PORTUGUESE BANKING ASSOCIATION RESPONSE TO ESMA CONSULTATION PAPER "GUIDELINES ON DISCLOSURE REQUIREMENTS APPLICABLE TO CREDIT RATINGS" (REF.ª ESMA 33-9-290)

Introductory Remarks

The Portuguese Banking Association (APB) welcomes ESMA's Consultation Paper on Guidelines on Disclosure Requirements Applicable to Credit Ratings.

As a general remark, we support the proposed guidelines objectives of (i) improving the quality and consistency of the information that is disclosed in publicly available press releases which accompany the issuance of a credit rating, and (ii) improving the transparency concerning the consideration of sustainability factors (environmental, social and governance) in credit ratings.

We welcome that ESMA emphasizes the need for proportionality and incremental measures to improve the information of whether ESG factors are considered in credit ratings, and when they are considered, the identification of the ESG factors in question.

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

Yes, we agree with the proposed guidelines.

Although highlighting that the incumbent rating agencies already include most of these elements in their press releases, we find it very useful that the following elements are to be disclosed:

(i) a statement regarding 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;

(ii) a clear statement as to whether the credit rating is an unsolicited credit rating and information on the level of rated entities participation;

(iii) the name of the primary and secondary analysts and the name of the chair person in the rating committee, as well as their contact details;

(iv) a link to the current version of the methodology, rating scale and definitions in a non-restricted area of the CRA website;

(v) a section on the press release highlighting the main factors that could lead to an upgrade or to a downgrade;

(vi) a statement explaining whether the rating was disclosed to the rated entity prior to publication and amended.

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?

In general terms, we find that it is positive to ensure a level playing field among all CRAs.

The idea of developing a standardised scheme indicating the rated entities level of participation in the case of unsolicited credit rating is welcome, as it shows to investors/users of this information how rated entities have collaborated in the process (even though being an unsolicited credit rating) and also how credit rating agencies have supported their own credit risk assessment.

Nevertheless, we consider that the scheme proposed by ESMA should be amended.

Being the scope limited to unsolicited credit ratings, the “YES” and “YES/NO” options present in the second line of the scheme are not clear.

The same happens with the general conjugation of “NOs” in “YES/NO” options, with “NO/NO” responses, corresponding to a “YES”, leading to interpretation difficulties for users of ratings. A good example can be found in the sequence “Unsolicited Credit Rating” » “No” » “No participation of the issuer” » “No”.

In sum, although agreeing with the presentation of a standardised scheme indicating the rated entities level of participation in the case of unsolicited credit ratings, we consider that ESMA's scheme should be improved, for example using a more simple standardised scheme:

	Unsolicited Credit Rating	
	Issuer	Of Related Third Party
Participation	√ / x	√ / x
Access to Accounts	√ / x	√ / x

Further guidance could also be provided to ensure the correct understanding of this scheme by investors/users of this information (e.g. through an explanatory note under the scheme).

Regarding the credit opinion that usually follows the press release (a more comprehensive analysis generally not available for non-subscribers of CRA's services), we consider that a high level of discretion should be allowed, given that the CRA methodologies differ substantially from each other and the structure of the credit opinion is linked to the CRA methodology.

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

Regarding item iv), we find it very useful that the name and contact details of the persons involved in the credit committees (at least the chair person) are to be disclosed, not just for the purpose of conducting due diligences, but also for enabling the interaction with the relevant person about the rating process or to clarify any doubts regarding the credit assessment.

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

Based on our experience with CRAs, they do not yet take into consideration ESG factors in their methodologies. In fact, for several industries these factors are irrelevant to evaluate the creditworthiness of an entity.

However, we consider that, in some circumstances, it may prove helpful to include ESG considerations, where meaningful, into credit analysis. The approach chosen by ESMA of identification of whether ESG factors were considered, and when they were considered, which ones, seems a proportionate approach.

The example provided in the consultation paper related to the "*effectiveness of a rated entities' Board of Directors*" clearly shows that governance issues that can prove to be important in organizations and in the CRA's credit risk assessment (e.g. management, corporate governance, strategy, etc.) may not be clear to the investors/users of this information. So, a reference as to whether and which of these factors are taken into consideration, when assigning a credit rating of an entity allows for a better understanding of the reasoning behind the credit ratings.

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

In the current regulatory environment, we consider the proposed guidelines in the consultation paper as sufficient.

Nonetheless, if, in the future, the CRA Regulation is amended to mandate credit rating agencies to explicitly integrate sustainability factors into their assessments, we consider that additional actions may be taken to improve the disclosure of the consideration of ESG factors.

For example, the circumstances upon which CRAs may, in the future, consider that mandatory ESG factors were not a key underlying element behind that credit rating (paragraph 65) may be heterogeneous.

As a result, some clarifications may prove helpful regarding the proposed statement to be included in the press release by the CRAs (as proposed in paragraph 69).

In fact, CRAs might consider that ESG factors were not a key underlying element behind that credit rating due to different factors and involving non-similar circumstances, such as:

i) Specific technical arguments considered by the CRA in the assessment on the impact of the specific ESG factors;

ii) Non-consistent elements of information regarding ESG factors disclosed by the rated entity or a third party;

iii) Insufficient information disclosed by the rated entity or a third party regarding ESG factors.

We also highlight that the integration of ESG factors may lead to contentious issues regarding possible rating amendments prior to its publication. It is not clear what will be the material criteria for CRA disclosure approach when divergent perspectives (either technical or informative) regarding the relevance of the ESG factors arise between CRA and the rated firm, namely when the information disclosed by the rated firm points to the non-relevance of ESG factors over its credit risk profile and the CRA (considering the information disclosed and/or other reliable sources of information) has a different opinion. This issue is related with the practical impact of the Guideline regarding the disclosure of information by CRAs clarifying if the rating was disclosed to the rated entity and amended following that disclosure (paragraphs 44 and 45).

Lastly, and as a general remark, we also consider that the development of Guidelines by ESMA regarding ESG factors under the CRA Regulation shall consider the regulatory interconnectedness between the CRA Regulation and the Directive 2014/95/EU (NFRD) framework regarding disclosure of non-financial information as well as the recent work on the updating of the Non-Binding Guidelines on Non-Financial Reporting promoting a consistent and integrated regulatory approach and gradually take further steps on the development of a workable criteria to factor the ESG factors within the credit rating issuance and disclosure.