

POSITION PAPER

ESBG response to

**CESR consultation paper on registration process,
functioning of colleges, mediation protocol, mediation
protocol, information set out in Annex II, information
set for the application for certification and for the
assessment of CRAs systemic importance**

(CESR/09-955)

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The European Savings Banks Group (ESBG) welcomes the opportunity to comment on the CESR consultation paper related to Credit Rating Agencies. ESBG acknowledges that the consultation paper has been established after prior consultation with the consultative working group, for which ESBG appointed experts. ESBG submits the following comments to the questions posed by CESR in its consultation paper:

General issues applicable to the registration process

Answer to question 1: ESBG does not envisage any problems with the proposed approach to use the calendar defined by the ECB for the operation of the TARGET system, and therefore supports this approach.

Application for registration

Answer to question 2: ESBG agrees with the proposal to have one submission for the whole group, while each home competent authority will adopt its own separate decision on the registration of the member of the group for which it is the home competent authority.

Language of the application for Credit Rating Agencies established in more than one Member State

Answer to question 3: ESBG agrees with the proposed approach, in particular the drawing up of the whole application in a language customary in the sphere of international finance.

Language of the application for Credit Rating Agencies established only in one Member State

Answer to question 4: ESBG agrees with the proposed language regime, i.e. appropriate language and translation to a language customary in the sphere of international finance when certain requirements, as outlined in paragraph 36, are met.

Format of the application

Answer to question 5: ESBG agrees that in general applications should be submitted electronically.

College assessment on the completeness of the application

Answer to question 6: ESBG agrees that the task of checking the completeness is a preliminary one limited to verifying that all the items of information required by Annex II of the Regulation have been included. As regards the beginning of the assessment period ESBG shares CESR's view that this period should begin from the date of receipt by the authorities of the application from CESR.



Answer to question 7: ESBG considers it useful to have a joint examination regarding the joint application from the group of CRAs and its completeness by the members of the college.

Answer to question 8: ESBG agrees to CESR's approach regarding non complete applications, including the additional period of maximum 25 working days to assess whether additional information submitted by the CRA contains the required information.

Period of examination

Answer to question 9: ESBG agrees that the facilitator may extend the period of examination based on its sole decision.

CESR's advice on the compliance of the CRAs with the requirements for the registration

Answer to question 10: ESBG agrees that CESR should only give advice in exceptional cases (e.g. when there is disagreement among the members of the college, see outlined in paragraph 54).

Exemptions

Answer to question 11: ESBG agrees with the proposed procedure for exemptions for CRAs as well as the approach for not granting the exemption by the authorities.

Common format for notifications of decisions

Answer to question 12: ESBG welcomes CESR's intention to produce for its members a common format for notifications.

Transparency of the registration process

Answer to question 13: A refusal of registration has the consequence that the CRA is not permitted to issue ratings (covered by the Regulation 1060/ 2009). Therefore ESBG considers that sufficient transparency is given to the market, without disclosing the decisions of refusal of registration. However, the approval as well as the withdrawal of registration should be disclosed, as this affects the use of ratings for regulatory purposes by EU banks and other regulated entities. In this context the following information should be disclosed: information about the CRA (in particular: name, address, number in the commercial register) and kind of decision (approval or withdrawal of registration). In the case of a withdrawal of registration further information could be of added value for the market (such as the reasons for the withdrawal). The notification by the competent authority to the Commission, CESR, other competent authorities and the applicant should contain the same information, supplemented by information about opinions of any dissenting authorities.

ESBG adds a specific remark regarding paragraph 60 of the consultation paper. The last sentence of this paragraph stipulates that the period of 10 days (for stopping to use a rating for regulatory purposes) might have been expired before the list of registered CRAs is updated. ESBG questions how this should work in practice: How should the bank know that it cannot use a rating anymore if it



cannot rely on the official list of registered CRAs? Will national regulators publish separate lists, which will be published before the Commission's list and are therefore the legal reference point?

ESBG expresses its preference for a Europe-wide list to be distributed simultaneously to all credit institutions upon each modification.

Notification of any material changes to the conditions for initial registration

Answer to question 14: Material changes should in ESBG's view include changes to its legal form, changes in the group structure (merger, acquisition, split), significant changes in the Board or in the working team.

Endorsement: Procedures with competent authorities

Answer to question 15: ESBG agrees that for the procedure authorities should follow in order to allow endorsement they should use the procedure set out in the Regulation for the registration.

Endorsement procedure

Answer to question 16: ESBG agrees to the approach of ex-post supervision without the need of having any actual endorsement of individual ratings previously approved by the authorities.

Registration without the conditions for endorsement being met

Answer to question 17: ESBG agrees to CESR's assessment that endorsement is an activity that is voluntary for the CRA that applies for registration and thus the applicant CRA should be registered if it complies with all the conditions for registration, even if those required for endorsement are not met.

Transparency regarding the third-country CRAs whose ratings may be endorsed by the EU CRAs

Answer to question 18: ESBG considers important that authorities and/ or CESR publish the list of third-country CRAs whose ratings may be endorsed by a registered EU CRA.

Procedure for certification

Answer to question 19: ESBG agrees to CESR's thoughts in this area and, in particular, supports the view that agreement among the members of the college will be necessary for the adoption of the decision to certify the CRA.

Language of the application for certification

Answer to question 20: ESBG agrees that the application should be submitted in a language customary in the sphere of international finance.



Systemic importance

Answer to question 21: ESBG agrees to CESR approach, i.e. when sending the application to the competent authorities of all Member States, CESR will ask them whether the CRAs' activities are of systemic importance in their respective jurisdiction.

Withdrawal of the certification

Answer to question 22: ESBG agrees that the provisions of Article 18 would also apply in case of withdrawal of certification.

Relationship between equivalence and endorsement

Answer to question 23: ESBG agrees to CESR's judgment that there would be no objective reasons to set different requirements for the third country CRAs depending on the mechanism used.

Answer to question 24: ESBG recognizes that an equivalence decision by the European Commission would be sufficient for the endorsing EU CRA to demonstrate that the third-country CRA fulfils the necessary requirements. ESBG, however, recommends that the European Commission should be advised by CESR on this matter, in particular for establishing the equivalence criteria.

Answer to question 25: ESBG fully agrees that Art. 4(3b) requires local legal and regulatory requirements as stringent as those in Articles 6 to 12 of the EU Regulation. ESBG also shares CESR's view that in case there is a negative equivalence assessment by the Commission it is still possible to meet the conditions for endorsement.

Language of the disclosures and of the transparency report

Answer to question 27: ESBG agrees that language requirement in this context should follow the same rationale as for the language of application.

Means of publication

Answer to question 28: ESBG does not envisage any problems with a publication via the CRA's website.

Timing for the publication or submission of the information

Answer to question 29: ESBG considers that CESR has chosen a sensible approach regarding the timing for publication or submission, in particular by setting the provision of information for the annual disclosures after the end of the financial year.



Selection of facilitator

Answer to question 30-32: ESBG agrees to the factors to be considered for criteria A and B, which are highlighted in paragraphs 114 and 115. Appropriate quantitative indicators would in ESBG's view be the number of CRAs operating in the relevant country, the total number of rated entities, the number of offices by country and the number of analysts by office in that country.

ESBG does not identify further factors, in addition to those mentioned under criteria C and D (in paragraphs 116 and 117). ESBG does not expect major problems with the collection of information required to assess the criteria. ESBG, however, notes that when using quantitative and qualitative elements an interpretation will be necessary to assess the situation.

Withdrawal of registration

Answer to question 33: ESBG agrees to the proposed method regarding the joint assessment. It also welcomes the proposed transparency towards the CRA.

Supervisory measures/sanction

Answer to question 34: ESBG agrees with CESR's points regarding the sanctioning proceedings.

Location of issuance and impact on supervisory responsibility

Answer to question 35: CESR identifies a number of possible criteria for assessing where a rating has been issued. ESBG considers the following criteria most relevant: "registered CRA that employs the lead analyst" and "If the registered CRA has an office in the country in which the issuer is incorporated (or the assets are located)".

Answer to question 36: ESBG sees no reasons for not meeting the requirements set out in paragraph 144 (i.e. auditable trail of the process of establishing a rating, office elaborating the rating and issuing it, location of issuances).

Mediation protocol

Answer to question 37: ESBG does not envisage any problems with the proposed mediation mechanism, which is organized, managed and supervised by the facilitator of the college, with the support of the CESR secretariat.

Guidance on the information set out in Annex II

Answer to question 38: No comments.

Answer to question 39: ESBG support the idea of adding the additional ECAI information requirements within this consultation paper. The following elements could be added:

- information on records and explanations of material errors identified in rating models or methodologies over the past five years,
- disclosure of the effects of these material errors on the rating,



- information on ratings that agencies are not going to update for special circumstances,
- information on ratings that have been disappeared.

Guidance in request for historic data and information

Answer to question 40: In ESBG's view CESR should ask for historic data and information, referring to a period of the last three years.

General guidance on the information to be submitted

Answer to question 41: No comments.

Scope of information requested in this guidance

Answer to question 42: ESBG is in favor of including the highlighted bullet points of this section IX within the guidelines.



About ESBG (European Savings Banks Group)

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of € 5967 billion (1 January 2008). It represents the interest of its Members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG Members are typically savings and retail banks or associations thereof. They are often organized in decentralized networks and offer their services throughout their region. ESBG Member banks have reinvested responsibly in their region for many decades and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.



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