

## **BVI's<sup>1</sup> core positions on the proposed EU Regulation on ESG Ratings**

We welcome the EU proposal for a Regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities which appears suitable for improving the quality of information on ESG ratings and addressing the existing shortcomings in the ESG rating market. Our key assessment and request for **including provision of ESG raw data and other ESG data products in the scope of the proposed Regulation** is outlined in the **position paper included in the annex** that has been agreed jointly by the French and German asset management and insurance associations.

In addition, we would like to suggest the following adaptations in order to warrant the success of the EU initiative:

- The **exemption from scope for financial market participants (FMPs) in Article 2(2)(b) should be refined** in order to encompass any ratings, scores, or data that financial market participants could furnish. In addition, asset management firms often share proprietary ratings within their group with other entities. This should be clearly allowed under the exemption. The term “in-house” used in Article 2(2)(b), which conveys the idea of “homemade” or “proprietary”, lacks sufficient clarity in this regard.
- We would welcome an **obligation of ESG rating providers to make available price lists** as part of information to be disclosed to users. In this context, it is not clear whether the information to users mentioned in Annex III No. 2 shall only be made transparent in the ESAP from 2028 by reference to Article 13 – this would then be rather counterproductive. At least Article 22(1) of the draft regulation assumes transparency towards users to be provided on separate terms.
- The new Regulation should **apply to the entire ESG rating agency group, including all subsidiaries**, in order to counteract anti-competitive behaviour and to avoid circumventions that can be observed in the credit rating industry today. Transparency and price formation standards should also be extended accordingly. This would ensure that there are no loopholes, particularly in distribution of ESG ratings and ESG data via licencing agreements with non-regulated group entities. However, in order to avoid major distortions of the existing business models, the group-wide application should not apply to the separation of activities under Article 15.
- In the same vein, we are generally critical of the proposals on independence of ESG rating providers, because these could also lead to a market limitation. In particular, the **proposed ban on developing benchmarks or issuing/selling credit ratings** is counterproductive and **should be deleted**.
- The **rules for market access by third country providers must not lead to a limitation of the ESG rating available to EU FMPs**. As it stands, a system based on equivalence decisions will be

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<sup>1</sup> BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 116 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 28%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit [www.bvi.de/en](http://www.bvi.de/en).



futile, given that the largest ESG rating providers are based in the US where there is so far no intent to introduce comparable rules for registration/authorisation of ESG rating providers. The only remaining option would be the endorsement procedure which seems to be relevant only for ESG rating providers having subsidiaries in the EU. An alternative approach would be to require that **third-country providers active in the EU comply with the transparency standards of the future EU Regulation** while waiving the formal equivalence status.

- The implementation and transition periods should be chosen in such a way that it is realistically possible for EU and non-EU agencies to establish the necessary legal and organisational structures for ensuring compliance with the new EU rules.

## Core Positions of the French and German Insurance and Asset Management Industry on the EU Commission's proposal for a regulation of ESG rating activities

We welcome the proposal by the European Commission for a regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities. The planned introduction of regulatory standards for ESG rating agencies and their rating activities appears suitable in general to improve the quality of information on ESG ratings and to address existing shortcomings in the ESG rating market. We support in particular:

- Proposals to improve the transparency of ESG ratings particularly regarding objectives, characteristics, methodologies, and data sources used, while preserving methodological freedom
- The disclosure of whether the rating addresses double or simple materiality
- Increased clarity on the activities of ESG ratings providers and the requirements to avoid and mitigate risks arising from conflicts of interest among providers
- Provision of a clear and transparent complaints-handling mechanism
- A harmonised authorisation and supervision regime by ESMA for providers
- Proposal for fair, reasonable, transparent and cost-based fees and that ESMA will be allowed to take action in case of violations

However, in order to ensure the success of this initiative, we consider it necessary to clarify some important issues and to further adapt and clarify some proposed regulations. The associations involved will elaborate on these important points in the further proceedings.

At the current stage, we would like to highlight one request for which we see particular urgency and importance, namely **inclusion of ESG raw data and other ESG data products in the scope of the proposed Regulation**. We see this as necessary for the following reasons:

Reliable and comparable ESG data is a prerequisite for the proper functioning of the European sustainable finance market in a similar way as ESG ratings. For many investors and providers of financial products ESG raw data and other ESG data products (hereinafter collectively referred to as "ESG data products") play an even more important role than ESG ratings. There is a high demand for reliable and comparable ESG data, due to regulatory reporting requirements for financial market participants under SFDR and EU-Taxonomy, but also for proper implementation of sustainable investment strategies and management of sustainability risks. Even though CSRD and the implementing ESRS will enhance availability and reliability of ESG data for EU issuers, significant data gaps will remain with regard to non-EU companies. ESG data vendors refer to different means for obtaining company-related ESG data, including extrapolations, approximations or estimations where the methodological approaches will remain unclear for the data users without regulation. The scope of the regulation should therefore also include provision of ESG data products.

Regarding ESG data products we see similar shortcomings as with ESG ratings. We are particularly critical of the lack of common standards and binding requirements, which limit the

quality of such data. The current lack of transparency and reliability of ESG data products not only weakens users' confidence in the accuracy of the data but increases their risk of being subject to greenwashing allegations. Better comparability and higher reliability, as envisaged for ESG ratings, is therefore also needed for other ESG data products than ESG ratings.

In its November 2021 report<sup>1</sup>, also the IOSCO recommends the supervision not only of ESG rating providers, but also of ESG data products and their providers and supports the idea of a regulatory framework for both.

In order to enhance their trustworthiness and comparability, ESG data products should fall within the scope of the Regulation in the same way as ESG ratings. As ESG data is usually collected and processed by ESG rating providers, the regulation on ESG ratings is a suitable regulatory framework. Its requirements for ESG rating providers and their products could serve as a blueprint for the regulation of ESG data products so that they are subject to similar requirements, in particular with regard to transparency, fees and the avoidance or mitigation of conflicts of interest.

#### **Recommended points for action:**

The suggested extension of the scope of the regulation to ESG data products should be accomplished by the following measures:

- Adaptation of Article 2(1) and deletion of the exemption in Article 2(2)(c)
- Inclusion of the respective definition contained in the IOSCO Report in Article 3 that should be supplemented as follows:

*“ESG data products”*: refer to the broad spectrum of data products, including estimates, that are marketed as providing either a specific E, S, or G focus or a holistic ESG focus on an entity, financial instrument, product or company's ESG profile or characteristics or exposure to ESG, climatic or environmental risks or impact on society and the environment, whether or not they are explicitly labelled as “ESG data products”.

According to its report IOSCO understands ESG raw data as one type of ESG data products. To avoid misunderstandings, it should be clarified that the definition of ESG data products includes ESG raw data.

- Extension of specific obligations under the proposed Regulation, in particular transparency requirements (Article 21) and complaints-handling mechanisms (Article 18) to the provision of ESG data products.

**Nota bene: Other important comments that we have on the proposal relating to ESG ratings will be provided in the coming weeks through an additional paper.**

2 August 2023

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<sup>1</sup> [IOSCO Final Report on Environmental, Social and Governance \(ESG\) Ratings and Data Products Provider](#)