



ESMA consultation paper on the revision to guidelines and recommendations on the scope of the Credit Rating Agencies (CRA) Regulation

[Link to the paper: Consultation paper on the Revision to Guidelines and Recommendations on the Scope of the CRA Regulation](#)

1- Target audience (potential stakeholders):

This paper is primarily of interest to:

- rated entities;
- issuers of debt instruments;
- users of credit ratings;
- credit rating agencies (CRA);
- entities interested in applying to be a registered CRA;
- other financial market participants outside the scope of the CRA Regulation.

The CNMV would appreciate it if all the above-mentioned potential stakeholders were to send a copy of their responses to the call for evidence to the following email address:

DocumentosInternacional@cnmv.es

2- Information Note

On 28 January, ESMA published this public consultation to gather stakeholders' views on the revision of the guidelines and recommendations on the scope of the CRA Regulation published in 2013. ESMA has gained experience since 2013 and seeks to carry out a specific update of the ESMA guidelines and recommendations on the scope of the CRA Regulation to address the existing lack of clarity surrounding the definition of private credit ratings.

Article 2(2) of the CRA Regulation establishes that this Regulation does not apply to '*private credit ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription*'. However, the elements defining private credit ratings are not clear. Therefore, ESMA proposes to clarify the content of paragraphs 14 and 15 of the 2013 Guidelines and Recommendations on private credit ratings.

ESMA seeks stakeholders' views on the proposed new draft which provides practical guidance on the application of the scope of the CRA Regulation to activities relating to private credit ratings, in order to

- Clarify what are the constituting factors of private credit ratings and which are their acceptable boundaries.
- Ensure the transparency of ESMA's expectations on the use and dissemination practices of private credit ratings by market participants in EU Member States.
- Ensure more straightforward and effective management of potential infringements of the scope of the CRA Regulation by non-CRA rating producing entities.

By further elaborating upon the application of these provisions, ESMA believes it will contribute to ensuring a level playing field with regard to the arrangements that market participants need to adopt to differentiate private from public credit ratings in the context of private placements, where private credit ratings are commonly used. This will contribute to the Capital Markets Union's initiative of removing barriers to the development of European markets for private placements, to promote easier and cheaper access to funding for small and medium-sized companies.

The paper is intended to clarify the meaning and interpretation of the following key elements:

1) '*Produced pursuant to an individual order*'. The update to paragraph 14 proposed by ESMA is to require the private credit rating to only be produced following an explicit request for it, formalising this bilateral relationship through a written agreement between the person placing the order and the issuer/provider of the rating.

2) '*Provided exclusively to the person who placed the order*'. ESMA proposes amending paragraph 14 to the effect that the agreement between the rating producer and the person who placed the order contains a specific provision expressly indicating that the rating is exclusively issued for the person who placed the order and that the latter signs a confidentiality agreement undertaking not to share the rating.

3) Limits on sharing the private credit rating with 'a limited number of third parties'. ESMA's proposal to amend paragraph 15 is to clarify that the party receiving the rating may share the rating confidentially with a selected and definite number of natural or legal persons, up to a maximum limit of 150 natural persons.

4) Monitoring the distribution of private credit ratings by the ratings issuer/provider. ESMA proposes to update paragraph 15 to require appropriate controls to be implemented by the ratings issuer/provider to allow for the monitoring of the distribution of the private credit rating to third parties.

The paper includes three annexes: Annex I.- text of the Guidelines; Annex II.- cost/benefit analysis; and Annex III.- list of questions.

Next steps

ESMA will consider the responses it receives to the consultation paper and expects to publish a final report by the end of the second quarter of 2022.

3.- Submission of comments

The consultation period ends on **11 March 2022**

Respondents may send their comments through ESMA's website: www.esma.europa.eu. Both the paper of this call for evidence and the response form are available in the section [Consultations](#) (place the cursor on the word to obtain the link).

Likewise, as indicated above, the CNMV would also appreciate it if stakeholders could send a copy of their responses to the call for evidence to the following address:

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