EUROPEAN BANKING AUTHORITY

Decision of the European Banking Authority confirming that the unsolicited credit assessments of certain ECAIs do not differ in quality from their solicited credit assessments

(2016/C 266/05)

THE BOARD OF SUPERVISORS OF THE EUROPEAN BANKING AUTHORITY,

Having regard to Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ([1]) (the 'Regulation' and 'the EBA'),

Having regard to Article 138 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([2]) (the 'CRR'),

Whereas:

(1) Article 138 CRR permits the use of unsolicited credit assessments of an External Credit Assessment Institution ('ECAI') for the determination of risk weights to be assigned to assets and off-balance sheet items for the purpose of the calculation of own funds requirements, subject to confirmation by the EBA that unsolicited credit assessments of that ECAI do not differ in quality from the solicited credit assessments of that same ECAI. In accordance with the same Article, the EBA is required to refuse or revoke this confirmation in particular if the ECAI has used an unsolicited credit assessment to put pressure on the rated entity to place an order for a credit assessment or other services.

(2) In accordance with point (98) of Article 4(1) CRR, 'ECAI' refers to a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council ([3]) (the 'CRA Regulation') or a central bank issuing credit ratings which are exempt from the application of the CRA Regulation. As a result, this Decision should cover the ratings of all those ECAIs, with the exception of those which, at this stage, do not assign unsolicited ratings. Further, given the interlinkages with the mapping of an ECAI's credit assessments under Article 136(1) CRR, this Decision should cover ratings of all those ECAIs for which a mapping has been assigned. The Decision should also cover those ECAIs which only provide unsolicited ratings with a view to taking into account the considerations referred to in recital 98 of the CRR, which relate to opening the market to other undertakings, while at the same time maintaining rigorous processes and requirements for all ECAIs.

(3) Article 4(1) of the CRA Regulation allows the use of the credit assessments for the determination of the risk-weighted exposure amounts as specified in Article 113(1) CRR as long as they meet the definition of 'credit rating' of Article 3(1)(a) CRA Regulation. Therefore, only those unsolicited credit ratings which comply with the definition of credit rating under both the CRR and the CRA Regulation should be covered by this Decision.

(4) In line with the methodology employed for the mapping of ECAIs' credit assessments to credit quality steps ([4]), both quantitative and qualitative criteria and factors should be used in the assessment contained in this Decision.

([1]) OJ L 331, 15.12.2010, p. 12.
([2]) OJ L 176, 27.6.2013, p. 1.
([3]) Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).
([4]) Final draft ITS on the mapping of ECAIs' credit assessments under Article 136 CRR and available at http://www.eba.europa.eu/regulation-and-policy/external-credit-assessment-institutions-ecai/draft-implementing-technical-standards-on-the-mapping-of-ecais-credit-assessments

Given that, by virtue of Article 11 CRA Regulation, credit rating agencies are required to submit data concerning their credit ratings to CEREP, a central repository managed and supervised by ESMA, it is appropriate to use the information available in the CEREP database as the only basis for the quantitative analysis, as it ensures common treatment and reliability of the information processed. Nevertheless, for those ECAIs not covered by the CRA Regulation, which do not submit data to CEREP, external data should be used with regard to the quantitative assessment of the unsolicited ratings of those ECAIs. With regard to the data to support the qualitative analysis, it is necessary to request such relevant information from all relevant ECAIs considered under this Decision.

(5) ECAIs have been classifying unsolicited credit ratings according to different definitions. This is reflected in the submission of information by ECAIs both to the EBA and to ESMA's CEREP database. In response to these divergences in practices across ECAIs, ESMA issued a 'Q&A' ([1]) on the definition of unsolicited rating, setting out its views on it, which, for consistency, should also be employed for the purposes of the assessment exercise under Article 138 CRR. Nevertheless, as the assessment exercise started earlier in time than, and was one of the triggers for the Q&A, it is appropriate for the purposes of this Decision, to assess the ratings considering their classification as assigned by each ECAI before the publication of the Q&A (i.e. 16 December 2015), as this would allow to consider the historical information on unsolicited ratings, and to use the only available quantitative data for such ratings, as provided in the CEREP database. In addition this would help avoid an overly delay of the entry into force of this Decision, especially in view of the impact the Q&A has on how ECAIs classify their unsolicited ratings, their policies, and how those ratings are used by institutions for regulatory purposes. Nevertheless, based on updates by ESMA regarding progress with adoption by ECAIs of the definition of unsolicited rating as further specified in the Q&A, the EBA will assess whether further action should be taken in the context of this Decision.

(6) With regard to the quantitative assessment, selected analyses should be performed for each ECAI where a sufficient number of items is available: '*ex-ante* distribution', aimed at analysing the distributions of solicited and unsolicited ratings; '*ex-ante* dynamics', aimed at analysing the time evolution of solicited (unsolicited) ratings that were previously assigned on an unsolicited (solicited) basis; and '*ex-post* analysis', aimed at analysing possible differences in accuracy between solicited and unsolicited ratings. Depending on the quantitative analysis to be performed, it may be appropriate to identify homogeneous subgroups of credit ratings in order to allow a comparison of the relative characteristics and behaviour of solicited versus unsolicited credit ratings in a way that would avoid conclusions driven by external factors. In cases where only selected quantitative analyses or no quantitative analysis can be performed due to scarcity of data, it is appropriate, at this stage, to still rely on the qualitative criteria for the purposes of the assessment. In these cases any further prudential concerns regarding the quality of unsolicited ratings are expected to be mitigated in the course of performing the mapping required under Article 136(1) CRR, as that mapping is designed to reflect possible quality issues of the ratings.

(7) With regard to the qualitative analysis, and with a view to understanding whether the ECAI produces unsolicited ratings that are of the same quality as its solicited ratings, it is appropriate to consider the following set of criteria and factors: differences in the policies regarding the assignment and review of solicited and unsolicited ratings; differences in the rating methodologies for solicited and unsolicited ratings; the data availability for unsolicited ratings including the most common restrictions of information faced during the assignment of unsolicited ratings, as well as actions undertaken by the ECAI in case of limited data availability. In addition it should be considered whether the ECAI employs measures to avoid that unsolicited credit ratings are used to put pressure on the rated entity to place an order for a credit assessment or other services.

(8) In accordance with the first paragraph of Article 138 CRR, where the EBA has not identified any evidence, either proving a difference in the quality between an ECAI's solicited and unsolicited credit assessments, or that the ECAI has used an unsolicited credit assessment to put pressure on the rated entity to place an order for a credit assessment or other services, the unsolicited credit assessments of that ECAI should not be prevented from being used for capital calculation purposes by institutions at this stage. Following the continuous monitoring of the performance of unsolicited ratings further Decisions should be issued, as appropriate.

([1]) https://www.esma.europa.eu/file/13634/download?token=05de9eN_

(9) In the course of applying the methodology described above, the EBA has not identified any evidence of a difference in the quality of those ECAIs' solicited and unsolicited ratings or of any pressure exerted on rated entities to place an order for a credit assessment or other services. It is therefore appropriate to confirm that the quality of those ECAIs' unsolicited credit assessments does not differ from their solicited credit assessments.

(10) The ECAIs concerned have been informed of the EBA's intention to adopt this decision and be given an opportunity to express their views on it,

HAS DECIDED AS FOLLOWS:

Article 1

For the purposes of Article 138 of Regulation (EU) No 575/2013, the EBA confirms that the quality of the unsolicited credit assessments of the ECAIs set out in the Annex does not differ from the quality of the solicited credit assessments of those ECAIs.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at London, 17 May 2016.

Andrea ENRIA

Chairperson

For the Board of Supervisors

ANNEX

External Credit Assessment Institutions (ECAIs) the unsolicited credit assessments of which the EBA has confirmed do not differ in quality from their solicited credit assessments for the purposes of Article 138 of Regulation (EU) No 575/2013

ARC Ratings S.A.

Axesor SA

Banque de France

BCRA – Credit Rating Agency AD

Capital Intelligence Ltd

Cerved Rating Agency S.p.A.

CRIF S.p.A.

DBRS Ratings Limited

Euler Hermes Rating GmbH

European Rating Agency, a.s.

EuroRating Sp. z o.o.

FERI EuroRating Services AG

Fitch Ratings

GBB-Rating Gesellschaft fuer Bonitaets-beurteilung GmbH

ICAP Group SA

Japan Credit Rating Agency Ltd

Kroll Bond Rating Agency

Moody's Investors Service

Scope Ratings AG

Spread Research

Standard & Poor's Ratings Services

The Economist Intelligence Unit Ltd