ecoDa
The European Voice of Directors

To: the Rapporteur and Shadow Rapporteurs to the file 2023/0177(COD)
Ms. Aurore Lalucq, Mr. José Manuel García-Margallo, Mr. Billy Kelleher, Mr. Rasmus Andresen, Ms. Dorien Rookmaker, and Mr. Dimitrios Papadimoulis

Brussels, 23 October 2023

Dear Rapporteur and Shadow Rapporteurs,

Subject: Ordinary legislative procedure on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities

The European Confederation of Directors' Associations (ecoDa), which represents the main national institutes of directors in Europe fully backs the European Commission's objectives to foster the reliability, trust and comparability of ESG ratings as underlined in its draft Regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities.

The draft directive will provide greater transparency and clarity on the methodologies adopted (including the topics covered, the weight given to the metrics used, and the number of data points used), and on the terminologies used for the provision of ESG ratings. It will provide a range of approaches from which customers will benefit by choosing what is most appropriate for them. ecoDa appreciates the amendments suggested by the ECON Committee.

This being said, ecoDa would like to highlight the following points for your consideration:

Article 2
On the scope, article 2 says that the directive applies to ESG ratings (from public and private entities) that are distributed to regulated financial undertakings (and this would not be considered as "disclosed publicly"). We do not understand why ESG ratings produced by central banks would not have to follow the same rule regarding disclosure of methodologies (i.e., the directive), which is important even if (i)(c) is satisfied (i.e., the ratings are provided in accordance with principles standards and procedures, which ensure adequacy). Who will review and provide an opinion on this? Considering the ESG rating it is not the same as providing the methodologies and key assumptions. How will financial undertakings be able to understand the difference? We would suggest that either they are disclosed publicly or distributed and they are covered, or not (and not covered).

Article 14
Principle 9 under Article 14 requires an assessment mechanism, but does not specify who (i.e., which authority) will be responsible for the monitoring, and if any audit is required.

Article 15
Under Article 15, it is not clear why audit activities are not allowed (if audit performed under approved auditing standards, yet to be developed, and if it is disclosed)?

Article 16

- Under Article 16, there should be an obligation regarding regular training and minimum number of annual training hours;

- Since this article is related to independence (very similar to independence for independent auditors) it should mirror these principles (i.e. independence requirement are applicable to senior management of audit firms, not only rating analysts and employees or other persons **directly** involved in the provision of ESG ratings);
- §4 of article 16 should also refer to appearance of independence (in addition to conflict of interest);
- §5 of article 16 refers to confidentiality of information, and should be similar to what is required from audit firms;
- §6 of article 16 specifies: "does not have negative consequence for the person reporting". It is unclear if the paragraph refers to the entity subject to the rating;
- Under §7 of article 16, there should be a cooling off period mechanism similar to audit firms, and 6 months (§8) is not sufficient. It should be aligned with what is applicable to financial audits. We appreciate that the ECON Committee has raised the cooling off period to one year in its' Committee draft report.

Article 25

Article 25 §1 refers to "fees based on costs", which is inappropriate. The fees should not be completely disconnected from the costs. "Cost plus fee" pricing is familiar to the engineering firms, but seems inappropriate for services like ratings.

In addition, ecoDa would like to point out that the proposed text generally helps the ESG rating disclosure methodologies. In addition to this, rating agencies should also have to disclose key assumptions used for specific ratings in order for customers to access them easily. In audit reporting, it exists the key audit matter section (and key assumptions are disclosed in the basis of preparation of the annual report), which could serve as an example for the legislative text.

Furthermore, we are calling for more engagement between ESG rating providers and companies even if this comes with a cost. It is essential that rating providers understand the business strategy, as well as the sector and the context in which companies are evolving. This is especially the case if companies are in a transitional phase. In the context of due diligence to be performed (see EFRAG ESRS), more intensive questioning by the rating agencies is expected. Rating agencies will have to get professionalized on these subjects in order to develop proper impact analyses. They shall not only rely on provided data but additionally engage with companies through interviews. This role and obligation is pivotal in creating a level playing-field at sector level and in creating the conditions for "enforcement" by other financial actors and non-financial entities (e.g. an NGO, through name-and-shame actions).

ecoDa suggests to ask the ESG rating provider to communicate ESG ratings to the company and naming a contact person. This amendment enables to establish two-way communication.

We thank you for your consideration and remain at your disposal for further details.

With best regards,

Béatrice Richez-Baum
Director General, ecoDa

Person of reference
Anne-Hélène Monsellato
IFA France
ahmonsellato@icloud.com