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FEEDBACK STATEMENT

**CESR's Guidance on the enforcement
practices and activities to be
conducted under Article 21.3(a) of the
Regulation**



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I. INTRODUCTION

Background

1. The EU Regulation of the European Parliament and Council on Credit Rating Agencies (CRAs) was published in the Official Journal¹ 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.
2. According to Article 21.3 (a) of the Regulation, CESR shall issue guidelines by 7 September 2010 on the enforcement practices and activities to be conducted by competent authorities under the Regulation.
3. As part of the process of producing its Guidance, CESR consulted publicly its proposals between 17 May 2010 and 18 June 2010. Non-confidential responses to the consultation have been published on CESR website <http://www.cesr-eu.org/index.php?page=responses&id=166>. Having considered the comments received, CESR has published its final Guidance on 30 August 2010.
4. This feedback statement discusses the main points which were made by respondents in the consultation process and explain the policy options which CESR decided upon. These policy options have been followed in its final Guidance (CESR/10-944).

II. GUIDANCE ON ENFORCEMENT PRACTICES

1. General remarks

5. Regarding point 7 of the Consultation Paper one respondent raised some doubts about the possibility for competent authorities to conduct onsite inspections or investigations themselves or through third parties (like audit companies). According to the respondent this language does not appear to be supported by any provision within the EU Regulation, which established in Article 23 that competent authorities must exercise their powers in conformity with national law.
6. *Having considered the feedback received, CESR has decided to amend paragraph 7 of the Guidance in order clarify that the extent to which the competent authorities can delegate their supervisory activities to third parties is a matter governed by national law.*

2. Scope of the guidance

7. With respect to the part of the Guidance -envisaged in point 12 and 13 of the Consultation Paper- that will not be made publicly available, some of the respondents argued that CESR should operate in a clear and transparent way, so all credit rating agencies supervised under the EU Regulation market have certainty as to the process that will be followed by regulators.
8. *CESR has analysed this concern and considers that the part of the Guidance covering investigations, supervisory measures and sanctions belongs to the internal organisation and procedural matters for supervisors.*

3. Enforcement practices as part of ongoing supervision

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0001:0031:EN:PDF>



Q1 - Do you agree with the approach outlined in section 3 of the Consultation? If not, please state your reasons.

9. One respondent suggested that the proposed level and frequency of operational and compliance data should be proportional to the size and complexity of the supervised CRA. CRA should be permitted to provide operational data on a quarterly basis and would advise its competent authority of any material changes in existing information and/or material new information on a timely basis. Similarly, compliance data could be provided every six months with interim updates and information on material matters.
10. Other respondents indicated that they considered disproportionate to require CRAs to file all of this data with the frequency envisaged in the Appendix of the Consultation Paper. They argue that the Guidance risks being excessively prescriptive and burdensome for both CRAs and supervisors. In particular, one respondent is concerned that the burden of a monthly reporting cycle could distract compliance personnel from their ongoing monitoring and other duties. It also appears to it that the Appendix would have the effect of imposing obligations upon CRAs that are not imposed by the EU Regulation itself.
11. Furthermore, one respondent highlighted that the provision on a monthly basis of operational data (especially regarding rating data), was excessive and proposed to align this requirement to those relating to the Central Repository of Ratings (which foresees a bi-annual submission of rating data). With reference to the information regarding 1 C (Financial revenues), their proposal is to provide this on a quarterly basis (which is the general practice in the financial industry or for companies listed on the stock exchange), smaller agencies should provide this information on an annual or bi-annual basis.
12. *Having considered the feedback received, CESR has decided to amend its proposal to provide further clarification (see paragraphs 18 and 19 of the Guidance).*

Regarding the proportionality in the level of information depending on the size and complexity of the supervised CRA, CESR considers that this is prescriptive as it forms the basis of ongoing supervision. However a specific CRA can still expect to be advised by supervisors of the necessary level of information it is expected to provide in the case where such requirement is too burdensome for that CRA.

CESR has also decided to amend the Guidance in terms of reporting frequency in order to reduce the burden of information requirements. With respect to the reporting of operational data, the guidance has been amended to a quarterly reporting for some items. In addition, the frequency for compliance data has been changed to semi-annual (see Appendix 1 of the Guidance).

4. Interaction between competent authorities and CRAs

Q2 - Do you agree with the approach outlined in section 4 of the Consultation? If not, please state your reasons.

13. All the respondents questioned the proportionality of the routine supervisory interaction. Respondents argued that a pattern of monthly meetings, in particular with the compliance officer, would be excessive and time consuming, not only for CRAs but also for supervisors considering the time needed to prepare each meeting so that they could be valuable.
14. One of the respondents argued that the guidance focuses 'heavily' on the interaction between each individual CRA and its home competent authority. There appeared to have been no consideration as to whether some of this interaction could take place at group level, with appropriate co-ordination by the different members of the college. Another respondent indicated that the guidance did not pay enough attention to the need to ensure that information requests are coordinated by the different regulators, so that duplication can be avoided.



15. *Having considered the feedback received, CESR has decided to amend its proposals in order to lower down the frequency of meetings and also clarify that, to the extent possible, meetings should be organised by competent authorities within the college in a coordinated manner (see paragraphs 25 and 28 of the Guidance).*

Appendix

Information requests and Interaction with CRAs

16. Regarding the content of the Appendix, one respondent expressed its concerns that CESR's approach was onerous and potentially inefficient. In particular: 1) the CEREP framework for historic ratings data and the new monthly reporting requirement for ratings data for supervisory purposes introduced a duplication which is not merited; 2) with respect to monthly financial data, it sees little supervisory benefit in a monthly reporting of a CRA's financial data given the different, non-trading and non-deposit/client money making role that CRAs have in the market ; 3) monthly compliance reporting coupled with monthly meetings with the compliance officers on a subsidiary by subsidiary basis was a heavy routine burden. It considered quarterly reporting should be enough for routine information.
17. Another respondent asked for clarification regarding the scope of point 1.c in the collection of periodic information and ad-hoc request of the Appendix of the Consultation Paper, more specifically, whether it concerns financial revenues and costs generated only by rating activities or all company's activities.
18. Moreover, one respondent suggested that, with respect to material changes concerning ratings data and methodologies, it is unnecessary to require that additional reports be generated by credit rating agencies. Instead, it would be more efficient for the competent authorities to simply access this information from the credit rating agency websites or via the same direct feeds that credit rating agencies provide to their subscriber base.
19. One respondent indicated that monthly reporting of data on staff turnover and promotion was not necessary given that staff promotions typically took place on an annual basis. It suggested to provide at most, semi-annual or annual numbers. Also, they expect to be able to provide this on a group basis.
20. Another comment received from the respondents noted that amendments to CRAs' internal rating process policy documents are made only infrequently and therefore it would suggest that any reporting relating to these internal documents be on an as-necessary basis.
21. Another respondent highlighted that their senior analytical management and support functions were organised on a regional, rather than a local, basis. As such, it hoped that group-wide meetings on a number of areas could be held in the college of supervisors in order to avoid unnecessary duplication and inefficiency. Where meetings are to be held in local offices, it requested to arrange them within the college work schedule, in order to allow appropriate staff to attend each meeting.
22. *Having considered the feedback received, CESR has decided to amend the Appendix of the Consultation Paper in terms of reporting frequency in order to reduce the burden of information requirements. With respect to the reporting of operational data, the Guidance has been amended for most items (including financial revenues) to a quarterly reporting, and compliance data to semi-annual (see Appendix 1 of the Guidance).*

Regarding the clarification of point 1.c in the collection of periodic information and ad-hoc request of the Appendix of the Consultation Paper, the Guidance has been amended to provide more clarity and consistency with Annex II. Financial revenues should be provided on an individual basis as well as on a consolidated and Group of CRAs basis, where applicable.

Staff turnover, vacancy levels & key promotions (such as to the role of committee Chair, senior management or Person approving ratings) will now be provided on a quarterly basis.



The Guidance has also been amended in order to clarify that CRAs should provide a summary of the internal reviews initiated or intended to be performed in the corresponding month.

Regarding the coordination of meetings within the college, as described above, the Guidance has been amended in order to clarify that, to the extent possible, meetings should be organised by competent authorities within the college in a coordinated manner (see paragraph 28).