Response to the targeted consultation on the functioning of the ESG ratings market in the European Union and on the consideration of ESG factors in credit ratings[1]

June 7, 2022

[The response is focused on possible EU intervention (A.III and B.III), and is inserted below in red.]

PART A – ESG RATINGS

Background information

ESG ratings are used by a wide variety of investors as part of their sustainable investment strategy to take into account risks and opportunities linked to ESG issues. Consequently, these ratings have an increasingly important impact on the operation of capital markets and on confidence of investors in sustainable financial products. For the purposes of this consultation the term ESG ratings is based on the definition provided in the International Organization of Securities Commissions' (IOSCO) final report on environmental, social and governance (ESG) ratings and data products providers (21 November 2021).

ESG ratings: refer to the broad spectrum of ratings products that are marketed as providing an opinion regarding an entity, a financial instrument or a product, a company's ESG profile or characteristics or exposure to ESG, climatic or environmental risks or impact on society and the environment that are issued using a defined ranking system of rating categories, whether or not these are explicitly labelled as "ESG ratings".

Due to the importance and growth of this market, and potential issues identified as to its functioning, in the action plan on sustainable finance, published in March 2018, the Commission announced a study to be conducted to dig further into the specifics of this market.

The study on sustainability-related ratings, data and research ('the study') was published in January 2021. The study identified a number of issues pertaining to the functioning of the market of ESG ratings providers, in particular on transparency around data sourcing and methodologies, as only few firms disclose the underlying indicators or their actual weights of their assessment. The study also highlighted issues in terms of timeliness, accuracy and reliability of ESG ratings. Another issue identified related to biases, based on the size and location of the companies. Finally, it highlighted potential conflicts of interest associated with certain aspects of their work, including where providers both assess companies and offer paid advisory services or charge companies to see their own reports.

As part of the consultation on the renewed sustainable finance strategy, which took place in early 2021, the Commission asked stakeholders about their views on the quality and relevance of ESG ratings for their investment decisions, on the level of concentration in the market for ESG ratings and

[1] Link to the consultation: https://ec.europa.eu/info/consultations/finance-2022-esg-ratings_en

need for action at EU level. This confirmed the conclusions of the study, Stakeholders indicated that better comparability and increased reliability of ESG ratings would enhance the efficiency of this fast growing market, thereby facilitating progress towards the objectives of the EU green deal.

This consultation will directly feed into an impact assessment that the Commission will prepare in the year 2022 in order to assess in detail the impacts, costs and options of a possible EU intervention. This consultation should help further clarifying and quantifying the main findings from the study and input received from market participants.

On 3 February 2022, the European Securities and Markets Authority (ESMA) published a call for evidence, complementary to this consultation, in order to support the exercise and provide a mapping of ESG rating providers operating in the EU. The call for evidence also looks at possible costs of supervision would these providers become subject to some supervision.

Subject to the result of this impact assessment, the Commission would propose an initiative to foster the reliability, trust and comparability of ESG ratings by early 2023.

This consultation also seeks views from market participants on the use of other types of tools that can be offered by sustainability-related providers, including research, controversy alerts, rankings, etc.

I. Use of ESG ratings and dynamics of the market

The study identified a rapid growth in global assets committed to sustainable and responsible investment strategies over the last decade, which is forecast to continue as sustainable investing becomes fully integrated into asset management.

This leads to higher demand by investors for ESG ratings to help them decide on particular investment strategies.

The study identified two key trends over the past five years - being consolidation and reinforcement of the established ESG ratings providers, and growth in the overall number of providers due to new market entrants.

The study also highlighted that it is challenging for new market entrants to replicate and compete with the larger providers due to high initial level of investment needed to cover a broad range of ESG issues, with as many as a thousand data points, across thousands of companies.

1. Questions for investors, asset managers and benchmark administrators

i. Do you use ESG ratings?

• Yes, very much

• Yes, a little

• No

Please explain

• Comment box

ii. Which type of ESG ratings do you use (non-exhaustive list – multiple answers possible):

ESG ratings providing an opinion on companies:

• ESG ratings providing an opinion on opportunities

• ESG ratings providing an opinion on the compliance of companies with frameworks and rules

• Exposure to and management of ESG risks

• ESG ratings providing an opinion on a company performance towards certain objectives

• ESG ratings providing an opinion on the impact of companies on the society and environment

• ESG ratings providing an opinion on the ESG profile of the company

ESG ratings providing an opinion on investment funds or other financial products (please specify which financial products):

- Investment funds

- Others (comment box)

• exposure to and management of ESG risks

• impact on the society and environment

• ESG characteristics

• Other specialised ratings

• None

• Not applicable

If you responded that you use specialised ratings, please indicate which one(s):

• Comment box

iii. To what degree do you use ESG ratings in investment or other financing decisions on the a scale of from 1 to 10 (1- very little, 10 – decisive)?

• Comment box

iv. If you don't use ESG ratings, or use on them to a very small degree, what do you use on in your investment or other financing decisions?

• Comment box

v. Do you use overall ESG ratings or ratings of individual Environmental, Social or Governance factors?

• Overall ESG ratings

• Ratings of an individual Environmental, Social and Governance factors

• Ratings of specific elements within the Environmental, Social and Governance factors,

• other types, please specify

vi. Do you buy ESG ratings as a part of a larger package of services?

• Yes

• No

• Not applicable

If you responded yes to the previous question, what other services do you buy?

• Comment box

If you responded yes to the previous question, do you consider that buying ESG ratings as a part of a larger package would give rise to potential conflicts of interests?

• Comment box

vii. What are you using ESG ratings for? (multiple choice)

• as a starting point for internal analysis

• as one of many sources of information that influence the investment decisions

• to meet regulatory or reporting requirements

• as a decisive input into an investment decision

• as a reference in financial contracts and collaterals

• for risk management purposes

• other(s).

If you use ESG ratings for other purposes, please specify which ones?

• Comment box

viii. As a benchmark administrator, how do you take into account ESG ratings for the construction of a benchmark and/or in disclosures around a benchmark?

• Comment box

ix. Do you refer to ESG ratings in any public documents or materials?

• Yes

• No

If you responded yes to the previous question, specify the type of documents of materials

• Comment box

x. What do you value and need most in ESG ratings:

• transparency in data sourcing and methodologies,

• timeliness, accuracy and reliability of ESG ratings,

• final score of individual factors

• aggregated score of all factors

• rating report explaining the final score or aggregated score

• specific information, please explain

• data accompanying rating

• other aspects

If you responded 'other aspects' to the previous question, please explain why :

• Comment box

xi. To what degree to you consider the ESG ratings market to be competitive and allows for choice of ESG rating providers at reasonable costs, on a scale from 1 (not competitive) to 10 (very competitive)?

• Comment box

2. Questions for companies subject to ratings

i. Do you have access to ESG ratings of your own company?

• Yes

• No

• Comment box

ii. To what degree do you use ESG ratings to assess the way you manage sustainability risks and opportunities and your impact on the outside world, on a scale from 1 (not determinant) to 10 (determinant)?

• Comment box

iii. If you do not use ratings, what do you use to assess the way you manage sustainability risks and opportunities and your impact on the outside world?

• Comment box

iv. Does this vary between individual E, S and G factors?

• Comment box

v. Do you provide information on ESG ratings you have received in any of your public documents?

• Yes

• No

• No opinion

If you responded yes to the previous question, please specify where you disclose this information:

• Answer

3. Questions for all respondents

i. Do you consider that the market of ESG ratings will continue to grow?

• Yes

• No

• No opinion

If you responded 'yes' to the previous question, to what extent do you expect the following factors to be decisive, on a scale from 1 (not at all) to 10 (very much)?

• Growth in demand from investors in ratings of companies for their investment decisions

• Growth in demand from companies in ratings including on rating future strategies

• Further standardisation of information disclosed by companies and other market participants

• Other

If you responded 'other' to the previous question, please specify the other reasons you see for this market to continue to grow

• Comment box

<u>ii. Are you considering to use more ESG ratings in the future?</u>

• Yes, to a large degree

• Yes, to some degree

• No

• No opinion

If you responded 'yes' to the previous question, please explain why

• Comment box

If you responded 'no' to the previous question, please explain why

• Comment box

<u>iii. Do you mostly use ESG ratings from bigger or larger market players?</u>

• Exclusively from large market players

• Mostly from larger market players

• Mixed

• Mostly from smaller market players

• Exclusively from smaller market players

• Not applicable

iv. If you use mostly or exclusively ratings from large ESG rating providers, what are the main reasons for this?

• Comment box

v. Do you consider there is a sufficient offer of ESG ratings from providers located in the European Union?

• Yes

• No

• No opinion

If you responded 'yes' to the previous question, please explain why

• Comment box

If you responded 'no' to the previous question, please explain why

• Comment box

vi. Finally, do you use other types of ESG assessment tools than ESG ratings (e.g. controversy screening, rankings, qualitative assessments, etc.)?

• Yes

• No

If you responded 'yes' to the previous question, how important are these tools in relation to the implementation of your investment strategies and engagement policies?

• Comment box

vii. Do you believe that due diligences carried out by users of ESG research are sufficient to ensure an acceptable level of quality?

• Yes

• No

If you replied 'no' to the previous question, would you see merit in refining the current definition of research under Directive 2014/65/EU1?

• Comment box

viii. Do you further believe that ESG research products have reached a sufficient level of maturity and comparability to allow users to fully understand the products they use?

• Comment box

II. Functioning of the ESG ratings market

The study identified several issues on the functioning of the ESG ratings market that may hamper its further development.

In particular, there is an overall demand for greater transparency of objectives sought, methodologies adopted and quality assurance processes in place ESG rating providers.

The timeliness, accuracy and reliability of the output from ESG ratings providers were also identified as issues for the good functioning of this market.

Another issue identified in the study concerns the existence of biases and low correlation across ESG ratings.

The potential for conflicts of interest, particularly associated with providers both evaluating companies and offering paid advisory services, was further highlighted. The study stressed that providers selling multiple products require an appropriate separation between departments to avoid potential conflicts of interest.

This section aims to inform on the functioning of the ESG ratings market and potential issues that hamper its development and trust by market participants.

i. How do you consider that the market of ESG ratings is functioning today?

• Well

• Not well

Please explain

• Comment box

ii. To what degree do you consider that the following shortcomings / problems exist in the ESG ratings market, on a scale of from 1 to 10 (1- very little, 10 – important)?

• Lack of transparency on the operations of the providers

• Lack of transparency on the methodologies used by the providers

• Lack of clear explanation of what individual ESG ratings measure

• Lack of common definition of ESG ratings

• Variety of terminologies used for the same products

• Lack of comparability between the products offered

• Lack of reliability of the ratings

• Potential conflicts of interests

• Lack of supervision and enforcement over the functioning of this market

• Other

If you responded ‘other’ to the previous question, please explain which ones:

• Comment box

<u>iii. What do you think of the quality of the ratings offered on a scale from 1 (very poor) to 10 (very good)?</u>

• Scale

Please explain why:

• Comment box

If you responded ‘very poor’ or ‘poor’ to the previous question, wo what degree do you consider that this affect your trust in the products that are offered, on a scale from 1 (no affect) to 10 (affects very much)?

• Answer (scale 1 to 10)

Please explain why

• Comment box

<u>iv. Do you consider that there are any significant biases with the methodology used by the providers?</u>

• Yes

• No

• No opinion

If you responded yes to the previous question, please specify the biases

• Biases based on the size of the company rated

• Biases based on the location of the company

• Other biases

If you responded 'other biases' to the previous question, please explain which ones

• Comment box

v. Do you think the current level of correlation between ratings assessing the same sustainability aspects is adequate?

• Yes

• No

• No opinion

vi. To what degree do you consider that a low level of correlation between various types of ESG ratings can cause problems for your business and investment decision, as an investor or a rated company, on a scale from 1 (no problem) to 10 (significant problem)?

• Comment box

vii. How much do you consider each of the following to be an issue, on a scale from 1 (no issue) to 10 (very significant issue)

• There is a lack of transparency on the methodology and objectives of the respective ratings

• The providers do not communicate and disclose the relevant underlying information

• The providers use very different methodologies

• ESG ratings have different objectives (they assess different sustainability aspects)

• Other issue(s)

If you responded 'other issue' in the previous question, please explain which one(s)

• Comment box

viii. Do you consider that a variety of types of ESG ratings (assessing different sustainability aspects) is a positive or negative feature of the market?

• Rather positive

• Rather negative

Please explain your response to the previous question :

• Comment box

<u>ix. To what degree do you consider this market to be prone to potential conflicts of interests on a scale from 1 (very little) to 10 (very much)?</u>

• Comment box

If you responded 'yes' to the previous question, where do you see the main risks? (multiple choice)

• Where providers both assess companies and offer paid advisory services

• Where providers charge companies to see their own reports

• In the absence of separation of sales and analytical teams

• With the ownership system of some providers, where the parent company may exert undue pressure or influence on the research and recommendations that a ratings provider offers

• In the lack of public disclosure of the management of potential conflicts of interest

• Other conflict(s) of interest

If you responded 'other(s) conflicts of interest' to the previous question, please specify the additional risks you see

• Comment box

<u>x. To what degree do you consider that the ESG ratings market as it operates today allows for smaller providers to enter the market on a scale from 1 to 10 (1- hard to enter, 10 – easy to enter)?</u>

• Scale from 1 to 10

<u>xi. What barriers do you see for smaller providers?</u>

• Comment box

<u>xii. Do you consider that the market currently allows for smaller providers who are already present in this market to remain competitive on a scale from 1 (does not allow) to 10 (fully allows)?</u>

<u>xiii. To what degree do you consider the fees charged for ESG ratings to be proportionate to the services provided, on a scale from 1 (not proportionate) to 10 (very proportionate)?</u>

• Scale

xiv. Do you consider that information on the fees charged by the providers is sufficiently transparent and clear?

• Yes

• No

• No opinion

If you responded 'no' to the previous question, please specify what you consider should be the minimum information to be disclosed

• Comment box

III. EU intervention

In light of the current situation and recent developments of the ESG ratings markets, and the potential issues affecting it, this section aims to gather stakeholder views on the need and type of a possible intervention at EU level.

a) Need for an EU intervention

i. Taking into account your responses to the previous sections, do you consider that there is a need for an intervention at EU level to remedy the issues identified on the ESG rating market?

• Yes

• No

• No opinion

Please explain why :

• Comment box

The ESG data and rating market has become significantly more important over the last few years, with growing demand from users for more and high-quality data and company performance evaluations. If anything, this growth in demand is only expected to increase in the coming years. Simultaneously and as underlined by the many EU initiatives in this area, the societal urgency to address the ESG issues in scope has never been greater, stressing the importance of reliable sustainability data and ratings. Overall, the ESG data and ratings market, in light of the various issues already identified in the 2020 European Commission's report, cannot yet meet the high standards required by the importance and the urgency of the ESG issues and for the financial markets to deploy their full capability in contributing to a more sustainable future. The extent to which this is the case depends on many factors, including variations between providers and whether users fully rely on the ESG ratings themselves or rather on the underlying data provisions as input for their own company assessments.

A targeted EU intervention based on a self-regulation approach (preferably a code of conduct required through an EU Directive, similar to the system put in place regarding the proxy advice market via the revised Shareholders' Rights Directive) is warranted to assure that the growing need for high-quality ESG data and ratings is met and that alignment with the broader EU objectives on sustainability and the role of the financial markets therein is promoted. Drafting a code of conduct should preferably be an industry-led process, with input from and/or overseen by relevant stakeholders. A self-regulation approach should be better suited to continue to enable the continuous need for innovation in the ESG rating industry as well. It is not in the interest of investors to burden emerging innovative companies in the industry with a disproportionate regulatory framework that would hamper competition and innovation. This might unintentionally contribute to the domination of the industry by a handful of players.

If you responded yes to the previous question, what type of intervention would you consider necessary?

- Non-regulatory intervention (e.g. guidelines, code of conduct)
- Legislative intervention

If you responded yes to the previous question, what do you consider should be the prime focus of the intervention? (multiple choice)

- Improving transparency on the operations of the providers,
- Improving transparency on the methodology used by the providers,
- Improving the reliability and comparability of ratings,
- Clarifying what is meant by and captured by ESG ratings, to differentiate from other tools and services,
- Clarifying objectives of different types of ESG ratings,
- Improving transparency on the fees charged by the providers,
- Avoiding potential conflicts of interests,
- Providing some supervision on the operations of these providers,
- Other measures (please specify).

For each of the points you selected in the previous question, please explain what solutions and options you would consider appropriate

- [comment box]

On improving transparency: Elements to be included in a code of conduct should follow the recommendations in the EC report, namely 'the disclosure of sustainability-related rating methodologies, including key factors such as the specific assessment criteria, sources of data, rationale for weighting, and any standards or guidelines considered.' Combined, the application of such principles in these areas should also lead to adequate transparency on e.g. the availability of data, existence of data gaps, sustainability reporting frameworks used, etc.

Regarding transparency around the application of such a code, the ESG rating market players should publicly disclose a reference to the code of conduct that they apply and report on the application of that code of conduct. Where an ESG rating market player does not apply a code of conduct, it shall provide a clear and reasoned explanation why this is the case. Where an ESG rating market player applies a code but departs from any of its recommendations or best practices, it shall declare from which parts it departs, provide explanations for doing so and indicate, where appropriate, any alternative measures adopted. This information should be placed on the websites of the ESG rating market players and should be updated on – at least – an annual basis.

On improving reliability and comparability: the ESG rating market players should at least provide information on i) the procedures put in place to ensure the quality of the ratings and the underlying analysis and data and the qualifications of the staff involved and ii) whether they have dialogues with the companies which are the object of their analysis and ratings and with the stakeholders of the company, and, if so, the extent and the nature thereof. Furthermore, improved comparability should both be understood as a need for an adequate understanding of how various methodologies can lead to various rating outcomes (i.e. avoiding inexplicable differences between ratings of different rating providers) as well as comparability between ratings from one and the same rating providers.

On avoiding conflicts of interest: as per the recommendations in the EC report, namely 'public disclosure of the management of conflicts of interest by sustainability-related rating, data and research providers. Sustainability-related product and service providers should be required to publicly disclose their policies and procedures for the prevention and management of potential conflicts of interest, or explain why they do not have such a process in place.' Additionally, the EC should provide guidance on avoiding conflicts of interest, as well as adopt a mechanism to evaluate the effectiveness of a self-regulation approach based on a code of conduct.

On supervision initiatives: given the cross-border operations and markets serviced by various key players in the ESG ratings market, the EC could consider tasking ESMA with a periodic evaluation of the application of a code of conduct, which could also promote consistency with CRA supervision where it concerns the integration of ESG integration into credit ratings. Within five years ESMA should report on the effectiveness of the code of conduct and should assess the need for establishing (further) regulatory requirements, taking into account relevant EU and international market developments.

If you responded 'other' to the previous question, please specify the other elements the intervention should focus on

• [comment box]

On 'other measures': Where applicable and necessary, aligning requirements for ESG data and rating providers with other policy initiatives in the area of sustainable finance (including CSRD, CSDDD, SFDR and Taxonomy). Such should also contribute to decreasing the burden for companies to respond to all these ratings, by having easy comparisons between metrics to enable companies to report in accordance to different metrics/rating with the same information.

ii. Do you consider that the providers should be subject to an authorisation or registration system in order to offer their services in the EU?

- Yes
- No
- No opinion

Please explain why :

- Comment box

The increased importance of ESG data and ratings providers and the growing dependency of an increasing amount of financial market actors warrants at a minimum a registration system of rating providers, in order to create a more regulated environment as a prerequisite for putting in place some kind of supervision.

iii. Do you consider that the providers should be subject to an authorisation or registration system in order to provide ESG ratings on EU companies or non-EU companies' financial instruments listed in the EU even if they offer services to global or non-EU investors?

- Yes
- No
- No opinion

Please explain why

- Comment box

Eumedion considers that a registration system should cover all providers rating EU companies and/or providing services to EU investors. A registration system and code of conduct should also provide some safeguards for EU companies who are subject to ESG rating activities.

iv. Do you consider that there should be some minimum disclosure requirements in relation to methodologies used by ESG rating providers?

- Yes
- No
- No opinion

Please explain why

• Comment box

In our view, a code of conduct should require minimum disclosures to improve transparency by providers, as per the recommendation in the EC report. See also above.

v. Do you consider that the providers should be using standardised templates for disclosing information on their methodology?

• Yes

• No

• No opinion

Please explain:

• Comment box

A code of conduct requiring a standardised format of disclosure may, while having certain downsides such as potentially limiting innovation or being mismatched with a provider's service, contribute to improving comparability as well as reliability of ESG-ratings, provided the quality of the ratings is also safeguarded by accompanying principles.

vi. Do you consider that the rules should be tailored to the size of the provider and hence have smaller providers subject to a lighter regime?

• Yes

• No

• No opinion

If you responded yes to the previous question, please specify what metric you consider should be used to differentiate between providers:

• Total revenue

• Revenue from ESG ratings

• Number of employees

• Other metric(s)

• in the case of providers located outside the EU and not providing services to EU investors but rating EU companies/financial instruments – percentage of EU companies/financial products rated

If you responded 'other metric(s)' please explain which one(s):

• Comment box

vii. Should the providers located outside of the EU, not providing services to the EU investors but providing ratings of the European companies/financial products be subject to a lighter regime?

• Yes

• No

• No opinion / not applicable

If you responded yes to the previous question, please specify what metric you consider should be used to differentiate between providers:

• Percentage of EU companies/financial products rated

• Other metric(s)

If you responded 'other metric(s)' please explain which one(s):

• Comment box

b) Costs of an EU intervention

Questions for ESG rating providers

i. Assume that in order to offer services to investors in the European Union or to rate European companies/financial products, ESG rating providers would be subject to an authorisation or registration requirement. How high would you estimate the one-off cost of applying for such an authorisation/registration? (please provide an estimate in EUR)

• Comment box

ii. In order to increase transparency, there may be considerations to introduce disclosure obligations on ESG rating providers. This could include, for example, disclosures on websites or annual reports on the operations and methodologies used by ESG rating providers and/or providing more information on how these methodologies were applied to specific ratings. Please estimate the number of hours needed to produce the following disclosures:

[TABLE]

If you chose more than 160 hours in the table above, please provide an indication of how many hours would be needed (for the costs in each column, as applicable). You may also use the following comment box if you wish to provide any further explanations.

• Comment box

iii. What percentage of these costs would be incurred even in the absence of legislation?

0% 1-20% 21%-40% 41%-60% 61%-80% 81%-100%

iv. Do you see any other costs related to providing these disclosures (e.g. adjustment of IT systems, external consultants, etc.)?

• Yes

• No

• Don’t know

If yes, please specify what type of cost and provide an estimate of its amount where feasible:

• Comment box

v. How many hours per week would you consider necessary to perform tasks that would be linked to fulfilling ongoing supervisory requirements?

• Negligible time

• Less than 5 hours (but not negligible)

• 5 to 9 hours

• 10 to 19 hours

• 20 to 40 hours

• More than 40 hours

If more than 40 hours, please provide an indication of how many hours would be needed: [comment box]

vi. If there were similar conflict of interest provisions introduced for ESG rating providers as in Article 6 and Annex I to Regulation (EU) 1060/2009 (CRA regulation), would you consider the associated costs to be of similar magnitude?

• Yes

• No

• Don’t know

Please explain

• Comment box

vii. Do you expect that you would face any further costs as an ESG rating provider as a result of a possible legal framework besides those mentioned above?

• Yes

• No

• Don't know

If yes, please explain what types of costs, whether they would be one-off or ongoing and provide estimates if possible:

• Comment box

viii. Do you estimate that possible additional compliance costs implied by a minimum requirement framework for ESG ratings would be compensated by the benefits of higher quality and more reliable ratings?

• Not at all

• To some extent

• To a reasonable extent

• To a great extent

• No opinion

ix. What other impact(s) of a regulatory and supervisory framework on the operations of ESG rating providers would you see (e.g. potential impacts on competition, SMEs assessed by ratings, users of ratings, sustainable development)?

• Comment box

Questions for supervisors

i. How many hours of work would you consider necessary to perform tasks that would be linked to granting an authorisation for one ESG rating provider?

• Negligible time

• Less than 5 hours (but not negligible)

• 5 to 9 hours

• 10 to 19 hours

• 20 to 40 hours

• More than 40 hours

If more than 40 hours, please provide an indication of how many hours would be needed

• comment box

<u>ii. How many hours per week would you consider necessary to perform supervisory tasks per ESG rating provider?</u>

• Negligible time

• Less than 5 hours (but not negligible)

• 5 to 9 hours

• 10 to 19 hours

• More than 20 hours

If more than 20 hours per week, please provide an indication of how many hours would be needed

• comment box

PART B – INCORPORATION OF ESG FACTORS IN CREDIT RATINGS

The provision of credit ratings is highly regulated in the EU as well as globally. Global standards are established by the IOSCO in its code of conduct for CRAs. The EU legal framework regulates the activities of CRAs with a view to protect investors and financial markets by guaranteeing the transparency, independence and integrity of the credit rating process – thereby enhancing the quality of ratings. All CRAs operating in the EU need to register with ESMA, which is the sole European supervisor. Credit ratings used for the purposes stemming from the EU legislation need to be provided by CRAs registered and supervised by ESMA. If a non-EU CRA wants its ratings to be used for regulatory requirements in the EU (i.e. by EU financial institutions), the CRA Regulation provides for two alternatives, certification or endorsement.

There are a number of EU regulatory requirements related to the use of credit ratings. , in particular, in the Capital Requirements Regulation (CRR) and in the Solvency Capital Requirement (SCR). The European Central Bank also makes extensive use of credit ratings in its open market operations.

Both EU legislation2 and the IOSCO code of conduct define precisely the objective of the credit rating: 'credit rating means an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories'.

In other words, credit ratings assess the likelihood of the default of the rated entity or security. Credit ratings reply to the question: "what is the likelihood of getting my money back?" They are neither investment recommendations nor they determine the value of the rated entity or instruments.

ESG risks may be relevant for the assessment of creditworthiness depending on the sector, geographical location and the entity itself. CRAs methodologies define which factors, including ESG factors, are considered to be relevant for the assessment of creditworthiness and how they are taken into account in the credit rating process. ESMA supervises the soundness of methodologies, which in accordance with the CRA Regulation need to be rigorous, systematic, continuous, based on historical experience and back-tested. In its Technical Advice provided to the Commission in 2019, ESMA concluded that while it is clear that CRAs are considering E, S or G factors in their credit ratings, the extent to which each factor is considered varies by asset class, according to the importance assigned to that factor by a CRA's methodology. Currently, ESMA is conducting a thorough assessment of how CRA's methodologies incorporate sustainability risks.

The CRA Regulation includes a number of disclosure obligations in relation to the methodologies as well as individual credit ratings. In 2019, ESMA conducted a public consultation on disclosure requirements applicable to credit ratings. Following the finding on the insufficient transparency on the relevance of ESG factors to credit ratings, one of the topics of the consultation, ESMA issued guidelines on disclosure requirements applicable to credit ratings.

These ESMA guidelines expect CRAs to identify in their press releases if ESG factors have been key drivers behind a change in the credit rating. CRAs are asked to identify relevant factors, elaborate on their materiality and provide a reference to the methodology or the associated model. The ESMA guidelines came into effect in April 2020.

A recent assessment of the application of the guidelines revealed that the improvement of transparency has been partial. ESMA has analysed press releases over the period January 2019 – December 2020 and compared the number of references to ESG considerations before and after April 2020. The main findings are that the improvement is partial and not uniform.

This consultation builds on the findings of ESMA and the consultation on renewed sustainable finance strategy.

I. Questions to users of credit ratings

<u>i. Do you use credit ratings for investment decisions?</u>

• Yes, as a starting point for internal analysis

• Yes, as one of many sources of information that influence investment decisions

• Yes, as a decisive input into an investment decision

• No

• Other

If you use credit ratings for other purposes, please explain :

• [Comment box]

<u>ii. Do you use credit ratings for regulatory purposes (e.g. stemming from the Capital Requirements Regulation or Solvency II)?</u>

• Yes

• No

• These requirements don’t apply to me

iii. Is it important for you to understand to what extent individual credit rating actions have been influenced by sustainability factors?

• Not important at all

• Slightly important

• Important

• Very important

• No opinion

iv. Do you find information about the extent to which CRAs methodologies or the rating process incorporate sustainability factors sufficiently well disclosed?

• Yes

• No

• No opinion

Please explain

• [comment box]

v. Where do you look currently for the information on how ESG factors impact the credit rating? (multiple choice)

• Press release accompanying credit ratings

• Additional analysis and reports available to subscribers

• Additional information materials available publicly

• Description of methodologies or rating process for specific asset classes, sectors or types of entities

• Frameworks or documents describing general approach to incorporation of ESG factors in credit rating process

• I don’t know where to find such information

• Other

If you responded ‘other’ please explain where:

• [Comment box]

vi. Does the level of disclosure differ depending on individual CRAs?

• Yes

• No

• No opinion

If you answered yes to the previous question, please explain the differences in the level of disclosure:

• [Comment box]

vii. What are the trends on the market in relation to disclosure of information as to which credit ratings actions have been influenced by sustainability factors? (multiple choice)

• The level of disclosure has improved sufficiently since the entry into effect of ESMA guidelines (April 2020)

• In general the level of disclosure has improved sufficiently although some CRAs are lagging behind

• The overall level of disclosure is insufficient although some CRAs have sufficiently improved

viii. The extent to which CRAs incorporate ESG factors in credit ratings depends on the asset classes methodologies and the importance assigned to the given factor by a CRA’s methodology. In addition, some CRAs have developed overall frameworks explaining how they incorporate ESG factors in credit ratings across asset classes, some publish reports reviewing past credit rating actions or specific sections accompanying credit rating actions.

In your opinion, what are trends in the relation to the incorporation of ESG factors in the credit rating process and methodologies?

• CRAs have sufficiently improved the incorporation of ESG factors in their methodologies and rating process,

• In general CRAs have sufficiently improved the incorporation of ESG factors in credit ratings although some CRAs are lagging behind

• In general the development is insufficient although some CRAs have improved the incorporation of ESG factors in their methodologies and rating process,

• CRAs have insufficiently improved the incorporation of ESG factors in their methodologies and rating process

II. Questions to Credit Rating Agencies

i. Do you explicitly incorporate ESG factors in your methodologies?

• Yes

• Yes, but only for asset classes and sectors where relevant

• Partially

• No

Please explain your reply

• [Comment box]

ii. Which individual E, S and G factors do you consider in your methodologies? (multiple choice)

• Environmental factors

• Social factors

• Governance factors

• Other – sustainability related factors

Please explain in more details

• [comment box]

iii. In addition to methodologies, do you have a framework or a document describing how you incorporate ESG factors in the credit rating process? By framework, we mean any general approach to the incorporation of ESG factors in credit rating process, in addition to methodologies for asset classes and sectors.

• Yes

• No

• Other

If you answered other, please explain

• [Comment box]

iv. Have you improved disclosure on ESG factors in credit ratings since April 2020 when ESMA guidelines became applicable?

• Yes

• Partially

• No, but we plan to improve

• No, because we have already been disclosing such information

• No

If you replied no to the previous question, please explain why

• [Comment box]

III. Questions on the need for EU intervention (all respondents)

i. Do you consider that the current trends in the market are sufficient to ensure that CRAs incorporate relevant ESG factors in credit ratings?

• Yes

• No

• No opinion

ii. Do you consider that the current trends in the market and application of ESMA guidelines on disclosure applicable to CRAs are sufficient to ensure understanding among users as to how ESG factors influence credit ratings?

• Yes

• No

• No opinion

iii. If you responded 'no' to the previous questions, what type of intervention would you consider necessary? (multiple choice)

• Further detailing of ESMA guidelines on the disclosure of ESG factors in credit ratings

• Further supervisory actions by ESMA

• Legislative intervention.

• While improvements are insufficient, we do not see further scope for EU intervention

• Other, please specify

If you responded ‘other’ to the previous question, please specify the other type of intervention you consider necessary:

• Comment box

iv. Regarding the possible regulatory intervention, what type of requirements do you find relevant? (multiple choice)

• Press releases: introduce mandatory requirements mirroring the provision of ESMA guidance on the disclosure ESG factors in credit ratings

• Press releases: in addition to the previous option require CRAs to publish information not only about the impact of ESG factors on credit ratings, but also the lack of it,

• Methodologies: require CRAs to explain the relevance of ESG factors in methodologies,

• Methodologies: require CRAs to take into account ESG factors where relevant,

• Other.

If you responded other, please explain:

• [Comment box]

v. What kind of risks or merits of the EU intervention do you see?

• Provide further clarity on the impact of ESG factors on the creditworthiness of creditors and financial instruments

• More coherent approach of CRAs to the incorporation of ESG factors into credit ratings

• Concerns about too much prominence given to ESG factors

• Others

If you responded ’others’, please explain:

• [Comment box]

vi. What would be the consequences of the lack of the EU intervention? (multiple choice)

• Market trends are sufficient to meet investors demands for information on the impact of ESG factors on credit ratings

• CRAs will respond to market pressure and ensure the incorporation of ESG factors in credit ratings

• The existing gap between approaches of CRAs to the incorporation of ESG factors in credit ratings will grow

• Concerns about the insufficient incorporation of ESG factors in credit ratings lack of understanding among investors why certain credit rating actions are not impacted by ESG factors

Costs of EU intervention – questions for CRAs

i. Where applicable, what are your costs in EUR to disclose information based on the current Guidelines on disclosure of ESG factors in credit ratings?

[Comment box]

ii. Would you foresee any additional compliance costs if the current Guidelines on disclosure of ESG factors in credit ratings were to become part of the EU legislation?

[Comment box]

iii. To what degree do CRAs overall already follow the guidelines in the absence of an obligation to do so?

• 0% 1-40% 41%-60% 61%-80% 81%-90% 91%-99% 100%

iv. Would you expect additional compliance costs if EU legislation explicitly required CRAs to take into account ESG factors where relevant in the rating process?

• No or negligible additional costs

• Low additional costs

• Moderate additional costs

• High additional costs

• Do not know

If you do expect additional compliance costs, how high would you expect these additional costs, as compared to current practice?

• [Comment box]

Please explain

• [Comment box]