Date: September 11th, 2023

EACRA response to ESAs consultation on Draft Regulatory Technical Standards to further harmonise ICT risk management tools, methods, processes and policies as mandated under Articles 15 and 16 (3) of Regulation (EU) 2022/ 2554

Dear ESAs,

With reference to your consultation paper JC 2023/39 dated June 13th, 2023, we are pleased to hereby submit the views of our association representing small to medium-sized credit rating agencies ("CRAs") registered with ESMA. In parallel to the above consultation, you are also consulting on 2 additional draft RTSs and one draft ITS as requested by the DORA Regulation 2022/2554. These additional consultation papers are highly technical in nature, we therefore make only short reference to these in this response.

According to the DORA Regulation 2022/2554 Article 2 (1) (q), credit rating agencies fall under the scope of DORA and should be considered as "financial entity" based on Article 2 (2).

The DORA Regulation defines in Articles 5 to 15 extensive requirements with regard to ICT risk management for financial entities. Article 16 of DORA provides for a simplified ICT risk management framework for a small group of small and non-interconnected financial entities. We regret that this Level 1 legislation does not specifically include small to medium sized CRAs. At the same time, we note that Article 4 of DORA includes the proportionality principle. That article mentions the following criteria to consider proportionality: size, overall risk profile, the nature, scale and complexity of the services, activities and operations. We allow ourselves to hereby provide a view on how these criteria could be applied to credit rating agencies. Additionally, we provide in an additional section some examples on how burdensome the application of these RTSs and ITS could be for small to medium CRAs.

As you are well aware of, whereas 24 agencies are currently registered with ESMA, the credit rating market in Europe continues to be dominated by 3 American rating agencies despite the political will of CRA III to foster competition in this market.

In terms of **size**, appropriate indictors could be the revenue level or the number of employees. Small agencies have currently a turnover in rating activities of around EUR 3 to 5 million, medium sized agencies reaching around EUR 15 million. In contrast, the dominant agencies have turnovers in the EU between EUR 180 to EUR 500 million. In terms of employees, small agencies have between 10 to 40 employees in the rating business, medium agencies around 120. In contrast, the dominant agencies have more than 1000 employees on a global basis.

With respect to the **nature, scale and complexity of the services, activities and operations**, a clear difference between the small to medium sized agencies on the one hand and the dominant agencies on the other hand exist. Small to medium sized agencies usually operate in a small number of market segments and geographies. Their services are usually focused on credit ratings with a very limited number of ancillary services or other products. Their operations, given the number of employees, are usually streamlined and easy to overview. In contrast, the dominant agencies have complex organisational structures across jurisdictions globally, provide rating services across all market segments globally and additionally provide a high number of additional services and products.

The **overall risk profile** of credit rating agencies is a consequence of the above considerations. Rating actions by the dominant agencies can impact on financial markets as evidenced by the European sovereign debt crisis period. Additionally, the dominant agencies are frequently nominated as External Credit Assessments Institutions by banks, investment firms and insurance companies – rating actions by these dominant agencies therefore impact on the capital requirements of these institutions. In contrast, small to medium sized agencies have yet a limited rating coverage and therefore do not impact on capital requirements of financial institutions.

All the above considerations can be summarized in one important criterion: the systemic importance of a credit rating agency to the functioning and stability of financial markets in a Member State or on the EU as a whole. It is clear that the dominant agencies are of systemic importance whereas this is not the case for smaller to medium agencies.

We would like to provide a few examples where even the basic application of these standards burdens small and medium CRAs disproportionately with the information it provides the regulators.

Most importantly, the **ITS on templates composing the register of information** in relation to all contractual arrangements requires the company to implement and maintain a complex register of information both at EU financial entity level (and at group level), to be reported to the ESAs in the shape of 10 + 14 templates containing an extensive range of information. Even leaving aside the IT development necessary and organizational changes internally, the templates themselves are extremely complicated, the differentiation between what is considered consolidated and sub-consolidated is not defined clear enough and the amount of possibly confidential data to be sent outside the organization through this reporting exercise is not proportionate to the size of some CRAs. Additionally, given that mostly non-European providers are used, we doubt that this high amount of information will ultimately feed into the list of top-critical ICT providers in the EU that the ESAs aim to achieve.

A similar example is the very complex matrix (Figure 1 - Incident classification chart) that the **RTS on criteria for classification of ICT related incidents** proposes in order to assess major incidents, versus the tight deadline to make a first incident report. We instead propose to have a simplified way of assessing if to make a first report and use the Incident classification chart when providing the follow-up report.

On the **RTS in relation to the contractual arrangement**, we assume that most of the ICT providers are US sourced, making it difficult to impose very specific and strict contractual clauses where the size of the CRA does not provide negotiation leverage. More specifically and in relation to Question of 5 on this RTS, we believe that Article 7(3) in regards to due diligence is not clear and seems to contradict itself by first stating: “the elements in paragraph 1 point a) shall be used where the selected elements in paragraph 1 points b) to e) are not sufficient”, and then stating “The assessment shall always include at least one of the elements listed in paragraph 1 points a) and c)”.

Furthermore, with respect to Question 7, we advocate that, in the spirit of proportionality, small and medium CRAs be allowed to always rely on third party certifications without going through the elaborate analysis indicated at Art 9 (3). It would be extremely difficult for small and medium CRAs to arrange pooled audits and basically impossible to impose own audits based on size of the company and negotiating power.

With reference to the ESMA guideline on the submission of periodic information to ESMA by Credit Rating Agencies dated April 2021, ESMA defined different reporting frequencies depending on the category of the CRA. That guideline also includes IT aspects. We think that this approach should equally apply to ICT risk management issues under consideration in this RTS.

In concluding, we hope that our response is helpful in the definition and application of the proportionality principle in Article 4 of DORA. Ideally, that principle could strongly simplify the requirements under Article 5 to 15 close to the expectations of the simplified framework under Article 16 of DORA.

About EACRA

The European Association of Credit Rating Agencies (EACRA), set up in November 2009 and registered in Paris, was established to act as a platform for cooperation for EU-based Credit Rating Agencies (CRAs). Our mission is to support and facilitate the compliance of CRAs with regulatory requirements through effective communication, cross-border know how, and the promotion of best practices. In addition, EACRA seeks to promote Credit Ratings and the interests of CRAs across Europe, as well as enhance the financial community and general public’s understanding of Credit Ratings.