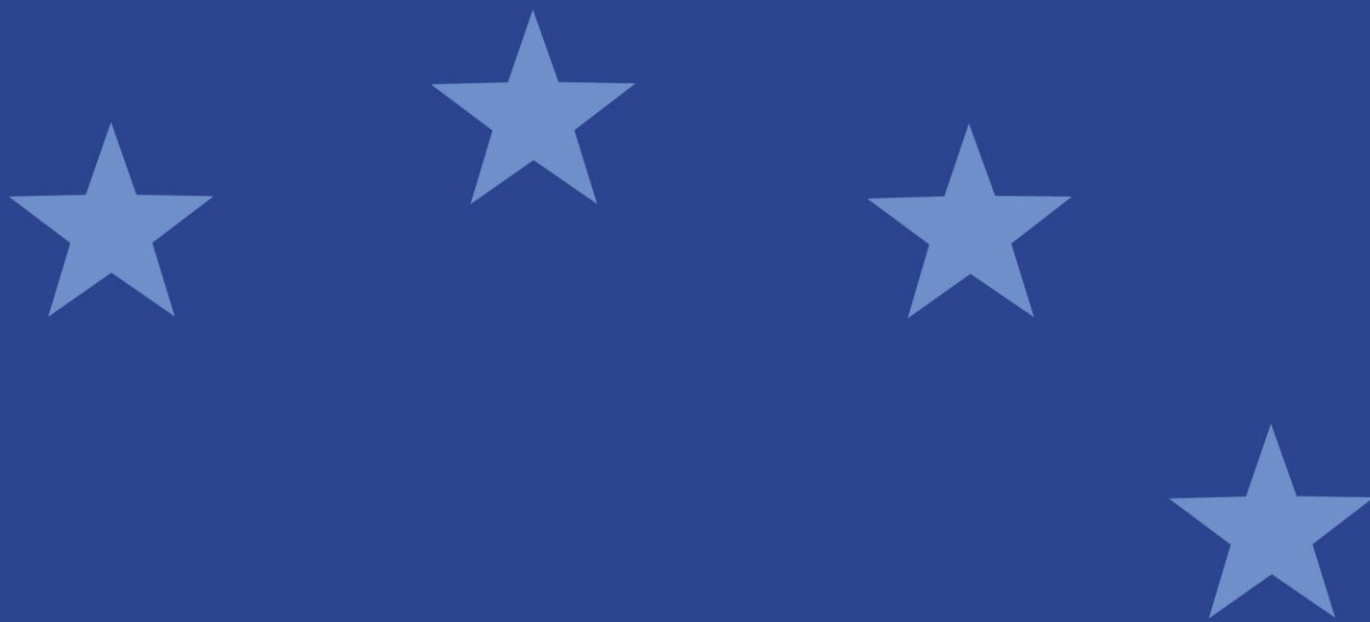


Call for Evidence Issuer Response

Competition, choice and conflicts of interest in the credit rating industry



Responding to this call for evidence

This call for evidence should be read by all those involved in the credit rating industry. It is particularly targeted at the following market participants and the groups and trade associations who represent them:

1. Corporate and sovereign issuers of financial instruments requesting credit ratings.
2. Credit rating agencies issuing credit ratings.
3. Institutional investors and other users of credit ratings.

There are specific questions for corporate and sovereign issuers in section 4 of the call for evidence, followed by questions for credit rating agencies in section 5 and for investors in section 6. ESMA invites respondents to provide information about each relevant set of questions using the template response forms provided for each group.

Responses are most helpful to ESMA where they clearly indicate which question is being answered and provide evidence in support of the response, such as concrete examples of practices experienced, data or costs estimates.

ESMA will consider all responses received by **31 March 2015**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the call for evidence, unless you request otherwise. Please clearly and prominently indicate in your submission any part that you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

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Acronyms used

CEREP	ESMA Central Repository for publishing credit rating activity and performance statistics
Commission	The European Commission
CRA	Credit rating agency
CRA Regulation	Regulation 1060/2009 on credit rating agencies as amended
ESMA	European Securities and Markets Authority
EU	European Union

Executive Summary

Reasons for publication

ESMA is publishing a call for evidence to collect information from market participants about the functioning of the credit rating industry and the evolution of the markets for structured finance instruments as required by Regulation 1060/2009 on credit rating agencies as amended (the CRA Regulation). ESMA is seeking evidence about competition, choice and conflicts of interests in the credit rating agency industry in general as well as about the impact of a number of specific provisions of the CRA Regulation.

Contents

This template response form contains the questions to be answered by corporate and sovereign issuers found in Section 4 of the call for evidence.

Respondents may need to disclose commercially sensitive information to ESMA in order to answer some of the questions asked. ESMA intends to present confidential information in anonymised and aggregated form in its Technical Advice so that individual respondents cannot be identified. In order to facilitate this process, ESMA therefore asks respondents to clearly indicate which parts of the answers to each question they believe to contain confidential information.

Next Steps

ESMA will carefully consider all responses to the Call for Evidence received by the deadline of 31 March 2015. The evidence obtained will be analysed by ESMA as part of the development of the Technical Advice to be provided to the European Commission pursuant to Articles 39(4) and 39(5) of the CRA Regulation.

4 Questions for corporate and sovereign issuers

4.1 About your organisation

1. The questions in this part aim to obtain information about the nature of the organisation you represent and the different markets in which you are active. This information will help ESMA to put your responses in context and to compare responses from similar respondents.

Q1: Please provide the name of your organisation.

AFTE French Association of Corporate Treasurers

Q2: Please explain whether you issue instruments requiring credit ratings at local, national, EU and/or global level. If your organisation issues financial instruments at EU or global level, please provide a list of the jurisdictions in question.

Created in 1976, AFTE (French Association of Corporate Treasurers) AFTE represents around 1 000 corporate treasurers or financial managers of approximately 800 industrial and commercial companies or groups.

Most of our members are rated as companies and also ask for the rating of their debt instruments of different natures:

- **Issuance of bonds within an EMTN Program or not. Issuance of bonds on "foreign markets" such as the US market, the GBP market, the Chises RMB market, and potentially any other specific currency markets where a bond market is developed or developin ...**
- **Issuance of French Billets de Trésorerie / more rarely US Commercial papers**
- **upon specific request from an investor, for a private placement**
- **for hybrid bond issuances**

AFTE will respond to the following questions :

- **1 to 9**
- **10 chapter 2**
- **11 to 13**
- **16 to 18**
- **25 to 27**

4.2 Use of credit ratings and sensitivity to price increases

2. The questions in this part aim to understand how issuers and sovereigns use credit ratings, whether there are products similar to credit ratings which should be considered

as substitutes and whether your demand for, or use of, credit ratings could change if the prices of credit ratings were to increase.

3. The purpose of these questions is to understand whether there are separate markets for the credit ratings of individual asset classes within the CRA industry. This will allow ESMA to assess how much market power the CRAs offering ratings for individual asset classes might have and what barriers to entry are faced by CRAs looking to start rating certain asset classes for the first time.

Q3: What criteria to do you use to select a CRA? Do you use different CRAs to rate different instruments and/or in different jurisdictions? If so, please explain whether, and if so how, your criteria vary.

Criteria used to select a CRA are :

- recognition of the CRA among investors (mentioned as the most important criteria by our members)
- understanding of the industry and business model
- coverage in terms of business and geographies
- pricing

Q4: How many ratings do you solicit for each type of instrument you want to market in each jurisdiction? If more than one, please explain why.

Unless mandatory for legal reasons, some companies only ask for 1 rating. It could be the investor's interest to rely on two independent credit opinions rather than only one.

In fact, a number of our rated members are rated by two different rating agencies (on a solicited basis). The major reason is to be in line with what people feel are a normal "market standard" i.e. give two credit opinions rather than one. It is also seen as a guarantee of a "balanced" treatment in case one rating agency would have a very different approach of the industry or the company from another one.

Q5: When you seek multiple ratings for certain types of instrument, please explain:

(1) The criteria you use to choose which CRA(s) to engage to rate different types of instruments.

See Q3

(2) How many CRAs can currently meet these criteria in your view, and why other CRAs cannot meet these criteria.

Only few CRAs have been identified to meet criterias for French companies needs. Because recognition is the major criteria, so far, most of our members are rated by S&P and Moody's and, to a lesser extent, Fitch.

They are currently the only CRAs with a strong brand awareness among investors, thanks to their track record and long history in credit rating.

However AFTE is following very carefully through its "Rating Working Group" the offer which is currently being developped by newly ESMA registered rating agencies

(3) Whether you apply the same criteria to select all of the CRAs engaged or whether you select a main CRA and then one or more secondary CRAs using different criteria. In particular, please explain whether the market share of the primary and/or secondary CRAs plays a part in this decision.

Same criteria are applied by our members in the selection of any of their CRA. The market share is indeed seen as one of the market recognition element of the CRAs as well as the way investor make reference to the major rating agencies in their communications with our companies.

Q6: Under which circumstances would you consider seeking ratings from a CRA which has not previously rated a particular asset class? Please give reasons for your answer.

Our members would not consider a CRA without any experience in a particular asset class.

Q7: Please explain whether you present the credit risk of the instruments you are marketing by means other than credit ratings, and if so, please provide details.

[Click here to enter text](#)

Q8: Please explain how the prices of credit ratings and the other products and services provided by CRAs have changed since 2010.

CRAs have significantly increased their prices overtime and especially since 2010. This increase doesn't reflect neither any additional work performed by CRAs nor additional information (provided to rated companies or investors). Their "pricing" practice is being challenged by a number of our rated members which, as much as practicable, try to negotiate their own rating costs in a rather constrained context ("yearly price list sent by rating agencies to their customers).

CRA's have been claiming in the recent past that increased regulatory pressures were impacting their costs. While rated companies can understand the point, they have not access to enough information on the CRA's P&L structure to judge it.

Q9: Please explain how you would respond if your preferred CRA(s) increased the costs of providing credit ratings for different asset classes by 5-10%. If your answer would differ depending on the jurisdiction or asset class in question, please explain why.

AFTE would first recommend companies to investigate the rationale behind the price increase and then to negotiate prices. It's worth noting that "AFTE Rating Commission" has already called on a CRA which "fee schedule" was unilaterally very significantly increased to communicate the companies' reaction to such a practice. However, companies are aware that it cannot easily withdraw a rating without having to face market reactions and feel they have at the end to come to an agreement with their CRA. This is the reason why we were mentioning earlier that companies were in a "constrained" environment: (1) CRA's issue updated fee schedule on a yearly basis and send them to the rated companies as the new "standard fee" and (2) rating withdrawal is a major decision for a company and is indeed very rare.

4.3 Impact of provisions requiring the use of multiple credit rating agencies

4. The 2013 amendments to the CRA Regulation introduced a number of requirements on issuers and related third parties of structured finance instruments regarding the use of multiple credit ratings. These requirements are set out in Articles 8c and 8d of the CRA Regulation.
5. Article 8c of the CRA Regulation introduces an obligation for issuers or related third parties to obtain at least two credit ratings for structured finance instruments. This obligation was introduced with the aim of restoring market confidence in complex financial instruments and reducing reliance on single credit ratings.¹
6. Article 8d of the CRA Regulation aims to increase competition in the markets for credit ratings by encouraging issuers or related third parties to use smaller credit rating agencies when they use multiple CRAs. Article 8d states that where issuers or related third parties intend to appoint at least two CRAs to rate an issuance or entity, they shall consider appointing at least one CRA with no more than 10% of the total market share where:

¹ Recital 28 of Regulation 462/2013 of 21 May 2013.

- The issuer or related third party finds that there is a CRA capable of rating the relevant issuance or entity; and
 - Such a CRA is available to rate the issuance or entity in question.
7. Where it is not possible to appoint at least one CRA with no more than 10% of the total market share, the issuer or related third party is required to document this.
8. The next question aims to understand whether these provisions have achieved their objectives and the impact they have had on your business.

Q10: Please explain the impact on your business of the following obligations and provide an estimate of your costs of complying with each of these obligations from 2013 to present where possible:

(1) to appoint at least two CRAs to provide ratings of structured finance instruments; and

AFTE members do not feel really concerned by this requirement as, indeed, they rarely issue structured instruments.

(2) to document the CRAs appointed.

Documentation is adding to the administrative tasks that companies have to fulfil. AFTE is concerned by the increasing administrative burden that companies are subject to. AFTE would therefore ask ESMA to really take this factor into consideration when issuing instructions to the market authorities.

4.4 Quality and independence of credit ratings

9. One of the aims of the CRA Regulation is to increase the quality of credit ratings by seeking to reduce the conflicts of interest inherent where issuers pay for the rating of their financial instruments.²
10. The questions in this part aim to understand whether corporate and sovereign issuers support the issue of credit ratings by CRAs using alternative business models and to assess the impact of the CRA Regulation on increasing the quality and independence of credit ratings overall.

Q11: Do you provide information to CRAs who issue ratings by subscription which are paid for by investors as well as for the ratings that you pay for? What are

² See Recital 10 of Regulation 462/2013 of 21 May 2013.

the advantages and disadvantages of these different business models from your perspective?

AFTE has not access to detailed information on detailed CRA'S P&L. AFTE understands however that investors need to subscribe and pay for CRA's services as soon as it needs to access not only the ratings themselves (which can be considered as public information overtime) but to rating analysis and rating analysts.

AFTE considers that while the issuer pay model is not ideal the investors only pay model may not unfortunately be a better solution because AFTE fears that it may lead to a reduction of coverage, especially for medium size companies.

AFTE recalls that its members can also be seen as "users" of rating services especially when it comes to measure their potential counterparty risks either with banks and Financial Institutions or with their various suppliers. Group treasurers are indeed especially interested in following their banks status in terms of ratings.

The methodology of the CRA is the key factor. AFTE considers it useful that the regulator performs periodical controls to guarantee the compliance with the methodology and guarantee that there is no conflict of interest in ratings.

Q12: Please explain whether there are other models which would allow CRAs to seek payment for the credit ratings they issue, giving reasons for your answer.

A better split of CRA's revenues between issuers and investors could be an interesting route to pursue should it be really unbalanced currently: AFTE indeed believes that ratings serves equally the need of issuers and investors on the financial markets.

Q13: What are the average durations of your agreements with CRAs for credit ratings and your agreements with CRAs for ancillary services? Please explain whether this differs by asset class and/or jurisdiction and how this has changed since 2010.

Our members mentioned contracts from 1 to 3 years.

Q14: Please describe the process you would typically follow when seeking a credit rating for a new financial instrument you wished to market, explaining how this process has changed since 2010, if at all. In particular:

(1) how many CRAs you would contact or hold preliminary discussions with:

AFTE members would contact their CRA(s) exclusively. For structured instruments AFTE members rarely issue them. They understand that they would need to have two ratings in such case and therefore may need to appoint a new CRA if they had only one. AFTE members are therefore concerned by the additional cost incurred.

(2) how you would compare the ratings and ancillary services being offered by different CRAs.

AFTE members see in fact few “ancillary services” except:

- 1) Shadow ratings which AFTE members see as potentially useful and interesting . AFTE sees it as a potentially interesting information for a company. AFTE recalls that it considers that the publication of a rating by a Company is a financial strategic decision which must be left at the Company’s initiative exclusively.**
- 2) “Rating Assessment Services” which are named differently by the CRA’s but consist into offering access to the rating potential consequences of company’s strategical decisions. These services are solicited usually in a very short time frame. CRA’s capacity of mobilisation in such contexts is required and is real. This comes with a cost. The publicity of such appraisal is left at the initiative of the company having requested it.**

Under normal circumstances, the on going CRA service is less time constrained.

Q15: Once you have chosen your preferred CRA, please explain your involvement in the process of preparing, issuing and subsequently reviewing the rating of your instrument.

CRA’s are on the mailing lists and get immediately all public information. In addition, a number of direct contacts either by phone, mail or face to face are organised all along the years to address any CRA’s questions. CRA’s also very often (but not always) get forecasts from companies which may not publicly released. Theses forecast can vary from one to two years usually

Q16: Do you give CRAs more detailed information about how the instruments for which you are seeking ratings are developed and how they subsequently

perform in practice now than you did before 2010? If so, please explain what kinds of additional information you now provide.

From our discussion with our members, companies are not providing the CRAs with more detailed or new type of information since 2010.

Q17: Do CRAs currently give you more information about how their credit ratings are developed, issued and revised and how their credit ratings compare to the market performance of the rated instruments than they did before 2010? If so, please explain what additional information you receive and whether this makes it easier for you to compare the ratings products and other services being offered by different CRAs.

AFTE confirms that CRAs are transparent on the methodology. On the contrary AFTE members does not seem to have ever seen analysis of CRA's on relative performance of their rated financing instruments but they recognize that they have not really been claiming to get such analysis.

AFTE recalls that Standard & Poor's issued a new corporate methodology last year and confirm that S&P communicated a lot with AFTE Rating Commission and rated companies on the changes to be implemented and their immediate impacts on the individual company's ratings. AFTE also noted that this consultation process has seriously been treated by S&P which has even changed certain of its initial intentions on its methodological approaches. This process has ben very well conducted in the opinion of AFTE members

CRA's methodology is indeed a key rating factor that the market, at large, must have access to and understand. Any methodology change must continue to be publicised widely before implementation

AFTE is aware that periodical controls from the Market authorities are now performed on methodology implementation and believes that this is a positive move to guarantee compliance with methodology and the lack of conflict of interests in the rating process.

CRA's have also made progresses on the way they explain their restatements made on the Company's published figures. However AFTE is still rather umcomfortable on the subject:

- AFTE believes that restatements have become excessively complex given their purpose. Interesting to note that these restatements seem to be mecanically made by specialists which supply them to the analysts. Some analysts can sometime be unable to precisely explain some of the restatements that they use and which directly impact released figures/ratios: this seems to confirm the currently excessive complexity of these technical restatements

- AFTE believes that the reconciliation table between the Company's published figures and the figures included in the CRA's public releases should always be supplied with the release itself to allow, at all times, issuers and investors to understand the reconciliation and the nature of the changes made to the company's public figures.

Q18: Please explain what, if any, further measures could be taken to increase the quality and independence of ratings, giving reasons for your answer.

The methodology of the CRA is a key factor for the quality of the rating. Therefore AFTE is in favour of audit performed by the regulator to check consistency of the analysis performed with the methodology and respect of the rules to prevent conflicts of interests. Those audits are also important to ensure the independence of the ratings.

Lastly, AFTE as indicated above would really like restatements on figures to be systematically released as soon as figures publicly used by CRA's differ from the Company's publications. In an ideal world (!), AFTE would also like restatements to be simplified whenever possible and tends to believe this is feasible without impacting the quality of the rating analysis and results...

4.5 Disclosure obligations for complex financial instruments

11. The 2013 amendments to the CRA Regulation introduced, in Article 8b, a joint obligation on issuers, originators and sponsors to publish information on the credit quality and performance of the underlying assets of structured finance instruments.
12. The expression structured finance instrument is defined as a financial instrument or other assets resulting from a securitisation transaction or scheme *'whereby the credit risk associated with an exposure or pool of exposures is tranced, having both of the following characteristics:*
 - (a) *payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures; and*
 - (b) *the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme'*.³
13. Commission Delegated Regulation 2015/3 of 30 September 2014 sets out the disclosure requirements for issuers, originators and sponsors of structured finance instruments.⁴

³ Article 4(1)(61) of Regulation No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation No 648/2012, OJ L 176, 27.6.2013.

Although this Delegated Regulation will only apply from 1 January 2017, its aim to improve transparency is clear. In this part ESMA therefore asks questions which seek to understand the benefits and costs of extending these disclosure obligations to other asset classes.

Q19: Please explain whether you would welcome an obligation for issuers to disclose details of the credit quality and performance of other financial credit products in addition to those foreseen by Article 8b of the CRA Regulation, giving reasons for your answer. If so, please explain to which products this obligation should be extended.

Q20: Please provide an estimate of the likely costs to your business of complying with Article 8b as currently formulated, and in the event that it were to be extended to the other instruments listed in your answer to question 19 above.

4.6 Mandatory rotation

14. The 2013 amendments to the CRA Regulation introduced a mandatory rotation provision for CRAs issuing ratings on re-securitisations, which can be found in Article 6b of the CRA Regulation. Article 6b provides that CRAs may enter into ratings agreements for re-securitisations with a maximum length of four years, after which time they are prevented from rating new re-securitisations with underlying assets from the same originator for a period of four years.
15. The CRA Regulation notes that the implementation of a rotation mechanism should remove the incentive for a CRA to issue favourable credit ratings to issuers on the basis of their existing relationships and could encourage other CRAs to start rating these instruments.⁵
16. As the provision was also designed to help stimulate competition, Article 6b2(b) of the CRA Regulation explains that mandatory rotation will cease to apply where at least four CRAs each rate more than 10% of the total number of outstanding re-securitisations.⁶
17. Although this provision has only recently entered into force, the questions in this part are designed to help ESMA understand the extent to which it has already been used and assess its likely future impact. They also aim to assess the appropriateness of

⁴ OJ L 57, 6.1.2015, p. 2.

⁵ See Recital 12 of Regulation 462/2013 of 21 May 2013.

⁶ See Recital 15 of Regulation 462/2013 of 21 May 2013.

maintaining a rotation mechanism, whether, and if so how, it should be extended to other asset classes and what impact this would have on issuers.

Q21: Please provide details of any experience you have had of this rotation provision to date. If you have had experience of this provision, please provide an estimate of your costs of complying with it to date.

Q22: Please explain whether a 4-year contract term is appropriate for this rotation provision, and if not, what would be an appropriate length?

As a general comment on rotation, AFTE is not in favour of mandatory rotation because a CRA needs time to know the company, understand its financial management and risk management, and understand its business sector and competitors. Company's also need to provide the CRA with confidential information and it take time to trust the CRA.

AFTE has , at this stage no comment, on rotation related to ratings of re-securitisations

Q23: Please explain whether mandatory rotation should be extended to other asset classes. If so, please:

(1) list the asset classes to be covered and state the appropriate contract length for each;

No mandatory rotation should be extended to other asset classes

(2) estimate the cost to your business of complying with the extension to each additional asset covered in your response to question 23(1) above;

(3) explain whether, and if so why an obligation should be introduced for CRAs to provide a handover file to the incoming CRA at the end of the maximum contract term.⁷

AFTE is not in favour of a handover of files between CRA's. It indeed believes that rating service is not a "commodity" and must not be treated as a commodity. In particular it is not comparable to an audit of financial

⁷ See Recital 13 of Regulation 462/2013 of 21 May 2013.

statements. Each CRA should be capable of making its own opinion based on its public methodology and on any information it has or receives from a Company. This leads back to the quality of the methodology , the skill level of analysts, the lack of conflict of interests... commented upon above.

In addition some information of interest at a given time can no longer be of any interest later on.

Q24: Please explain, giving reasons for your answer, whether, and if so how, the exemption from the mandatory rotation provision should be maintained where at least four CRAs each rate more than 10% of the total number of outstanding re-securitisations.

AFTE is not in favour of mandatory rotation but in favour of competition among CRAs, and control of the CRAs by the regulator.

AFTE also asks the regulator to recognize the CRA responsibility when there is negligence (which is currently the case under the CRA regulation).

4.7 Further measures to stimulate competition

18. The questions in this part aim to collect information about your experiences of competition between CRAs, and whether competition or interactions between credit rating agencies have changed since the CRA Regulation entered into force in 2010.

19. ESMA understands that CRAs may compete to win the business of issuers on a number of different parameters, such as price, quality of service, the offer of unsolicited ratings or the provision of ancillary services.

20. ESMA would like to take your views as to whether, and if so how, competition between credit rating agencies works in practice and whether it could be further stimulated without having a negative impact on the quality of credit ratings.

Q25: Please explain whether, and if so how CRAs compete to win your business.

As mentioned above, most of French companies are rated, on a solicited basis, by the first two major CRAs. AFTE doesn't really see competition between those two which have had their own franchise for a very long time.

What has changed in the past years is the quality of the interactions with CRA's and transparency on their methodologies. There are real progresses made.

On the more negative side AFTE members express concerns on the level of fee increases year after year both in absolute terms but also when compared to standard indexes of price inflation

Q26: If you have been aware of competition between CRAs, please explain whether, and if so how, the nature of competition has changed between 2010 and present.

Since the new ESMA regulation, small CRAs have emerged. Some of them have actively started to contact issuers or treasurer associations. In the short term, it is fair to say that the lack of name recognition and track records of these CRAs does not allow creating a real competition.

AFTE has therefore entered into contact with some of these new CRA's which are trying to develop their presence on the market. AFTE is organising meetings for its members with some of these "new rating agencies" to allow them to present their rating offer and allow its members to judge their merits on an educated basis.

Q27: Have you seen other changes to the behaviour of CRAs since 2010? If so, please explain what these changes have been and to which products or services these changes related.

Yes . please refer to comments above

Q28: Should further measures be taken to stimulate competition between CRAs overall and/ or in respect of the rating of particular types of asset class such as structured finance instruments? If so, please explain what measures should be taken and what impact you think these would have on the quality of credit ratings.

.This is not our priority : strength and transparency of the rating methodology must be the priority.

4.8 Other evidence

21. If there is any other evidence or information that you would like to bring to ESMA's attention, please present it in this part.

