

Date: October 21st, 2011

To
European Securities and Market Authority
103 rue de Grenelle
75007 Paris, France

Via www.esma.europa.eu

Reference: Consultation Papers ESMA/2011/302 and ESMA/2011/305 on Draft Regulatory Technical Standards applicable to Credit Rating Agencies

Dear Sirs,

With reference to your public consultations on your Draft Regulatory Technical Standards applicable to Credit Rating Agencies launched on September 19th, 2011, kindly find attached the response of our association. Our response follows the order of the references of the consultation and the questions therein, but please allow first for some preliminary comments.

From a general perspective, Regulatory Technical Standards ("RTS") detail as level 3 legislation requirements included in relevant Regulations adopted by the European Parliament and the Council of the European Union. Such standards are adopted through a well-designed process where sectoral competent supervisory authority proposes draft RTS to be adopted by the European Commission. Such a process, due to the its length, should rather be rare and should therefore provide a stable regulatory framework in the respective industry. With respect to financial markets, any RTS should balance the level of precision with the different business models of the players, their size and importance to the respective markets and the on-going financial innovation – such a balanced approach should apply to Credit Rating Agencies as newly regulated and supervised industry as well.

Whereas we think that the four proposed RTS provide enough detail and lay the foundation for efficient and effective supervision of CRAs by your institution, we strongly believe the RTS need to be amended to reflect that some requirements may not be applicable to all CRAs when there are requirements which are not material or appropriate given their business models, their size, their rating methodologies or their rating scales.

EACRA points out that high fixed compliance costs give relative advantage to large agencies, and that a number of the suggested regulations impose large fixed costs, thus discriminating against small agencies. The excessive administrative burden connected with the issuance of ratings is a clear barrier to entry into the market – we therefore call on the application of the principle of proportionality as a tool to promote more competition in the rating market. Positive discrimination towards smaller agencies will facilitate market entry.

The proposed Draft RTS on monthly reporting requirements (reference ESMA/2011/305) introduces new reporting standards and represent therefore an additional burden on CRAs. Out of the two analyzed options in the accompanying impact assessment, the more burdensome has been selected. This option extends the CEREP reporting format with several new items and with a much higher frequency. In order to reduce the burden on CRAs, EACRA recommends that the information requirements under these two reporting formats are standardized and synergies are used by ESMA. For smaller CRAs, we propose quarterly or semi-annual reporting instead of monthly reporting – this is more proportionate to their size and corresponds to the approach taken in other sectoral legislation requiring high frequency reporting only to significant players. The size of an agency should be assessed based on the business volume connected with the issuance of credit ratings and not of the company's overall activity as derived eg from the Transparency report – for companies not having set-up a separate legal entity for their rating agency activities, the size of the CRA Business unit should be used as a guidance. Our detailed response to this consultancy is annexed to this letter.

With respect to your Draft RTS on rating methodologies (reference ESMA/2011/303), the draft RTS presumes only one form of rating process, namely the mechanical collection of data and its comparison to models. Ratings are traditionally contrasted with rankings, in that rankings use mathematical models to process data, whilst ratings utilize qualitative expert inputs. Models are used in rating processes, but are not the only critical element to a rating. Consequently, focusing regulations on models places unnecessary burdens on small agencies relying less on such models, and distorts the perception of regulators about the importance of models. Back-testing of pure quantitative models may effectively turnout to be impossible for low-default environments (eg insurance sector or sovereign market).

Please allow for a comment based on the recent experience of the registration process of some of our members: although the registration process has been far longer than expected by all parties involved, we appreciate the due care shown in the evaluation of each single application. This thorough analysis by the competent authorities ensures that the specificities of the applicants (eg in terms of business model, methodologies etc) are fully taken into account and that CRAs, in case of need, adapt their process in order to fully comply with all requirements. This sensible approach will ensure that registered CRAs are up to the standards expected by the Regulation. On the other hand, we also call on the use of the proportionality principle in order to avoid that the administrative burdens out of registration do not surpass any potential benefits. Annexed to this letter is our detailed response to your consultancy on the registration requirements (reference ESMA/2011/302)

Last but not least, given that the status of registered or certified CRA is a very new one and that many stakeholders are not aware of this important regulatory change, we call on your esteemed institution to spread this information more widely, especially towards users of ratings as defined under the Regulation. As registered or certified are CRAs not allowed to advertise and use the fact of being supervised by your esteemed institution, a change in the current market structure can only be achieved if all parties are aware of all players on the market.

We remain at your full disposal if you would like to clarify any of the above.

Yours sincerely

Thomas Missong
EACRA President

Thomas Morgenstern
EACRA Secretary General

About EACRA

The European Association of Credit Rating Agencies ("EACRA"), registered in Paris, was established in November 2009. The Members of the Association currently originate from 8 European countries and include the following companies:

- **Assekurata Assekuranz Rating-Agentur** is the first independent German rating agency that has specialized on the quality evaluation of insurance companies
- **Axesor**: Leading independent provider of information and marketing services in Spain. Provides comprehensive information and an indication of solvency on all registered Spanish companies.
- **BCRA** assigns credit ratings to the leading Bulgarian insurance and pension companies, banks, corporates, municipalities
- **Cerved Group**: Italian Credit Rating Agency recognized ECAI by Bank of Italy
- **Credit Rating**: covers corporate, financial institutions and municipalities in Ukraine
- **CRIF**: global company that, in addition to the traditional services of information and scoring, started last year a professional activity aimed to issue unsolicited ratings to Italian companies
- **Informa D&B** is the Marketing, Financial and Business Information leading company in Spain, offering currently more than 3.7 million online ratings on Spanish companies
- **Informa D&B** is the Marketing, Financial and Business Information leading company in Portugal, offering currently more than 820K online ratings on Portuguese companies
- **JCR Eurasia**: is Japan Credit Rating affiliated company in Turkey and covers all market segments.
- **National Rating Agency** (NRA) is one of the leading independent rating agencies in Russia. As of today National Rating Agency has assigned ratings to over 750 leading Russian and international companies.
- **PSR RATING**, based in Germany, focuses on solicited corporate ratings and the development of valid rating systems
- **RusRating** is a credit rating agency based in Moscow, with sister agencies in Armenia and Kazakhstan. It is accredited with the Ministry of Finance of the Russian Federation.



The Members of the Association have very different business models while assigning ratings. All are deeply rooted in their respective markets; enjoy a high market share and a good reputation with local investors

Consultation Paper ESMA/2011/302 regarding ESMA's Draft Regulatory Technical Standards on the information to be provided by a credit rating agency in its application for registration and certification and for its systemic importance

Q1: Would you agree that the content of the Programme of operations set out in Annex X of the draft RTS is appropriate? If not, please, indicate the reasons or provide ESMA with further elements which could be included in the Annex.

The programme of operations as set out in Annex IX of the draft RTS requires CRAs to provide substantial information to ESMA. Whereas the topic "business concept/business development" may provide general indications where CRAs are heading to, this information cannot be modeled into pure financial projections and numbers of ratings to be issued as these will depend on several factors. This information may turn out not providing any benefit but rather pose further challenges to CRAs as they would be scrutinized for failing any business development plans.

Q2: Would you agree that the CRAs provide the criminal records of its senior management as set out in Article 15.2 of the draft RTS?

We think that the list included in Annex VI is too exhaustive and may even be misleading. Senior management executives may for instance not be aware of any investigation launched by a regulatory body. Points e or f in this list, although important, may not be connected to credit rating agency activities and should therefore not impact on the registration.

Q3: Would you agree with the content of the self-declaration that the senior management has to sign as set out in Annex VI of the draft RTS?

The application for registration is not related to the senior management but rather to the whole CRA. Such an application can only be submitted if the Senior Management of the CRA has been authorized by the shareholders. We therefore think that this additional obligation will not improve the quality of any application.

Q4: Would you agree that the CRAs provide a copy of the outsourcing agreements instead of a description of its content?

Outsourcing agreements between a CRA and an external service provider may be quite extensive as they also cover standard clauses applicable in commercial law in general. We therefore think that it is more appropriate for CRAs to provide descriptions of their content than providing the full text.

On the other hand, as all documents provided for registration are confidential and restricted to the use of your institution, we would also accept providing the full contract if this contributes to a more efficient and effective supervision of a CRA activity and its service providers.

Q5: Would you agree with the level of detail regarding the information on the activities of the owners of the CRA described in Annex III of the draft RTS?

Rating agencies base their ratings on rating methodologies and specific processes designed to ensure the independence of the analysis and ratings, including the independence from the owner of the agency.

The ownership structure of rating agencies may substantially differ, we therefore think that the analysis should focus on material shareholders and not on all of them. In addition, the analysis of the shareholders further business activities should focus on their material interests.

Q6: Would you agree with the proposed content of the inventory of conflicts of interest?

The proposed content of the inventory of conflicts of interest is understandably generic as conflict of interest depend on the business model (eg investor-pays agencies need to inform the rated entity about rating assignments 12 hours before general publication, thereby creating new conflict of interest to be managed by CRAs). We would therefore appreciate if ESMA, during the registration of an CRA, establishes in collaboration with the CRA a more precise list of potential conflicts of interests.

Q8: Would you agree that the statistics concerning the remuneration of employees are simplified?

Yes, we agree with the proposal of simplifying any statistics on employees, whether connected to their activities or their remuneration.

In order to ensure high quality ratings, CRAs employ highly qualified staff – their remuneration depends not least on local circumstances and salary levels, a direct comparison across Europe may therefore disturb the results. In addition, the regulation already foresees several limits to the flexibility on remuneration policies.

Statistics regarding the fields of activity of the employees should be presented, if any, at an aggregate level – the analysis of an issuer may substantially differ depending on the size of the issuer and the quality of information available.

Q9: Please, provide any other comments on the proposed draft RTS.

With reference to the CESR Annual report on Credit Rating Agencies dated December 6th, 2011, we kindly ask your institution to clarify the language regime for any application. The report cited that CESR had to deal with applications in several languages and that this may have partly hampered CESR to discharge its obligation. Although your institution is exclusively in charge of supervising CRAs, you may involve national authorities in this process. In order to ensure that language issues do not create additional barriers and burdens, we would highly appreciate if you could indicate to each potential registrant which language is applicable.

Given that the requirements included in this draft RTS go beyond the currently applicable CESR guidance on registration, please confirm that the new requirements relate only to new applications and that already registered/certified CRAs will not need to provide this additional information.

We support the referencing of all documents submitted for registration (and thereafter) and suggest that you provide a unique reference framework as this will allow documents to be tracked more easily by CRAs, by ESMA but also by all market participants with respect to public disclosure requirements.

Consultation Paper ESMA/2011/305 regarding ESMA's Draft Regulatory Technical Standards on the content and format of ratings data periodic reporting to be submitted from credit rating agencies

Q2: Do you think the current proposal for the draft Regulatory Technical Standards covers all relevant data that should be periodically reported to ESMA?

Whereas the standards currently foresee the reporting of “action type”, “outlook/trend” and “watch” purposes, this standard may not be used by all Credit rating agencies. Given the independence of rating agencies in the methodologies and scales used, CRAs cannot be obliged to introduce such a standard. We therefore would appreciate a reference in Article 4 exempting CRAs to report datafields not applicable to them – ESMA and the respective CRA shall clarify in detail which fields may be left empty.

Q6: Do you agree that the suggested frequency (monthly) for reporting is appropriate to enable ESMA to discharge timely and effectively its obligations and to ensure it has up-to-date data?

We think that reporting requirements should be proportionate to the size, activity and importance of the Credit Rating Agencies and propose as a general rule the quarterly reporting and a monthly reporting for systemically important CRAs. Such an approach will balance the supervisory requirements with the resources available at ESMA as well as at the Credit Rating agencies.

As an alternative route and similar to other sectoral legislation, annual reporting should be very detailed whereas more frequent reporting should be as simple as possible as too much reporting leads to high administrative costs.

Q8: Do you agree with the standards indicated for the data fields in Table 2?

With respect the field “Seniority”, please note that the US xBRL reporting standard for CRAs does not define any precise ranking and leaves it to CRA to describe the ranking. The proposed list is much too short compared to the different levels of rankings of financial instruments existing in the market – financial innovation will never allow for a defined and unique set of rankings.

Q9: Do you think that additional actions should be included in field n. 8 of Table 2 of the Annex? Q10: Do you think that additional options/items should be included in fields n. 9, 10 and 11 of Table 2 of the Annex?

This new Table 2 introduces several new fields as compared to the CEREP standard. Fields like “Action type, outlook/trend and watch” may not be applicable for certain CRAs as these standards are yet not used.

Q11: Do you believe that the solutions proposed for the identification of instruments, issuers and originators are appropriate? Should ESMA consider alternative identifiers?

The market may create additional instruments or ways of identifying these instruments in the future, ESMA should therefore be able to take into account the evolving market practices.

Q12: Do you agree with the method proposed for the cancellation of records?

Field N° 12 “reason for calculation” is a mandatory field but it does not contain any more precise standard or indication. Please clarify here.

Q13: Do you think that any of the fields that are proposed to be filled in only the first time a rating is reported should instead be provided more frequently?

In order to avoid unnecessary problems and duplication of information, only changing information should be reported and all other information should remain unchanged.

Q16: What is your view on the requirement that CRAs should include in the periodic reporting to ESMA information about changes of outlooks or the issuance of “watches” (or watchlist designations) on credit ratings? Do you agree that reporting of these data can materially improve the effectiveness of supervision from ESMA?

A change in outlook or the issuance of an “watch” change is based on the rating methodologies and processes of each Credit Rating Agency and can therefore not be standardized across agencies or from a regulatory perspective. Next to the change of outlook and Watchlist, ESMA would require the background information on each rating action in order to assess whether a breach or potential breach of legislation is given. Given that ESMA has the investigative powers required, ESMA may launch an information request any time without the need to await the data being reported to it.

Q19 Do you agree that for the purpose of ongoing supervision ratings on covered bonds (that are not structured finance instruments) should be reported to ESMA as a separate type of ratings different from corporate ratings? What is your view on the specific issues/risks linked to covered bonds ratings? Can the clear identification of covered bond ratings in the periodic reporting help ESMA to deliver a more effective and timely supervision of those risks and issues?

Give the specificities of covered bonds, we agree that these instruments should be treated separately from other Structured finance products.

Questions regarding the Impact Assessment presented in Annex II

Q22: Do you have any concerns regarding the methodological specifications and key assumptions adopted for the Impact Assessment? If so, please specify the alternative solutions and hypothesis that should be considered in case of positive answer.

Unfortunately, the keys used for the costs and benefit analysis are only symbols and don't include any range of costs. Generally speaking, EACRA believes that for smaller CRAs the additional reporting requirements generate additional fixed costs. Therefore EACRA recommends to size the requirements for smaller CRAs and to take into account specificities under the investor-pays model (unsolicited ratings).

Q24: Has the Impact Assessment omitted any material cost or benefit?

We think that the provision of monthly rating data can be used by ESMA in order to fulfill its tasks related to the CeRep project. Instead of the dual reporting by CRAs, ESMA could compile all the information required for the CeRep.

It is argued that the CeRep project is already so far underway, that any change to this project will lead to substantial costs. Unfortunately, CeRep is still based on the xml standard, whereas EIOPA recently endorsed xBRL and EBA supports the use of this standard. ESMA should therefore reflect the opportunity to introduce xBRL as this may facilitate to the exchange of information between the authorities.