

## **EACRA Position paper on the proposed regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities**

On June 13<sup>th</sup>, 2023, the European Commission tabled the Sustainable finance package<sup>1</sup>, which includes amongst others a legislative proposal regarding the “transparency and integrity of Environmental, Social and Governance (ESG) rating activities<sup>2</sup> (“ESG ratings” in this paper).

Given that ESG topics have gained substantial momentum in the financial industry in recent years, we generally welcome the European’s Commission intention to regulate the ESG rating activities. We hope that this new legislative framework will contribute to more comparability of ESG assessments across the different providers.

In this paper, we are pleased to publish the views of our association, which represents European Credit Rating Agencies (“CRAs”) registered under the 1060/2009 Regulation (as amended) with ESMA. Our key concern relates to the proposed Article 15 (1) (b) prohibiting the simultaneous issuance of ESG rating and credit ratings. We further provide some comments on the proposed scope and disclosures provisions of the regulation.

Before commenting on the ESG ratings proposal, we highlight that ESMA issued “guidelines on disclosure requirements applicable to credit ratings”<sup>3</sup> (which apply already for more than 3 years), which include specific obligations on CRAs to disclose in their press releases whether ESG factors were a key driver behind a change to a credit rating or rating outlook. CRAs are therefore mandated to consider and disclose ESG factors in their credit rating activities (“outside-in perspective”). Based on this ESMA requirement, most EACRA Members now include ESG considerations in their rating activities, some EACRA Members having developed separate products outlining more precisely these ESG considerations. Several EACRA Members are also signatories of the Principles for Responsible Investing Statement on ESG in credit risk and ratings<sup>4</sup>.

---

<sup>1</sup> See press release available at: [https://finance.ec.europa.eu/publications/sustainable-finance-package-2023\\_en#regulation](https://finance.ec.europa.eu/publications/sustainable-finance-package-2023_en#regulation)

<sup>2</sup> Text of legislative proposal is available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0314>

<sup>3</sup> Available at: [https://www.esma.europa.eu/sites/default/files/library/esma33-9-320\\_guidelines\\_on\\_disclosure\\_requirements\\_applicable\\_to\\_cras.pdf](https://www.esma.europa.eu/sites/default/files/library/esma33-9-320_guidelines_on_disclosure_requirements_applicable_to_cras.pdf)

<sup>4</sup> Available at: <https://www.unpri.org/credit-risk-and-ratings/statement-on-esg-in-credit-risk-and-ratings-available-in-different-languages/77.article>

With respect to the proposed ESG ratings regulation, we note that several concepts of the CRA Regulation in terms of processes, procedures and organisational requirements as well as requirements on rating methodologies would also apply but in a far less stringent and detailed manner. The proposed ESG ratings regulation can therefore be classified as a far lighter regulation than the CRA Regulation.

In view of the above, we welcome that ESG rating providers would not be allowed to provide credit rating activities as foreseen in Article 15 (1) (b) of the proposed regulation. On the other hand, we are of the view that this requirement should not apply to entities already registered as credit rating agencies under regulation 1060/2009 for the following reasons:

- Registered credit rating agencies organizational frameworks naturally adhere to the provisions of the proposal;
- Registered credit rating agencies are already supervised by ESMA;
- Registered credit rating agencies have implemented research departments focusing on ESG in credit ratings (in application to ESMA's guidelines on this matter) in order to develop, assess and study ESG factors relevant to the applicable methodologies. It should be considered an advantage to implement synergies and interactions - compatible with applicable regulations – with the existing ESG operations;
- Regulation 1060/2009 requirements are based on the same pillars of the proposal, but the former are even stricter, therefore registered credit rating agencies should be even more inclined and compliance oriented from a regulatory and supervisory perspective;
- The decision to keep article 15 1(b) would imply an increase of governance costs and an organizational, governance and control burden for registered CRAs, with no actual effective compliance advantage: such costs and burden would have a greater impact on medium and small-sized CRAs rather than on the incumbents.

According to the proposed Article 3 (5) (xxiii), credit rating agencies are considered regulated financial undertaking for the purpose of this ESG regulation. Article 2 (2) b of the ESG regulation states that the regulation does not apply to “ESG ratings produced by regulated financial undertakings in the Union that are used for internal purposes or for providing in-house financial services and products”. As mentioned in our opening remarks, ESMA requires credit rating agencies to disclose ESG considerations in their rating reports. Credit rating agencies therefore can't benefit from Article 2 (2) b since their ESG analysis is not restricted to internal purposes but is disclosed publicly.

Based on the above, we submit one important amendment for a new paragraph (3) in the proposed Article 15: **Article 15 1 (b) does not apply to entities registered as credit rating agencies under regulation 1060/2009.**

The proposed ESG ratings regulation excludes from the scope “the provision of ESG data that do not contain an element of rating or scoring” (Article 2 (2) c). Given the wide use of ESG assessments, we believe that the underlying data would also benefit from the integrity considerations included in this proposal. We are also concerned with the Article 2 (2) h which excludes “ESG ratings from an authorised ESG rating provider that are made available to users by a third party” as this represents an easy route to circumvent the proposed regulation. Finally, in order to ensure a level playing field, we believe that ESG ratings produced by Union or Member States public authorities should have the first three conditions as in Article 2 (2) (i) applicable to central banks.

Compared to the CRA Regulation, we note that this proposal lacks two important elements. First, the ESG rating providers are not mandated to disclose the ESG Rating to the rated entity ahead of the general publication. Instead, the proposal foresees a complaints handling mechanism (Article 18). It is unclear whether this alternative approach would work better. Second, while general information on ESG rating providers shall be available at the European Single Access Point (ESAP) from January 2028 onwards, ESG ratings shall not be disclosed at ESAP. If ESMA manages to successfully disclose credit ratings in a user friendly version at ESAP, we see no reason why issuer solicited ESG ratings should not be available at ESAP.

## **About EACRA**

The European Association of Credit Rating Agencies (EACRA), set up in November 2009 and registered in Paris, was established to act as a platform for cooperation for EU-based Credit Rating Agencies (CRAs). Our mission is to support and facilitate the compliance of CRAs with regulatory requirements through effective communication, cross-border know how, and the promotion of best practices. In addition, EACRA seeks to promote Credit Ratings and the interests of CRAs across Europe, as well as enhance the financial community and general public’s understanding of Credit Ratings.