2 April 2024
ESMA84-2037069784-2122

Fitch Response Annex 2

Consultation Paper

Proposed Revisions to Commission Deleg
447/2012 and Annex I of CRA Regul

Responding to this paper

Commented [A1]: In addition to the specific concerns and suggested amendments included in our response letter, we have the additional drafting suggestions set forth in this mark-up to ensure that the legislative history is accurate.

ESMA invites comments on all matters 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 21 June 2024**.**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Data protection'.

Who should read this paper?

Credit Rating Agencies (CRAs) registered to issue credit ratings and rating outlooks in the EU, firms considering registration as Credit Rating Agencies. This Consultation Paper should also be of interest to public institutions, users of credit ratings, issuers, investors, and other stakeholders such as industry bodies or trade associations.

1. Table of Contents

1. Executive Summary

Reasons for publication

In June 2023 ESMA received a formal request for Technical Advice from the European Commission concerning the Annex I of the Regulation 1060/2009 on Credit Rating Agencies (the CRA Regulation) and (EU) Delegated Regulation 447/2012 on the demonstration of compliance of credit rating methodologies (the Delegated Act).

This request sought ESMA's input on how the Delegated Act and the Annex of the CRA Regulation could be amended to ensure that ~~relevant~~ ESG risks are systematically captured in credit ratings where they are considered relevant by a CRA and to improve transparency on the inclusion of ESG risks by credit rating agencies in credit ratings and rating outlooks.

Commented [A2]: It is important throughout to be clear that under CRAR, a CRA is solely responsible for determining the relevance of any particular risk (whether ESG-related or not) to its methodologies.

This consultation paper provides ESMA's proposals for amending:

- Commission Delegated Regulation (EU) No 447/2012.
- Annex I of Credit Rating Agencies Regulation.

The proposed amendments to the Delegated Act and Annex I of the CRA Regulation, which explicitly integrate ESG factors in the regulatory framework, are also supported by a number of complementary amendments which implicitly support the integration of ESG factors in the regulatory framework.

Contents

ESMA's proposed advice to the European Commission is outlined in Sections 6-7 of this consultation paper. The advice is structured to provide both ESMA's proposed revisions and the accompanying rationale. Further to this:

- Annex IV provides the proposed Commission Delegated Regulation amending the regulatory technical standards laid down in Delegated Regulation (EU) No 447/2012 for the assessment of compliance of credit rating methodologies.
- Annex V provides the proposed Changes to Annex I of the CRA Regulation.

Next Steps

The deadline for the submission of responses to this Consultation Paper is 21 June 2024. ESMA will consider all feedback received and submit its technical advice to the European Commission by end December 2024.

2. Background

1 The regulatory framework for EU credit rating agencies was established with the introduction of Regulation (EC) 1060/2009 on credit rating agencies (the CRA Regulation). The CRA Regulation[1] has since been subject to two revisions, first in 2011[2] to reflect the assumption of supervisory responsibilities by ESMA and then in 2013[3] to reflect the introduction of a number of new provisions.

2 The CRA Regulation sets out detailed requirements to protect against conflicts of interest, ensure rigorous ~~high quality~~ methodologies and sound corporate governance and deliver transparency to investors and the market. The supporting regulatory framework is composed of several Regulatory Technical Standards and Delegated Acts which provide further detail on the functioning of certain key provisions within the CRA Regulation. In addition, ESMA promotes the smooth functioning of this regulatory framework through the development and implementation of Guidelines and Questions and Answers.

Commented [A3]: The CRAR does not include any reference or requirement for "high quality" methodologies and the term is not clearly defined. To avoid any uncertainty over the requirements placed on CRAs, the language used should match that of CRAR, which requires methodologies be rigorous, systematic, continuous and subject to validation.

3 When it comes to delivering transparency to the market and to investors, Annex I of the CRA Regulation sets out detailed requirements for CRAs' credit rating and methodological disclosures. The purpose of these provisions is to ensure that investors and users of credit ratings have all relevant information necessary to understand a credit rating and perform their own due diligence.

4 To ensure that credit rating methodologies meet the ~~quality~~ requirements of the CRA Regulation, the regulatory framework includes a specific Delegated Act that provides greater level of detail on how a credit rating agency can demonstrate that its credit rating methodology is ~~robust~~rigorous, systematic, continuous~~ly applied~~ and subject to validation.

Commented [A4]: Again, the language used should match the specific requirements of the CRAR.

5 The input on revisions to the Delegated Act and the Annex that is provided in this consultation paper is building on several prior steps taken by ESMA. Specifically, as part of Action 6 under the European Commission's 2018 Action Plan on Sustainable Finance[4], ESMA published its Guidelines on Disclosures applicable to Credit Ratings.

6 These Guidelines had the objective of improving the consistency and transparency of credit rating agencies' press releases. The Guidelines also sought to improve the level of transparency provided when ESG factors were a key driver behind a credit rating or rating outlook.

[1] Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies
[2] Regulation (EU) No 513/2011 of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies.
[3] Regulation (EU) No 462/2013 of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies.
[4] COM/2018/097 final, Communication from the Commission to the European Parliament, the European Council, The Council, The European Central Bank, The European Economic and Social Committee and the Committee of the Regions Action Plan: Financing Sustainable Growth.

7 As part of Action 3(b) of the European Commission's Sustainable Finance Strategy[5], ESMA conducted a Thematic Review on the integration of ESG factors in CRA's methodologies. This thematic review was concluded by Q2 2022. In addition, as part of Action 3(b) ESMA assessed the implementation of the Guidelines on Disclosure, with respect to whether the disclosure on the relevance of ESG factors had improved[6].

8 In addition to the tasks allocated to ESMA under European Commission's Sustainable Finance Strategy, Action 3(b) also required that, subject to ESMA's findings, the European Commission would take action to ensure that ~~relevant~~ ESG risks are systematically captured in credit ratings where they are considered relevant by a CRA and improve transparency on the inclusion of ESG risks by credit rating agencies in credit ratings and rating outlooks.

Commented [A5]: While we note the language here reflects the requirement from the Commission, we believe in all places it should be made clear that relevance can only be determined by the CRA, in accordance with Article 23 of the CRAR.

3. Commission Request for Technical Advice

9 The European Commission submitted a request for Technical Advice to ESMA in June 2023 seeking input on amendments to the CRA Regulatory Framework.

10 In line with the European Commission's own deliverable under Action 3(b), this request for technical advice sought ESMA's assessment on how Annex I of the CRA Regulation and Commission Delegated Regulation (EU) No 447/2012 (the Delegated Regulation on Methodologies) could be updated in order to ensure a better incorporation of ESG factors in the methodologies and rating process and the further disclosure to the public. This request for technical advice is included in Annex II.

11 ESMA welcomes this opportunity to revise the regulatory framework of the CRA Regulation to enhance transparency around the consideration of ESG factors and their ~~more systematic~~ integration in the credit rating process.

Commented [A6]: The original text could imply that CRAs should systematically integrate ESG factors into their methodologies, irrespective of the CRA's stated approach and whether it considers them relevant. This would be contrary to Article 23.

4. Legislative Background

12 The CRA Regulation does not make explicit reference to the integration of ESG factors in credit rating methodologies or the subsequent disclosure of their consideration in credit rating press releases. However, ESMA considers they are covered by the general requirements of Article 8(2) and Annex I of the CRA Regulation, when they are relevant by the CRA to the creditworthiness assessment.

13 Nevertheless, the provisions of Article 8(2) of the CRA Regulation and Article 8(3) are prescriptive in their requirement that CRAs use methodologies that are rigorous,

[5] COM/2021/390 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Strategy for Financing the Transition to a Sustainable Economy
[6] 10 February 2022 - TRV Risk Analysis Text Mining ESG disclosures in rating agency press releases

systematic, continuous, and subject to validation, and which include the driving factors to assess creditworthiness.

14 These wide-ranging and high level requirements which ensure the quality of credit rating methodologies are then supplemented by a Delegated Act that provides more granular detail on the practical steps that a credit rating agency needs to take in order to ensure it can demonstrate compliance with the CRA Regulation.

15 These requirements combined, ensure that the CRA Regulation creates a framework whereby at a high level that when a CRA considers ESG factors to be relevant to its methodologies, ~~it is expected that ESG factors are considered as part of CRAs' credit rating methodologies, when they are relevant by the applicable methodology, and that when this is the case~~ the integration of these ESG factors should be done ~~so~~ in a manner that meets the more granular requirements of Article 8(3).

16 For the disclosures made by CRAs, the requirements set out in Annex I of the CRA Regulation follow a similar approach to those relating to methodologies. Here, under paragraph 5, Annex I, Section D credit rating agencies are required to disclose "the key elements underlying the rating issuance". In addition, in accordance with paragraph 2a of Annex I, Section D a credit rating agency is required to accompany the disclosure of credit rating methodologies, models and key rating assumptions with "guidance which explains assumptions, parameters, limits and uncertainties surrounding the models and rating methodologies used in credit ratings".

17 Unlike, the CRA Regulations' requirements applicable to methodologies, these high level requirements are not expanded on through a supporting Delegated Act. Instead, ESMA provided its more granular expectations for these provisions through the introduction of its Guidelines on Disclosure for credit ratings[7]. ESMA considers that the CRA Regulation and the supporting regulatory framework have already established that CRAs should be integrating ESG factors in their methodologies, where they consider them to be relevant, and should also be disclosing ESG factors in credit rating press releases, when they are a key driver behind a change to a credit rating or rating outlook ~~considered~~. It is ESMA's view however that the regulatory framework needs to be revised in order to make this more explicit in order to ensure consistency of application by all CRAs.

Commented [A7]: The original text could have been interpreted as implying that a methodology has to include ESG factors in order to comply with the CRA regulation, again this would be contrary to Article 23.

Commented [A8]: The existing guidelines do not require disclosure in press releases when ESG factors have been "considered". To ensure clarity and avoid any misunderstanding, the language used in the consultation should match that used in the current guidelines.

[7] Section 5.2 of ESMA's Guidelines on Disclosure outline that where ESG factors have been key drivers behind a change to the credit rating or rating outlook, CRAs must:
– identify the relevant factors,
– elaborate on their materiality, and

– include a reference to where an explanation of how ESG factors are considered as part of the credit rating process can be found (e.g., a reference to their credit rating methodologies).

5. ESMA Input on ESG factors in Methodologies and Disclosures

18 With this consultation paper ESMA is outlining the changes to the Delegated Act and Annex I of the CRA Regulation that it considers necessary to meet the objectives of the European Commission's request for technical advice.

19 In this regard, ESMA's input on the Delegated Act includes revisions to add explicit reference to the identification of ESG factors within credit rating methodologies. In the same manner, the approach of ESMA's input on Annex I of CRA Regulation is to propose that the provisions of Section 5.2 of ESMA's Guidelines on Disclosure i.e., those applicable to the disclosure of ESG considerations, are integrated into the provisions of the CRA Regulation.

20 These proposed amendments to the Delegated Act and Annex I of the CRA Regulation, which explicitly integrate the disclosure of ESG factors in the regulatory framework when they are considered relevant by the CRA, are also supported by a number of complementary amendments ~~which implicitly support the integration of ESG factors in the regulatory framework~~. ESMA considers that ~~both~~ the ~~explicit and implicit~~ amendments are necessary to achieve the objectives of the European Commission's request for technical advice.

Commented [A9]: Integration of ESG factors in the regulatory framework could be interpreted as meaning the regulatory framework requires ESG factors to be incorporated in methodologies. This would be contrary to Article 23 of the CRAR.

Commented [A10]: It is unclear how these changes provide implicit support. The explicit intent of regulatory changes should be clear in all cases.

21 In addition, these changes will be complementary to the more extensive sustainable finance regulatory package that has been put forward by the European Commission.

6. Proposed Approach to the Delegated Act on Methodologies

Inclusion of reference to 'rating outlooks'

22 With a view to ensuring that the Delegated Act is sufficiently aligned with the CRA Regulation as revised in 2013, ESMA considers that an important first step is to ensure that the scope of the Delegated Act is revised to include reference to 'rating outlooks'. This revision being necessary to reflect changes introduced in the CRA Regulation in by "CRA 3" in 2013[8].

23 The rationale for expanding the scope of the CRA Regulation to include 'rating outlooks' was outlined in Recital 7 stating that "*the relevance of rating outlooks for investors and issuers and their effects on markets are comparable to the relevance and effects of credit ratings*" and that as a result "*all the requirements of Regulation (EC) No 1060/2009 which*

[8] Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies.

aim at ensuring that ratings are accurate, transparent and free from conflicts of interest should also apply to rating outlooks".

24 As part of this expansion in scope, a definition of the term 'rating outlooks' was provided[9] and Article 8(2) was amended to clarify that the provision's requirements were also applicable to rating outlooks[10].

25 On the basis that the Delegated Act has not been amended or revised since the introduction of this amendment in 2013, ESMA considers it is important to take this opportunity to align the scope of the Delegated Act, with the revised scope of the CRA Regulation.

ESMA is of the view that the Commission should consider amending the Delegated Act as follows:

Reference to '***rating outlooks***' should be added throughout the Delegated Act wherever the term 'credit rating' is used.

Clarification of the term 'methodology'

26 In addition, to enhance the functioning of certain provisions of the Delegated Act, ESMA considers the term 'methodology' should be further clarified within the Delegated Act. ESMA is of the view that this is necessary in order to ensure that credit rating agencies understand which elements that contribute to the methodological process are considered to fall within the scope of the provisions of the Delegated Act.

27 Such clarification is necessary based on ESMA's supervisory experience, where in certain instances, what a credit rating agency denotes as 'methodology' may only represent a subset of the elements that constitute the methodology used to determine a credit rating.

28 In ESMA's view, the scope of documents that should be subject to the safeguards of Article 8(3), as supported by the Delegated Act, should not be determined by the title of the document, and should instead be determined by the role a document plays in the credit rating agencies' creditworthiness assessment. On this basis, ESMA is proposing that the Delegated Act is amended to include a sufficiently encompassing term for 'methodology' to ensure that all documents that contribute to a credit rating agencies' creditworthiness assessment are subject to the relevant safeguards provided by the CRA Regulation.

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[9] Regulation (EU) No 462/2013, Article 3 (iv)(w), "rating outlook" means an opinion regarding the likely direction of a credit rating over the short term, the medium term or both".
[10] Regulation (EU) No 462/2013, (10) Article 8 is amended as follows: (a) paragraph 2 is replaced by the following:
'2. A credit rating agency shall adopt, implement and enforce adequate measures to ensure that the credit ratings and the rating outlooks it issues are based on a thorough analysis of all the information that is available to it and that is relevant to its analysis according to the applicable rating methodologies. It shall adopt all necessary measures so that the information it uses in assigning credit ratings and rating outlooks is of sufficient quality and from reliable sources. The credit rating agency shall issue credit ratings and rating outlooks stipulating that the rating is the agency's opinion and should be relied upon to a limited degree.'

29 The term ESMA has proposed to include is composed of two parts. The first part establishes the principle of what constitutes a methodology. In ESMA's view, a methodology is the framework that contributes to the determination of a credit rating and rating outlooks. The second part lists the most common elements of a methodology that ESMA considers are relevant to CRAs creditworthiness assessments. ESMA proposes that the Delegated Act clarifies that this includes criteria, models, driving factors, and key rating assumptions.

30 To ensure the effectiveness of this revision, ESMA also proposes that Article 3 of the Delegated Act is revised to reflect the language of this new term. In ESMA's view, this is necessary to ensure there is clarity in how the assessment of compliance under Article 8(3) of CRAR is carried out.

31 Finally, in order to ensure consistency with the clarified term for methodology, ESMA proposes that the Delegated Act is revised to remove the sentence "*where these are in place*" from paragraph (d) of Article 4 (1) and "where relevant" from paragraph (a) of Article 4 (3).

ESMA is of the view that the Commission should consider amending the Delegated Act as follows:

Current formulation:

Article 1

This Regulation lays down the rules to be used in the assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009.

Proposed amendment:

Article 1

This Regulation lays down the rules to be used in the assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009.

For the purpose of this regulation, a credit rating methodology is the framework that contributes to the determination of a credit rating and rating outlooks. It includes criteria, models, driving factors and key rating assumptions relevant to the creditworthiness assessment.

Current formulation:

Article 3 paragraph 2

When examining the compliance of credit rating agencies with the provision of Article 8(3) of Regulation (EC) No 1060/2009 ESMA shall use all information relevant to assess the process of developing, approving, using and reviewing credit rating methodologies.

Proposed formulation:

Article 3 paragraph 2

When examining the compliance of credit rating agencies with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009, ESMA shall use all information relevant to assess the process of developing, approving, using, **validating** and reviewing credit rating methodologies. ***In carrying out the compliance assessment, ESMA will consider that a credit rating methodology is the framework which contributes to the determination of a credit rating and rating outlooks. It includes criteria, models, driving factors and key rating assumptions relevant to the creditworthiness assessment.***

Current formulation:

Article 4(1)(d)

(d) incorporate reliable, relevant and quality related analytical models, key credit rating assumptions and criteria where these are in place.

Proposed formulation:

Article 4(1)(d)

(d) incorporate reliable, relevant and quality related analytical models, key credit rating assumptions and criteria ~~where these are in place.~~

Q1: Do you agree with the above proposed changes in Article 1? If not please explain.

Q2: Do you agree with the changes proposed in Article 3? If not, please explain.

Q3: Do you agree with the changes proposed in Article 4(1)(d)? If not, please explain.

Changes to Article 4(2) to ensure integration of ESG factors

32 ESMA considers that Article 4 of the Delegated Act is one of the principal areas where explicit reference to ESG factors is necessary. The role this article plays in the Delegated Act is to set out what is needed from CRAs to demonstrate the rigorousness of their methodology. The inclusion of a reference to ESG factors in the provisions of this Article of the Delegated Act will help ensure the more consistent and effective disclosure of the integration of ESG factors in the credit rating process where they are considered relevant by the CRA.

Commented [A11]: Consistent integration of ESG factors in the credit rating process should not be the objective of this consultation. This would contravene Article 23 of CRAR. Integration of ESG factors must be dependent on the CRA's assessment that they are relevant to the methodology.

33 In this regard, the revisions proposed by ESMA to this Article are three-fold. First, ESMA proposes to revise the introduction of Article 4 paragraph (2) from the existing wording of "*a credit rating agency shall list and provide...*" to "*a credit rating agency shall use and apply credit rating methodologies which*..". The purpose of this change is to align the introduction of Article 4 paragraph (2) with the wording of Article 4 paragraph (1). This change also has the practical effect that it clarifies what information ESMA expects to be disclosed ~~included~~ in a methodology, and not just the information that a credit rating agency "shall list and provide" to ESMA upon request.

Commented [A12]: This change should be made to make it clear that ESMA is not intending to interfere with the content of methodologies.

34 Second, ESMA proposes to revise Article 4(2) substantially to ensure the provisions include explicit reference to ESG factors. Here, it is proposed that Article 4(2)(a) is revised to require CRAs to list each qualitative factor that the credit rating methodology refers to, the scope of judgement that is permitted under that factor and additionally identify, where applicable, whether each factor is considered to be an E factor, S factor, G factor.

35 Further to this, ESMA is proposing that Article 4(2)(b) should be revised to require CRAs to list each quantitative factor, and identify, where applicable, whether a factor is considered to be an E factor, S factor or G factor.

36 Third, ESMA also considers that a series of new sub-paragraphs should be added to Article 4(2), covering points (c)-(e). In ESMA's view the addition of these new sub-paragraphs is necessary to ensure that the level of documentation and explanation included in a methodology on the incorporation and relevance of all factors, is sufficiently detailed and structured. Specifically, under point (c) ESMA proposes that CRAs ensure their credit rating methodology includes the rationale according to which the qualitative and quantitative factors are considered within the creditworthiness assessments. In effect, after identifying whether a factor is an E, S, G factor, or not, under points 4(2)(a) and 4(2)(b), under 4(2)(c) a credit rating methodology should make it clear how these factors are considered within the creditworthiness assessment.

37 In addition, ESMA proposes that a new sub-paragraph 4(2)(d) is added to ensure that a credit rating methodology also includes the key variables, data sources, key assumptions, modelling and quantitative techniques is in place for qualitative factors. While this requirement was already in place for quantitative factors, ESMA is of the view that it is important to have this additional information in place for qualitative factors also.

38 Finally, ESMA proposes a new sub-paragraph 4(2)(e) to ensure that a credit rating methodology also includes detail on the process according to which E,S, G factors have been identified as quantitative or qualitative factor. This will ensure better supervisory and investor traceability over the judgements that are made in respect of these factors in the creditworthiness assessment process.

39 In ESMA's view these additions will help shed light on how CRAs take into account ESG factors in their creditworthiness assessments as well as those stemming from technological innovations, such as cyber risk.

ESMA is of the view that the Commission should consider amending Article 4(2) of the Delegated Act as follows:

Article 4 (2)

<u>Current formulation:</u>

2. A credit rating agency shall list and provide a detailed explanation of the following points with regard to the credit rating methodologies used regarding:

(a) each qualitative factor, including the scope of qualitative judgement for that factor;

(b) each quantitative factor, including key variables, data sources, key assumptions, modelling and quantitative techniques.

<u>Proposed formulation:</u>

2. A credit rating agency *shall use and apply credit rating methodologies which*:

(a) list each qualitative factor including the scope of qualitative judgement for that factor and identify, where applicable, whether a factor is considered as an E factor, S factor, G factor;

(b) list each quantitative factor and identify, where applicable, whether a factor is considered as an E factor, S factor, G factor;

(c) include the rationale according to which qualitative and quantitative factors are considered within the creditworthiness assessment.

(d) include the key variables, data sources, key assumptions, modelling, and quantitative techniques applicable to the quantitative and qualitative factors used.

(e) include the process according to which a qualitative or quantitative factor has been identified as an E factor, S factor or G factor .

Q4 Do you agree with the proposed changes in Article 4(2) to the Delegated Regulation? If not, please explain.

Changes to Article 4(3) to clarify the information to be included in a methodology

40 In addition to the changes proposed in Article 4(2), ESMA considers it necessary to revise Article 4(3). ESMA also proposes the revision of the wording of Article 4(3) to ensure that it is consistent with the proposed new wording under Article 4(2). As Article 4(2) no longer refers to a "detailed explanation", Article 4(3) can also no longer refer to "the detailed explanation in paragraph 2. On this basis ESMA proposes to amend Article 4(3) so that it refers to "*the information referred to in paragraph 2 shall include a detailed explanation of the following*".

41 ESMA is also proposing to revise Article 4(3) sub paragraph (a). ESMA proposes to remove reference to "*a statement of importance*" and instead replace it with "*the importance of each qualitative or quantitative factor…*". The intention of this change is to clarify that the information included in a methodology under Article 4(3)(a) shall include a detailed explanation of the importance of each qualitative or quantitative factor used within that credit rating methodology. ESMA considers that this new wording provides a more purposeful role for this provision than the original "*statement of importance*". In addition, ESMA proposes to add reference to 'rating outlooks' in order to ensure alignment with other changes proposed to the Delegated Act.

ESMA is of the view that the Commission should consider amending Article 4(3) and 4(3)(a) of the Delegated Act as follows:

Article 4 (3)

Current formulation:

3. The detailed explanation referred to in paragraph 2 shall include the following:

(a) a statement of the importance of each qualitative or quantitative factor used within that credit rating methodology including, where relevant, a description of and justification for related weightings assigned to those factors and their impact on credit ratings;

Proposed formulation:

3. ***The information*** referred to in paragraph 2 shall include a detailed explanation of the following:

(a) *the **importance** of* each qualitative or quantitative factor used within that credit rating methodology including, a description of and justification for related weightings assigned to those factors and their impact on credit ratings ***and rating outlooks***;

Q5: Do you agree with the above proposed changes in Article 4(3) to the Delegated Regulation? If not, please explain why not.

Changes to Article 5 to ensure sufficient detail in methodologies

42 In order to ensure a more systematic consideration of ESG factors in creditworthiness assessments where they are considered relevant by a CRA, ESMA considers that changes to the Delegated Act are necessary to ensure CRAs' methodologies are fully capable of being applied in a systematic manner. In ESMA's view, a credit rating methodology should provide sufficiently detailed guidance for the persons who will be applying them, in view of ensuring a consistent determination of reliable credit ratings and rating outlooks.

Commented [A13]: The consultation should be clear that CRAs are solely responsible for deciding whether ESG factors are relevant to a particular methodology.

43 To meet this objective, ESMA is proposing two changes to Article 5 of the Delegated Act. The first change is in Article 5 sub-paragraph 1. Here, ESMA proposes that the sub-paragraph is revised to include reference to '*rating outlook*'. This will ensure the provisions within the sub-paragraph remain aligned with the scope of the CRA Regulation. The second change is to replace "*a credit rating methodology and its associated analytical models, key credit rating assumptions and criteria*" with the wording "*credit rating methodologies*". This wording ensures that the scope of Article 5 sub-paragraph 1 is consistent with what is encompassed by the term "*credit rating methodology*" introduced in Article 1 of the Delegated Act.

44 ESMA also proposes a new sub-paragraph in Article 5. In order to demonstrate that a credit rating methodology is systematic, the text of this new sub-paragraph (3) requires credit rating methodologies be sufficiently detailed to ensure a consistent approach to the determination of creditworthiness. ESMA is of the view that the introduction of this amendment will contribute to a more systematic consideration of ESG factors in CRAs' credit worthiness assessments where they are considered relevant under the CRA's methodology.

Commented [A14]: The consultation should be clear that CRAs are solely responsible for deciding whether ESG factors are relevant to a particular methodology.

ESMA is of the view that the European Commission should consider amending Article 5 of the Delegated Act as follows:

Article 5(1)

Current formulation:

A credit rating agency shall use a credit rating methodology and its associated analytical models, key credit rating assumptions and criteria that are applied systematically in the formulation of all credit ratings in a given asset class or market segment unless there is an objective reason for diverging from it.

Proposed formulation:

A credit rating agency shall use **credit rating *methodologies*** that *are* applied systematically in the formulation of all credit ratings **and *rating outlooks*** in a given asset class or market segment unless there is an objective reason for diverging from it;

Article 5(3)

Current formulation:

N/A

Proposed formulation

A credit rating agency shall use credit rating methodologies which are sufficiently detailed and which ensure a consistent approach to the determination of credit ratings and rating outlooks.

Q6: Do you agree with the above proposed changes in Article 5 to the Delegated Regulation on Methodologies? If not, please explain why not.

Changes to Article 6 to integrate reference to ‘rating outlooks’

45 In order to ensure that the requirements of Article 6 of the Delegated Act remain aligned with the CRA Regulation and other proposed revisions to the Delegated Act, ESMA is of the view that Article 6 sub-paragraph (b) and (c) should be revised to include reference to ‘rating outlooks’. In addition to these changes ESMA also proposes that the duplication of the word “*shall*” be removed from the first paragraph of Article 6, on the basis that it represents a typo.

ESMA is of the view that the European Commission should consider amending Article 6 points (b) and (c) of the Delegated Act as follows:

Article 6

Current formulation:

A credit rating agency shall use credit rating methodologies shall that are designed and implemented in a way that enables them to:

(b) be capable of promptly incorporating any finding from ongoing monitoring or a review, in particular where changes in structural macroeconomic or financial market conditions would be capable of affecting credit ratings produced by that methodology;

(c) compare credit ratings across different asset classes.

Proposed formulation:

A credit rating agency shall use credit rating methodologies ~~shall~~ that are designed and implemented in a way that enables them to:

(b) be capable of promptly incorporating any finding from ongoing monitoring or a review, in particular where changes in structural macroeconomic or financial market conditions would be capable of affecting credit ratings ***and rating outlooks*** produced by that methodology;

(c) compare credit ratings ***and rating outlooks*** across different asset classes.

Q7: Do you agree with the above proposed changes in Article 6 to the Delegated Regulation on Methodologies? If not, please explain.

Changes to Article 7 to ensure allocation of responsibility for validation

46 As with the changes introduced to Article 6, ESMA proposes that Article 7 of the Delegated Act is amended to include reference to 'rating outlooks' in order to ensure it remains aligned with the revised scope of the CRA Regulation and other amendments introduced in the Delegated Act.

47 ESMA considers it necessary to amend the third sub-paragraph of Article 7 to clarify aspects around the validation of a credit rating methodology. Specifically, ESMA is looking to clarify that the validation of a credit rating methodology shall be designed in order to assess the input data used by a credit rating methodology.

48 ESMA considers that this is an important aspect to ensuring that the credit rating methodology uses reliable inputs~~ and is also relevant to ensure the more systematic integration of ESG factors in credit rating methodologies~~.

Commented [A15]: Ensuring systematic integration of ESG factors within methodologies would constitute interference in methodologies under Article 23 of the CRAR.

ESMA is of the view that the Commission should consider amending Article 7 of the Delegated Act as follows:

Article 7(2)(a)

Current formulation:

2 (a) the historical robustness and predictive power of credit ratings issued using the relevant methodology over appropriate time horizons and across different asset classes;

Proposed formulation:

2 (a) the historical robustness and predictive power of credit ratings **and rating outlooks** issued using the relevant methodology over appropriate time horizons and across different asset classes;

Article 7(3)(ca)

Current formulation

N/A

Proposed formulation

(ca) assess the input data used by a credit rating methodology for completeness, accuracy and appropriateness

Article 7(5)(a)

Current formulation:

(a) regular credit rating and performance reviews on rated entities and financial instruments

Proposed formulation:

*(a) regular credit rating, **rating outlook** and performance reviews on rated entities and financial instruments*

Q8: Do you agree with the proposed changes in Article 7 to the Delegated Regulation? If not, please explain.

7. Proposed changes to Annex I of the CRA Regulation

49 In addition to the changes proposed to the Delegated Act, ESMA is also proposing targeted revisions to Annex I of the CRA Regulation. The objective of ESMA's input is to ensure that the transparency provisions that were introduced by ESMA's Guidelines on Disclosure are integrated into the CRA Regulation itself. This will place the provisions of the Guidelines on a stronger legal footing. This will contribute to increasing the levels of adoption of these provisions by CRAs and should lead to a more consistent outcome of disclosure. In addition, ESMA's input aims to improve transparency around CRA's validation process and deliver clarity as to the internal responsibility for this process.

Proposed new paragraph "5a" in Annex I, section D. I.

50 In order to ensure sufficient transparency around the consideration of ESG factors in credit rating press releases, ESMA is proposing to add a new paragraph to Annex I, Section D, I. This new paragraph intends to reflect the provisions of Section 5.2 of ESMA's existing Guidelines on Disclosure. In this way, ESMA will be endorsing what is already the industry standard for the disclosure of ESG factors in credit ratings, and placing it on a stronger legal footing, thereby improving levels of compliance and adherence in the CRA market.

51 In ESMA's view these proposed revisions should be added as a new paragraph within Annex I.D.I following the existing paragraph 5[11]. Once these changes have been integrated in Annex I.D.I, ESMA would then repeal Section 5.2 of the Guidelines on Disclosure.

ESMA is of the view that the Commission should consider amending Annex I. Section D.I by adding a paragraph 5a after current paragraph 5 as follows:

<u>Proposed addition:</u>

5a. When a key element underlying a credit rating or rating outlook is an E, S, or G factor a credit rating agency shall additionally in its press releases or reports:

i. identify prominently the key elements that were considered to be an E, S or G factor;

ii. explain why these E, S or G factors were material to the credit rating or rating outlook according to the relevant methodology.

Q9: Do you agree with the proposed addition of new paragraph 5a in Annex I.D.I to the Delegated Regulation? If not, please explain.

Proposed change to paragraph '9' in Annex I Section A and 2a. of Annex I Section D.I

52 The final changes that ESMA is proposing to be introduced in Annex I, are concerned with the responsibility for the validation of credit rating methodologies and subsequent disclosure of validation processes. ESMA proposes that this can be achieved through two separate changes to Annex I of the CRA Regulation. In ESMA's view these changes complement the other proposed changes to the Delegated Act and will contribute to a higher quality of input data in credit rating methodologies.

53 ESMA considers that it is necessary to specify in paragraph 9 of Annex I.A that a CRAs' review function should be responsible for the validation of a credit rating methodology. This is necessary on the basis that the CRA Regulation does not provide clarity as to

[11] Annex I, Section D, I, paragraph 5 requires requests credit rating agencies, when announcing a credit rating or a rating outlook, to explain in their press releases or reports the key elements underlying the credit rating or the rating outlook

which function should be responsible for the validation of a methodology. By adding this clarification ESMA is proposing to remove this area of uncertainty in the regulatory framework.

54 In addition to this organisational clarification, ESMA also considers it necessary to enhance the level of transparency and disclosure around a CRAs' validation processes and that this can be made through a targeted disclosure under paragraph 2a. of Annex I.D.I. of the CRA Regulation.

55 Greater visibility on how a credit rating agency is validating its methodologies can provide the users of credit ratings with greater levels of re-assurance on the frequency and comprehensiveness of these validation processes. ESMA considers that this greater level of disclosure will also be beneficial to provide visibility on the integration of ESG factors in credit rating methodologies.

ESMA is of the view that the Commission should consider amending Annex I Section A, paragraph 9 as follows:

Current formulation:

9. A credit rating agency shall establish a review function responsible for periodically reviewing its methodologies, models and key rating assumptions, such as mathematical or correlation assumptions, and any significant changes or modifications thereto as well as the appropriateness of those methodologies, models and key rating assumptions where they are used or intended to be used for the assessment of new financial instruments.

Proposed formulation:

9. A credit rating agency shall establish a review function responsible for periodically reviewing ***and validating*** its methodologies, models and key rating assumptions, such as mathematical or correlation assumptions, and any significant changes or modifications thereto as well as the appropriateness of those methodologies, models and key rating assumptions where they are used or intended to be used for the assessment of new financial instruments.

ESMA is of the view that the Commission should consider amending Annex I. Section D.I, paragraph 2a. as follows:

Current formulation:

2a. A credit rating agency shall accompany the disclosure of rating methodologies, models and key rating assumptions with guidance which explains assumptions, parameters, limits and uncertainties surrounding the models and rating methodologies used in credit ratings, including simulations of stress scenarios undertaken by the credit rating agency when establishing the credit ratings, credit rating information on cash-flow analysis it has performed or is relying upon, and, where applicable, an indication of any expected change in the credit rating. Such guidance shall be clear and easily comprehensible.

Proposed formulation:

2a. A credit rating agency shall accompany the disclosure of rating methodologies, models and key rating assumptions with guidance which explains assumptions, parameters, limits and uncertainties surrounding the models and rating methodologies used in credit ratings, including simulations of stress scenarios undertaken by the credit rating agency when establishing the credit ratings, credit rating information on cash-flow analysis it has performed or is relying upon, ***the process of validation***, and, where applicable, an indication of any expected change in the credit rating. Such guidance shall be clear and easily comprehensible.

Q10: Do you agree with the proposed change in Annex I Section A paragraph 9 of the CRA Regulation? If not, please explain.

Q11: Do you agree with the proposed change to Annex I. Section D.I paragraph 2a. of the CRA Regulation? If not, please explain why not.

Q12: Do you see merit in requesting a disclosure of the use of technological innovations such as Artificial Intelligence (AI) in the rating process?

Annex I

Summary of questions

Q1: Do you agree with the above proposed changes in Article 1? If not, please explain.
Q2: Do you agree with the changes proposed in Article 3? If not, please explain.
Q3: Do you agree with the changes proposed in Article 4(1)(d)? If not, please explain.
Q4 Do you agree with the proposed changes in Article 4(2) to the Delegated Regulation? If not, please explain.
Q5: Do you agree with the above proposed changes in Article 4(3) to the Delegated Regulation? If not, please explain.
Q6: Do you agree with the above proposed changes in Article 5 to the Delegated Regulation on Methodologies? If not, please explain.
Q7: Do you agree with the above proposed changes in Article 6 to the Delegated Regulation on Methodologies? If not, please explain.
Q8: Do you agree with the proposed changes in Article 7 to the Delegated Regulation? If not, please explain.
Q9: Do you agree with the proposed addition of new paragraph 5a in Annex I.D.I to the Delegated Regulation? If not, please explain.
Q10: Do you agree with the proposed change in Annex I Section A paragraph 9 of the CRA Regulation? If not, please explain.
Q11: Do you agree with the proposed change to Annex I. Section D.I paragraph 2a. of the CRA Regulation? If not, please explain.
Q12: Do you see merit in requesting a disclosure of the use of technological innovations such as Artificial Intelligence (AI) in the rating process?

Annex II

Legislative mandate to develop technical standards

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

The Director-General

Brussels
FISMA.C.1/SMI/RV/(2023)6219300

Ms Verena ROSS
Chair
European Securities and Markets Authority (ESMA)
201-203 Rue de Bercy
75012 Paris

Per email:
verena.ross@esma.europa.eu

Subject: Request for ESMA technical advice on the best way to update Annex I of the CRA Regulation and Commission Delegated Regulation (EU) No 447/2012

Dear Verena,

In its Action Plan for Sustainable Finance, published on 18 March 2018, the European Commission invited ESMA in the area of credit ratings: (i) to include environmental and sustainability considerations into its Guidelines on Disclosure Requirements ("Guidelines"), and (ii) to assess the current practice within the credit rating market concerning sustainability considerations.

ESMA published the Consultation Paper on Disclosure Requirements applicable to credit ratings in December 2018. It contained a chapter proposing measures to improve transparency regarding the consideration of ESG factors in credit ratings. ESMA issued Guidelines on disclosure requirements in July 2019 including recommendations for how CRAs should present which credit ratings have been impacted by ESG factors. Those guidelines entered into force in April 2020.

In 2021, ESMA carried out an assessment of results of Guidelines and, reviewed how CRAs incorporate ESG factors in their methodologies.

In July 2019, ESMA also provided a Technical Advice to the Commission advising against explicitly mandating the consideration of sustainability characteristics in CRA's credit assessments. ESMA considered that it could be useful to update the CRA Regulation's disclosure provisions, to provide a more consistent level of transparency around how CRAs are considering ESG factors in these assessments and ensure the CRA regulatory framework keeps pace with ESG developments in other areas.

Based on the recent ESMA assessments, as well as the results of the targeted consultation, meetings with stakeholders, and the Impact Assessment accompanying the proposal for the regulation of ESG ratings, two main problems have been identified:

- **Varied degree of rigorousness of the incorporation** of ESG factors in the assessment of creditworthiness. Furthermore, there is heterogeneity in the identification and definition of ESG factors across CRA methodologies.

- **Insufficient disclosure** in relation to ESG factors that have influenced changes to credit ratings. ESMA's assessment suggests that although there has been an increase in the overall level of ESG disclosures in CRAs' press releases since the introduction of the Guidelines on Disclosure Requirements applicable to credit ratings in 2019, there is room for further improvement.

Regulation (EC) No 1060/2009 (the CRA Regulation) requires CRAs to incorporate all driving factors relevant for the assessment of creditworthiness. Specific disclosure requirements are provided for in the Annex I to the CRA Regulation.

The CRA Regulation lays down the empowerment for the Commission to update Annex I of the CRA Regulation via a delegated act in view of market developments. More specifically, such a mandate is set out in Article 37 of CRA Regulation. Therefore, in order to further improve transparency, the Commission could amend the Annex I of the CRA Regulation by specifying that CRAs need to disclose the information on ESG factors that have influenced the credit ratings.

In addition, requirements regarding methodologies are specified in Commission Delegated Regulation (EU) No 447/2012. To ensure more rigorous incorporation of ESG factors in the methodologies and to set conditions that methodologies need to meet in the case of the incorporation of ESG factors in creditworthiness assessment, Commission Delegated Regulation (EU) No 447/2012 could be amended in accordance with Article 38a CRA Regulation.

Against this background, ESMA is invited to provide the Commission with a technical advice assessing the best way to update:

- Annex I of the CRA Regulation, and
- Commission Delegated Regulation (EU) No 447/2012,

in order to ensure a better incorporation of ESG factors in the methodologies and rating process and the further disclosure to the public.

We would welcome to receive the above-mentioned advice by end 2024.

Yours faithfully,

[Electronically signed]

John BERRIGAN

ESMA
European Securities and Markets Authority

Annex III

Cost-benefit analysis

The cost-benefit approach takes into account the related European Commission's impact assessment [12] and ESMA's regulatory and supervisory experience. It presents, first, the benefits collectively for all entities and market participants including investors, issuers, users of ratings. It then, differentiates between the main costs, including compliance and supervisory costs, which are discussed accordingly, for the CRAs and ESMA.

Options	Qualitative description
Objective	Changes to the Delegated Act on Methodologies and Annex I of the CRA Regulation to (a) ensure ~~a~~ better disclosure of, and more consistent application of ~~incorporation of~~ ESG factors in ~~the~~ credit rating methodologies, where they are considered relevant by CRAs, and better subsequent disclosure to the public, and (b) to enhance the transparency, credibility, and validity in the credit rating process.
Benefits	ESMA's supervisory observations, the related input from the European Commission, as well as continued concerns expressed by stakeholders, have indicated a persisting lack of transparency on how CRAs incorporate sustainability factors in their methodologies, when these factors have been deemed credit material. ESMA considers that the changes proposed to the Delegated Act and Annex I of the CRA Regulation are necessary to achieve the above listed objectives and address concerns that have been identified as part of ESMA's supervisory observations. The proposed changes will increase transparency around how ESG factors are considered as part of credit ratings and credit rating methodologies. ESMA considers that this will be of benefit to the financial industry by enabling all market participants in taking more informed financial decisions. In addition, the changes proposed by ESMA will enhance ESMA's ability to assess compliance of CRAs methodologies with the requirements of the CRA Regulation. ~~This will have the benefit of ensuring that CRAs will more consistently and robustly integrate ESG factors in their credit rating methodologies.~~ These

[12] "Targeted consultation on the functioning of the ESG ratings market in the European Union and on the consideration of ESG factors in credit ratings" (finance-2022-esg-ratings - European Commission (europa.eu)).

Commented [A16]: "better incorporation of ESG factors in credit rating methodologies" would appear to breach the non-interference principle in Article 23 of the CRAR.

Commented [A17]: This is contrary to the non-interference principle in Article 23. It should not be an intended benefit and it would not actually be beneficial if the consultation forced CRAs to integrate ESG factors in methodologies when they did not consider them to be relevant for that methodology.

	more specific provisions will also improve ESMA's ability to supervise CRAs compliance with the requirements of the CRA Regulation. In addition, ESMA considers that CRAs will benefit from the proposed amendments on the basis that they will gain greater clarity on ESMA's supervisory expectations in this area. The proposed revisions will also simplify supervisory engagement by reducing the need for ad-hoc interventions to highlight the importance of ~~robust and~~ consistent ~~integration of ESG factors in credit rating methodologies and~~ disclosures. ESMA also considers that a greater convergence between CRAs' disclosures ~~and practices~~ will reduce informational asymmetries and contribute to ESMA's core tasks of investor protection within a sustainable EU.
Costs to CRAs	In order to ensure compliance with the proposed revisions, ESMA considers that CRAs will need to revise their internal processes and, possibly, update their existing methodologies. The level and extent of these costs will depend on how far a CRA has already gone with regards to the incorporation of ESG factors in their credit rating methodologies and disclosures. ESMA expects that these operational and compliance costs will be adjustment short-run costs that would be mitigated according to the extent to which CRAs have: - already adapted their processes to the specific requirements of ESMA's 2019 Guidelines and more generally, to the widespread demand for heightened awareness on sustainability risks in financial markets, and - complied with ESMA's ongoing monitoring/supervisory actions relating to the implementation of the whole set of provisions of the Delegated Regulation and the CRA Regulation. In the medium/long term, these costs are expected to be reduced through the gradual implementation of the harmonised EU regulatory package on sustainable finance. CRAs are expected to increasingly benefit from the adoption of the latter which will provide more standardised informational inputs in the rating process. These comprise, e.g., the taxonomy framework, ESG definitions and labels, targeted disclosures and ESG regulated information from financial market participants, as well

Commented [A18]: ESMA should not be highlighting the importance of integration of ESG factors in methodologies. Such integration should only occur where the CRA alone considers ESG factors to be relevant.

Commented [A19]: Convergence of rating practices, as opposed to disclosure, could be contrary to Article 23. In addition requiring the same practices of CRAs reduces the potential for them to have different views on a particular risk or rating, which would be negative for users of credit ratings.

	as the ESG ratings per se, and other forthcoming, sectoral or not, EU and international, regulatory developments. Based on the above, CRAs are not expected to face material legal or reputational costs. ~~Along the same lines, the enhanced consideration of ESG factors in CRA's credit rating methodologies may mitigate opportunity costs linked to an expanded CRAs' rating universe. For the small and medium CRAs this can be even more beneficial in terms of costs in the medium/long run as far as it is translated to rising market shares.~~ Overall, only a small additional compliance burden is expected as a direct result of the application of the proposed changes. These costs are expected to diminish in the medium/long-term.
Costs to regulator	ESMA has acquired significant supervisory experience since the introduction of the CRA Regulation. It has also extensively monitored the way CRAs embed the ESG risks into their credit rating analysis. These elements point to a limited incremental supervisory cost for ESMA in this regard. More generally, ESMA's proposals are forward looking, outcome focused and aim to heighten legal certainty. This means that they are expected to enhance the efficiency and effectiveness of CRA's supervision. At the same time, the transition to sustainable finance is central to ESMA's priorities as a result, costs of adapting to the new ESG EU prerequisites are transversal to ESMA's activities. ~~Furthermore, the proposed changes do not entail interference with the design of credit rating methodologies. For example, ESMA does not propose a specific E, S or G categorisation nor expands on the interlinkages between these three components. It is for CRAs to affirm, where applicable, how they incorporate ESG risks as material factors into their credit rating methodologies. This element, combined with ESMA's supervisory experience, suggests that the proposed changes are not expected to bring additional legal and reputational risks for ESMA.~~

Commented [A20]: Requiring "enhanced consideration" of ESG factors in CRA's methodologies would be interference with those methodologies. This would not constitute a benefit and should be deleted.

Commented [A21]: Pressing CRAs to incorporate ESG risk in criteria where the CRA does not consider such risks to be relevant would constitute interference by itself, even if there is no requirement to use a specific ESG categorization. We therefore believe this paragraph is inaccurate and should be deleted.

	Overall, ESMA is not expected to face critically heightened supervisory or other costs after the adoption of the proposed changes.
ESG-related aspects	Given that the revision to the RTS and Annex aim to improve disclosure around the integration of ESG factors in methodologies where CRAs consider them to be relevant, and to support the consistent application of those methodologies, ~~more concretely integrate the consideration of ESG factors in credit rating methodologies and CRA disclosures,~~ this proposal is directly relevant to ESG aspects of CRA activities.
Innovation-related aspects	ESMA proposes that all factors relevant to credit rating methodologies, including ESG ones, are adequately presented. CRAs should further disclose the rationale for their inclusion within the creditworthiness assessment. This addition would also increase transparency around how CRAs take account of emerging risks, such as those stemming from technological innovations. Furthermore, the consultation paper includes a question on the necessity to propose enhanced disclosures on the use of technological innovations, such as Artificial Intelligence (AI), in the rating process.
Proportionality-related aspects	The elements proposed apply uniformly to all credit rating agencies. The ultimate objective is the provision to the financial industry of robust credit ratings which are based on the whole spectrum of critical available information. This, by definition, cannot be mitigated by proportionality considerations.

Commented [A22]: Increasing the integration of ESG factors without reference to whether those factors are considered relevant by the CRA would be contrary to Article 23 of the CRAR. It should be clear that the intent is to focus on disclosure and consistent application of methodologies, and that the consideration of ESG factors is entirely down to whether the CRA considers them relevant.

Annex IV

Proposed Delegated Regulation amending Commission Delegated Regulation (EU) No 447/2012

COMMISSION DELEGATED REGULATION (EU) XXX/XXXX

of XXX

amending the regulatory technical standards laid down in Delegated Regulation (EU) No 447/2012 for the assessment of compliance of credit rating methodologies.

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ([13]), and in particular point (d) of Article 21(4) thereof,

Whereas:

(1) In view of market and regulatory developments, it is necessary to ensure that environmental, social and governance (ESG) factors are consistently incorporated in credit rating methodologies where deemed relevant in determining creditworthiness. This will enable their adequate documentation as well as their rigorous, systematic, continuous and subject to appropriate validation consideration throughout the rating process. The identification of ESG factors may pertain to their classification according to the prespecified ESG categories, in an individual or aggregate dimension, including by financial instrument, issuer, or sector.

(2) In order to ensure a streamlined assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009, it is important to be clarified that ESMA, , considers that a credit rating methodology is the framework which contributes to the determination of a credit rating and rating outlooks. It includes elements such as criteria, models, driving factors and key rating assumptions relevant to the creditworthiness assessment.

[13] OJ L 302, 17.11.2009, p. 1.as amended.

(3) Credit rating methodologies should be designed, to warrant their systematic application. In this sense, they should embody a sufficiently detailed guidance to persons who apply them, in view of ensuring a consistent determination of reliable credit ratings and rating outlooks. In addition, it is also necessary to clarify that the validation of credit rating methodologies should be designed, inter alia, to adequately assess the input data used by the methodology.

(4) Following the amendments to Regulation (EC) No 1060/2009 introduced by Regulation (EU) No 462/2013 of the European Parliament and of the Council[14] in relation to rating outlooks, it is necessary to clarify that the requirements of Delegated Regulation (EU) No 447/2012 also apply to rating outlooks.

(5) Delegated Regulation (EU) No 447/2012 should therefore be amended accordingly.

(6) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(7) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, consulted the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 447/2012 is amended as follows:

(1) in Article 1, the following subparagraph is added:

[14] Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies (OJ L 146, 31.5.2013, p. 1).

‘For the purpose of this regulation, a credit rating methodology is the framework that, contributes to the determination of a credit rating and rating outlooks. It includes criteria, models, driving factors and key rating assumptions relevant to the creditworthiness assessment.’;

(2) in Article 3, paragraph 2 is replaced by the following:

‘2. When examining the compliance of credit rating agencies with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009, ESMA shall use all information relevant to assess the process of developing, approving, using, validating and reviewing credit rating methodologies. In carrying out this assessment, ESMA will consider that a credit rating methodology is the framework which contributes to the determination of a credit rating and rating outlooks. It includes criteria, models, driving factors and key rating assumptions relevant to the creditworthiness assessment.;’

(3) Article 4 is amended as follows:

(a) in paragraph 1, in point (d), the words ‘where these are in place’ are deleted;

(b) paragraph 2 is replaced with the following:

‘2. A credit rating agency shall use and apply credit rating methodologies which:

(a) list each qualitative factor including the scope of qualitative judgement for that factor and identify, where applicable, whether a factor is considered as an E factor, S factor, G factor;

(b) list each quantitative factor and identify, where applicable, whether a factor is considered as an E factor, S factor, G factor;

(c) include the rationale according to which qualitative and quantitative factors are considered within the creditworthiness assessment.

(d) include the key variables, data sources, key assumptions, modelling and quantitative techniques applicable to each of the quantitative and qualitative factors used.

(e) include the process according to which a qualitative or quantitative factor has been identified as an E factor, S factor or G factor.’;

(c) paragraph 3 is replaced with the following:

‘3. The information referred to in paragraph 2 shall include a detailed explanation of the following:

(a) the importance of each qualitative or quantitative factor used within that credit rating methodology, including a description of and justification for related weightings assigned to those factors and their impact on credit ratings and rating outlooks;

(b) an assessment of the relationship between the key assumptions used in that credit rating methodology and the critical risk factors derived from macroeconomic or financial data;

(c) an assessment of the relationship between the key assumptions used in the credit rating methodology and the volatility of credit ratings and rating outlooks produced by that methodology over time.';

(d) the first subparagraph of paragraph 4 is replaced with the following:

'A credit rating agency shall use and apply credit rating methodologies that promptly incorporate findings or outcomes from an internal review, or a monitoring review undertaken by one or more of the following:';

(4) Article 5 is amended as follows:

(1) In the first paragraph the words "a credit rating methodology and its associated analytical models, key credit rating assumptions and criteria" are deleted and replaced with "credit rating methodologies"

(2) In the first paragraph the word "and rating outlooks" is added after the word 'credit ratings'.

(3) In the second paragraph "methodology" is deleted and replaced with "methodologies", and the word "is" that appears after "methodology" is replaced with "are".

(4) The following paragraph is added as a third paragraph:

'3. A credit rating agency shall use credit rating methodologies which are sufficiently detailed and which ensure a consistent approach to the determination of credit ratings and rating outlooks.';

(5) Article 6 is amended as follows:

(a) in the first paragraph the word 'shall' after 'methodologies' is deleted;

(b) in point (b) the words 'and rating outlooks' are added after 'credit ratings';

(c) in point (c) the words "and rating outlooks" are added after "credit ratings'.

(6) Article 7 is amended as follows:

(a) in paragraph 2, point (a) the words "and rating outlooks" are added after "credit ratings"

(b) in paragraph 3, the following new point (ca) is added:

‘(ca) assess the input data used by a credit rating methodology for completeness, accuracy and appropriateness;.’

(c) in paragraph 5, point (a) the words ‘rating outlook’ are added after ‘credit rating‘.

Article 2
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,.

For the Commission

The President

Annex V

Proposed Amendments to Annex I of CRA Regulation

(1) In Annex I, Section D, Rules on the presentation of credit ratings and rating outlooks, I. General obligations, the following paragraph is added as paragraph 5a:

‘5a. When a key element underlying a credit rating or rating outlook is an environmental (E), social (S), or governance (G) factor, a credit rating agency shall additionally in its press releases or reports:

(i) identify prominently the key elements that are considered to be an E, S or G factor;
(ii) explain why each of these factors is material to the credit rating or rating outlook according to the relevant methodology.’

(2) In Annex I, Section A, Organisational Requirements, paragraph 9, the words ‘and validating’ are added after the word ‘reviewing' in the first paragraph.

(3) In Annex I, Section D, Rules on the presentation of credit ratings and rating outlooks, I. General obligations, paragraph 2a. the sentence “,the process of validation,” is added after the words “it has performed or is relying upon’ in paragraph 2a.