



European Securities and  
Markets Authority

## **Consultation Paper**

**ESMA's Technical Advice to the Commission on Fees for CRA Supervision**



## **Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **27 April 2011**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Consultations'.

### **Publication of responses**

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

### **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Disclaimer'.

### **Who should read this paper**

Although all stakeholders are invited to comment on this consultation paper, it would primarily be of interest to Credit Rating Agencies which have been registered or certified or have applied for registration or certification under the Regulation 1060/2009/EC, as well as to any market participant which intends to apply for registration or certification under the Regulation 1060/2009/EC.



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Annex I: Summary of questions



## **Executive Summary**

### **Reasons for publication**

On 24 February 2011 ESMA received a formal request from the European Commission (the Commission) to provide technical advice to assist the Commission in formulating a Regulation on fees for Credit Rating Agencies (CRAs) by delegated act. The advice is due to be delivered to the Commission by 13 May 2011.

In order to deliver its advice to the Commission, ESMA has considered possible fee structures for CRAs registered in the EU and for CRAs seeking registration. In order to finalise the advice by the due deadline, ESMA considers it necessary to conduct a shortened consultation on these possible structures in order to deliver robust advice to the Commission.

ESMA recognises that the approach which the Commission adopts to fees may have material implications on the supervisory and administrative costs associated with registration. In order for ESMA to best consider the relevance of comments, please, indicate any material concerns over the impact of the advice being considered, including if you consider it may lead to unfair or disproportionate financial or administrative burden.

### **Contents**

This document sets out the possible options ESMA has considered for the fee structure for CRA supervision and registration in the EU and welcomes comments in order to assist in the finalisation of the advice.

For on-going supervisory fees, ESMA is considering for its advice a single periodic fee based on the turnover of the CRA relative to other CRAs registered in the EU.

For registration fees to be charged to applicant CRAs, ESMA is considering for its advice different registration assessment fee bands based on objective criteria for assessing the complexity of the application.

The amendments to the CRA Regulation 1060/2009/EC (the Regulation) agreed by the EU Parliament and the Council provide that supervisory fees must be proportionate to the turnover of the CRA. Therefore, ESMA has formulated an initial view on the appropriate method for considering the turnover of the CRA in fee calculations. This has also meant that ESMA is considering what advice to provide the Commission on the period and date of calculation of turnover and fees.

ESMA has also considered the need to raise fees for the supervisory tasks associated with the certification of third country CRAs.

### **Next steps**

ESMA will consider the feedback it received to this consultation and will provide by 13 May 2011 its advice on technical aspects of the future Regulation which will be adopted by the Commission in the form of a delegated act.

## **I. Introduction**

1. On 24 February 2011 ESMA received a formal request from the European Commission (the Commission) to provide technical advice to assist the Commission in formulating a Regulation on fees for CRAs by delegated act. The advice is due to be delivered to the Commission by 13 May 2011.
2. Given the time period established for providing its advice, ESMA is compelled to conduct a limited period consultation on options for the advice and request the responses to this consultation in a short timeframe.
3. ESMA is still in the process of defining the exact amounts of fees for its advice to the Commission. ESMA is assessing the cost of carrying out the different actions for which it is considering to propose charging certification, registration and minimum fees for the supervision of registered and certified CRAs. For its advice to the Commission, ESMA will as well consider the fees levied by the competent authorities of the home Member States currently responsible for the registration and supervision of the CRAs. The ranges of fees provided in this consultation have been calculated based on a preliminary assessment of the cost for ESMA to carry out the relevant actions (minimal supervision, certification, registration,...).

## **II. Supervisory Fees for EU registered CRAs**

4. ESMA has considered two basic methods of raising fees in order to prepare this consultation.
  - Periodic fees; and
  - Activity specific fees.

### ***Pros and cons of the methods***

5. The benefits of periodic fees are considered to be that they are simpler to calculate and implement than activity specific fees. They also create more budgeting certainty for CRAs than with activity specific fees. However, periodic fees may be more prone to leading to under or over-charging CRAs. They may also be less effective in reflecting the actual supervisory effort dedicated to a particular firm.
6. The advantages of having activity specific fees is that they may better aligned supervisory fees with the work conducted with respect to specific CRAs, allows for a quick reclamation of fees relating to tasks and could reduce the risk of under or over charging fees. However, this approach can reduce the ability of CRAs to plan for supervisory fees and reduce the simplicity and clarity of fee calculations.
7. The amendments to the CRA Regulation make clear that fees charged should be proportionate to the turnover of the CRA. Therefore, a key question ESMA has considered is how best to achieve this, particularly if activity specific fees are utilised.
8. ESMA has also considered whether a base or minimum fee should be charged to all registered CRAs irrespective of their turnover given there are likely to be certain fixed costs relating to the CRA irrespective of size.

### ***Periodic fees***

9. For its advice on supervisory fees, ESMA would favour the option of raising a periodic fee only.
10. Total resourcing budget for ESMA supervisory activities is established in the annual budget. The budget for CRA supervision would include flexibility for ad-hoc tasks, investigations and delegated activities. If this additional budget is not utilised it would be considered a surplus and need to be dealt with under the agreed approach to dealing with surpluses covered below.
11. Each CRA would be charged a percentage of the total budget which ESMA has allocated for CRA supervision. The percentage would be based on the ratio of the CRA's applicable turnover to the total applicable turnover of all registered CRAs. (i.e. if a CRA has a turnover of 2 million euros and the total turnover of all EU CRAs is 20 million euros then the CRA's fee would be 10% of ESMA's CRA supervision budget).

**Q1: Do you agree with ESMA's preferred option to raise a periodic supervisory fee? Do you agree with the proposed fee calculation method to ensure that the fee is proportionate to the turnover of the CRA?**

12. There would be a set minimum fee for all CRAs irrespective of their turnover.

### ***Pros and cons of setting a minimum fee***

13. Even if a CRA does not publish any revenue in a given year, ESMA will carry out periodic on-going supervisory tasks in respect to this CRA as long as it is registered. The minimum fee will be set to cover these periodic on-going supervisory tasks as to avoid other CRAs to pay for them. ESMA is considering advising that amount for the minimum supervisory fee is set at around 2,000 - 5,000 euros.

**Q2: Do you agree that the minimum supervisory fee is charged regardless of the annual turnover of the CRA? Do you agree that this fee amounts at least around 2,000 - 5,000 euros?**

### ***Turnover calculation***

14. Any method for raising fees requires a calculation based on the turnover of the CRA. Therefore, ESMA is considering how this could be calculated most fairly for the calculation of fees.
15. ESMA considers that the full turnover of the CRA should be utilised to allow calculations to be conducted using fully audited accounts. ESMA recognises that within global groups there might be some potential to channel turnover and will consider whether additional advice on this potential scenario is necessary.
16. The turnover for charging fees purposes would be determined by taking the figure for turnover/revenue from the most recent audited accounts of the CRA.
17. CRAs would be expected to avoid channelling funds for the purposes of reducing their revenues and thus, the supervisory fee to be paid to ESMA.

18. In the event that there are no audited accounts, if for example the CRA has not been active for an entire year at the time fees are calculated, then ESMA is considering two possible options for its advice:

Option 1: Minimum fee set

19. In the case of CRAs without audited accounts, the supervisory fee would be set at the minimum fee for the fee period.

***Pros and cons of the option 1***

20. Although this option is very straight forward, its disadvantages are that the amount of the supervisory fee would not be based on the turnover of the CRA and it would not necessarily correspond to the supervisory tasks carried out by ESMA in respect of that CRA.

Option 2: CRA requested to submitted interim accounts

21. In the case a CRA does not prepare a full set of audited accounts before the end of the calendar year, the CRA would be required to provide accounts audited on an interim basis to ESMA for the purposes of calculating the fee for the next year.

***Pros and cons of the option 2***

22. This option has the advantage that the amount of the fee would be proportionate to the turnover of the CRA during that concrete year. Furthermore, the audited accounts ensure harmonisation in the calculation of the turnover of all CRAs when calculating the ratio that will be applied to ESMA's budget so as to calculate the individual CRA fees. The disadvantage is that preparing the interim audited income statement rises the costs for CRAs.

**Q3: In case that audited revenues are not available, what should be the basis for calculation of the supervisory fees?**

### **III. Certified CRAs**

23. Although the level of supervisory work associated with certified CRAs is very limited in comparison with registered CRAs it is not negligible. Therefore, ESMA is considering providing advice to the Commission on possible fees relating to certification.
24. Given the certification of a CRA and ongoing interactions with third country regulators ESMA is currently considering providing the following advice to the Commission.
25. ESMA is considering for its advice a flat fee for processing an application for certification. The amount of the fee would correspond to the cost of the average resources ESMA expects to dedicate to processing the application for registration (around 2,000-15,000 euros).
26. ESMA is of the opinion that the turnover of the third country certified CRA is not relevant for the calculation of the certification fees. Therefore, ESMA would charge an annual flat fee based on the estimated cost of supervision of certified CRAs. This amount is expected to be set at level close to the minimum supervisory fee.

27. When a CRA is certified during the course of the year, this annual fee would be pro-rated and charged at the point of certification.

**Q4: Do you agree that a flat fee for certification applications is established? Do you agree that the fee amounts around 2,000-15,000 euros?**

**Q5: Do you agree that an annual flat supervisory fee for certified CRAs is established? If the CRA is certified during the course of the year, do you agree to charge this supervisory fee on a pro-rata basis? Do you agree that the fee is set at a level close to the amount of the minimum supervisory fee?**

#### **IV. Registration Fees**

28. ESMA has considered two potential options for registration fees:

- A flat fee for all new registrations; or
- Different bands of registration fees based on objective factors.

#### ***Pros and cons of the options***

29. The benefits of a flat registration fee are its clarity and simplicity. Set against this, more complex applications may be undercharged relative to the resource they take to process and less complex applications may be overcharged.

30. The benefits of a banded approach to registration fees are that they better associate the fee with the expected cost of the registration. However, given the lack of experience in processing applications it is highly likely that ESMA would not be in a position to provide very accurate figures for these bands to the Commission.

31. Consideration has also been given to what should be done if an application is withdrawn before the process is complete and whether there should be a reimbursement of any of the fee.

32. ESMA has also considered the appropriateness of levying a fee for supervision on the completion of the application process given that supervision of the firm will need to start at this time. Given that there would be no rating activity related turnover, ESMA has considered whether this should reflect the minimum fee for supervision on a pro-rated basis.

#### **Bands of registration fees**

33. For its advice to the Commission, ESMA currently favours the option of bands of registration fees since a single flat fee would not be proportionate for all applicants. As the turnover of the applicants cannot be used as the basis of calculation, the registration fee bands should somehow reflect the foreseen turnover of the applicant.

34. Applicants would be charged a fee based on the complexity of the application. In case that a group of CRAs applies, the registration fees will be charged to individual applicants. The band in which an application is placed would be determined by the following criteria:



- Band A: for applicant CRA not issuing ratings for structured finance instruments, with no branches nor plans to endorse ratings
  - Band B: for applicant CRA issuing ratings for structured finance instruments or having branches or planning to endorse ratings (one of the three criteria)
  - Band C: for applicant CRAs with branches, issuing structured finance ratings and endorsing ratings (at least two of the three criteria)
35. The fees associated with the bands above would range as follows:
- Band A: 2,000 – 30,000 euros
  - Band B: 10,000 – 100,000 euros
  - Band C: 30,000 – 150,000 euros
36. The above ranges should not be interpreted as ESMA's proposal to have the discretion to define the exact amount of fees within the bands. At this stage, ESMA is still in the process of defining exact fees within each band for its advice to the Commission. For this purpose, ESMA is considering other objective criteria to impose proportionate fees, such as the number of employees, to discriminate the fees within the bands for applicants of different size (as a proxy for their expected turnover).
- Q6: Do you agree with the criteria ESMA is considering for establishing the fee bands (i.e. type of credit ratings (structured finance instruments), existence of branches and use of endorsement)? Do you agree with the criteria ESMA is considering to establish the exact fee amounts within the bands (i.e. number of employees)?**
37. If the application is withdrawn before the completeness check had been completed, the CRAs would be granted a reimbursement of  $\frac{3}{4}$  of the initial fee. If the application is withdrawn after this point, they would be granted a reimbursement of  $\frac{1}{4}$  of the initial fee. The reimbursement proportions which ESMA is considering to propose are based on the experience of the competent authorities of the home Member States which are dealing with the registration applications.
- Q7: Do you agree that the registration fee is partly reimbursed in case of withdrawal of the application? Do you agree with the reimbursement proportions which ESMA is considering for its advice?**
38. Once registered, the CRA would be charged a supervisory fee based on the minimum fee charged to registered CRAs and the remaining time in the ESMA budget period.

## **V. Management of surpluses/deficits in ESMA CRA supervision budget**

39. ESMA is currently in discussions regarding the appropriate treatment of budgeting surpluses or deficits with the relevant EU bodies. ESMA is, therefore, not in a position to consult on this issue or whether it will provide advice on how surpluses and deficits should be managed.

## **VI. Calculation Period and Collection of Fees**

40. ESMA operates on a budgeting year from January to December. ESMA will propose in its advice that the fee period is based on this period. The ESMA budget is only approved at the end of the year by the Parliament and Council. Therefore, the calculation of fees will need to wait for this process to be finalised. As a consequence, the calculation of fees will need to occur on the 1 January based on the budget approved for the year.
41. ESMA is considering whether to provide advice on the Commission on the timing of fee requests to CRAs. For example, ESMA is considering if it is better to have one fee collection at the start of the year of two or more fee collections throughout the year. This would not alter the basis of the calculation of fee. It would only impact how and when the fee was due to be paid.
42. ESMA is considering two options for fee payment for its advice to the Commission.

### Option 1: One payment due by 31 March

43. The total fee would be calculated in early January and sent to the CRA with full payment expected by 31 March each year.

### Option 2: Two payments by 31 March and 30 September

44. The total fee would be calculated in early January. A first payment of 2/3 of the total fee would be due by 31 March with the remainder due by 30 September.

### ***Pros and cons of the options***

45. Option 2 has the advantage of permitting the CRAs to split their annual payment over two instalments which may assist the financial management of the fee.

**Q8: Would you be in favour that the supervisory fees are paid in one single payment per year (option 1) or in two payments per year (option 2)? Would you agree with the proposed dates?**

## **VII. 2011 Fees**

46. ESMA will provide advice to the Commission on raising fees for the 1 July 2011 to end 2011 period as requested.
47. ESMA is currently discussing the budgetary implications of collecting these fees and therefore will not be consulting on this issue.

## **VIII. 2012 Fees**

48. ESMA will provide advice on the calculation and collection of fees for 2012.
49. The budget for ESMA CRA supervision has been proposed at 3 million Euros for this period. Therefore, ESMA is intending to recommend that the fees to cover this amount are based on a simple cal-



ulation using the relative turnover of registered CRAs in the last set of audited accounts as of 31 December 2011 compared to the total turnover of all registered CRAs.

50. The advice will also include a recommendation for the timing of payment of these fees. ESMA is currently considering advising that this would follow the same approach as for other years (i.e. one payment by 31 March 2012 or two payments, one by 31 March and one by 30 September).

## **Annex I**

### **Summary of questions**

- Q1: Do you agree with ESMA's preferred option to raise a periodic supervisory fee? Do you agree with the proposed fee calculation method to ensure that the fee is proportionate to the turnover of the CRA?**
- Q2: Do you agree that the minimum supervisory fee is charged regardless of the annual turnover of the CRA? Do you agree that this fee amounts at least around 2,000 - 5,000 euros?**
- Q3: In case that audited revenues are not available, what should be the basis for calculation of the supervisory fees?**
- Q4: Do you agree that a flat fee for certification applications is established? Do you agree that the fee amounts around 2,000-15,000 euros?**
- Q5: Do you agree that an annual flat supervisory fee for certified CRAs is established? If the CRA is certified during the course of the year, do you agree to charge this supervisory fee on a pro-rata basis? Do you agree that the fee is set at a level close to the amount of the minimum supervisory fee?**
- Q6: Do you agree with the criteria ESMA is considering for establishing the fee bands (i.e. type of credit ratings (structured finance instruments), existence of branches and use of endorsement)? Do you agree with the criteria ESMA is considering to establish the exact fee amounts within the bands (i.e. number of employees)?**
- Q7: Do you agree that the registration fee is partly reimbursed in case of withdrawal of the application? Do you agree with the reimbursement proportions which ESMA is considering for its advice?**
- Q8: Would you be in favour that the supervisory fees are paid in one single payment per year (option 1) or in two payments per year (option 2)? Would you agree with the proposed dates?**