



To

European Securities and Markets Authority (ESMA)

103 rue de grenelle,
75007 Paris, France

Reference: ESMA Consultation 33-9-252 dated July 19th, 2018 on guidelines on submission of periodic information to ESMA by CRAs – 2nd edition

Date: September 26th, 2018

Dear ESMA,

With reference to your consultation on “revised guidelines on periodic reporting by CRAs”, dated July 19th, 2018, we appreciate the opportunity to provide the views of our Association, currently representing 10 ESMA registered CRAs.

You shall find attached the responses to your specific questions, which represent the shared views and concern from all our Member. Several EACRA Members shall send to you separate responses providing additional insights and additional examples.

From a more general perspective, we very much appreciate that ESMA proposes to reduce the reporting frequency for all credit rating agencies (“CRA”), thereby smoothening the administrative burden for all CRAs. On the other hand, we are concerned that ESMA has substantially extended the list of reporting items by adding 13 topics, thereby nullifying the benefits to CRAs out of the reduced reporting frequency.

While ESMA intends to use its internal risk assessment to classify CRAs into risk categories, we are surprised that a binary option in terms of reporting schemes is being proposed. We therefore request a higher degree of differentiation and flexibility.

For small CRAS the proposed new reporting guidelines would add additional costs since some information may be produced only upon ESMA’s request. In general and according to the pillar of proportionality that shall guide ESMA’S approach on the reporting guidelines, we propose that not only the reporting frequencies shall be tailored on CRAs categorization, but also the content of the reporting items. In the light of the above, we propose to reduce the number of reported Items for the CRAS falling in category 2.

With respect the timing of the different items, we propose that Category 2 CRAs should report annual information by April 30th (or even July 31st) and not by January 31st as currently expected. Moving the deadline to April or July will allow Category 2 CRAs to produce this information in parallel

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to the external audit process (where often the same type of information is required) – such an approach will allow CRAs to streamline the processes.

Regarding the entrance into force of the new Guidelines specified as 31st July 2019, we propose that in order to respect the calendar year for category 2 CRAs, the coverage period for the Items mentioned in the Guidelines, will start from 01 January 2019 and thus the first reporting will be due in 2020 (preferably by April).

While the reporting guidelines foresee detailed deadlines for the majority of reporting requirements, several items are marked “upon demand” or “as soon as possible”. In order to provide proper guidance to CRAs, we propose the following:

- The topics marked “upon demand” relate to Internal Controls and IT strategy topics and apply only to Category 2 CRAs. We think that a large share of Category 2 CRAs do not have the corresponding information at hand and therefore propose that these topics should be classified as “not required to be reported”.
- The guidelines do not define the timeframe for “as soon as possible”. In order to contribute to a shared understanding between ESMA and CRAs, we propose that “as soon as possible” is interpreted “within 2 months for identification”

In order to achieve the consistency, comparability and usability of the information provided by CRAs and across the internal identification for each CRA of the relevant data to be provided, we propose that ESMA provides guidance on the meaning of the following items:

- “finding” in Template 9 relating to Internal Control mechanism: ideally provide a definition and/or a check list
- Cases of non-compliance with CRA Regulation: kindly provide a clear codification and types and/or risk level of breaches to be included in Template 2
- Definition of ‘rating related IT applications’ for supporting processes under Item 21 and Template 11
- Definition of ‘errors in methodology’ under Item 37 and Template 17.

Differently, a lack of clear guidance on the above concepts could lead to each CRA applying different concepts in their reporting, thereby substantially reducing the consistency ESMA is targeting.

We remain at your disposal for any clarification or additional information.

Sincerely yours

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EACRA President

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Q1: Do you agree that CRA's reporting requirements should be based on the reporting categorisation determined by ESMA's internal risk assessments, instead of whether or not they are liable for supervisory fees according to Fees RTS? If not please explain.

ESMA proposes to classify CRAs into 2 categories depending on ESMA's internal risk assessment, departing from the current, objective threshold of EUR 10 mln revenues per Year.

While we understand ESMA's wish to classify CRAs according to its internal risk assessment (higher risk entities submitting more information more frequently to ESMA), we request more transparency from ESMA on how the classification will be done. The criteria (including their weights) established for such a classification should be objective, clear and transparent and known to all CRAs. Having the classification method communicated to CRAs incentivizes these to reach the "low" risk category and thereby contributes to best practices spreading more rapidly.

Additionally, in view of the substantial effect of ESMA's classification of CRAs, we would appreciate to be heard in the course of such classification (as well as in case of a change of classification), i.e. been given the chance to respond to a reasoned statement on the classification highlighting the areas of highest concern, allowing CRAs to remedy such concerns. In any way, we request that ESMA provides a reasoned statement on the classification highlighting the areas of highest concern.

We note that the change of classification from Category 2 to Category 1 triggers a far higher reporting frequency as well as the mandatory reporting of several additional items. A change in classification is therefore connected with substantial additional compliance costs to CRAs. In view of the principle of proportionality as well as to provide assurance to smaller agencies, we believe that the classification into Category 2 should be based on the current threshold based on turnover of EUR 10mln. Additionally, we believe that the Category 1 reporting scheme is commensurate only for CRAs of systemic importance to the EU financial markets and that an intermediary reporting scheme is being introduced. Under this intermediary reporting scheme, concerned CRAs (having more than EUR 10 mln turnover but not of systemic importance) would report under Category 2 and additional items on a selective basis based on the areas of concern as identified through ESMA's internal risk assessment. In case where ESMA's internal risk assessment classifies a CRA as a low risk entity, such a CRA should report under the Category 2 scheme even if the CRA's turnover is above the threshold of EUR 10 mln.

Q2. Do you agree with that the proposed reporting periods and reporting deadlines are practicable and in particular scheduling the annual submission of information for "category 1" CRAs for the 12 Months to 30 June? If not please explain.

Compared to the 2015 guidelines, we welcome that the reporting frequency has been reduced.

Regarding the annual reporting, we think that the reporting period should be the calendar year and not the year ending June 30. Most CRAs use the calendar year for their reporting activities and for



internal/external communication (e.g. with shareholders), using the same calendar year for supervisory reporting to ESMA would streamline the processes.

Given that the reported information to ESMA is expected to peak at 2 dates, we propose that the deadline for submission of the annual reporting should be set for each CRA based on ESMA's internal risk assessment, "riskier" CRAs submitting information by April 30 while all others could submit by July 31st. As mentioned in our introductory comment, the reporting deadline of 30th April would be more suitable in coherency with the internal closure of Internal Audit Processes. Such an approach could support ESMA risk-based supervisory approach as information from "riskier" CRAs would be available earlier.

With reference to Questions 13 to 21, we note that Category 2 CRAs are expected to provide some information on a Bi-annual basis while other information is to be provided "upon demand". We propose that Category 2 CRAs should report all the above information only upon demand.

Q3. Do you agree with the proposed approach of reducing the frequency for reporting of Board Documents for "all other" CRAs? If not please explain.

Yes, we welcome that the frequency has been reduced. ESMA could go even further and classify this as an "upon demand" item.

Q4. Do you agree with the proposed approach of the Guidelines with regards to the more systematic provision of INEDs opinions? If not please explain.

While we understand ESMA's concern regarding the differing contents and formats of INEDs report, we believe that each CRA has established its own procedures and processes in order to ensure that all requirements of the CRA Regulation are met. We therefore think that the INEDs opinion need to be assessed within the context of the respective CRAs and should not be compared to INEDs opinions from other CRAs.

With respect to Category 2 CRAs, we propose that the deadline for submission should be set to April 30th. Given that several CRAs are exempted of having INEDs, these CRAs should not fill this template.

Q5. Do you agree with the proposed Guidelines for reporting CRAs organisational chart? If not please explain.

While we understand ESMA's wish to have a better insight into a CRA's organization, we believe that the total number of staffing in each unit should suffice and that no detailed information is being provided on each person. In case where ESMA may specifically require this information (e.g. in the context of a thematic review), CRAs should provide this information.

We have several comments regarding the content of the proposed organizational chart reporting:

- Kindly clarify the terms “Executive Committee Members”, “Analytical Support Management”; “in-business Control”
- We note that the CRAs should report the “seniority level” according to the CRA-specific grades. Given that CRAs may use different gradings for seniority level, we believe that this information will not allow for comparability across CRAs and therefore propose that ESMA provides more precise guidance.

With respect to Category 2 CRAs, we propose that the deadline for submission should be set to April 30th.

Q6. Do you agree with the proposed approach for the reporting of litigations? If not please explain.

We deem the requirement “*information on any existing, new or potential legal actions*” unclear as compared to the 2015 Guidelines (5.6 “*pending and current [...] proceedings*”). Where does a “potential legal action” start? “*Potential*” exceeds “*pending*” and “*legal action*” exceeds “*proceeding*”, so is the idea to learn of any claim communicated to a CRA, no matter how unlikely such claim may be? We propose to uphold the definition of “*pending and current proceedings*” which is more clearly defined by requiring the initiation of a formal proceeding which may adversely impact the continuity or quality of ratings and/or materially impact the financial position of a CRA.

We propose that Category 2 CRAs should report this information only upon demand as we believe that these CRAs face less litigation risks than Category 1 CRAs.

In case ESMA maintains its current position, we again propose that the deadline for submission should be set to April 30th.

Q7. Do you agree with the proposed approach for the reporting of new and potential conflicts of interest? If not please explain.

Given that the management of conflict of interests is a focal topic of the CRA Regulation, we believe that Category 1 CRAs should continue reporting on a semi-annual basis.

We believe that the template for the conflict of interest scenario shall be modified e.g. by including the terms “incident” or “finding” (both requiring a precise definition) to avoid declaring a “breach” where the conflict of interest has been successfully eliminated or managed.

Q8. Do you agree with the proposed approach for reporting of information related to the annual and semi-annual review of credit ratings? If not please explain.

While the CRA Regulation requires CRAs to review their ratings annually (or semi-annually for sovereign ratings), the CRA Regulation does not require to issue an updated rating. For those agencies having the policy to re-issue ratings after each review and reporting these to ESMA via

RADAR, we believe that ESMA should be able to check whether a CRA has reviewed all its ratings within the time periods foreseen in the CRA Regulation. We therefore think that this additional reporting is not required or could only be requested on demand.

With respect to private ratings, we believe that CRAs should only report those ratings falling under the scope of the CRA Regulation.

Q9. Do you agree with the proposed approach regarding the submission of information on whether or not a CRA has conducted an annual review of its methodologies and models? If not please explain.

We consider that this information is also available to ESMA through the qualitative data sent by CRAS according to the Commission Delegated Regulation 2015/2. Therefore, we propose that a specific field for the reason of the delay be included in the template.

Q10. Do you agree with the proposed approach of the Guidelines in respect of reporting information on the allocation of analysts across different analytical business lines? If not please explain.

Q11. Do you agree with the proposed approach of the Guidelines in respect of reporting information on the allocation of staff for the review or validation of methodologies? If not please explain.

Q12. Do you agree with the proposed approach for the reporting of objective reasons? If not, please explain.

Q13. Do you agree with the proposed approach regarding the submission of the Compliance Work programme? If not please explain.

Q14. Do you agree with the proposed approach regarding the submission of a CRA's Internal Audit Work Plan? If not please explain.

Q15. Do you agree with the proposed approach regarding the submission of Compliance Assessment and Internal Assessment Reports? If not please explain.

Q16. Do you agree with the proposed approach regarding the submission of information on CRAs internal control monitoring? If not please explain

In order to achieve the consistency and usability of the information provided by CRAS and across the internal identification for each CRA of the relevant data to be provided, we propose that ESMA shall provide a further guidance on the meaning of the following items: A clear matrix in general and definition of the term 'finding' to be populated in Template 9 and Item 15



Q17. Do you agree with the proposed approach regarding the submission of and attestation on the CRAs internal controls where this has been provided to another supervisory body? If not please explain.

As mentioned in our introductory comment, this Internal Control Attestation is not always produced in the small CRAs. Therefore we propose for category 2, and item 16 – not to be reported-.

Q18. Do you agree with the proposed approach regarding the submission of a CRAs Business Continuity Plan and/or Disaster Recovery Plan? If not please explain. .

As mentioned in our introductory comment,, not all small CRAs prepare a Business Continuity Plan. Therefore we propose for category 2, and item 17- not to be reported-.

Q19. Do you agree with the proposed approach regarding the submission of CRAs' Risk Dashboard? If not, please explain.

With reference to the Item mentioned in paragraph 4.2.3. Module: Internal Control, in case the data has been sent through the package that periodically approves and verifies the Board of Directors of a CRA, we propose to create a statement or tickbox where each CRA declares whether these documents have been provided under a different Item already. In such a case, the CRA would not need to duplicate the reporting and thereby avoid additional operational costs.

Q20. Do you agree with the proposed approach regarding the submission of CRA's IT Strategies? If not please explain.

We propose ESMA to better explain the term IT Strategy as this could mirror the IT programme present by the relevant function.

Q.21 Do you agree with the proposed approach regarding the submission of information on CRAs ongoing IT programmes and Projects? If not please explain.

Q22. Do you agree with the proposed approach regarding the submission of information on the allocation of FTE across key internal functions? If not please explain.

We ask ESMA to clarify the meaning of 'other' in The template 11.

Q23. Do you agree with the proposed approach regarding the submission of information on the number of IT programmes in use across key internal functions? If not please explain.

For Category 2 CRAs, we believe that this information should be reported only upon demand.



It'd be suitable to have further guideline on the meaning of 'rating related IT applications applicable for example for HR and other supporting processes.

Q24. Do you agree with the proposed approach of the Guidelines that ESMA should receive annual information on costs and revenues per (i) types of credit ratings (ii) ancillary services in addition to fees and costs for credit rating related products and services sold by other entities within the group? If not please explain.

We believe that only Category 1 CRAs should provide a breakdown of financial information on quarterly basis – such information should be provided to ESMA 1 month after the end of quarter.

For Category 2 CRAs, annual financial information should suffice.

With respect the reporting of revenues, ESMA could use the information provided by CRAs in the context of ESMA yearly market share calculation.

ESMA should define “rating related products and services” and “other services” in a way enabling those CRAs affiliated to (larger) groups to differentiate between those products “related” and those “unrelated”. The example provided (“e.g. by distributing and/or licencing the use of credit ratings and related content such as research”) is hardly helpful: Does ESMA expect to receive information on all financial information services provided from any group entity? In cases of CRAs affiliated to larger groups of companies (providing a range of products going well beyond credit ratings), this requirement would trigger a tremendous reporting obligation linked with high administrative costs. In view of the regulation on the reporting of periodic fees, Regulation EU 2015/1 of 30th September 2014, the information on costs and revenues on ancillary services (or other related products or services shall be reported only when the client that has acquired an ancillary service has also acquired a rating product, thus in cross-selling scenarios.

Q25. Do you agree with the proposed approach with regards to the submission of a full list of CRAs internal policies and procedures? If not please explain.

CRAs need to report changes to internal policies and procedures on an ad-hoc basis. We therefore think that on an annual basis, CRAs should provide only the list of valid policies and procedures without providing additional information on each single policy.

Q26. Do you agree with proposed Guidelines for ESMA to receive information on material changes to the conditions of registration? If not please explain.

Q27. Do you agree with proposed Guidelines for ESMA to receive information on non-material changes to the conditions of registration? If not please explain.

Compared to the existing guidelines on periodic reporting of CRAs, we note that ESMA introduced a section on “non-material changes”. We note that the topics covered are all based on specific requirement in the CRA Regulation (except for endorsed ratings) and that including these items into the reporting guideline contributes to more clarity to CRAs. On the other hand, we believe that the list of non-material items is too extensive and may require reporting on only small changes (eg in case of a small change in a policy submitted during the registration process).

In order to achieve the consistency and usability of the information provided by CRAs and across the internal identification for each CRA of the relevant data to be provided, we propose that ESMA shall provide a further guidance on the and types and/or risk level of breaches to be populated in Template 2 and Item 43

Q28. With regard to notifications under Item 37 “Identification of errors in methodologies / model processes”:

(i) Please explain if you apply any materiality threshold to the reporting of errors in rating methodologies or in their application under Article 8(7) CRAR to ESMA?

We note that CRAs use different approaches to monitor the quality and accuracy of their ratings and to detect potential errors in methodologies. The impact of such errors on any recent rating or the likely impact on future ratings is assessed. The decision on whether or not to report such errors is made based on the outcome of this assessment.

Such a monitoring exercise could also result in confirming the rating assigned and that no error in methodology exist.

(ii) Please clarify how you make the distinction between errors that need to be notified to ESMA and the affected rated entities (Article 8(7)a CRAR), and errors that need to be published on your website (Article 8(7)b CRAR)?

Such errors, if deemed material, are reported to ESMA and, in case of any impact on outstanding ratings, to the affected rated entities. In case outstanding ratings are affected, a notification is made on our websites on which the affected ratings are published as part of a notification that these ratings are under review.

We would appreciate if ESMA provides proper guidance on the definition of errors in methodology (and whether the approach mentioned above corresponds to ESMA's expectation). Having a clear guidance from ESMA will ensure that CRAs report the same type of information consistently.

Q29. Do you have any comments on the reporting templates provided in Annex I? If yes please provide the Templates Reference alongside your comments.

Template 2 Conflict of interest shall be split from the template of breaches or non-compliance with the CRA Regulation. Template 2 need to be properly explained setting a codification of breaches or risk level of non compliance with ‘the initial conditions for registration’. In template 9, the definition of ‘finding’ or matrix of the information that ESMA expects to receive should be provided. In Template 11, the meaning of ‘other’ should be explained.



Q30. Do you have any comments regarding the feasibility Template 16 [IT Notification Cloud Computing] and the appropriateness of the information requested?

Q 31. Do you have any comments on the proposed process of implementation?

For small CRAs the proposed new reporting frequencies would add additional costs since some information is not always produced automatically by the CRAs independently of ESMA's request. In general and according to the pillar of proportionality that shall guide ESMA'S approach on the reporting guidelines, we propose that not only the reporting frequencies shall be tailored on CRAS categorization, but also the content of the reporting items. In the light of the above, we propose to reduce the reporting obligation number of Items for the CRAS falling in category 2. We'd like also to ask ESMA, whether the templates included in the Guidelines and in general the reporting obligations, will need to be implemented internally as part of the IT systems and processes in the future, representing an additional cost specially for small CRAS.

Regarding the entrance into force of the new Guidelines specified as 31st July 2019, we propose that in order to respect the calendar year for category 2 CRAS, the coverage period for the Items mentioned in the Guidelines, will start from 01 January 2019 and thus the first reporting will be due in 2020.

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