

Milan, 31 August 2023

## PROPOSAL FOR A REGULATION ON TRANSPARENCY AND INTEGRITY IN ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) RATING ACTIVITIES

### Foreword

By accepting the invitation of this Honourable Commission to submit comments and observations on the Proposal for a Regulation of the European Parliament and of the Council on Transparency and Integrity of Environmental, Social and Governance (ESG) Ratings, AIPB would first thank you for this opportunity and express its general appreciation for the proposed regulation which aims at improving the quality of ESG ratings to enable investors to make more informed investment decisions in relation to sustainability objectives and at promoting confidence in ESG rating providers ensuring the proper functioning of the market.

In particular, AIPB agrees with the criterion behind the proposed draft regulation which is not intended to harmonise the methodologies used by ESG ratings providers but to increase their transparency, in order to ensure the availability of a variety of approaches under the banner of pluralism in the ESG ratings market.

From this point of view, a number of remarks are being presented here to the Commission hoping that they will be taken into consideration to facilitate a better understanding of the proposed regulation.

### I. Re the subjective and objective scope of the Regulation

According to recital (15) of the proposed regulation, 'the rules on ESG rating providers should not apply to private ESG ratings calculated upon an individual order and provided exclusively to the person who requested the rating and which are not intended for public disclosure or distribution by subscription or other means. Those rules should also not apply to ESG ratings produced by European financial firms and used for internal purposes [...]'.  
*According to recital (15) of the proposed regulation, 'the rules on ESG rating providers should not apply to private ESG ratings calculated upon an individual order and provided exclusively to the person who requested the rating and which are not intended for public disclosure or distribution by subscription or other means. Those rules should also not apply to ESG ratings produced by European financial firms and used for internal purposes [...]*'.

On the basis of the above, "internal" ESG ratings developed by intermediaries or "proprietary" ESG ratings that are not intended for distribution for a fee ("by subscription or other means") seem to be excluded from the scope of the Regulation.

Article 2(2)(a) of the proposed Regulation reads as follows: *'This Regulation shall not apply to any of the following:*

- a) private ESG ratings that are not intended for public disclosure or distribution.*
- b) ESG ratings produced by regulated financial firms in the Union that are used for internal purposes or for the provision of internal financial services and products'.*

AIPB is of the opinion that the proposed text appears inconsistent with the objective of excluding from the scope of the Regulation 'proprietary' ESG ratings that are not intended for distribution and dissemination *'by subscription or other means'*, i.e. against the payment of a fee.

In other words, if our understanding of the rationale behind the legislative initiative is correct, the proposed text should also specify that internal ESG ratings are not subject to the regulation when they are disclosed to the public but are not distributed for a fee.

Notwithstanding the above, AIPB is of the opinion that the draft Regulation should be clearer on the difference between, on one hand, intermediaries who have developed their own internal ESG rating methodology in connection with the structuring of products or the provision of investment services to their clients but do not operate as ESG rating providers on a professional basis and for commercial purposes and, on the other hand, ESG rating providers within the meaning of the Regulation, which, conversely, are defined in Article 3(1)(4) as legal persons *"... whose business includes the offering and distribution of ESG ratings or scores on a professional basis"*. Also, financial intermediaries who are not ESG rating providers within the meaning of the Regulation and therefore offer ESG ratings on a not-for-profit basis for the purposes of the business of structuring financial products and providing investment services to their clients, should be able to publish the data they produce without being subject to authorisation (bearing in mind, inter alia, that financial intermediaries are supervised entities subject to governance and transparency rules) and, more generally, to the rules dictated by the Regulation on legal persons operating as ESG rating providers on a professional and fee-based basis.

Issuers and financial intermediaries, in fact, may define several proprietary ESG rating/scoring methodologies in order to create ESG products or to assess client portfolios and carry out suitability checks within the framework of the provision of investment services, first and foremost the advisory service, to their clients, also indicating these ESG scores in the product and advisory reports delivered to clients. For example, averages can be calculated using the rating/scoring values processed by specialised data providers, possibly supplemented with additional

information available from the relevant issuer or asset manager (e.g., the presence of disputes or exclusion rules), but in any case these are internally developed methodologies necessary for the management of investment processes, also in light of the new SFDR and Taxonomy regulatory framework, of the products issued or for the provision of MiFID investment services to clients, taking into consideration the MiFID ESG framework.

This activity is by no means carried out professionally and offered to market players for commercial purposes and upon payment which is carried out by specialised entity/providers, namely ESG data providers such as MSCI, Bloomberg, Refinitiv, Morningstar etc.

Therefore, we request that the draft regulation is amended to better specify that the same does not apply to:

- private ESG ratings published for free
- ESG ratings developed and disclosed to the public, instrumental to the provision of investment services or to the structuring and advertisement of products issued by financial intermediaries who do not act as ESG ratings providers on a professional, fee-based basis.

In light of the above, AIPB proposes to amend the draft regulation as follows:

- Article 2(2)(a): *'private ESG ratings **or scoring** which are not intended for public disclosure or for distribution **on a commercial basis**'*
- Article 2(2)(b): *'ESG ratings **or scoring** produced by regulated financial firms of the Union used for internal purposes or **for external purposes in connection with the provision in-house** of financial services and products **to their prospect and customers or required by other EU regulations applicable to regulated financial firms, services or products or provided to other entities of the same group**'*
- Article 3, point 1: *"ESG rating" means an opinion, a score or a combination of both, regarding an entity, a financial instrument, a financial product, or an undertaking's ESG profile or characteristics or exposure to ESG risks or the impact on people, society and the environment, that are based on an established methodology and defined ranking system of rating categories and that are provided to third parties **on a professional basis and for commercial purposes**, irrespective of whether such ESG rating is explicitly labelled as 'rating' or 'ESG score'*
- Article 3(4): *'ESG rating providers' means a legal person whose professional activity includes the offering and distribution of ESG ratings or scores on a professional basis **and for commercial scope by subscription for a charge***

## II. Re the role of distributors as users of ESG ratings

Article 3(1)(8) of the draft regulation defines the 'user' of ESG ratings as '*a natural or legal person, including a public authority or a body governed by public law, whom an ESG rating is provided*'.

AIPB is of the opinion that from this definition and from the structure of the draft Regulation – the purpose of which was to make the provision of ESG ratings on a professional basis an activity subject to authorisation by ESMA – that, on the one hand, intermediaries providing advisory or placement and distribution services of insurance and managed products should also be considered users for the purposes of the Regulation; on the other hand, as such they cannot be held liable for relying on ESG ratings distributed by providers authorised under the Regulation, also in relation to the future framework that will be introduced to manage potential greenwashing.

An intermediary that uses ESG ratings to provide investment or collective management services cannot be required to carry out an assessment of the quality of the ESG rating data used, nor can it be held responsible for the methodological correctness and reliability of the information sources used by ESG rating providers which are precisely the main subject of the new draft regulation. The users of ESG rating/scoring must be able to legitimately rely on the output they receive without being obliged to carry out data quality assessments or material verification activities on their reliability nor they should be held responsible for potential greenwashing that will be better regulated in the future.

Therefore, it is deemed appropriate and necessary to include in the text of the Regulation a specific provision concerning the role of ESG rating/scoring users which, among other things, clearly indicates that intermediaries acting as distributors (e.g. a bank providing advice on ESG products) as well as intermediaries issuing financial instruments (e.g. an asset manager issuing a UCITS) that are users of ESG ratings cannot be held liable for having legitimately relied on ESG ratings/scoring distributed by ESG rating/scoring providers for the provision of investment and collective management services.