

11 March 2010

Explanatory note on the review of CEBS's guidelines on the recognition of External Credit Assessment Institutions (GL07)

Introduction

1. To ensure consistency between Regulation (EC) No 1060/2009 on Credit Rating Agencies (CRAs) of 16 September 2009¹ and the Capital Requirements Directive (CRD)², Articles 81(2) and 97(2) of Directive 2006/48/EC have been amended³ to include the following additional sentence:

'Where an ECAI is registered as a credit rating agency in accordance with Regulation (EC) No 1060/2009 of 16 September 2009 of the European Parliament and of the Council on credit rating agencies, the competent authorities shall consider the requirements of objectivity, independence, ongoing review and transparency with respect to its assessment methodology to be satisfied.'

2. In addition, Recital 23⁴ of the amending Directive invites CEBS to review its Guidelines on the Recognition of External Credit Assessment Institutions (ECAIs) of 20 January 2006⁵ in order to avoid duplication of work and reduce the burden of the recognition process where an ECAI is registered as a CRA at Community level.
3. **In this context, CEBS publishes today its revised Guidelines on the Recognition of ECAIs for a public consultation running until 09 April 2010. Please note that comments are sought only in respect of the amendments to the guidelines, as highlighted in this note.** Comments received will be published on CEBS's website unless respondents request otherwise. Responses should be sent to the following email address: cp37@c-eps.org.

¹ The Regulation on credit rating agencies is published under: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0001:0031:EN:PDF>

² Capital Requirements Directive is a technical expression which comprises Directive 2006/48/EC and Directive 2006/49/EC.

³ The amending Directive – Directive 2009/111/EC of the European Parliament and of the Council 16 September 2009 is published under: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0097:0119:EN:PDF>

⁴ Quote from the amending Directive: '(23) The provisions related to external credit assessment institutions (ECAIs) under Directive 2006/48/EC should be consistent with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies. In particular, the Committee of European Banking Supervisors should review its guidelines on the recognition of ECAIs to avoid duplication of work and reduce the burden of the recognition process where an ECAI is registered as a credit rating agency (CRA) at Community level.'

⁵ The CEBS guidelines are published under: <http://www.c-eps.org/getdoc/0da3a72b-d3dc-4214-b691-bbf5fdd4af55/GL07.aspx>

Overview of the amendments

4. This section provides an overview of the proposed amendments to the Guidelines on the Recognition of ECAIs of 20 January 2006, as well as the reasoning supporting these changes.

a) Part 1: Application of the guidelines

5. In line with the amended Articles 81(2) and 97(2) of Directive 2006/48/EC, for CRAs which are registered under the Regulation on CRAs the only criteria that should be assessed in the ECAIs' initial recognition process and on-going review are the technical criteria on 'Credibility and Market Acceptance' and 'Transparency and Disclosure' with respect to their individual credit assessments. The remaining technical criteria are assessed during the registration process under the Regulation on CRAs and are considered to be satisfied for the purposes of the ECAIs' recognition process.
6. For those entities which produce credit ratings which do not fall under the Regulation on CRAs, in accordance with its Article 2 Paragraph 2, the entire set of Guidelines applies.

b) Part 2: Common understanding of the ECAI recognition criteria laid down in the CRD

7. CEBS members now have enough experience with the application of the Guidelines to allow for a review of the common understanding of the technical criteria set out in Part 2 of Annex VI of Directive 2006/48/EC. Therefore CEBS has taken this opportunity to propose some amendments and clarifications to its understanding of the requirements on 'Credibility and Market Acceptance' and 'Transparency and Disclosure' with respect to the individual credit assessments.
8. It has also clarified that fulfilment of the 'Credibility and Market Acceptance' criterion is required for each of the market segments⁶ in which the CRA is seeking recognition.
9. Furthermore, in order to ensure that the ratings institutions use for prudential purposes are issued by ECAIs which have sufficient experience of issuing ratings, CEBS believes that generally a rating agency must have at least five years of experience in a given market segment in order to become eligible for ECAI recognition. However, less than five years of experience may exceptionally be deemed adequate in cases where the rating agency can provide a sufficiently broad database that enables market participants to assess the credibility and reliability of the rating agency's assessments.
10. The substance of the 'Transparency and Disclosure' criterion has been kept unchanged. However, CEBS has noted that fulfilment of this criterion by the CRAs registered under the Regulation on CRAs can be assumed by the competent authorities, based on the assessment which has been conducted in the context of their registration under the Regulation on CRAs.

⁶ Para 28 of the revised guidelines requires a separate recognition for each of three main market segments: public finance, commercial entities (including corporates and financial companies), and structured finance (including securitisation).