



European Securities and
Markets Authority

Final Report

Guidelines on Disclosure Requirements for Initial Reviews and Preliminary Ratings





Table of Contents

Legislative references, abbreviations and definitions.....	3
1. Executive Summary.....	4
2. Feedback Statement	6
Annex I Guidelines on disclosure requirements for initial reviews and preliminary ratings	12
Annex: Standardised Disclosure Template.....	16
Annex I Cost Benefit Analysis	17

Legislative references, abbreviations and definitions

CP	Consultation paper
CRA	Credit Rating Agency
CRA Regulation or CRAR	Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit ratings agencies as amended by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011, Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011, Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013, and Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014
ESMA	European Securities and Markets Authority
RADAR	ESMA's credit ratings data reporting tool

1. Executive Summary

Reasons for publication

1. The CRA Regulation (CRAR) includes a number of requirements that are designed to provide clarity to the market around whether entities or debt instruments have been subject to initial review or preliminary rating by CRAs, before receiving a credit rating. The objective of these requirements is to mitigate against the effects of rating shopping.
2. Rating shopping can be understood as occurring when an issuer engages with a number of credit rating agencies with a view to selecting only those credit rating agencies that will provide the most favourable assessment for the entity or debt instrument. In choosing to appoint only those credit rating agencies that provide the most favourable assessment, risks are created for investor protection and financial stability, specifically, risks of ratings inflation and lack of applied methodological rigour¹. While concerns around this practice were initially focused on structured finance ratings², revisions of the CRA Regulation expanded the area of focus to the broader spectrum of entities and debt instruments assessed by CRAs.
3. The rationale of the CRAR is to provide investors and the market with greater visibility on which entities or debt instruments may have been subject to rating shopping. This will enable them to be forewarned about the levels of rating assigned to these entities or debt instruments. It will also reduce the incentive for issuers to engage in this behaviour in the future.
4. The purpose of these Guidelines is to deliver guidance that will address inconsistencies in the application of these requirements by CRAs, and by extension reduce the risks that are posed by rating shopping to the extent it is possible under the existing provisions of the CRA Regulation.
5. ESMA has conducted a public consultation on these Guidelines in order to gather the views of CRAs and other relevant stakeholders. A number of amendments and clarifications have been introduced into the final guidelines in order to take account of the views expressed during this consultation.

Contents

6. The guidelines are structured according to three main parts that establish:
 - ESMA's views on how the term "initial review and preliminary rating" should be understood for the purposes of the CRAR's public disclosure requirements.

¹ [European Commission: Impact Assessment Accompanying the Proposal for a Regulation on Credit Rating Agencies. 12.11.2008.](#)



- ESMA’s view on the content and timing of CRAs public disclosures for interactions that meet the standard of “initial review and preliminary rating”.
- ESMA’s views on the steps to ensure these public disclosures are more accessible for investors and the market.

Next Steps

7. ESMA will consider these guidelines for the purposes of its supervision from 1 July 2022.

2. Feedback Statement

1. A total of 14 Responses were received to the Consultation Paper from Credit Rating Agencies registered with ESMA as well as non-CRAs such as market participants. This feedback statement provides a summary of the principal comments received to the different questions of the CP.

Guidelines - General

2. Responses to the CP were supportive of ESMA's objectives. Responses to the proposals focused on three main areas. First, the common understanding regarding initial reviews and preliminary ratings. Second, the timing of publications and the timeline for disclosure of interactions that meet the standard of the common understanding. Third, whether improved disclosures by CRAs would be sufficient to deter issuers from engaging in rating shopping.

Common Understanding of Initial Review or Preliminary Rating (Questions 1-3)

3. A majority of respondents welcomed the introduction of a common understanding for the term initial review and preliminary rating. With regards to the scope of the common understanding there were differing views. For example, some respondents considered the term was "too broad" in so far as it could capture assessments that are intended to result in product offerings that are different from public credit ratings. Other respondents stated that they considered the term as being insufficiently specific to capture "informal assessments that do not correspond to a specific or defined product".
4. With regards to the terminology used, a number of respondents highlighted concerns with the use of the term "hypothetical financial instrument" and outlined that this may inadvertently capture interactions and services that are not relevant for rating shopping. In addition, a number of respondents highlighted that the term "final credit rating" was an unfamiliar concept under the CRA Regulation and could lead to inconsistent application. Finally, there were general questions as to how the term "may be converted into" or "replaced with a final credit rating" could be understood in practice.
5. With regards to the applicability of the common understanding to Structured Finance Instruments, there was general agreement among respondents that the common understanding for initial review or preliminary ratings provided would also be applicable to Structured Finance Instruments. One respondent added that such an understanding was already being applied in the case of structured finance ratings.
6. Finally, one respondent outlined that the inclusion of initial assessments on hypothetical scenarios would be "challenging" for structured finance instruments on the basis that it could be quite complex to track a structured finance transaction to determine if one of the scenarios reviewed was "converted into" or "replaced" by a public credit rating issued by another CRA.

7. **ESMA Response:** ESMA has revised the final text in order to address the most critical issues highlighted above. In revising the common understanding ESMA has sought to maintain the intention that it should apply to both informal and formal interactions that result in the provision of an initial review or preliminary rating.
8. More specifically, ESMA has made revisions to the structure and wording of the common understanding. First, ESMA has clarified in the initial paragraph that an initial review and preliminary rating is considered as having been provided only when all of the conditions of section 5.1 of the guidance have been met. Second, under point (i) ESMA has removed the term “hypothetical” and replaced this with “proposed” issuer or debt instrument. This is to clarify that the guidelines apply to cases where an initial review or preliminary rating is provided for financial instruments that have either been offered to investors or intend to be offered to investors. Under point (ii) ESMA has replaced the term “final credit rating” with the term “public” credit rating to clarify that the outputs referred to under point (ii) and (iii) are public credit ratings that are eventually published in accordance with CRAR. Finally, under point (iii) ESMA has removed the terms “may be converted into (or replaced with)” on the basis that these could be subject to different interpretations. ESMA has clarified that the result or outcome of the creditworthiness assessment is an output that provides an indication of the public credit rating the CRA would assign to the issuer or debt instrument if the CRA were to receive the mandate.
9. With regards to structured finance instruments ESMA considers that the changes that have been made to address more general issues with the common understanding will also address the concerns that were provided by respondents under this point.

Feasibility of Information to be Disclosed (Question 4)

10. The majority of respondents agreed with the feasibility of the content of public disclosures set out in the guidance. However, a number of respondents raised specific concerns over the provision of an LEI or ISIN for each disclosed instance. Specifically, one respondent outlined that not all entities currently have an LEI/ISIN and that this can depend on the maturity of the entity seeking a rating, its industry, or the stage of the considered transaction. To address this issue, some respondents advocated to replace a missing LEI by the “reporting company’s unique key” or unique rating identifier, as reported to ESMA under Commission Delegated Regulation (EU) 2015/2³. Other respondents advocated for the exclusion of initial assessments for which an LEI and/or ISIN had not been provided from the proposed disclosures. This was on the basis that it would be difficult to monitor other CRAs’ public disclosures to assess whether that CRAs provided an initial review or preliminary rating for that same transaction.
11. **ESMA Response:** Given the majority of respondents highlighted that the information to be disclosed was feasible ESMA has made limited changes to this section of the guidance. Where ESMA has made a change is under point (ii) concerning the LEI or ISIN. Here ESMA considers that it is not a point that needs to be populated in the disclosure if that

³ [Commission Delegated Regulation \(EU\) 2015/2 of 30 September 2014](#)

information is not available to the CRA at the time of making the disclosure. However, the CRA should back-fill this data point on subsequent publications when this data becomes available to the CRA.

Usefulness of Information to be Disclosed (Question 5)

12. ESMA received limited feedback to this question. One respondent to the consultation agreed that the information to be disclosed would help in developing a clearer picture of which entities or instruments have been subject to initial review or preliminary rating, explaining that the four points of information to be disclosed should enable such an improvement. Another respondent flagged that even with the additional disclosure provided by the guidelines, this could not fully eliminate risks related to rating shopping which to a degree depend on the behaviour of issuers, who are not captured by the requirements of the guidelines.
13. **ESMA Response:** No changes have been made to reflect the responses to this question.

Feasibility of Timing of Disclosures (Questions 6)

14. ESMA received a large number of responses to this question. While two respondents supported the proposed guidance, the majority sought refinements to improve the feasibility and clarity of the guidance. Specifically, respondents questioned whether requiring disclosures to be made on the first Wednesday of the month would be feasible, in cases where this date fell on the 1st or 2nd or in the case of smaller CRAs. By way of alternative these respondents suggested alternatives such as allowing for publication “until the 15th”.
15. In addition, respondents highlighted that it would be difficult for a CRA to definitively check whether a credit rating had not been provided for an entity or debt instrument as required by the proposed guidance under Section 5.3 point (v)⁴. The purpose of this provision being to set a minimum timeline for disclosure. As a result, a number of respondents indicated that the timing of their disclosures would likely have to default to the guidance that had been provided under point (vi)⁵. The purpose of this provision being to provide a maximum timeline for disclosure.
16. Elsewhere, a number of respondents requested the guidance to confirm the point at which a CRA was no longer required to monitor whether an issuer or entity for which it had provided an initial review or preliminary rating had received a credit rating from another CRA. On this point, respondents suggested that a 6 or 12 month monitoring period would be sufficient to ensure that risk of rating shopping had been sufficiently diminished by the passage of time and changing market dynamics. Finally, one respondent suggested the

⁴ Within 30 calendar days of when the initial review or preliminary rating was provided unless it can determine that a credit rating has not been provided for that entity or debt instrument.

⁵ If this cannot be determined, it should be included on the list no later than 30 days after the end of the month in which a credit rating was provided for that entity or debt instrument.

guidance to include an upper limit on the length of time that entries on CRAs disclosures should be maintained.

17. **ESMA Response:** ESMA has maintained the publication date as the first Wednesday of the month. This is because the alignment of CRAs' disclosures is important to ensure the usability and comparability of the information. If a derogation was allowed "up to XX" date, this could result in publications across a range of days, which would result in inconsistent time periods for different disclosures. To address the difficulty of CRAs having to determine whether a credit rating had not been provided for an issuance or entity by another CRA, this element of the guidance has been removed. Under the revised proposal, a CRA must make the disclosures within 30 days after the end of the month in which a credit rating has been provided by another CRA.
18. In practice this means that if a CRA provides an initial review on an instrument on 15 March and a credit rating is provided by another CRA on 25 May, then the CRA has until 30 June to include the issuer or instrument on its list for publication. This list should then be published on the first Wednesday of July.

Usefulness of Proposed Timing of Disclosures (Question 7)

19. One respondent agreed that the proposed timing of these disclosures will better enable investors and the market to identify where rating shopping might have occurred, on the basis that "*since all CRAs will publish an updated list on the same day of each month, it should enable investors to check the issuers and issuances*". Another respondent questioned whether the uniformity of dates would create a risk of a race to the bottom in terms of timing.
20. **ESMA Response:** No changes have been made to directly reflect responses to this question on the basis that significant changes have been made to the timing in response to Questions (1-3).

Potential for Conflict between Disclosures and Regulatory Obligations (Question 8)

21. This question focused on assessing whether respondents foresaw any conflicts between the text of the guidance and existing regulatory requirements. In this regard, no respondents flagged any conflicts. However, one respondent flagged one potential issue as being that "*there may be a gap between the debt issuance for instance and the disclosure of the information*", and that in such case, "*the disclosure could happen after an investment has been made*".
22. **ESMA Response:** No changes have been made to reflect the responses to this question on the basis that no conflicts were identified.

Relevance of Disclosure where final public credit rating not provided (Question 9)

23. ESMA received two responses to this question concerning the value of CRAs disclosing that they provided an initial review or preliminary rating in cases where a public credit rating is ultimately not provided for an entity or debt instrument. In this regard one respondent mentioned that *“If a rating is not published, investors receive valuable information about the fact that there may be a disagreement between the issuer and the rating agency about the rating to be issued”*. Another respondent outlined that such a disclosure *“could give information on the potential financing/refinancing strategy of the issuer”*.

24. **ESMA Response:** No changes have been made to reflect the responses to this question on the basis that disclosures in cases of initial reviews or preliminary rating where no credit rating is provided may provide indications about an issuer or entity that could be misinterpreted.

Value of Centralising Accessibility to disclosures for CRAs (Question 10)

25. The majority of respondents expressed support for the proposal and concurred that centralising accessibility to this information will improve the value of CRAs disclosures on an overall basis. However, one respondent highlighted that this approach would still require users to review disclosures from all CRAs in order to fully assess whether rating shopping has occurred in a specific case of interest.

ESMA Response: No changes have been made to reflect responses to this question.

Value of Centralising Accessibility to disclosures for Issuers and Users of Ratings (Question 11)

26. Two respondents agreed that centralising accessibility to this information will improve the ability for users to assess whether an entity or debt instrument has been subject to rating shopping. In this regard, one respondent outlined that they considered the standardised template, lack of registration barriers on the CRA’s website and a link on ESMA’s website would be sufficient. However, another respondent highlighted that the provision of this information should not depend on the rating agency alone.

27. **ESMA Response:** No changes have been made to reflect responses to this question.

Added Value of Standardised Disclosure Template (Question 12)

28. A large majority of respondents supported the proposed standardised template, while some provided minor comments. One respondent questioned the purpose of the three blank columns included in the template on the basis that they were not “not defined and therefore it was not clear which information should be included there” This respondent recommended to merge these 3 fields into one single “Comments” section. Other respondents suggested adding to the template the preliminary rating when available, or including new items to the templates, such as i) name of the CRA, ii) the reference period of reporting, iii) the date of publication of the report, iv) the date when the (final) credit rating has been provided, if any.

Overall a large majority of respondents considered that the standardised disclosure template would provide added value for the public disclosures and increasing consistency thereby facilitating comparability.

29. **ESMA Response:** No changes have been made to reflect responses to this question. The purpose of the blank columns is to allow CRAs to provide additional disclosures over and above what is suggested by the Guidelines. This will ensure that columns 1-5 of the template will always be comparable when combined across different CRAs.

Views on Cost Benefit Analysis (Question 13)

30. A number of respondents highlighted that they considered the cost of monitoring involved to be high and disproportionate to the expected benefit of the improved disclosures. To mitigate the costs involved some respondents suggested a limitation in time of the monitoring requirement and the frequency for the publication (quarterly, instead of monthly). Another respondent suggested that the monitoring exercise could be automated via ESMA's RADAR reporting system, where CRAs would report their preliminary ratings and RADAR would alert the respective CRA as soon as a credit rating has been reported to RADAR on that issue or instrument.

ESMA Response: **With a view to** automating the publication of this information ESMA will assess the possibility of revising its RADAR reporting instructions to see whether improved reporting of initial reviews or preliminary ratings can be provided via this means. Depending on this process this could result in publication of this information by ESMA.

Annex I Guidelines on disclosure requirements for initial reviews and preliminary ratings

1 Scope

Who?

1. These guidelines apply to CRAs established in the Union and registered with ESMA in accordance with the CRA Regulation.

What?

2. These guidelines concern matters relating to the public disclosures of CRAs in accordance with Article 10(2) and Section D point 6 of Annex I of the CRA Regulation.

When?

3. These guidelines apply from 1 July 2022.

2 Legislative references and abbreviations

Legislative References

<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ⁶
<i>CRA Regulation</i>	Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ⁷

Abbreviations

<i>ESMA</i>	European Securities and Markets Authority
<i>CRA</i>	credit rating agency

3 Purpose

4. These guidelines concern the public disclosures of CRAs' in relation to the entities or debt instruments submitted for their initial review or preliminary rating.
5. The guidelines set out ESMA's expectations regarding the timing, content and format of these public disclosures. They also set out ESMA's expectations as to the type of interactions that should be considered as initial review or preliminary rating for the purpose of these disclosure requirements.

4 Compliance and reporting obligations

4.1 Status of the guidelines

6. In accordance with Article 16(3) of the ESMA Regulation, CRAs must make every effort to comply with these guidelines.
7. ESMA will assess the application of these guidelines by CRAs through its ongoing direct supervision.

⁶ OJ L 331, 15.12.2010, p. 84.

⁷ OJ L 302, 17.11.2009, p.1.

5 Guidelines on disclosure requirements for initial review and preliminary Rating

5.1 Common Understanding of Initial Review or Preliminary Ratings.

8. For the purpose of the public disclosures that are provided in accordance with point 6 of Section D of Annex I of the CRA Regulation, a CRA is understood as providing an initial review or a preliminary rating of an entity or debt instrument when all of the following conditions are met:
 - i. a CRA provides a creditworthiness assessment in respect of an existing or proposed issuer or debt instrument;
 - ii. the creditworthiness assessment is communicated using the same established and defined rating symbology as it would for a public credit rating (although a CRA may use a prefix or suffix to denote that the assessment differs from a credit rating); and,
 - iii. the result of the creditworthiness assessment is not a public credit rating but provides an indication of the public credit rating the CRA would assign to the issuer or debt instrument if the CRA were to receive a mandate.

5.2 Content of public disclosures provided in accordance with point 6 of Section D of Annex I of the CRA Regulation.

9. When publishing its public disclosures that are provided in accordance with point 6 of Section D of Annex I of the CRA Regulation, a CRA should ensure that the following points of information are included for each instance where it has provided an initial review or preliminary rating:
 - i. the name of the entity or debt instrument;
 - ii. the LEI or ISIN of the entity or debt instrument, where available;
 - iii. the segment / asset class of the entity or debt instrument; and,
 - iv. the date the initial review or preliminary rating was provided.

5.3 Timing of public disclosures provided in accordance with point 6 of Section D of Annex I of the CRA Regulation

10. When publishing its public disclosures that are provided in accordance with point 6 of Section D of Annex I of the CRA Regulation, a CRA should ensure that the list of entities

or debt instruments for which they have provided an initial review or preliminary rating is published by:

- i. the first Wednesday of each month.
11. A CRA should monitor⁸ to ensure the list published on that day includes all those entities or debt instruments for which that CRA has provided an initial review or preliminary rating, unless it is necessary to delay publication for confidentiality reasons. In case it is necessary to delay publication for confidentiality reasons, a CRA should ensure publication is made:
- i. no later than 30 days after the end of the month in which a public credit rating was provided by another CRA for that entity or debt instrument.
12. CRAs should maintain the items on the list for a period of five years from the month of inclusion.

5.4 Accessibility of public disclosures provided in accordance with point 6 of Section D of Annex I of the CRA Regulation

13. When publishing its public disclosures that are provided in accordance with point 6 of Section D of Annex I of the CRA Regulation, CRAs should ensure that:
- i. their public disclosures are provided using the standardised disclosure template set out in the Annex of these guidelines;
 - ii. the standardised disclosure template is published on a section of their website that is free from registration barriers; and,
 - iii. ESMA is notified of the location of the standardised disclosure template on their websites.

⁸ This may be based on a search of the European Rating Platform using the information available to the CRA.

Annex: Standardised Disclosure Template

Disclosure in accordance with the requirements of point 6 of Section D of Annex I of Regulation (EC) No 1060/2009: Initial reviews or preliminary ratings provided on entities or debt instruments by [CRA Name]							
For the purpose of the public disclosures that are provided in accordance with point 6 of Section D of Annex I of the CRA Regulation, a CRA is understood as providing an initial review or a preliminary rating of an entity or debt instrument where all of the following conditions are met:							
i. a CRA provides a creditworthiness assessment in respect of an existing or proposed issuer or debt instrument;							
ii. the creditworthiness assessment is communicated using the same established and defined rating symbology as it would for a public credit rating (although a CRA may use a prefix or suffix to denote that the assessment differs from a credit rating); and,							
iii. the result of the creditworthiness assessment is not a public credit rating but provides an indication of the public credit rating the CRA would assign to the issuer or debt instrument if the CRA were to receive a mandate.							
LEI of entity	ISIN of debt instrument	NAME of entity or debt instrument	SEGMENT or ASSET CLASS of entity or debt instrument	DATE initial review or preliminary rating was provided	[Additional Field 1]	[Additional Field 2]	[Additional Field 3]
[0-9]	[0-9]	[Name]	[SEGMENT OR ASSET CLASS]	[DD/MM/YYYY]	[Free Text]	[Free Text]	[Free Text]

Annex I Cost Benefit Analysis

31. Draft Guidelines on Disclosure Requirements for Preliminary Ratings and Initial Reviews.

<p>Benefits</p>	<p>These guidelines are intended to improve implementation of the CRA Regulation's provisions covering initial reviews and preliminary ratings. By improving the implementation of these provisions ESMA aims to ensure that the CRA Regulation is as effective as possible in mitigating against the impacts of rating shopping.</p> <p>ESMA foresees that these guidelines will benefit the following market participants:</p> <ul style="list-style-type: none"> • EU registered CRAs; • potential entrants into the market for credit ratings in the EU; • investors who refer to credit ratings issued by EU registered CRAs in the conduct of their internal due diligence processes. <p>The guidelines will benefit EU registered CRAs by providing a common understanding for the terms “initial review and preliminary rating”. This common understanding will assist CRAs in their responsibilities to take measures to avoid situations where issuers request multiple assessments for the rating of an entity or instrument. In addition, the guidelines will benefit potential entrants by clarifying ESMA’s supervisory expectations in this area. Finally, the guidelines will benefit investors by improving their ability to conduct their due diligence as to whether an entity or debt instrument has been subject to rating shopping.</p>
<p>Costs</p>	<p>The potential costs for these guidelines can be split into two main categories:</p> <ul style="list-style-type: none"> • Initial costs that will be fixed for all EU registered CRAs; and • ongoing costs that will scale relative to the extent of an EU registered CRAs’ activities. <p>The initial costs to be borne by all EU registered CRAs registered are the costs related to updating internal policies and procedures to reflect the guidelines, and ensuring that staff are provided with the necessary training to develop familiarity with the new aspects these policies and procedures.</p> <p>The ongoing costs to be borne by all EU registered CRAs are the costs related to the internal monitoring of initial review or preliminary rating activities and the underlying work necessary to reflect these activities in public disclosures. However, it is anticipated that the level of these costs will increase relative to the extent of a CRA’s activities. For example, the costs of monitoring and publishing will be greater for CRAs whose initial review and preliminary rating activities are more extensive. Likewise, for those CRAs whose initial review and preliminary rating activities are not as extensive, the costs of monitoring and disclosing will be lower. As a result,</p>

	<p>the guidelines will ensure proportionality from the perspective of these ongoing costs.</p>
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	<p>There are no costs foreseen relating to investors or other market participants.</p>
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