

## Feedback document to CP 37

### Introduction

1. On 11 March 2010, the Committee of European Banking Supervisors (CEBS) submitted the review of its *Guidelines on the recognition of External Credit Institutions* (ECAIs) of 20 January 2006 for public consultation.<sup>1</sup>
2. The consultation period ended on 9 April 2010.<sup>2</sup> Three responses were received; two of which are published on the CEBS website.<sup>3</sup>
3. This paper presents a summary of the key points arising from the consultation and CEBS's response.

### General comments

4. One respondent supports steps towards harmonisation and the promotion of a level playing field and is comfortable with CEBS's proposals.
5. The other two respondents support the review undertaken by CEBS, but present some specific comments, which are discussed in the following section.
6. One of these respondents strongly supports the view that credit rating agencies (CRAs), registered in accordance with the *Regulation on CRAs*<sup>4</sup>, should be exempted from providing the necessary information for the assessment of the 'Methodology' technical criteria. The same respondent also supports the view that for a registered CRA, the fulfilment of the criterion on transparency and disclosure of individual credit assessments can be assumed by the competent authority.

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<sup>1</sup> CP37 is published under: <http://www.c-eps.org/Publications/Consultation-Papers/All-consultations/CP31-CP40/CP37.aspx>

<sup>2</sup> In accordance with CEBS's *Public Statement of Consultation Practices* ([http://www.c-eps.org/getdoc/eed60d2e-5caf-494f-9422-2467ba1e4bbb/20080805\\_CP01rev.aspx](http://www.c-eps.org/getdoc/eed60d2e-5caf-494f-9422-2467ba1e4bbb/20080805_CP01rev.aspx)), the public consultation period is reduced to one month, given that the guidelines have been previously submitted to a full consultation period and are only subject to limited amendments.

<sup>3</sup> The public responses to CP37 are published under: <http://www.c-eps.org/Publications/Consultation-Papers/All-consultations/CP31-CP40/CP37/Responses-to-CP37.aspx>

<sup>4</sup> The Regulation (EC) No. 1060/2009 on Credit Rating Agencies is published under: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0001:0031:EN:PDF>

## Specific comments and CEBS's response

7. One respondent commented on the revised 'Market Credibility and Acceptance' criterion and, in particular, on the requirement for 5 years of minimum experience in each market segment in which the CRA is applying for ECAI status. This respondent recommends that the assessment of 'quality, consistency and robustness' of ratings should privilege qualitative criteria rather than the minimum experience threshold. In the opinion of the respondent, this provision might constitute a market entry barrier for new players. In addition, the respondent believes this provision leaves room for interpretation or might lead to undesired effects (e.g. a new CRA which results from a merger or spin-off might easily demonstrate longer experience than actual 'active period' as a stand-alone entity).

### **CEBS's response:**

CEBS has considered the arguments presented by the respondent. However, based on the experience of its members, it is of the view that the technical criteria on "Credibility and Market Acceptance" for assessing whether the market has a favourable opinion of the ECAI's methodology and credit assessments, should be reinforced by introducing a requirement related to a CRA's experience.

CEBS regards it as necessary that CRAs be able to demonstrate that they have sufficient experience in providing ratings for a given market segment. The requirement that a CRA must have at least five years experience in the market segment for which it applies for ECAI recognition should give some level of comfort to competent authorities when they allow institutions to use these ratings for the purpose of calculating regulatory capital requirements.

Requiring a minimum experience of five years should also improve the quantity and quality of data that will be available for the mapping of the ratings of a given ECAI. CEBS notes that based on the experience gained with smaller rating agencies, even for ECAIs which have been active for more than five years, the number of published ratings (and especially the number of observed defaults) can still be very limited.

In any case, the revised guidelines also acknowledge that less than five years experience may be deemed adequate in cases where the CRA can provide a sufficiently broad data basis that enables market participants to assess the credibility and reliability of the CRA's assessments.

8. Another respondent asks for more clarity on the possibility of an entity being recognised as an ECAI without being a registered CRA. The respondent expresses the opinion that it should be possible for a company (other than an Export Credit Agency or a Central Bank) to become an ECAI without being a registered CRA. The respondent adds that the operational requirements for CRA registration do not fit with the market practice for unsolicited ratings.
9. In addition, this respondent asks for more clarity on whether companies, which are excluded from the application of the *Regulation on CRAs* because they issue ratings based solely on a quantitative system (credit scoring), would still be eligible for ECAI recognition.

**CEBS's response:**

CEBS has been discussing the issue raised by this respondent and has consulted on draft advice to the European Commission on the non-eligibility of entities only producing credit scores for ECAI recognition (CP43<sup>5</sup>). CEBS is currently reviewing its draft advice taking into account the feedback received in the public consultation.<sup>6</sup>

CP43 presented CEBS's proposal to advise the European Commission to amend Directive 2006/48/EC to allow for the introduction of a requirement that an ECAI has to be registered in accordance with the *Regulation on CRAs* as a precondition for its being recognised as an eligible ECAI for capital requirement purposes; the only possible exception being Central Banks. This amendment would lead to the non-eligibility of entities producing only credit scores for ECAI recognition, given that these entities are excluded from the scope of the *Regulation on CRAs*.

CEBS acknowledges that cases might exist where the registered CRAs produce both credit ratings that fall within the scope of the *Regulation on CRAs* and credit scores, which are out-of-scope of the Regulation. It is CEBS's view that, in these cases, the registered CRA can apply for ECAI recognition, but the use of its assessments for supervisory purposes is limited to the credit ratings which fall within the scope of the Regulation.

10. The same respondent is of the view that an ECAI should be allowed to apply for recognition to provide both solicited and unsolicited ratings for counterparties belonging to the same broad market segment ('commercial entities'), but completely different in terms of business / juridical form (e.g. banks vs. corporate) so that there is no ambiguity as to which ratings approach to use for a counterparty and no possibility for the same counterparty to change its segment.

**CEBS's response:**

Article 83(2) of Directive 2006/48/EC states that "*Credit institutions shall use solicited credit assessments. However, with the permission of the relevant competent authority, they may use unsolicited assessments.*"

It is CEBS's understanding that is up to the competent authority to authorise (or not) the use of unsolicited credit assessments for capital requirements' purposes.

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<sup>5</sup> CP43 is published under: <http://www.c-eps.org/Publications/Consultation-Papers/All-consultations/CP41-CP50/CP43.aspx>

<sup>6</sup> The consultation period closed on 13 November 2010 and four responses have been received; all of which are published on CEBS website: <http://www.c-eps.org/Publications/Consultation-Papers/All-consultations/CP41-CP50/CP43/Responses-to-CP43.aspx>