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| 26 March 2018 |

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| Reply form for the Consultation Paper on The Guidelines on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies Regulation (CRAR) – proposed supplementary guidance on how to assess if a requirement is “as stringent as” the requirements set out in CRAR |
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| Date: 26 March 2018 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the Guidelines on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies Regulation (CRAR) with proposed supplementary guidance on how to assess if a requirement is “as stringent as” the requirements set out in CRAR, published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_QUESTION\_CRA\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

* if they respond to the question stated;
* contain a clear rationale, including on any related costs and benefits; and
* describe any alternatives that ESMA should consider

**Naming protocol**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_CRA\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA\_ CRA \_XXXX\_REPLYFORM or

ESMA\_ CRA \_XXXX\_ANNEX1

***Deadline***

Responses must reach us by **25 May 2018.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| Name of the company / organisation | Rating-Agentur Expert RA GmbH |
| Activity | Other Financial service providers |
| Are you representing an association? |[ ]
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CRA\_1>

We highly appreciate the efforts of ESMA to improve the guidelines on the application of the endorsement regime. We agree that the requirements for the third country CRAs shall be as stringent as the requirements of the main ESMA CRA Regulation in order to increase the level of transparency and clarity for the users of credit ratings and all market participants.

<ESMA\_COMMENT\_CRA\_1>

1. Do you agree with the proposed guidelines in respect of Paragraph 3c of Section B of Annex I?

<ESMA\_QUESTION\_CRA\_1>

We think that currently there is a lack of transparency regarding the fees paid for the rating services and their distribution. For instance, it is often not clear whether the fees were paid to the CRA which is based in the EU or the third country CRA, or third party and how those fees are distributed between legal entities of a group. Therefore, it should be clearly stated whether the rating is endorsed or not, both on the website of the endorsing CRA and on the ERP. Some additional indication of the party receiving fees would also be beneficial.

<ESMA\_QUESTION\_CRA\_1>

1. Do you agree with the proposed guidelines in respect of Article 11(3) and Point 2 of Part II of Section E of Annex I and the Delegated Regulation on Fees?

<ESMA\_QUESTION\_CRA\_2>

We think it is feasible to report fees for endorsed ratings to ESMA. It is very important from the transparency perspective.

<ESMA\_QUESTION\_CRA\_2>

1. Do you agree with the proposed guidelines in respect of Article 10(3)?

<ESMA\_QUESTION\_CRA\_3>

Yes

<ESMA\_QUESTION\_CRA\_3>

1. Do you agree with the proposed guidelines in respect of Article 10(5)?

<ESMA\_QUESTION\_CRA\_4>

We agree that it is very important to provide a clear indication of the solicitation status of the published ratings. Also, the definition of unsolicited ratings that is used by a third country CRA shall be disclosed on the CRA’s website, so that the rating users can have a clear picture of what is considered by the CRA as an unsolicited rating and whether this definition corresponds with the CRA Regulation.

<ESMA\_QUESTION\_CRA\_4>

1. Do you agree with the proposed guidelines in respect of Article 12 and Part III of Section E of Annex I?

<ESMA\_QUESTION\_CRA\_5>

Yes

<ESMA\_QUESTION\_CRA\_5>

1. Do you agree with the proposed guidelines in respect of Paragraph 6 of Subsection I of Section D of Annex I?

<ESMA\_QUESTION\_CRA\_6>

Yes. However, the steps to mitigate the risks posed by rating shopping shall be appropriately disclosed.

<ESMA\_QUESTION\_CRA\_6>

1. Do you agree with the proposed guidelines in respect of Article 8(3), (5), (5a) and (6)?

<ESMA\_QUESTION\_CRA\_7>

Yes

<ESMA\_QUESTION\_CRA\_7>

1. Do you agree with the proposed guidelines in respect of Article 8(7)(a)?

<ESMA\_QUESTION\_CRA\_8>

Yes

<ESMA\_QUESTION\_CRA\_8>

1. Do you agree with the proposed guidelines in respect of Article 7(4) and Paragraph 8 of Section C of Annex I?

<ESMA\_QUESTION\_CRA\_9>

Yes

<ESMA\_QUESTION\_CRA\_9>

1. Do you agree with the proposed guidelines in respect of Article 6(1) and Paragraph 3(aa) and (ca) of Section B of Annex I?

<ESMA\_QUESTION\_CRA\_10>

Yes<ESMA\_QUESTION\_CRA\_10>

1. Do you agree with the proposed guidelines in respect of Paragraphs (6)-(7) of Section C of Annex I?

<ESMA\_QUESTION\_CRA\_11>

Yes

<ESMA\_QUESTION\_CRA\_11>

1. Do you agree with the proposed guidelines in respect of Article 10(2) and Paragraph 3 of Subsection I of Section D of Annex I?

<ESMA\_QUESTION\_CRA\_12>

Yes

<ESMA\_QUESTION\_CRA\_12>

1. Do you agree with the proposed guidelines in respect of Article 10(2a)?

<ESMA\_QUESTION\_CRA\_13>

Yes

<ESMA\_QUESTION\_CRA\_13>

1. Do you agree with the proposed guidelines in respect of Article 7(3) and Paragraph 3 of Section C of Annex I?

<ESMA\_QUESTION\_CRA\_14>

Yes

<ESMA\_QUESTION\_CRA\_14>

1. Do you agree with the proposed guidelines in respect of Article 6(2) and Paragraphs 7-9 of Section B of Annex I?

<ESMA\_QUESTION\_CRA\_15>

Yes

<ESMA\_QUESTION\_CRA\_15>

1. Have you identified any alternatives internal requirements which could meet the same objective and effects of an EU requirement in practice?

<ESMA\_QUESTION\_CRA\_16>

Besides the points mentioned in the Consultation paper we would like to highlight the following issues:

- While endorsement of ratings assigned by the third-country CRAs is regulated and much effort is put on the selection of appropriate third-countries and third-country regulatory regimes the work of branch offices is not transparent enough for the rating users and it might be difficult for ESMA to assess functioning of those branch offices as they can be in third-countries outside EU and not considered by ESMA as equivalent in Regulatory terms. Of course the responsibility for those branch offices lies on the head offices of the corresponding ESMA registered CRAs, however they may have conflicts of interest when checking compliance of those offices due to obvious affiliation and low probability of in-house check of the branch offices.

- It should be clearly stated everywhere whether the rating is endorsed or not, both on the website of the endorsing CRA and on the ERP so that the rating user knows whether when using the credit rating he is exposed to the risks related to endorsement.

- When rating work is performed in few CRA offices and various jurisdictions it can be confusing which jurisdiction is ultimately responsible for the rating in legal and regulatory terms. Additional clarifications would be beneficial. <ESMA\_QUESTION\_CRA\_16>