



European Securities and
Markets Authority

Final Report

Guidelines on periodic information to be submitted to ESMA by Credit Rating Agencies

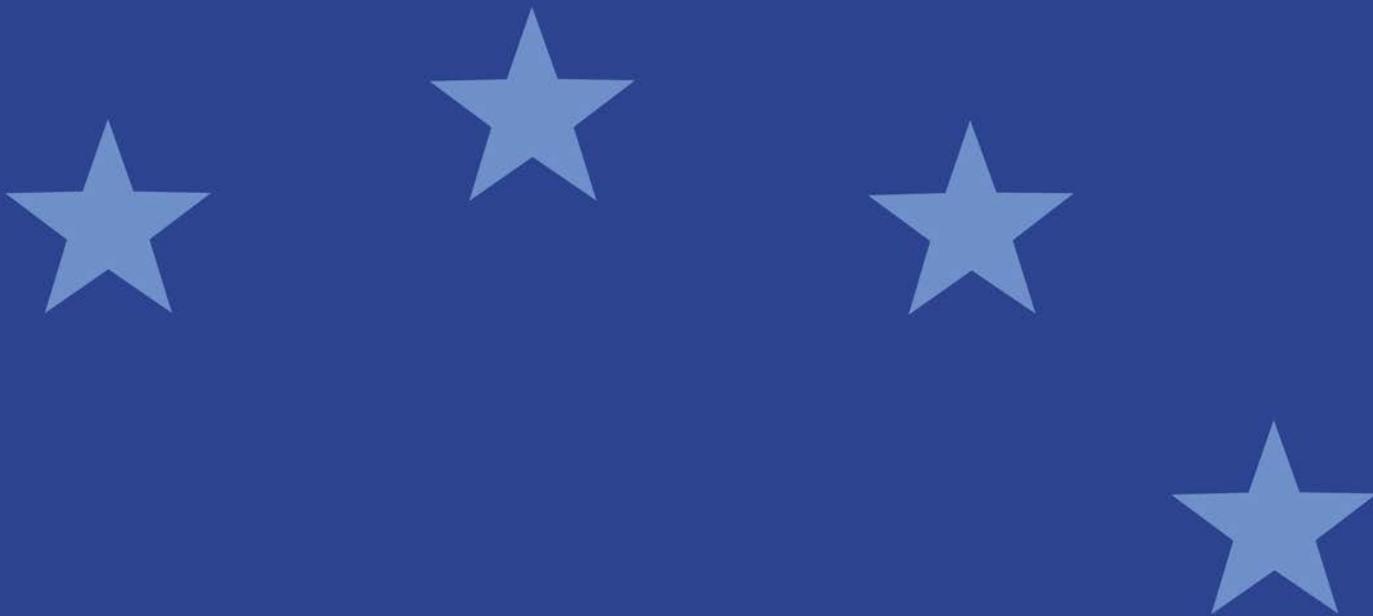




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Acronyms used

CRA Regulation	Regulation (EC) No 1060/2009 of the European Parliament and of the Council (as last amended by Regulation (EU) No 462/2013).
CRA	Credit Rating Agency
ESMA	European Securities and Markets Authority
HR	Human Resources
IA	Internal Audit

1 Executive Summary

Reasons for publication

The European Securities and Markets Authority (ESMA) published on 16 July 2014 a Consultation Paper on Guidelines on the information that should be periodically submitted to ESMA by credit rating agencies (CRAs).

In this Final Report, ESMA considers the responses received to the consultation paper during Q3 2014 and adopts the final guidelines.

The guidelines are published under Article 16 of Regulation EU No 1095/2010 of the European Parliament and of the Council of 24 November 2010, which enables ESMA to publish guidelines addressed to financial market participants with a view to establishing consistent, efficient and effective supervisory practices. These guidelines do not apply to certified CRAs.

In light of these Guidelines, CESR's Guidance on the enforcement practices and activities to be conducted under Article 21.3(a) of the Regulation (ESMA/2010/944) of 30 August 2010 will no longer apply.

Contents

ESMA welcomes the feedback received on the proposed guidelines. Feedback and ESMA's response is summarized in Section 2. The final guidelines on periodic information to be submitted to ESMA are provided in Annex 1.

Next Steps

Following the translation of the guidelines in Annex 1 into all the official languages of the EU, the final texts will be published on ESMA's website.

The guidelines will become effective two months after their publication on ESMA's website in all the official languages of the EU.

2 Feedback Statement

1. This section provides a summary of the responses to the consultation, identifying the main comments from respondents and ESMA's view on those responses, together with changes to the proposed guidelines, where appropriate. When summarizing the answers to the consultation paper, ESMA uses the term 'proposed guidelines'. All other references are made to the final guidelines included in this report.

Question 1: Do you agree that ESMA should be kept up to date with changes to a CRA's Board and senior management as described above?

2. The majority of respondents supported regularly providing the minutes of board meetings and documents sent to board members in advance of board meetings, as well as the documents presented and discussed at board meetings.
3. Some respondents were concerned that providing this information could present an administrative burden and may result in providing information to ESMA multiple times. ESMA is of the view that the information presented at board meetings provides a useful insight into board oversight and firm strategy with minimal additional cost for CRAs. We have clarified in our guidelines that ESMA does not expect to receive multiple copies of the same document.
4. Some respondents requested clarification as to whether ESMA expected to receive board papers and minutes for both the management board and the supervisory board. We have clarified in our guidelines that ESMA expects to receive minutes and boards papers for both the management and the supervisory board.

Question 2: Do you agree that receipt of INEDs' opinions will provide ESMA with useful insight as part of its supervisory responsibilities? If not, please explain.

5. The majority of respondents was concerned that this requirement implies that ESMA expects INEDs' opinions to be standalone documents, rather than reported in board minutes. We have clarified that ESMA does not expect INEDs' opinions to necessarily be standalone documents. Therefore they should be provided alongside board minutes where relevant.
6. One respondent stated that INEDs' opinions should not be supplied to ESMA. ESMA is of the view that the INEDs' opinions provide a useful insight into the management of a CRA, particularly given the important role that INEDs provide in the management and oversight of CRAs, and that they have specific responsibilities as set out in Article 6(3) in conjunction with Section A of Annex I of the CRA Regulation¹. ESMA does not believe that the provision of the INEDs' opinions to ESMA compromises the independence of INEDs.

¹ [Regulation \(EC\) No 1060/2009](#) of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, amended by [Regulation \(EU\) No 510/2011](#) of the European Parliament and of the Council of 11 May 2011 and by [Regulation \(EU\) No 462/2013](#) of the European Parliament and of the Council of 21 May 2013.

7. One respondent also recommended that it may be more useful for ESMA to have regular calls with INEDs rather than to receive formal opinions. ESMA already engages with INEDS through its supervisory dialogue with CRAs; this point has therefore not been included in the guidelines.

Question 3: Is there further information that the draft guidelines should include on Board minutes and INED opinions?

8. Respondents did not propose further information that should be included in the guidelines, however it was proposed that ESMA clarify that board papers should be limited to CRA activity and not include ancillary services. Given the importance of understanding the relationship between ancillary services and CRA business in assessing the risk of conflict of interests, ESMA needs to receive full board papers and minutes covering both ancillary services and CRA business.
9. One respondent noted that there could be a considerable time lag between the date of a board meeting and the receipt of approved minutes and board papers. We acknowledge that this may occasionally occur, however this does not change our proposed approach.

Question 4: Do you agree that it is helpful in ESMA's supervision of CRAs to receive information on the legal risks that CRAs are exposed to? If not, please explain.

10. Five respondents proposed that the guidelines could be improved by further clarifying the legal risks that ESMA would like to receive information on, and that the current definition was too broad. Three respondents were also concerned that the provision of this information may result in ESMA prejudging the outcome of legal proceedings. ESMA is requesting this information so that it can monitor the quality and continuity of ratings in cases where ratings may be suspended due to litigation or where a CRA's financial position could be materially affected by a legal proceeding. It is not the intention of ESMA to review the information provided to take a view of the legal action. We have clarified in the guidance that governmental, legal or arbitration proceedings reported should be cases which may materially impact a CRA's financial position and/or the continuity of its ratings. We have also included a requirement to provide a brief overview of cases reported to ensure that the information provided is meaningful. We have also removed the proposed text that this information does not need to be provided if a legal proceeding is referred to in board minutes. This is so that the information we receive on proceedings is on a consistent basis.
11. One respondent suggested that this section of the guidance would reflect better its purpose if it were entitled 'litigation proceedings' rather than 'legal risk'. One respondent also noted that ESMA should not request information that is legally privileged as part of this periodic reporting. ESMA has clarified its position by changing the title of this section to 'legal and arbitration proceedings' and does not envisage that CRAs will waive legal privilege in providing this information to ESMA. ESMA expects to receive information on legal risks as part of CRAs' risk management reports.

Question 5: Is there further information that ESMA should receive in regards to a CRA's legal risk?

12. The majority of respondents made no further suggestions. One respondent recommended that ESMA could measure legal risk by requesting from the CRAs' Legal Departments an official statement regarding the categories of legal affairs that CRAs are

involved in. ESMA's view is that this may be too prescriptive and result in an additional administrative burden for CRAs who do not currently do this as standard practice.

13. One respondent proposed that it may be beneficial to include some guidelines to help interpret where there is a sufficient proof of absence of such risks for reporting purposes. As stated earlier, we believe that reporting should be limited to cases which may materially impact a CRA's financial position and/or the continuity of ratings.

Question 6: Are there further possible instances that may result in a potential breach of the initial conditions of registration that should be included in the guidelines as examples?

14. Two respondents were concerned that the proposed text did not provide sufficient guidance as to a materiality threshold for reporting potential breaches of the initial conditions of registration. Two respondents also requested that ESMA provide examples of potential breaches that should be reported. ESMA is of the view that, due to the nature, scale and complexity of the CRAs it supervises and that the initial conditions of registrations may differ for each CRA, it is important that this requirement remains judgment based and related to a CRA's specific initial conditions of registration.

Question 7: Do you agree that ESMA should receive CRA's internal audit work plans? If not, please explain.

15. The majority of CRAs did not object to this approach. Three respondents were concerned that the establishment of an IA function would create an unnecessary cost on smaller CRAs. One respondent suggested that where smaller CRAs have an internal audit function, the annual submission of a work plan should suffice, while another respondent suggested half yearly reporting would be sufficient. ESMA stated in the proposed guidance that it will only request IA work plans where a CRA has an IA function in place, and so this requirement does not imply that all registered CRAs must have an IA function. However, where a CRA commissions internal audits from an external consultant, it should also request an IA work plan. The reporting of IA work plans will remain half yearly as stated in the guidance, but only where there has been a change in the work plan over that period, as stated in the proposed guidance. This is so that ESMA may have oversight of the progress or changes to work plans.

Question 8: Do you agree that the submission to ESMA of follow up actions and disciplinary measures undertaken after internal reviews are a useful way for ESMA to monitor a CRA's risk management? If not, please explain.

16. One respondent was concerned that this could pose an administrative burden and information should only be provided at the specific request of ESMA's supervisors. Another respondent also suggested that smaller CRAs should be exempted. ESMA does not however consider that this is a significant administrative burden given that the majority of CRAs already incorporate the reporting of actions following relevant internal reviews into their periodic submissions.
17. Two respondents requested that further clarification needs to be given to the term 'complaint'. ESMA has provided such clarification in the final guidelines. It was also proposed that further documentation demonstrating the status and follow-up actions of the complaint would be beneficial to ESMA. However ESMA believes that it is appropriate for ESMA to request this information on an ad-hoc basis when deemed necessary by ESMA supervision.

Question 9: Is there further information that CRAs should submit on receipt of a complaint?

18. The majority of respondents had no further recommendations. One respondent requested that ESMA should provide a definition of what was intended by 'internal complaints' and provide any relevant definition from the EU Regulation 1060/2009, as amended. One respondent suggested that the scope of the requirement could be further limited to internal reviews relevant to the regulation of CRAs, rather than for example, extending to HR disputes. ESMA has clarified in the final guidance that ESMA is requesting internal complaints relevant to the scope of the CRA Regulation (irrespective of whether Section C (5) of Annex 1 of the Regulation applies to the complaint), in particular internal complaints relating to the quality and continuity of ratings. ESMA notes that there are a number of factors which fall into the scope of the CRA Regulation, and this may include, in some instances, HR internal complaints (for example, staff concerns about workload).

Question 10: Do you agree that the submission of CRA's IT strategy and work plans would aid ESMA in the monitoring of CRA IT risk? If not, please explain.

19. One respondent stated that it did not consider that these documents would benefit ESMA in its supervision and the requirement would increase the administrative burden for CRAs. ESMA however is of the view based on its supervisory experience that IT strategy and work plans are key components to ensuring that CRAs have in place robust systems and controls for its critical activities.
20. Two respondents requested further clarification of what was meant by IT strategy and more detail on the documents ESMA would like to receive in periodic reporting relating to IT, for example limiting the request to security and business continuity documents. Another respondent suggested that documents on IT strategy only need to be provided annually. One respondent suggested that board minutes and papers relating to IT would suffice for this point.
21. ESMA has clarified in its guidance that IT strategy may include, for example: the links with the business strategy, the enterprise IT-related goals and plans on IT expenditure. These items may also include board documents. ESMA considers that although information security and business continuity issues might be included and form part of an IT strategy, they would not in themselves form the enterprise IT strategy of the CRA.
22. Another respondent suggested that IT information provided as part of a material change should be sufficient for ESMA's supervision of IT risk. ESMA considers that CRAs should submit their enterprise IT strategy, as explained above. ESMA views the enterprise IT strategy of the CRA as an important aspect considered in the IT risk assessment and supervision. The information obtained from the reporting of the material changes does not suffice for this purpose.
23. One respondent noted that these documents may not be available for smaller CRAs. ESMA notes that a CRA's documentation on IT strategy and work plans will reflect the nature, scale and complexity of a CRA's business.

Question 11: Do you agree that the regular and consistent submission of organisational charts to ESMA contributes to the better supervision of CRAs? If not, please explain.

24. Two respondents proposed that organisational charts should only be submitted when changes occur. Another respondent suggested submitting organisational charts annually for smaller CRAs should be sufficient, while another suggested that submission could be done outside periodic reporting on an ad hoc basis when changes to the organisation structure were made. ESMA has updated the text so that the requirement is for semi-annual submission where there has been a change in an organisational chart. We believe that this provides a balanced response to comments received.
25. One respondent requested clarification of whether the proposed list of organisational charts (Compliance, IA, IRF, business lines in charge of ratings activities, Information security function and IT department) was exhaustive. ESMA has added a further function, the Risk Function, to this list, and considers this list exhaustive unless ESMA's supervision makes ad-hoc requests for further organisational charts.

Question 12: Do you agree with the proposal that ESMA should receive information on quarterly revenues per i) type of credit ratings and ii) costs? If not, please explain.

26. Three respondents proposed that this information should not be necessary for smaller agencies to submit to ESMA. One respondent stated that this requirement was overly burdensome. ESMA has reviewed and updated this requirement so that smaller CRAs (CRAs exempt from an annual supervisory fee due to their total revenues²) will only need to submit this information semi-annually.
27. One respondent recommended that further definition should be provided in interpreting 'operational costs'. ESMA has clarified in its guidance that CRAs should provide an approximation of earnings before interest and tax charges.

Question 13: Do you agree with the proposed periodic reporting of changes in key positions and headcount? If not, please explain.

28. A number of respondents challenged both the necessity and granularity of this requirement. One respondent suggested that this information was not necessary quarterly, while another suggested it was not useful information for ESMA to request. Similarly, one respondent suggested that information on headcount provided in the Transparency Report was sufficient. One respondent suggested it would be more useful to provide this information when a change has occurred, while another suggested that smaller CRAs should only need to provide this information annually, or if the 50-staff threshold requirement has been breached. In response to feedback, ESMA has amended the guidance so that CRAs exempt from an annual supervisory fee due to their total revenues should only provide this information semi-annually rather than quarterly.
29. Respondents also challenged the scope of the requirements, requesting further information on the precise departments ESMA would like this information on and also requesting further definition of the terms 'key position' and 'more senior staff'. One respondent suggested that it would be better to change the term 'key position' to 'senior management' to link the requirement to the Regulation. ESMA has in response revised the information requested on staff turnover to the following categories: Senior Management (including IT senior management), Lead Analysts and analysts.

² This is based on Article 3(1) Article 5 (1) of the Commission delegated regulation (EU) No 272/2012

Question 14: Do you agree that the further changes outlined under paragraph 27 qualify as ‘material changes’? If not, please explain why.

30. ESMA clarifies that the ‘material changes’ were outlined under paragraph 38 of the consultation, rather than paragraph 27.
31. A number of respondents felt that further definition of the term ‘material change’ was needed, requesting further guidance on examples of material changes already provided in CESR Guidance³. Given that a material change is dependent on the initial conditions of registration, which may differ across CRAs due to the nature, scale and complexity of their activities, ESMA is of the view that the interpretation of material change should remain principle based.
32. To reflect amendments made to the Regulation under CRA 3, ESMA is also using this guidance to amend the requirement to report material changes in the CRAs’ ownership structure, lowering the threshold to report acquisition or disposal of holdings from above 10%’ above 5% (see Annex 1, section VI(i)). This amendment will align the guidance with the objectives of the Regulation.

Question 15: Are there additional ‘material changes’ that ESMA should include in the draft guidelines?

33. The majority of respondents did not recommend further additional material changes. One respondent recommended the inclusion of changes to own capital or long term debt of a CRA to reflect a CRA’s financial position. ESMA has included this as an example of material changes to a CRA’s financial position.

Question 16: Do you agree that CRAs should identify and describe revenues generated from non-rating activities and/or non-ancillary services to help ensure that ESMA calculates supervisory fees on a fair and consistent basis? If not, please explain why.

34. The majority of respondents agreed with ESMA’s proposal that the applicable turnover for the calculation of supervisory fees is only based on revenues from credit rating activities and ancillary services. In addition, two respondents asked for further clarification as to what is covered under “credit rating activities” and “ancillary services”. As the CRA Regulation only defines credit ratings and credit rating activities (Article 3(1) of the CRA Regulation) and does not provide a complete definition of ancillary services (Point 4 of Section B of Annex I of the CRA Regulation), ESMA will consider providing further clarification of these concepts in a separate set of guidelines. In the meantime, ESMA will need to carry out case-by-case assessments of credit rating activities and ancillary services for the calculation of the supervisory fees.
35. Two respondents agreed with ESMA’s proposal, but requested that ESMA should individually provide CRAs with feedback as to which of their services are considered as credit rating or ancillary and which services are not. The respondents stated that this information is relevant for CRAs as it might significantly impact CRAs’ work, in particular on revenues disclosures, fees disclosure, pricing policies, pricing procedures and other disclosure. ESMA takes note of the transparency request and will improve individual

³ Guidelines - Registration Process, Functioning of Colleges, Mediation Protocol, Information set out in Annex II, Information set for the application for Certification and for the assessment of CRAs systemic importance (ESMA/2010/347).



communication with CRAs on the determination of credit rating activities and ancillary services for the calculation of the supervisory fees.

36. Another respondent expressed concern with the requirement to have the exact corresponding amounts associated to non-rating and/or ancillary services certified by external auditors. ESMA is requiring certification by the CRAs' external auditors on the revenues generated from non-rating, non-ancillary or ancillary services to ensure a fair and consistent calculation of supervisory fees and their allocation to registered CRAs based on accurate and reliable data.

Question 17: Do you agree that where rating activities and ancillary services are provided to different clients, due to a deliberate and clear decision to provide them to separate client bases, the provision of ancillary services does not present any structural potential conflict of interest with the issuance of credit ratings and consequently, those amounts are eligible for deduction from the applicable turnover? If not, please explain why.

37. The majority of respondents agreed with ESMA's proposal. However, one respondent did not consider that the provision of ancillary and rating services to the same client created a conflict of interest since they are fully separated services with distinct products which are used for different purposes by the same client, without any limitations. In the respondent's view, the conflicts of interest will be effectively avoided if the CRA discloses periodically the clients and revenues they generate in each type of service, the potential and actual conflicts of interest to the public, and establishes measures and proactive controls to promptly identify any such cases. ESMA welcomes the respondent's interpretation on how CRAs should internally manage possible conflict of interests on a client-by-client basis in order to reduce or eliminate them. Nevertheless, the CRA Regulation⁴ focuses on avoiding any potential or actual conflict of interests between the provision of credit rating activities and ancillary services, regardless of the entity to whom services are provided. Ancillary services are, as a general principle, permitted by the CRA Regulation as long as their provision does not create any potential conflict of interests with the issuance of credit ratings. Furthermore, the CRA 3 Regulation empowered ESMA with supervisory powers on fees charged by CRAs to their clients. To this end, ESMA adopted a draft Regulatory Technical Standard (RTS) on fees to allow for the collection of uniform information on fees from CRAs in July 2014⁵. ESMA's supervisory powers on fees will focus on, amongst other points, assessing whether the provision of ancillary services creates a conflict of interests on a client-by-client basis and whether fees charged for credit rating activities to a given issuer are dependent on the results or outcome of the work performed.
38. Another respondent added that CRAs under subscriber or investor-pays model have reduced or have no structural potential conflicts of interests due to the business model. The respondent stated that in this business model credit ratings are unsolicited and fees are not paid by the rated entity (or issuer) for their production. Clients are not rated entities but subscribers or investors. As a result, the provision of credit rating activities does not conflict with the provision of ancillary services and the potential conflict of interests may only exist where credit rating activities and ancillary services are provided to the same client and on a client-by-client basis.

⁴ Recital 6 and 22 of CRA Regulation, first part of last paragraph of Point 4 of section B of Annex I of the CRA Regulation and Recital 4 of the Fees Regulation No 272/2012.

⁵ The draft RTS was endorsed by the European Commission on 30 September 2014 and published in the European Official Journal on 6 January 2015.

39. ESMA understands the structure of this business model and in particular the absence of conflict of interest in principle where ancillary services are provided to clients other than those receiving credit rating services. ESMA will amend the guidelines in order to be able to assess the revenues generated from ancillary services. Specifically, ESMA will assess whether revenues generated from ancillary services provided to clients other than those receiving credit ratings services require additional supervisory effort by ESMA. Where further supervisory effort is not necessary, those related revenues may be eligible for deduction from the applicable turnover. For such assessment, a CRA will need to provide ESMA with a detailed description of its internal structure, as well as detailed information on the services provided to and amounts billed to those clients on a client-by-client and aggregated basis.
40. Finally, one respondent requested further clarification on the objective of ESMA's Guidelines on this point. ESMA's objective is to increase transparency on the calculation of supervisory fees, ensure that supervisory fees are calculated on a fair and consistent basis and are fairly assigned. To this end, ESMA uses these guidelines on what revenues might be eligible for deduction from the applicable turnover and what information should be provided by CRAs.

Question 18: Do you agree that any amount to be deducted from the CRA's applicable turnover should be certified by the CRA's external auditors to help to ensure that ESMA calculates supervisory fees on a reliable and accurate basis? If not, please explain why.

41. The majority of respondents expressed concern in requesting certification from external auditors for those amounts eligible for being deducted from CRAs' applicable turnover. One respondent stated that it is an unnecessary and disproportionate cost for CRAs. Another respondent suggested that a certification by the Chief Financial Officer or someone in a similar capacity would ensure the accuracy of such deductions, as in the case for the annual transparency report where ESMA does not require external third party certifications. Another respondent stated that certification by external auditors would create significant additional costs for smaller CRAs, which are currently exempted from this legal requirement. One respondent suggested that it may be reasonable to request such a certification by external auditors starting from the turnover level from when this can actually influence the calculation of supervisory fees.
42. ESMA aims at ensuring a consistent calculation of supervisory fees and a fair distribution of fees among registered CRAs. To this end, ESMA needs accurate and reliable data from CRAs in order to properly calculate their applicable turnover and ensure an appropriate allocation of fees. The Fees Regulation⁶ requires ESMA to calculate supervisory fees based on CRAs' revenues as published in its audited financial accounts. Consequently, any amount provided by CRAs to be deducted from their applicable turnover should have the same or similar degree of reliability than the one provided by the external auditors of the CRAs' financial statements. Respondents have not proposed alternatives for certifying this data by any means other than independent external third party. Therefore, ESMA is requiring certification by the CRAs' external auditor on those revenues. This certification is only requested where a CRA's total turnover is more than 10 million euro and the CRA requests a reduction in the applicable turnover used by

⁶ Commission Delegated Regulation (EU) No 272/2012 with regard to fees charged by ESMA to credit rating agencies ("Fees Regulation").

ESMA in the calculation of fees. Small and medium CRAs will only have to provide this certification where their total turnover is more than 10 million euro. ESMA clarifies in its guidance that the request for certifying information only applies when CRAs' total revenue is more than 10 million euros and the CRA requests a reduction in the applicable turnover used by ESMA in the calculation of supervisory fees.

43. To ensure the accuracy and reliability of the data, ESMA requests certification by CRAs' external auditors of amounts deducted from the applicable turnover but does not request a full audit of such information. Certification may be done by CRAs' external auditors through different means such as a specified procedures report or an agreed-upon procedure report⁷ with the CRAs' external auditor, a statement of CRAs' revenues or amounts billed signed by the CRAs' external auditor, or simply by including this certification request in the audit engagement with the CRAs' external auditor.
44. Finally, another respondent expressed concern that this requirement would not necessarily enhance the ongoing supervision of CRAs in the EU and that it is unclear to what extent external auditors could certify the amount deducted by CRAs and calculate supervisory fees. ESMA's goal in providing guidance for calculation of supervisory fees is not to enhance ongoing supervision, but increase transparency and ensure fair distribution of supervision fees among registered CRAs. The ongoing supervision of fees will be performed by ESMA on the basis of the RTS on fees. ESMA will use the current guidance for calculating CRAs' applicable turnover on the basis of the information provided by CRAs and certified by their auditors. ESMA is neither delegating the calculation of the supervisory fees nor the applicable turnover to CRAs' auditors. Those calculations will be performed by ESMA.

Question 19: Do you agree that ESMA should calculate market share based on a CRA's calendar year accounts rather than its accounting period?

45. The majority of respondents agreed that the calculation is more consistent if done for the same period for all CRAs. As the majority of CRAs already have a calendar financial year, respondents expressed a clear preference for the calendar year over the accounting year. However, one respondent stated that it would be unfair to penalize those CRAs with a non-calendar financial year by requiring them to produce two sets of audited books each year as it would be an additional burden without clear benefits. The respondent suggested providing a single set of audited books at the end of the financial year with the revenues broken down by quarter. Along the same line, another respondent questioned the need for another set of certified financial statements beyond what is already submitted to ESMA, especially when the market share calculation is not based on an exact definition. Another respondent stated that 30% of registered CRAs have an accounting year deviating from the calendar year and suggested that ESMA could adapt the accounting year to the calendar year on an approximate rolling basis if this is deemed necessary.
46. A goal of Article 8 is to increase competition in the credit rating market by encouraging the use of smaller CRAs, the calculation of the CRAs' total market share should be consistent, accurate and reliable. ESMA has identified only four registered CRAs using a financial year other than the calendar year and who will need to provide an adjustment to their financial statements. Nevertheless, ESMA understands respondents' concerns.

⁷ Engagement undertaken in accordance with the International Standard of Related Services 4400: "Engagement to perform agreed-upon procedures regarding financial information".



ESMA will not request two full sets of audited books but only a statement or declaration by the CRA's external auditor on the adjustments performed to the financial statements. CRAs can also provide audited financial statement broken down by quarter as far as this information allows ESMA to make its annual calculation for the total market share and the calculation of the supervisory fees.

47. As an alternative to the current market share disclosure, one respondent suggested to simply indicate which CRAs are above or below the 10% threshold. The respondent also suggested calculating CRAs' market share on the basis of number of ratings issued by each CRA. Another respondent also suggested a more transparent and frequent publication of the CRAs' market share to increase awareness of Article 8d of CRA Regulation.
48. Article 8d(2) of CRA Regulation requests ESMA to annually publish on its website a list of registered CRAs indicating their total market share. In addition to the publication of the CRAs' total market share, ESMA will further analyze the possibility to also publish which CRAs are above or below the 10% threshold while respecting the current legal framework. ESMA will also study the possibility to publish the number of ratings issued by each CRA. Finally, ESMA will be more transparent in publishing the CRAs' market share calculation by putting it in a more prominent way on ESMA's website.



Annex 1: Guidelines on Periodic information to be submitted to ESMA by Credit Rating Agencies

I. Scope

Who?

1. These Guidelines apply to credit rating agencies (CRAs) registered in the EU. These guidelines do not apply to certified CRAs.

When?

2. These Guidelines will be published in all EU official languages. Following the translation of the guidelines in Annex 1 into all the official languages of the EU, the final texts will be published on ESMA's website.
3. The guidelines will become effective two months after their publication on ESMA's website in all the official languages of the EU.

II. Definitions

4. ESMA Regulation: Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

III. Purpose of Guidelines

5. The Guidelines set out the information that should be submitted by CRAs to enable ESMA's ongoing supervision of CRAs on a consistent basis. The Guidelines also clarify ESMA's expectations of the information that should be submitted to ESMA for the calculation of supervisory fees and CRAs market share.

IV. Compliance and reporting obligations

6. This document contains guidelines issued under Article 16 of the ESMA Regulation. In accordance with Article 16(3) of the ESMA Regulation, financial market participants must make every effort to comply with the guidelines and recommendations.

V. Information to be contained in the periodic submissions

7. This Section sets out the information that CRAs should submit to ESMA on a quarterly, semi-annual and annual basis as part of their periodic submissions. Information should be submitted within one month following the end of the quarter concerned.

Period	Submission deadline
1Q 20xx (up to 31 March 20xx)	30 April 20xx
2Q 20xx (up to 30 June 20xx)	31 July 20xx
3Q 20xx (up to 30 September 20xx)	31 October 20xx
4Q 20xx (up to 31 December 20xx)	31 January 20x(x+1)

8. Please note that, where potential infringements of the CRA Regulation that pose a risk to the integrity and objectivity of existing credit ratings have been identified (including possible fraudulent or irregular activity (e.g. employee or manager misconduct)), CRAs will wish to consider informing ESMA of them promptly. CRAs will be aware that a failure to do so would, in the event of an infringement being found, prevent the firm from relying on the mitigating factor set out in Point 3 of Section II of Annex IV of the CRA Regulation (*“If the credit rating agency has brought quickly, effectively and completely the infringement to ESMA’s attention, a coefficient of 0,4 shall apply.”*).
9. ESMA does not intend that a CRA will waive legal privilege in submitting the periodic information included in these guidelines.

A. Quarterly information submissions

Financial revenues and costs (per type of credit rating and on individual and consolidated basis)

10. ESMA should receive information on quarterly revenues per i) type of credit rating and ii) costs.
11. Quarterly revenues should be split across the following types of credit ratings: Corporate Non Financials; Corporate Financials; Sovereign/Public Finance; Structured Finance; Covered Bonds.
12. Quarterly costs should show operational and total costs on a separate basis. Operational costs should be an approximation of earnings before interest and tax charges. Figures should be presented as quarter-on-quarter revenues and costs (rather than year-on-year).
13. CRAs exempt from an annual supervisory fee should submit this information semi-annually, rather than quarterly.

Staff turnover, vacancies and key promotions

14. Quarterly turnover of Senior Management (including senior IT management), Lead Analysts and Analysts should be provided. CRAs exempt from an annual supervisory fee should submit this information semi-annually, rather than quarterly.



FTE headcount

15. In addition to staff turnover data, ESMA should receive a quarterly report of the total number of staff working at a CRA expressed in terms of Full Time Employees. CRAs exempt from the annual supervisory fee should provide this information semi-annually, rather than quarterly.

Internal complaints submitted to the Compliance Department

16. CRAs should submit to ESMA on receipt of a complaint within the scope of the Regulation:

- A description of the content of the complaint;
- The follow-up actions undertaken by the CRA;
- Information on whether an internal investigation was opened as a consequence, including whether the investigation is ongoing or closed at the date of reporting; where the investigation has been closed, a copy of any consequent report made in respect of the investigation.

B. Semi-annual information submissions

Board minutes, independent non-executive directors' opinions and reports submitted to the Board

17. CRAs should submit on a semi-annual basis:

- The minutes of their board meetings;
- A copy of documents sent to management and supervisory board members in advance of their respective board meetings, as well as additional documents discussed in the meeting (for instance, reports made by Compliance, Internal Audit Risk, internal review reports function, information security and risk function);
- Where an independent non-executive director's (INED) opinion is provided in a standalone document, CRAs should submit in the semi-annual submission any opinions presented by a CRA's INED(s) pursuant to point 2 of Section A of Annex I of CRA Regulation and all reports (including follow-up reports) issued by an independent director.

Court, arbitration and other dispute resolution proceedings

18. ESMA should receive semi-annually a brief description of, and updated information on pending and current court proceedings, arbitration proceedings and any form of binding dispute resolution proceedings which are/were in being at any point in time during the reporting period, and which may adversely impact the continuity or quality of ratings and/or materially impact the financial position of a CRA. This description should include a summary of the proceedings and of the potential outcome of the proceedings in terms of liability.

Potential and actual cases of non-compliance with the CRA Regulation that have been identified and measures taken

19. CRAs should provide semi-annually detailed information regarding possible cases that



may result in non-compliance with any of the initial conditions for registration, including:

- a. A description of each case which may result in a possible non-compliance with the initial conditions for registration;
- b. A statement of the reasons why such case has arisen;
- c. A statement of the actions undertaken by the CRA following the identification of the case concerned;
- d. A statement of whether an internal investigation has been opened in relation to the case concerned and of whether such investigation is ongoing or closed; and where closed, furnish a copy of any consequent report made in respect of the investigation.

Organisational charts

20. CRAs should submit semi-annually organisational charts if there have been updates to the organisational charts. Such organisational chart should provide such detail as will enable ESMA to identify the structure of the following departments and should describe the main functions of the departments:

- Compliance function;
- Internal Audit;
- Internal Review function;
- Business lines in charge of the ratings activities;
- Information Security function;
- IT department;
- Risk function.

Compliance, Internal Audit, Risk Management

21. Each CRA should submit semi-annually its Compliance work plan in any case where an updated version of such plan has been produced during the period.

22. Where a CRA has established an Internal Audit function or commissioned internal audits from an external party, ESMA should receive a copy of the Internal Audit updated work plan in any case where an updated version of such plan has been produced during the period.

23. Each CRA should submit to ESMA copies of the reports issued by its compliance, internal audit, and risk management (covering, for example, operational or information security risks). CRAs should provide details of any follow-up action identified to mitigate those risks.

Enterprise IT strategy

24. ESMA should be informed semi-annually of CRAs' enterprise IT strategies and of any changes made thereto.

25. ESMA should be informed semi-annually of CRAs' IT work plans and of any changes thereto. CRAs should also provide updates on the implementation status of the work plan.



Other areas

26. CRAs should also report semi-annually:

- New potential and actual conflicts of interest identified and measures taken in response thereto;
- Information on any internal review being initiated or intended to be performed on rating models and rating processes;
- Outcomes of the methodology reviews including information on any back-testing performed in the period, details of any key findings as well as actions taken by the CRA as a result.

VI. Notifications of material changes to the initial conditions for registration

27. ESMA considers a “material change” to be a change in the information submitted in the registration application and, more generally, any change that may affect compliance with the requirements of the CRA Regulation.

28. A CRA should notify ESMA of any material changes to the conditions of its initial registration, including but not limited to the following matters:

- a. Opening and closing of branches;
- b. Use of endorsement;
- c. CRAs’ right to an exemption(s) given at registration;
- d. Outsourcing arrangements;
- e. Legal form;
- f. Business structure (including reorganisation or restructuring of the CRA activities and spin-offs);
- g. Type of business activities (including the provision of a new service and launch of new product in either the rating or non-rating business);
- h. Class and/or type of credit ratings;
- i. Ownership structure: acquisition or disposal of holdings above 5% of capital;
- j. Membership of the supervisory/administrative board;
- k. Compliance function and review function;
- l. Procedures used to issue and review credit ratings;
- m. Financial resources (including change share capital or long term debt);



- n. Rating methodologies, models or key rating assumptions;
- o. IT process and information processing systems supporting the rating process, such as changes in IT governance.

VII. CRA supervisory fee and market share calculations

Supervisory fee

- 29. For the purpose of calculating the supervisory fees, CRAs should submit to ESMA their annual audited accounts for the previous year, at the latest by 31st May each year.
- 30. The basis for the calculation of the supervisory fee is the revenue generated from the CRA's credit rating activities and ancillary services. A CRA providing a service or services other than credit ratings should provide ESMA with a detailed description of such service(s) so that ESMA can assess whether the service(s) concerned constitute non-rating services, non-ancillary services or ancillary services.
- 31. Where a CRA, with annual total revenue of at least 10 million euro, identifies revenues as generated from non-rating activities and/or non-ancillary services, the CRA should provide ESMA with a detailed description of such activities and services. This is to allow ESMA to assess whether the revenues generated from those activities and services are eligible for deduction from the applicable turnover. The amounts corresponding to those non-rating activities and non-ancillary services should be appropriately certified by the CRA's external auditors⁸.
- 32. Where a CRA with annual total revenue of at least 10 million euro provides credit rating activities and ancillary services to different clients, it may request to deduct the related revenues from the calculation of the revenues generated from ancillary services. The CRA should provide ESMA with a detailed description of its internal structure, as well as relevant policies, processes and procedures, if any. This is to enable ESMA to assess, on a case by case basis, whether the outcome is the provision of services to different clients thereby removing potential conflict of interest and the need for supervisory scrutiny. On this basis, ESMA will determine whether the revenues generated from the differentiated client bases are eligible for deduction from the applicable turnover. The amounts corresponding to the revenues generated from ancillary services which are provided to different clients who do not receive rating services in the applicable financial year should be appropriately certified by the CRA's external auditors on a client-by-client basis and aggregated basis. Any change to the CRA's structure or to the relevant policies, processes or procedures relative to the provision of ancillary services to a given client should be communicated to ESMA without undue delay.

⁸ Certification may be done by the CRAs external auditor through different means such as a specified procedures report or an agreed-upon procedure report with the CRA's external auditor, a statement of the CRA's revenues or amounts billed by the CRA's external auditor, or by including this certification request in the audit engagement with the CRA's external auditor.

33. For the purpose of the above-mentioned calculation and the assessment of the absence of potential conflict of interests, 'client' means any client within the meaning of the term as defined in the last paragraph of point 2 of Part II of Section E of Annex I of CRA Regulation who does not receive any rating service from the CRA group⁹.
34. Where a CRA requests any other adjustment to the applicable turnover (such as the elimination of intercompany transactions), the CRA should provide ESMA with a detailed description of the requested adjustment and the reasons for such an adjustment. The amount corresponding to such adjustment should be appropriately certified by the CRA's external auditor.
35. The calculation of a CRA's supervisory fees is without prejudice to ESMA's ongoing supervisory powers to assess whether the provision of ancillary services provided by a CRA constitutes a potential conflict of interest and, where this is the case, to adopt appropriate measures in accordance with the CRA Regulation.

CRA market share calculation

36. As the calculation of CRA's market share is made on the same basis as the calculation of supervisory fees, the guidelines for calculating the applicable turnover for supervisory fees will be applicable to the calculation of the CRA's market share.
37. For the purpose of calculating the yearly CRA's market share, CRAs with a financial year other than the calendar year should provide ESMA with the financial accounts adjusted to the calendar year. The amounts corresponding to such adjustments should be appropriately certified by the CRA's external auditors. A CRA may also provide audited financial statements broken down by quarter or by other time periods as long as the information enables ESMA to make its annual calculation for the total market share and the calculation of the supervisory fees.

⁹The final paragraph of point 2 of Part II of Section E of Annex I of the CRA Regulation states: "*client means an entity, its subsidiaries, and associated entities in which the entity has holdings of more than 20%, as well as any other entities in respect of which it has negotiated the structuring of a debt issue on behalf of a client and where a fee was paid, directly or indirectly, to the credit ratings agency for the rating of that debt issue.*"



Annex 2: Summary of periodic information to be submitted to ESMA by Credit Rating Agencies

A. Quarterly information submissions

- Financial revenues (per type of credit rating and on individual and consolidated basis) and costs (semi-annually for CRAs exempt from supervisory fees);
- Staff turnover, vacancies and key promotions (semi-annually for CRAs exempt from supervisory fees);
- FTE headcount (semi-annually for CRAs exempt from supervisory fees);
- Internal complaints submitted to the Compliance Department.

B. Semi-annual information submissions

- Information on the initiation of any internal review being performed or intended to be performed on rating models and rating processes;
- Outcomes of methodology reviews including information on any back-testing performed in the period, details of any key findings as well as actions taken by the CRA as a result;
- Compliance, Internal Audit, Risk Management and IT strategy and governance;
- Potential cases of non-compliance with the CRA Regulation that have been identified and measures taken;
- New potential and actual conflicts of interest identified and measures taken;
- Board minutes, INED opinions and reports submitted to the Board;
- Court, arbitration and other dispute resolution proceedings;
- Updated organisational charts.