COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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GUIDANCE

CESR's Guidance on Registration Process, Functioning of Colleges, Mediation Protocol, Information set out in Annex II, Information set for the application for Certification and for the assessment of CRAs systemic importance

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I. INTRODUCTION

1. Background

1. On 12 November 2008, the European Commission published a Draft Regulation on Credit Rating Agencies (CRAs)[1]. The amended version of this Regulation was approved on 23 April 2009 by the European Parliament[2]. The jurist linguistic revision took place and the European Council approved the document on the 27 July 2009[3]. The European Council[4] signed the Regulation on the 16th September 2009.

2. The Regulation on CRAs was published in the EU Official Journal[5] on 17 November 2009 and came into force on 7 December 2009. As a result, CRAs operating in the EU will need to apply for registration between 7 June 2010 and 7 September 2010 for their ratings to be used for regulatory purposes in the European Community.

3. The Regulation article 21 requires CESR to issue guidance, among others, on:

    - The registration process and coordination arrangements between competent authorities and with CESR, including on the information set out in Annex II, and regime for applications submitted to CESR;

    - The operational functioning of the colleges, including on the modalities for determining the membership to the colleges, the application of the criteria for the selection of the facilitator referred to in points (a) to (d) of Article 29.5, the written arrangements for the operation of colleges and the coordination arrangements between colleges;

    - The application of the endorsement regime under Article 4.3 by competent authorities;

    - Information that the credit rating agency must provide for the application for certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5.

4. CESR has to provide this guidance within 6 months of the entry into force of the Regulation, i.e. by 7 June 2010.

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[1] http://ec.europa.eu/internal_market/securities/agencies/index_en.htm

[2] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0279+0+DOC+XML+V0//EN&language=EN#BKMD-56

[3] http://register.consilium.europa.eu/servlet/driver?page=Result&lang=EN&ssf=DATE_DOCUMENT+DESC&fc=REGAISEN&srm=25&md=400&typ=Simple&cmsid=638&ii_PUBLIC_DOC=%3E0&ff_TITRE=credit+rating+agencies&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_REUNION

[4] http://register.consilium.europa.eu/servlet/driver?lang=EN&ssf=DATE_DOCUMENT+DESC&fc=REGAISEN&srm=25&md=400&typ=Simple&cmsid=638&ff_TITRE=credit+rating+agencies&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_REUNION=&rc=1&nr=25&page=Detail

[5] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0001:0031:EN:PDF

5. A CESR Expert Group, renamed CESR Standing Committee in January 2010 (SC), has been set up to assist in preparing CESR for these new tasks relating to CRAs. Three subgroups have been set up within the SC to deal with the different topics on which CESR is requested to issue guidance. The 3 subgroups worked in parallel and with full transparency and the CESR Secretariat and the Chair of the SC ensured coordination between the 3 subgroups. Subgroup 1 focused on the registration process, colleges, cooperation, and mediation; Subgroup 2 focused on applications, surveillance and enforcement and Subgroup 3 dealt with disclosure by CRAs of historical performance data and the Central Repository database.

6. The SC has established a consultative working group (CWG) composed of senior practitioners from the industries concerned by the Regulation to continuously support it in its work program by advising on all matters relating to the implementation and application of the future legal framework. In particular, the CWG has been asked to comment on draft documents prior to public consultation.

7. CESR asked the CWG to comment on Pre-Consultation Papers by September 2009. Based on the feedback it received, CESR produced a Consultation Paper which was published on October 2009 (Ref: CESR/09-955).

8. Following the publication of the Consultation Paper, CESR gave market participants and other interested parties a deadline of 30 November 2009. To facilitate the consultation process, CESR held an open hearing on November 2009 in Paris at the CESR premises, where over sixteen people attended. CESR received seventeen responses to the Consultation document, all respondents coming from the credit rating and banking sectors. All responses that are public can be viewed on CESR's website http://www.cesr-eu.org/index.php?page=responses&id=152.

9. CESR publishes along this guidance a Feedback Statement (CESR/10-346) providing a summary of the main suggestions received with an explanation of CESR's decision on some of the most significant issues raised.

II. GUIDANCE ON THE REGISTRATION PROCEDURE (Articles 14-20 of the Regulation)

1. General issues applicable to the registration process

A. National laws governing the procedure for registration

10. CESR guidance is without prejudice to national laws governing the procedure for registration, certification or withdrawal

11. According to recital 63 of the Regulation, unless this Regulation provides for a specific procedure as regards registration, certification or withdrawal thereof, the adoption of supervisory measures or the performance of supervisory powers, the national law governing such procedures including linguistic regimes, professional secrecy and legal professional privilege, should apply and the rights of the credit rating agencies and other persons under that law should not be affected.

B. Scope of the Regulation - Credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships

12. Articles 14 to 20 of the Regulation provide for the process of registration for legal persons established in the Community whose occupation includes the issuing of credit ratings on a professional basis. The term credit rating is defined in Article 3.1 (a) as follows: "'credit rating means an opinion regarding the creditworthiness of an entity, a debt, or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial

obligation, debt, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories". The expression of such opinions requires according to the Regulation also the performance of rating specific analytical functions by a person ("rating analysts"). This performance of analytical functions should be understood as a substantial rating specific expert analysis and evaluation of information regarding creditworthiness employing significant professional knowledge, experience and analytical skills that according to the rating process must have an impact on the rating process and the outcome of the rating process. Therefore if no rating analysts are employed to arrive at a specific expression of creditworthiness of a particular entity, debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, such an expression on creditworthiness is not an opinion within the meaning of the definition of a credit rating, and consequently cannot be deemed to be a credit rating within the meaning of the CRA Regulation. Summarizing and expressing data according to a pre-set statistical system or model alone without any additional substantial rating specific analytical input from a rating analyst in the assessment process does therefore, like the activities listed in the exceptions in Article 2.2 of the Regulation (e.g. private credit ratings, credit scores and others), do not require registration according to the Regulation.

13. Entities that only produce credit scorings as referred to in Article 2.2 (b) are excluded from the scope of the Regulation on CRAs and hence they are not required to apply for registration. They may not apply voluntarily for registration either as the Regulation does not grant them that right.

C. Definition of working day

14. During the registration process, the competent authorities of the home Member States, the colleges and CESR are subject to a number of deadlines. However, the Regulation defines neither the term "working day" nor a relevant calendar respectively to use with the Regulation. This approach could create uncertainty as to when the different periods stated in the Regulation will begin and end.

15. If a common calendar is not agreed by the competent authorities, different calendars will coexist. This would result in uncertainty and complexity. In practice the party (a competent authority or CESR) that has to take any measure would use its national calendar. And CRAs would have to use the calendar of its home competent authority.

16. Agreeing a common definition of working day that would apply for all the parties would be the simplest solution although it might require changes to national legislation.

17. CESR considers that the complexity of having different calendars should be avoided. Recital 51 indicates that the current supervisory architecture should not be considered as the long-term solution for the oversight of credit rating agencies. If the goal of the EU legislators is to achieve a more consolidated supervision of the credit rating industry, keeping different calendars at this transitional phase would be a step in the wrong direction.

18. CESR analysed the different alternatives to have a common definition of working day. CESR members could agree a single calendar for the purposes of the Regulation (setting out all the days that would not be considered as working days –for instance all the days that are holidays in the Member States). An easier option could be to choose a calendar already established by a European institution, such as the TARGET calendar set by the European Central Bank.

19. CESR members agreed that the best option would be the calendar defined by the European Central Bank for the operation of the TARGET system (Guideline of the ECB of 26 April 2007 -ECB/2007/2).

2. Application for registration

Article 15.1: The credit rating agency shall submit an application for registration to CESR. The application shall contain information on the matters set out in Annex II.

20. Section VIII of this Guidance sets out CESR's proposals about the typical information that competent authorities would expect CRAs to provide as part of an application for registration by a CRA.

A. Structure of the application for groups of credit rating agencies

Article 15.2: Where a group of credit rating agencies applies for registration, the members of the group shall mandate one of their numbers to submit all the applications to CESR on behalf of the group. The mandated credit rating agency shall provide the information on the matters set out in Annex II for each member of the group.

21. CESR has considered whether there should be only one application for the whole group containing a breakdown of Annex II disclosures by each member of the group or whether there should be as many applications as legal persons established in the Community and falling within the scope of the Regulation - Article 3.1 (b).

22. A single application for the whole group of CRAs submitted to all home competent authorities would facilitate the analysis by the members of the college as they would have to handle just one application and would reduce the compliance burden for the applicants. Also, as discussed in the following paragraphs, the structure of the application is relevant for the language regime.

23. Therefore CESR proposes that there should be only one submission for the whole group containing a breakdown of Annex II disclosures by each CRA member of the group. This submission should clearly set out the different applicants and the different home competent authorities to which the applications are submitted (i.e. the French subsidiary applies to the French competent authority for registration in France, the Italian subsidiary applies to the Italian CA for registration in Italy, etc). Information related to each member of the group should be clearly separated.

24. This means that for a group of CRAs, the structure of the pack to submit would be the following:

- Formal application for each of the applicants containing the details listed in paragraph 186 of the Guidance
- General part including all the disclosures that are common for all the CRAs members of the group
- Separate sections including the specific disclosures for each of the applicants (if there are 7 members of the group there would be 7 sections –i.e. for the subsidiary in Germany, for the subsidiary in Spain, etc)

25. The members of the relevant college will examine the whole pack including all the applications (bullet points 1 to 3 above). However, 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, on the basis of the formal application, the general part and the section related to that member of the group.

B. Language of the application for credit rating agencies established in more than one Member State

Article 15.3, first subparagraph: A credit rating agency shall submit its application in the language which is required under the law of its home Member State and also in a language customary in the sphere of international finance.

26. The language regime would be the following. The whole application (paragraph 24) would be drawn up in a language customary in the sphere of international finance. This would be the pack the college would use in its examination process.

27. In addition, where required by the law of the home Member State, the applicant subject to this obligation will specifically translate to the language required under that law the formal application referred to in paragraph 25 (i.e., if the German law required that the application is submitted in German, the German subsidiary would have to translate the formal application).

28. The submission of the application in a language customary in the sphere of international finance and the translation of the formal application referred above, will start the administrative process. The application for registration with the translation of the formal application will be deemed complete without any additional translations at the time of the submission.

29. In the case of a group composed of five CRAs where the laws of the home Member States of two of them require a language different than a language customary in the sphere of international finance, the mandated credit rating agency - according to Article 15.2 shall submit to CESR the whole application referred to in paragraph 23 and additionally the translation of the formal applications of those two applicants.

C. Language of the application for credit rating agencies established only in one Member State and whose college is composed only of the home competent authority of that Member State

30. The Regulation applies to entities of very different size and nature. CESR understands that the proportionality principle included in the Regulation should allow different ways of implementing the principles it is based upon. This would enable competent authorities to apply the EU rules in a way that does not infringe competition and fully respects the other objectives of the Regulation. To achieve this CESR is working on the assumption that the language requirement should be interpreted as a requirement for a language that is common for all interested parties. Therefore, the requirement would vary if the circumstances at the time of the registration change over time (i.e. if there are more interested parties in the supervision of the CRA because it has enlarged the scope of its operations the local language would not be sufficient anymore).

31. In cases where only the competent authority of the home Member State is involved in the supervision of the CRA (because no other authorities are members of the relevant college) it could be argued that it is not necessary for the home competent authority to receive the application both in its local language and in a language customary in the sphere of finance (as required by Article 15.3).

32. Under those circumstances (e.g. a CRA established only in Germany and whose college is composed only of the German authority -or other authorities whose national language is also German), it could be understood that German is a language customary in the sphere of finance that is common to all interested parties because of the local scope of the operations of the CRA.

33. The fact that no other authorities have decided to become members of the college -according to article 29.3 means that they consider that a supervision carried out solely by the competent authority of the home Member State is sufficient.

34. According to the Regulation, even when the CRA is established only in one jurisdiction, authorities from other Member States can become members of the college that is going to supervise the CRA concerned. Article 29.3 stipulates that a competent authority other than the competent authority of the home Member State may at any time become a member of the college, provided that the CRA

has established a branch in its jurisdiction or the use for regulatory purposes of the ratings of the CRA is widespread or has or is likely to have a significant impact within its jurisdiction.

35. According to item 15 of Annex II of the Regulation, the application for registration has to contain information about the CRA's programme of operations, including indications of where the main business activities are expected to be carried out, branches to be established, and setting out the type of business envisaged. Applicants would have to provide a summary in English (the working language of CESR) of the information supplied to comply with item 15. This information should enable competent authorities to determine whether they have an interest in becoming members of the college of that CRA.

36. Also, the second subparagraph of Article 14.3 requires the credit rating agencies to notify without undue delay CESR, the competent authority of its home Member State and the facilitator of any material changes to the conditions for initial registration, including any opening or closing of a branch within the Community.

37. Therefore, a CRA with a registered office only in one Member State would provide the application in an appropriate language and to translate its application to a language customary in the sphere of international finance only where it has plans to establish a branch in another jurisdiction (s) or where its ratings are widely used for regulatory purposes or have or are likely to have a significant impact in another jurisdiction(s)[6]. For these purposes the language common in the sphere of international finance could be interpreted as being one commonly used between the countries of establishment. Also a translation of the application to a language customary in the sphere of international finance would be required after registration has been granted if a competent authority decides to join the college at a later stage (i.e. because the CRA enlarges its operations so as to have a significant impact in other countries). In the event that competent authorities other than the home competent authority wished to be a member of the college it would be necessary for them to provide sufficient warning to the home competent authority and the CRA to allow them to make appropriate arrangements for the language implications.

D. Format of the application

Article 15.4 first subparagraph: Within five working days of receipt of the application, CESR shall transmit copies of the application to the competent authorities of all Member States.

Article 15.3 second subparagraph: An application for registration sent by CESR to the competent authority of the home Member State shall be considered to be an application submitted by the credit rating agency concerned.

38. Without prejudice to national requirements, CESR considers that applications should be submitted electronically. This would speed the process of examination of the application by all the authorities involved and in particular would ensure that they get the application packs as fast as possible from CESR.

39. In case the legislation of the home Member State requires that the application is submitted in hard copy, this should be sent directly by the applicant to the competent authority of the home Member State. Notwithstanding, as stated below, the period for assessment of the application would start from the day the home competent authority receives from CESR the application in electronic format.

[6] Applicants should bear in mind that they might not have information on whether the use for regulatory purposes of its ratings is widespread or has or is likely to have a significant impact on a Member State different than its home Member State. Accordingly, its application does not necessarily have to contain such information. Therefore, even if the application fulfils the requirements of the Regulation and the applicant legitimately considers that its ratings are not widely used for regulatory purposes or have or are likely to have a significant impact in other jurisdictions different than its home Member State, it could be possible that a competent authority different than its home competent authority requests –during the period for the formation of the college- that it should be translated to English. This could happen if that authority has evidence that condition set out in Article 29 (3b) is met in its jurisdiction and therefore would have an interest in joining the college.

3. Assessment and decision on the completeness of the application for registration

Article 15.4 second subparagraph: Within ten working days of receipt of the application, CESR shall provide advice to the competent authority of the home Member State on the completeness of the application

Article 15.5: Within 25 working days of receipt of the application, the competent authority of the home Member State and the members of the relevant college shall assess whether the application is complete, taking into account the advice of CESR referred to in paragraph 4. If the application is not complete, the competent authority of the home Member State shall set a deadline by which the credit rating agency is to provide additional information to it and to CESR and shall notify the members of the college and CESR accordingly.

40. Home competent authorities and members of the college have 25 working days to assess whether the application is complete. Once they have notified to the CRAs that the application is complete, they will have 60 additional days to examine the application and decide whether to grant or to refuse registration. CESR has examined some interpretative issues about the starting of the period authorities have to examine the applications.

A. CESR's advice on the completeness of the application

41. CESR has analysed what this task should entail. One factor to be considered is that the members of the college that will examine and decide on the completeness of the application are also members of CESR. This leads CESR to believe that Article 15.4 should be interpreted with the aim of avoiding a duplication of tasks.

42. Also, it has to be underlined that according to paragraph 5 of Article 15, the responsibility for the assessment and decision about the completeness of the application lies with the competent authority of the home Member State and the members of the relevant college. They will have to request additional information to the applicant where necessary. To carry out this task the authorities will have 25 working days whilst CESR has to provide its advice about completeness within 10 working days.

43. The abovementioned considerations lead CESR to believe that its task regarding the completeness of the application should be considered as a preliminary one limited to checking that all the items of information required by Annex II of the Regulation have been included in the application. This does not include an analysis of the content of the information supplied. CESR also considers that its advice needs only to be formally issued in case it deems that the application is not complete.

44. Finally, in case of applications submitted by a group of credit rating agencies, CESR will submit its advice on whether the application can be considered complete for the whole group (represented by the mandated CRA) to the home competent authority of the mandated rating agency. Therefore there will be only one advice on completeness for the whole group.

B. College assessment on the completeness of the application

1) Beginning of the assessment period

45. Article 15.5 provides 25 working days to the competent authority of the home Member State and the members of the college for assessment of the application. CESR considers that this period should begin from the date of receipt by the authorities of the application from CESR (and not from the day CESR has received the application from the applicant). Otherwise the authorities could have only 20 days (or less if CESR does not transmit the applications in time) to decide that the application is complete or to require additional information if that is not the case. CESR will endeavour to circulate the applications immediately after reception from the applicant. CESR will duly notify the

applicant of the date of receipt of the application by the competent authorities to allow for transparency in the calculation of the time periods envisaged under the Regulation.

46. CESR considers that the same rationale should apply to the formation of the colleges according to Article 29.1. Therefore, the period for the establishment of the college would start from the date of receipt by the authorities of the application from CESR (and not from the day CESR has received the application from the applicant).

2) Notification of the completeness of the application in case of groups of CRAs

47. In case of groups of CRAs, doubts arise as to when the application can be considered complete - Article 15.5. There should be one notification for the whole group or is it possible to assess that the application is complete for some subsidiaries but not for others therefore starting counting the 60 days period for examination in different moments?

48. CESR proposes that the members of the college should jointly examine the joint application from the group of CRAs and decide whether it is complete. Therefore the decision will be taken in relation to the whole group of CRAs. Then the home competent authority of the mandated rating agency - designated by the group according to Article 15.2 will notify that decision to the mandated rating agency on behalf of all home competent authorities. In case the application is not complete, the home competent authority of the mandated rating agency will notify to the mandated CRA the deadline (agreed by the college), by which the group of CRAs will have to provide the additional information.

3) Non complete applications - Deadline for applicants to provide additional information and deadline for competent authorities to assess the additional information requested

49. According to Article 15.5 the competent authority of the home Member State shall set a deadline by which the CRA is to provide additional information to it and to CESR and shall notify the members of the college and CESR accordingly. CESR considers that it would be desirable to ensure a consistent approach by competent authorities when setting those deadlines. In CESR's view, normally a timeframe up to 20 working days should be sufficient. In setting the deadline, the relevant competent authority will take into consideration the amount and type of information being requested. This approach would avoid undue delays in the process of registration. This timeframe will start from receipt by the CRA of the notification from the relevant competent authority.

50. As the Regulation is silent, competent authorities will assess whether the additional information submitted by the CRA contains the required information during an additional period of up to a maximum of 25 working days. This period will commence on the day of receipt of the additional information by the home competent authorities.

4. Examination of the application for registration of a CRA by the competent authorities

A. Period of examination

Article 17.1:

1. The facilitator and the competent authorities who are members of the relevant college shall, within 60 working days of the notification referred to in the second subparagraph of Article 15.5:

a. jointly examine the applications for registration; and

b. do everything reasonable within their power to reach an agreement on whether to grant or refuse registration of the members of the group of credit rating agencies based on the compliance of those credit rating agencies with the conditions set out in this Regulation.

2. The facilitator may extend the period of examination by 30 working days, in particular if any of credit rating agencies in the group:

a. *envisages endorsing credit ratings as referred to in Article 4.3;*

b. *envisages using outsourcing; or*

c. *requests exemption from compliance in accordance with Article 6.3.*

51. CESR considers that this decision may be taken at the discretion of the facilitator, without the need of formally consulting the rest of the members of the college. This approach would avoid undue delays in the process.

B. CESR's advice on the compliance of the CRA with the requirements for the registration

52. The Regulation establishes a system of supervision by colleges of authorities. Coherence in the application of the Regulation should be ensured by CESR, according to Recital 65 of the Regulation, with the aim of providing a level playing field for the CRAs supervised in the European Union. In order to facilitate the tasks assigned to CESR by the Regulation, CESR would be involved in an appropriate manner depending on the proportionate impact of the operations of the group of CRAs concerned (i.e. for example sitting as an observer). CESR's proposals on the functioning of colleges are put forward in Section VI of this Guidance.

53. Articles 16.6 and 17.6 stipulate that CESR shall provide advice on the compliance of the applicant with the requirements for the registration to the members of the relevant college.

54. Whilst CESR's role is critical in order to ensure consistency among colleges, CESR considers that it should intervene when deemed necessary to achieve that objective. Otherwise there would be an unnecessary duplication between the tasks of the college and CESR. Therefore, as envisaged in Articles 16.7 and 17.7, CESR considers that its advice would be particularly important in the following cases:

- There is disagreement among the members of the college; or
- One CESR member so requests (even if the members of the college agreed to grant or to refuse the registration); or
- CESR considers that its advice is appropriate in order to achieve the objectives of the Regulation (i.e. where CESR identifies divergences among colleges or more generally when necessary to promote convergence).

55. According to Art 16.5 and 17.5 the facilitator submits the draft decision to CESR (even if there is an agreement in the college and no CESR member so requests) for examination of potential divergences between colleges. In the event that there is only one relevant competent authority they will submit the decision they have reached regarding the registration of the CRA to CESR for the above purposes. The level of detail of CESR's advice could vary according to the specific characteristics of the case.

C. Exemptions

Article 6.3: At the request of a credit rating agency, the competent authority of the home Member State may exempt a credit rating agency from complying with the requirements of points 2,5 and 6 of Section A of Annex I and Article 7.4 if the credit rating agency is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of issue of credit ratings and that:

a) The credit rating agency has fewer than 50 employees;

b) the credit rating agency has implemented measures and procedures, in particular internal control mechanisms, reporting arrangements and measures ensuring

independence of rating analysts and persons approving credit ratings, which ensure the effective compliance with the objectives of this Regulation; and

c) the size of the credit rating agency is not determined in such a way as to avoid compliance with the requirements of this Regulation by a credit rating agency or a group of credit rating agencies.

In the case of a group of credit rating agencies, competent authorities shall ensure that at least one of the credit rating agencies in the group is not exempted from complying with the requirements of points 2, 5 and 6 of Section A of Annex I and Article 7.4.

56. The EU CRA that according to Article 6.3 intends to be exempted from the requirements under points 2, 5 and 6 of Section A of Annex I and Article 7.4 has to inform its home competent authority for that intention in the application for registration. The CRA has to indicate clearly which requirements it applies to be exempted from. The CRA shall not attach to the application for registration the information related to these requirements (i.e. on independent members of the board or the compliance function department). The CRA should be able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and that the conditions of Article 6.3 (a, b, c) are fulfilled. During the examination of the application by the members of the college they shall also assess the request for exemption. If after the examination of the request by the college the home competent authority decides not to grant the exemption or to grant exemption not for all of the requested requirements it should notify this decision to the CRA and set a deadline by which the CRA will have to provide to it the information related to the requirements for which the exemption has not been granted. Decision on registration shall not be given conditioned to a later fulfilment by CRAs of the requirements to be granted exemptions. The applicants will be given a sufficient period within the registration process to respond to the exemption refusal before making the final registration decision.

57. Where the request for exemption is included in an application by a group of CRAs, a decision by a competent authority to decline the request should not interrupt the process of examination of the application in relation to the other members of the group not affected by the refusal. Therefore, once the college has finalised the examination and agreed that the registration should be granted for the other subsidiaries, the other competent authorities will take their respective decisions regarding registration of the CRAs of their competence. The CRA whose request for an exemption was refused will be given a defined period of time to put in place the required function.

58. If the home competent authority decides to grant the requested exemption it should notify this decision to the CRA within the decision for registration. CESR considers that it would be desirable that college members have a common approach to the examination of the request for exemption and reach an agreement on this decision, in order to promote consistency between decisions in respect of different subsidiaries and in respect of different colleges. CESR hopes that this would speed up the process for taking decisions about granting of exemptions.

5. Adoption of a fully reasoned registration or refusal decision by the competent authority of the home Member State

Article 16.7: The competent authority of the home Member State shall adopt a fully reasoned registration or refusal decision within 15 working days or receipt of CESR's advice. If the competent authority of the home Member State departs from CESR's advice, it shall provide full reasons. If CESR has provided no advice, the competent authority of the home Member State shall adopt its decision within 30 working days of the communication to CESR of the draft decision in accordance with paragraph 5.

In the event of a continued absence of agreement among the members of the relevant college, the competent authority of the home Member State shall adopt a fully reasoned refusal decision, which shall identify the dissenting competent authorities and shall include a description of their opinions.

Article 17.7 includes a similar provision for groups of CRAs.

A. Common format for notifications of decisions

59. CESR intends to produce for its members a common format for notifications. This would ensure that all competent authorities include the same items in the notification and that the level of information provided is consistent (i.e. description of the opinions of any dissenting competent authority). This is particularly important in case of applications by groups of CRAs, where the Regulation requires separate notifications by each home competent authority.

6. Notification of the decision on the registration, refusal of registration or the withdrawal of registration of a credit rating agency

Article 18.1: Within five working days of the adoption of a decision under Articles 16 or 17 the competent authority of the home Member State shall notify the credit rating agency concerned whether or not it has been registered. Where the competent authority of the home Member State refuses to register the credit rating agency, it shall provide full reasons in its decision.

Article 18.2: The competent authority of the home Member State shall notify the Commission, CESR and the other competent authorities of any decision under Article 16, 17 or 20.

Article 18.3: The Commission shall publish in the Official Journal of the European Union and on its website a list of credit rating agencies registered in accordance with this Regulation. That list should be updated within 30 days of the notification referred to in paragraph 2.

A. Transparency of the registration procedure

60. Apart from the notification to the applicant, the Regulation enables the Commission, CESR and the other competent authorities to be informed about any decisions regarding registration, refusal of registration or withdrawal of registration.

61. Market participants will know the CRAs that are registered through the list that the European Commission will publish in the Official Journal and on its website.

62. CESR considered whether further transparency, especially for market participants, would be appropriate and feasible. In particular, the Regulation does not contemplate the publication of a refusal of registration. However, a refusal of registration might have important consequences for third parties. In particular, Article 40 stipulates that existing credit rating agencies may continue issuing ratings which may be used for regulatory purposes by the financial institutions referred to in Article 4.1 unless registration is refused. Where registration is refused, Article 24.2 shall apply. This means that after the refusal financial institutions would not longer be able to use for regulatory purposes the ratings of the CRA that was turned down. It seems that they would have an interest in knowing any refusal decisions (and arguably any request from a CRA to be registered as well).

63. Another issue arises regarding the withdrawal of a registration. According to Article 20.4, the decision on the withdrawal of registration shall take immediate effect throughout the Community, subject to the transitional period for the use of credit rating agencies referred to in Article 24.2. This means that EU banks and other regulated entities will have to stop using for regulatory purposes the ratings of the CRA concerned in a period not exceeding ten working days if another registered CRA has rated the same instrument or issuer or three months if there are no ratings of the same instrument or issuer by other registered CRAs. Once the authority of the home Member State has notified the withdrawal to the Commission, the list of registered CRAs will be updated within 30 days. This means that the abovementioned period of 10 days might have expired before the list of registered CRAs is updated.

64. CESR has therefore analysed the steps of the procedure for registration (and the procedures for endorsement and certification) that should be made public and the information that should be communicated to other competent authorities and the applicant about the decision adopted by the competent authority of the home Member State. CESR acknowledges that beyond Article 18 of the Regulation, publication of decision by authorities would be governed by national law.

65. The competent authority of the home Member State should, to the extent permitted by national law, publish in its official journal and/or by any other means it deems appropriate, its decision on registration and withdrawal within five working days of the notification to the credit rating agency concerned. Registration or withdrawal of registration will take effect immediately according to 18.2 and 20.4 of the Regulation.

66. Even though CESR would consider it appropriate the publication of a refusal of an application for registration, it is not envisaged in the Regulation, and mandating that would be beyond its competence scope. It will be up to the competent authorities in the different Member States, depending on their respective laws on publications, to decide if such disclosure can be made.

67. The announcement of registration, refusal or withdrawal will contain information about the CRA (name, address, number in the commercial register) and the decision (registration/refusal/withdrawal).

68. The notification by the competent authority to the Commission, CESR, other competent authority and the applicant/registered CRA of any decision under Article 16, 17 or 20 should be done in accordance with the administrative law requirements of the home Member State and include the following information:

    a. Full reasons for any decision with evidence on which the reasons are based;

    b. The competent authority's understanding of the relevant provisions of the Regulation on which the decision is based;

    c. The process followed and details of the reasoning process that led to the decision, including full and detailed disclosure of any dissenting opinions which should be appropriately identified and members of the college which participated in any meetings discussing the decision.

69. In case of refusal or withdrawal of registration, applicant/registered CRAs could apply for an appeal process within their national jurisdictions.

7. Notification of any material changes to the conditions for initial registration

Article 14.3: A registered credit rating agency shall comply at all times with the conditions for initial registration.

A credit rating agency shall, without undue delay, notify CESR, the competent authority of its home Member State and the facilitator of any material changes to the conditions for initial registration, including any opening or closing of a branch within the Community.

Recital 52: Significant changes in the endorsement regime, outsourcing arrangements as well as the opening and closing of branches should, inter alia, be considered as material changes to the conditions for initial registration of a credit rating agency.

70. CESR is currently analysing what procedure competent authorities should carry out in case of notifications of material changes to the conditions for initial registration.

71. Material changes to the following circumstances among others could be considered under article 14.3:

- Opening and closing of branches.
- Use of endorsement
- Outsourcing arrangements
- Changes in the legal form
- Business combinations
- Type of business activities
- Class and type of credit ratings
- Ownership structure: acquisition or disposal of holdings above 10% known to the agency
- Administrative and/or Supervisory Board; compliance and review function
- Procedures and methodologies used to issue and review credit ratings Financial resources

72. In general terms a material change is any change that may affect the substantive information submitted in the application, and in any event, all changes that may affect compliance with the requirements of the EU regulation.

III. GUIDANCE ON THE PROCEDURE FOR ENDORSEMENT (Article 4.3 of the Regulation)

73. In order to allow EU financial firms to use ratings issued by non-EU CRAs, the Regulation sets forth two distinct mechanisms: endorsement and certification.

Article 4.3: A credit rating agency established in the Community and registered in accordance with this Regulation may endorse a credit rating issued in a third country only when credit rating activities resulting in the issuing of such a credit rating comply with the following conditions:

(a) the credit rating activities resulting in the issuing of the credit rating to be endorsed are undertaken in whole or in part by the endorsing credit rating agency or by credit rating agencies belonging to the same group;

(b) the credit rating agency has verified and is able to demonstrate on an ongoing basis to the competent authority of the home Member State that the conduct of credit rating activities by the third-country credit rating agency resulting in the issuing of the credit rating to be endorsed fulfils requirements which are at least as stringent as the requirements set out in Articles 6 to 12;

(c) the ability of the competent authority of the home Member State of the endorsing credit rating agency or the college of competent authorities referred to in Article 29 (college) to assess and monitor the compliance of the credit rating agency established in the third country with the requirements referred to in point (b) is not limited;

(d) the credit rating agency makes available on request to the competent authority of the home Member State all the information necessary to enable that competent authority to supervise on an ongoing basis the compliance with the requirements of this Regulation;

(e) there is an objective reason for the credit rating to be elaborated in a third country;

(f) the credit rating agency established in the third country is authorised or registered, and is subject to supervision, in that third country;

(g) the regulatory regime in that third country prevents interference by the competent authorities and other public authorities of that third country with the content of credit ratings and methodologies; and

(h) there is an appropriate cooperation arrangement between the competent authority of the home Member State of the endorsing credit rating agency and the relevant competent authority of the credit rating agency established in a third country. The competent authority of the home Member State shall ensure that such cooperation arrangements shall specify at least:

(i) the mechanism for the exchange of information between the competent authorities concerned; and

(ii) the procedures concerning the coordination of supervisory activities in order to enable the competent authority of the home Member State of the endorsing credit rating agency to monitor credit rating activities resulting in the issuing of the endorsed credit rating on an ongoing basis.

1.Procedures with competent authorities

74. The EU CRA that intends to endorse ratings of a foreign CRA belonging to the same group (or from a CRA outside its group where the endorsing CRA has undertaken in whole or in part the rating activities resulting in the issuing of the rating to be endorsed) has to inform its home competent authority in the application for registration (item 16 of Annex II of the Regulation,). Annex II requires the CRA applying for registration to submit "documents and detailed information related to the expected use of endorsement". As part of the registration process authorities could check that the conditions set out in Article 4.3 are complied with.

75. Thus the application for registration would start the process with competent authorities. As the Regulation is silent about the procedure authorities should follow to allow endorsement, CESR considers that that they should use the procedure set out in the Regulation for the registration. In case a CRA that has already been registered decides later on that it would like to endorse ratings from other foreign CRAs (endorsement not envisaged at the time of registration) then the registration procedure would be used (when applicable) to determine all procedural issues (i.e. format of application, deadlines, language, notifications).

76. The home competent authority will notify the applicant in its registration decision if the expected use of endorsement has been approved or not.

77. As stated above, according to Article 14.3 of the Regulation, a registered CRA shall comply at all times with the conditions for initial registration. It also requires CRAs to notify without undue delay CESR, the competent authority of its home Member State and the facilitator of any material changes to the conditions for initial registration. CESR understands that Article 14.3 applies also to the conditions for endorsement.

2.Endorsement procedure

78. The previous section discusses the procedure that competent authorities should carry out before allowing the EU CRA to start endorsing ratings. CESR has also considered what procedure the EU CRA would have to follow when actually endorsing ratings: should the CRA demonstrate to the college compliance with the conditions under Article 4.3 each time it endorses a rating or only once at the time it submits the application for registration to the EU authorities.

79. It seems neither practical nor necessary for authorities to check beforehand every rating that is going to be endorsed. However, the CRA should be in a position to prove at any time, ex post facto and upon the request of the relevant competent authority, that any given endorsements it has issued comply with the requirements of the Regulation.

80. In any case the EU CRA when publishing the endorsed rating must clearly identify that it is an endorsed rating. Such an identification does not necessarily require a separate "identifier", an appropriate disclosure could also be made in ratings publications. However, the Regulation does not require the CRA to publish alongside the rating any further information about the rationale for the endorsement or the endorsement processes it has followed.

81. In CESR's view, once the authorities are satisfied that the CRA that expects to endorse ratings complies with the requirements set out in Article 4.3, the EU CRA should be able to start endorsing ratings without the need of having any actual endorsement of individual ratings previously approved by the authorities (therefore supervision would take place ex post).

3.Registration without the conditions for endorsement being met

82. As endorsement is an activity that is voluntary for the CRA that applies for registration, CESR considers that the applicant CRA should be registered if it complies with all the conditions for registration even if those required for endorsement are not met. This would mean that the registered CRA would not be able to endorse any ratings until it demonstrates to the college full compliance with all the conditions under Article 4.3.

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

83. As stated above, Article 4.2 requires CRAs to clearly identify the credit ratings that have been endorsed. CESR recommends, that in the disclosure, CRAs should also include an indication of the third-country CRA that issued the endorsed rating.

IV. GUIDANCE ON THE PROCEDURE FOR CERTIFICATION (Article 5 of the Regulation)

Article 5.1: The credit ratings that are related to entities established or financial instruments issued in third countries and that are issued by a credit rating agency established in a third country may be used in the Community under Article 4(1) without being endorsed in accordance with Article 4(3), provided that:

(a) the credit rating agency is authorised or registered in and is subject to supervision in that third country;

(b) the Commission has adopted an equivalence decision in accordance with paragraph 6 of this Article, recognising the legal and supervisory framework of that third country as equivalent to the requirements of this Regulation;

(c) the cooperation arrangements referred to in paragraph 7 of this Article are operational;

(d) the credit ratings issued by the credit rating agency and its credit rating activities are not of systemic importance to the financial stability or integrity of the financial markets of one or more Member States; and

(e) the credit rating agency is certified in accordance with paragraph 2 of this Article.

1.Procedure with competent authorities

84. According to Article 5.3, the application for certification shall be examined in accordance with the procedure set out in Article 16 for the registration of a CRA and the subsequent decision shall be notified and published also in accordance with what the Regulation envisages for registration (Article 18). In addition, Article 5.2 describes the procedure for the establishment of the college that is going to examine the application.

85. In paragraph 23 of this Guidance (structure of the application for groups of credit rating agencies), CESR proposes that in case of a group of CRAs there should be only one submission for the whole group containing a breakdown of all required disclosures by each CRA member of the group. Therefore, even if the submission is composed of separate applications, the college would have all the information in one pack and this would facilitate the examination process. CESR considers that the synergies of having all that information in one document do not exist in the case of applications for certification. In this case the group of third country CRAs does not have to provide substantive information about how the group operates and is organised but just information on whether the applicants are registered and subject to supervision in their countries of origin. The rest of the requirements are outside the control of the applicants and it will be up to the authorities to scrutiny (i.e. whether there has been a decision on equivalence on the countries concerned). Therefore, there should be a separate submission containing a separate application for each member of the group of third-country CRAs.

86. In addition, CESR considers that the application of Article 16 to the decision regarding the certification means that agreement among the members of the college will be necessary for the adoption of the decision to certify the CRA.

87. Also, CESR thinks that Article 14.2 should be applicable to the certification procedure, thus the certification would be effective for the entire territory of the Community once the certification decision issued by the facilitator has taken effect under the relevant national law.

88. Once the CRA has been certified, the selected facilitator will take on the tasks of home competent authority.

89. Finally, in CESR's view Article 14.3 applies to certified agencies. Therefore, the certified CRA shall comply at all times with the conditions for the initial certification. Certified CRAs shall notify without undue delay CESR and the facilitator of any material changes to the conditions for initial certification. If a certified CRA subsequently becomes systematically important, it will need to create an establishment in the EU and follow the Regulation accordingly.

2.Systemic importance

90. One of the conditions for being certified is that the credit ratings issued by the applicant and its credit rating activities are not of systemic importance to the financial stability or integrity of the financial markets of one or more Member States –Article 5.1 (d).

91. CESR considers that this is a matter for competent authorities to assess. Therefore, 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 jurisdictions. The authorities will be

asked to respond within the 10 working days they have to notify their decision to join the college. CESR considers that Moody´s Investors Service, Standard &Poor's and Fitch Ratings groups are systematically important and therefore not eligible for the certification.

3.Withdrawal of the certification

92. There are no specific provisions in the Regulation regarding the notification of the withdrawal of a certification. According to Article 5.8, Articles 20 (Withdrawal of registration), 24 and 25 shall apply mutatis mutandis to certified credit rating agencies and to credit ratings issued by them. Article 20.4 stipulates that the decision on the withdrawal of registration shall take immediate effect throughout the Community, subject to the transitional period for the use of credit ratings referred to in Article 24.2. Therefore it seems that the provisions of Article 18 (Notification of the decision on the registration, refusal of registration or the withdrawal of registration of a credit rating agency) would apply also in the case of a withdrawal of a certification.

4.Relationship between equivalence and endorsement

A. Should endorsed ratings and ratings issued by certified CRAs be subject to different requirements?

Recital 13: It is desirable to provide for the use of credit ratings issued in third countries for regulatory purposes in the Community provided that they comply with requirements which are as stringent as the requirements provided for in the Regulation. This Regulation introduces an endorsement regime allowing credit rating agencies established in the Community and registered in accordance with its provisions to endorse credit ratings issued in third countries. When endorsing a credit rating issued in a third country, credit rating agencies should determine and monitor, on an ongoing basis, whether credit rating activities resulting in the issuing of such a credit rating comply with requirements for the issuing of credit ratings which are as stringent as those provided for in this Regulation, achieving the same objective and effects in practice.

Recital 14: In order to respond to concerns that lack of establishment in the Community may be a serious impediment to effective supervision in the best interests of the financial markets in the Community, such an endorsement regime should be introduced for credit rating agencies that are affiliated or work closely with credit rating agencies established in the Community. Nevertheless, it may be necessary to adjust the requirement of physical presence in the Community in certain cases, notably as regards smaller credit rating agencies from third countries with no presence or affiliation in the Community. A specific regime of certification for such credit rating agencies should therefore be established, in so far as they are not systemically important for the financial stability or integrity of the financial markets of one or more Member States.

93. Therefore, as stated above in this paper, the Regulation provides for two means by which ratings issued outside the EU can be used for regulatory purposes by regulated entities in the EU. The first is endorsement. One of the conditions that an EU CRA must verify in order to endorse ratings is that "the conduct of credit rating activities by the third-country credit rating agency resulting in the issuing of the credit rating to be endorsed fulfils requirements which are at least as stringent as the requirements set out in Articles 6 to 12". The second method is certification based on equivalence. One of the conditions for a foreign credit rating agency to be certified is that the Commission has adopted an equivalence decision recognising the legal and supervisory framework of the third country as equivalent to the requirements of the Regulation. The equivalence decision would state that the legal and supervisory framework of a third country ensures that credit rating agencies authorised or registered in that third country comply with legally binding requirements which are equivalent to the requirements resulting from the Regulation and which are subject to effective supervision and enforcement in that country –Article 5.6.

94. The question that arises is whether the Regulation establishes two different tests depending which method is followed ("at least as stringent as" versus "equivalent to").

95. The last sentence of Recital 13 stipulates that the third country CRA should comply with requirements that achieve the same objective and effects in practice (as the EU Regulation). This suggests an objective based assessment of the condition set out in Article 4.3 (b) for endorsement and therefore a similar test than that required for equivalence.

96. Recital 14 clarifies that the certification regime is envisaged for smaller CRAs that are not systemically important. But the only adaptation to the endorsement mechanism that the Recital considers necessary is the requirement of physical presence in certain cases.

97. Therefore, CESR considers that there would be no objective reasons to set different requirements for the third country CRAs depending on the mechanism used. The requirements according to which the ratings are produced should achieve the same objectives irrespective of the route the foreign CRA has to follow. This would ensure a level playing field for all rating agencies.

B. What impact would a decision on equivalence have on the condition set out in Article 4.3(b) for endorsement?

98. Based on CESR's understanding outlined above, an equivalence decision by the European Commission recognising the legal and supervisory framework of the third country as equivalent to the requirements of the Regulation would certainly facilitate the obligation of the endorsing EU CRA to demonstrate that the third-country CRA fulfils requirements that are at least as stringent as those set out in Articles 6 to 12 of the Regulation (assuming that no material changes to the framework of the third-country have occurred since the date of the Commission's decision). In par. 110 and 111 there is a synthetic description of the approach concerning the objective-based assessment (paragraph 111) and of the further information necessary to assess the fulfilment with the requirements of the Regulation on an "ex-post basis" (paragraph 110).

99. CESR has also analysed the impact a negative Commission's decision on equivalence would have on the endorsement procedure. CESR considers that this impact could depend on the nature of the requirements the endorsement regime is based upon. This would also be relevant in case an EU CRA wishes to endorse ratings from a CRA established in a foreign country and there has not been a previous European Commission decision on the equivalence of its legal and supervisory framework.

100. The European Commission service's informal view communicated to CESR clearly states their understanding that the Article 4.3 (b) should be interpreted as requiring local legal and regulatory system to impose requirements as stringent as those found in Articles 6 to 12 of the EU Regulation. Whilst this position is not binding it is a clear indication and therefore CESR is working under this interpretation of the Regulation. This means that Article 4.3 (b) has been interpreted as requiring the local third country legal and regulatory system to impose requirements as stringent as those found in Articles 6 to 12 of the EU Regulation.

101. The reasoning behind this interpretation is that third-country CRAs need to be subject to supervision and possible enforcement by the relevant authority of the third-country for endorsement to be effective. Therefore the competent authority of the home Member State of the endorsing CRA should directly assess and monitor compliance of the CRA with requirements of the EU Regulation according to Article 4.3 (c) and withdraw the authorisation to endorse in cases where the third-country CRA ceased to subject to requirements as stringent as those set out in Articles 6 to 12 of the Regulation under local legal and regulatory requirements.

102. If the requirements for endorsement could be established on a voluntary basis the risk of non compliance by the third-country CRA would be significantly higher as those requirements would not be subject to supervision by the third-country authority (if the law of that third-country does not include provisions as stringent as those set out in the EU Regulation). A regime based on the conduct of business rules of the foreign CRA on a voluntary basis could be understood as a self regulating system. In the absence of ex ante supervision by the third-country authority, the supervision ex-post by the EU home competent authorities could not be sufficient and effective,

because a rating might have been published for the EU market for months or even for years before the breach of any requirements is spotted and the EU authorities react. This situation could produce material negative effects for the EU financial market. It is also questionable whether a cooperation arrangement with such a third-country supervisor could fulfil the objectives and criteria as specified in Article 4.3 (h). Therefore, interpreting the endorsement criteria as not requiring local regulations and a legal structure at least as stringent as the EU Regulation could make it much more difficult to achieve the principal aim of the Regulation, i.e. to protect the stability of financial markets and investors.

103. Furthermore, the interpretation of Art. 4.3 (b) as referring only to requirements established by law or by regulation seems to be confirmed by other parts of the Regulation, i.e. Article 4.3 (f) and (g), which define other requirements for endorsement to be fulfilled in a cumulative manners:

    a. *Article 4.3 (f): "the CRA established in the third country is authorised or registered, and is subject to supervision, in that third country";*

    b. *Article 4.3 (g*): "*the regulatory regime in that third country prevents interference by the competent authorities and other public authorities of that third country with the content of credit ratings and methodologies"*

104. An interpretation of Article 4.3 (f), is that if the CRA should be authorised or registered, and subject to supervision, in the third country, it seems logical that the requirements "as stringent as the requirements set out in Articles 6 to 12" of the Regulation are established by law or regulation, and not on a voluntary basis. In fact, it seems not consistent to require that in the third country there is a regulatory system which provides for authorisation/registration and supervision of the CRAs, whereas the requirements "as stringent as" can be also met on a voluntary basis.

105. Letter (g) refers to a "regulatory regime in that third country", which could be interpreted as clearly indicating rules established by Law or Regulation.

106. The Regulation does not envisage admissibility of a dual system of compliance with its requirements, whereby local legal/regulatory duties in a third country would be "topped up" by policies and procedures voluntarily followed by the third country CRA or the EU-registered, endorsing CRA. Therefore, the requirements as stringent as those set out in Articles 6 to 12 may only be established in law or regulation of that third-country in order to satisfy the condition laid down in Article 4.3 (b).

107. Moreover, according to the Commission's view, the absence of a positive equivalence decision would not prevent the use of endorsement as the EU competent authorities could directly verify the presence, within the local laws and regulations, of the requirements set out in Article 4.3 (b), (f) and (g), based on the information provided by the CRAs to comply with this demonstration, according to Article 4.3 (b). Conversely in case the Commission had decided that the framework of a third country is not equivalent there would be a strong indication that endorsement was unlikely. However endorsement would still be possible if, for example, the CRA could demonstrate to the competent authorities that the third country regime had changed since the negative assessment to impose requirements at least as stringent as those outlined in Articles 6 to 12.

108. Article 41 provides an 18 month transitional period for Articles 4.3 (f, g and h), therefore during this period the endorsing CRA would, according to the Commission's interpretation, be required to confirm to the EU authorities that the third country CRA is meeting requirements at least as stringent as Articles 6 to 12 on a self-imposed basis if there was no equivalent local regulatory regime.

109. Furthermore, Art. 4.3 (b) of the Regulation states that the CRA should be able to demonstrate 'on an ongoing basis' to the competent authority of the home Member State that the conduct of the third-country CRA fulfils requirements which are 'as stringent as' those of the EU Regulation. CRAs will need to be able to demonstrate, with regard to the ratings elaborated in a third country,

that the requirements 'as stringent as' are fulfilled not only ex-ante, but also ex-post. To demonstrate this, either the CRA based in the EU should provide information on this aspect, or the EU competent authorities should be able to collect information concerning the conduct of the third-country CRA from an equivalent supervisory authority.

110. This demonstration may be made in different ways, depending on the circumstances and whether the transitional period of 18 months is in effect or not:

    a. during the transitional period of 18 months and in the absence of equivalent regulatory regime, the demonstration of the fulfillment of the requirements 'as stringent as' should be made by the CRAs. To demonstrate this fulfillment the CRA will need to provide all necessary information to the competent authorities that the requirements 'as stringent as' those of Article 6 to 12 of the EU Regulation are "*de facto*" respected. EU authorities will monitor the meeting of these requirements on an on-going basis. The collection of these information could imply to integrate the elements to be provided in Annex II (and subsequently updated, as necessary), to include also the procedures put in place from the EU-registered CRAs to monitor that the third country CRAs whose ratings are endorsed are *de-facto* fulfilling with the above requirements, together with the indication of any possible criticalities that the EU-registered CRA would notice in the fulfillment of these requirements by the third country CRA.

    b. after the transitional period has expired or, during the transitional period, where there is an equivalent regulatory regime, the demonstration of the fulfillment on a *de-facto* basis may be obtained by some on-going information/confirmation from the competent authority of the third country. These on-going information/confirmation - that would be asked in the framework of the cooperation arrangements provided for by Art. 4.3 (h) - would concern information on any proceedings of a third country competent authority against the third country CRA, or the confirmation that there are no proceedings.

111. As stated in the above guidance the conditions set out in Art. 4.3 (b) will be evaluated via an objective based assessment. This means that authorities will assess that the crucial and core aspects of the EU Regulation – as considered in the equivalence assessment advice to the Commission – have to be fulfilled and met by law or regulation in the third country, but that an exact replication of all the EU Regulations requirements would not be necessary. CESR published an equivalence advice to the Commission and this advice includes a description of the methodology for the objective based assessment required to demonstrate the existence of requirements 'as stringent as' (Ref. CESR/10-332). CRAs will need to utilise the same methodology to demonstrate to competent authorities that third country CRAs meet requirements 'at least as stringent as' Articles 6 to 12 of the Regulation during the transitional period if there is no equivalent regulatory regime.

V. GUIDANCE ON THE GENERAL AND PERIODIC DISCLOSURES AND THE TRANSPARENCY REPORT (Articles 11 and 12 of the Regulation)

Article 11 – General and periodic disclosures

Article 11.1: A credit rating agency shall fully disclose to the public and update immediately information relating to the matters set out in Part I of Section E of Annex I.

112. Those matters are the disclosures about conflicts of interest, a list of ancillary services, policy concerning publication of ratings and other communications, compensation arrangements, methodologies, models and assumptions, any material modification to its systems, resources or procedures and, where relevant, its code of conduct.

Article 11.2: A credit rating agency shall make available in a central repository established by CESR information on its historical performance data including the ratings transition frequency and information about credit ratings issued in the past and on their changes. A credit rating agency shall provide information to that repository on a standard form as provided for by CESR. CESR shall make that information accessible to the public and shall publish summary information on the main developments observed on an annual basis.

Article 11.3: A credit rating agency shall provide annually to the competent authority of its home Member State and CESR information relating to matters set out in point 2 of Part II of Section E of Annex I. The competent authority of the home Member State shall disclose that information to the members of the relevant college.

113. Those matters are the disclosure on an annual basis of a list of the largest 20 clients and a list of those clients whose contribution to the growth rate of the revenues has exceeded the growth rate of the revenues by more than 1,5 times.

Article 12: A credit rating agency shall publish annually a transparency report which includes information on matters set out in Part III of Section E of Annex I. The credit rating agency shall publish its transparency report at the latest three months after the end of each financial year and shall ensure that it remains available on the website of the agency for at least five years.

114. CESR has considered three aspects of these articles that would need clarification:

    a. Language of the disclosures

    b. Means of publication (where required)

    c. Timing for the publication

1.Language of the disclosures and the transparency report

115. CESR considers that for CRAs established in more than one Member State all the information should be published or provided in a language common in the sphere of international finance. In case of CRAs established only in one Member State (or in more than one but all of them sharing the same language) and whose college is composed only of the home competent authority of that Member State (or composed of more than one competent authority but all of them sharing the same language) the solution would be the same as envisaged for the registration procedure.

116. The above guidance would apply to the requirements in Articles 11.1 and 11.3 and in Article 12. However, regarding the central repository, which is set up to provide rating users with transparent and comparable information on rating activities and performances, and which is operated by CESR, CESR considers that in all cases it will have to be submitted (only) in English being the working language of CESR.

2.Means of publication

117. The Regulation refers to the means of publication only in Article 12 related to the transparency report. Furthermore, the Article states that the report should remain available on the agencies website for at least five years.

118. The CRA's website is the only place where the information could be easily accessible by investors and also competent authorities –there is no obligation for the CRAs to provide this information to the competent authorities except for the lists of clients.

119. In CESR's view the same manner of publication should apply to other disclosures that must be published according to the Regulation. Therefore, disclosures required under Article 11.1 should be published at the website of the CRA.

3.Timing for the publication or submission of the information

120. Article 12 defines the publication deadline for the transparency report. According to this Article, the report must be published at the latest three months after the end of each financial year or three months after registration if the date is more than four months away from the end of the financial year.

121. Regarding the general disclosures required by Article 11.1, CESR considers that the CRA should publish them at its website as soon as practicable after the competent authority of the home Member State notifies its decision to register the agency -according to Article 18.1. CESR considers that the CRA should publish the information without undue delay after said notification. After the initial publication updates of the annual information contemplated in Article 11.1 should be published immediately.

122. The annual disclosures –Article 11.3 that the CRA has to provide to the competent authority of its home Member State are linked to the revenues of the credit rating agency. Therefore, CESR considers that this information should be provided after the end of the financial year. As mentioned above, CRAs must publish their transparency report three months after the end of each financial year at the latest. According to Part III of Section E of Annex I, the transparency report will include financial information on the revenue of the credit rating agency divided into fees from credit rating and non-credit-rating activities with a comprehensive description of each. Therefore, CESR considers that CRAs should provide the lists of clients referred to in paragraph 113 within the same deadline set for the transparency report.

123. Finally, in CESR's view, the names of the rated entities or related third parties from which it receives more than 5% of its annual revenue (item 2 of Section B of Annex I) should be published also within that deadline (the Regulation does not provide any deadline for the publication of this information).

VI. OPERATIONAL FUNCTIONING OF COLLEGES

1.Selection of facilitator

124. For the purposes of generating a consistent, balanced and pan-EU approach to the Regulation of CRAs within the EU the CESR has interpreted the criteria for selection of a facilitator based on the appropriate distribution of workload as requiring the facilitator for each of the largest three CRAs to be a different competent authority. This means that provided that other criteria are fulfilled, if a competent authority is already the facilitator for one of the largest three CRAs, the next most appropriate competent authority under these criteria should be selected.

125. Criteria A of Article 29.5 of the Regulation indicates that the relationship between the competent authority and the credit rating agency should be considered. CESR considers assessment of this criteria should consider factors which would lead to a competent authority having more efficient access to key CRA staff. Factors that will be considered include whether there is a regional Head Quarter, the working location of senior management, the location of any centralized oversight functions. Another factor to consider may include past experience/interaction with the credit rating agency.

126. Criteria B of Article 29.5 of the Regulation requires a consideration of the extent to which the ratings of the CRA will be used for regulatory purposes in the jurisdiction of the respective

competent authorities. Related to this criteria there is a complexity in gathering data on the actual extent of use. However to ensure the criteria is considered, each competent authority should indicate which regulations they use the CRA within and give their views of the importance of the CRA to the application of this regulation (for example are other CRAs also used and to what extent) and will do so by using qualitative and quantitative indicators. Quantitative indicators that may be presented by competent authorities as proxies for demonstrating the extent of regulatory use are:

a. Number of ratings, issued by the CRA, which are used for regulatory purposes, in the CRD framework, by the biggest five banks and investment firms in the jurisdiction that rely on the standardized approach to credit risk capital calculation;

b. Total number of entities rated by the CRA and based in the jurisdiction;

c. Total number of financial instruments (for type of financial instruments, if available) listed in the jurisdiction which are rated by the CRA;

d. Notional value of assets which are rated by the CRA and which relate to entities based in the jurisdiction (e.g. for each rated financial instrument, what is the percentage of underlying assets of the rated security which are located in the jurisdiction)

The above suggested quantitative indicators should preferably be based on the date of application to allow for a consistent consideration.

127. Criteria C of Article 29.5 of the Regulation requires the location of the most important part of the rating agencies business to be evaluated. Article 3 of the Regulation provides the definition of rating activity as meaning "data and information analysis and the evaluation, approval issuing and review of credit ratings." CESR has therefore identified of the following indicators for this criteria:

a. Number/percentage of ratings issued/endorsed from the office; and

b. Number of analysts in the office;

128. Criteria D of Article 29.5 of the Regulation requires the college to consider administrative convenience, burden optimization and appropriate distribution of the workload. CESR considers the most important aspect of this criterion is that one competent authority is not expected to take on the role of facilitator for more than one of the three largest and most systemically important CRAs. Another interpretation of this criterion is that a competent authority should indicate to the college that it is adequately resourced for the role of facilitator. Therefore the criterion should be viewed as requiring a consideration of each prospective competent authorities existing commitments and resourcing. One further indicator which may be taken into account is whether the process facilitator for the CRA for other regulations, for example the Capital Requirements Directive, is based in the same jurisdiction.

129. Competent authorities that consider that they are the most appropriate facilitator for the college of supervisors will be expected to indicate that they wish to assume this role and how they consider they meet the criteria in a notification at the time they express their desire to join the college. This will enable the competent authority arranging the first meeting of the college to notify all the members of the college of the list of potential facilitators.

2.Cross-college consistency

A. Role of CESR

130. CESR will act to promote a consistent approach to the oversight of CRAs within the EU. Therefore it is proposed that CESR can participate as a non-voting member on all colleges to provide advice on the activities and approach of the college and work with the facilitators to create a consistent

supervisory framework. Given the number of CRAs currently operational in the EU and their varying importance to pan-EU regulations and markets CESR may choose to take a proportionate approach to interacting with the supervisors of the smaller CRAs and may choose to promote consistency by other means than direct involvement in college meetings and decision making processes. Where there is no supervisory college CESR will monitor supervisory decisions to facilitate a consistent EU approach.

131. CESR will be prepared to offer advice to colleges in how similar decisions have been made in other colleges, particularly for important decisions requiring interpretation of the meaning of the Regulation and how it can be complied with. In order to accomplish the task of promoting consistency CESR will ensure that some form of record of the supervisory decisions of all the colleges is maintained and facilitate the centralization and sharing of the information contained therein, particularly during the registration period when interpretative decisions are being formulated.

132. Where there is no impediment CESR will publicise decisions on interpretation of the Regulation and decisions by competent authorities regarding how compliance can be achieved.

B. Role of facilitators

133. Specific semi annual coordination meetings between the facilitators of CRA colleges organised by CESR should be implemented in order to promote a consistent approach to regulation. The facilitators would update on the key actions taken by their colleges since the last meeting and their intended work plan for the coming period. Where other colleges have identified different but material risks a facilitator may choose to suggest the members of its college review their work plans. CESR should consider the best manner in which to ensure that the findings of these meetings are analysed in order to identify possible trends and that the findings are recorded so as to enable them to be referred to later on in the context of its future role in the supervision of CRAs.

3.Interaction with CEBS and CEIOPS

134. College meetings and actions –Article 26.2 of the regulation requires that competent authorities cooperate with the competent authorities responsible for supervision of the undertakings referred to in Article 4.1. CESR has identified the other L3 committees as representing a key route for developing this cooperation. It is agreed this cooperation should be developed both at a committee level but also at a supervisory college level. To this end there is now permanent CEBS and CEIOPS representation on the CESR Standing Committee. Allowance can also be made for representatives of these committees to be party to, without the ability to vote on, certain college decisions.

135. CEBS and CEIOPS should be notified if the college is considering regulatory action that may impact on their regulations (most notably decisions under Articles 16, 17, 20, 24 and 25). Representatives of CEBS and CEIOPS will be invited, on a non-voting basis, to comment on decisions and attend meetings of supervisory colleges when discussing the decisions highlighted above. If there is no supervisory college the home competent authority will ensure that CEBS and CEIOPS are appropriately consulted before taking any of the above mentioned actions.

136. Upon request of CEBS and CEIOPS, CESR will provide all relevant information of the registered CRA, and in particular about the type of activities which fall under the scope of the Regulation.

4.Non-members participation in college activities

137. Whilst non-college members can request to participate in college activities CESR does not consider it would be appropriate for these competent authorities to vote on college decisions given the nature of their participation. Therefore, whilst non-member competent authorities may request to be updated on the specific activities of the college and to attend meetings they will be restricted to observing and commenting on proceedings rather than being involved in any voting processes.

5.Decision Making

138. A number of decisions that will need to be made within the college framework have been identified in the regulation, these include:

- Registration and changes to conditions for registration.
- Withdrawal of registration
- Sanctioning for failure to comply with the regulation

It was recognised by CESR that the level of college support for each of these actions would vary, given the relative legal rights and responsibilities of the home competent authority, based on the Regulation. However, as a central principle CESR agrees that each competent authority should give due consideration to the majority view of the college before taking any action and that the majority and minority views from the college should be reflected in any request to CESR for further advice. It should be clear however, we are not seeking to introduce majority voting the final decision – the Regulation is clear that this lies with individual competent authorities.

139. Two examples of how this principle may apply to the decision making process are:

a. A competent authority requests that a home competent authority take action under Article 24 but the home competent authority does not agree action is necessary. If the majority of the college do not support the action the competent authority which requested it should consider carefully if it should exercise its right to request advice from CESR. If advice is requested the request would make clear the position of the majority and minority of the college.

b. A competent authority wishes to exercise powers under Article 25 and notifies the college. The majority of the college oppose the action. The competent authority should carefully reconsider its standpoint. If it wishes to proceed, CESR's advice should be sought clearly indicating the viewpoint of the majority and minority of the college.

140. In addition to these decisions, it is appropriate for the college to agree to a regulatory work plan at periodic intervals to allow effective planning of supervisory activities at each competent authority. However, it is also necessary that this work plan allows a sufficient degree of flexibility, to deal with any new evidence of regulatory failure by a CRA or market developments; therefore, the guidance must balance this need against the need to create an efficient approach to supervision.

A. Registration

141. The registration decision is clearly defined in the Regulation. Whilst guidance could cover the impact of a minority objection to registration there seems little need as all parties will be aware of the importance of the decision and it is clear the steps need to be taken by competent authorities in the event of disagreement.

B. Withdrawal of registration

142. The regulation makes clear that the final decision to remove registration from a CRA remains with the home competent authority. If other competent authorities hold different views to the home competent authority they can request CESR's opinion be given. Given the importance of the withdrawal decision one or more physical meetings would be required as a matter of course. Focus should be maintained on allowing all competent authorities to indicate their views on the subject of a withdrawal of registration but without preventing an efficient framework for making these decisions. Whilst taking account of the majority view is a central principle the importance of the

withdrawal decision means that competent authorities opposed to a withdrawal should not be dissuaded from asking CESR's advice.

143. In the event that a competent authority considers a CRA has met any of the conditions for withdrawal of their registration as set out in Article 20.1 of the Regulation they will notify the facilitator of the college and the home competent authority. All members of the college should then be notified and the facilitator should organise a suitable method for all college members to input into the required joint assessment. The college should seek the appropriate level of input from CESR and other L3 committees. The CRA should be requested, by the home competent authority, to submit its views on the matter and any additional information considered relevant.

144. It is important to provide a CRA with sufficient notification of withdrawal proceedings being initiated, with the possibility to provide additional evidence and information and with an appropriate mechanism for challenging the decision to withdraw its registration. This will necessarily need to be conducted via interaction with the home competent authority and therefore an iterative approach to allow the CRA the right of response and transmit these elements to the other members of the college may be necessary. Therefore, once the college has been requested to consider withdrawal of registration by one of its members the home competent authority will offer the CRA the opportunity to provide its views and additional evidence to the college within a time period set by the home competent authority. The home competent authority will consider 25 working days as the baseline for setting this period but this may be extended or reduced dependent on circumstances.

145. If the home competent authority begins withdrawal proceedings following the college process, its national process may include a notification to the CRA indicating the initial decision to begin withdrawal proceedings (including the option for the CRA to provide further evidence within a set time period) and an appeal mechanism for the CRA. If further information comes to light as part of this process that alters the home competent authority's view or ability to proceed with withdrawal they may refer the matter back to the college to re-evaluate the case for withdrawal.

C. Supervisory measures/Sanctions

146. A number of possible types of sanctions can be put in place under the Regulation. As a minimum, consultation with the college should be expected for all of these actions. However, as stated above the principle that members of the college should take appropriate account of the majority view should be followed for these types of decisions to enhance the effective functioning of the college. When considering how to proceed it is also to be expected that college members should bear in mind the materiality of the sanctions being proposed (for example a pan-EU sanctions versus an action impacting only one market or entity).

147. A number of scenarios can be envisaged when considering supervisory measures:

    a. Sanctions under Article 24 proposed by the home competent authority;

    b. Sanctions under Article 24 proposed by a competent authority other than the home competent authority; and

    c. Sanctions under Article 25.

The college will need to operate in different ways with regard to each of these decisions due to the differing responsibilities for action set out under the Regulation. If a college member chooses to proceed with action against the majority view of the college this should be identified when requesting CESR advice on the subject.

148. As with the withdrawal process it is important to provide a CRA with sufficient notification of sanctioning proceedings being initiated and an appropriate mechanism for challenging the decision if they considered it unjustified. This will necessarily need to be conducted via interaction with the

home competent authority or other competent authorities (in case of sanctions having effects only in the jurisdiction of the competent authority proposing them) and therefore an iterative approach to allow the CRA the right of response and circulation of additional information to the other members of the college will be necessary. Therefore, once the college has been requested to consider sanctions by one of its members the CRA will be offered the opportunity to provide its views and additional evidence to the college within a set time period. The home competent authority will consider 25 working days as the baseline for setting this period but this may be extended or reduced as is necessary under the circumstances.

149. If a competent authority begins sanctioning proceedings following the college process its national process may include a notification to the CRA indicating the initial decision to begin these proceedings (including the option for the CRA to provide further evidence within a set time period) and an appeal mechanism for the CRA. If further information comes to light as part of this process that alters the competent authority's view or ability to proceed with sanctions they may refer the matter back to the college to re-evaluate the case for sanctioning.

D. College coordination meetings

150. Periodic meetings to agree supervisory college work plans should be established. To increase the efficiency of the college and allow competent authorities to effectively manage their work programs there should be semi-annual coordination meetings, organized by the facilitator and established within the written coordination arrangements. At these meeting college members would discuss in detail the previous six months supervisory findings and upcoming work plan for the next six months based on their assessment of the priority risks in the CRAs business model, including identifying which competent authorities will be involved with elements of the work plan. To enhance the effectiveness of these meetings members would need to circulate their proposals for supervisory focus at least a month before the meeting. This will provide all college members the chance to input into the supervisory work plan and allow work to be conducted in a coordinated manner.

151. This will also limit unexpected requests for work, increasing the efficiency and effectiveness of supervisory work by increasing the level of planning possible. This would obviously in no way bar a competent authority from requesting another competent authority carries out some assessment, but they should only do so in the event that they become aware of new material information or events that prompt concerns that were not raised in the previous coordination meetings. The agreed work plan would also not obviously prevent competent authorities undertaking any work they considered necessary in their own jurisdiction in the event of circumstances not foreseen when the work plan was agreed. This would not require college support, although there would be an expectation that the college was updated with any material findings.

152. After the supervisory work plan has been agreed within the college it would seem appropriate that work be coordinated between members based on their involvement with the particular assessment work, thereby improving the effectiveness and proportionality of the work. Therefore competent authorities should only be involved in meetings regarding supervisory work that has been assigned to them in the work plan, unless they have material concerns over the specific issue. All information on the outcomes of supervisory work would be shared with the college as agreed at the coordination meeting to allow all competent authorities to consider the outcome. Any meetings of a sub-group of the college would not make decisions affecting the whole college or other members of the college.

E. On-site inspections

153. Article 28 gives to competent authorities the right to request an on-site inspection in another jurisdiction. The future work planning for supervision/investigations would be covered by a college coordination meeting. Therefore requests, under Article 23, in terms of requesting on-site inspections by a competent authority should only be envisaged in the case that:

a. The requesting competent authority is not on the college for the CRA; or

b. The agreed work plan could not have effectively considered the need for the work (i.e. due to new information coming to light) and the issue is of sufficient importance that it cannot be raised at the next coordination meeting.

154. To enhance the efficient operation of the college a competent authority should fully consider whether the issue could be raised most appropriately at the next college coordination meeting (i.e. if the risk posed makes it appropriate to request immediate action that has not gone through the normal college channel). There should obviously be no impediment to the ability of each competent authority to carry out supervisory work within its own jurisdiction as it saw fit.

6.Location of issuance and impact on supervisory responsibility

155. The supervisory powers attributed to competent authorities by the Regulation give the competent authority of each credit rating agency some powers to sanction the CRAs for which it has accepted the request for registration. In the particular case of a group of CRAs (i.e. with an agency registered in more than one member state) a given rating may be of pertinence to more than one competent authority. The Regulation does not provide for the possibility that the supervisory actions of more than one competent authority could create confusion and potentially lead to conflicting positions. To avoid such situations, each rating should be clearly linked to one member state. This should be done by responsibility for the actions which the Regulation attributes to the competent authorities of the home Member States resting with the home competent authority of the issuing office.

156. Therefore CESR considers that, in these situations, the home competent authority of a CRA issuing a rating will be the competent authority responsible as the sole home competent authority for that rating. Therefore the responsibilities and supervisory powers assigned to home competent authorities will fall only to that competent authority. This does not, in anyway, impact on the powers and responsibilities of other competent authorities under the Regulation or on the due process that must be followed by home competent authorities within the college before exercising its supervisory powers, it is solely for identifying which office will be considered the home competent authority.

157. CESR considers that it is necessary to define criteria for assessing where a rating has been issued to allow supervisory responsibility to be assigned and also to allow a correct implementation of the endorsement regime (market participants should bear in mind the definition will need to be applied to identifying the issuing location of non-EU ratings).

158. The CRA deemed to have issued a given rating and thus deemed legally responsible for that rating is determined by the location of the lead rating analyst (Article 3.1 (e)) upon the publication of the rating, and upon each subsequent review (including rating upgrades, downgrades and affirmations). Upon each review CRAs are required to disclose the name, job title and location of the lead rating analyst (Article 4.2, Annex I.D.1). CRAs should not shift a lead rating analyst to another CRA in order to circumvent the Regulation.

159. In the process of formulating a credit rating, CESR expects the CRA to identify the office of the CRA that issues the rating in accordance and in fulfilment of the conditions established for it under the decision to grant the CRA registration. This means that the CRA must implement the measures necessary for the establishment of a credit rating and such measures must include an auditable trail of the process of establishing each credit rating. CESR further expects the name and address of the office elaborating the rating and issuing it, including the member state in which the agency has issued the rating must accompany each credit rating at all times.

VII. MEDIATION PROTOCOL

1.Introduction

160. The mediation mechanism has been drafted using the terminology that has already been used in the general CESR mediation mechanism as well as those procedural aspects of the mechanism which CESR Expert Group considers to be appropriate for the credit rating agencies mediation mechanism.

161. This mechanism is without prejudice to the future developments regarding the establishment of European Supervisory Authorities, as agreed by the European Council and any subsequent changes that may need to be made to this mechanism as a result of this.

2.Mediation mechanism

162. Having regard to:

1) The Regulation (EC) No 1060/2009 of 16 September 2009 on credit rating agencies ("the Regulation) and in particular Articles 31.1,31.2 and recital 65;

2) The Charter of the Committee of European Regulators;

3) The CESR Protocol on mediation mechanism of the Committee of European Securities Regulators;

Considering the need to put in place an effective mediation mechanism under the Regulation that provides for a method of achieving quick, effective resolution of issues that may arise as well as assisting in finding common views that can be used during a decision making process in a manner that works within the parameters of the decision making process of the college of Credit Rating Agencies and its members, as well as that of CESR.

Section I

General Provisions

Article 1

Scope

1) The Mediation Mechanism will be used to settle disputes and assist in finding a common view between the parties as set out in Article 31 of the Regulation concerning disputes relating to:

   a. A decision to be taken regarding the registration of a CRA or group of CRA's (art. 16, par. 1, lett. b) and art 17, par. 1, lett. b):

   b. A decision taken or to be taken regarding the withdrawal of a CRA's registration (art. 20, par. 2):

   c. A decision by the competent authorities of the home member state taken or to be taken regarding supervisory measures taken or to be taken by said authorities in relation to a CRA (art. 24, par. 3):

   d. A decision by competent authorities other than the competent authority of the home member state regarding supervisory measures taken or to be taken by said authority in relation to a CRA (art. 25, par. 2)

e. The selection of a facilitator within the college of competent authorities (art. 29, par. 5);

f. The selection of members of college;

g. Written coordination arrangements within the framework of the college (art. 29, par. 8);

h. Any other issue for which the parties involved wish to have a common view, or where the facilitator considers that the need for a common view has arisen

2) Issues eligible for mediation need to meet the following condition:

a. All reasonable bilateral efforts to settle the dispute have been exhausted or, alternatively, both parties agree to submit their dispute to mediation.

3) The mediation mechanism cannot be used by CRAs and interested parties to appeal against decisions of competent authorities.

Article 2

Parties

Only the competent authorities designated by the Member state for the purposes of the Regulation will be parties to mediation regulated by the mediation mechanism.

Article 3

Mediator

1) Subject to the procedural provisions contained in Section II, each mediation shall be organised, managed and supervised by the facilitator of the college, with the support of the CESR Secretariat.

2) The following person(s) will act as mediator:

a. One or more person(s) from the list of senior experts eligible for mediation on CRA supervision;

3) The persons on the list of senior experts for the purposes of this mediation protocol should have the requisite expertise for any of the different issues within the scope of the Mediation Mechanism on CRAs and appropriate seniority. Volunteers should be nominated by CESR members.

4) The list of experts will be agreed by CESR and reviewed at least every year. CESR will ensure that the respective list of experts is regularly reviewed and updated.

Article 4

Legal nature

1) The parties involved shall be expected to agree to mediate and to cooperate in good faith with the facilitator, mediator and the party seeking mediation, with a view to reaching a common understanding and or amicable solution.

2) If, exceptionally, a party refuses to agree to mediation, such party shall explain the reasons to the mediator, who will report the reasons to the facilitator, college and CESR.

3) Mediation outcomes shall not have any legal effect, be legally binding or be enforceable. Furthermore, they will not prejudice the initiation of infringement proceedings of the European Commission or proceedings of the European Court of Justice or national authorities.

4) If a party decides not to follow the recommendation stemming from the mediation procedure, it shall explain in writing the reasons to the college and CESR.

Article 5

Duty of confidentiality

In accordance with [reference to the latest decision establishing CESR] mediators, panellists, members of the CESR secretariat, and members of the college involved in mediation cases will keep strict confidentiality in respect of the data, documents, findings, discussions and results pertaining to the mediation process, without prejudice to the reporting and information provisions of this Protocol.

Section II

Procedural Rules

Article 6

Selection of mediation procedures and mediators

1) The facilitator can establish mediation for members of the college who are unable to reach an agreement or a common view within the parameters of the normal procedures for decision making within the college.

2) The facilitator will select the mediator from the list described in Article 3.3. Whenever a facilitator is conflicted, he/she shall notify as soon as possible such circumstances to the CESR Chair, who will select the mediator as soon as possible. In cases where the CESR Chair is also conflicted, he can delegate the task to the Vice Chair of CESR.

3) The mediator will choose, taking into account the time frame of the decision making procedure in the Regulation, to choose within one working day, one of the following mediation procedures:

   a. A facilitative procedure – which involves the mediator facilitating a discussion between the different parties with a view to reaching a satisfactory solution to the dispute. The mediator does not give a final view regarding which of the parties is right or wrong.

   b. An evaluative procedure - which involves the use of a panel of individuals that evaluates the issue and recommends in writing a solution to the parties.

4) In the evaluative procedure, the mediator will appoint the other panellists from the list of mediators described in Article 3.3, in consultation with the parties, within three working days from the selection of the evaluative procedure.

5) The panel should consist of an odd number of at least three mediators, who will be selected from the list of senior experts from CESR authorities eligible for mediation on CRA supervision. The mediators serving on the panel will not be representatives of either party and will not otherwise be conflicted.

6) When selecting mediators and panellists, the facilitator and mediator shall ensure an appropriate representation from college members in order to avoid any bias in legal or cultural views that could influence the discussion and the mediation outcome.

Article 7

Evaluative Procedure

1) The Mediation panel will generally decide cases on the basis of oral submissions and/or documents submitted by the parties to the mediator.

2) The Mediation panel may request any additional information and/or clarification from the parties that is necessary for a sound assessment of the issue.

3) Subject to the parties' consent, the mediation panel may invite third parties, including market participants, to provide their views.

4) After assessing the issue, the mediation panel will seek to come to an agreed view on its recommendation. If agreement is not possible, the panel will adopt its recommendation by simple majority voting. Panellists will not be allowed to abstain or make dissenting recommendations.

5) Only the final recommendation of the mediation panel will be disclosed to the parties.

Article 8

Facilitative procedure

The mediator in the facilitative procedure will have all the necessary leeway and flexibility to help the parties to come to an agreement. In doing so, the mediator will respect the equal treatment of the parties.

Article 9

Reporting and publication

1) The mediator will report to the college and CESR the outcome of the mediation procedure.

2) Reports or summaries of mediated outcomes will be reported to CESR on an anonymous basis.

Article 10

Time frame

The timeframe for the mediation procedure will need to be as quick as possible to ensure that it meets its objective. For those areas of the Regulation that already set time frames (e.g. appointment of facilitator, selection of college members, approval or CRA's registration, etc.) the mediation process will have to be completed within the parameters of these timeframes.

Article 11

Administrative support

The mediation procedure will be fully supported by the CESR Secretariat which will provide any necessary assistance to the facilitator, mediator and panellists.

VIII. GUIDANCE ON THE INFORMATION REQUIRED BY ANNEX II

1. General remarks applicable to the registration process

163. As defined in Articles 14 and 15 of the Regulation, a credit rating agency shall apply for registration for the purposes of Article 2.1 provided that it is a legal person established in the Community. The application shall contain information on the matters set out in Annex II.

164. As part of any application for registration, CESR expects the applicant to provide detailed information and evidence as to how they demonstrate compliance with the applicable requirements of the Regulation. It is expected that an applicant can demonstrate that it is compliant with the Regulation at the point of application and thereafter on an ongoing basis. In line with Article 21 of the Regulation this guidance sets out the information that competent authorities would expect to receive as part of an application for registration by a CRA.

165. The information submitted to the competent authorities, as part of an application for registration under the terms of the Regulation, will only be used by competent authorities to discharge their responsibilities as defined in the Regulation and shall remain confidential.

166. This Guidance sets out the information that competent authorities would expect to receive as part of an application for registration by a CRA. An applicant should provide a clear explanation for not submitting any specific information contained herein. The applicant should also provide an explanation as to how it demonstrates compliance with the relevant requirements of the Regulation as set out in this guidance. The competent authority will consider these explanations and retain the ability to request further supporting material from the applicant on these points. In the process of formulating a credit rating, CESR expects groups of CRAs to identify the office responsible for the rating. Supervisory actions of more than one competent authority could create confusion and potentially lead to conflicting positions. To avoid such situations, responsibility for the actions which the Regulation attributes to the competent authorities of the home Member States should be given to the home competent authority of the CRA responsible for the rating.

167. The application should be accompanied by a cover letter signed by a senior representative of the applicant attesting that the information contained in the application is accurate and complete to the best of their knowledge.

168. The applicant is responsible for demonstrating compliance with the requirements of the Regulation. To support the information outlined in this guidance an applicant should consider providing an accompanying explanation, in written form, of how they met each requirement as set out in the Regulation. This should refer where applicable, to the information contained within this guidance. Should an applicant believe that additional information or explanation (not specifically stated herein) would be useful to competent authorities for the review of the application, such additional information or explanation should be submitted.

169. All applicants should have regard to the guidance that CESR has issued in compliance with Article 21.2 (a) on the registration process. This outlines that, where the applicant is applying as part of a Group of CRAs, there should be only one submission for the whole group containing a breakdown of Annex II disclosures by each CRA member of the group. This submission should clearly set out the different applicants and the different home competent authorities to which the applications are submitted. Information related to each member of the group should be clearly separated. Where the applicant has subsidiaries which do not produce ratings, detailed information on each of these are not required.

170. After application, the applicant should notify the competent authority of any material change to the documentation submitted. A material change is any change that may affect the substance of the information submitted in the application. In any event all changes that may affect compliance with the requirements of the Regulation are material.

171. Competent authorities retain the ability to ask for any information submitted as a result of this Guidance to be verified in a manner directed by them.

172. As stipulated by Article 4.1, credit ratings may be used for regulatory purposes in Europe only if they are issued by CRAs established and registered in the Community. Registration is a necessary condition, although not sufficient, for a CRA being recognized as an External Credit Assessment Institution (ECAI). Additional conditions have to be satisfied by CRAs for being granted this status and Banking regulatory authorities, coordinated through the Committee of European Banking Supervisors (CEBS), will be responsible for assessing each ECAI application.

173. Within this Guidance and unless specified otherwise, the term 'rating analyst' should be read as encompassing the terms 'rating analyst' and 'lead rating analyst' of the Regulation.

174. The submission of the information contained within this Guidance does not preclude further information requests or onsite inspections by the competent authorities responsible for assessing the application. Competent authorities retain the ability to request an interview with any employee of the applicant (e.g. Senior Management, Compliance Officer, Rating Analysts etc.).

175. In particular, the following supplementary information may be requested at short notice during the application process or after registration:

    a. Copy of the minutes of the Administrative and/or Supervisory Board meetings.

    b. Copy of the minutes of the meetings of any other Committees (e.g. Remuneration, Strategy Committees).

2. General guidelines on the information to be submitted

176. It is expected that the policies and procedures submitted with the application either individually or when read together will:

    a. Indicate the person(s) responsible for the approval and maintenance of these policies and procedures.

    b. Describe how compliance with these policies and procedures will be enforced and monitored, and the person(s) responsible for this.

    c. Describe the measure(s) undertaken in the event of a breach of these policies and procedures.

    d. Indicate the procedures, if any, for reporting to the competent authorities a material breach of the EU regulation.

177. Within this Guidance, the terms 'policies and procedures' refer to any document relevant to the application. This would include, for example, a code of conduct for employees.

178. Within this Guidance and where applicable, the number of employees should be provided on a headcount basis and information on ratings should be based on the current volume of ratings outstanding (the as of date should be provided).

179. Within this Guidance, three types[7] of credit rating are being identified as consistent with CESR's Central Repository: corporate, public/sovereign and structured finance instruments. The corporate category should contain data and detail according to the following industry categories: financial institutions, insurance and corporate issuers.

[7] For consistency with CESR's Central Repository the term 'type' is used instead of 'class' of credit rating.

180. The corporate and public/sovereign categories cover not only ratings of entities which fall herewith but also all rated securities or other instruments which represent obligations of theirs (or of their financing vehicles), save where these are structured instruments.

181. In the event that the term ancillary services as described in the Regulation does not cover all the non-credit rating activities/businesses a CRA is performing, the CRA must indicate such other activities and provide relevant information as required in the case of ancillary services.

3. General information (Annex II point 1, 2, 3, 9)

182. The information is required for competent authorities to conduct the registration process, in particular to assess whether the applicant falls within the scope of the Regulation (Article 2) and its legal structure.

183. The applicant should submit the following information:

a. Full name

b. Country of establishment within the European Union.

c. Legal status including details of company registration such as excerpt from the relevant commercial or court register, or other form of evidence of the place of incorporation and scope of business activity. The evidence shall be current as of the application date

d. Name, title and contact details (address, email and telephone) of the person(s) who will be the main point of contact for the competent authorities during the application process.

e. Where different, name, title and contact details (address, email and telephone) of the Chief Compliance Officer.

f. Where the applicant is applying as part of a Group of CRAs as defined by Article 3.1 (m), an organisational chart of the Group of CRAs, including the legal status, full name and address of all entities within the Group of CRAs (e.g. parent entity, fellow subsidiaries, subsidiaries, branches). This should include ownership details of each entity within the group. If there is a holding company, please detail all the ownership links within the holding company.

g. Where the applicant is not applying as part of a Group of CRAs and has one or several branches, an organisational chart of the CRA's group of branches (where applicable), including the full name, legal status and address of each branch.

4. Business activities (Annex II point 14, 15)

184. This information is required for competent authorities to assess the nature, scale and complexity of the applicant's business (Article 6.3) and its compliance with the conflicts of interest requirements (Article 6.1, Annex I section A and B).

185. Where the applicant is not applying as part of a Group of CRAs, it should submit the following information:

a. Description of the type of business activities (rating and ancillary) conducted by the applicant and, where the applicant has one or several branches, the business conducted by each branch.

b. For the past three years, number of employees contracted to the applicant and involved in the rating and ancillary business (both permanent and temporary) and, where the

applicant has one or several branches, the number of employees involved in the rating and ancillary business in each branch.

c. Number of rating analysts contracted to the applicant including, where the applicant has one or several branches, the number of analysts contracted in each branch.

d. Where the applicant is planning to establish a new subsidiary or branch, a description of the type of business activities this new entity is expected to conduct, its full name and address and the timeframe for its establishment.

e. Where the applicant is planning to conduct any new ancillary activity, a description of the new activity and the timeframe for setting up this new activity.

f. Total revenue generated over the past three years by the applicant and, where the applicant has one or several branches the revenue generated by each branch, as a proportion of total revenue (presented on a fiscal year basis).

g. Where the applicant operates ancillary services, the revenue generated over the past three years by these services (non-rating business activity) as a proportion of total revenue (presented on a fiscal year basis).

186. Where the applicant is applying as part of a Group of CRAs, it should submit the following information:

a. Description of the type of business activities conducted (rating and ancillary) by each entity of the Group of CRAs.

b. For the past three years and in each entity of the Group of CRAs, number of employees contracted to the applicant and involved in the rating business (both permanent and temporary).

c. Where the applicant or its parent company is planning to establish a new subsidiary or branch, a description of the type of business activities this new entity is expected to conduct, its location and the timeframe for its establishment.

d. Where the applicant is planning to conduct any new ancillary business activity in the future, a description of the new activity and the timeframe for setting up this new activity.

e. Revenue generated over the past three years by each entity of the Group of CRAs and as a proportion of total revenue of the Group of CRAs (presented on a fiscal year basis).

f. Where the applicant operates ancillary services, the revenue generated over the past three years by these services (non-rating business activity) that the applicant, its parent company, subsidiaries, fellow subsidiaries or branches conducts and as a proportion of total revenue of the Group of CRAs (presented on a fiscal year basis).

5. Class/Type of credit ratings (Annex II point 4)

187. This information is required for competent authorities to assess the nature, scale and complexity of the applicant's business (Article 6.3).

188. The applicant should submit the following information:

a. Type of credit ratings produced by the applicant according to the following classifications as defined in CESR's Central Repository: corporate, public/sovereign and structured finance instruments. The corporate category should contain data and detail according to the following industry categories: financial institutions, insurance and corporate issuers.

b. Rating nomenclatures used for each type of credit rating.

c. Definition of any rating action and statuses available to the applicant (e.g. negative watch).

d. Details of whether the applicant produces solicited or unsolicited ratings (or both).

e. For each type of credit ratings produced by the applicant, the number of years of experience the applicant has in producing these ratings.

f. For each type of credit ratings produced by the applicant, the proportion of public rating and private ratings.

6. Ownership structure (Annex II point 5)

189. The information is required for competent authorities to assess the applicant's compliance with the conflicts of interest requirements (Article 6.1, Annex I section A and B).

190. The applicant should submit the following information:

a. Details of whether the applicant is publicly listed or privately owned.

b. Identity and brief description of business activity of each shareholder of the applicant that owns a stake greater than 10% of the applicant and the size of its stake/ownership.

7. Organisational structure (Annex II point 6)

191. This information is required for the competent authority to assess the applicant's compliance with the conflicts of interest requirements (Article 6.1, Annex I section A and B).

192. The applicant should submit the following information:

a. Organisational chart detailing the organisational structure of the applicant including the clear identification of significant roles and the identity of the person responsible for each significant role. Significant roles should at least include Senior Management and senior rating analysts. Where the applicant conducts ancillary businesses the organisational chart should also cover ancillary activities and include detail on the separation of rating and ancillary businesses.

b. Where the applicant is part of a Group of CRAs, the applicant should specify clearly if any of its employees has contractual obligations (either individually or on behalf of the applicant) to any other entity within the Group of CRAs.

8. Corporate governance (Annex II point 6)

193. This information is required for competent authorities to assess the applicant's compliance with the conflicts of interest requirements (Article 6.1, Annex I section A and B).

A. Corporate governance policy

194. The applicant should submit the following information:

a. Internal corporate governance policy, if any.

b. Information on whether the applicant adheres to a recognised corporate governance code of conduct. It should also indicate, where appropriate, where it deviates from the recognised code it is adhering to and provide an explanation for any deviation.

B. Administrative and/or Supervisory Board

195. The applicant should submit the following information unless the exemption contained in Article 6.3 applies with respect to independent board members:

a. Terms of reference of the Administrative and/or Supervisory Board.

b. Description of the measures in place to ensure sound administrative procedures.

c. Curriculum Vitae of the members of the Administrative and/or Supervisory Board including identification of the independent members (unless the exemption contained in Article 6(3) applies with respect to independent members) and, in the case of CRAs that issue credit ratings of structured finance instruments, identification of the independent member and one other member who have in-depth knowledge and experience at a senior level of the market in structured finance instruments.

d. Copy of the last three sets of minutes of the Administrative and/or Supervisory Board.

e. The last three opinions presented to the Administrative or Supervisory Board by the independent members (unless the exemption contained in Article 6.3 applies).

C. Audit Committee

196. Where the applicant has an Audit Committee in place it should submit the following information:

a. Terms of reference of the Audit Committee.

D. Other Committees

197. Where the applicant has other relevant Committees in place (e.g. Remuneration, Strategy Committees), it should submit the following information:

a. Terms of reference of these Committees.

E. Compliance function

198. The applicant should submit the following information unless the exemption contained in Article 6.3 applies:

a. Description of the compliance function. It is expected that this description includes:

i. Organisational chart of the compliance function.

ii. Description of the role and responsibilities of the compliance function.

iii. Description of the policies and procedures deemed to ensure the independence of the compliance function and the mechanisms in place to monitor its effectiveness.

iv. Number of employees contracted to the applicant (temporary and permanent) allocated to the compliance function and the resource typically dedicated to this function (man hours).

v. Reporting lines of the compliance function and frequency of reporting.

vi. Description of the interaction between the compliance function and employees of the CRA directly involved in the rating process. This should include policies and procedures with respect to the reporting of information as described in Annex I section C (5).

vii. Work plan of the compliance function for the next three years.

viii. Description of how the compliance function will review the compliance of the CRA with its obligation under the Regulation.

ix. Curriculum Vitae of the Chief Compliance Officer.

F. Internal control/audit function

199. Where the applicant has an internal control/audit function in place, it should submit the following information:

a. Description of the internal control/audit function. It is expected that this description includes:

i. Organisational chart of the internal control/audit function.

ii. Description of the role and responsibilities of the internal control/audit function and the mechanisms to monitor its effectiveness.

iii. Number of employees contracted to the applicant (temporary and permanent) allocated to the internal control/audit function.

iv. Reporting lines of internal control/audit and frequency of reporting.

v. Work plan of the internal control/audit function for the next three years.

vi. Curriculum Vitae of the Chief Internal Control/Audit Officer.

vii. Whether the applicant adheres to recognised internal control/audit code of conduct. It should also indicate, where appropriate, where it deviates from the recognised code it is adhering to and provide an explanation for any deviation.

G. Risk assessment function

200. Where the applicant has a risk assessment function in place, it should submit the following information:

a. Description of the risk assessment function. It is expected that this description includes:

i. Organisational chart of the risk assessment function.

ii. Description of the role and responsibilities of the risk assessment function and the mechanisms to monitor its effectiveness.

iii. Number of employees contracted to the applicant (both permanent and temporary) allocated to the risk assessment function.

iv. Reporting lines of the risk assessment function and frequency of reporting.

v. Work plan of the risk assessment function for the next three years.

vi. Curriculum Vitae of the Chief Risk Officer.

H. Internal review function

201. The applicant should submit the following information:

a. Description of the internal review function as required by Annex I section A (9). It is expected this description include:

i. Organisational chart of the internal review function.

ii. Description of the role and responsibilities of the internal review function and the mechanisms to monitor its effectiveness.

iii. Number of employees contracted to the applicant (temporary and permanent) allocated to the internal review function.

iv. Reporting lines of the internal review function and frequency of reporting.

v. Work plan of the internal review function (if any) for the next three years.

vi. Curriculum Vitae of the Chief Internal Review Officer.

9. Policies and procedures to identify and manage and disclose any conflicts of interests (Annex II point 11)

202. This information is required for competent authority to assess the applicant's compliance with the conflicts of interest requirements (Article 6.1, Annex I section A and B) and the rules on rating analysts (Article 7.2, Annex 1 Section C).

A. Policies and procedures with respect to conflicts of interest

203. The applicant should submit the following information:

a. Copy of the current policies and procedures for the identification, prevention, disclosure and mitigation of conflicts of interests. It is expected that these policies and procedures:

i. Include an inventory of potential conflicts of interest relevant to the applicant and an explanation of how they are eliminated or managed and disclosed.

- This should include potential conflicts of interest with related third parties as defined by Article 3.1 (i).

- Where the applicant is part of a Group of CRAs, this should include all conflicts of interest at the Group of CRAs level.

ii. Include information on the measures and controls in place to ensure the independence of rating analysts.

b. Description of the method used to ensure that the relevant individuals are aware of the policies and procedures for the prevention, identification, disclosure and mitigation of conflicts of interests.

B. Management of conflicts of interest with respect to ancillary services

204. Where the applicant conducts ancillary services, it should submit the following information:

a. Copy of the policies and procedures with respect to the prevention, identification, disclosure and mitigation of conflicts of interests arising specifically from the performance of ancillary businesses. Where the applicant is part of a Group of CRAs, this should include all conflicts of interest at the Group of CRAs level.

b. A description of any internal assessment performed to identify any existing or potential conflict of interest between the rating business and ancillary services of the applicant and a copy of the results thereof. Where the applicant is part of a Group of CRAs the prevention and identification of conflicts should be conducted at the Group of CRAs level.

c. Description of the resources, both human and technical, shared by the rating and ancillary services of the applicant.

C. Policies and procedures with respect to fees received from rated entities and related third parties

205. The applicant should submit the following information:

a. Copy of the policies and procedures with respect to the segregation from the rating process of discussions related to fees received from rated entities and related third parties as defined by Article 3.1 (i).

b. For each type of credit ratings, copy of the policies and procedures with respect to the determination of fees charged by CRAs to rated entities and related third parties.

D. Policies and procedures with respect to the control of confidential information

206. The applicant should submit the following information:

a. Copy of any confidentiality policies and procedures applicable to information obtained from, or shared with, all rated entities, related third parties and other relevant individuals, as required by Annex I Section C (3).

b. Description of the process used to ensure that the relevant individuals are aware of the policies and procedures applicable to information obtained from, or shared with, all rated entities and related third parties.

E. Policies and procedures with respect to transactions in securities rated by the CRA

207. The applicant should submit the following information:

a. Copy of the policies and procedures with respect to rating analysts, employees and any other natural persons as described in Annex I Section B (1) and C (1) trading in securities rated by the CRA, or which are securities representing obligations of an entity rated by the CRA. It is expected that these policies and procedures require the identification, for each credit rating outstanding, of every employee involved in the rating process at any level or function.

b. Description of the method used to ensure that the relevant individuals are aware of the policies and procedures with respect to rating analysts, employees and any other natural persons as described in Annex I Section B (1) and C (1) trading in securities rated by the CRA, or which are securities representing obligations of an entity rated by the CRA.

F. Other information

208. The applicant should submit the following information:

a. Identities of the rated entities (based upon legal entity groupings and including ratings of any securities or other instruments which represent obligations of that legal entity group) or related third parties that account for more than 3% in terms of the applicant's revenue (with corresponding percentage) and number of ratings at the applicant and, where appropriate, Group of CRAs level for each type of credit ratings issued (corporate, public/sovereign, structured finance).

b. For credit ratings issued on structured instruments, the identities of the sponsoring banks/originators which account for greater than 3% of the applicant's revenue (with corresponding percentage) and number of ratings at the applicant and, where appropriate, Group of CRAs level.

10. Human Resources (Annex II point 8 and 12)

209. This information is required for competent authorities to assess the applicant's compliance with the requirements concerning rating analysts, employees and other persons involved in the issuance of credit ratings (Articles 7.1, 7.4, Annex 1 Section C).

A. General information

210. The applicant should submit the following information at the applicant level (not Group of CRAs level):

a. Number of temporary employees contracted to the applicant and involved in the rating business, if any.

b. Number of permanent employees contracted to the applicant involved in the rating business, including data on length of employment with the applicant according to the following buckets (over 5 years, between 2 and 5 years, less than 2 years).

c. Number of rating analysts, lead rating analysts, chairs and persons approving ratings. This should include further information on:

   i. Seniority/rank

   ii. Type of rating analyst (including primary vs. surveillance, quantitative vs. qualitative, where relevant)

   iii. Number of years of experience in the CRA, or rating industry when available.

   iv. Type of credit rating produced or monitored (corporate, public/sovereign, structured finance). The corporate category should contain detail according to the following industry categories: financial institutions, insurance and corporate issuers.

d. Copy of any applicable employment policies and procedures.

e. Description of the measures in place to ensure that appropriate resources are employed, as required by Annex I Section A (8).

f. Unless the exemption contained in Article 6.3 applies, copy of the policies and procedures for the rotation of lead rating analysts, rating analysts and persons approving credit ratings, including detail on the work plan for how this has been implemented.

g. Copy of any training and development policies and procedures relevant to the rating process including any type of formal assessment (e.g. exam) required for the conduct of rating activities.

h. Sample templates of employment contracts for rating analysts.

i. Copies of the procedures for recording and dealing with any complaint made against or by an employee.

j. Copy of the policies and procedures required by Annex I Section C (5).

B. Corporate ratings

211. Where the applicant rates corporate transactions, it should provide the following information:

a. Number of corporate obligors rated and being monitored per lead rating analyst. Please give the average, top 10% and bottom 10%. The corporate category should contain data and detail according to the following industry categories: financial institutions, insurance and corporate issuers.

C. Public finance ratings

212. Where the applicant rates public finance, it should provide the following information:

a. Number of public finance transactions rated and being monitored per lead rating analyst. Please give the average, top 10% and bottom 10%.

D. Structured instruments ratings

213. Where the applicant rates structured instruments, it should provide the following information:

a. Number of structured instruments transactions rated per lead rating analyst. Please give the average, top 10% and bottom 10%.

b. Number of outstanding structured instrument ratings being monitored per rating analyst. Please give the average, top 10% and bottom 10%.

11. Compensation and performance evaluation arrangements (Annex II point 13)

214. This information is required for competent authorities to assess the applicant's compliance with requirements concerning the compensation and performance of rating analysts and persons approving credit ratings (Article 7.5).

215. The applicant should submit the following information:

a. Copy of the compensation and performance evaluation policies and procedures. This should cover all employees involved in the rating business but with specific reference to rating analysts, persons approving credit ratings, Senior Management and the compliance function.

b. Statistics on the remuneration of employees involved in the rating business in the previous business year broken down by the following. In each case the data should include at a minimum average figure as well as the top 10% and bottom 10%.

i. Base salary vs. additional remuneration

ii. Employee seniority/rank

iii. Type of credit rating (corporate, public/sovereign , structured finance)

12. Description of the procedures and methodologies used to issue and review credit ratings (Annex II point 10)

216. This information is required for competent authorities to assess the applicant's compliance with the requirements relative to issuing and reviewing credit ratings, rating methodologies (Articles 8.2, 8.3, 8.4, 8.5, 8.6) and conflicts of interest (Article 6.1).

A. Development and review of rating methodologies

217. The applicant should submit the following information:

a. Copy of the policies, procedures and responsibilities for the development and review of rating methodologies, models and key rating assumptions. It is expected that these will include:

i. Policies, responsibilities and procedures for rating methodology development and sign off, including details on the composition of rating methodology committees and procedures for members' selection.

ii. Policies, responsibilities and procedures for rating methodology, model and key rating assumption review, including:

- For the implementation of a change in methodology, model or key rating assumptions within the rating methodology.
- For verifying and validating a rating methodology, model or key rating assumptions.
- For validating the rating methodology, model or key rating assumptions based on historical data, including backtesting. This should also include the results of such validation/backtesting for the past three years where quantitative data is available and an indication of how long these procedures have been in place.

iii. Procedures for disclosing rating methodologies, description of the models and key rating assumptions.

iv. Policies and procedures in place to ensure independence of quantitative team and separateness of decisions on rating methodologies from the rating business.

b. High level description for each type of credit rating of the range of core models and methodologies used to determine credit ratings.

c. Size and experience of CRAs quantitative teams responsible for developing and reviewing methodologies and models, including Curriculum Vitae of the head of each quantitative team. This information should be provided for each type of credit ratings.

d. Information on the measures in place to mitigate the risk of over-reliance on key employees.

B. Issuance of credit ratings

218. The applicant should submit the following information:

a. Copy of the policies, procedures and responsibilities for the issuance of credit ratings. It is expected that these will include:

i. Where applicable, role and responsibilities of the rating committees (or rating approval processes, as appropriate), including copies of the terms of reference and sample copies of minutes or record of committee discussion and decision. The process and procedures for selecting committee members should also be provided. The terms of reference may include procedures aimed to prevent any potential abuse of power from committee members in rating committees.

ii. Process for reviewing the documentation of issuers or securities to be rated. This should include any benchmark used to facilitate the review (if any).

iii. Role and responsibilities of rating analysts. The process and procedures for their selection on specific securities should also be provided.

iv. Role and responsibilities of rating committee chairs as well as skills required. The process and procedures for their nomination should also be provided.

v. Role and responsibilities of persons approving credit ratings. The process and procedures for their selection should also be provided.

vi. Determination of which methodology, models and key rating assumptions to use in issuing a rating and description of how this is being applied consistently.

vii. Assessment of minimum information requirements to initiate and maintain a rating (both public and non-public information – where relevant).

viii. Collation, analysis and assessment (e.g. representations or warranties and where applicable) of information used to determine a rating, including (where applicable) reliance on analysis by another CRA or other third parties.

ix. Process for notifying the rated entity, or the entity to which the rated securities or instruments relate, of the principal grounds on which the rating is based at least 12 hours before publication of the credit rating. This should also include a description of the rating appeal process (if any).

x. Processes for determining which key elements underlying the credit rating will be included in the press release or reports.

xi. Procedures in place that ensure that the methodology is applied and implemented consistently across credit ratings (within each type), offices and regions (where applicable).

xii. Sequence of steps followed for the production of ratings.

xiii. Detail of any aspect of the rating process that has been outsourced.

xiv. Policies, controls and procedures around the process for issuing a rating, including for the involvement of the issuer/arranger/investor/servicer within the process.

xv. Procedures for disclosing a rating decision.

xvi. Any differences in these processes and responsibilities for unsolicited vs. solicited ratings.

xvii. Information on whether the rating process is regularly audited by an independent third party.

xviii. Processes for determining which CRA within the group is responsible for a credit rating where applicable and the procedures for disclosing this information.

b. Description of any review performed on internal and external data input into rating models. It is expected that this includes:

i. Procedures and criteria for the selection of data providers.

ii. Details on the reliability of internal and external data input into rating models.

iii. Details on the sources of data used.

C. Monitoring of credit ratings

219. The applicant should submit the following information:

a. Copy of the policies, procedures and responsibilities for the monitoring of ratings. It is expected that these will include:

i. Role and responsibilities of rating committees (or rating approval processes, as appropriate) in the monitoring process.

ii. Role and responsibilities of rating analysts.

iii. Collation, analysis and assessment (e.g. representations or warranties and where applicable) of information used to monitor a rating, including (where applicable) reliance on analysis by another CRA or other third parties.

iv. Process (including overview of the factors considered) and responsibilities for deciding when a rating should be formally reviewed, including rating actions (e.g. negative watch).

v. Process and responsibilities for deciding when a rating should be formally suspended or withdrawn.

vi. Policies, procedures and controls with respect to credit rating reviews required by Article 8.6 (b), (c) and Annex I Section C (6).

vii. Policies, procedures and controls for the involvement of the issuer/arranger within the process.

viii. Procedures for disclosing a decision to review or change a rating.

ix. Any differences in these processes and responsibilities for unsolicited vs. solicited ratings.

x. Information on the internal arrangements in place to monitor the impact of changes in macroeconomic or financial market conditions on credit ratings as described in Article 8.5.

13. Description of the procedures and methodologies used to issue and review credit ratings – Disclosure requirements (Annex II point 10)

220. This information is required for competent authorities to assess compliance with the requirements concerning credit ratings disclosure (Articles 10.2, 10.3, 10.5, Annex I Section D and B (4)), general disclosure (Annex I Section E I), transparency report (Annex I Section E III) and other disclosure (Article 8.6 (a), Article 10.1, Article 10.4, Annex I Section B (2) and C (5)).

A. Credit rating disclosure requirements

221. The applicant should submit the following information:

a. Copy of the policies and procedures with respect to the credit ratings disclosure requirements stipulated in Article 10.2, 10.5, Annex 1 section D I (1), (2), (3), (4) and (5). Where the CRA rates structured instruments, these policies and procedures should also cover the requirements set out in Article 10.3, Annex I section D II and B (4).

b. Evidence of how the applicant meets or intends to meet these disclosure requirements in practice. Evidence could take the form of the copy of appropriate documents such as credit rating reports.

c. For each type of credit ratings produced by the applicant, sample templates of rating letters.

B. General disclosure requirements

222. The applicant should submit the following information:

a. Copy of the policies and procedures with respect to the general disclosure requirements stipulated in Annex I Section E I.

b. Evidence of how the applicant meets or intends to meet these disclosure requirements in practice. Evidence could take the form of the copy of credit rating reports, snapshot of the website etc.

C. Transparency report requirements

223. The applicant should submit the following information:

a. Copy of the policies and procedures with respect to the production of the transparency report required by Annex I Section E III.

b. Copy of the last transparency report, if applicable, and evidence that it has been made public.

D. Other disclosure requirements

224. The applicant should submit the following information:

a. Copy of the policies and procedures with respect to other disclosure requirements stipulated in Article 8.6 (a), Article 10.1, Article 10.4 and Annex I Section B (2).

b. Evidence of how the applicant meets or intends to meet these disclosure requirements in practice. Evidence could take the form of the copy of credit rating reports, snapshot of the website etc.

14. Financial Resources (Annex II point 7)

225. This information is required to facilitate competent authorities to assess the requirement for CRA to ensure continuity and regularity in the performance of its credit rating activities (Annex 1 section A (8)).

226. To the extent such information is available, the applicant should submit the following information:

a. Financial statements (on individual as well as consolidated and Group of CRAs basis, where applicable) for the past three years and projections, if available, for the next three years.

b. Relevant management information and reports

c. Auditor's report

d. Description of the measures in place to ensure sound accounting procedures.

15. Outsourcing (Annex II point 17)

227. This information is relevant for competent authorities to assess that the applicant's outsourcing arrangements do not impair the quality of its internal control (Article 9).

228. Where the applicant outsources some of its rating activities, it should submit the following information:

a. Policies and procedures with respect to outsourcing.

b. Description of any functions being outsourced.

c. Description of the entity to which rating activities are outsourced, including its full name and address.

d. Description of the outsourcing agreements between the applicant and entity to which activities are outsourced.

e. Copy of any internal or external review of the risks posed by the outsourcing arrangements (where applicable).

16. Policies on record keeping (no direct reference in annex II)

229. This information is required for competent authorities to asses that the applicant is complying with the record keeping requirements set out in Article 8.4, Annex I section A (7), Annex I section B (7), (8) and (9).

230. The applicant should submit the following information:

a. Copy of the policies and procedures on record keeping. It is expected that these policies and procedures:

i. Cover the requirements set out in Article 8.4, Article 23.3 (d), Annex I section A (7), Annex I section B (7), (8) and (9).

ii. Indicate which records are kept and for how long.

iii. Identify recipients of confidential information for each rating issued.

17. Business Continuity Planning (no direct reference in Annex II)

231. This information is required for competent authorities to assess the applicant's ability to ensure the continuity and regularity in the performance of its rating activities (Annex 1 section A (8)).

232. The applicant should submit the following information:

a. Copy of the Business Continuity Planning policies and procedures, including, where applicable, information on their applicability to outsourced service providers.

b. Business Continuity Planning tests (where applicable). It is expected that this should include information on:

i. The types of test conducted.

ii. The frequency of testing.

18. Information Systems (no direct reference in Annex II)

233. This information is required for competent authorities to assess the applicant's control and safeguard arrangements for information processing systems (Annex 1 section A (4)) and continuity and regularity in the performance of its rating activities (Annex 1 section A (8)).

234. The applicant should submit the following information:

a. Identity of senior manager responsible for Information Systems.

b. Description of the Information Systems including any back-up systems.

c. Description of the procedures deemed to ensure effective control and safeguard arrangements for the Information Systems in place as well as the mechanisms to monitor their effectiveness. This should include details of the procedures in place to ensure effective separation between the Information Systems used to report fees from those accessible to rating analysts and used to enter ratings and information about the rated entities or rated transactions.

19.Expected use of endorsement (Annex II point 16)

A. Issuance of the credit rating endorsed by a European CRA (Article 4.3 (a))

235. This information is required for the competent authority to assess the applicant's compliance with the provisions concerning endorsement requirements (Article 4.3 (a)) of the Regulation.

236. The applicant should submit the following information for each third country CRA involved in the process of issuing ratings for which endorsement is envisaged:

a. Full name

b. Legal status including details of company registration such as excerpt from the relevant commercial or court register, or other form of evidence of the place of incorporation and scope of business activity. The evidence shall be current as of the application date.

c. Country of establishment

d. Details of the types of credit rating which the applicant expects to endorse and according to the following classifications as defined in CESR's Central Repository: corporate,

public/sovereign and structured finance instruments. The corporate category should contain detail according to the following industry categories: financial institutions, insurance and corporate issuers

e. An organisational ownership chart of each CRA, subsidiary, fellow subsidiary, branch and parent involved in the process of issuing ratings for which endorsement is envisaged. This should provide for legal status, full name and address of all entities within the ownership structure of the relevant CRAs.

B. Issuance of the credit rating endorsed by a European CRA (Article 4.3 (b))

237. This information is required for the competent authority to assess the applicant's compliance with the provisions concerning the endorsement requirements (Article 4.3 (b)).

238. The applicant should submit the following information:

a. A reasoned assessment by the CRA of how the conduct of the credit rating activities of the third country CRA resulting in the issuing of credit ratings, for which an application for endorsement has been submitted, fulfil requirements which are at least as stringent as the requirements set out in Articles 6 to 12 of the EU Regulation.

i. It is anticipated that a CRA applying for endorsement of third country credit ratings will provide, as part of the application, detailed information, structured analysis and reasoning for each requirement set out in Articles 6-12, including any reference to the relevant sections of the third country law/regulation. This could, for example, take the form of a tabular analysis detailing each requirement, and how the third country CRA fulfils a requirement which is at least as stringent. The information provided should also include the procedures put in place by the endorsing EU CRA to monitor that the third country CRA is de facto fulfilling such requirements as well as any potential concerns identified by the endorsing EU CRA with respect to the fulfilment of such requirements.

ii. Where relevant information has already been provided as part of a simultaneous application for registration by the endorsing EU CRA, such as copies of policies and procedures which are currently applied by both the EU and third country CRA, then these can be cross-referred within the application for endorsement.

C. Issuance of the credit rating endorsed by a European CRA (Article 4.3 (e))

239. This information is required for the competent authority to assess the applicant's compliance with the provisions concerning endorsement requirements, in particular Article 4.3 (e) of the Regulation, i.e. that there "is an objective reason for the credit rating to be elaborated in a third country". This requirement is in place to ensure that ratings are not produced in a third country to avoid being subject to the EU Regulation. A CRA should be in a position to demonstrate, when required, why it is appropriate for a specific credit rating to be produced by a particular CRA/office.

240. The applicant should submit the following information:

a. Indication of objective reasons for credit ratings to be elaborated in a specific third country (i.e. expertise of analysts, nationalities of rated entities, organizational structure of the Group of CRAs, etc);

b. Number of analysts working for each of the credit rating agencies based in third countries which contribute to the issuance of ratings for which an application to be endorsed has been submitted.

D. Statutory requirements concerning CRAs established in a third country (Article 4.3(f))

241. This information is required for the competent authority to assess the applicant's compliance with the provisions concerning authorisation and supervision it is subject to in a third country (Article 4.3 (f)) of the Regulation.

242. The applicant should submit the following information (if the transitional arrangements outlined in Article 41 apply, this should be clearly specified):

a. Indication by the applicant that the CRA established in the third country is authorised or registered and is subject to supervision in the relevant jurisdiction, together with the relevant part of the law and/or regulation in the third country which provides for the authorisation/registration and supervision.

b. Excerpt from the relevant commercial or court register, or other form of evidence of the place of incorporation and scope of business activity. The evidence shall be current as of the application date.

E. Regulatory framework providing for independence of credit rating agencies in their professional capacity (Article 4.3 (g))

243. This information is required for the competent authority to assess fulfilment of requirements regarding regulatory regime of the third country set out in Article 4.3 (g) of the Regulation.

244. The applicant should submit the following information (if the transitional arrangements outlined in Article 41 apply, this should be clearly specified):

a. Copy of relevant legislation in place demonstrating that public authorities are not entitled to interfere with the content of credit ratings and methodologies used by credit rating agencies incorporated in the relevant jurisdiction.

20.Application for exemptions from certain requirements of the Regulation

245. The information is required for competent authorities to conduct the registration process as set out In Article 6.3.

246. Where an applicant believes that some, or all, of the requirements set out in points 2, 5 or 6 of Section A of Annex I and Article 7.4 are not proportionate in view of the nature scale and complexity of its business and the nature and range of its issue of credit ratings, then the applicant should provide a detailed description of:

a. The relevant requirement of the Regulation from which it is requesting an exemption (including reference to the specific Article or clause in Section A of Annex I).

b. The reason why the applicant considers the requirement is not proportionate.

IX. GUIDANCE ON THE INFORMATION REQUIRED FOR CERTIFICATION

247. Recital 13 and 14 of the Regulation states:

Recital 13

It is desirable to provide for the use of credit ratings issued in third countries for regulatory purposes in the Community provided that they comply with requirements which are as stringent as the requirements provided for in the Regulation. This Regulation introduces an endorsement regime allowing credit rating agencies established in the Community and registered in accordance with its provisions to endorse credit ratings issued in third countries. When endorsing a credit rating issued in a third country, credit rating agencies should determine and monitor, on an ongoing basis,

whether credit rating activities resulting in the issuing of such a credit rating comply with requirements for the issuing of credit ratings which are as stringent as those provided for in this Regulation, achieving the same objective and effects in practice.

Recital 14

In order to respond to concerns that lack of establishment in the Community may be a serious impediment to effective supervision in the best interests of the financial markets in the Community, such an endorsement regime should be introduced for credit rating agencies that are affiliated or work closely with credit rating agencies established in the Community. Nevertheless, it may be necessary to adjust the requirement of physical presence in the Community in certain cases, notably as regards smaller credit rating agencies from third countries with no presence or affiliation in the Community. A specific regime of certification for such credit rating agencies should therefore be established, in so far as they are not systemically important for the financial stability or integrity of the financial markets of one or more Member States.

248. The relevant detail of the equivalence and certification regime can be found in Article 5 of the Regulation. The relevant sections of this Article are reproduced below:

Article 5

Equivalence and certification based on equivalence

1. The credit ratings that are related to entities established or financial instruments issued in third countries and that are issued by a credit rating agency established in a third country may be used in the Community under Article 4(1) without being endorsed in accordance with Article 4(3), provided that:

(a) the credit rating agency is authorised or registered in and is subject to supervision in that third country;

(b) the Commission has adopted an equivalence decision in accordance with paragraph 6 of this Article, recognising the legal and supervisory framework of that third country as equivalent to the requirements of this Regulation;

(c) the cooperation arrangements referred to in paragraph 7 of this Article are operational;

(d) the credit ratings issued by the credit rating agency and its credit rating activities are not of systemic importance to the financial stability or integrity of the financial markets of one or more Member States; and

(e) the credit rating agency is certified in accordance with paragraph 2 of this Article.

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4. The credit rating agency may also separately apply to be exempted:

(a) on a case-by-case basis from complying with some or all of the requirements set out in Section A of Annex I and Article 7(4) if the credit rating agency is able to demonstrate that the requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of its issue of credit ratings;

(b) from the requirement of physical presence in the Community where such a requirement would be too burdensome and disproportionate in view of the nature, scale and complexity of its business and the nature and range of its issue of credit ratings.

When assessing that application, the competent authorities shall take into consideration the size of the applicant credit rating agency, having regard to the nature, scale and complexity of its business and the nature and range of issue of its credit ratings, as well as the impact of the credit ratings issued by the credit rating agency on the financial stability and integrity of the financial markets of one or more Member States. On the basis of those considerations, the competent authority may grant such exemption to the credit rating agency.

249. In summary, this document therefore sets out the information, in line with Article 21 of the Regulation, that competent authorities would expect to receive as part of an application for certification.

250. It is CESR's view that information will only be required from an applicant CRA relating to Article 5.1 (a), (d), (e) and 5.4. The other information required from competent authorities for assessment against the criteria contained within Article 5 will be sourced by the relevant competent authorities directly.

1. General remarks applicable to the application process

251. As defined in Articles 14 and 15 of the Regulation, a credit rating agency shall apply for registration for the purposes of Article 2.1 provided that it is a legal person established in the Community. Article 5 sets out the application of the equivalence regime and certification based on equivalence.

252. In line with Article 21 of the Regulation this guidance sets out the information that competent authorities would expect to receive as part of an application for certification by a CRA and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5.

253. As part of any application for certification, CESR expects the applicant to provide detailed information and evidence as to how they demonstrate compliance with the applicable requirements of the Regulation. It is expected that an applicant can demonstrate that it is compliant with the Regulation at the point of application and thereafter on an ongoing basis. Should an applicant believe that additional information or explanation (not specifically stated herein) would be useful to competent authorities for the review of the application, such additional information or explanation should be submitted.

254. The information submitted to the competent authorities, as part of an application for certification under the terms of the Regulation, will only be used by competent authorities to discharge their responsibilities as defined in the Regulation and shall remain confidential.

255. This guidance sets out the information that competent authorities would expect to receive as part of an application for certification by a CRA. An applicant should provide a clear explanation for not submitting specific information contained herein. The applicant should also provide an explanation as to how it demonstrates compliance with the relevant requirements of the Regulation as set out in this guidance. The competent authority will consider these explanations and retain the ability to request further supporting material from the applicant on these points.

256. The application should be accompanied by a cover letter signed by a Senior representative of the applicant attesting that the information contained in the application is accurate and complete to the best of their knowledge.

257. After application, the applicant should notify the competent authority of any material change to the documentation submitted. A material change is any change that may affect the substance of the information submitted in the application. In any event all changes that may affect compliance with the requirements of the regulation are material.

258. Competent authorities retain the ability to ask for any information submitted as a result of this Guidance to be verified in a manner directed by them.

259. Within this Guidance and unless specified otherwise, the term 'rating analyst' should be read as encompassing the terms 'rating analyst' and 'lead rating analyst' of the Regulation.

260. The submission of the information contained within this Guidance does not preclude further information requests or onsite inspections by the competent authorities responsible for assessing the application. Competent authorities retain the ability to request an interview with any employee of the applicant (e.g. Senior Management, Compliance Officer, Rating Analysts etc.).

2. General guidelines on the information to be submitted

261. Within this Guidance, three types[8] of credit rating are being identified as consistent with CESR's Central Repository: corporate, public/sovereign and structured finance instruments. The corporate category should contain data and detail according to the following industry categories: financial institutions, insurance and corporate issuers. The corporate and public/sovereigns categories cover not only ratings of entities which fall herewith but also all rated securities or other instruments which represent obligations of theirs (or of their financing vehicles), save where these are structured instruments. The information set out in this guidance is designed to assist competent authorities to assess compliance with the certification requirements as set out in Article 5.1 (a), (d) and (e) of the Regulation.

262. Within this Guidance and where applicable, the number of employees should be provided on a headcount basis and information on ratings should be based on the current volume of ratings outstanding (the as of date should be provided).

263. In the event that the term ancillary services as described in the Regulation does not cover all the non-credit rating activities/businesses a CRA is performing, the CRA must indicate such other activities and provide relevant information as required in the case of ancillary services.

264. CESR has considered the full quantum of data which it believes competent authorities will need to make an effective determination of an application against the certification criteria. The required information is highlighted in the following paragraphs.

3. Information on domestic supervision of the CRA

265. This information is required for the competent authority to assess the applicant's compliance with the provisions concerning authorisation and supervision it is subject to in a third country (Article 5.1 (a) of the Regulation.

266. The applicant should submit the following information:

a. Indication by the applicant that the CRA established in the third country is authorised or registered and is subject to supervision in the relevant jurisdiction, together with the relevant part of the law and/or regulation in the third country which provides for the authorisation/registration and supervision.

b. Excerpt from the relevant commercial or court register, or other form of evidence of the place of incorporation and scope of business activity. The evidence shall be current as of the application date.

4. Information on systemic importance of the CRA

267. This information is required for the competent authority to assess the applicant's systemic importance to the financial stability or integrity of the financial markets of one or more Member States as set out in Article 5.1 (d) of the Regulation.

268. The applicant should submit the following information:

[8] For consistency with CESR's Central Repository the term 'type' is used instead of 'class' of credit rating.

a. Volume of outstanding ratings the applicant has issued including detail on:

Corporate ratings	Sovereign & Public finance ratings	Structured Finance ratings
Per industry sector	***Per segment***	***Per asset class***
1. Financial Institutions	1. Sovereign - foreign currency	1. ABS
2. Insurance	2. Sovereign - local currency	2. RMBS
3. Corporate	3. Sub-sovereigns/ municipalities	3. CMBS
	4. Supranational organisations	4. CDO
	5. Public entities	5. ABCP
		6. Other

5. General information

269. The information is required for competent authorities to conduct the registration process as set out in Article 5.1 (e).

270. The applicant should submit the following information:

a. Full name

b. Country of establishment outside the European Union.

c. Legal status including details of company registration such as excerpt from the relevant commercial or court register, or other form of evidence of the place of incorporation and scope of business activity. The evidence shall be current as of the application date.

d. Name, title and contact details (address, email and telephone) of the person(s) who will be the main point of contact for the competent authorities during the application process.

e. Where different, name, title and contact details (address, email and telephone) of the Chief Compliance Officer.

f. Where the applicant has one or several branches, an organisational chart of the CRA's group of branches (where applicable), including the full name, legal status and address of each branch.

6. Business activities

271. The information is required for competent authorities to conduct the registration process as set out in Article 5.1 (e).

272. The applicant should submit the following information:

a. Description of the type of business activities (rating and ancillary) conducted by the applicant and, where the applicant has one or several branches, the business conducted by each branch.

b. For the past three years, number of employees contracted to the applicant and involved in the rating and ancillary business (both permanent and temporary) and, where the applicant has one or several branches, the number of employees involved in the rating and ancillary business in each branch.

c. Number of rating analysts contracted to the applicant including, where the applicant has one or several branches, the number of rating analysts contracted in each branch.

d. Where the applicant is planning to establish a new branch, a description of the type of business activities this new entity is expected to conduct, its full name and address and the timeframe for its establishment.

e. Where the applicant is planning to conduct any new ancillary services, a description of the new activity and the timeframe for setting up this new activity.

f. Total revenue generated over the past three years by the applicant and, where the applicant has one or several branches the revenue generated by each branch, as a proportion of total revenue (presented on a fiscal year basis).

g. Where the applicant operates ancillary services, the revenue generated over the past three years by these services (non-rating business activity) as a proportion of total revenue (presented on a fiscal year basis).

7. Class/Type of credit ratings

273. The information is required for competent authorities to conduct the registration process as set out in Article 5.1 (e).

274. The applicant should submit the following information:

a. Type of credit ratings produced by the applicant according to the following classifications as defined in CESR's Central Repository: corporate, public/sovereign and structured finance instruments. The corporate category should contain detail according to the following industry categories: financial institutions, insurance and corporate issuers.

b. Rating nomenclatures used for each type of credit rating.

c. Definition of any rating action and statuses available to the applicant (e.g. negative watch).

d. Details of whether the applicant produces solicited or unsolicited ratings (or both).

e. For each type of credit ratings produced by the applicant, the number of years of experience the applicant has in producing these ratings.

f. For each type of credit ratings produced by the applicant, the proportion of public rating and private ratings.

8. Ownership structure

275. The information is required for competent authorities to conduct the registration process as set out in Article 5.1 (e).

276. The applicant should submit the following information:

a. Details of whether the applicant is publicly listed or privately owned.

b. Identity and brief description of business activity of each shareholder of the applicant that owns a stake greater than 10% of the applicant and the size of its stake/ownership.

c. Where relevant, the applicant should indicate whether it currently holds, or expects to apply for, ECAI status in any EU jurisdiction(s) and, if so, which jurisdiction(s).

9. Organisational structure

277. The information is required for competent authorities to conduct the registration process as set out in Article 5.1 (e).

278. The applicant should submit the following information:

a. Organisational chart detailing the organisational structure of the applicant including the clear identification of significant roles and the identity of the person responsible for each significant role. Significant roles should at least include Senior Management and senior rating analysts.

b. Where the applicant conducts non-rating business the organisational chart should also cover ancillary services and include detail on the separation of rating and non-rating businesses.

10. Financial Resources

279. The information is required for competent authorities to conduct the registration process as set out in Article 5.1 (e).

280. To the extent such information is available, the applicant should submit the following information:

a. Financial statements (on individual as well as consolidated basis, where applicable) for the past three years and projections, if available, for the next three years.

b. Relevant management information and reports

c. Auditor's report

d. Description of the measures in place to ensure sound accounting procedures.

11. Application for exemptions from certain requirements of the Regulation

281. The information is required for competent authorities to conduct the registration process as set out in Article 5.4 (a).

282. Where an applicant believes that some, or all, of the requirements set out in Section A of Annex I and Article 7.4 are not proportionate in view of the nature scale and complexity of its business and the nature and range of its issue of credit ratings, then the applicant should provide a detailed description of:

a. The relevant requirement of the Regulation from which it is requesting an exemption (including reference to the specific Article or clause in Section A of Annex I).

b. The reason why the applicant considers the requirement is not proportionate.