the initial conditions from registration.
- → Monitors ratings data submitted to ESMA by CRAs.

As part of its supervisory activity, ESMA also conducts investigations that may or may not

involve on-site visits.
ESMA has the power to take appropriate enforcement action where it discovers a breach of the CRA Regulation. These actions can range from the imposition of fines to the withdrawal of registration."

Registration Fee

"A fee will be payable at outset of the registration process. The calculation of fees, as defined by Commission Delegated Regulation EU/272/2012 (the "Fees Regulation") is based on several factors such as numbers of employees, whether the applicant has or plans to have branches in another Member State or third country, or whether it intends to issue ratings on structured finance instruments."

Supervisory Fee

CRAs, either established in the EU or outside it, shall pay an annual supervisory fee to ESMA for the purpose of covering all supervisory costs of the European authority or other competent authorities delegated with certain tasks by ESMA, according to articles 30, 23c (4) and 23d (5) of regulation (EC) 1060/2009. The fee is paid only by agencies with a total revenue higher than EUR 10 million. The amount of the fee is calculated by taking into consideration both the expenditures of ESMA for the agency's supervision and its turnover compared to the turnover of other CRAs that qualify for fee payment. For CRAs established outside the EU the amount of supervisory fees are flat and can be found in article 6 of the Commission delegated regulation (EU) 272/2012.

Withdrawal of registration:

ESMA is responsible for the approval of registration applications and of monitoring the activities of CRAs. Furthermore, if a certain agency stops producing ratings for 6 months, doesn't meet the registration criteria at any given moment or has obtained the registration by providing false information, then ESMA is also responsible for the withdrawal of the registration.

Supervision by ESMA (art. 21 - 25)

ESMA is the competent authority tasked with the implementation of this regulation. Therefore it has the responsibility to cooperate with other competent authorities, designated by each member state, and coordinate their actions. It shall also draft

technical standards, constructing CRAs as to what information they need to disclose to the ESMA about their registration, the methodologies used for their ratings, the fees they charge for their ratings and other relevant data. ESMA also monitors the compliance of CRAs with the quality standards. This regulation sets for the methodologies and information used by the agencies to produce their ratings, but in no way is ESMA allowed to interfere with the production of credit ratings or their content. ESMA is also allowed at any given moment to ask for information from CRAs, persons involved in ratings, or rated entities, to conduct general investigations, onsite inspections of agencies and impose supervisory measures and fines. However the authority cannot take any decision before conducting hearings of the persons concerned with any sort of violation or misconduct.

Civil liability (art. 35a)

When a CRA has conducted an infringement that causes damages to an issuer or investor, intentionally or with gross negligence, it has an obligation to compensate them. The burden of proof falls upon the investor or issuer to present adequate information that the CRA has committed an infringement.

Critical assessments of the EU on its 1060/2009 and the credit ratings market in general

The concentration of the credit ratings market has been reduced slightly over the last few years according to the data collected, but since these data are based on rating but also 'ancillary' activities of different agencies, we need to take into account their nature. The concentration of the market remains still if calculated on a revenue base. This concentration has a big impact on competition in the ratings market, a problem that the European regulators have tried to combat with the measures introduced with the CRA.CRAs had a tendency to rate complex financial products such as SFIs higher before the financial crisis of 2008 and this was one of the reason that led to the creation of this registration and supervision system by the European Commission. The following article forces issuers of SFIs to appoint at least two credit rating agencies, in order to secure the quality and accuracy of the ratings, but also combined with article 8d there is an effort to increase the competition by promoting the appointment of a smaller CRA to provide the second rating. This last recommendation has not (at least yet) made an impact on the market for a number of reasons:

a) as stated it is only a recommendation, as an enforcement to exclude certain corporations simply because of their size would be unjustifiable,

b) the business of credit rating solicitation is highly reputation based and there is a common belief between investors and issuers that the traditional and reputable "big - three" produce higher quality ratings compared to other smaller businesses, c) there are already business relationships established between issuers and CRAs.

"**Article 8c**
Double credit rating of structured finance instruments
1. Where an issuer or a related third party intends to solicit a credit rating of a structured finance instrument, it shall appoint at least two credit rating agencies to provide credit ratings independently of each other."

In paragraph 2 the regulation sets certain conditions for the issuer of the SFI when choosing the two CRAs in order to ensure complete distinction and independency between them.

"Article 8d
Use of multiple credit rating agencies
1. Where an issuer or a related third party intends to appoint at least two credit rating agencies for the credit rating of the same issuance or entity, the issuer or a related third party shall consider appointing at least one credit rating agency with no more than 10 % of the total market share, which can be evaluated by the issuer or a related third party as capable of rating the relevant issuance or entity, provided that, based on ESMA's list referred to in paragraph 2, there is a credit rating agency available for rating the specific issuance or entity. Where the issuer or a related third party does not appoint at least one credit rating agency with no more than 10 % of the total market share, this shall be documented."

When addressing the issue of concentration and competition in the credit rating market, we have to take into consideration the fact that it has significant barriers for entry established even though there has been a raise in the numbers of CRAs in the last few years. The 1060/2009 regulation together with the nature of the market have created a *de jure and facto* system of approval for CRAs, with the traditional ones being advantaged. The high cost of building a company with an object so complex and the recruitment of capable and experienced personnel must be also taken into consideration. At last one can be assured that as long as there is no motive for the issuers to change or interchange between CRAs it would only be an inconvenience to do so.

Regulation for ESMA (No 1095/2010)

The European Securities and Markets Authority (ESMA) is a European Supervisory Authority established in 2010 with its seat in Paris (Article 7).

ESMA is a part of a European System of Financial Supervision (ESFS), which was created to ensure the financial stability and confidence in the financial system and to protect the customers of financial services (Article 2, paragraph1). The ESFS consists of the following:

- the European Systemic Risk Board (ESRB)
- the European Supervisory Authority (European Banking Authority)
- the European Supervisory Authority (European Insurance and Occupational Pensions Authority)
- the Joint Committee of the European Supervisory Authorities ('Joint Committee')
- the competent or supervisory authorities in the Member States as specified in the Union
- the European Securities and Markets Authority (ESMA)

All of the abovementioned authorities (expect the Joint Committee and the competent or supervisory authorities of the member states) are accountable to the European Parliament and the Council (Article 3).Also, all the ESFS members should cooperate with each other in order to exchange as much information as possible and to supervise efficiently financial market participants operating in the Union (Article 2, p 4 and 5).

A very important part, is the definition of the scope of application of the ESMA mentioned in Article 1, paragraph 2 as such:

"The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2003/6/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2009/65/EC and to Directive 2006/49/EC, without prejudice to the competence of the European Supervisory Authority (European Banking Authority) in terms of prudential supervision, ►M1 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (1) ◄, and Regulation (EC) No 1060/2009, and, to the extent that these acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of, Directive 2002/87/EC, Directive 2005/60/EC, Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority."

The general tasks of the ESMA are:

- the establishment of high- quality common regulatory and supervisory standards and practices,
- the consistent application of legally binding Union acts,
- the delegation of tasks and responsibilities among competent authorities,
- the close cooperation with ESRB,
- the conduction of peer review analyses,
- the observation and assessment of market developments in the area of its competence,
- the conduction of economic analyses,
- the protection of investors,
- the contribution to the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans,
- the fulfillment of any other specific tasks,
- the publication and update on its website of information related to its field of activities,
- the assumption of all existing and ongoing tasks from the Committee of European Securities Regulators (CESR).

The powers of ESMA are:

- the development of draft regulatory technical standards,
- the development of draft implementing technical standards,
- the issuance of guidelines and recommendations,
- the issuance of recommendations in specific cases,
- the ability to take individual decisions addressed to competent authorities in the specific cases,
- the ability to take individual decisions addressed to financial market participants,
- the issuance of opinions to the European Parliament, the Council, or the Commission,
- the gathering of the necessary information concerning financial market participants,
- the development of common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of financial market participants and on consumer protection,
- the provision of a centrally accessible database of registered financial market participants in the area of its competence.

ESMA's specific tasks related to consumer protection and financial activities (Article 9):

1. collecting, analyzing and reporting on consumer trends,

2. reviewing and coordinating financial literacy and education initiatives by the competent authorities,
3. developing training standards for the industry,
4. contributing to the development of common disclosure rules.

In order to achieve transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, it can issue guidelines and recommendations and also warnings in cases that a financial activity poses a serious threat to the Union. Additionally, the ESMA can temporarily prohibit or restrict certain financial activities that threaten the Union or in a case of an emergency situation.

Regulatory technical standards:

ESMA has the authority to issue regulatory technical standards that are limited by their technical nature, without enforcing strategic and political practices. Before the submission of these standards to the Commission, open public consultations are being conducted by ESMA in order to measure the potential pros and cons of its implementation. Then, ESMA submits its plan to the Commission and the Commission forwards it to the Council and European Parliament. The Commission has the authority to approve, amend or reject ESMA's regulatory technical standards, but this authority can always be revoked by the Council and European Parliament. In addition, the Council and European Parliament can make objections, within 6 months, to the regulatory technical standards approved by the Commission.

Implementing technical standards:

ESMA develops implementing technical standards that determine the conditions of application of implementation acts. Before their submission to the Commission, open public consultations are being conducted by ESMA in order to measure the potential pros and cons of its implementation. Within 4 months, the Commission shall approve the plan fully, partly or with amendments. In case it intends not to confirm the plan, the Commission informs the ESMA about the reasons of rejection. ESMA can amend the draft, implementing technical standard within 6 weeks and resubmit it in the form of a formal opinion to the Commission. The Commission doesn't have the authority to amend the draft implementing technical standard without coordinating with the ESMA first.

Emergency situations:

In cases of developments, critical for the integrity and stability of the Union's financial system, the ESMA shall undertake the coordination of actions of the relevant national competent supervisory authorities and participate as an observer to relevant meetings of these authorities. If the ESRB or ESMA predict a potential emergency situation, they address a confidential recommendation to the Council, which determines the existence of an emergency situation and, if so, it informs the

European Parliament and the Commission without delay. If there is need for coordinated action by national authorities, the ESMA shall adopt individual decisions which obligate the national authorities to take the necessary action to combat this situation (Article 18, p. 3). In case a national authority doesn't comply with or breaches the ESMA's decision, the ESMA can adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under that legislation, including the cessation of any practice.

College of supervisors:

Members of the ESMA can participate in the colleges of supervisors in order for the ESMA to ensure a consistent and coherent functioning of these colleges for cross-border institutions across the Union. For this purpose the ESMA:

- cooperates with the competent authorities in order to gather relevant information and establishes and manages a central system which provides these information to the competent authorities in the college,
- organizes Union-wide stress tests in order to find the flaws in situations of stress in the financial market and assess the potential systemic risk and makes recommendations to the competent authorities in order to correct issues discovered in these tests,
- promotes an effective and efficient supervision, including the evaluation of risks that market participants might face in stress situations,
- supervises the tasks accomplished by the competent authorities,
- requests further deliberations of a college in cases where it considers the application of a decision might misquote the Union law or would not achieve the objective of convergence of supervisory practices and also, requires to schedule meetings of a college and adds more points to the meeting's agenda.

In order to fulfil these tasks, the ESMA can issue draft regulatory and technical standards, address guidelines and recommendations and has a legally binding mediation role to resolve conflicts between competent authorities, publishing supervisory decisions directly applicable to the financial market participant concerned.

Further functions of ESMA:

The ESMA can develop regulatory and implementing technical standards in order to achieve recovery and resolution of the financial system (Article 25) and contributes to strengthening the European system of national Investor Compensation Schemes (ICS) to ensure adequate funding and provision of a high level of protection to all investors (Article 26). Additionally, the ESMA develops methods for the resolution of failing key financial market participants in order to avoid spreading on the financial system, to allow them to be cleared in an orderly and timely manner and , if it is possible, to have access to coherent and credible funding mechanisms. The ESMA

tries to restore level playing field issues in Union's financial market and to ensure fair burden sharing and incentives to contain systemic risk.

Common supervisory culture:

The Union needs to build a common supervisory structure in which the ESMA has a basic role by developing supervisory methods and ensuring the application of uniform and consistent procedures. For this purpose, the ESMA should fulfill the following tasks (Article 29, p.1):

"(a) providing opinions to competent authorities;

(b) promoting an effective bilateral and multilateral exchange of information between competent authorities, with full respect for the applicable confidentiality and data protection provisions provided for in the relevant Union legislation;

(c) contributing to developing high-quality and uniform supervisory standards, including reporting standards, and international accounting standards in accordance with Article 1(3);

(d) reviewing the application of the relevant regulatory and implementing technical standards adopted by the Commission, and of the guidelines and recommendations issued by the Authority and proposing amendments where appropriate; and

(e) establishing sectoral and cross-sectoral training programmes, facilitating personnel exchanges and encouraging competent authorities to intensify the use of secondment schemes and other tools."

Collection of information (Article 36):

In order to fulfill its tasks, the ESMA can request from the competent authorities of the Member States all the necessary information to complete its duties, provided that these authorities have legal access to the information and that the request is critical for ESMA's purpose. Also, it can request these information to be provided continuously and in specified formats. A competent authority of a Member State is able to request information as well for justified reasons and in accordance with the professional secrecy obligations. In case that requested from ESMA information is not available or provided in a timely fashion by competent authorities, the ESMA can address a duly justified and reasoned request to other supervisory authorities, to the ministry of finance, to the national central bank or to the statistical office of the Member State concerned. If this information is still not collected by ESMA, then it can request information directly from the relevant financial market participants and inform the relevant competent authorities about the request.

Securities and Markets Stakeholder Group:

In order to promote a dialogue with stakeholders in areas relevant to the tasks of the ESMA, a Securities and Markets Stakeholder Group is established (Article 37). This

group issues its opinion about regulatory technical standards, implementing technical standards and also, recommendations and guidelines of ESMA. The group arranges meetings at least 4 times a year and it consists of 30 members representing financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services, representatives of SMEs and at least five of them are independent top-ranking academics. The members of the Securities and Markets Stakeholder Group are appointed by the Board of Supervisors and they can serve for 5 years (2 and a half years each period). The ESMA provides to the group all necessary information, secretarial support and adequate reimbursement. The Securities and Markets Stakeholder Group submits its opinions and advice to issues related to regulatory technical standards, implementing technical standards, common supervisory culture, peer reviews of competent authorities and assessment of market developments. The ESMA has to make public the opinions and advice of the group, as well as, the results of the consultations.

Safeguards:

The ESMA must ensure that none of their decisions, applied for emergency situations or disagreements between competent, impinges in any way on the fiscal responsibilities of Member States. In cases that a Member State considers that a decision made under these circumstances impinges on its fiscal responsibilities, it can inform the ESMA and the Commission within 2 weeks explaining clearly and specifically why it won't imply the decision and how it impinges on the fiscal responsibilities. If the ESMA maintains or amends its decision (meaning that state's fiscal responsibilities are not affected), the Council decides, by a majority of the votes cast, if the ESMA's decision will continue to be into force. In case the Council decides to revoke ESMA's decision, it's instantly terminated. Where the Council has decided not to revoke a decision and the Member State concerned still considers that it impinges upon its fiscal responsibilities, the State can declare in detail the reasons for its disagreement with the decision of the Council and request a re-examination of this matter.

Organization of the ESMA (Articles 40 to 59):

Board of supervisors:

The Board consists of:

- The Chairperson, with no right to vote
- The head of the national supervisory authority of each Member State
- One representative of the Commission, with no right to vote
- One representative of the ESRB, with no right to vote
- Representatives of the other two European Supervisory Authorities, with no right to vote
- Potential observers

The Board can establish internal committees or panels for specific reasons and it can assign clearly defined tasks to internal committees or panels, to the Management Board or to the Chairperson. The Board can, also, create an independent panel (consisting of the Chairperson and 2 of its members) for resolving disagreements. As it is referred in the regulation:

"When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Board of Supervisors in the performance of their tasks."

The Board of Supervisors provides guidance to the work of ESMA by adopting opinions, recommendations, and decisions, and issuing advice, adopts the work program of the ESMA for the coming year, the annual report on the activities of the ESMA, the multi-annual work program and the budget of the ESMA and it exercises disciplinary authority over the Chairperson and the Executive Director and may remove them from office, if it's necessary. The Board takes decisions by a simple majority of its members and in the meetings, relating to individual financial market participants, the observers and non-voting participants (with the exception of the Chairperson and the Executive Director) must be absent.

Management Board:

The Management Board consists of the Chairperson and six other members, elected by and from the Board of Supervisors. The Executive Director and a representative of the Commission can participate in meetings of the Management Board without the right to vote, but in cases of budget processing the representative of the Commission may vote as well. The Board's meetings are convened by the Chairperson at least five times a year and advisers or experts can attend to assist the procedure. The Management Board ensures that the ESMA completes its mission and tasks, proposes an annual and multi-annual work program to the Board of Supervisors, adopts ESMA's staff policy plan and necessary implementing measures of the Staff Regulations of Officials of the European Communities, approves the special provisions on right of access to the ESMA's documents, submits an annual report on the activities of the ESMA and it has the authority to appoint and remove the members of the Board of Appeal.

Chairperson:

The Chairperson is a full-time independent professional, who has the responsibility of preparing the work of the Board of Supervisors and he must chair the meetings of the Board of Supervisors and the Management Board. He is

elected by the Board of Supervisors, according to his skills and knowledge, and, before taking up his duties, the European Parliament may express an objection about the selection of this candidate. The Board of Supervisors shall also, elect an alternate to take over the Chairperson's duties in his absence.

The Chairperson's term of office is 5 years and it can be renewed once (after receiving a confirmation by the European Parliament), according to an evaluation of the Board of Supervisors about Chairperson's achievements and the way they were achieved, as well as, the ESMA's duties and requirements in the coming years. He can be removed from office only by the European Parliament following a decision of the Board of Supervisors and he mustn't prevent the Board of Supervisors to discuss matters relating to him.

The European Parliament and the Council may invite the Chairperson or his alternate to make a statement and answer before the European Parliament to every question put by its members. At last, he submits a report about the main activities of the ESMA to the European Parliament, including any relevant information requested by the European Parliament on an ad-hoc basis.

Executive Director:

The Executive Director is a full-time independent professional, who is elected by the Board of Supervisors, according to his skills and knowledge. His term of office is 5 years and it can be renewed once, according to an evaluation of the Board of Supervisors about his achievements and the way they were achieved, as well as, the ESMA's duties and requirements in the coming years. He can be removed from office only upon a decision of the Board of Supervisors.

The Executive Director is responsible for the management of the ESMA and prepares the work of the Management Board. He is also, in charge of the implementation of the annual work program of the ESMA and takes the necessary measures (adoption of internal administrative instructions and the publication of notices) to ensure the function of the organization. Moreover, he prepares a multi-annual work program, a work program for the following year and he draws up a preliminary draft budget of the ESMA, as well as, implement the budget of the organization. At last, he prepares a draft report with a section on the regulatory and supervisory activities of the ESMA and a section on financial and administrative matters and he manages staff matters.

Joint Committee of European Supervisory Authorities:

"The Joint Committee shall serve as a forum in which the Authority shall cooperate regularly and closely and ensure cross-sectoral consistency with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), in particular regarding:

— financial conglomerates,

— accounting and auditing,

— micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability,

— retail investment products,

— measures combating money laundering; and,

—information exchange with the ESRB and developing the relationship between the ESRB and the ESAs."

The Joint Committee consists of staff provided by the ESAs that shall act as a secretariat. It also, resolves disagreements about joint positions and common acts. The Committee is composed of the Chairpersons of the ESAs. In their meetings, the Executive Director, a representative of the Commission and the ESRB are invited as observers. The Chairperson of the Joint Committee is appointed annually from among the Chairpersons of the ESAs and at the same time, he is the Vice-Chair of the ESRB.

Sub-Committees:

The regulation 1095/2010 established a Sub-Committee on Financial Conglomerates to the Joint Committee composed of the Chairpersons of the ESAs and one high-level representative from the current staff of the relevant competent authority from each Member State. The Sub-Committee elects its Chairperson from its members and it can create more Sub Committees.

Board of Appeal:

The Board of Appeal is a joint mechanism of the ESAs, which is composed of 6 members and 6 alternates with high levels of knowledge and experience in the field of activities of the ESAs. Each ESA elects 2 members of the Board of Appeal and their alternates. Their term of office is 5 years and it can be extended once. Additionally, the members of the Board of Appeal can't be removed during their term of office, unless the commit a serious misconduct. The decisions of the Board of Appeal is adopted on the basis of a majority (at least four of its six members) and the ESAs need to provide them adequate operational and secretarial support through the Joint Committee.

It is worth citing the Regulation's Article 59 about the independence and impartiality of the Board of Appeal:

"Independence and impartiality

1. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any

other duties in relation to the Authority, its Management Board or its Board of Supervisors.

2. Members of the Board of Appeal shall not take part in any appeal proceedings in which they have any personal interest, if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.

3. If, for one of the reasons referred to in paragraphs 1 and 2 or for any other reason, a member of a Board of Appeal considers that another member should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.

4. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraphs 1 and 2, or if suspected of bias.

No objection may be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has nonetheless taken a procedural step other than objecting to the composition of the Board of Appeal.

5. The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned.

For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. Where the alternate is in a similar situation, the Chairperson shall designate a replacement from among the available alternates.

6. The members of the Board of Appeal shall undertake to act independently and in the public interest.

For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

Those declarations shall be made public, annually and in writing."

The Board of Appeal is responsible for examining an appeal against the ESMA. Any natural or legal person, including competent authorities, can make an appeal against ESMA's decision, together with a writing statement of grounds. The appeal does not have a suspensive effect (unless the Board of Appeal decides otherwise). The Board is responsible for deciding whether the appeal is well-founded, after hearing the parties' oral representations. The Board's decision

bounds the competent body of the ESMA and that body adopts an amended decision regarding the case concerned.

Member States and the Union institutions, as well as any natural or legal person, may institute proceedings before the Court of Justice of the European Union against decisions of the ESMA. In the situation that the ESMA has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice of the European Union and the ESMA must take the necessary measures to comply with Court's judgement.

Some thoughts about ESAs' function

As we already have mentioned, the ESMA focuses its authorities in CRA's supervision and trade repositories and it is a part of the European System of Financial Supervision (ESFS). ESMA is the biggest of the three ESAs - namely the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), according to its activities and budget. Although the legislation for these EU institutions seemed very promising, it seems that neither of the ESAs has fully acted according to its original goals. A few years after their formation, these EU institutions still have many problems to resolve in order to implement their competencies efficiently.

As Mr. Karel Lannoo (*Chief Executive and Senior Research Fellow at CEPS)* writes in his publication "EU Supervisory Cooperation Scaled Back at the Expense of Capital Markets Union", the Commission's 8% cut to ESAs' financing, took these institutions a further step back. According to him: "While the Authorities are still in the process of implementing huge blocks of legislation and with new expectations created by capital markets union, the ESAs have effectively been forced to scale back their operations". By establishing the ESAs, EU achieved the creation of a more stable supervisory environment in its financial section. The Authorities made a great progress by setting significant technical standards, improving the EU supervisory methods and determining the equivalence of rules in third countries. These steps have been made by implementing a great amount of new regulations, adding to the supervisory system a certain complexity. As we can see, Authorities' advising and guiding role consists a very critical part of EU's system, due to the amount of workload and progress they accomplished. So, by even the slightest piece of their financing can only damage their cause and prevent them from taking new initiatives. How can these supervisory institutions keep up with the continuous new challenges arising in the capital market without having EU's the full support?

Another factor that "holds" the ESAs back is their dependency from member states, especially in the decision-making field. As it seems, the Authorities lack in executive capabilities because the decisions are taken by the Supervisory Board. This means that in order to implement a decision, the voting process goes thought a Board, composed of representatives of member state supervisors. On the other hand, the Management Board and further ESAs' stuff have no say in the decision-making process as they don't have the right to vote. This situation lead to an oxymoron, as the people who are directly and mostly connected to the institutions have no effect to their administration. Additionally, the EU through its new regulations created more capital markets supervisory competencies than it could actually manage. ESMA proves this point, as it is responsible only for credit rating agencies and trade repositories. Many other financial factors like benchmarks and data reporting agencies left out to the experience of each member state to manage them. It is clear that ESAs have limited powers according to the competencies that EU has set, but even these authorities' needs to become far more independent from the influence of the member states in order to create an effective structure and broaden their field of competence.

The latest proof of the above arguments is the Commission's Review of the European Supervisory Authorities, in 2017, where it was proposed an expansion of ESMA's field of competencies, but the review didn't mention any change in the decision-making process. The proposal focuses in the boosting of ESMA's supervisory powers and it is suggested an assignment of executive authorities to the Management Board. But even with this radical proposals, there are no changes to the voting rights and the decisions remain to the hands of the member states. This review makes us wonder if these proposals could actually improve the existing malfunctions, given that ESAs' administrative structure doesn't really change.

Another critical obstacle that prevents ESAs' effective function is their labor shortage and their lack of funding. According to researchers Willem Pieter de Groen and Klaudia Zielińska, in their article "European Supervisory Authorities still playing second fiddle to national financial regulators", it seems there are operational and financial restrictions, which are blocking their efficiency, especially compared to the resources of other institutions. As they point out, many institutions like ECON of the European Parliament and the European Court of Auditors have identified the problem few years ago, but nothing has been done yet to resolve it. In their article it is provided a very enlightening comparison of the budget and members of the ESAs and some national or European authorities.

Focusing on the human resources, we see that the European Central Bank had twice the size of supervisors working in the Single Supervisory Mechanism (SSM), as the total amount of ESAs' staff members (532 members). The situation gets worse in the national level, as almost every member states has more employees

working in the supervisory section than ESAs combined. The article comes to an upsetting conclusion that "the ESAs employ only around 0.7% of all staff of national and European financial authorities".

Focusing on the financial resources things turn out to be disappointing as well. The total amount that the ESAs spent combined in 2016 for their operational needs doesn't surpass the €97 million, with EIOPA spending the less. ECB's financing amount was almost 10 times higher than ESAs' budget combined, approaching the amount of €954 million. As for the member states, it seems that Germany, France and Italy spend 20 times higher than the ESAs' budget to their financial authorities. It turns out that only 3 national supervisory institutions from the 27 European countries have less operational expenses than the three ESAs. As a result "the ESAs have about 0.7% of the financial resources available to national and European financial authorities combined".

To sum up the basic challenges that EU has to resolve in order to improve ESAs' effectiveness are:

- the dependency from the member states
- the restriction to advisory bodies/ incompetence to implement directly initiatives
- the labor shortage
- the lack of funding

Some basic steps that need to be done in order for the EU to see actual improvement to the operation of the ESAs are:

- to reform ESAs to a more transparent and comprehensible structure
- to make a more rational and integrated legal system concerning the financial sector
- to facilitate as much as possible the cross-border investments
- to give the right to vote to ESAs' staff

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