Final Report

Guidelines on Disclosure Requirements Applicable to Credit Ratings

18 July 2019 | ESMA33-9-320

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Legislative references, abbreviations and definitions

Action Plan	European Commission's Action Plan for Sustainable Finance
CP	Consultation paper
CRA	Credit Rating Agency
CRA Regulation or CRAR	Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit ratings agencies as amended by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011, Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011, Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013, and Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014
EU CRA	A credit rating agency registered with ESMA
ESG	Environmental, Social or Governance
ESMA	European Securities and Markets Authority
ESMA SMSG	ESMA Securities and Markets Stakeholder Group

1 Executive Summary

Reasons for publication

1. The CRA Regulation includes a number of disclosure requirements relating to credit ratings. The purpose of these requirements is to ensure a sufficient level of transparency around the credit rating actions so as to enable the users of the credit rating to understand the main reasons for the credit rating, any limits or uncertainties underpinning the credit rating as well as where further information can be found to facilitate their own due diligence.

2. In this regard, ESMA has noted an inconsistent level between CRAs regarding the information that is disclosed in accordance to these requirements. As a result, ESMA believes that it would be beneficial to collate a set of good practices in a single guidance document covering the disclosure requirements that are applicable to credit ratings' press releases and reports. In doing so, this will contribute to ESMA's core tasks of contributing to investor protection within the EU.

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3. This Final Report is structured as follows:

- Section 2 contains a summary of the feedback received to the Consultation Paper alongside ESMA's responses.

- Annex I contains the final guidelines. These guidelines are composed of two main elements:

  - Guidance to improve the quality and consistency of the information that is disclosed following a credit rating action.

  - Guidance to improve the transparency of credit rating actions concerning the extent to which sustainability factors have been key driving factors behind that action. This section of the Final Report is provided specifically with a view to supporting the European Commission's Action Plan on Sustainable Finance[1].

- Annex II contains a cost-benefit analysis of the Guidelines.

- Annex III contains the response of ESMA's Securities and Markets Stakeholders Group to the Consultation Paper.

Next Steps

4. The Guidelines in Annex I will be translated into all official languages and published on ESMA's website. ESMA will consider these Guidelines for the purpose of its supervision as of 30 March 2020.

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[1] Communication for the Commission: Action Plan for Financing Sustainable Growth

2 Feedback Statement

1. This section provides a summary of the responses to the Consultation Paper (CP) Guidelines on Disclosure Requirements applicable to Credit Ratings. In providing this summary, ESMA also explains the changes that have been made in response to the comments provided during the consultation process.

2. In total, 28 responses were received to the consultation with 6 of these provided on a confidential basis. Responses were received from a mixture of credit rating agencies, and other non-CRA market participants.

Respondent Activity	Number of Responses Received	Confidential
Credit Rating Agency	14	3
Asset Manager	2	0
Banking	3	1
Investment Firm	1	0
Issuer Association	1	0
Other	7	2

2.1. General remarks

3. The feedback statement follows the order of the questions as they were presented in the CP. These comments were focused on the following areas:

   - Guidelines applicable to credit rating actions.
   - Guidelines concerning where sustainability factors have been key driving factors behind that action.

4. In addition to commenting on the proposed Guidelines, a number of respondents provided remarks on issues discussed in the introduction to the CP. In particular, paragraph 14[2], which discussed the accessibility of information provided in accordance with certain articles of the CRA Regulation. In this regard, a number of respondents provided detailed reasons in favour and against the placing of restricting barriers or checks on access to certain information. ESMA welcomes the input of respondents on this topic, in this regard ESMA believes it is important that the users of ratings and investors in general are capable of accessing the required rating related disclosures in a clear and consistent manner in accordance with the requirements of the CRA Regulation. This being said, it is recognised that differences in the technical approach as to how CRAs exactly make this information

[2] *"Beyond ensuring that these rating actions are accompanied by the required variety of disclosure requirements, it is also necessary to highlight the requirement of Article 13 of the CRA Regulation which requires that CRAs do not charge a fee for any information provided in accordance with Articles 8 to 12 of the CRA Regulation. In practice, this means that these press releases should be located on a section of a CRA's website that can be accessed without any barrier to entry or registration requirement."*

available can exist. ESMA will ensure the responses received on this topic are taken into consideration in any possible future work in relation to access to this information.

Question 1: Do you agree with the proposed Guidelines for press releases that accompany credit ratings or rating outlooks? If not, please explain.

5. Of the 28 respondents, 16 provided replies to this question. Of these, eight agreed with or expressed support for the approach of the consultation paper. Five requested clarifications or amendments be introduced, whereas three respondents disagreed with or did not support the approach of the proposals.

6. One CRA respondent outlined that they did not agree with the proposal to use the press release as the only vehicle for disclosures. In their view a press release is a communication adapted to the specific needs of the media. This respondent described how its current approach to publishing credit rating actions was highly automated and relied to a significant degree on a dedicated entity page on its website. It is via this means the respondent meets its disclosure obligations for various regulatory jurisdictions. This concern was echoed by another CRA respondent who stated that while they supported ESMA's objective of increasing the quality of credit rating disclosures, they did not believe that including this information in the press release was the best way to achieve this. This respondent highlighted that it currently used a separate document accessible through a link in the press release to meet its regulatory disclosure requirements. In this respondent's view, this approach is an appropriate way of meeting the CRA Regulations disclosure requirements.

7. A similar call for flexibility was reiterated by another CRA respondent who stressed that CRAs use different approaches to implementing the requirements of the CRA Regulation. The respondent outlined that CRAs can include regulatory disclosures in press releases, rating reports or in some cases separate documents that accompany the rating action press release. A similar point was made by another CRA respondent who emphasised that the proposed draft Guidelines should reduce, not increase, the complexity of regulatory disclosure around credit rating announcements. This respondent requested ESMA to amend the proposed Guidelines to reflect that certain disclosures can be included by reference in the publication that accompanies a credit rating action. The respondent suggested that this reference could be achieved through a hyperlink to the relevant section of the CRA's website.

8. Another CRA agreed that introducing guidance on minimum industry standards for disclosures in press releases would be beneficial, although it was concerned that additional requirements could increase the administrative burden on its analysts. This respondent also highlighted that additional information would lead to longer press releases potentially making them more difficult to read.

9. One respondent disagreed with the proposed draft guidelines stating that in their view the proposals were excessive and misguided. This respondent questioned whether addressing the inconsistency of the information disclosed by CRAs was a worthwhile exercise.

10. While expressing support for the objectives of the Guideline one CRA respondent noted that while it was normal practice for a press release to accompany a rating action, it was not a requirement of CRAR that all disclosures be made in the press release. As a result, the respondent requested that ESMA introduce amendments to allow the required disclosures to be provided by other means.

11. Elsewhere a non-CRA respondent stated that the proposed draft guidelines was reasonable and would provide users with greater clarity, consistency and ultimately confidence in the credit ratings they were using. However, the respondent stated that some elements of information are more useful than others and that ESMA should focus on only few key requirements. In addition, the respondent highlighted that ESMA should allow some flexibility in the level of information available on these areas within the press release itself.

12. A similar point was made by another non-CRA respondent who stated that while they agreed with the proposed draft guidelines in their view, the most relevant elements were items (i)-(vi) of the proposed draft Guidelines.

13. On a more specific point, one respondent stated that while they agreed with the proposed draft guidelines in their view, CRAs could improve their clarity on the thresholds or triggers that could lead to an upgrade or downgrade.

14. Going beyond the issues of content, a non-CRA outlined that while they agreed with the proposed draft Guidelines for press releases, they believed that ESMA should also propose minimum standards for the format of disclosure. Specifically, that ESMA should provide guidance on the way the information in a press release is presented.

15. Finally, more general support for the proposals was provided by three non-CRA respondents with one additional CRA respondent stating that ESMA's approach of addressing the structure of press releases would facilitate the better measurement of transparency, consistency and accuracy of CRA's practices.

16. **ESMA SMSG:** The SMSG agreed with the proposed guidelines. In the SMSG's view, the guidelines identified the most important elements of information to be included in the credit rating press release. The SMSG also supported the proposal that information, such as a description of rating category and methodology, should be directly and easily accessible to where they are located on the CRAs website.

ESMA Response: The purpose of this question was to gauge the overall level of support for the proposals in Chapter three of the draft proposed Guidelines as well as to receive the views of respondents on whether the press release accompanying a credit rating action should be the vehicle for credit rating related disclosures. In this regard, ESMA noted a general level of support for providing guidance that ensures a minimum level of consistency between CRAs with regards to credit rating related disclosures. In addition, ESMA noted that several respondents were supportive of improving the accessibility of this information and that the press release was a good tool for this purpose.

17. On the other hand, a number of respondents, particularly CRAs expressed reservations about using the press release as the vehicle for these disclosures. These comments highlighted that the CRA Regulation allows for flexibility in terms of how this information is disclosed, and that depending on the CRAs' current practices it may not be technically feasible or desirable to include all information covered by Chapter three of the draft proposed Guidelines in the press release.

18. ESMA considers that the main issue raised in response to this question relates to the use of the press release as the vehicle for rating related disclosures and in particular, whether all information should be disclosed within the press release that accompanies the rating action. In this regard, ESMA recognises that the CRA Regulation already allows for a degree of flexibility which states that where it is disproportionate in relation to the length of the report distributed, it shall suffice to make clear and prominent reference in the rating report itself to the place where such disclosures can be directly and easily accessed, including a direct web link to the disclosure on an appropriate website of the CRA.

19. What is therefore important for ESMA is that the press release or report is understandable for investors and does not omit key information necessary for understanding the credit rating or rating action. In this regard while the ***full underlying detail*** of all relevant elements need not be made ***within*** the press release itself, it should at least be accessible ***from*** the press release, whether by hyperlink or other means. This will therefore avoid press releases that are overly long on the one hand, or only contain general links to where further information can be found on the CRAs website. Ideally what ESMA would like to see is that there would be a clear signposting as to where information on each of the key element in the Guidelines can be found, for example "information endorsement status can be found HERE", information on solicitation status can be found HERE, and so on.

Question 2: Do you agree a standardised schematic indicating the rated entities level of participation would be beneficial? Do you have any comments on the proposed standardised schematic?

20. This question asked whether respondents agreed with the approach of the draft Guidelines with respect to a standardised table indicating the rated entities level of participation to be beneficial.

21. Of the 28 respondents, 20 provided replies to this question. Of these, 8 mostly non-CRAs agreed with or supported the proposals, whereas nine requested amendments or clarifications. Three respondents did not support the approach.

22. One CRA respondent stated that they had concerns with a number of aspects of the proposal. First, in practice this element covers both solicitation status and level of the rated entities' participation. However, solicitation status, can apply at the debt instrument level as well as at the issuer level. As a result, a credit rating action may cover a range of different instruments with different solicitation statuses. Therefore, an additional disclosure requirement here could result in significantly more lengthy credit rating announcements. Second, the respondent highlighted that it would be technically difficult to include

schematic tables in credit rating announcements as these are difficult to integrate from the perspective of ensuring they can be transmitted to different users across different platforms. Third, the respondent stated that they were concerned that the use of a schematic or table could increase the prominence of this disclosure requirement in relation to other elements, potentially implying it is of greater importance. By way of an alternative the respondent suggested that this disclosure item could be made through text only and made available on sections of the CRA website that could be easily found and accessed through the credit rating press release or report itself.

23. Another CRA respondent outlined similar concerns, stating that ESMA should not be prescriptive about the formatting of such disclosures. In this regard, the respondent outlined that this format would not be compatible its approach to publishing credit rating actions. In their view, it would be more proportionate to ensure a brief, clear and prominent narrative disclosure and that the respondent itself is already including colour coding for unsolicited credit ratings. As such the respondent requested that ESMA not prescribe the use of the tabular schematic.

24. These concerns were also expressed by another two CRA respondents who stated that they did not agree with a standardised scheme. In the view of one, setting additional standards on the way CRA's meet certain public disclosure requirements would go beyond what is required by the CRA Regulation without adding value for the users of credit ratings. By way of compromise the second respondent suggested that it would be more appropriate that this disclosure be required only for unsolicited ratings, or where the rated entity failed to fully participate in the rating process.

25. Another CRA respondent stated that while they agree with providing greater clarity in this area it was important not to overemphasise the importance of these factors of solicitation and participation. In this regard, the respondent highlighted that Solvency II does not distinguish between solicited and unsolicited ratings from the perspective of their use for regulatory purposes. As a result, this respondent stated that it did not believe a separate scheme for unsolicited ratings is required and that CRAs should instead provide this information in the form a narrative.

26. A further non-CRA respondent stated that in their view there are limits to standardisation and that the users of ratings do not necessarily need to know the level of participation in the rating process as in the case of a solicited rating, participation is presumed.

27. Qualified support was provided by another CRA respondent who stated that they currently comply with this disclosure requirement by (a) including a statement, in each press release that accompanies the issuance of an unsolicited credit rating, that such credit rating is an unsolicited rating (and information regarding "participation" and "access" in the context of the rating analysis), and (b) using the appropriate notations for each unsolicited rating (depending on "participation" and "access") in a distinguishable colour coding in the rating table dedicated to each issuer.

28. Another CRA respondent outlined that they consider the standardised schematic as a proactive measure to ensure consistency and was therefore beneficial in nature. This view

was echoed by another respondent who stated that in their view a standardised scheme indicating the rated entities level of participation would be useful as this will provide greater transparency on the information used as part of the rating action itself.

29. Further support was provided by a non-CRA respondent who stated that a standardised scheme communicating the issuers level of participation in the credit rating process would be beneficial. However, this respondent stated that the proposed scheme only refers to whether access to accounts has been made available which in the case of listed companies is highly likely, given that these are publicly available. In this respondent’s view the proposed scheme could be supplemented by further requirements describing the interaction of the issuer with the CRA on a more general basis.

30. Additional support was provided by another two non-CRA respondents who stated that in their view a standardised scheme would be welcome as it would ensure a level playing field among all CRAs and allow the users of ratings to see how rated entities had participated in the credit rating process. This being said, the respondents recommended that the scheme be simplified and that the scope should be limited to unsolicited ratings.

31. Similar views were expressed by another non-CRA respondent who supported the proposal for a standardised format on the basis it would aid comparability. This view was repeated by another respondent who supported the idea of a standardised scheme to indicate the rated entities level of participation. This respondent likewise stressed that a more simplified scheme would be beneficial.

32. Three further CRA respondents stated that they agreed that the standardisation of information presentation was beneficial for the users of ratings. Of these one stated that while they generally agreed with ESMA’s proposed approach, the scheme itself could be made more simple. In this regard, the respondent noted that the CRA Regulation already required unsolicited credit ratings to be identified as such and as a result there is no further need to add such a chart. Another supported the proposal on the basis it would provide users with a better understanding on the rated entities involvement. While another stated that it may also be useful to also allow the CRA itself to comment on the level of the rated entities’ participation.

33. Finally, one non-CRA respondent stated that they welcomed the efforts of the proposed draft guidelines to improve the quality and consistency of information disclosed alongside the issuance of a credit rating. In this regard, the respondent stated that knowledge of whether a particular rating is solicited or not is important information for the user in providing context to the issuer's level of participation in the rating process, and to allow the user to understand the solicitation status of a rating without recourse to the CRA's website. In this regard, the respondent requested that CRAs be required to specify clearly at the top of every page of the press release the fact that the ratings were unsolicited. The respondent also requested that the schematic include information such as the rationale for carrying out the unsolicited ratings exercise, the source of the information relied upon for the unsolicited rating, any efforts made to substantiate the information relied upon, and a link to the particular CRA's policy on unsolicited ratings.

34. **ESMA SMSG:** The SMSG agreed that a standardised scheme for communicating the level of participation of a rated entity would be beneficial for the users of ratings. In this regard, the SMSG agreed with ESMA's proposal. The SMSG highlighted that in its view CRAs should also be able to comment on the level of participation.

ESMA Response: The purpose of this question was to receive feedback on whether there was support for including a standardised table that would provide clear information on the solicitation status of the credit rating as well as the level of participation of the rated entity or related third party in the rating process. ESMA notes that there was general support for providing greater clarity and signposting of the solicitation status of the rating, as well as the involvement of the rated entity in the rating process. However, it was also noted that the majority of respondents found the proposed table to be overly complex and difficult to interpret. As this was contrary to the objective of this proposal, ESMA is proposing a revised table in the Final Report. This revised version is simplified to focus on the information that respondents highlighted was most important to their analysis, namely whether the credit rating was unsolicited and the level of engagement with the rated entity. The level of engagement in the table now focuses on the areas that respondents highlighted were most important to their consideration (i) whether the CRA had access to management of the rated entity and (ii) whether the CRA had access to internal documents.

Question 3: Do you have any comments on specific items under this section? If yes, please explain with reference to the proposed item's number.

35. This question asked whether respondents had any comments on the specific proposals of the draft Guidelines in relation to disclosures for credit rating press releases. Of the 28 respondents, 20 provided replies to this question. Seven respondents expressed general support for all the proposed items. Of these, one respondent questioned whether it was necessary to provide this guidance given the instructions were so straightforward.

36. While thirteen respondents suggested amendments or clarifications, no respondent expressed general opposition to the guidance set out in this chapter. Two CRA respondents reiterated general comments regarding the need for flexibility regarding how the information is provided (i.e. in the press release on the CRA's website). In addition, one CRA respondent expressed the need to allow enough time for CRAs – and particularly small CRAs – to implement the Guidelines.

37. The following subsections summarise the comments provided with regard to each of the individual nine items followed by an answer from ESMA.

Item (i): A statement as to whether or not the credit rating has been endorsed for use for regulatory purposes in the EU in accordance with the CRA Regulation.

38. Ten respondents provided specific comments or views with regard to this item. Comments focused on two topics: (i) where to disclose the information (ii) what information to disclose.

39. Three CRA respondents argued that this information would be better provided through the website of a CRA rather than the press release itself. Providing the information in the press release could lead to an extensive amount of information, and potentially confusing for non-EU investors. In addition, this information is primarily relevant to professional investors, who are less likely to rely on the press release for this information. One CRA respondent, however, stated that it already provides this disclosure in the press release as well as on its website.

40. Two CRA respondents stressed that it was unnecessary and excessive to require CRAs to disclose when a rating was *not* endorsed from a third country. However, another CRA respondent suggested ESMA go further by proposing a standard wording to be used by CRAs. Finally, one non-CRA respondent raised an issue beyond disclosure practices, pointing out the relevance of commitments agreed under Paris Agreement to the ability of CRAs credit rating methodologies' to measure the risks involved in a transition to a low carbon economy.

Items (ii) and (iii): A clear statement as to whether the credit rating is an unsolicited credit rating; and in the case of an unsolicited credit rating the use of the following scheme to clarify the level of the rated entities participation.

41. Six respondents provided specific comments or views on these two items. One non-CRA respondent stressed the importance of knowing the level of participation of the rated entity in a credit rating. Three CRA respondents stated that they already broadly followed the instruction of these items. Another CRA respondent proposed that information about solicitation and participation be provided on the CRA's website accessible via hyperlink in the press release to avoid overly lengthy disclosures in the press release.

42. One CRA respondent asked whether it would be useful for ESMA to provide a standardised wording which CRAs could use. In a similar theme, two other CRA respondents asked whether ESMA could provide further clarification of key terms such as 'participation' and 'access to accounts'. One of these CRA respondents proposed that 'participation' could be defined as 'substantive discussion of the primary topics driving the relevant credit rating'. According to this CRA, ESMA should also clarify that 'access to accounts' refers to access to non-public information.

43. Finally, one CRA respondent outlined that while it generally agrees with ESMA's proposed approach it believes the chart could be much simpler and also highlighted that as the EU CRA Regulation already requires unsolicited credit ratings be identified as such, there is no further need to add a Yes/No in the chart as it will only apply to unsolicited ratings.

Item (iv): The names, job titles and contact details for the persons responsible for the credit rating together with the name and address of the legal entity responsible for the credit rating.

44. Six respondents provided specific comments or views with regard to this item. One non-CRA respondent, stressed the importance of contact information for users of credit ratings, particularly for due diligence purposes.

45. Two CRA respondents expressed opposition to publishing contact details of the relevant persons arguing that this was not required by the Regulation.

46. Three CRA respondents described how they considered their current practices to be broadly aligned with the proposed guidance. In this regard, one of these respondents proposed to change the wording from "the persons responsible for the credit rating" to “the persons primarily responsible for the analysis with respect to the credit rating” in order to reflect that it is the CRA which is responsible for the rating rather than any individual analyst. Another, stressed the need to provide this information on the website of the CRA, in order to allow for updates in contact information without having to revise press releases. Finally, one stated that it should be sufficient to provide the contact details of the lead analyst (and not the chair of the rating committee) as that would be the person with most knowledge of the credit rating.

Item (v): A reference to all substantially material sources used for the report should be listed at the end of the report. Where a fact or figure is cited in the press release this should be referenced via footnote to the sources listed at the end of the press release.

47. Seven respondents provided specific comments or views on this item. All but one expressed opposition. This respondent explained that it discloses in its criteria the data sources it uses to derive the assumptions specified in the criteria, and thus which are used in the credit rating analysis.

48. While most of these respondents expressed support for the underlying goal of this item, there were a number of elements that they disagreed with. In this regard One respondent stated that the requirement for such referencing is not supported by the CRA Regulation and could take a disproportionately onerous amount of time to populate. Two other respondents stated that the addition of precise references of material data or information sources used would involve substantial additional manual work for which consistency may be hard to achieve posing systems-related challenges for CRAs. One respondent stated that integrating such references could impair the fluidity of the press release. Finally, one respondent stated that CRAs may use confidential information from the issuer, which hardly would not be possible to list as a source. In this regard the respondent stated that references to sources should only be included in the more extensive rating report.

49. Two respondents proposed that it should be sufficient to provide a synthesis or summary at the end of the press release of the sources utilised for the elaboration of the rating without including a footnote in each fact and/or figure of the rating press release. Another respondent argued that the current industry practice of referencing specific documents cited in the credit rating action should be enough.

Item (vi): The name of the principal methodology and associated models or criteria used in determining the credit rating are listed alongside dates of applicability or version number. For each methodology or associated model a direct web-link should be provided to that document on the CRA’s website.

50. Nine respondents provided specific comments or views with regard to the fifth item on the list. By way of expressing support, one non-CRA respondent stressed the value and importance of this information from the perspective of the users of ratings. Another non-CRA respondent also highlighted the importance of including the titles and versions of the methodology and definition documents in the press release. As a counter point another stakeholder was of the view that most users of ratings were largely unfamiliar with the content of the methodologies and that including this information was of limited value.

51. One CRA respondent stated that it consistently discloses in the dedicated entity web-page on its website together with the name of the criteria used (with a direct hyperlink). Another respondent stated that CRAs generally provide a direct link to their rating methodologies, while others choose to provide links to a section on their website. In the view of this respondent, both approaches are equally valid. Another CRA respondent, stated that since the name of the principal methodology and associated models or criteria could vary from issuer or instrument, it would be beneficial if this information could be provided via a link to a location on the CRAs website. This view was supported by another stakeholder which stated that disclosure of "version number or applicability date" of each model presents certain challenges in cases where methodologies are amended to correct immaterial elements. In these cases, the methodology has a new internal version number but it would not be relevant to the user of the rating.

52. Finally, one CRA respondent asked ESMA to clarify the proposal to clarify that there is no requirement to disclose models themselves, but rather only the name of the model (and version or date) and where the model summary can be found).

Item (vii): A section clearly identified as addressing actions or events that could lead to an upgrade or downgrade of the credit rating accompanied by best and worst-case scenario credit ratings, with dedicated paragraphs addressing factors that could lead to an upgrade, and actions or events that could lead to a downgrade.

53. Six respondents provided comments or views on this item. Two CRA respondents stated that their current practices should be considered adequate to meet the requirements. In their view scenario analysis or triggers that could lead to an upgrade and downgrade of the credit rating should be sufficient and are already being provided. One CRA respondent proposed that such information should be available only in longer rating reports.

54. One CRA respondent stated that it is not necessary to have separate paragraphs for factors that could lead to an upgrade or downgrade and asked ESMA to make that such a clarification in the guidelines. Another CRA respondent stated that such additional analysis would offer limited additional clarity to the users and would impose heavy burdens on CRAs. Finally, one CRA respondent stated that in its view what is most important is to ensure CRAs are as clear as possible with regards to definition of best and worst cases scenarios.

Item (viii): An explanatory paragraph outlining where the user of the rating can find information on the definition of each rating category, including definitions of default, risk warnings, etc. If this is on a section of the CRA's website then a

dedicated link to that section or document(s) in that section. If this is in a section of the principal methodology, then a reference to the section of the methodology.

55. Six respondents provided comments or views on this item. One non-CRA respondent, stressed the importance of access to methodologies as well as information on titles and version numbers. Another respondent stated that CRAs should provide more information about how the application of the methodology led to a particular credit rating.

56. One CRA respondent, stated that they currently provide this information together with a link to explanations about credit rating definitions and categorisations as well as information about attributes and limitations of credit ratings. Two other CRA respondents stated that in their view including a reference to the methodology itself should be sufficient.

Item (ix): A statement explaining whether or not the rating was disclosed to the rated entity and amended following that disclosure.

57. Seven respondents provided comments on this item. Three of these, two CRA and one non-CRA, stressed the relevance and importance of this information. One of these, in addition, proposed that CRAs should disclose information about fees related to analytical services. Two of these respondents, one CRA and one non-CRA proposed that the wording of the guidance should more clearly refer to the very specific situation of an amendment following an appeal process from the rated entity.

58. Two CRA respondents proposed that current practice, whereby a reference with a link to the relevant section of the website is made, is the most effective means for disclosure.

59. Two respondents, one CRA and one non-CRA questioned the relevance of including this information in the press release since the vast majority of credit ratings are not amended after disclosure.

60. **ESMA SMSG:** The SMSG highlighted that CRA's methodologies (item vi) and the definition of rating category (item viii) should be easily accessible through a direct link without barrier or registration. The names and versions of these methodology and definition documents should be explicitly mentioned in the press release.

61. The SMSG also highlighted that for outlining the endorsement status of ratings the draft guidelines only require a "statement", whereas for outlining the status of unsolicited ratings a "clear statement" is required. The SMSG suggested that these elements be harmonised so that both requested a "clear statement".

ESMA Response: The purpose of this question was to allow respondents to provide their views on the nine specific recommendations as to how CRAs could meet their disclosure obligations with regards to certain disclosure requirements that accompany the disclosure and presentation of a credit rating. The order in which these items are presented follows the sequence of the underlying provisions in the CRA Regulation. In this regard the guidelines should not be understood as presenting an order of presentation or hierarchy of the provisions. ESMA received significant input on each of the items under Chapter three. In this regard, ESMA has made the following amendments to the final guidelines:

Item (i). A number of respondents highlighted that to require a statement that a credit rating had not been endorsed could lead to confusion among non-EU users of ratings, to whom this distinction may not be clear. As such, ESMA has clarified that a statement is only required in positive circumstances. ESMA has also amended the statement to remove reference to “use for regulatory purposes” to also improve clarity of any statement provided under this item.

Item (ii). There was general support for this requirement, as a result no changes have been proposed to this element.

Item (iii). ESMA has amended and simplified the table proposed in the final draft guidelines to take on board views expressed by respondents. See above ESMA’s response to question 2.

Item (iv). ESMA noted the views of non-CRA respondents who generally supported more consistent information as to the individuals responsible for developing and approving the credit rating. However, ESMA also noted the views of some CRAs that these individuals are not personally responsible for the credit rating. As a result, ESMA has clarified the language to ensure it refers to the lead or principal analysts and the person primarily responsible for approving the credit rating.

Item (v). ESMA has clarified that rather than footnoting every fact or figure in a press release CRAs should ensure that identifying references for any substantially material source cited as a key driver within the press release should be provided. The level of detail in these references should be sufficient to, for example, enable to the reader to identify the source of a specific report or event that was cited or referred to by the CRA in the press release. The purpose of this is to allow the user to conduct their own due diligence on the sources or material that the CRA is citing as relevant to its credit analysis.

Item (vi). There was general support for this proposal from non-CRAs on the basis that this information is useful for their own due diligence, and from CRAs who to a large degree are already implementing this proposal. The purpose of this element of the draft proposed guidelines was to ensure that all CRAs list the principal methodology and associated material models used in determining the credit rating. In this regard, ESMA has clarified that CRAs should disclose the names of their principal methodologies and models used in determining the credit rating.

Item (vii). Respondents were generally supportive of this proposal, as a result ESMA has made no changes to these elements of the proposed draft guidelines.

Item (viii). Respondents were generally supportive of this proposal, therefore ESMA has only made changes necessary to better align the wording of the paragraph with the relevant section of the CRA Regulation.

Item (ix). Respondents were generally supportive of this element of the proposal, however to improve the coherence with the regulation, ESMA has clarified that this statement should focus on explaining whether the rating was amended following that disclosure.

Question 4: Do you have any comments on specific items under this section? If yes, please explain with reference to the proposed item's number.

62. Of the 28 respondents, all of them provided replies to this question which asked for respondents views as to the proposal for increasing transparency as to the consideration of ESG factors in credit rating action press releases and reports. Eight respondents agreed with the proposals, whereas sixteen provided amendments or requested clarifications. Three respondents disagreed with the proposals.

63. One non-CRA respondent disagreed with the proposals on the basis that the guidelines were burdensome and requested information that agencies are already including in their rating related publications. This respondent also questioned the usefulness of including an identifier that ESG factors were not a key underlying element behind a rating action. One CRA respondent stated that CRAs should be allowed to decide whether ESG factors are applicable or not to a credit rating decision, and in the case that they are this should be clearly stated in the press release.

64. Another CRA respondent outlined that while it agreed with the objective of increasing investor understanding of how ESG factors are reflected in credit analysis, ESMA's proposed draft Guidelines should distinguish between credit rating changes and changes in credit rating level of outlook. In addition, a negative identification as to the consideration of ESG factors could lead to a misleading disclosure to investors. Finally, the respondent believed the proposed draft guidelines assume a clear distinction between E,S and G factors, which although very different in nature have some degree of overlap in practice. To address this final element the respondent suggested an approach that does not artificially define or compartmentalise these factors.

65. A similar view was expressed by another CRA respondent who stated that while it was supportive of the need to increase transparency around when and how ESG factors are considered as key elements in credit ratings and elements of the proposal such as the creation of stand-alone ESG sections on CRAs' publicly accessible website or the publication of specific information on how ESG factors are considered by each CRA in their methodologies. The respondent had concerns about a number of the proposals. Most notably, the categorisation of factors as E, S or G where it requested greater flexibility, the requirement to include a hyperlink which could be burdensome, and the negative statement which could be misleading.

66. A lack of support for the negative statement was also expressed by another CRA respondent who stated that stated that while they welcomed the focus ESG factors were receiving and agreed that where ESG factors are a key underlying element in a rating action they should be highlighted and explained. However, the respondent stated that they believed a standardised approach, as set out in the CP, that would add a requirement to disclose whether a factor had not been considered was not advisable.

67. A further non-CRA respondent outlined that it agreed with and supported ESMA's proposals, but nevertheless wished to highlight that it agreed with paragraph 57 of the CP which stated that '..in no way does this guidance recommend or mandate what factors a CRA should be considering as part of their creditworthiness assessments nor does it suggest that the consideration of ESG factors are more important than other factors to the creditworthiness assessment of an entity or issuer.'

68. A similar desire for the guidelines to go further was expressed by non-CRA another respondent, who requested that the guidelines be amended to clarify that this applies in cases where they are key driving factors behind a change in a rating. The respondent also highlighted that it is important that the guidelines should be clear that the disclosure around ESG factors should not be on how these impact a rated entity's business model but its credit quality.

69. Another non-CRA respondent stated that they agreed that improving transparency around the consideration of ESG factors would be beneficial, however in their view the absence of a taxonomy would make comparability difficult to achieve.

70. Another non-CRA respondent stated that although ESG factors are not relevant to the evaluation of creditworthiness in a number of industries, they supported the approach of ESMA's guidelines as a proportionate way of describing when ESG factors have been considered by a CRA as relevant to the creditworthiness assessment.

71. An additional non-CRA respondent outlined that they agreed with the proposals and felt that the proposed draft guidelines would contribute positively to the European Commission's Action Plan on Sustainable Finance. This respondent recommended that the ESG disclosure could be made in a separate stand-alone disclosure and that within this disclosure the CRA could provide a detailed causal chain between the driving factors and the impact on the credit rating.

72. Elsewhere another non-CRA respondent stated that they supported the approach of the draft guidelines but recommended that they include an explicit requirement that CRAs should also review their methodologies with a view to assessing whether ESG factors are relevant and should be included in the methodology.

73. An opposing view to this was outlined by a CRA respondent who highlighted ESMA guideline can neither require CRAs to include ESG into their rating methodologies nor require CRAs to disclose ESG considerations separately or explicitly and that CRAs need to remain free in choosing which factors they consider in their methodologies and how the credit ratings are presented and explained. This respondent highlighted that ESMAs proposals would most affect small CRAs who would need to devote resources to ESG topics.

74. Another non-CRA respondent stated that as the incorporation of ESG factors into investment activities increases, fixed income investors need to better understand how their data sources consider ESG factors. Given ESG factors are not an explicit part of the CRA Regulation, the respondent welcomed that these factors were being addressed in ESMA's

guidelines. However, the respondent stated that ESMA should not be prescriptive about what is categorised as ESG factors but rather leave it to CRAs define this themselves. In this regard, the respondent pointed to the European Commission's taxonomy as a policy tool which seeks to identify investment activities that make a substantive contribution to environmental/sustainability objectives rather than to be used as a conceptual framework for categorising ESG matters.

75. An additional non-CRA respondent supported the draft guidelines but questioned whether the focus should be on sustainability considerations as opposed to ESG factors. The respondent also highlighted that CRAs need to ensure that any ESG metrics are accurately and measured and that ESG factors do not fall prey to corporate 'window-dressing'. The respondent supported the requirement to have a positive identification as to whether ESG factors were a key underlying element but did not support a negative identification. The respondent questioned whether it would be sufficient to identify if ESG factors were a key underlying element without adding more qualitative information on their materiality. Finally, the respondent highlighted potential problems with how each CRA would benchmark whether a criteria is E, S or G. In this regard, the respondent noted that some criteria could be a combination of all three.

76. A further non-CRA respondent stated that while they agreed with the proposal the requirement to include a link to how CRAs are considering ESG factors in their credit ratings could be seen as contradictory with the statement that ESG factors may not be relevant to every credit rating action. A similar view was expressed by another CRA respondent who stated that while they agreed with the proposals they had two main issues. First, that it should not be mandatory to have a link to a document or section of that CRAs website which outlines how it considers ESG factors in its credit ratings. Second, that an identifier stating whether ESG factors were not considered could be misleading and goes contrary to the CRA regulations purpose of liming disclosures only to information relevant to the rating. A further CRA respondent requested that ESMA clarify whether the proposed ESG disclosures refer to the drivers of the current rating action or the overall credit rating. In addition, the respondent requested that ESMA allow for flexibility on the location of the web link to the ESG guidance in the press release. Finally, the respondent questioned the usefulness of including a negative statement where ESG factors were not a key driving factor.

77. From a more general perspective, one non-CRA respondent agreed with the proposals but questioned whether ESMA should take the ratification of the Paris Climate Agreement into account for the purposes of the CRA Regulation's endorsement regime.

78. By way of supporting a more prescriptive approach, another non-CRA respondent stated that in addition to the Guidelines, CRAs should also disclose information about what steps the rated entity could take to improve its overall credit rating by addressing any ESG risks identified by the CRA.

79. The view that the guidelines should in fact go further was outlined by another CRA respondent who stated that the guidelines should also require; (i) a detailed explanation of the relative importance of E, S and G factors, including their weights and/or sensitivity in

the credit ratings, (ii) an explanation on how E, S, and G factors evolved since the previous rating action and whether these evolutions are at the root of a change in the credit rating or rating outlook, and finally (iii) an explanation on the impact that E, S, and G factors have had on the simulation of stress scenarios that the CRA has undertaken.

80. Another non-CRA respondent supported the approach of the draft Guidelines, stating that credit focused assessments by CRAs were complementary to more ESG focused assessments of non-CRAs. This respondent also emphasised that it is important to avoid giving the impression that ESG factors were considered as part of a credit rating when in fact their relevance was limited.

81. Another non-CRA respondent stated that they support the work of ESMA to provide ESG related disclosure guidelines for CRAs as the consideration of these factors will help provide a more complete view of an entities' long-term performance. This respondent stated that they believed that the draft guidelines provide an important foundation for disclosure and transparency around these factors.

82. A further CRA respondent stated that they supported the proposed draft Guidelines for ESG disclosures and welcomed the wording in that "in no way does this guidance recommend or mandate what factors a CRA should be considering as part of their creditworthiness assessments". This respondent outlined that it was committed to understanding and evaluating how ESG factors affect credit and are continually working to make these factors more prominent in ratings and research.

83. Finally, a CRA respondent stated that they welcomed the guidelines as a first concrete step on the side of EU authorities to ensure CRAs take full consideration of ESG factors in their credit rating processes. This respondent considered that the guidelines are in line with current market practice. However, the respondent also requested that ESMA allow for sufficient time to implement the guidelines.

84. **ESMA SMSG:** The SMSG highlighted that credit ratings are fundamentally different from ESG ratings as the two products serve very different purposes. In this regard, the SMSG stated that while ESG factors may be relevant to credit ratings in certain cases, they will not be a "key element" in every instance.

85. Beyond this point the SMSG requested ESMA clarify whether the guidelines are intended to require CRAs to include ESG factors in their rating methodologies. The SMSG stressed that the lack of agreed definitions at EU level is a substantial shortcoming that seriously hampers the implementation of a harmonised approach to sustainable finance and that even if the guidelines increase transparency around the consideration of ESG factors these disclosures will only be useful if the factors being referenced are comparable.

ESMA Response: The purpose of this question was to receive the views of respondents on the proposals for increasing transparency of ESG factors in credit rating action press releases**.** Consequently, ESMA has revised the proposals to address a number of issues raised by respondents. First, ESMA has clarified that the disclosures in this section only relates to where ESG factors are the key elements driving a change in a credit rating action.

This is to distinguish from where ESG factors may be considered as part of a credit rating issuance. In such cases where ESG factors are a key driver of a rating change, CRAs should outline by way of a statement that ESG factors were a key driver in the rating change. Next, CRAs should identify which of the key rating drivers were ESG factors. Then, CRAs should explain why these ESG factors were material to the credit rating or rating outlook. Finally, ESMA has clarified that a link to guidance or a section of that CRAs website explaining how ESG factors are considered within their credit ratings, should only be provided for rating actions where ESG factors were key elements driving a change. For those CRAs who either do not have dedicated research explaining how they consider ESG, or a section of their website, this element could be fulfilled through a link to the principal methodology where information can be found as to how that CRA considers all factors relevant to its credit assessments, including ESG factors, where applicable. However, in line with the provisions of Article 23 of CRA Regulation these guidelines do not mandate that CRAs include ESG factors in their credit rating methodologies. Finally, ESMA has removed the proposal for a negative statement, where ESG factors were not key elements driving a change in a credit rating.

As now drafted, the proposals set out that where ESG factors were a key driver of a change in a credit rating action, CRAs should outline in the press release that one or more of the key elements driving the change correspond to that CRA's categorisation of ESG factors. Separately, the CRA should explain whether the key elements are considered by that CRA to be ESG factors. This general categorisation will on the one hand provide the users with information on which key drivers were ESG factors, without requiring CRAs to draw a hard distinction between whether a factor is E, S or G which in the absence of an agreed taxonomy could prove difficult for CRAs and problematic for users. With a view to providing greater consistency ESMA may consider revisiting this element of the guidelines following the adoption of the European Commission's proposal for a regulation on a framework to facilitate sustainable investment. Finally, where available, and where ESG factors were a key driver of the rating change, the CRA should provide access to guidance explaining how it considers ESG factors in its credit ratings more broadly.

Question 5: This question asked whether respondents could identify any additional actions that CRAs could take to improve the disclosure of the consideration of ESG factors.

86. Of the 28 respondents, 16 mostly non-CRAs provided replies to this question. Three respondents stated that ESMAs proposed draft guidelines were sufficient and had no further comments or suggestions. Eleven respondents provided comments discussing where CRAs could take additional steps to improve transparency around the consideration of ESG factors. Three respondents provided comments stating that CRAs' current level of disclosure around the consideration of ESG factors was sufficient.

87. One CRA respondent outlined that they were concerned about the potential to confuse the relevance of ESG to creditworthiness, and ESG as an additional information point for investors. In this respondent's view, both aspects are relevant but both serve different purposes and should be used as complementary to each other. Another non-CRA

respondent highlighted the importance of ensuring that the information CRAs analysis is based on is up to date and accurate and encouraged ESMA to ensure compliance and accountability where discrepancies occur. This respondent also recommended IOSCO including the topic of ESG disclosures in the Code of Conduct for CRAs.

88. Another non-CRA respondent recommended that ESMA introduce additional guidance stating that when for example an environmental factor has been a key element of a rating action, the CRA should also specify the climate scenario or trajectory used for that analysis. In addition, the respondent suggested that the CRA should provide links to further analysis that could help investors better understand if ESG factors might become relevant for a credit rating in the future. Another non-CRA respondent however stated that CRAs were already taking the necessary steps to increase transparency on the integration of ESG factors in credit ratings. In this regard, the respondent highlighted that a number of CRAs already have dedicated ESG sections of their websites and are raising awareness in a proportionate manner.

89. In terms of future developments another respondent stated that if in the future the CRA Regulation were to be amended to mandate CRAs to explicitly integrate ESG factors in their assessments, additional disclosure actions may be necessary.

90. One non-CRA respondent suggested that an alternative to improving the quality and consistency of ESG related disclosures in credit ratings would be to include a specific section related to “ESG factors consideration” in the press release. This would provide greater transparency in their ESG related guidance by listing the raw data used and key metric related to ESG factors that were considered.

91. A further non-CRA respondent highlighted the lessons from the sub-prime crisis which demonstrated the dangers of relying on external opinions. In this regard, the respondent emphasised the importance of ensuring the maximum level of transparency to allow users to conduct their own due diligence.

92. In terms of additional actions that could be taken another non-CRA respondent outlined that it would be helpful if CRAs provided additional guidance on the relevance of ESG factors to a credit rating. Specifically, within their methodology documents CRAs should disclose all factors – financial or ESG related – which are likely to be viewed as a key element in the credit rating. In this regard, CRAs should explain the criteria for arriving at what is considered material and what is not for different types of issuers and sectors. As part of this, the respondent outlined that CRAs could consider providing an indication as to the timeframe over which they would consider such factors to be material.

93. One non-CRA respondent wished to draw attention to ESMAs’ Annual Report and Supervision Work Programme which did not contain any references to climate, carbon or sustainability. In this regard, the respondent recommended that ESMA should be provided with greater resources in order to tackle climate change.

94. Another CRA respondent stated that disclosure around the consideration of ESG factors should not only focus on credit ratings but also on CRAs methodologies. In this regard, the

respondent considered that guidelines addressing credit rating disclosures were too narrowly focused. This respondent considered that a more appropriate course of action would be for ESMA to require CRAs to provide a clear definition of the taxonomy chosen for ESG factors as well as an indication as to whether or not ESG factors have been integrated in a systematic manner within the CRA's rating methodologies. Finally, the respondent outlined that a CRA should clearly indicate, for each ESG factor it considers, whether it is a quantitative or qualitative factor. In this regard, the respondent outlined that whenever a CRA states that ESG factors are considered as part of its rating methodologies this information should appear in the principal methodology document related to each asset class instead of in an ad hoc ESG-related guidance or research.

95. One CRA respondent outlined that they considered ESMA's draft guidelines as sufficient as a first step until the EU taxonomy has been defined. Another respondent disagreed and considered that the guidance was excessive and that CRAs should be allowed to develop practices in this area on their own. Another CRA respondent outlined that further regulatory intervention relating to ESG disclosure is not necessary and that the users of credit ratings were best placed to inform CRAs about what information they should be provided with.

96. Finally, one non-CRA respondent recommended that ESMA go further with its guidelines and require CRAs to disclose (i) the framework or approach used to build the methodologies for assessing material ESG considerations. For example, whether CRAs use third party frameworks to form part of their methodologies, and if so what third party framework. (ii) the ESG risks that require greater consideration by issuers and investors (iii) disclosure of whether the CRA is a signatory of the UNPRIs credit rating initiative.

ESMA SMSG: The SMSG stated that it considered ESMA's proposed guidelines to be sufficient until the EU taxonomy is defined.

ESMA Response: The purpose of this question was to receive additional input from respondents with a view to identifying whether there were other possible steps that CRAs could take to improve the transparency of their consideration of ESG factors. A number of interesting proposals were provided in response to this question, however ESMA also noted that there appeared to be a balance between those respondents who felt CRAs could take further actions beyond the steps outlined in this paper and those that felt the proposals were either sufficient or overly burdensome. As a result, ESMA feels that the proposals should not be expanded beyond their current format at this stage and wait until possible further developments in this area.

Annex I Guidelines

Scope

Who?

These guidelines apply to credit rating agencies established in the Union and registered with ESMA (hereinafter “EU CRAs”) in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies[3] (hereinafter “CRAR”).

What?

These guidelines concern particular matters relating to the publication of credit ratings, rating outlooks and methodologies and models by EU Registered CRAs in accordance with Articles 10(1), 10(2), 10(5) and Annex I, Section D, I, points 1, 2, 4 and 5 and Annex I Section D, III, 1,2, 2a and 4.

When?

These Guidelines will be translated into all official EU languages and published on ESMA’s website. ESMA will consider these Guidelines for the purpose of its supervision as of 30 March 2020.

[3] OJ L 302, 17.11.2009, p.1.

Definitions, legislative references and acronyms

The following definitions apply:

CRA	Credit rating agency
CRAR	Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit ratings agencies (as last amended by (EU) No 462/2013)
ESMA	European Securities and Markets Authorities
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 (ESMA Regulation)
ESG Factors	Environmental, Social or Governance Factors

1 Purpose

1. The purpose of these Guidelines is to improve the consistency of the information that CRAs are required to disclose as part of certain rating actions. This information is typically included in the rating action press release or reports.

2 Compliance and reporting obligations

2.1 Status of the guidelines

2. This document contains guidelines issued pursuant to Article 16 of the ESMA Regulation. In accordance with Article 16(3) of the ESMA Regulation, CRAs must make every effort to comply with the guidelines.

2.2 Reporting requirements

3. ESMA will assess the application of these guidelines by the CRAs through its ongoing supervision and monitoring of CRAs' periodic reporting to ESMA.

3 Guidelines

3.1 Requirements relating to Press Releases or Reports published in accordance with Article 10(1), 10(2) and 10(5).

4. ESMA considers that a credit rating or rating outlook, disclosed and presented within the meaning of Articles 10(1), 10(2),10(5) and Annex I, Section D, I, 1, 2, 2a, 4 and 5 should be accompanied by a press release or report that explains the key elements underlying the credit rating or rating outlook and includes at least the following elements:

i. A clear statement or identifier as to whether the credit rating has been endorsed in accordance with the CRA Regulation.

ii. A clear statement as to whether the credit rating is an unsolicited credit rating.

iii. In the case of an unsolicited credit rating the use of the following scheme to clarify the level of the rated entities participation:

Unsolicited Credit Rating	
With Rated Entity or Related Third Party Participation	[YES][NO]
With Access to Internal Documents	[YES][NO]
With Access to Management	[YES][NO]

iv. The names, job titles and contact details for the lead rating analyst and the name and position of the person primarily responsible for approving the credit rating together with the name and address of the legal entity responsible for the credit rating.

v. Identifying references for any substantially material source cited within the press release as a key driver of the credit rating action.

vi. The name of the principal methodology and material models used in determining the credit rating are listed alongside dates of applicability or version number. For each methodology a link should be provided to that methodology, for each material model a link should be provided to a description of that model.

vii. A section clearly identified as addressing actions or events that could lead to an upgrade or downgrade of the credit rating accompanied by best and worst-case scenario credit ratings, with dedicated paragraphs addressing factors that could lead to an upgrade, and actions or events that could lead to a downgrade.

viii. An explanatory paragraph outlining where the user of the rating can find information on the meaning of each rating category, including definitions of default or recovery including a sensitivity analysis of the relevant key rating assumptions, such as mathematical or correlation assumptions. If this is in a section of the principal methodology, then a reference to the section of the methodology.

ix. A statement explaining whether the rating was disclosed to the rated entity and amended following that disclosure prior to publication.

5. In accordance with Annex I Section D, 5, where it would be disproportionate in length to include the full underlying detail of the above elements in the press release or report accompanying the credit rating or rating outlook, ESMA expects that CRAs make clear and prominent reference where this underlying detail can be directly and easily accessed through direct web-link. Notwithstanding this, ESMA considers that the inclusion of the core of the above elements in the press release or report is necessary and proportionate to the overall length of the press release or report.

3.2 Requirements relating to Article 10(1), 10(2) and Section D, Annex I, I, points 2a and 5.

6. Where ESG factors were a key driver behind a change to a credit rating or rating outlook that had been presented and disclosed in accordance with Article 10(1), 10 (2) and Section D, Annex I, I, points 2a and 5, ESMA expects CRAs in the accompanying press release or report to:

i. Outline whether any of the key drivers behind the change to the credit rating or rating outlook correspond to that CRA's categorisation of ESG factors;

ii. Identify the key driving factors that were considered by that CRA to be ESG factors;

iii. Explain why these ESG factors were material to the credit rating or rating outlook;

iv. Include a link to either the section of that CRA's website that includes guidance explaining how ESG factors are considered as part of that CRA's credit ratings or a document that explains how ESG factors are considered within that CRA's methodologies or associated models.

Annex II Cost Benefit Analysis

Background

7. In the years following the publication of the CRA Regulation, ESMA has noted that different CRAs have interpreted the disclosure requirements of the provisions in different ways. This lack of consistency has weakened the purpose of these provisions the purpose of which was to improve transparency and enhance the ability of the users of ratings to perform their own due diligence.

8. With publication of the European Commission's Action Plan on Sustainable Finance which has the objective of better integrating the consideration of Environmental, Social and Governance factors into the actions of financial market participants, it has become even more necessary that the disclosure provisions under the CRA Regulation are fully adhered to.

Reasons for Publication

9. The purpose of this consultation paper is to propose a set of Guidelines that increases the standard and consistency of these credit rating related disclosure practices in a manner that gives full effect to the objectives of the Regulation's provisions. In so doing it is noted that this guidance seeks to harmonise the application of existing Level 1 provisions, rather than imposing any new requirements for CRAs.

10. As a result, it is difficult to argue that they impose any new or material costs on CRAs. In addition, as the philosophy behind these Guidelines, has been to recommend the widespread adoption of practices that have already been observed in the market ESMA believes that the measures proposed are proportionate and achievable.

11. In this regard the approach of the guidelines is to improve the content of the most common rating related publication, the credit rating press release. As part of this approach ESMA would like to support the European Commission's Action Plan for sustainable finance by improving how CRAs disclose how ESG factors have been considered as part of a credit rating action within these press releases.

CBA

12. The following table summarises the potential costs and benefits resulting from the implementation of these Guidelines.

Policy objective	To harmonise the presentation and content of CRAs' most common credit rating related disclosures, in order to increase investors' protection and further assist the users of credit ratings to perform their own due diligence.
Technical proposal	To provide guidance to EU registered CRAs regarding how they can comply with CRAR requirements regarding the presentation of credit ratings and credit outlooks. This is done by proposing good practices and encouraging their uptake.
Benefits	For ESMA, a higher uptake of these guidelines will mean that CRAR requirements on the presentation of credit ratings and ratings outlooks will be more consistently applied which will contribute to its mandate to promote investor protection and orderly financial markets. ESMA expects that these guidelines will benefit EU CRAs by: - Providing clarity and guidance on the expected rating related disclosures, in terms of their scope and degree of precision. - ESMA also expects that these guidelines will benefit the users of credit ratings by and contributing to consumer and investor protection within the EU by: - Facilitating a consistent implementation of the rules on the presentation of credit ratings and credit outlooks, through encouraging the adoption of similar standards. - Increasing the transparency of CRAs credit rating actions. - Improving the ability of the users of credit ratings to perform their own due diligence. - Improving the transparency around whether and how ESG factors were considered as part of a credit rating.
Costs for CRAs	For those CRAs who are already implementing some or all of the practices in these Guidelines, it is expected that these Guidelines will have limited additional initial, ongoing or ad-hoc costs.

Initial Costs	For those CRAs who do not currently apply the practices outlined in this paper, the Guidelines will have an initial cost related to the adaptation of their procedures related to disclosures. However, this cost should be scaled to the current level of a CRAs compliance with their requirements under CRAR. For example if a CRA is already implementing the provisions of the regulation in a manner similar to the Guidelines then adapting its processes to the practices in these guidelines should be relatively less costly than for a CRA that is implementing the provisions of the Regulation in a manner very different from the Guidelines, as it will have a further distance to travel in order to but in place the measures proposed by these guidelines. For newer CRAs, the effect of these Guidelines should be to lower costs, by reducing the need for them to dedicate time and resources to the development of their own internal policies and procedures. Indeed, these Guidelines should save them from having to develop their own systems and procedures to define the appropriate disclosures. They could outright implement the disclosures set out in the Guidelines.
Ongoing Costs	There may be a slight increase in ongoing costs, as some CRAs will have to increase their efforts in order to meet the guidelines.
Ad-Hoc	Ad-hoc costs may decrease, as the need for corrections and enforcement by ESMA should be reduced, since clear standards are set in the Guidelines.
Costs for ESMA	For ESMA the costs entailed with these guidelines are limited given that they do not propose a significant shift in its supervisory practices.

Annex III SMSG Advice

ESMA’s consultation on
Guidelines on Disclosure Requirements Applicable to Credit Ratings.

1. General comments

1. The SMSG supports the work undertaken by ESMA regarding Credit Ratings Disclosures.

2. The SMSG is concerned by ESMA’s assessment of current inconsistent practices among CRAs regarding disclosure. It seems in particular that CRAs are not always compliant with Article 13 of the CRA. ESMA highlights that press releases should be accessible without any barrier to entry or registration requirements.

3. The SMSG believes that, although ESG factors are long term in nature and do not immediately impact solvency, they might play a significant role in the ability of debtors to reimburse their liabilities. The combined analysis of ESG and classic financial factors may highlight the contradictions in the business and financial assumptions.

4. As mentioned in its February 2019 advice to ESMA4 , the SMSG notes that the lack of agreed definitions and labels at the EU level is a substantial shortcoming and seriously hampers the implementation of a harmonized approach to sustainable finance. This should, however, not prevent firms from making progress in order to incorporate sustainability risks and factors but should be taken into account by regulators and supervisors.

2. Response to consultation (19 December 2018 | ESMA 33-9-290)

2.1. Disclosure Requirements for Credit Rating Press Releases

Q1 Do you agree with the proposed Guidelines for press releases that accompany credit ratings or rating outlooks? If not, please explain.

5. Yes, the SMSG agrees with the proposed guidelines. The guidelines identify the important information and highlights that references to information, such as a description of rating category and methodology, should be easily accessible through links to specific sections rather than to a general website.

[4] ESMA Consultation Papers On integrating sustainability risks and factors in MIFID, the UCITS Directive and AIFMD.

Q2 Do you agree that a standardised scheme indicating the rated entities level of participation would be beneficial? Do you have any comments on the proposed standardised scheme?

6. The SMSG believes that standardization of information and presentation will also more generally be beneficial for users of credit rating information. In the mean while, the SMSG agrees with the standardised scheme. The SMSG, however, also believes that CRAs should be able to comment on the level of participation.

Q3 Do you have any comments on specific items under this section? If yes please explain with reference to the proposed item's number

7. As mentioned in paragraph 13 of the introduction of the consultation, we believe that the methodology (guideline vi) and definition of rating category (guideline viii) should be easily accessible through a link accessible without barrier or registration. The titles and versions of these methodology and definition documents should be explicitly mentioned.

8. The SMSG notes that in respect of endorsement of ratings the draft guidelines require a "statement", whereas in respect of unsolicited ratings a "clear statement" is required. We suggest to add the adjective "clear" also in respect of the statement on endorsement.

2.2. Environmental, Social and Governance Factors under the CRA Regulation

Q4 Do you have any comments on the proposed Guidelines under this section?

9. The SMSG wants to stress the obvious difference between the purpose of a credit rating – assessing creditworthiness – and the purpose of an ESG rating – assessing sustainability. While the SMSG recognizes that ESG factors may in certain cases clearly influence the creditworthiness of a company, this is not always the case and will very often not be a "key element" of the underlying rating.

10. The SMSG has the impression that ESMA actually wants CRAs to include ESG factors in their rating methodologies, so that even if such factors do not have any influence on the creditworthiness of a company / product in a certain case, ESG factors have at least in all cases been considered. The SMSG is of the opinion that this is indeed the adequate way forward. If this is indeed also ESMA's intention, this should be clearly stated. If this is, however, not ESMA's intention, guideline 8 i should be adapted as follows: "CRAs should include a direct web-link at the bottom of each credit rating press release to the section of that CRA's website that includes guidance explaining how ESG factors are considered as part of that CRA's credit ratings, if any".

11. As mentioned in its February 2019 advice to ESMA[5] , the SMSG wants to stress that the lack of agreed definitions and labels at the EU level is a substantial shortcoming and seriously hampers the implementation of a harmonized approach to sustainable finance. In respect of disclosure requirements in regard of credit ratings, this problem is equally urgent. Even though the proposed guidelines would increase transparency on the impact of ESG factors on credit ratings, such disclosure is only meaningful if investors can also trust that the ESG factors / scale / taxonomy used by the CRA is reliable.

Q5 Are there any additional actions that CRAs could take to improve the disclosure of the consideration of ESG factors?

12. We believe that ESMA's proposed guidelines are adequate until the EU taxonomy is defined.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA's website.

Adopted on 28 March 2019

[signed]

Veerle Colaert

Chair

Securities and Markets Stakeholder Group

[5] ESMA Consultation Papers On integrating sustainability risks and factors in MIFID, the UCITS Directive and AIFMD (ESMA22-106-1683, 6 March 2019).