

CNMV's response to the Consultation of the European Commission's services on credit rating agencies

5 September 2008

The CNMV is providing in this paper its views in relation to the consultation on a draft Directive / Regulation with respect to the authorisation, operation and supervision of credit rating agencies (CRAs) undertaken by the European Commission.

I. CNMV's support to CESR's response

The CNMV, as member of CESR, has participated in the preparation and supports the response that CESR will be submitting. In particular, the CNMV considers that the General Comments included at the beginning of the paper need to be highlighted.

II. CNMV's views in relation to the options on the authorisation process and the supervisory architecture

A) Preferred option: Community Agency for credit rating agencies with full authorisation and supervision powers.

Regarding the options put forward by CESR's response, the CNMV would like to elaborate in this paper on its preferred alternative which is the setting up of a Community Agency.

Option 2 in the Commission's paper envisages the creation of a Community Agency but only to perform the role of authorisation. The CNMV considers that the role of such Community Agency should encompass also the supervision of the registered CRAs.

As securities market supervisors in Member States do not currently have competences over CRAs, the CNMV considers that this is the perfect opportunity to create from the depart a clear unified system for the authorisation and supervision of CRAs in the EU, avoiding the complicated and costly processes derived from the host-home systems.

Given the political willingness to provide a strong EU political response in relation to CRAs in the context of the current financial crisis, the EU has to come forward with an effective and easily understandable framework to supervise the activity of the CRAs. The setting of a Community Agency for credit rating agencies with full authorisation and supervision powers is in the CNMV's view the best way to achieve this objective.

Under this option, the CNMV considers that, while respecting the EU legal framework for the Community Agencies, it would be desirable that CESR (or even the 3L3 Committees depending on the scope of the Agencies powers) plays an active role in the activities on the agency (for example by being responsible for its governance and oversight of its procedures and/or being member of the board, or having the ability to appoint members of the board).

The main reasons why the CNMV considers this option should at least be further explored are the following:

- The global nature of the CRAs activities and the small number of players are arguments that favour a single approach for the whole EU.
- It would be difficult to set objective criteria to assign the supervision of the global business of the CRAs to just one competent authority. The business of the CRAs affects issuers and investors from all EU markets and the negative consequences of the CRAs wrongdoings are not limited to the home Member State but have a clear consequences in all the other EU countries (or even only in a country that is not the home).
- A unified approach can be more easily achieved by the creation of an agency that would undertake all the responsibilities in the area of CRAs.
- An EU Agency might be more sensitive to the different EU countries concerns than any option relaying mainly in a home competent authority supervision.
- The creation of a community agency would most probably be more efficient (as decisions will be taken by an executive organisation) and would facilitate the technical work as it would have professional personnel with expertise in the field. This will enable shorter and more straight-forward processes, therefore ensuring the necessary responsiveness to market changing conditions.
- This supervisory structure with a single agency will set clear responsibilities (and potential liabilities) that will fall on the agency.
- The community agency system will create a “one-stop shop” in the EU.
- It would facilitate the coordination at international level as the agency would talk as one EU voice in the area of CRAs in international fora.

B) Second best alternative: the cooperative approach.

Regarding the other 2 main options outlined in CESR’s response, the CNMV second best alternative, as reflected in CESR’s paper, is the “cooperative approach”. This option, in the CNMV’s view, has the merit over the home approach of involving all the competent authorities affected by the CRAs business.