Frankfurt am Main,
3 August 2020

BVI`s comments on ESMA`s call for evidence on availability and use of credit rating information and data

BVI[1] gladly takes the opportunity to present our views on the availability and use of credit rating information and data. Our members are investment fund management companies and investment firms providing management services to regulated and supervised collective investment undertakings such as UCITS or AIF under the European UCITS Directive 2009/65/EC or the AIFM Directive 2011/61/EU. They use ratings and ancillary services provided by Credit Rating Agencies (CRAs) and their data entities within the group. As users of these products, member firms are interested in a well-functioning credit rating market in which improved transparency of ratings data both on ESMA's ERP as well as CRA websites will help to counterbalance their inferior bargaining position towards the oligopolistic credit rating agencies, namely Fitch. Moody's and S&P.

Aided by regulation which is encouraging the use of credit ratings, such as CRR for banks and Solvency 2 for insurance companies, it is nearly impossible for regulated and supervised credit rating data users such asset managers under UCITS, AIFMD, and MIFID or their clients, namely banks, insurance companies and pension vehicles (IORPs) to escape the triple impact of recurring price increases (Pice Policy), new data license types aiming to capture all use credit rating use cases along the whole value chain of asset management („slicing and dicing" within the Data Policy) and increased data license management, compliance and audit efforts and costs (Data License Management).

Taken together these three effects lead to double digit annual price and cost increases. Insofar the user side of the credit ratings data market is inelastic, as ratings need to be used based on client or regulatory requirements. An easy to use ERP/CRA website offer with terms and conditions allowing the databasing of and use of minimum credit ratings data along the value chain of asset management would help to offset the oligopolistic pricing seen with the three large CRAs.

Moody's, along with S&P Global and Fitch, has an effective monopoly over the sector. The listed rating agencies in the U.S. (Moody' and S&P) have enjoyed an enormous bull market since the Global Financial Crisis ended a decade ago. Their stocks have all moved significantly higher as their business models have adapted to a world that is moving towards greater analytical capabilities for investors using real-time data, in addition to the core ratings business, backed by the ability to generate oligopoly rents in their field of activity (for a comparison of Moody's and S&P, please see https://www.suredividend.com/credit-rating-agency-stocks/). No wonder that backed by high oligopoly revenues Moody's stock gained a staggering 69.5% in 2019 alone and another 15.7% during the first half of 2020 (https://www.fool.com/investing/2020/01/13/why-moodys-gained-695-in-2019.aspx; https://www.fool.com/investing/2020/07/10/why-shares-of-moodys-rose-157-in-the-first-half-of.aspx).

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 114 members manage assets more than 3 trillion euros for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 22%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

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It is noteworthy that similar rating data Price and Data Policies have not been implemented by e.g. Morningstar/DBRS and Scope which do not enjoy a dominant position in this market.

In a nutshell we focus on the following aspects in our responses to the call for evidence to improve the usability and acceptance of the ERP and the CRA (regulatory) websites:

- allow for access to and download/datafeed of a defined issue ratings list in standardised, structured, machine readable formats,including date, rating level, issue /ISIN, and/or issuer/ deposit taker /guarantor (LEI)
- define free use of ratings data of both CRA website and ERP data, also through market data distributors (MDD) and vendors, as users may not want directly asses the website to avoid maintaining new IT interfaces.
- no (wholesale) redistribution of the ERP/CRA rating databases required- only limited use on the ratings required on actual or researched portfolio holdings of clients.
- secure confirmation of license free internal and external use of basic rating data, at a minimum including regulatory reporting, encompassing direct as well as indirect reporting, e.g. asset manager to insurer/bank for Solvency 2 /CRR reporting purposes on assets held for such investors.
- delete disclaimers on ERP/CRA websites referencing licenses based on possible IP rights, and narrow the scope of "derived data" or "manipulated data" licenses - No such license should be allowed for products and services which are based on free to use CRA website or ERP data. A case at hand is in the context of Solvency 2 the calculation of the CQS score for holdings based on ERP rating information.
- repeal CRAs Terms and Conditions (ToC) which do not clearly allow for use of ratings data obtained from (all) CRA websites internally and in client / regulatory reporting.
- introduce MiFID type protection in terms of pricelist and cost of data production disclosure as well as introduction of cost based pricing requirements on CRA ancillary, including data, services.

We limit our answers to section 7 of the Questionnaire.

7. Questionnaires

7.1 Questionnaire A for users and potential users of credit rating data

7.1.1 Background information

Q1 Name of respondent or organisation

BVI German Fund Association

Q2 Country of residence

Germany

Q3 Type of stakeholder (Supervisory authority; other public authority; industry association; bank; insurance undertaking; investment firm; asset manager; NGO)

Industry association

Q4 If applicable, please provide an estimate of the organisation's annual turnover in the financial year 2019.

N.A. For BVI's EU lobbying budget please see the EU Transparency Register.

7.1.2 Activities in which credit ratings are used as an input

Q5 Please describe in as much detail as you can, each of the main activities for which you use credit ratings as an input (e.g. risk management, investment strategy, market research, supervision, etc). Subsequently, please answer the following questions for each of the described activities:

Both AIF and UCITS are required by EU regulation not to rely exclusively on credit ratings. However, credit ratings are an important input factor in internal management processes, not the least because of (regulated) client requirements. Based on their responses, we can discern the following broad use cases for the use of credit ratings data within our membership of regulated fund management companies:

1. **Fund portfolio management (FM)**
   Credit ratings are used in the allocation and management of assets in accordance with the set of investment strategy of the fund. Some members use weighted or average rating scores based on the available S&P, Moody´s und Fitch ratings of the issue or if this is information is lacking the rating of the issuer/counterparty/deposit taker/guarantor of an issue. This „second-best“ approach is supported by banking regulation as it enables a consistent ratings view across the portfolio.

2. **Fund risk management (FR)**
   Fund management companies are required by regulation to implement a holistic risk management process which implicitly requires the use of ratings in at least two areas. Firstly, ratings are input factors in the internal credit assessment process, especially on issuers which are not covered in detail by internal research departments. Additional monitoring is required at times of market stress such as Covid-19 in order to correctly anticipate „fallen angel“(downgrade below investment grade) situations or other rating actions. Ratings are also relevant input factors for the determination of market risk metrics, e.g. the fixing of interest rate curves.

3. **Investment Controlling (IC)**
   The IC activities comprise the monitoring of UCITS and AIF investment limits in terms of eligible assets and risk diversification as set in the German Capital Investment Code (KAGB, Derivate-Verordnung) or contract based limits agreed with institutional clients. Banking clients require a look-through approach on the credit risk weightings of the fund assets according to CRR based on the short- or long-term rating of the issue which in the end determine the bank’s capital requirement on its fund investments.
   Additionally, LCR requirements allow for the use of certain instruments only based on their ratings. The calculation can usually be done by the fund as it is a prerequisite for the correct implementation of the contractually agreed investment strategy.
   According to the German National Competent Authority BaFin supervisory risk management guidelines for bank (MaRisk) capital must be held to cover for certain (spread) risks which must be quantified based on the available ratings.
   Similar requirements exist in case of insurance clients investing in regulated investment funds under EU Solvency 2 and implementing German law (VAG). Insurers need the ratings on the bond allocation of both retail (e.g. UCITS) as well as the mainstay of the German fund industry, i.e. the institutional funds („Spezialfonds“-AIF). Not rated investments are only allowed under a de-minimis approach. For Solvency 2 purposes the credit ratings must be converted to numerical "credit quality steps"(CQS). The required stress-test scenarios need to be calibrated on the basis of the mentioned CQS. Securitisations require at least two issue long-term ratings to allow for the calculation of the relevant credit quality steps.

4. Reporting to clients and supervisory agencies (regulatory reporting – RR)

Most fund managers provide their banking and insurance clients with reports to help them to implement their regulatory reporting obligations under CRR and Solvency 2. Such reports usually provide information on the respective portfolio, including individual ratings and/or CQS, as well as other aggregated data on a weekly, monthly, quarterly or annual basis. In case of fund holdings reporting to insurance companies there is a standard industry template called „TPT“ made available by the FinDatEx platform[2]. The use of TPT and all other FinDatEx templates is not compulsory, and they are provided to the industry free of charge and free of any intellectual property rights.

FinDatEx (Financial Data Exchange Templates) is a joint structure established by representatives of the European Financial services sector industry with the view to coordinate, organise and carry out standardisation work to facilitate the exchange of data between stakeholders in application of European Financial markets legislation, such as MiFID II, PRIIPs and Solvency 2.
The joint FinDatEx structure was established by the European Fund and Asset Management Association (EFAMA), the European Banking Federation (EBF), Insurance Europe (link), the European Savings and Retail Banking Group (ESBG), the European Association of Cooperative Banks (EACB) and the European Structured Investment Products Association (EUSIPA). In October 2019, the European Association of Public Banks (EAPB) joined FinDatEx

Regulatory reporting requirements on funds and fund managers (AIFMD, MMFR) require ratings information as input factors on a credit quality view on the portfolio on the basis of various asset types/classes.
Ratings are included in client reporting to inform them inter alia on the portfolios credit risk structure. Some asset managers offer access to a secure database where institutional investors get access to and may download the reports with respect to their portfolio fund data. It should be stressed that portfolio holdings reporting covers only a specific number of rated issues or issuers and never the full rating universe. Therefore, it should be clear that only a limited amount of individual ratings/CQS is shared for information purposes with clients but never for commercially driven redistribution purposes.

(**A) Is the activity necessary for your organisation to be able to fulfil a regulatory requirement (if so, please explain which one)?**

Yes, to implement regulatory requirements for fund management companies as well as of regulated fund clients, especially banks and insurance companies, as described above.

(B) Is the activity necessary for your organisation to be able to deliver a part of your core business (if so, please explain how)?

Many clients of our members are regulated entities such as banks or insurance companies as well as other regulated investment funds (delegated portfolio management for AIF/UCITS/IORP).

They require information on the credit risk structure of their portfolio to be able to verify compliance with the investment guidelines of the portfolio. Additionally, credit ratings are quasi mandatory with respect to the monitoring of all Fixed Income investment strategies.

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[2] https://findatex.eu/

A complete internal credit risk measurement without external credit ratings is difficult to achieve as missing rating information needs to b be replaced with other credit quality proxy data or internal credit risk assessments. CRA ratings are used to benchmark internal credit risk assessment processes.

(C) How important are credit ratings in enabling to carry out this activity? (indispensable/important/desirable/optional. Please explain why).

In regulatory/client reporting CRA ratings are indispensable because of regulatory or client requirements. In other activities such as FM, FR, IC external CRA ratings are important to supplement internal credit risk assessments at the fund management companies. Sometimes credit ratings on a small number of issuers or asset classes are indispensable if the fund management company does not have a fullblown internal credit assessment in place for specific assets. Ratings may be used also as a filter to narrow down a potential investment universe before the internal credit process is applied.

(**D) Does this activity necessitate the transmission of credit rating data within your organisation and/or to third parties such as clients or public authorities (if so, please explain to whom, how and why)?**

Most fund managers provide their banking and insurance clients with reports to help them to implement their regulatory reporting obligations under CRR and Solvency 2 to NCAs (BaFin), EIOPA or the central bank in its role as banking supervisor (Bundesbank, ECB). Such reports usually provide information on the respective portfolio, including individual ratings and/or CQS, as well as other aggregated data on a monthly, quarterly or annual basis. In case of fund holdings reporting to insurance companies there is a standard industry template called „TPT“ made available by the FinDatEx platform.. For the latest version, please see: https://findatex.eu/news/37/findatex-platform-publishes-fifth-version-of-solvency-ii-template

Ratings are included in client reporting to inform them inter alia on the portfolios credit risk structure. Some fund managers offer access to a secure data vault which is accessible electronically and where institutional investors may download the reports (but not the ratings) with respect to their portfolio fund data. It should be stressed, however, that portfolio holdings reporting covers only a specific number of rated issues or issuers and never the full rating universe. Therefore, it should be clear that a limited amount of individual ratings/CQS or similar derived ratings is shared for information purposes but never for commercial redistribution purposes.

(E) For the purposes of this activity, what frequency of updates is necessary (real-time / lag of less than 15 minutes / daily / monthly / quarterly / other)?

FM, FR, IC and sometimes client reporting require daily updates, also of the rating input into the respective management processes. For example, investment limits need to be checked permanently as they may be breached when market prices react to rating changes.

RR (CRR/Solvency 2) to banks and insurance companies could be generally made on a monthly basis.

(**F) For the purposes of this activity, is there a specific software format in which you need to receive the data (e.g. XML, CSV, JSON, other). Please explain which and why?**

Ratings data are needed daily for thousands of issues and issuers requiring on the fund managers side easy to handle and full automated processes to collect, validate, transform to internal specifications, and ultimately processing of the rated issues data in various internal applications and external reporting. Our members in general are flexible with respect to the data formats and interfaces used. XML, CSV, JSON are all possible options.

It is important that the data obtained can be used freely in all internal and external (client and regulatory reporting) situations. CRA website data are usually view only and can be downloaded only on an individual rating basis. CRA websites in their current form are not fit for purpose for institutional investor and asset manager use as described above. CRA websites may be useful to assess the credit risk of small bond portfolios usually held by retail investors or for one-off academic studies on a static pool of bonds or the occasional single rating status inquiry by member firms.

(G) For the purposes of this activity, which specific data characteristics do you need and why (e.g. rated instrument ISIN, rated entity LEI, CRA LEI, date, solicitation status, endorsement status…)?

Our members need a limited amount of information besides the rating levels/credit quality steps in order to be able to correctly identify the rated issue and/or issuer. They need ISIN (ISO6166), LEI (ISO17442), or other market identifiers if ISO identifiers are not available. However, the US CUSIP and the UK SEDOL identifiers are to be avoided because of associated data license and fee requirements by both S&P CGS and LSE. Additionally, the CRA LEI is required as not all fund managers and their clients use all rating agencies registered with ESMA, as well as the date of the rating to be able to track rating changes and to build rating histories.

(H) For the purposes of this activity, what other CRA information is indispensable (e.g. press releases, ratings reports, data models, methodologies, research papers etc.)?

In IC and RR processes no additional information other than mentioned above (G) is needed. In FM /FR additional, usually methodology related information, is used such as "default-studies" on corporate bonds, transition matrices, methodology papers, data models, etc.

(I) For the purposes of this activity, which coverage of rated entities/instruments do you need (e.g. all German corporates, all instruments traded on regulated markets in the EU etc.).

In general German fund managers invest globally and therefore need access to ratings on all rated (exchange listed) issues and all rated issuers for FM, FR purposes. For RR and IC purposes all fixed income ratings (issue and issuer rating) on all holdings in the managed funds and portfolios.
Some of our members with a more limited investment universe may only need the ratings on the constituents of a broad-based fixed income indices e.g. Bloomberg Barclays Pan-European Aggregate or iBoxx Euro Corporates.

(J) For the purposes of this activity, which CRAs' credit ratings do you need and why (i.e. only some ESMA registered CRAs, all ESMA registered CRAs, all ESMA registered CRAs as well as one or more non-EU CRAs)?

Most or our members need currently only a few of the ESMA registered CRA's, namely S&P, Moodys, Fitch as these are the CRAs most used by investors /clients use themselves. In rare cases few of our members report the use of Morningstar/DBRS, Scope and Creditreform ratings.
In the long-term all ESMA registered CRAs ratings should be available, not the least to increase their acceptance in the marketplace.

7.1.3 CRAs' websites – current use and potential changes

Q6 Please indicate the level of use by you/your organisation (exclusive, primary, secondary, occasional, none) of the public website of CRAs, explaining why or why not you rely on CRAs' websites as your primary source of rating information. Please specify which CRAs' websites you use in practice.

In order for issue based credit ratings data to be usable in fund management daily practice is important that the data obtained can be used freely in all internal and external (especially in client and regulatory reporting) situations. CRA website use is occasional only, as data are usually allowed for „view only" and can be downloaded only on an individual rating basis. Most members therefore use payable CRA datafeeds in the absence of large number download possibilities on CRA websites. The CRA websites in their current form are not fit for institutional investor and asset manager use of rated issuance data as described above. CRA websites may be useful to assess the credit risk of small bond portfolios usually held by retail investors or for one -off academic studies on a static pool of bonds.
Beyond rated issuance data, our members use the websites (primary) to download on a selective basis information related to methodology, default studies or to address ad hoc information needs on specific issuers or asset classes to support FM, FR, IC processes. Usually access to information is at least restricted to registered user and often requires a payable data license.

Q7 Some CRAs recently changed the terms of use of the free public information disclosed on their websites, for example to permit internal use and use of credit ratings for regulatory reporting. Please explain what impact, if any, this has had on your use of the public websites of those CRAs?

If our members used rated issuance information in vast numbers in the past, either prohibitions to collect the information on the websites in an automated fashion and/or to use the ratings for internal use and/or external including regulatory reporting prevented in practice widespread use of CRA or ERP websites. In general both website and general data license terms and conditions (ToC) are difficult to find and understand. Also the application of the CRA's data ToC to data obtained from the ESMA website is not clear. Fitch, Moody's and S&P confirmed to us that license requirements apply to rated issuance data obtained from their websites or otherwise as detailed below. Exemptions apply to use of rated issuance data in direct regulatory reporting by regulated entities, but not in cases where the outsourced fund manager is preparing such reporting on the portfolios managed on behalf of its clients. The not dominant Morningstar/DBRS and Scope CRAs on the other hand largely allow for the free download and use of their rated issuance data in internal systems and all reports.

We asked four CRAs in July 2020 about their position on Q7 as follows:
Could you confirm the ESMA Q7 statement and also please send the relevant terms and conditions for the CRA's websites please? Does this rule also apply to rating data obtained from the ESMA ERP or third party vendors?

- **DBRS answer:**

Please see the link to the DBRS Morningstar website Terms and Conditions of Use: https://www.dbrsmorningstar.com/terms-and-conditions/ All information is available to users upon registration free of charge. Our terms and conditions of usage of the free information disclosed in our website has not changed and there are no restrictions such as the ones highlighted in the consultation. We provide all the information required by ESMA for regulatory purposes and disclosure in the ERP platform. ESMA has their own terms and conditions of use of their platform.

- **FITCH answer:**

The wording in the Fitch Ratings Terms of Use is an acknowledgement by Fitch Ratings that certain users, who go to the Fitch Ratings' website, may need to use the information on the website for distribution to their regulators. The wording is not, however, a general license to database or use Fitch intellectual property for commercial purposes. Entities that are managing assets on behalf of regulated entities are not granted a license to use Fitch information by that wording. If you believe that either you, or your clients, may have a need for use of Fitch data, then please obtain a subscription agreement.

- ***Moody's answer:***

Once a credit rating is published on moodys.com, the credit rating and related information are available to self-registered users of the site. There is no fee for being a self-registered user. Self-registered users have complete access to current and historic credit ratings on a look-up basis (that is, not through scraping or computer automation) and, as per our terms of use on moodys.com, may print, copy and use the credit ratings for internal business purposes and in regulatory reporting to a government authority, where required by law or regulation. The Terms of Use may be accessed through: https://www.moodys.com/termsofuseinfo.aspx?lang=en&cy=global I can not confirm the usage rights on third party websites. Please refer to the terms of use on these sites and the European Ratings Platform which references the terms of use on www.moodys.com.

- ***S&P answer:***

The Terms & Conditions of S&P's website was last updated on November 26, 2019. The terms can be found at this link: https://www.standardandpoors.com/en_US/web/guest/regulatory/termsofuse
As ESMA maintains the ERP site, we'd suggest the best would be to refer to the terms and disclaimers on that site. Third-party vendors have individual bilateral agreements with S&P Global Market Intelligence, covering use and redistribution of ratings data.

Q8 Please explain what further changes to CRAs' websites would be necessary in order for you to make the credit ratings published there more useful and easier to access? Please explain the positive and negative impacts to your organisation of implementing those changes.

At least our members would need free access to the website (if possible, without registration) and the possibility to download the necessary ratings information in an automated fashion. Even better would be a direct data feed directly from the CRA. In this case our members would request the rated issuance data as described above based on a list of ISINs shared with the CRA. This datafeed should be coupled with the possibility to request daily automated „delta files" with only those ratings on the issues on the ISIN list on which a rating action occurred during the day.

Positive impacts include lower costs as separately licensed CRA data feeds are no longer needed which today are covering the full rating universe as opposed to the more limited ISIN list based requested data feed needed by our members. Additional advantage is the less error prone automatic upload of the ratings into internal databases and systems.

The market acceptance of all other CRA's beyond the top three agencies could be improved. More CRAs in the ESMA register would be used if their data can be used more easily. In order to facilitate access to all CRAs, ESMA ideally would define the information sharing interface to be offered by all CRAs in the ESMA register both for their websites and to be used by ESMA itself for the ERP data feed. There will be some costs for defining and implementing new interfaces and processes. There are likely also some cost based „carrier fees“ for the technical expense to provide customized data feeds to users.

Q9 Please explain the positive and negative impacts to your organisation of making the following changes to CRAs’ websites:

(A) Making credit rating data freely downloadable in CSV format?

Making rating data freely available in CSV format is most a welcome move. As stated above our members, however, do not use all CRA ratings and certainly do not want to redistribute the full ratings file. A CSV file with all, perhaps millions of ratings of many or all CRAs, is therefore neither necessary nor can be handled well in practice. Smaller CSV files based on asset classes/regions maybe a solution. Before CSV files can be used questions of cybersecurity (virus protection) need to be addressed and manual intervention is still necessary to use the file.

(B) Making credit rating data freely machine-to-machine downloadable in XML or JSON format?

Our members welcome a credit rating data freely machine-to-machine downloadable in XML or JSON format based on a requested ISIN based rated issue list as explained above as the best way forward.

(C) Making further changes to the terms of use?

This is the single most important measure for securing use of rating data obtained from the CRA’s and/or ERP websites. As simple rated issue data (essentially rating level, ISIN, LEI; date as defined above) lack creativity and is therefore NOT protected per se by IP rights. CRA‘s like other data sources (exchanges, benchmark providers) use their data source monopoly to force by contract certain obligations on users who need the data, not the least because of regulatory obligations. Therefore ESMA and the CRAs needs to give clear guidance that the defined rated issue data obtained from the CRA‘s websites directly or indirectly through market data distributers (MDD) such as Bloomberg, Refinitiv or WM-Datenservice can be used freely without need for additional licenses in the whole value chain of asset management both within internal systems as well as externally. External users include custodians/trustees, external fund managers or other service partners which need such data to perform regulatory or contractual requirements on the fund such as investing only in permitted assets. Similarly, free use of rating data in client (both retail and institutional) information and reporting situations independent of the format used, i.e. both durable media (pdf) as well as data files/feeds or websites need to be included in the defined fee and license free use rights. Additionally, the use of individual or aggregated (e.g. average rating of a fund holdings) taking the form of „derived” or „manipulated“ data, for example as in CQS, needs to be included in the definition of fee and license free usage. For example, today it does not matter whether ratings are shown directly in a client report or only used as an input factor as license requirements apply in both cases. We saw „derived data“ license requests by a large CRA in case of a fund manager detailing only a single figure average fund holdings credit rating in client reports and on its website without even mentioning the name of the CRA’s used.

In sum, if there were no restrictions on using the published ratings obtained directly or indirectly from CRA or ERP websites, the current „slicing and dicing“ of data licenses according to more and more discrete use cases will need to stop and our members no longer would need to sign contracts for each of their activities for which they use credit ratings as an input. This would be a much more transparent and reasonable approach which would considerable reduce also the existing Data Policy Management workload at our members firms as no or very few license contracts on other CRA services than website ratings data need to be analysed, understood and implemented going forward. The cumbersome audits could be largely avoided which are used by data sources to create additional revenue streams. Our members regularly report that during the past few years more fees were charged for single activities or reports referencing ratings.

(D) Other?

A particular issue is that some CRA's, such as Fitch, provide the rating datafeeds on the basis of the US S&P CUSIP Global Services identifier system (mainly CUSIP, US-ISIN). However, the use of CUSIP codes requires a separate usage based identifier license paid for by the fund manager ranging from ca. 10000 USD to over 400000 USD for a global active manager according to information obtained from the CUSIP website. Apparently also the MDDs are required by S&P to take out CGS identifier licenses, the cost of which are then passed on to downstream users within the MDD fees. These fees are on top of any fees charged by the CRAs for datafeeds. ESMA therefore needs to ensure that EU based users can obtain ratings data based on an ISIN basis. According to an EU Commission (DG Comp) decision, based on a complaint by BVI and other associations, ISIN identifier issued by S&P can since 2011 be used free of fees based on a so-called USU-ISIN end user agreement. For details, please see: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39592
For similar reasons, UK SEDOL identifiers issued by LSE should be avoided.

Q10 Where you have identified negative impacts to making any of the changes listed in response to Q9 above, please explain whether there are any measures which could be adopted to mitigate these negative impacts.

See above our answers to Q 9, especially Q9 (C).

7.1.4 Credit ratings via a paid data-feed – current use and characteristics

Q11 Please indicate the level of use by you/your organisation (exclusive, primary, secondary, occasional, none) of a paid data-feed as the source of rating information/data explaining why or why not you rely on a paid datafeed as your primary source of rating information.

Paid data feeds are the primary source of rating information given that our members need to deal with thousand or hundreds of thousands of ratings depending on their size and investment focus. Paid rating data feeds either direct or through MDDs are, given the current limitations on CRA data website usage as described above, today the easiest way to get the ratings into our members databases and onwards into FM, FR, IC and RR systems and applications. Data feeds provide up-to-date ratings coverage and allow fast information of rating changes and therefore possibility to consider them on a timely basis in all applications and reports. Our members also rely on paid data because they need to be sure to receive high quality and complete data from the (golden) source. This insurance also hinges on the contracts between our member company and the CRA, although CRA's limit their liability for their data quality. If our members would rely today on free (third party collected) ratings information, there would be no certainty on the completeness of the data and important information e.g. on the reasons for a specific rating action, could be missing. Our members would switch if they could obtain the ratings data via a reliable public data feed.

Q12 If you or your organisation relies on a paid datafeed, please describe the characteristics of this datafeed:

(A) What is the name of the data-feed and the name of its provider?

Many of our members receive the three large CRA ratings feeds either directly or indirectly through MDDs. In Germany the local MDD WM Datenservice is mentioned several times. WM Datenservice charges a carrier fee for passing through ratings data in their interface format which is implemented by virtually all banks and fund managers in Germany.
The free use of ratings data in case of indirect use of CRA website data, through market data distributors (MDD) and vendors needs to be defined too, as users may not want to directly access the websites to avoid maintaining a new IT interfaces.

(B) Does this datafeed allow for the transmission of credit rating data internally within your organisation and/or to clients, contractors or public authorities (to whom and how is transmission permissible)?

Our members report different answers ranging from a clear „no“ to that the data may be stored and used inhouse for various purposes. Passing data to clients or other service partners of the fund in need of such data requires licenses at all partner levels or licensing of the partner/client by the fund manager. Sometimes clients may receive reports containing ratings without a separate license if the report is in durable media format (pdf) or clients have access only to displayed (but not downloadable) ratings via an internet based reporting tool. Only direct reporting to public authorities by the entity which is obliged by law to report (e.g. insurance company doing Solvency 2 reporting) may be free of licenses. However, the fund manager preparing such reports on behalf of the insurer still must be licensed, for details see above Q7.

(C) What is the frequency with which you receive updated rating data through this source (real-time / lag of less than 15 minutes / daily / monthly / quarterly / other)?

Our members report daily updated data feeds directly or indirectly via MDD obtained from the CRAs.

(D) In which format (e.g. XML, CSV, JSON, other) do you currently receive rating data?

Our members report daily updated CSV or WM-Datenservice data feeds.

(**E) Which specific data characteristics does the rating data you currently receive include (e.g. rated instrument ISIN, rated entity LEI, CRA LEI, date, solicitation status, endorsement status…)?**

Our members report without completeness the following attributes: Issue/Issuer Rating, ISIN, Issuer ID, Issuer Name, Rated Entity LEI, Rating Type, Date, Alert Code, Ratings Suffix, Rating Trend, Rating confirmation.

(F) Which coverage of rated entities/instruments does the rating data you currently receive include (e.g. which geographic zones, asset classes etc)?

Our members report interest in or usage of ratings of Global Issuers (Corporates, Financial Institutions, Insurance, International Public Finance, Sovereigns, Utilities), Structured Finance (Asset-Backed

Commercial Paper, Asset-Backed Securities, Structured Credit, Commercial Mortgage-Backed Securities, Residential Mortgage-Backed Securities).

(**G) Which CRAs' ratings are included in the rating data-feed?**

Our members report nearly exclusively usage of S&P, Moodys, Fitch feeds.

(**H) Does your subscription include other CRA products or services (e.g. press releases, ratings reports, data models, methodologies, research papers etc.)?**

Our members report that these items are usually not included in contracts for ratings data but require a separate subscription. Please see also answer to Q12 (i) below.

(I) Please provide the total fees paid by you or your organisation in 2019, 2018 and 2017 to access and use credit rating data. If your organisation pays a fee to more than one entity (*e.g. several CRAs/ CRA affiliates/data service providers/Intellectual Property right holders etc*) please break down the fee per entity. Please provide explanations as necessary.

BVI does not collect this information from its members. Information obtained from market participants, however, suggests regular annual fee increases well above inflation, coupled with additional fees associated with new data licenses, and increasingly additional revenue generation through regular CRA audits. For instance, one of our top ten members has witnessed a fee increases between 2016-2020 for issuer/issue ratings only for internal purposes about all three rating agencies (S&P, Moodys and Fitch) in average of 60 per cent.

Audits regularly lead to claims of insufficient licensing in the past and requests for payment of additional fees. Two members were recently faced nearly 1 million USD retroactive fee claims each by a CRA following an audit.
Fee negotiations with CRA are extremely difficult to engage in. CRAs - unlike exchanges under MiFID - do not need to publish pricelists. Fees are based supposedly on usage requirements which are apparently determined based on lists of detailed questions (statements of use). Our members need to fill in prior to receiving the individual data license agreements. The price formation on the license agreement cannot be verified in any meaningful way. For example, we are aware of a member which after terminating a paid rating research subscription was not able to reduce the fees on the remaining data feed because the CRA claimed that the combined research and data feed fee was originally based on a „new client" discount which had evaporated at the time of the negotiation. The member had no way to verify this claim for lack of historic pricelists and could not reduce the payable amount on the needed data feed either.

The same situation arises with regular price increases. There are no new pricelists and it is difficult to engage any CRAs in a meaningful discussion on the reasons of price increases. CRA's like other data sources usually justify price hikes in abstract terms referring to the value of their data which is exploited by the fund manager. Attempts in negotiations to limit base price increases to e.g. the cost of data production increase at the CRA level are futile as CRA's - unlike exchanges under MiFID - are not required to make their cost of data production public. Users therefore have to accept fee increases set by the dominant three CRA oligopoly. In rare cases the fund manager is able to engage in effective price negotiations but only if and when the asset manager can terminate one CRA data license and continues to use only two out of the top three rating agencies. Increased coverage and market

acceptance by junior CRA's will hopefully help to break the dominant market position of the large CRA's in the longer term.
To illustrate the situation, we give the example of the issues associated with CRA Price and Data License Polices faced by just one member:

1) *Lack of transparency*
There is no price list when asking services from the rating agencies. The member was told that their peers pay double without any proof of this claim. It is, however, not easy to compare business needs across companies. The lack of pricelists enables the rating agencies to increase the fees on other services to compensate for any contract terminations.

2) *Restriction of use*
Burdensome Statement of Use without knowing the pricing impact of the intended use information. For example a ratings subscription for one region was changed into a multi-region license at double the price. When the fund manager wanted to reinstate the one region only license, the price did not decrease.

3) *Bundling of services*
Fund managers end up paying for services they do not need, because they are bundled with other data feeds. Cancellation would result in a sharp increase in costs. For example, a price of X would be charged for the data feed itself, plus an additional price of Y for a certain number of data users in the firm. However, if subsequently a request is made to reduce the previously agreed number of users, the CRA's often refuse such request, claiming that it is a bundled price. In such a case, reducing the service to the data feed without any additional user licenses does not help either as this will only lead to the situation that continuing the use of two services is cheaper than maintaining only one. Even if certain ratings data is not used in practice, the mere possibility of using it is enough to charge additional costs.
There is also a lack of flexibility of license agreements. For example, a fund manager will try to obtain multi-year license agreement to achieve price stability over a predetermined period, e.g. 5 years. However, contractual adjustment thereafter because of to changes in the market are difficult, not the least because the bundled nature of this type of agreement prevents any cost reduction thereafter. For example, even if data license cost are based on asset under management it is difficult to reduce fees in spite of outflows or market based value losses on assets under management. This issue is of particular relevance given the market losses during the COVID-19 crisis.

4) *Service agreements per department and not per user*
Some CRA license agreements delete the possibility of paying per user for the data licence. This also renders it impossible to cancel only one or two users on the licence.

7.1.5 Credit ratings via the ERP – current use and potential improvements

Q13 Please indicate the level of use by your organisation (exclusive, primary, secondary, occasional, none) of the ERP, explaining why or why not you rely on the ERP as your primary source of rating information.

A few of our members use the ERP usually for selected inquires only, for example in FR. One or two stated to explore a more frequent use of the ERP and are in the process of analysing the pros and cons comparing ERP with the CRA data feeds. Work is in progress.

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Q14 Please explain what specific changes to the ERP (e.g new technical functionalities, data presentation and accessability) would be necessary in order for your organisation to use it as your primary source of rating information?

As discussed above the same improvements suggested or the CRA websites necessary to support institutional use of thousands of issue rating data are required for the ERP. The possibility to download or better receive via datafeed the requested ratings and ERP ToC which clarify the fee and license free use along the whole value chain of asset management are essential. The ERP has the added advantage of providing a single secure and permanent access point to all ESMA registered CRAs. This would require the use of only one instead of many interfaces and would further limit cost to the industry as a whole and its millions of investors. With the ERP being the database of databases, additional filters may be needed on top of those discussed for the individual CRA website, for example to be able to request data feeds based on selected CRAs (CRA LEI) only. The ERP EOD datafeed would have to incorporate the rating changes during the same day. If the ERP could become the EU's single access point /database for ratings data there would be no need to maintain basic free rating data feeds at the individual CRA websites.

Q15 Please explain the positive and negative impacts to your organisation of making the credit ratings on the ERP and indicate if you are in favour of such changes:

Please see above for the positive impacts on reducing the current cost and effort on maintaining individual and multiple interfaces for payable CRA datafeeds at all steps of the asset management value chain. Cost savings to the order of millions of Euros could be saved by the industry for the benefit of the investor.

(A) Freely downloadable in CSV format?

As discussed above, the same improvements suggested on the CRA websites necessary to support institutional use of thousands of issue rating data are required for the ERP. The possibility to download the requested ratings and ERP ToC which clarify the fee and license free use along the whole value chain of asset management are essential requirements. This would be great step because of the possibility to upload the necessary data automatically. This would require the use of only of one instead of many interfaces and would further limit cost to the industry and investors.

(B) Freely machine-to-machine downloadable in XML or JSON format?

See above answer to Q14.

(C) Making further changes to the terms of use?

The ERP website TOC are not helpful as they perpetuate legal uncertainty: "Users should refer to the terms of use of third parties who provide ESMA with material appearing on the ERP website."
https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_radar
As discussed above the same improvements suggested on the CRA websites necessary to support institutional use of thousands of issue rating data are required for the ERP. ERP ToC which clarify the fee and license free use along the whole value chain of asset management are essential. For details please see answers to Q7, Q 11(C), (D), and 12 (I).

(D) Other?

The free use of ratings data in case of indirect use of the ERP data, through market data distributors (MDD) and vendors needs to be defined, as users may not want directly to access the website to avoid maintaining a new IT interfaces. Could there be an ERP look through offer by vendors to which the CRAs and the MMDs could agree?

Q16 Where you have identified negative impacts to making any of the changes listed in response to Q14 and Q13 above, please explain whether there are any measures which could be adopted to mitigate these negative impacts.

As discussed above the same improvements suggested or the CRA websites necessary to support institutional use of thousands of issue rating data are required for the ERP. The possibility to download or to receive via datafeed.
The requested ratings and ERP ToC which clarify the fee and license free use along the whole value chain of asset management are essential requirements.

7.1.6 Additional relevant information and evidence

Q17 Please use this space to provide any further information you would like to bring to ESMA's attention and to attach any relevant evidence in support of your responses to the questions above.

To use the published ratings from ERP as a primary source our members need asset and issuer ratings by the CRAs S&P, Moodys and Fitch to be able to fulfill client and regulatory requirements. With expanding regulation, the CRAs may establish more and more licenses. Because of the rising costs of CRA datafeeds, there must be a solution to stop this behaviour through a combination of basic ratings data which is available on ERP (and perhaps CRA websites) which are fee and license free for use in the whole value chain of asset management. On the hand we need a minimum regulation of other CRA proprietary data feeds in terms of making available pricelists, cost of data production reports, and a cost based pricing similar to what is currently already required from exchanges under MiFID rules. CRA proprietary value added data and research services will be the main revenue stream for the agencies other than rating fees going forward, and will have to coexist with the envisaged ERP basic rated issue data offer.

Finally, given the increased importance of and EU regulatory requirements to consider ESG aspects when managing investment funds, a possible expansion of the ERP to incorporate also ESG ratings and labels on issue/issuer level should be contemplated at the EU level. Furthermore, we believe that a uniform quality standard for the evaluation process for external ESG ratings is necessary. In this respect, CRAs, who provide ESG ratings, could be also regulated. Conflicts of interest of the rating agencies needs be avoided and should be made transparent to the public. Changes in the methodologies should be made transparent to the users and consulted with the financial industry.