

Title: Credit Rating Agencies (Civil Liability) Regulations 2013 PIR No: N/A Original IA/RPC No: N/A Lead department or agency: HM Treasury Other departments or agencies: Financial Conduct Authority (FCA) Contact for enquiries: samuel.hill@hmtreasury.gov.uk	Post-implementation review
	Date: 12/04/2019
	Type of regulation: EU
	Type of review: Statutory
	Date measure came into force: 25/07/2013
	Recommendation: Keep
	RPC Opinion: N/A

1. What were the policy objectives of the measure?

The SI imposed civil liabilities on credit rating agencies (CRAs) through Article 35a of the Credit Rating Agencies Regulation (EC 1060/2009), known as CRAR, where they commit infringements of certain EU law intentionally or with gross negligence. The objectives were to promote legal certainty for businesses and to encourage and enable competition among CRAs. Competition was encouraged by ensuring that the costs of understanding and taking account of the Article 35a liability are as small as possible and do not form barriers to entry for new CRAs to the market.

2. What evidence has informed the PIR?

The implementation of the regulations has been tested in consultation with key stakeholders. We have engaged the Financial Conduct Authority (FCA) to gain information relating to the enforcement aspects of the regulations. We also discussed the PIR with affected stakeholders, including the 'big 3' CRAs – Standard and Poor's, Moody's and Fitch Ratings – to understand the impact of the regulations on these bodies. These firms were broadly supportive of the regulations in providing legal clarity to the market. Further information obtained from these CRAs can be found throughout the remaining sections.

3. To what extent have the policy objectives been achieved?

The regulations have promoted legal certainty for individuals and firms as it provides them with greater assurances of their claims against CRAs, given their reliance on credit ratings when trading financial instruments. As a result of these regulations, for example, an individual could claim against a CRA if it issued a credit rating that did not comply with the requirements in CRAR. Additionally, the second objective of the regulations sought to reduce the barriers for entry for prospective CRAs. While 13 CRAs, including one UK-based firm, have registered or certified with the European Securities and Markets Authority (ESMA) since the regulations were introduced across the EU, it is difficult to consider the extent of these regulations on CRA registration and certification trends.

SCS of Securities, Markets and Banking

Signed: *Clare Bolingford*

Date: 12/04/2019

SCS of Better Regulation Unit

Signed: *Gemma Peck*

Date: 11/04/2019

Sign-off for Post-implementation review: Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***John Glen MP, Economic Secretary to the Treasury***

Date: ***23/04/2019***

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

It was assumed that the regulations would improve CRAs' accountability by providing a further means of claims against them where a CRA committed an infringement specified in CRAR. The regulations were also expected to promote competition in the CRA market by reducing barriers to entry for prospective CRAs.

5. Were there any unintended consequences?

One unidentified consequence that was raised by a CRA was that the regulations have raised a risk associated with issuing unsolicited credit ratings – ratings that have not been requested – which have been claimed against under these regulations. The regulations determine that damages for issuers of unsolicited ratings should be assessed as an increase in their financing costs due to the difference between the actual rating and the rating that would have been assigned had this breach under Article 35a of CRAR not occurred. It was argued that there was no correlation between a rating and an issuer's financing costs.

6. Has the evidence identified any opportunities for reducing the burden on business?

The responses we gained suggested that the limitation period that was introduced by this regulation provide necessary opportunities for claims to be brought against CRAs, while the limiting nature of the period ensures that CRAs are not burdened by an excessive number of claims.

7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?

The cost of implementation in other Member States is not available.

Recommended Next Steps (Keep, Amend, Repeal or Replace)

This PIR recommends that the regulations are renewed. Our engagement with stakeholders has indicated that the regulations provide an adequate regime for individuals and firms to bring cases against CRAs, improving accountability of CRAs more generally.