AMENDMENTS 001-001
by the Committee on Economic and Monetary Affairs

Report
Aurore Lalucq **A9-0417/2023**
Transparency and integrity of Environmental, Social and Governance (ESG) rating activities

Proposal for a regulation (COM(2023)0314 – C9-0203/2023 – 2023/0177(COD))

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2023/0177 (COD)

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,

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* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

Having regard to the opinion of the European Economic and Social Committee[1],
Acting in accordance with the ordinary legislative procedure,
Whereas:

(1) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development[2], having at its core the Sustainable Development Goals (SDGs). The Commission's Communication of 2016 on the next steps for a sustainable European future[3] links the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, within the Union and globally, take the SDGs on board at the outset. The European Council conclusions of 20 June 2017[4] confirmed the commitment of the Union and the Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner and in close cooperation with partners and other stakeholders. ***In addition, the UN Principles for Responsible Investment has over 3000 signatories representing over EUR 100 trillion of assets under management.*** On 11 December 2019, the Commission published its communication on 'The European Green Deal'[5]. ***On 30 June 2021, the European Parliament and the Council signed the European Climate Law which enshrines into Union law the goal set out in the Commission's communication of 11 December 2019 entitled 'The European Green Deal' (the 'European Green Deal') of Union economy and society becoming climate-neutral by 2050.***

(2) The transition to a sustainable economy is key to ensuring the long-term competitiveness ***and sustainability*** of the Union economy ***and the quality of life of citizens in the Union and to keeping global warming well below the 1.5 degree Celsius threshold***. Sustainability has long been at the heart of the Union project and the Union Treaties give recognition to its social and environmental dimensions.

(3) Achieving SDG objectives in the Union requires the channelling of capital flows towards sustainable investments. It is ***necessary*** to exploit fully the potential of the internal market for the achievement of those goals. In that context, it is crucial to remove obstacles to the efficient movement of capital towards sustainable investments in the internal market and to prevent such obstacles from emerging ***and to set rules and standards to, on the one hand, incentivise sustainable finance and, on the other, disincentivise investments that can adversely impact the achievement of SDG objectives***.

(4) The EU's approach to sustainable and inclusive growth is anchored in the 20 principles of the European Pillar of Social Rights to ensure a fair transition towards this goal and policies which leave no one behind. Furthermore, the EU social acquis including the Union of Equality Strategies[6] provides standards in the areas of labour law, equality, accessibility, health and safety at work, and anti-discrimination.

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1 OJ C , , p. .
2 Transforming our World: The 2030 Agenda for Sustainable Development (UN 2015).
3 COM(2016) 739 final.
4 CO EUR 17, CONCL. 5.
5 Communication from the Commission of 11 December 2019 on the European Green Deal, COM(2019) 640 final.
6 Gender equality strategy; LGBTIQ equality strategy; Roma strategic framework; Strategy for the Rights of Persons with Disability.

(5) ***Financial markets play a crucial role in the channelling of capital toward investments necessary for the achievement of the Union climate and environmental objectives.*** In March 2018, the Commission published its Action Plan 'Financing Sustainable Growth'[1], setting up its strategy on sustainable finance. The objectives of that Action Plan are to mainstream sustainability factors into risk management and reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth.

(6) As part of the Action Plan, the Commission commissioned a study entitled "Study on Sustainability Related Ratings, Data and Research"[2] to take stock of the developments in the sustainability-related products and services market, identify the main market participants and highlight potential shortcomings. That study provided an inventory and classification of market actors, sustainability products and services available in the market and an analysis of the use and perceived quality of sustainability-related products and services by market participants. The study highlighted ***the existence of conflicts of interest,*** the lack of transparency and accuracy of Environmental, Social and Governance ('ESG') ratings methodologies and the lack of clarity over ***the terminology and*** the operations of ESG rating providers.

(7) In the framework of the European Green Deal, the Commission put forward a renewed sustainable strategy. The renewed sustainable finance strategy was adopted on 6 July 2021[3].

(8) As a follow-up, the Commission announced in the renewed sustainable finance strategy, a public consultation on ESG ratings to feed into an impact assessment. In the public consultation that took place in 2022, stakeholders confirmed concerns with the lack of transparency of ESG ratings methodologies and objectives and clarity over ESG rating activities. ***As trust is pivotal in the functioning of financial markets, such lack of transparency and reliability of ESG ratings should be urgently addressed.***

(9) At international level, the International Organization of Securities Commissions ('IOSCO') has issued a report in November 2021 containing a set of recommendations on ESG ratings providers[4].

(10) ESG ratings play an important role in global capital markets, as investors, borrowers and issuers increasingly use those ESG ratings as part of making informed, sustainable investment and financing decisions. Credit institutions, investment firms, insurance undertakings, assurance undertakings, and reinsurance undertakings, amongst others, often use those ESG ratings as a reference for the sustainability performance or for the sustainability risks and opportunities in their investment activity. Consequently, ESG ratings have a significant impact on the operation of the markets and on the trust and confidence of investors and consumers. To ensure that ESG ratings used in the Union are independent, ***comparable*** and of adequate quality, it is important that ESG rating

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1 European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final.

2 European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Study on sustainability-related ratings, data and research, Publications Office of the European Union, 2021, https://data.europa.eu/doi/10.2874/14850.

3 Communication from the Commission on the Strategy for Financing the Transition to a Sustainable Economy COM(2021) 390 final.

4 IOSCO Report on ESG ratings and data products providers, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf.

activities are conducted in accordance with the principles of integrity, transparency, responsibility, and good governance ***as well as with core concepts of Union law***. Better comparability and increased reliability of ESG ratings would enhance the efficiency of that fast-growing market, thereby facilitating progress towards the objectives of the Green Deal.

(11) ESG ratings play an enabling role for the proper functioning of the Union sustainable finance market by providing important information for investment strategies, risk management and disclosure obligations by investors and financial institutions. It is therefore necessary to ensure that ESG ratings provide material decision-useful information to the users, and that users of ESG ratings better understand the objectives which ESG ratings pursue and what specific issues and metrics those ratings measure.

(12) It is necessary to acknowledge the various business models of the ESG rating market. A first business model is the user-paid model, where users are mainly investors that purchase ESG ratings for investment decisions. A second business model is the issuer-pay model, where undertakings purchase ESG ratings for assessing risks and opportunities with their operations.

(13) Member States neither regulate nor supervise the activities of ESG rating providers or the conditions for the provision of ESG ratings. In ensuring alignment with the objectives of the SDGs and the European Green Deal, and given the existing divergences, lack of transparency and absence of common rules, it is likely that Member States would adopt diverging measures and approaches, which would have a direct negative impact on, and create obstacles to, the proper functioning of the internal market, and be detrimental to the ESG rating market. ESG rating providers issuing ESG ratings for the use of financial institutions and undertakings in the Union would be subject to different rules in different Member States. Divergent standards and market practices would make it difficult to have clarity over the construction of ESG ratings and allow for their comparison, thus creating uneven market conditions for users, causing additional barriers within the internal market, and risking distorting investment decisions.

(14) This Regulation complements the existing EU sustainable finance framework. Ultimately, ESG ratings should facilitate information flows in order to facilitate investment decisions.

(15) Rules on ESG rating providers should not apply to private ESG 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 or other means. Neither should such rules apply to ESG ratings produced by European financial undertakings that are used ***exclusively*** for internal purposes ***or shared within their group***. ***ESMA should develop draft regulatory standards to strictly delineate what constitutes an internal use. To preserve the level playing field, ESMA should ensure that the exclusion does not apply to ESG ratings provided by a financial undertaking to other parties***, ***other than in the case of certain disclosures under Regulation (EU) 2019/2088 of the European Parliament and of the Council***[1] ***and***

[1] ***Regulation (EU) of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).***

Regulation (EU) 2020/852 of the European Parliament and of the Council*[1]*. ESG ratings developed by European or national authorities should also be exempted from such rules. ***Such*** rules should not apply to the provision of ESG data that do not include an element of rating or scoring and are not subject to any modelling or analysis resulting in the development of an ESG rating.

(15a) Rules on ESG rating providers should in principle not apply to ratings produced by members of the European System of Central Banks (ESCB). That is because it is necessary to ensure that this Regulation does not unintentionally have an impact on measures of the ESCB that seek to take climate considerations into account in the ESCB's monetary policy collateral framework when pursuing its primary objective of maintaining price stability and supporting the general economic policies in the Union.

(15b) Non-profit civil society organisations that compile scoreboards or rankings for non-commercial purposes and that make those rankings accessible free of charge, should not be deemed to fall within the scope of this Regulation. However, they should endeavour to integrate the transparency requirements laid down in this Regulation where applicable.

(15c) To assess the ESG profile of companies, and as part of their sustainable investment and financing decisions processes, credit institutions, investment firms, insurance undertakings, and reinsurance undertakings, amongst others, rely both on external ESG ratings and on external ESG data products. Financial institutions should bear responsibility in the case of greenwashing accusations concerning their financial products, while the distribution of ESG information on entities or financial products, relying on proprietary or established methodology, which includes, among others, data sets on emissions and data on controversies, should not be covered by this Regulation. The Commission should carry out a review of this Regulation that assesses whether the scope identified is sufficient to ensure the confidence of investors and consumers in the sustainability performance of financial products and services and, where needed, envisages broadening the set of ESG data products and ESG data products providers covered by this Regulation.

(16) It is important to lay down rules ensuring that ESG ratings provided by ESG rating providers authorised in the Union are of adequate quality, are subject to appropriate requirements***, recognising the existence of different business models,*** and ensure market integrity. Those rules would apply to overall ESG ratings capturing Environmental, Social and Governance factors, and to ratings that are only looking at a single Environmental, Social or Governance factor or sub-component of that factor. ***Separate environmental (E), social (S) and governance (G) ratings should be provided rather than a single ESG metric that aggregates E, S and G factors. If ESG rating providers nevertheless decide to provide aggregated ratings, they should disclose and justify the rate and weight granted to each component (E, S and G), which should be based on the same scale in order to ensure that each E, S and G category can be compared with the other ones.***

(17) Given the use of ESG ratings from providers located outside the Union, it is necessary to introduce requirements based on which third-country ESG rating providers may offer

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[1] ***Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p.13).***

their services in the Union. This is necessary to ensure market integrity, investor protection and proper enforcement. ***There should also be an objective reason why a third country ESG rating provider needs to provide the ESG rating and why that ESG rating needs to be endorsed for use in the Union***. Therefore, three possible regimes are proposed for those third countries ESG rating providers: equivalence, endorsement and recognition. As an overarching principle, supervision and regulation in a third country should be equivalent to Union supervision and regulation of ESG ratings. Therefore, ESG ratings provided by an ESG rating provider located in a third country can only be offered in the Union where a positive decision on equivalence of the third-country regime has been taken by the Commission. ***In order to benefit from the Union's equivalent regulatory and supervisory regime, third-country ESG rating providers should be legally established and authorised or registered in a third country.*** However, to avoid any adverse impact resulting from a possible abrupt cessation of the offering in the Union of ESG ratings provided by a third country ESG rating provider, it is also necessary to provide for certain other mechanisms, that is endorsement and recognition. Any ESG rating provider with a group structure should be able to use the mechanism of endorsement for the ESG ratings developed outside the Union, provided they establish, within the group, an authorised ESG rating provider in the Union. Smaller ESG rating providers, within the meaning of the maximum threshold of net turnover to define small undertakings in Directive 2013/34/EU[1], that generally do not belong to a group, and may not have the means to have a legal entity authorised in the Union, should be able to continue or start offering their services in the Union and should therefore benefit from a lighter regime, that is recognition. Where the third country ESG provider is subject to supervision, appropriate cooperation arrangements should be put in place in order to ensure the proper exchange of information with the relevant competent authority of the third country.

(18) To ensure a high level of investor and consumer confidence in the internal market, ESG rating providers which provide ESG ratings in the Union should be authorised. It is therefore necessary to lay down harmonised conditions for such authorisation and the procedure for the granting, suspension and withdrawal of such authorisation.

(19) To ensure a high level of information to investors and other users of ESG ratings, information on ESG ratings and ESG rating providers should be made available on the European Single Access Point (ESAP)[2]. ESAP should provide the public with an easy centralised access to such information.

(20) To ensure the quality and reliability of ESG ratings, ESG rating providers should use rating methodologies that are rigorous, systematic, ***independent***, continuous and subject to ***justification***. ***As a matter of principle, ESG rating providers are encouraged to address the material impact of the rated entity on the environment and on society in***

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1 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

2 Regulation (EU) XX/XXXX of the European Parliament and of the Council establishing a European Single Access Point (ESAP) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L [...], […], p. […]).

general. ESG rating providers should review ESG ratings methodologies on an on-going basis and at least annually ***taking into account European and international developments affecting the E, S or G factors***. ***However, it is key to leave it to the ESG rating providers themselves to determine their own methodologies in accordance with those principles***.

(21) To ensure a higher-level transparency, ESG rating providers should disclose information to the public on the methodologies, models and key rating assumptions which those providers use in their ESG rating activities and in each of their ESG ratings product. In light of the uses of ESG ratings by investors, the rating products should explicitly disclose which dimension of the double materiality the rating addresses, whether ***the rating addresses*** both material financial risk to the rated entity and the material impact of the rated entity on the environment and society in general or whether it takes into account only ***the material impact of the rated entity on the environment and on society in general***. They should also explicitly disclose whether the rating addresses other dimensions. For the same reason, ESG rating providers should provide more detailed information on the methodologies, models and key rating assumptions to subscribers of ESG ratings. That information should enable users of ESG ratings to perform their own due diligence when assessing whether to rely or not on those ESG ratings. ***In particular, ESG rating providers should disclose whether they have taken into account E, S, or G factors, or an aggregation thereof, the rating given to each relevant factor, and the weighting each of those factors is given in the aggregation. ESG rating providers should also disclose the limitations of the information available to them, including information about engagement with the various stakeholders of a rated entity and how contradictory, incomplete or subjective information is handled.*** ***(21a) Taking into account the Union objectives and international standards for each factor is recommended to ensure a sufficient level of quality of ESG ratings. As such, ESG ratings providers should provide information on whether the rating considers, amongst others, the alignment with the objectives set in the Paris Agreement adopted under the United Nations Framework Convention on Climate Change on 12 December 2015 (the 'Paris Agreement') for the E factor, the compliance with International Labour Organisation core conventions on the right to organise and collective bargaining for the S factor, and the alignment with international standards on tax evasion and avoidance for the G factor.***

(21b) Regulation (EU) 2019/2088, Regulation (EU) 2020/852 and Directive (EU) 2022/2464 of the European Parliament and of the Council[1] represent landmark legislative initiatives to enhance the availability, quality and consistency of ESG requirements across the entire value chain of financial market participants, which should contribute to the continuous improvement of the quality of ESG ratings.

(21c) This Regulation should not interfere with the ESG rating methodologies or content. Diversity in the methodologies of ESG rating providers ensures that the broad requirements of users can be met and promotes competition in the market.

(21d) Whilst an ESG rating provider may use alignment with the taxonomy set out in Regulation (EU) 2020/852 as a relevant factor or key performance indicator (KPI)

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[1] ***Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (OJ L 322, 16.12.2022, p. 15).***

in its rating methodology, ratings within the scope of this Regulation should not be considered as ESG labels indicating or providing assurance of compliance or alignment with Regulation (EU) 2020/852 or with any other standards.

(22) ESG rating providers should ensure that they provide ESG ratings that are independent, objective and of adequate quality. It is important to introduce organisational requirements ensuring the prevention and mitigation of potential conflicts of interests. To ensure their independence, ESG rating providers should avoid situations of conflict of interest and manage those conflicts adequately where they are unavoidable. ESG rating providers should disclose conflicts of interest in a timely manner. They should also keep records of all significant threats to the independence of the ESG rating provider and that of its employees and other persons involved in the rating process, and the safeguards applied to mitigate those threats. In addition, to avoid potential conflicts of interest, ESG rating providers should not be allowed to offer a number of other services including consulting services, credit ratings, benchmarks or audit ▌activities. ***Furthermore, ESG rating providers providing banking, insurance and reinsurance or investment activities, as well as entities that are part of a group to which an ESG rating provider belongs, should take appropriate measures to prevent conflicts of interest.*** Finally, to prevent, identify, eliminate or manage and disclose any conflicts of interest and ensure the quality, integrity and thoroughness of the ESG rating and review process at all times, ESG rating providers should establish appropriate internal policies and procedures in relation to employees and other persons involved in the rating process. Such policies and procedures should, in particular, include internal control mechanisms and a compliance function.

(22a) Competition among ESG rating providers and an environment in which small ESG rating providers can enter the market are key, as concentration among providers can result in higher prices, barriers to entry, lower competition, reduced innovation, less geographical diversity in providers and poor coverage of smaller issuers. Entities that seek more than one ESG rating should therefore consider choosing at least one ESG rating provider with a market share below 15%.

(23) To bring more clarity and to enhance trust on the operations of ESG rating providers, it is necessary to lay down requirements for ongoing supervision of ESG rating providers at Union level. To ensure a level playing field in terms of on-going supervision and to eliminate the risk of regulatory arbitrage across Member States, the European Securities and Markets Authority (ESMA) should be entrusted with the exclusive responsibility for such authorisation and supervision. At the same time, such exclusive responsibility should optimise the allocation of supervisory resources at Union level, thus making ESMA the centre of supervision.

(23a) Aside from their use in the financial services sector, ESG rating assessments are also used in the procurement and supply chain context. Therefore, ESMA should take account of the distinction between ESG rating providers in the financial sectors and those in non-financial sectors in its supervision of ESG rating providers.

(24) ESMA should be able to require all information necessary to carry out its supervisory tasks effectively. It should therefore be able to demand such information from ESG rating providers, persons involved in ESG rating activities, rated entities and third parties to whom the ESG rating providers have outsourced operational functions and persons otherwise closely and substantially related or connected to ESG rating providers or ESG rating activities.

(25) ESMA should be able to perform its supervisory tasks, and in particular to compel ESG rating providers to end an infringement, to supply complete and correct information, or to comply with an investigation or an on-site inspection. To ensure that ESMA is able to perform those supervisory tasks, ESMA should be able to impose penalties or periodic penalty payments.

(26) Given its role to authorise and supervise ESG rating providers, ESMA should develop draft regulatory technical standards that do not involve policy choices for submission to the Commission. ESMA should specify further the information needed for the authorisation of ESG rating providers. The Commission should be empowered to adopt those implementing technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[1].

(27) In its role to authorise and supervise ESG rating providers, ESMA should be able to charge supervisory fees to supervised entities. Such fees should be paid by the supervised entities.

(28) In order to specify further technical elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the specifications of the procedure impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, the collection of fines or periodic penalty payments, and detailed rules on the limitation periods for the imposition and enforcement of penalties and the type of fees, the matters for which fees are due, the amount of the fees, and the manner in which those fees are to be paid. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making[2]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(29) It is necessary to have a number of measures supporting smaller ESG rating providers to enable them to continue their activities, or to enter the market after the date of application of this Regulation. Such measures should include the possibility for ESMA to exempt smaller ESG rating providers from a number of organisational requirements where they meet certain criteria. In addition, a transitional regime should be introduced for the first months following the application of this Regulation, to facilitate the initial phase of application for smaller ESG rating providers. Finally, supervisory fees should be proportionate to the annual net turnover of the ESG ratings provider concerned.

(29a) Where available, a credit rating agency should consider taking into account the ESG rating of the rated entity provided in accordance with this Regulation to define its credit rating.

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1 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 (OJ L 331, 15.12.2010, p. 84).

2 OJ L 123, 12.5.2016, p. 1.

(30) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, namely to lay down a consistent and effective regime to address the shortcomings and vulnerabilities that ESG ratings pose, but can rather, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(31) This Regulation should apply without prejudice to the application of Aricles 101 and 102 TFEU,

HAVE ADOPTED THIS REGULATION

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject-matter

This Regulation introduces a common regulatory approach to enhance the integrity, transparency, ***comparability,*** responsibility, ***reliability, alignment with Union law,*** good governance, and independence of ESG rating activities, contributing to the transparency and quality of ESG ratings. It aims to contribute to the smooth functioning of the internal market, while achieving a high level of consumer and investor protection and preventing greenwashing or other types of misinformation, including social-washing, by introducing transparency ***and minimum*** requirements related to ESG ratings and rules on the organisation and conduct of ESG rating providers.

Article 2

Scope

1. This Regulation applies to ESG ratings issued by ESG rating providers operating in the Union that are disclosed publicly or that are distributed to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or Union or Member States public authorities.

2. This Regulation does not apply to any of the following:

   (a) private ESG ratings which are not intended for public disclosure or for distribution;

   (b) ESG ratings produced by regulated financial undertakings in the Union that are used ***exclusively*** for internal purposes or for providing in-house financial services and products, ***including services provided to other entities that are part of the same group as long as the ratings are not disclosed to third parties beyond the group***;

   (c) the provision of ESG data that do not contain an element of rating or scoring, and is not subject to any modelling or analysis ;

(d) credit ratings issued pursuant to Regulation (EC) No 1060/2009 of the European Parliament and of the Council[1] ***and any ESG-related scores or factors that are produced or solely used as components of credit ratings as part of the public methodology for credit ratings***;

(e) products or services that incorporate an element of an ESG rating***, including content produced by financial analysts within the investment research division of a regulated financial institution***;

(f) second-party opinions on ***sustainable debt instrument, including but not limited to*** sustainability bonds***, social bonds, sustainability-linked bonds, loans and other types of debt instrument, as well as financing frameworks that govern the use of such instruments***;

(g) ESG ratings produced by Union or Member States' public authorities;

(h) ESG ratings from an authorised ESG rating provider that are made available to users by a third party ***or an affiliate of the authorised ESG rating provider within the same group structure***;

(i) ESG ratings produced by ***members of the European System of C***entral ***Banks (ESCB) provided*** that ***they are not produced or disseminated for commercial purposes;*** ▌

(ia) mandatory disclosures pursuant to Articles 6, 8, 9, 10 and 11 of Regulation (EU) 2019/2088;

(ib) disclosures pursuant to Articles 5, 6 and 8 of Regulation (EU) 2020/852.

2a. ESMA shall develop draft regulatory technical standards to specify further what is considered to constitute a use exclusively for internal purposes or for providing in-house or intra-group financial services and products in accordance with paragraph 2, point (b).

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months from the entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) 1095/2010.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'ESG rating' means ***a product marketed as providing*** an ***ESG*** opinion, ***an ESG*** score or a combination of both, regarding an entity, a financial instrument, a financial product, or an undertaking's ***environmental, social or governance*** profile or characteristics or exposure to ESG risks or the impact on people, society and the environment, that are based on ***both*** an established ***and***

[1] Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

transparent methodology and defined ranking system of rating categories and that are ***marketed*** to third parties, irrespective of whether such ESG rating is explicitly labelled as 'rating' or 'ESG score'***, excluding ESG labels***;

(2) '***ESG*** opinion' means an ***ESG*** assessment that ***is*** based on a rules-based methodology and defined ranking system of rating categories, involving directly a rating analyst in the rating process or systems process;

(3) '***ESG*** score' means a***n ESG*** measure derived from data, using a rule-based methodology, and based only on a pre-established statistical or algorithmic system or model, without any additional substantial analytical input from an analyst;

(4) 'ESG rating provider' means a legal person whose occupation includes the ***issuance*** of ESG ratings ▌

(5) 'regulated financial undertaking in the Union' means an undertaking, regardless of its legal form, that is:

– (i) a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council[1];

– (ii) an investment firm as defined in Article 4(1), point (1), of Directive 2014/65/EU the European Parliament and of the Council[2];

– (iii) an alternative investment fund manager (AIFM) as defined in Article 4(1), point (b), of Directive 2011/61/EU of the European Parliament and of the Council[3], including a manager of a qualifying venture capital fund as defined in Article 3, point (c) of Regulation (EU) No 345/2013 of the European Parliament and of the Council[4], a manager of a qualifying social entrepreneurship fund as defined in Article 3, point (c) of Regulation (EU) No 346/2013 of the European Parliament and of the Council[5] and a manager of the ELTIF as defined in Article 2, point (12) of Regulation (EU) 2015/760 of the European Parliament and of the Council[6];

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1 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

2 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

3 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

4 Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

5 Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

6 Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

– (iv) an undertaking for collective investment in transferable securities (UCITS) management company as defined Article 2(1), point (b), of Directive 2009/65/EC of the European Parliament and of the Council[1];

– (v)an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council[2];

– (vi) a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;

– (vii) an institution for occupational retirement provision as defined in Article 1, point (6) of Directive 2016/2341 of the European Parliament and of the Council[3];

– (viii) pension institutions operating pension schemes which are considered to be social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council[4] and Regulation (EC) No 987/2009 of the European Parliament and of the Council[5] , and any legal entity set up for the purpose of investment of such social security schemes;

– (ix) an alternative investment fund (AIF) managed by an AIFM as defined in Article 4(1), point (b), of Directive 2011/61/EU or an AIF supervised under the applicable national law;

– (x)a UCITS as defined in Article 1(2) of Directive 2009/65/EC;

– (xi) a central counterparty as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council[6];

– (xii) a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014 of the European Parliament and of the Council[7];

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1 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

2 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

3 Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

4 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

5 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

6 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

7 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities

– (xiii) an insurance or reinsurance special purpose vehicle authorised in accordance with Article 211 of Directive 2009/138/EC;

– (xiv) a 'securitisation special purpose entity' as defined in Article 2, point (2), of Regulation (EU) No 2017/2402 of the European Parliament and of the Council[1];

– (xv) an insurance holding company as defined in Article 212(1), point (f), of Directive 2009/138/EC or a mixed financial holding company as defined in Article 212(1), point (h), of Directive 2009/138/EC, which is part of an insurance group that is subject to supervision at the level of the group pursuant to Article 213 of that Directive and which is not exempted from group supervision pursuant to Article 214(2) of that Directive;

– (xvi) a payment institution as defined in Article 1(1), point (d), of Directive (EU) 2015/2366 of the European Parliament and of the Council[2];

– (xvii) an electronic money institution as defined in Article 2, point (1), of Directive 2009/110/EC of the European Parliament and of the Council[3] ;

– (xviii) a crowdfunding service provider as defined in Article 2(1), point (e), of Regulation (EU) 2020/1503 of the European Parliament and of the Council[4] ;

– (xix) a crypto-asset service provider as defined in Article 3(1), point (8), of [the proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets[5]] where performing one or more crypto-asset services as defined in Article 3(1), point (9), of [the proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets];

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depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

1 Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

2 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

3 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

4 Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).

5 COM/2020/593 final.

– (xx) a trade repository as defined in Article 2, point (2), of Regulation (EU) No 648/2012;

– (xxi) a securitisation repository as defined in Article 2, point (23), of Regulation (EU) 2017/2402;

– (xxii) an administrator of benchmarks as defined in Article 3(1), point (3), of Regulation (EU) 2016/1011 of the European Parliament and of the Council[1] ;

– (xxiii) a credit rating agency as defined in Article 3(1), point (b), of Regulation (EC) No 1060/2009;

(6) 'rating analyst' means a person who performs analytical functions for the purpose of issuing ESG ratings ***on an ESG profile or characteristics, exposure to ESG risks, or the impact of an entity, financial instrument, company or financial product on people, society and the environment***;

(7) 'rated entity' means a legal person, a financial instrument, a financial product or a public authority or a body governed by public law which is explicitly or implicitly rated in the ESG rating or score, irrespective of whether such rating has been requested for and irrespective of whether the legal person has provided information for that ESG rating or score;

(8) 'user' means a natural or legal person, including a public authority or a body governed by public law, to which an ESG rating is provided;

(9) 'competent authorities' means the authorities designated by each Member State for the purposes of this Regulation;

(9a) 'management body' means an ESG rating provider's body or bodies which are empowered to define the ESG rating provider's strategy and objectives and which are responsible for overseeing and monitoring the ESG rating provider's activities;

(10) 'senior management' means the person or persons who effectively ***run*** the business of the ESG rating provider and the member or members of the ESG rating provider's administrative or supervisory board.

(11) 'group of ESG rating providers' means a group of undertakings established in the Union consisting of a parent undertaking and its subsidiaries within the meaning of Article 2 of Directive 2013/34/EU, and undertakings linked to each other by a relationship and whose occupation includes the provision of ESG ratings.

TITLE II

[1] Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

PROVISION OF ESG RATINGS IN THE UNION

Article 4

Requirements to provide ESG ratings in the Union

Any legal person who wishes to provide ESG ratings in the Union shall be subject to either of the following:

(a) an authorisation issued by ESMA as referred to in Article 5;

(b) an implementing decision as referred to in Article 9;

(c) an authorisation for endorsement as referred to in Article 10.

(d) a recognition as referred to in Article 11;

CHAPTER 1

Authorisation to provide ESG ratings in the Union

Article 5

Application for an authorisation to provide an ESG rating

1. Legal persons established in the Union that wish to provide ESG ratings in the Union shall apply for authorisation to ESMA.

2. The application for authorisation shall contain all of the information listed in Annex I and shall be submitted in any of the official languages of the Union. Council Regulation No 1[1] shall apply mutatis mutandis to any other communication between ESMA and the ESG rating providers and their staff.

3. ESMA shall develop draft regulatory technical standards to specify further the information listed in Annex I.

   ESMA shall submit those draft regulatory technical standards to the Commission by... ***[9 months from the date of entry into force of this Regulation]***.
   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. An authorised ESG rating provider shall comply with the conditions for initial authorisation at all times.

5. ESG rating providers shall notify ESMA of any material changes to the conditions for initial authorisation, including any opening or closing of a branch within the Union, without undue delay.

5a. ESMA shall develop draft regulatory technical standards to specify what is considered to constitute a material change as referred to in paragraph 5. ESMA shall submit those draft regulatory technical standards to the Commission by XX XXXX XXXX.

[1] Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 6

Examination of the application for authorisation of ESG rating providers by ESMA

1. Within ***20*** working days of receipt of the application referred to in Article 5(2), ESMA shall assess whether the application is complete. Where the application is not complete, ESMA shall set a deadline by which the applicant is to provide additional information.
2. After having assessed whether an application is complete, ESMA shall notify the applicant of the result of that assessment.
3. Within ***90*** working days of the notification referred to in paragraph 2, ESMA shall adopt a fully reasoned decision to authorise or refuse authorisation.
4. ESMA may extend the period referred to in the paragraph 3 to ***100*** working days in particular where the applicant:
   (a) envisages endorsing ESG ratings as referred to in Article 10;
   (b) envisages using outsourcing; or
   (c) requests exemption from compliance in accordance with Article 20.
5. The decision adopted by ESMA pursuant to paragraph 3 shall take effect on the fifth working day following its adoption.

5a. If no decision is adopted by ESMA within the period referred to in paragraph 3 or 4, as applicable, the applicant shall not be considered authorised to provide ESG ratings in the Union.

Article 7

Decision to grant or to refuse the authorisation to provide ESG ratings and notification of that decision

1. ESMA shall authorise the applicant as ESG rating provider where it concludes from the examination of the application referred to in Article 6 that the applicant complies with the conditions for the provision of ratings set out in this Regulation.
2. ESMA shall inform the applicant within five working days of that decision referred to in the first paragraph.
3. ESMA shall inform the Commission, the EBA and EIOPA of any decision taken pursuant to paragraph 2.
4. The authorisation shall be effective for the entire territory of the Union.

Article 8

Withdrawal or suspension of authorisation

1. ESMA shall withdraw or suspend the authorisation of an ESG rating provider in any of the following cases:

(a) the ESG rating provider has expressly renounced the authorisation or has provided no ESG ratings for ***12*** months preceding that withdrawal or suspension;

(b) the ESG rating provider has obtained its authorisation by making false statements or by any other irregular means;

(c) the ESG rating provider no longer meets the conditions under which it was authorised;

(d) the ESG rating provider has seriously or repeatedly infringed this Regulation.

2. The decision on the withdrawal or suspension of authorisation shall take immediate effect throughout the Union.

2a. In the event of a withdrawal or suspension based on any of the cases listed in paragraph 1, points (b) to (d), ESMA shall publish the decision on the withdrawal or suspension on its website.

CHAPTER 2

Provision of ESG ratings in the Union by third country ESG rating providers

Article 9

Equivalence decision

1. A third country ESG rating provider that wishes to provide ESG ratings in the Union shall only be able to do so where it is included in the register referred to in Article 13 and provided that all of the following conditions have been complied with:

(a) the third country ESG rating provider is a legal person, is authorised or registered as an ESG rating provider in the third country concerned, and is subject to supervision by that third country;

(b) the third country ESG rating provider has notified ESMA that it wishes to provide ESG ratings in the Union and has informed ESMA with the name of the competent authority responsible for its supervision in the third country;

(c) the Commission has adopted an equivalence decision pursuant to paragraph 2;

(d) the cooperation arrangements referred to in paragraph 4 are operational***;***

(da) the establishment of the third country ESG rating provider in the Union would be disproportionate to the nature, scale and complexity of that provider's ESG rating activities in the Union;

(db) the third-country ESG rating provider has been authorised by ESMA pursuant to Article 7.

2. The Commission ***shall, where appropriate,*** adopt an implementing decision stating that the legal framework and supervisory practice of a third country ensures that:

(a) ESG rating providers authorised or registered in that third country comply with binding requirements which are equivalent to the requirements under this Regulation,

(b) compliance with the binding requirements referred to in point (a) is subject to effective***, regular and equivalent*** supervision and enforcement on an on-going basis in that third country.

For the purposes of point (a), the Commission shall take into account whether the legal framework and supervisory practice of a third country ensures ***at least*** compliance with the IOSCO recommendations for ESG Ratings published in November 2021. ***Compliance with those recommendations does not in and of itself constitute equivalence.***

Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 47.

3. The Commission may adopt a delegated act in accordance with Article 45 to specify the conditions referred to in points (a) and (b) of the first subparagraph. The Commission may subject the application of the implementing decision referred to in paragraph 2 to:

(a) the effective fulfilment on an ongoing basis by that third country of any condition set out in that implementing decision that aims at ensuring equivalent supervisory and regulatory standards;

(b) the ability of ESMA to effectively exercise the monitoring responsibilities referred to in Article 33 of Regulation (EU) No 1095/2010.

4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2. Such arrangements shall specify all of the following:

(a) the mechanism for exchanging information ***on a regular and ad hoc basis*** between ESMA and the competent authorities of third countries concerned, including access to all relevant information requested by ESMA regarding the ESG rating provider authorised or registered in that third country;

(b) the mechanism for prompt notification to ESMA where a third country competent authority deems that the ESG rating provider authorised or registered in that third country and that is supervised by that third country competent authority is breaching the conditions of its authorisation or registration, or other national law in that third country;

(c) the procedures concerning the coordination of supervisory activities, including on-site inspections.

Article 10

Endorsement of ESG ratings provided by a third country ESG rating provider

1. An ESG rating provider located in the Union and authorised in accordance with Article 7 may endorse ESG ratings provided by a third country ESG rating provider belonging to the same group, provided that all of the following conditions have been met:

(a) the ESG rating provider located in the Union has applied to ESMA for authorisation of such endorsement;

(aa) the ESG rating provider located in the Union fulfils the indicators of minimum substance set out in Article 7(1) of [Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU];(ab) the endorsement of the ESG rating does not impair the quality of the assessment of the rated entity or the arrangement of on-site reviews or inspections, where provided for in the ESG rating methodology used by the ESG rating provider;

(b) the ESG rating provider located in the Union has verified and is able to demonstrate on an on-going basis to ESMA that the provision of the ESG rating to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation;

(c) the ESG rating provider located in the Union has the necessary expertise to monitor the provision of ESG ratings by the third country ESG rating provider effectively, and to manage any associated risks;

(d) there is an objective reason why the third country ESG rating provider has to provide the ESG rating and why that ESG rating has to be endorsed for their use in the Union***, which could include proximity to the issuer, a particular industry, centres of excellence for sub-components of ESG factors, expertise of staff employed outside the Union, and the development of ratings through the collaboration of global teams;***

(e) the ESG rating provider located in the Union provides ESMA at its request with all the information necessary to enable ESMA to supervise the compliance by the third country ESG rating provider with this Regulation on an ongoing basis ***in accordance with Article 30***;

(f) where a third country ESG rating provider is subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information;

(fa) the endorsement of ESG ratings does not represent the main activity of the ESG rating provider.

For the purposes of point (b) of the first subparagraph, ESMA ***shall examine*** compliance with the requirements of this Regulation***, particularly those of Article 5 and Articles 14 to 25***. ***ESMA shall consider the application of the IOSCO recommendations for ESG ratings. Compliance with those recommendations does not in and of itself satisfy the condition set out in point (b) of the first subparagraph .***

2. An ESG rating provider that applies for endorsement as referred to in paragraph 1 shall provide ESMA with all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.

3. Within ***30*** working days of receipt of the application for endorsement referred to in paragraph 1, ESMA shall ***assess whether*** the application ***is complete***. ***Where the application is not complete, ESMA shall notify the ESG rating provider that applied for endorsement and shall set a deadline by which that ESG rating provider is to provide additional information. Where the application is complete, ESMA shall notify the ESG rating provider thereof.***

Within 45 working days of receipt of a complete application for endorsement, ESMA shall verify that the requirements laid down in paragraphs 1 and 2 are fufilled.

ESMA shall publicly notify the decision to endorse provided by a third country ESG rating provider.

4. An endorsed ESG rating shall be considered to be an ESG rating provided by the endorsing ESG rating provider. The endorsing provider shall not use the endorsement to avoid or circumvent the requirements of this Regulation.

5. An ESG rating provider that has endorsed an ESG rating provided by a third country ESG rating provider shall remain fully responsible for such an ESG rating and for compliance with the obligations under this Regulation.

6. Where ESMA has well-founded reasons to consider that the conditions laid down in ***this Article*** are no longer fulfilled, it shall have the power to require the endorsing ESG rating provider to cease the endorsement.

The first subpararaph of this paragraph is without prejudice to any penalties that could be imposed on the authorised ESG rating provider pursuant to Articles 33 to 35.

Article 11

Recognition of third country ESG rating providers

1. Until the Commission has adopted an equivalence decision as referred to in Article 9 or, where adopted, in the event that the equivalence decision is repealed, third country ESG rating providers ▌may provide ESG ratings to regulated financial undertakings in the Union, provided that ESMA has recognised that third country ESG rating provider in accordance with this ***Article***.

1a. A third country ESG rating provider recognised by ESMA as referred to in paragraph 1 shall demonstrate that establishing a legal presence within the Union would be disproportionate to the nature, size and complexity of the third country ESG rating provider. ESMA shall take into account whether the third country ESG rating provider belongs to a group.

2. Third country ESG rating providers that wish to be recognised as referred to in paragraph 1 shall comply with the requirements established in this Regulation and apply for recognition to ESMA. ▌

When ESMA assesses whether third-country ESG providers comply with the requirements of this Regulation, it shall consider the application of the IOSCO recommendations for ESG ratings. Compliance with those recommendations does not in and of itself constitute recognition.

For the purposes of the first subparagraph, ESMA may take into account either an assessment by an independent external auditor or a certification of the competent authority of the third country where the third country ESG rating provider is located.

2a. Third-country ESG rating providers that wish to be recognised as referred to in paragraph 1 shall provide ESMA with all information listed in Annex I.

3. Third country ESG rating providers that wish to be recognised as referred to in paragraph 1 shall have a legal representative. That legal representative shall be a legal

person located in the Union and expressly appointed by that third country ESG rating provider to act on behalf of that ESG rating provider with regard to that ESG rating provider's obligations under this Regulation and, in that respect, be accountable to ESMA.

4. The third country ESG rating provider shall provide ESMA, prior to the recognition referred to in paragraph 1, with the following information:

(a) all information necessary to satisfy ESMA that that third country ESG rating provider has established all the necessary arrangements to meet the requirements referred to in paragraph 2;

(b) the list of its actual or prospective ESG ratings which are intended for provision in the Union;

(c) where applicable, the name and contact details of the competent authority in the third country responsible for its supervision.

ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph.

5. ESMA shall recognise the third country ESG rating provider as referred to in paragraph 1 provided that all of the following conditions are met:

(a) the third country ESG rating provider has complied with all the conditions laid down in paragraphs 2, 3 and 4

(b) where the third country ESG rating provider is subject to supervision, ESMA shall seek to put in place an appropriate cooperation arrangement with the relevant competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information**.**

6. No recognition shall be granted where the effective exercise by ESMA of its supervisory functions under this Regulation is either prevented by the laws, regulations or administrative provisions of the third country where the third country ESG rating provider is established, or, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.

7. ESMA shall impose fines, in accordance with Article 30, suspend or, where appropriate, withdraw the recognition referred to in paragraph 1 where it has well-founded reasons, based on documented evidence, to consider that the ESG rating provider:

(a) is acting, or has been acting, in a manner which is clearly prejudicial to the interests of users of its ESG ratings or to the orderly functioning of markets;

(b) has seriously infringed the applicable requirements set out in this Regulation;

(c) made false statements or used any other irregular means to obtain the recognition.

8. ESMA shall develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 2 and, in particular, the presentation of the information required in paragraph 4. ESMA shall submit them to the Commission.

Power is conferred on the Commission to adopt the regulatory technical standards

referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 12

Cooperation arrangements

1. Any cooperation arrangement as referred to in Article 9(4), Article 10(1), point (f) and Article 11(5), point (b), shall be subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 44. The exchange of information performed under such cooperation arrangements shall be intended for the performance of the tasks of ESMA or the competent authorities.

2. With regard to transfer of personal data to a third country, ESMA shall apply Regulation (EU) 2018/1725 of the European Parliament and of the Council[1].

CHAPTER 3

Register and accessibility of information

Article 13

Register of ESG rating providers and accessibility of information on the European Single Access Point (ESAP)

1. ESMA shall establish and maintain a register that contains information on all of the following:

   (a) the identities of the ESG rating providers authorised pursuant to Article 7;

   (b) the identities of third country ESG rating providers that comply with the conditions laid down in Article 9 and the third country competent authorities responsible for the supervision of those third country ESG rating providers;

   (c) the identities of the endorsing ESG rating provider and the endorsed third country ESG rating provider referred to in Article 10, and, where applicable, the third country competent authorities that are responsible for the supervision of the endorsed third country ESG rating provider;

   (d) the identities of the third country ESG rating providers that have been recognised in accordance with Article 11, and, where applicable, the third country competent authorities responsible for the supervision of those third country ESG rating providers;

2. The register referred to in paragraph 1 shall be publicly accessible on the website of ESMA and shall be updated promptly, as necessary.

3. From 1 January 2028, when making public any information pursuant to Article 18(1) and 21(1), the ESG rating provider shall submit that information to the relevant collection body referred to in paragraph 6 of this Article at the same time for

[1] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

accessibility on ESAP established under Regulation (EU) XX/XXXX [ESAP Regulation] of the European Parliament and of the Council*.

4. That information shall comply with all of the following requirements:

   (a) the information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation] or, where required under Union law, in a machine-readable format, as defined in Article 2, point (4), of Regulation (EU) XX/XXXX [ESAP Regulation];

   (b) the information shall be accompanied by the following metadata:

      (1) all the names of the ESG rating provider submitting the information;

      (2) the legal entity identifier of the ESG rating provider as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];

      (3) the size of the ESG rating provider as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];

      (4) the type of information as classified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];

      (5) metadata specifying whether the information includes personal data.

5. For the purposes of paragraph 1, point (b)(ii) the ESG rating provider shall acquire the legal entity identifier as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation].

6. For the purposes of making accessible on ESAP the information referred to in paragraph 1, the collection body as defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] shall be ESMA.

7. From 1 January 2028, the information referred to in paragraph 1 and in Articles 10(3), 33(1), 34 and 35 shall be made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of that Regulation shall be ESMA. That information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation], include the metadata as regards the names and, where available, the legal entity identifier of the ESG rating provider as specified pursuant to Article 7(4) of that Regulation, the type of information as classified pursuant to Article 7(4) of that Regulation and whether the information includes personal data.

8. For the purposes of ensuring an efficient collection and administration of data submitted in accordance with paragraph 3, ESMA shall develop draft implementing technical standards to specify:

   (a) any other metadata to accompany the information;

   (b) the structuring of data in the information;

   (c) for which information a machine-readable format is required and which machine-readable format is to be used.

   Before developing the draft implementing technical standards, ESMA shall carry out a cost-benefit analysis. For the purposes of point (c), ESMA shall assess the advantages and disadvantages of different machine-readable formats and conduct appropriate field tests***, in cooperation with ESG rating providers***.

ESMA shall submit those draft implementing technical standards to the Commission.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

9. If necessary, ESMA shall adopt guidelines for entities to ensure that the metadata submitted in accordance with paragraph 8, first subparagraph, point (a), is correct.

TITLE III

INTEGRITY AND RELIABILITY OF ESG RATING ACTIVITIES

CHAPTER 1

Organisational requirements, processes and documents concerning governance

Article 14

General principles

1. ESG rating providers shall ensure the independence of their rating activities, including from all political and economic influences or constraints.

2. ESG rating providers shall have in place rules and procedures that ensure that their ESG rating are provided and published or made available in accordance with this Regulation.

3. ESG rating providers shall employ systems, resources and procedures that are adequate and effective to comply with their obligations under this Regulation.

4. ESG rating providers shall adopt and implement written policies and procedures that ensure that their ESG ratings are based on a thorough analysis of all relevant information available to them.

5. ESG rating providers shall adopt and implement internal due diligence policies and procedures that ensure that their business interests do not impair the independence or accuracy of the assessment activities.

6. ESG rating providers shall adopt and implement sound administrative and accounting procedures, internal control mechanisms, and effective control and safeguard arrangements for information processing systems.

7. ESG rating providers shall use rating methodologies for the ESG ratings they provide that are rigorous, systematic, ***independent*** and capable of ***justification*** and shall apply those rating methodologies continuously.

8. ESG rating providers shall review the rating methodologies referred to in paragraph *7* on an on-going basis and at least annually.

9. ESG rating providers shall monitor and evaluate the adequacy and effectiveness of the systems, resources and procedures referred to in paragraph 2 at least annually and take appropriate measures to address any deficiencies.

10. ESG rating providers shall establish and maintain a permanent***, independent*** and effective oversight function to ensure oversight ▌***over***all aspects of the provision of

their ESG ratings. ***The oversight function shall have the necessary resources and expertise and have access to all information necessary to perform its functions. It shall have direct access to the management body of the ESG rating provider.***

ESG rating providers shall develop and maintain robust procedures regarding their oversight function.

11. ESG rating providers shall adopt, implement, and enforce measures to ensure that their ESG ratings are based on a thorough analysis of all the information that is available to them and that is relevant to their analysis in accordance with their rating methodologies. They shall adopt all necessary measures to ensure that the information they use in assigning ESG ratings is of sufficient quality and from reliable sources. ESG rating providers shall explicitly mention that their ESG ratings are their own opinion .

12. ESG rating providers shall not disclose information about their intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets as defined in Article 2, point (1), of Directive (EU) 2016/943 of the European Parliament and of the Council[1].

13. ESG rating providers shall only make changes to their ESG ratings in accordance with their rating methodologies published pursuant to Article 21.

Article 15

Separation of business and activities

1. ESG rating providers shall not provide any of the following activities:

(a) consulting activities to investors***, or financial*** or ***non-financial*** undertakings;

(b) the issuance and ***distribution*** of credit ratings;

(c) the development of benchmarks ***by an administrator of benchmarks as defined in Article 3(1), point (3), of Regulation (EU) 2016/1011 of the European Parliament and of the Council***;

(e) audit activities***.***

1a. Appropriate measures to prevent conflicts of interest shall be put in place by:

(a) ESG rating providers that provide investment activities;

(b) ESG rating providers that provide banking, insurance or reinsurance activities;

(c) entities that are part of a group to which an ESG rating provider belongs, that provide services referred to in paragraph 1.

Appropriate measures include the measures referred to in Articles 23 and 24.

1b. Employees of ESG rating providers involved in the assessment process of an entity

[1] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

shall not provide any of the activities referred to in paragraph 1.

2. ESG rating providers shall ensure that the provision of other services than those referred to in paragraph 1 does not create risks of conflicts of interest within its ESG rating activities.

2a. ESMA shall develop draft regulatory technical standards to specify the details of the safeguards to be implemented pursuant to paragraphs 1a and 1b, as well as to specify the conditions under which ESG rating providers could provide other services as referred to in paragraph 2.

When developing the draft regulatory technical standards referred to in the first subparagraph, ESMA shall take into account the potential conflicts of interest for the provision of ESG ratings and credit ratings that could arise between the rated entity and the rating entity as well as between their employees. ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by XX XX XXXX.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

Article 16

Rating analysts, employees and other persons involved in the provision of ESG ratings

1. ESG rating providers shall ensure that rating analysts, employees and any other natural person whose services are placed at its disposal or under its control and who are directly involved in the provision of ESG ratings, including analysts directly involved in the rating process and persons involved in the provision of scores, ***are appropriately trained and*** have the knowledge and experience that is necessary for the performance of the duties and tasks assigned***, in particular a sufficient understanding of potential material financial risk to the rated entity and potential material impact of the rated entity on the environment and on society in general***.

2. ESG rating providers shall ensure that the persons referred to in paragraph 1 are not allowed to initiate or participate in negotiations regarding fees or payments with any rated entity or any person directly or indirectly linked to the rated entity by control.

3. The persons referred to in paragraph 1***, as well as persons occupying a senior management position in the ESG rating provider,*** shall not buy or sell any financial instrument issued, guaranteed, or otherwise supported by any rated entity ***or any entity within the group of the rated entity,*** other than holdings in diversified collective investment schemes, including managed funds, nor engage in any transaction in such financial instruments.

4. The persons referred to in paragraph 1 shall not participate in or otherwise influence the determination of an ESG rating of any rated entity where those persons:

   (a) own financial instruments of the rated entity, other than holdings in diversified collective investment schemes;

(b) own financial instruments of any entity related to a rated entity, the ownership of which may cause or may be generally perceived as causing a conflict of interest, other than holdings in diversified collective investment schemes;

(c) have had***, over the last year an*** employment, business or other relationship with the rated entity ***or any entity within the group of the rated entity*** that may cause or may be generally perceived as causing a conflict of interest.

5. ESG rating providers shall ensure that the persons referred to in paragraph 1***, as well as persons occupying a senior management position in the ESG rating provider***:

(a) take all reasonable measures to protect property and records in possession of the ESG rating provider from fraud, theft or misuse, taking into account the nature, scale and complexity of the ESG rating provider's business and the nature and range of ESG rating activities;

(b) do not share confidential information that has been entrusted to the ESG rating provider with anyone who is not directly involved in the provision ofESG rating activities, including rating analysts and employees of any person directly or indirectly linked to the ESG rating provider by control, and any other natural person whose services are or have been placed at the disposal of, or are under the control of, any person directly or indirectly linked to the ESG rating provider by control;

(c) do not use or share confidential information for any other purpose than the provision of ESG rating activities, including for the trading of financial instruments.

6. Persons as referred to in paragraph 1 that consider that any other person as referred to in paragraph 1 has engaged in conduct that they consider to be illegal shall immediately inform the compliance function thereof. The ESG rating provider shall ensure that such reporting does not have any negative consequences for the person reporting.

7. Where a rating analyst terminates his or her employment with the ESG rating provider and***, within one year,*** joins a rated entity which he or she has been involved in rating, the ESG rating provider shall review the work of the rating analyst over one year preceding his or her departure.

8. Persons as referred to in paragraph 1, ***as well as persons occupying a senior management position in the ESG rating provider,*** shall not take up a ***senior*** management position within a rated entity which they have been involved in rating for ***one year*** after the provision of such rating.

8a. ESG rating providers shall ensure that, when carrying out an assessment, the persons referred to in paragraph 1 shall be independent of the rated entity and shall not be involved in the decision making of the rated entity during the period of the assessment leading to the issuance of an ESG rating and for one year thereafter.

ESG rating providers shall take all reasonable steps to ensure that, when the persons referred to in paragraph 1 participate in or otherwise influence the determination of an ESG rating of any rated entity, their independence is not affected by any existing or potential conflict of interest or business or other direct relationship involving those persons.

The persons referred to in paragraph 1 shall not participate in or otherwise

influence the determination of an ESG rating of any rated entity if there is any evidence of self-review, self-interest, advocacy, familiarity or intimidation created by financial, personal, business, employment or other relationships between those persons and the rated entity as a result of which an objective, reasonable and informed third party, taking into account the safeguards applied, would conclude that those persons' independence is compromised.

8b. The persons referred to in paragraph 1 shall not solicit or accept pecuniary or non-pecuniary gifts or favours from a rated entity unless an objective, reasonable and informed third party would consider the value thereof as trivial or inconsequential.

8c. If, during the period in which the persons referred to in paragraph 1 are involved in the assessment activities, a rated entity merges with, or acquires, another entity, the ESG rating provider shall ensure that those persons identify and evaluate any current or recent interests or relationships which, taking into account available safeguards, could compromise those persons' independence and ability to continue being involved in the assessment activities after the effective date of the merger or acquisition.

Article 16a

Use of multiple ESG rating providers

1. Where an entity or investor seeks an ESG rating from at least two ESG rating providers, it shall consider appointing at least one ESG rating provider with a market share of no more than 15% in the Union.

2. ESMA shall publish annually on its website a list of ESG rating providers listed in the register referred to in Article 13(1), indicating their total market share in the Union.

3. For the purposes of this Article, total market share shall be measured by reference to the annual turnover generated from ESG rating activities and ancillary services, at group level in the Union.

Article 17

Record-keeping requirements

1. ESG rating providers shall record their ESG rating activities. Those records shall contain the information listed in Annex***es I and*** II.

1a. ESG rating providers shall keep a record of key rating-related information, including rating, the rated legal entity or financial instrument, the rating type, the horizon or outlook used for the rating, and the rating status, and make that information available upon request to competent authorities in charge of the supervision of the regulated financial undertakings in the Union.

2. ESG rating providers shall keep the information referred to in paragraph 1 for at least five years and in such a form that it is possible to replicate and fully understand the determination of an ESG rating.

Article 18

Complaints-handling mechanism

1. ESG rating providers shall have in place and publish on their website procedures for receiving, investigating and retaining records concerning complaints made.

1a. The complaint procedures referred to in paragraph 1 shall be open and accessible, and shall disclose the name of the complainant, unless there are objective grounds for not doing so.

2. The procedures referred to in paragraph 1 shall ensure that:

   (a) the ESG rating provider makes publicly available the complaints-handling policy through which complaints may be submitted on:

      (1) the sources of data used for a specific ESG rating;

      (2) the way in which the rating methodology in relation to a specific ESG rating has been applied;

      (3) whether a specific ESG rating is representative of the rated entity;

      ▌

      (5) other decisions in relation to the ESG rating ***that appear inconsistent with the applicable methodologies, policies or procedures of the ESG rating provider***;

   (b) complaints are investigated in a timely and fair manner and that the outcome of the investigation is communicated to the complainant within a reasonable period of time, unless such communication would be contrary to objectives of public policy or to Regulation (EU) No 596/2014 of the European Parliament and of the Council[1];

   (c) the inquiry is conducted independently of any personnel that has been involved in the subject-matter of the complaint.

Article 19

Outsourcing

1. ***Outsourcing of*** important operational functions ***shall not*** materially impair the quality of the ESG rating provider's internal control ***and*** the ability of the European Supervisory and Markets Authority (ESMA) to supervise the ESG rating provider's compliance with its obligations under this Regulation.

2. ESG rating providers that outsource functions or any services or activities that are relevant for the provision of an ESG rating shall remain fully responsible for discharging all of the obligations under this Regulation.

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[1] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

3. ESG rating providers that outsource functions or any services or activities that are relevant for the provision of an ESG rating shall remain fully responsible for disclosing the information referred to in Annex II.

Article 20

Exemptions on governance requirements

1. ESMA may exempt an ESG rating provider at its request from complying with the ***organisational*** requirements laid down in Article 14***(10)*** where that ESG rating provider is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of the issuance of ESG ratings and provided that:

   (a) the ESG rating provider is a small or medium-sized undertaking according to the criteria laid down in Article 3 of Directive 2013/34/EU ***and is not part of a group***;

   (b) the ESG rating provider has implemented measures and procedures, and in particular internal control mechanisms, reporting arrangements and measures, that ensure the independence of rating analysts and persons approving ESG ratings and that ensure the effective compliance with this Regulation;

   (c) the size of the ESG rating provider is not determined in such a way as to avoid compliance with the requirements of this Regulation by an ESG rating provider or a group of ESG rating providers.

CHAPTER 2

Transparency requirements

Article 21

Disclosure of the methodologies, models, and key rating assumptions used in ESG rating activities to the public

1. ESG rating providers shall disclose on their website***, as a minimum,*** the methodologies, models and key rating assumptions they use in their ESG rating activities, including the information referred to in point***s (d) and (g) of Annex I and point*** 1 of Annex III.

1a. Separate E, S and G ratings shall be provided rather than a single ESG metric that aggregates E, S and G factors. ESG rating providers shall provide the disclosures referred to in this Article and in Article 22 separately for each factor.

1b. By way of derogation from paragraph 1a of this Article, ESG rating providers may provide a single ESG rating that aggregates E, S and G factors, if they provide, without prejudice to further disclosure obligations under this Regulation, the information referred to in point (f) of Annex III.

2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1.

2a. ESMA shall develop draft implementing technical standards to specify the data standards, formats and templates that ESG rating providers are to use to present the information referred to in paragraph 1.

3. ESMA shall submit ***the*** draft ▌technical standards ***referred to in pargraphs 2 and 2a*** to the Commission by ... ***[6 months from the date of entry into force of this Regulation]***.

Power is delegated to the Commission to adopt the ▌technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14and Article 15 of Regulation (EU) No 1095/2010.

3a. The ESG rating provider shall provide the information referred to in Annex III as soon as it has been authorised or recognised pursuant to this Regulation.

The ESG rating provider shall make the changes needed following the entry into force of the regulatory technical standards referred to in the second subparagraph of this paragraph.

Article 22

Disclosures to *users of ESG ratings,* subscribers of ESG ratings and rated entities

1. ESG rating providers shall disclose, as a minimum, the information referred to in point 2 of Annex III to their subscribers and to the rated entities. ***Where ESG rating providers publicly disclose ESG ratings, they shall publicly disclose the underlying information referred to in point 2 of Annex III for those specific ratings.***

1a. Where subscribers of ESG ratings or rated entities disclose or distribute the ESG ratings, they shall disclose the information referred to in point 2 of Annex III to the persons receiving the ESG ratings or provide a link to the website of the ESG rating providers where that information is available.

Where subscribers of ESG ratings or rated entities publicly disclose ESG ratings, the information referred to in point 2 of Annex III shall be made publicly available.

1b. ESG rating providers shall notify a rated entity that it will be rated.

1c. Where an ESG rating provider issues an unsolicited rating, it shall include a prominent statement to that effect in the rating, including information on whether the entity or a related third party participated in the rating process and whether the ESG rating provider had access to the management and other relevant internal documents for the rated entity or a related third party.

2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1.

2a. ESMA shall develop draft implementing technical standards to specify the data standards, formats and templates that ESG rating providers are to use to present the information as referred to in paragraph 1.

3. ESMA shall submit ▌***the*** draft ▌technical standards ***referred to in paragraphs 2 and 2a*** to the Commission by ***[6 months from the date of entry into force of this Regulation]***.

Power is delegated to the Commission to adopt the ▌technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 ***and 15*** of Regulation (EU) No 1095/2010.

CHAPTER 3

Independence and conflicts of interest

Article 23

Independence and avoidance of conflicts of interest

1. ESG rating providers shall have in place robust governance arrangements, including a clear organisational structure with well-defined, transparent, and consistent roles and responsibilities for all persons involved in the provision of an ESG rating.

2. ESG rating providers shall take all necessary steps to ensure that any ESG rating provided is not affected by any existing or potential conflict of interest, or by any business relationship, either from the ESG rating provider itself or from their shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the ESG rating providers, or any person directly or indirectly linked to them by control ***or any third-party provider to whom functions or any services or activities have been outsourced***.

3. Where there is a risk of a conflict of interest within an ESG rating provider due to the ownership structure, controlling interests, or activities of that ESG rating provider, of any entity owning or controlling the ESG rating provider, of an entity that is owned or controlled by the ESG rating provider, or of any the ESG rating provider's affiliates ***or third-party provider***, ESMA ***shall take action. ESMA shall*** require the ESG rating provider to take measures to mitigate that risk. ▌

A shareholder or a member of an ESG rating provider holding at least 5 % of either the capital or the voting rights in that ESG rating provider, or in a company which has the power to exercise control or a dominant influence over that ESG rating provider, shall be prohibited from doing any of the following:

(a) holding 5 % or more of the capital of any other ESG rating provider;

(b) having the right or the power to exercise 5 % or more of the voting rights in any other ESG rating provider;

(c) having the right or the power to appoint or remove members of the administrative or supervisory board of any other ESG rating provider;

(d) being a member of the administrative or supervisory board of any other ESG rating provider;

(e) exercising or having the power to exercise control or a dominant influence over any other ESG rating provider.

This paragraph does not apply to investments in other ESG rating agencies belonging to the same group of ESG rating agencies or to investments in ESG rating providers that are micro or small-sized undertakings according to the criteria laid down in Article 3 of Directive 2013/34/EU.

Where conflict of interest as referred to in the first subparagraph cannot be adequately managed ***through specific risk mitigation***, ESMA ***shall*** require the ESG rating provider to cease the activities or relationships that create the conflict of interest, or to cease providing the ESG ratings.

4. ESG rating providers shall disclose to ESMA all existing or potential conflicts of interest, including conflicts of interest arising from the ownership or control of the ESG rating providers.

5. ESG rating providers shall establish and operate policies, procedures, and effective organisational arrangements for the identification, disclosure, prevention, management and mitigation of conflicts of interest. ESG rating providers shall regularly review and update those policies, procedures and arrangements. Those policies, procedures and arrangements shall specifically prevent, manage and mitigate conflicts of interest due to the ESG rating provider's ownership or control or due to other interests in the ESG rating provider's group, or conflicts of interest that are caused by other persons that exercise influence or control over the ESG rating provider in relation to determining the ESG rating.

6. ESG rating providers shall review their operations to identify potential conflicts of interests at least each year.

Article 24

Management of potential conflicts of interests from employees

1. ESG rating providers shall ensure that their employees and any other natural persons whose services are placed at their disposal or under their control and who are directly involved in the provision of an ESG rating:

   (a) have the skills that are necessary for performing their tasks and duties and are subject to effective management and supervision;

   (b) are not subject to undue influence or conflicts of interest;

   (c) that the compensation and performance evaluation of those persons do not create conflicts of interest or otherwise impinge upon the integrity of the ESG rating determination process;

   (d) do not have any interests or business connections that compromise the activities of the ESG rating provider;

   (e) are prohibited from contributing to an ESG rating determination by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except where such contribution is explicitly required as part of the ESG rating methodology and is subject to specific rules laid down therein;

   (f) are subject to effective procedures to control the exchange of information with other employees involved in activities that may create a risk of conflicts of interest or with third parties, where that information may affect the ESG rating.

2. ESG rating providers shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining the ESG rating, including internal sign-off by management before the dissemination of the ESG rating. ***ESMA may require ESG rating providers to provide information about such control procedures.***

Article 25

Fair, reasonable, transparent and non-discriminatory treatment of users of ESG ratings

1. ESG rating providers shall take steps that are adequate to ensure that fees charged to clients are fair, reasonable, transparent ***and*** non-discriminatory ▌.

2. For the purposes of paragraph 1, ESMA may require ESG rating providers to provide it with documented evidence, may take supervisory measures in accordance with Article 33, and may decide to impose fines in accordance with Article 34 where it finds that fees from ESG rating providers are not fair, reasonable, transparent ***and*** non-discriminatory ▌.

CHAPTER 4

Supervision by ESMA

Section 1

General principles

Article 26

Non-interference with the content of ratings or methodologies

In carrying out their duties under this Regulation, ESMA, the Commission or any public authorities of a Member State shall not interfere with the content of ESG ratings or methodologies, ***provided those ratings and methodologies meet the criteria set out in this Regulation***.

Article 27

ESMA

1. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall issue and update guidelines on the cooperation between ESMA and the competent authorities for the purposes of this Regulation, including the procedures and detailed conditions relating to the delegation of tasks.

2. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall, in cooperation with the EBA and EIOPA, issue and update guidelines on the application of the endorsement regime referred to in Article 10 of this Regulation by XX XXXX XXXX.

3. ESMA shall publish an annual report on the application of this Regulation, including on supervisory measures taken and penalties imposed by ESMA under this Regulation, including fines and periodic penalty payments. That report shall contain, in particular, information on the evolution of ESG Ratings market and an assessment of the application of the third country regimes referred to in Articles 9, 10 and 11.

   ESMA shall present the annual report referred to in the first subparagraph to the European Parliament, the Council and the Commission.

4. ESMA shall cooperate with the EBA and EIOPA in performing its tasks and shall consult the EBA and EIOPA before issuing and updating guidelines and submitting draft regulatory technical standards.

Article 28

Competent authorities

1. By XX XXXX XXXX, each Member State shall designate a competent authority for the purposes of this Regulation.

2. Competent authorities shall be adequately staffed, with regard to capacity and expertise, to be able to apply this Regulation.

Article 29

Exercise of the powers referred to in Articles 30 to 32

The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 30 to 32 shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 30

Requests for information

1. ESMA may by simple request or by decision require ESG rating providers, persons involved in ESG rating activities, rated entities, third parties to whom the ESG rating providers have outsourced operational functions or activities, and persons otherwise closely and substantially related or connected to ESG rating providers or ESG rating activities, to provide all information that it needs to carry out its duties under this Regulation.

2. When sending a simple request for information under paragraph 1, ESMA shall:

   (a) refer to this Article as the legal basis for the request;

   (b) state the purpose of the request;

   (c) specify what information is required;

   (d) set a ***reasonable*** time-limit within which the information is to be provided ***and the format in which the information is to be provided***;

   (e) inform the person from whom the information is requested that there is no obligation to provide the information but that any reply to the request for information must not be incorrect or misleading;

   (f) indicate the fine provided for in Article 34, where the answers to questions asked are incorrect or misleading.

3. When requiring the supply of information under paragraph 1 by decision, ESMA shall:

   (a) refer to this Article as the legal basis for the request;

   (b) state the purpose of the request;

   (c) specify what information is required;

   (d) set a ***reasonable*** time-limit within which the information is to be provided ***and the format in which the information is to be provided***;

   (e) indicate the periodic penalty payments provided for in Article 35 where the production of the required information is incomplete;

   (f) indicate the fine provided for in Article 34, where the answers to questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or of associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. Those clients shall remain fully responsible if the information supplied by the lawyers is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 who are concerned by the request for information are domiciled or established.

Article 31

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary investigations of persons referred to in Article 30(1). To that end, the officials of and other persons authorised by ESMA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any person referred to in Article 30(1),or their representatives or staff for oral or written explanations on facts or documents related to the subject matter and purpose of the ***investigation*** and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

2. The officials of and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 35(1) where the production of the required records, data, procedures or any other material, or the answers to questions asked of the persons referred to in Article are not provided or are incomplete, and the fines provided for in Article 34, where the answers to questions asked of the persons referred to in Article are incorrect or misleading.

3. The persons referred to in Article 30(1) shall submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 3, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice of the European Union.

4. In good time before the investigation, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.

Article 32

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at the business premises ***and land*** of the legal persons referred to in Article 30(1). Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on-site inspection without prior announcement.

2. The officials of and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 31(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. The officials of and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection, and the periodic penalty payments provided for in Article 31 where the persons concerned do not submit to the inspection. In good time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where it is to be conducted.

4. The persons referred to in Article 30(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, specify the date on which it is to begin and indicate the periodic penalty payments provided for in Article 31, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of

Justice of the European Union. ESMA shall take such decisions after consulting the competent authority of the Member State where the inspection is to be conducted.

5. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, upon the request of ESMA, actively assist the officials of and other persons authorised by ESMA. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the competent authority of the Member State concerned may also attend the on-site inspections upon request.

6. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 31(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 31(1).

7. Where the officials of and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

8. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

9. Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.

Section 2

Administrative sanctions and other administrative measures

Article 33

Supervisory measures by ESMA

1. Where ESMA' finds that a ESG rating provider has not complied with its obligations under this Regulation, it shall ***require the ESG rating provider to bring the infringement to an end. In addition, ESMA may*** take one or more of the following supervisory measures:

(a) withdraw the authorisation of the ESG rating provider;

(b) temporarily prohibit the ESG rating provider from providing ESG ratings, until the infringement has been brought to an end;

(c) suspend the use of the ESG ratings provided by the ESG rating provider, until the infringement has been brought to an end;

(e) impose fines pursuant to Article 34;

(f) issue public notices.

2. The supervisory measures referred to in paragraph 1 shall be effective, proportionate, and dissuasive.

3. When taking the supervisory measures referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;

(c) whether the infringement has been committed intentionally or negligently;

(d) the degree of responsibility of the person responsible for the infringement;

(e) the financial strength of the ESG rating provider, as indicated by its total annual net turnover;

(f) the impact of the infringement on retail investors' interests ***and on other ESG rating users***;

(g) the importance of the profits gained and losses avoided by the ESG rating provider or the losses for third parties derived from the infringement, insofar as such profits and losses can be determined;

(h) the level of cooperation of the ESG rating provider with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that ESG rating provider;

(i) previous infringements by the ESG rating provider;

(j) measures taken after the infringement by the ESG rating provider to prevent its repetition.

4. ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement without undue delay. ESMA shall publish any such action on its website within ***5*** working days from the date when it was adopted.

The publication referred to in the first subparagraph shall contain all of the following:

(a) a statement affirming the right of the ESG rating provider to appeal the decision;

(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for ESMA to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

4a. Where an ESG rating provider has committed material infringements of this Regulation in respect of the development of an ESG rating, ESMA may require the infringing ESG rating provider to inform the ESG rating subscribers and users that the ESG rating is no longer valid. ESMA shall publish on its website its decision to that effect on the day following the adoption of that decision.

Article 34

Fines

1. Where ESMA finds that an ESG rating provider, or, where applicable, its legal representative, has, intentionally or negligently, infringed this Regulation, it shall adopt a decision imposing a fine. The maximum amount of the fine shall be 10 % of the total annual net turnover of the ESG rating provider, calculated on the basis of the most recent available financial statements approved by the management body of the ESG rating provider. ***An infringement shall be considered to have been committed intentionally if ESMA finds objective elements which demonstrate that a person acted deliberately to commit the infringement.***

2. Where the ESG ratings provider is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU, the relevant total annual net turnover shall be either the total annual net turnover, or the corresponding type of income in accordance with the relevant Union law in the area of accounting, according to the most recent available consolidated accounts approved by the management body of the ultimate parent undertaking.

3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 33(3).

4. Notwithstanding paragraph 3, where the ESG rating provider has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

5. Where an act or omission of a ESG rating provider constitutes more than one infringement to this Regulation, only the higher fine calculated in accordance with paragraph 2 and relating to one of those infringements shall apply.

Article 35

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments to compel:

   (a) an ESG ratings provider to put an end to an infringement in accordance with a decision taken pursuant to Article 33;

   (b) the persons referred to in Article 30(1):

      (1) to supply complete information which has been requested by a decision taken pursuant to Article 30;

      (2) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct

other information provided in an investigation launched by a decision taken pursuant to Article 30;

(3) to submit to an on-site inspection ordered by a decision taken pursuant to Article 32.

2. A periodic penalty payment shall be effective and proportionate. ESMA shall impose the periodic penalty payment on a daily basis until the ESG rating provider or person concerned complies with the relevant decision referred to in paragraph 1.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of that period, ESMA shall review the measure.

Article 36

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and every periodic penalty payment that it has imposed pursuant to Articles 34 and 35, unless such disclosure to the public would seriously jeopardise the Union financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2018/1725 of the European Parliament and of the Council[1].

2. Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be of an administrative nature.

3. Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be enforceable.

Enforcement of the fines and periodic payments shall be governed by the rules of procedure in force in the Member State or third country in which it is carried out.

4. The fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Section 3

Procedures and review

Article 37

Procedural rules for taking supervisory measures and imposing fines

[1] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

1. Where ESMA finds that there are serious indications of a possible infringement of this Regulation, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. That appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the ESG ratings to which the infringement relates and shall perform his or her functions independently from ESMA's Board of Supervisors.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, take into account any comments submitted by the persons who are subject to the investigation, and shall submit a complete file with his or her findings to ESMA's Board of Supervisors.

3. The investigation officer shall have the power to request information in accordance with Article 30 and to conduct investigations and on-site inspections in accordance with Articles 31 and 32.

4. When carrying out his or her tasks, the investigation officer shall have access to all documents and information that have been gathered by ESMA in its supervisory activities.

5. The rights of defence of the persons subject to the investigation shall be fully respected during investigations under this Article.

6. Upon submission of the file with his or her findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigation.

7. On the basis of the file containing the investigation officer's findings and, where requested by the persons concerned after having heard those persons in accordance with Article 38, the Board of Supervisors of ESMA shall assess whether one or more persons subject to the investigation have committed the infringements concerned and shall, where it comes to the conclusion that such infringements have been committed, take a supervisory measure as referred to in Article 33 and impose a fine in accordance with Article 34.

8. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.

9. The Commission shall supplement this Regulation by adopting further rules of procedure for the exercise of ESMA's power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and by adopting detailed rules on the limitation periods for the imposition and enforcement of penalties.

   The rules referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 45.

10. ESMA shall refer matters for criminal prosecution to the national authorities concerned where, in carrying out its tasks under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from an identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Article 38

Hearing of the persons subject to investigations

1. Before taking any decision pursuant to Article 33, 34 and 35, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

   The first subparagraph shall not apply where urgent action pursuant to Article 33 is needed to prevent significant and imminent damage to the financial system. In such a case, ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of defence of the persons subject to the proceedings shall be fully respected in the investigations. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

Article 39

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce, or increase the fine or periodic penalty payment imposed.

Section 4

Fees and delegation

Article 40

Supervisory fees

1. ESMA shall charge ***proportionate*** fees to the ESG rating providers in accordance with the delegated act adopted pursuant to paragraph 2. Those fees shall ***have as reference the amount needed to*** cover ESMA's necessary expenditure relating to the supervision of ESG rating providers and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, and in particular as a result of any delegation of tasks in accordance with Article 41, ***and shall fully cover that amount***.

2. The amount of an individual fee shall be proportionate to the annual net turnover of the ESG ratings provider concerned.

   By ... ***[12 months from the date of entry into force of this Regulation]***, the Commission shall adopt delegated acts in accordance with Article 45 to supplement this Regulation by specifying the type of fees, the matters for which fees are due, the amount of the fees ***and respective justification***, the manner in which they are to be paid and, where applicable, the way in which ESMA is to reimburse competent authorities in respect of any costs that they may have incurred carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks as referred to in Article 41.

CHAPTER 5

Cooperation between ESMA and national competent authorities

Article 41

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 30 and to conduct investigations and on-site inspections in accordance with Article 31 and Article 32.

2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:

   (a) the scope of the task to be delegated;

   (b) the timetable for the performance of the task;

   (c) the transmission of necessary information by and to ESMA.

3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the delegated act adopted pursuant to Article 45.

4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. ESMA may revoke a delegation at any time.

5. A delegation of tasks shall not affect the responsibility of ESMA nor limit ESMA's ability to conduct and oversee the delegated activity. ESMA shall not delegate supervisory responsibilities, including authorisation decisions, final assessments and follow-up decisions concerning infringements.

Article 42

Exchange of information

ESMA and the competent authorities, shall, without undue delay, provide each other with the information required for carrying out their duties under this Regulation ***or their respective supervisory responsibility and mandates***.

Article 43

Notifications and suspension requests by competent authorities

1. A competent authority of a Member State that finds that acts infringing this Regulation are being, or have been, carried out on the territory of its own or of another Member State shall inform ESMA thereof. A competent authority that considers it appropriate for investigatory purposes may suggest to ESMA that it assesses the need to use the powers under Article 30 in relation to the ESG rating provider involved in those acts.

2. ESMA shall take appropriate action. ESMA shall inform the notifying competent authority of the outcome and, as far as possible, of any significant interim developments.

3. A notifying competent authority of a Member State that considers that an ESG rating provider that is listed in the register referred to in Article 13 and whose ESG ratings are used within the territory of that Member State has infringed this Regulation in such a way that the protection of investors or the stability of the financial system in that Member State are significantly impacted, may request ESMA to suspend the provision of ESG ratings by the ESG rating provider concerned. The notifying competent authority shall provide ESMA with full reasons for its request.

4. Where ESMA considers that the request referred to in paragraph 3 is not justified, it shall inform the notifying competent authority thereof in writing, setting out the reasons for its opinion. Where ESMA considers that the request is justified, it shall take the measures appropriate to resolve the issue.

Article 44

Professional secrecy

1. The obligation of professional secrecy shall apply to ESMA, the competent authorities, and all persons who work or who have worked for ESMA, for the competent authorities or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA.

2. All the information exchanged under this Regulation between ESMA, the competent authorities, the EBA, EIOPA and the ESRB shall be considered confidential, except:

   (a) where ESMA or the competent authority or another authority or body concerned states at the time of communication that such information may be disclosed;

   (b) where disclosure is necessary for legal proceedings;

   (c) where the information disclosed is used in a summary or in an aggregate form in which individual financial market participants cannot be identified.

TITLE IV

DELEGATED AND IMPLEMENTING ACTS

Article 45

Exercise and revocation of the delegation and objections to delegated acts

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles ***9(3), 37(9) and 40(2)*** shall be conferred on the Commission for ***a period of five years from ... [date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of that period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period***.

3. The delegation of power referred to in Articles ***9(3), 37(9) and 40(2)*** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles ***9(3), 37(9) and 40(2)*** shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of ***three*** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [***three*** months] at the initiative of the European Parliament or of the Council.

7. If, on expiry of the period referred to in paragraph 6, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

8. If either the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 of the Treaty on the Functioning of the European Union, the institution which objects shall state the reasons for objecting to the delegated act.

Article 47

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[1]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.[2]

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

TITLE V

[1] Commission Decision of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45)

[2] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

TRANSITIONAL AND FINAL PROVISIONS

Article 48

Transitional provisions

1. ESG rating providers which provided their services at the date of entry into force of this Regulation shall notify ESMA within 3 months if they want to continue offering their services and apply for authorisation in accordance with Article 5. In that case, they shall apply for authorisation within 6 months after the date of application of this Regulation.

1a. After notifying ESMA pursuant to paragraph 1, the ESG rating provider shall be registered as temporarily authorised in the register referred to in Article 13 and be authorised to continue providing services in the Union until its application has been approved or denied.

2. By way of derogation of the first paragraph, ESG rating providers categorized as small and medium-sized undertaking under Article 3 of the Directive 2013/34/EU shall apply for authorisation within 24 months after the date of application of this Regulation.

3. ESG rating providers categorized as small and medium-sized undertaking under Article 3 of Directive 2013/34/EU entering the market after [*please insert the date of entry into application*] shall notify ESMA prior to starting offering their services and shall apply for authorisation within 12 months of that notification.

Article 49

Review

1. The Commission shall evaluate the application of this Regulation by [*five years after the entry into force of this Regulation*].

2. The Commission shall present a report on the main findings of the evaluation to the European Parliament and the Council. In carrying out the evaluation, the Commission shall take into account market developments and the relevant evidence at its disposal.

3. Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal for amendment of relevant provisions of this Regulation.

3a. By ... [3 years from the date of entry into force of this Regulation], the Commission shall, in close cooperation with ESMA, publish a report considering whether the scope of this Regulation is sufficient to ensure confidence in the market and to attain its objectives, including the need to extend the scope to ESG data providers. The report may be accompanied, if appropriate, by a legislative proposal.

3b. By ... [3 years from the date of entry into force of this Regulation], the Commission shall publish a report on the functioning of the ESG rating market, including:

(a) whether its general principles, including the non-interference principle referred to in Article 26, have sufficiently contributed to improving the quality and reliability of ESG ratings and reduced the use of misleading ESG ratings;

(b) whether the obligation under Article 16a to consider the appointment of an ESG rating provider with a lower market share has sufficed to limit

concentration in the ESG rating market; and

(c) whether the methodologies used by ESG rating providers are consistent with the Union objectives and the international standards related to each factor, including a consideration of the need to set out in this Regulation minimum requirements regarding the content of ESG ratings and their methodologies.

The report may be accompanied, if appropriate, by a legislative proposal.

3c. ESMA shall submit a report to the European Parliament, the Council and the Commission by ... [three years from the date of entry into force of this Regulation] on the adequacy of the requirements of Articles 9, 10 and 11 in order for third country ESG rating providers to be able to provide ESG ratings in the Union. The Comission shall consider the results of the report and submit, where appropriate, a legislative proposal.

Article 50

Entry into force and application

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.
It shall apply from ... [**9** *months from the entry into force of this Regulation*].

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I
Information to be provided in the application for authorisation

An application for authorisation shall contain all of the following information :

(a) the full name of the applicant, the address of the registered office within the Union, the applicant's website and, where available, the legal entity identifier (LEI);

(b) the name and contact details of a contact person;

(c) the legal status of the applicant;

(d) the ownership structure of the applicant ***at group level***;

(da) the identity of entities within the ownership structure that would provide ESG rating activities or any other services listed in Article 15(1) that create risks of conflicts of interest within the ESG rating activities to be provided by the applicant;

(e) the identity of the members of the senior management of the applicant and their level of qualification, experience and training;

(f) the number of the analysts, employees and other persons directly involved in assessment activities ***with the purpose of providing ESG ratings***, and their level of experience and training working for the applicant and their level of experience and training;

(fa) the number of entities, financial products and instruments for which the applicant will provide ESG ratings;

(g) a ***detailed*** description of the procedures and methodologies used to issue and review ESG ratings implemented by the applicant; ***if ESG rating providers choose to use common data points disclosed under Regulation (EU) 2019/2088, including principal adverse impacts (PAIs) under the delegated act adopted pursuant to Article X of Regulation 2019/2088, or under Directive (EU) 2022/2464, including delegated acts adopted pursuant to Directive 2013/34/EU, they shall include a demonstration of how those common data points are used;***

(ga) if ESG ratings providers use methodologies that are considered as being based on scientific evidence, information on how they use such scientific evidence, including whether and how they are in line with the Paris Agreement;

(gb) a description of data processes including data sources, estimation of input data in case of unavailability, frequency of data updates and data quality controls;

(h) the policies or procedures implemented by the applicant to identify, manage and disclose any conflicts of interests as referred to in Article 14 of the Regulation;

(i) where applicable, documents and information related to any existing or planned outsourcing arrangements for activities covered by this Regulation;

(j) where applicable, information about other activities carried out by the applicant, or which the applicant intends to provide;

(ja) where applicable, a list of the ESG ratings that the applicant expects to endorse;

(jb) where applicable, existing track records of ESG rating activities.

ANNEX II
Organisational requirements

1. Record Keeping information

ESG rating providers shall keep records of all of the following:

(a) for each ESG rating***, where applicable:***

(1)the identity of the rating analysts participating in the determination of the ESG rating, the identity of the persons who have approved the ESG rating, information as to whether the ESG rating was solicited or unsolicited, and the date on which the ESG rating action was taken;

(2)the identity of the persons responsible for the development of the rule-based methodology, and the identity of the persons who have approved the rating methodology;

(c) the account records relating to fees received from any rated entity or related third party or any user of ratings;

(d) the account records for each subscriber to the ESG ratings;

(e) the records documenting the established procedures and rating methodologies used by the ESG rating provider to determine ESG ratings;

(f) the internal records and external communications and files, including non-public information and work papers, used to form the basis of any ESG rating decision taken;

(g) records of the procedures and measures implemented by the ESG rating provider to comply with this Regulation;

(h) the methodology used for the determination of an ESG rating;

(i) changes in or deviations from standard procedures and methodologies;

(j) all documents relating to any complaint, including those submitted by a complainant.

2. Outsourcing

Where ESG rating providers outsource to a service provider functions or any relevant services or activities in the provision of an ESG rating, the ESG rating provider shall ensure that the following conditions are met:

(a) the service provider has the ability, capacity, and any authorisation required by law, to perform the outsourced functions, services or activities reliably and professionally;

(b) the ESG rating provider takes appropriate action if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;

(c) the ESG rating provider retains the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing;

(d) the service provider discloses to the ESG rating provider any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;

(e) the ESG rating provider is able to terminate the outsourcing arrangements where necessary;

(f) the ESG rating provider takes reasonable steps, including contingency plans, to avoid undue operational risk related to the participation of the service provider in the ESG rating determination process.

ANNEX III
Disclosure requirements

1. Minimum disclosures to the public

In accordance with Article 21 of the Regulation, ESG rating providers shall, at the minimum, disclose to the public on their website and through the European Single Access Point (ESAP) the following:

(a) high level overview of the rating methodologies used (and changes thereto), including***:*** ***(1)***whether analysis is backward-looking ***or forward-looking and the time horizon covered***; ***and***

(2) whether the analysis looks at potential material financial risk to the rated entity, or potential material impact of the rated entity on the environment and on society in general, or both, the weighting of the two factors;

(aa) the industry classification used and why such classification is relevant;

(b) ***data sources including whether data is sourced from information disclosed under Directive 2013/34/EU and Regulation (EU) 2019/2088 and whether sources are public or non-public and a*** high level overview of data processes ***with*** data sources, including if they are sourced from sustainability statements required by Directive (EU) 2022/2464, estimation of input data in case of unavailability, frequency of data updates;

(c) information on whether and how the methodologies are based on scientific evidence;

(d) ***where the ESG rating assesses only financial materiality, a clear warning about the limitations of the methodology and the conclusions that can be drawn from that rating***;

(e) the rating's scope – i.e., ***whether it covers a specific factor (E, S, or G) or*** specific issues (e.g., transition risks);

(f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per individual E, S and G factors;

(g) within the E, S or G factors, specification of the topics covered by the ESG rating/score, and whether they correspond to the topics from the sustainability reporting standards developed pursuant to Article 29b of Directive 2013/34/EU;

(h) information on whether the rating is expressed in absolute or relative values, ***and if the ESG rating is expressed in relative value, a clear warning about the limitations of the methodology and the conclusions that can be drawn from that rating;***

(i) where applicable, reference to the use of Artificial Intelligence (AI) in the data collection or rating/scoring process ***including information about current limitations or risks of those tools***;

(j) general information on criteria used for establishing fees to clients, specifying the various elements taken into consideration, such as the involvement of data analysts, IT equipment, purchasing data;

(k) ***data sources used and*** any limitation in ***relation to them*** for the construction of ESG ratings***;***

(ka) in sufficient detail taking into account the nature of any conflicts of interest that arise, the general nature or sources of conflicts of interest and the steps taken to mitigate those risks;

(kb) if an ESG rating provider chooses to include in its ESG rating KPIs covering the E factor, information on whether that rating considers the alignment of the business model and strategy of the company with the objectives of the transition to a sustainable economy and with the limiting of global warming, in line with the Paris Agreement;

(kc) if an ESG rating provider chooses to cover the S factor in its ESG rating, information on whether that rating considers the compliance of the rated entity with International Labour Organisation core conventions on Right to Organise and Collective Bargaining;

(kd) if an ESG rating provider chooses to cover the G factor in its ESG rating, whether the rated entity considers the alignment with international standard on tax evasion and avoidance;

(ke) any limitation on the information available to ESG rating providers.

2. Additional disclosures to users of ESG rating and rated undertakings in scope of Directive 2013/34/EU

In addition to the elements referred to in Article 22 of the Regulation, ESG rating providers ***and, where relevant, ESG rating subscribers*** shall make available the following information to European regulated financial undertakings and to undertakings in the scope of Directive 2013/34/EU that are subject of such rating:

(a) a more granular overview of the rating methodologies used (and changes thereto), including:

(1) where applicable, scientific evidence and assumptions on which the ratings are based,

(2) whether the analysis is backward-looking or forward-looking ***and the time horizon covered***,

(2a) whether the analysis looks at potential material financial risk to the rated entity, or potential material impact of the rated entity on the environment and on society in general, or both,

(2b) the industry classification used for the rated undertaking and why this classification is relevant,

(4) the relevant KPIs per E, S and G factor, and weighting method,

(4a) in the case of an aggregated ESG rating, the result of the assessment for each ESG factor ***category, each assessment result being based on a same scale, to ensure comparability of the E, S and G category,***

(5) any potential shortcomings of methodologies,

(6) policies for the revision of methodologies,

(6a) any changes to rating methodologies, models, key rating assumptions or data sources (including estimates), reasons for these changes and their implications on ratings,

(7) last date of the revision***,***

(7a) timing of data used for evaluation,

(7b) any errors in its ESG rating methodologies or in their application, including the measures taken once errors have been identified,

(7c) where the ESG rating includes KPIs covering the E factor, the extent to which the ESG rating is correlated with the percentage of taxonomy-alignment under Regulation (EU) 2020/852, together with an explanation of any significant deviations therefrom.

(b) a more granular overview of data processes, including:

(1) more detailed explanation of data sources used – including whether public or non-public, mentioning whether derived from the sustainability reporting standards developed pursuant to Article 29b of Directive 2013/34/EU /Taxonomy/SFDR],

(2) where applicable the use of ***proxies or*** industry average and explanation of the underlying methodology,

(3) the policies for updating data and revising historical data, date of last updates of data,

(4) data quality controls,

(5) any steps taken to address limitations in data sources, where applicable***,***

(5a) whether the data used has been subject to an assurance review;

(c) information about engagement with rated entities ***including whether on-site reviews or inspections have been performed by the ESG rating provider and at what frequency***;

(ca) a statement on the limitations of the ratings, including information about engagement with the various stakeholders of a rated entity and how contradictory, incomplete or subjective information is handled;

(d) where applicable, an explanation of any AI methodology used in the data collection or rating process;

(e) in case of a major new information on a rated entity that has the possibility to affect the result of an ESG rating, ESG rating providers shall inform how they have taken that information into account and whether they have amended the corresponding ESG rating.

The information referred to in Part 2 of this Annex shall be specific to each ESG rating distributed.