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| **Response Form** |
| **Consultation on Fees charged to Credit Rating Agencies by ESMA** |

**Responding to this paper**

ESMA invites comments on all matters set out in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **15 March 2021.**

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

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_CRAFees\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_CRAFees\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ CRAFees\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Fees charged to Credit Rating Agencies by ESMA”).

**Publication of responses**

All contributions received will be published following the closure of the consultation period, unless you specifically request otherwise. Please clearly and prominently indicate in your submission any part that you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested by ESMA in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose a response 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 heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should respond to the consultation paper**

Credit Rating Agencies (CRAs) issuing or endorsing credit ratings for use in the EU and their auditors, CRAs certifying credit ratings for use in the EU, firms considering registration as Credit Rating Agencies or firms applying for certification status. This Consultation Paper may also be of interest to trade associations representing CRAs and users of credit ratings.

**General information about respondent**

|  |  |
| --- | --- |
| Name of company / organisation | S&P Global Ratings Europe |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Ireland |

**Introductory comments**

**Please use this space to provide any relevant introductory comments:**

<ESMA\_ QUESTION\_CRAFees\_Qi>

S&P Global Ratings Europe Limited (“SPGRE”) appreciates the opportunity to respond to the Consultation Paper of the European Securities and Market Authority (“ESMA”) on Fees charged to Credit Rating Agencies by ESMA as published on 29 January 2021 (the “Consultation Paper”) with a view to providing Technical Advice to the European Commission on a revision to Commission Delegated Regulation 272/2012 (the “Fee Regulation”).

Overall, we believe that one area that could benefit from additional clarity is the process by which ESMA calculates its fees, in particular, more detail on how ESMA calculates its budget for CRA supervision including a calculation of ESMA’s actual incurred expenses and how it applies fees received from CRAs against such incurred expenses. We make this suggestion in light of ESMA’s planned cumulative increase in its CRA supervision budget, and by consequence in CRA supervisory fees, of 19% in 2021 compared to 2019[[1]](#footnote-2) despite ESMA’s supervising fewer CRAs and smaller Groups of CRAs and altogether a lower number of credit ratings issued from the EU[[2]](#footnote-3) in 2021 following the end of the transition period of the United Kingdom’s departure from the EU.

SPGRE therefore respectfully requests that, going forward, ESMA publishes a sufficiently detailed overview of direct and allocated fixed and variable cost so that CRAs and other stakeholders can better understand the basis for budgeted sums against ESMA’s actual expenses and better understand how surpluses and shortfalls are accounted for in subsequent years.

<ESMA\_ QUESTION\_CRAFees\_Qi>

1. **Changes to general budgetary approach**

**Q1: Do you agree with the proposals to reflect ESMA’s general budgetary approach in the revised Fees Delegated Regulation? If not, please explain why not.**

<ESMA\_ QUESTION\_CRAFees\_Q1>

We understand these changes are proposed in light of the observations made by the European Court of Auditors and the Internal Audit Service of the European Commission and the objective to align the fee collection process for CRAs and the fee collection processes for Trade Repositories under Regulation (EU) 2015/2365 and Regulation (EU) No 648/2012 as set out in Commission Delegated Regulations 2019/360 and 1003/2013, respectively.

We do, however, disagree with the proposed amendment to Article 5(3).

Rather than imposing an annual charge at the beginning of the year in advance of supervisory activity (with no interest consideration), we consider it is fairer for CRAs to pay their supervisory dues in monthly instalments better reflect the timing of expenses incurred by ESMA, as well as CRAs’ business conditions.

We also note that the fee collection process in Article 10 of the Commission Delegated Regulation (EU) 2019/360 sets out payment of annual supervisory fees in two equal instalments rather than a single payment up front or the current approach in the Fee Regulation of the first of two instalments representing two thirds of the estimated supervisory fee.

<ESMA\_ QUESTION\_CRAFees\_Q1>

1. **Registration fees**

**Q2: Do you agree with the proposed changes to registration fees? If not, please explain why not.**

<ESMA\_ QUESTION\_CRAFees\_Q2>

No comment

<ESMA\_ QUESTION\_CRAFees\_Q2>

**Q3: Do you agree with the proposed changes to the reimbursement of registration fees? If not, please explain why not.**

<ESMA\_ QUESTION\_CRAFees\_Q3>

No comment

<ESMA\_ QUESTION\_CRAFees\_Q3>

**Q4: Do you agree with the proposed changes to the calculation of initial supervisory fees for CRAs? If not, please explain why not.**

<ESMA\_ QUESTION\_CRAFees\_Q4>

No comment

<ESMA\_ QUESTION\_CRAFees\_Q4>

1. **Annual supervisory fees**

**Q5: Do you agree with the proposal to exempt CRAs with a total turnover of under €1,000,000 from the payment of annual supervisory fees? If not, please explain why not.**

<ESMA\_ QUESTION\_CRAFees\_Q5>

We support the proposal to adapt the exemption threshold so that CRAs with total annual revenues of over €1m would now be subject to the payment of annual supervisory fees. Without such a change in the threshold, larger CRAs remain disproportionate charged compared to medium size CRAs, and, in particular, those CRAs that have a relatively high market share in a small number of sectors only and which may currently be exempted from paying fees.

We consider however that setting a flat fee of €20,000 is insufficient to compensate for ESMA’s supervisory expenses. With reference to paragraph 21 of the Consultation Paper, €20,000 represents only about a tenth of the annual compensation for an FTE[[3]](#footnote-4), and we would expect ESMA to have allocated more resources to supervising medium size CRAs. There we consider it to be more appropriate and proportionate for all CRAs with revenue over €1m should pay fees based on their respective turnover.

<ESMA\_ QUESTION\_CRAFees\_Q5>

**Q6: Do you agree with the proposed changes to annual supervisory fees charged to CRAs? If not, please explain why not.**

<ESMA\_ QUESTION\_CRAFees\_Q6>

SPGRE notes the introduction of flat annual fees for endorsement of €40,000 for larger and €20,000 for purposes of endorsement. As ESMA has indicated it would spend resources on endorsement, we consider it appropriate and transparent to set a specific level for fees incurred in reviewing matters relating endorsement.

SPGRE respectfully requests that, going forward, ESMA publishes a sufficiently detailed overview of direct and allocated fixed and variable cost so that CRAs and other stakeholders can understand the budgeted amounts and actual expenses made. The proposed flat fee for supervision in relation to endorsement provides such transparency in our view.

As we understand that a specific budget will be set aside for endorsement, no additional resources from the general CRA supervisory budget should be spent on endorsement.

<ESMA\_ QUESTION\_CRAFees\_Q6>

1. **Applicable turnover**

**Q7: Do you agree with the proposed changes to the calculation of CRAs’ applicable turnover? If not, please explain why not.**

<ESMA\_ QUESTION\_CRAFees\_Q7>

We disagree with the proposed amendment to Article 2(1) that the audited accounts used are from financial year n-2, submitted to ESMA by 30 September in year n-1. Historical accounts do not reflect the reality of the current business environment hence our preferred approach is to use the CRAs forecasted revenue projections for year n and adjust the fee at the time of the final submission of audited statutory accounts by May n+1.

Also, the eventual entry into force of the amended Fee Regulation could mean that the 2022 budget would be determined by the 2020 audited statutory accounts. However, this would unfairly double-charge CRAs, such as SPGRE, that changed their corporate structure by moving its UK operations into a newly established UK CRA entity at the end of the Brexit transition period.

We also disagree with the proposal that CRA supervisory dues are to be paid at the beginning of the year in advance of supervisory activity (with no interest consideration) and we consider it is fairer for CRAs to pay their supervisory dues in monthly instalments in order to better reflect the timing of expenses incurred by ESMA, as well as CRAs’ business conditions.

ESMA is proposing that a CRA’s applicable turnover shall be deemed equal to the CRA’s total annual revenues. We believe that CRA’s should be given the opportunity to disclose fee-based credit rating revenues separately from other types of revenue (for example, intercompany transfers and other non-credit rating related revenue) in their audited statutory accounts. This audited fee-based credit rating revenue can then be used by ESMA to determine supervisory fees with minimal use of specialist resources. The use of a fee-based revenues as the basis of ESMA’s compensation is, in our view, more consistent with ESMA’s actual supervisory role.

<ESMA\_ QUESTION\_CRAFees\_Q7>

1. **Certification fees**

**Q8: Do you agree with the proposal to revise the approach to the reimbursement of supervisory fees for certified CRAs? If not, please explain why not.**

<ESMA\_ QUESTION\_CRAFees\_Q8>

No comment

<ESMA\_ QUESTION\_CRAFees\_Q8>

**Q9: Do you agree with the proposal to exempt certified CRAs from the payment of initial fees? If not, please explain why not.**

<ESMA\_ QUESTION\_CRAFees\_Q9>

No comment

<ESMA\_ QUESTION\_CRAFees\_Q9>

**Q10: Do you agree with the proposal to require all certified CRAs to pay an annual certification fee of €6,000? If not, please explain why not.**

<ESMA\_ QUESTION\_CRAFees\_Q10>

We support the principle that each CRA should contribute to the CRA budget, albeit on the basis of a balanced proportionality. As credit ratings from certified CRAs are also eligible for regulatory purposes it is proportionate, in our view, to require an annual *de minimis* certification fee.

<ESMA\_ QUESTION\_CRAFees\_Q10>

1. **Final comments**

**Please use this space to provide any other relevant information you wish to bring to ESMA’s attention not covered by your responses to the previous questions:**

<ESMA\_ QUESTION\_CRAFees\_Qf>

TYPE YOUR TEXT HERE

<ESMA\_ QUESTION\_CRAFees\_Qf>

1. The final amount of CRA supervisory fees received was €8,867,936 in 2019 while the budgeted amount

   €10,545,743 in 2021, as set out in:

   “Final Accounts of the European Securities and Markets Authority, Financial Year 2019”, 25/09/2020, <https://www.esma.europa.eu/sites/default/files/library/esma02-91-3007_final_accounts_2019.pdf>

   “Budget 2020 amendment n.4”, 04/02/2021, <https://www.esma.europa.eu/sites/default/files/library/budget_amendment_2020_n.4.pdf>

   “ESMA Work Programme 2021”, 02/10/2020, <https://www.esma.europa.eu/sites/default/files/library/esma20-95-1273_2021_annual_work_programme.pdf> [↑](#footnote-ref-2)
2. “Brexit: ESMA withdraws the registrations of six UK-based Credit Rating Agencies and four Trade Repositories”, 04 January 2021, <https://www.esma.europa.eu/press-news/esma-news/brexit-esma-withdraws-registrations-six-uk-based-credit-rating-agencies-and> [↑](#footnote-ref-3)
3. According to paragraph 21, 1 FTE represents €195,000 annually in salary and allocated expenses. [↑](#footnote-ref-4)