Council of the European Union
General Secretariat

PUBLIC

Interinstitutional files:
2023/0177 (COD)

Brussels, 01 December 2023

WK 16164/2023 ADD 1

LIMITE

EF
ECOFIN
ENV
SUSTDEV
CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Sustainable Finance) Financial Services Attachés
N° Cion doc.:	ST 10638 2023 INIT + ST 10638 2023 ADD 1 + ST 10638 2023 ADD 2 + ST 10638 2023 ADD 3
Subject:	ESG Ratings Regulation: Compilation of replies to Presidency compromise proposal – CWP 22 November 2023 - replies from 10 MS

Please note that due to their size MS replies are uploaded in several documents

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2023/0177 (COD) **Proposal for a** **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** **on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities** **(Text with EEA relevance)**		
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Having regard to the proposal from the European Commission,		
After transmission of the draft legislative act to the national parliaments,		
Having regard to the opinion of the European Economic and Social Committee[1],		
Acting in accordance with the ordinary legislative procedure,		
Whereas:		

[1] OJ C , , p. .

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(1) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development[2], having at its core the Sustainable Development Goals (SDGs). The Commission's Communication of 2016 on the next steps for a sustainable European future[3] links the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, within the Union and globally, take the SDGs on board at the outset. The European Council conclusions of 20 June 2017[4] confirmed the commitment of the Union and the Member States to the implementation of the 2030		

2 Transforming our World: The 2030 Agenda for Sustainable Development (UN 2015).
3 COM(2016) 739 final.
4 CO EUR 17, CONCL. 5.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Agenda in a full, coherent, comprehensive, integrated and effective manner and in close cooperation with partners and other stakeholders. On 11 December 2019, the Commission published its communication on 'The European Green Deal'[5].		
(2) The transition to a sustainable economy is key to ensuring the long-term competitiveness of the Union economy. Sustainability has long been at the heart of the Union project and the Union Treaties give recognition to its social and environmental dimensions.		

[5] Communication from the Commission of 11 December 2019 on the European Green Deal, COM(2019) 640 final.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(3) Achieving SDG objectives in the Union requires the channelling of capital flows towards sustainable investments. It is important to exploit fully the potential of the internal market for the achievement of those goals. In that context, it is crucial to remove obstacles to the efficient movement of capital towards sustainable investments in the internal market and to prevent such obstacles from emerging.		
(4) The EU's approach to sustainable and inclusive growth is anchored in the 20 principles of the European Pillar of Social Rights to ensure a fair transition towards this goal and policies which leave no one behind. Furthermore, the EU social acquis including the Union of		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Equality Strategies[6] provides standards in the areas of labour law, equality, accessibility, health and safety at work, and anti-discrimination.		
(5) In March 2018, the Commission published its Action Plan 'Financing Sustainable Growth'[7], setting up its strategy on sustainable finance. The objectives of that Action Plan are to mainstream sustainability factors into risk management and reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth.		

6 Gender equality strategy; LGBTIQ equality strategy; Roma strategic framework; Strategy for the Rights of Persons with Disability.
7 European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(6) As part of the Action Plan, the Commission commissioned a study entitled "Study on Sustainability Related Ratings, Data and Research"[8] to take stock of the developments in the sustainability-related products and services market, identify the main market participants and highlight potential shortcomings. That study provided an inventory and classification of market actors, sustainability products and services available in the market and an analysis of the use and perceived quality of sustainability-related products and services by market participants.		(6) As part of the Action Plan, the Commission commissioned a study entitled "Study on Sustainability Related Ratings, Data and Research"[9] to take stock of the developments in the sustainability-related products and services market, identify the main market participants and highlight potential shortcomings. That study provided an inventory and classification of market actors, sustainability products and services available in the market and an analysis of the use and perceived quality of sustainability-related products and services by market participants.

[8] European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Study on sustainability-related ratings, data and research, Publications Office of the European Union, 2021, https://data.europa.eu/doi/10.2874/14850.

[9] European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Study on sustainability-related ratings, data and research, Publications Office of the European Union, 2021, https://data.europa.eu/doi/10.2874/14850.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
The study highlighted the lack of transparency and accuracy of Environmental, Social and Governance ('ESG') ratings methodologies and the lack of clarity over the operations of ESG rating providers.		The study highlighted the lack of transparency and accuracy of Environmental, Social and Governance ('ESG') ratings methodologies and the lack of clarity over the operations of ESG rating providers. **The study also identified a need for ESG ratings and ESG data providers to engage with entities to which their products relate to help guarantee the quality of the ratings and data products offered through better contextual understanding and correction of errors in data sets.**
(7) In the framework of the European Green Deal, the Commission put forward a renewed		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
sustainable strategy. The renewed sustainable finance strategy was adopted on 6 July 2021[10].		
(8) As a follow-up, the Commission announced in the renewed sustainable finance strategy, a public consultation on ESG ratings to feed into an impact assessment. In the public consultation that took place in 2022, stakeholders confirmed concerns with the lack of transparency of ESG ratings methodologies and objectives and clarity over ESG rating activities.		
(9) At international level, the International Organization of Securities Commissions		(9) At international level, the International Organization of Securities Commissions

[10] Communication from the Commission on the Strategy for Financing the Transition to a Sustainable Economy COM(2021) 390 final.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
('IOSCO') has issued a report in November 2021 containing a set of recommendations on ESG ratings providers[11].		('IOSCO') has issued a report in November 2021 containing a set of recommendations on ESG ratings **and data products** providers[12].
(10) ESG ratings play an important role in global capital markets, as investors, borrowers and issuers increasingly use those ESG ratings as part of making informed, sustainable investment and financing decisions. Credit institutions, investment firms, insurance undertakings, assurance undertakings, and reinsurance undertakings, amongst others, often use those ESG ratings as a reference for the sustainability performance or for the		

11 IOSCO Report on ESG ratings and data products providers, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf.

12 IOSCO Report on ESG ratings and data products providers, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
sustainability risks and opportunities in their investment activity. Consequently, ESG ratings have a significant impact on the operation of the markets and on the trust and confidence of investors and consumers. To ensure that ESG ratings used in the Union are independent, objective and of adequate quality, it is important that ESG rating activities are conducted in accordance with the principles of integrity, transparency, responsibility, and good governance. Better comparability and increased reliability of ESG ratings would enhance the efficiency of that fast-growing market, thereby facilitating progress towards the objectives of the Green Deal.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(11) ESG ratings play an enabling role for the proper functioning of the Union sustainable finance market by providing important information for investment strategies, risk management and disclosure obligations by investors and financial institutions. It is therefore necessary to ensure that ESG ratings provide material decision-useful information to the users, and that users of ESG ratings better understand the objectives which ESG ratings pursue and what specific issues and metrics those ratings measure.		
	(11a) (new): ESG ratings at large encompass a wide and diverse range of products marketed as providing information on an undertaking's exposure to risk and	*There is currently no clarity over the scope of products covered by the regulation. A recital is in any case necessary to clarify the products in the scope, whatever the final option retained. If*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	opportunities and/or impacts on environmental, social and governance matters. These products may consist of an opinion, a score, or a combination of both, that rely on a ranking system. ESG ratings may also cover the analysis or modelling of quantitative and/or qualitative information. To avoid circumvention strategies that would inevitably result from adopting too narrow a definition for ESG ratings, the scope of this Regulation should include not only those products explicitly labeled as ratings or scores, but also products like regulatory compliance tools (providing users with e.g. indicators of principal adverse impacts under Regulation (EU) 2019/2088, taxonomy alignment, Pillar 3 requirement), net zero	*it were not to happen, it would be left to ESMA to determine the final scope of the regulation.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	alignment tools (implied temperature rise metrics, transition analysis, climate targets and commitment dataset…) and footprint calculation tools (carbon emissions data, climate solutions…). Likewise, products that purport to analyse an entity's exposure to controversies, sectors or types of activities (screening solutions or involvement screening search…) as well as to physical and transition risks should also be considered in the scope of this Regulation. Since all these products raise similar issues of transparency of methodology and management of conflicts of interests, they should be equally captured by this Regulation.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(12) It is necessary to acknowledge the various business models of the ESG rating market. A first business model is the user-paid model, where users are mainly investors that purchase ESG ratings for investment decisions. A second business model is the issuer-pay model, where undertakings purchase ESG ratings for assessing risks and opportunities with their operations.		(12) It is necessary to acknowledge the various business models of the ESG rating market. A first business model is the user-paid model, where users are mainly investors that purchase ESG ratings for investment decisions. A second business model is the issuer-pay model, where undertakings purchase ESG ratings for assessing risks and opportunities with their operations. **In both situations relationships with rated entities can represent risks and opportunities that must be addressed through this regulation to ensure the quality and reliability of ESG ratings. In particular, this regulation should define a framework for constructive exchange between rated entities and providers that would contribute to the**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		general quality of ESG ratings, while putting in place the necessary safeguards to avoid conflicts of interest. *Comment: communication between rated entities and ESG rating providers is an essential element of the quality of ESG Ratings and should be highlighted in the recitals.*
(13) Member States neither regulate nor supervise the activities of ESG rating providers or the conditions for the provision of ESG ratings. In ensuring alignment with the objectives of the SDGs and the European Green Deal, and given the existing divergences, lack of transparency and absence of common rules, it is likely that Member States would adopt		(13) Member States neither regulate nor supervise the activities of ESG rating providers or the conditions for the provision of ESG ratings. **Providers of ESG ratings operate largely on a cross-border basis, offering their products to European regulated financial undertakings and companies located in different Member States.** In ensuring

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
diverging measures and approaches, which would have a direct negative impact on, and create obstacles to, the proper functioning of the internal market, and be detrimental to the ESG rating market. ESG rating providers issuing ESG ratings for the use of financial institutions and undertakings in the Union would be subject to different rules in different Member States. Divergent standards and market practices would make it difficult to have clarity over the construction of ESG ratings and allow for their comparison, thus creating uneven market conditions for users, causing additional barriers within the internal market, and risking distorting investment decisions.		alignment with the objectives of the SDGs and the European Green Deal, and given the existing divergences, lack of transparency and absence of common rules, it is likely that Member States would adopt diverging measures and approaches, which would have a direct negative impact on, and create obstacles to, the proper functioning of the internal market, and be detrimental to the ESG rating market. ESG rating providers issuing ESG ratings for the use of financial institutions and undertakings in the Union would be subject to different rules in different Member States. Divergent standards and market practices would make it difficult to have clarity over the construction of ESG ratings and allow for their comparison, thus creating uneven market conditions for users,

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		causing additional barriers within the internal market, and risking distorting investment decisions.
(14) This Regulation complements the existing EU sustainable finance framework. Ultimately, ESG ratings should facilitate information flows in order to facilitate investment decisions.		
		<u>(14a) For the purpose of this Regulation, the provision of ESG ratings should encompass the process of issuance, distribution and publication of ESG ratings.</u> *Comment: Related to our oral comment on the limits of using the wording "distribution and*

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		publication, which does not encompass the issuance of rating.
(15) Rules on ESG rating providers should not apply to private ESG ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription or other means. Neither should such rules apply to ESG ratings produced by European financial undertakings that are used for internal purposes. ESG ratings developed by European or national authorities and by central banks should also be exempted from such rules. Finally, such rules should not apply to the provision of ESG data that do not include an element of rating or scoring and are	(15) Rules on ESG rating providers should not apply to private ESG ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription or other means. Neither should such rules apply to ESG ratings produced by European financial undertakings that are used for internal purposes. ESG ratings developed by European or national authorities and by central banks should also be exempted from such rules. Finally, such rules should not apply to the provision of ESG data that do not include an element of rating or scoring and are not subject to any modelling or analysis	(15) Rules on ESG rating providers should not apply to private ESG ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription or other means. Neither should such rules apply to ESG ratings produced by European financial undertakings that are used for internal purposes~~.~~, **or shared within their group, or provided or disclosed as required by or derived from the regulation applicable to EU financial undertakings, services or products, or as an element in conjunction with, and limited to, their regulated financial products or services.** ESG

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
not subject to any modelling or analysis resulting in the development of an ESG rating.	resulting in the development of an ESG rating. **Such rules should not apply to product or services that use an ESG rating as a benchmark or as an evaluation or screening tool, including for instance ESG ratings used for the purpose of a research, academic, consumer paper or where ESG ratings which are not primary targeting investment and financial analysis or decision making. Finally, such rules should not apply to ESG labelling where ESG labels are granted by labelling agencies to entities, financial instruments or products, provided that the ESG labels are not based on a defined ranking system and do not involve the disclosure of a score.**	ratings developed by European or national authorities and by central banks should also be exempted from such rules. Finally, such rules should not apply to the provision of ESG data that ~~do not include an element of rating or scoring and~~ are not subject to any modelling or analysis ~~resulting in the development of an ESG rating~~. **Such rules should not apply to product or services that use an ESG rating as a benchmark or as an evaluation or screening tool, including for instance ESG ratings used for the purpose of a research, academic, consumer paper or where ESG ratings which are not primary targeting investment and financial analysis or decision making. Finally, such rules should not apply to ESG labelling where ESG labels are granted by labelling**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		agencies to entities, financial instruments or products, provided that the ESG labels are not based on a defined ranking system and do not involve the disclosure of a score.
	(15a) Where an undertaking or financial institution discloses information about its own sustainability impacts, risks and opportunities or those of its value chain, such information should not be considered as an ESG rating pursuant to the meaning of this Regulation.	
	(15b) This Regulation should not apply to providers that collect, aggregate and distribute publicly disclosed ESG data where such providers do not transform,	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	approximate or complete the data through further analysis or by applying modelling techniques. The European Single Access point (ESAP) or the Collection bodies that provide ESAP with financial and non-financial information should not be considered as ESG rating providers pursuant to the meaning of this Regulation.	
(16) It is important to lay down rules ensuring that ESG ratings provided by ESG rating providers authorised in the Union are of adequate quality, are subject to appropriate requirements and ensure market integrity. Those rules would apply to overall ESG ratings capturing Environmental, Social and Governance factors, and to ratings that are only		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
looking at a single Environmental, Social or Governance factor or sub-component of that factor.		
(17) Given the use of ESG ratings from providers located outside the Union, it is necessary to introduce requirements based on which third-country ESG rating providers may offer their services in the Union. This is necessary to ensure market integrity, investor protection and proper enforcement. Therefore, three possible regimes are proposed for those third countries ESG rating providers: equivalence, endorsement and recognition. As an overarching principle, supervision and regulation in a third country should be equivalent to Union supervision and regulation		(17) **To provide ESG ratings to regulated financial undertakings in the Union, an ESG rating provider should be established in the Union and authorised by ESMA to ensure an effective supervision. Notwithstanding the aforementioned principle and** given the use of ESG ratings from providers located outside the Union, it is necessary to introduce requirements based on which third-country ESG rating providers may offer their services in the Union. This is necessary to ensure market integrity, investor protection and proper enforcement. Therefore, three possible regimes are proposed

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of ESG ratings. Therefore, ESG ratings provided by an ESG rating provider located in a third country can only be offered in the Union where a positive decision on equivalence of the third-country regime has been taken by the Commission. However, to avoid any adverse impact resulting from a possible abrupt cessation of the offering in the Union of ESG ratings provided by a third country ESG rating provider, it is also necessary to provide for certain other mechanisms, that is endorsement and recognition. Any ESG rating provider with a group structure should be able to use the mechanism of endorsement for the ESG ratings developed outside the Union, provided they establish, within the group, an authorised ESG rating provider in the Union. Smaller ESG		for those third countries ESG rating providers: equivalence, endorsement and recognition. As an overarching principle, supervision and regulation in a third country should be equivalent to Union supervision and regulation of ESG ratings. Therefore, ESG ratings provided by an ESG rating provider located in a third country can only be offered in the Union where a positive decision on equivalence of the third-country regime has been taken by the Commission. However, to avoid any adverse impact resulting from a possible abrupt cessation of the offering in the Union of ESG ratings provided by a third country ESG rating provider, it is also necessary to provide for certain other mechanisms, that is endorsement and recognition. Any ESG rating provider with

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
rating providers, within the meaning of the maximum threshold of net turnover to define small undertakings in Directive 2013/34/EU[13], that generally do not belong to a group, and may not have the means to have a legal entity authorised in the Union, should be able to continue or start offering their services in the Union and should therefore benefit from a lighter regime, that is recognition. Where the third country ESG provider is subject to supervision, appropriate cooperation arrangements should be put in place in order to ensure the proper exchange of information with		a group structure should be able to use the mechanism of endorsement for the ESG ratings developed outside the Union, provided they establish, within the group, an authorised ESG rating provider in the Union. **The endorsed ratings should only complement the EU entity's ESG rating activities and should not constitute its sole or essential activity**. **In addition, the endorsing ESG rating provider should demonstrate that the provision of an ESG rating by the third country entity relies on objective reasons. For instance, an ESG rating provider should not be able to consider as an objective reason the fact that**

[13] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the relevant competent authority of the third country.		**the ESG ratings of EU entities is carried out by a pool of analysts based outside of the Union.** Smaller ESG rating providers with an annual net turnover on their ESG rating activities below EUR 12 million for three consecutive years**,** ~~and within the meaning of the maximum threshold of net turnover to define small undertakings in Directive 2013/34/EU[14],~~ that generally do not belong to a group, and may not have the means to have a legal entity authorised in the Union, ~~should be able to continue or start offering their services in the Union and~~ should ~~therefore~~ benefit from ~~a lighter regime, that is~~ **the** recognition **regime**.

[14] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		To avoid circumvention, the turnover threshold should be assessed on a consolidated basis, by adding up all turnover deriving from ESG rating activities within the group, where the ESG rating provider belongs to a group. Where the third country ESG provider is subject to supervision, appropriate cooperation arrangements should be put in place in order to ensure the proper exchange of information with the relevant competent authority of the third country. *Comment:* *There is a confusion between the recognition regime for non-EU providers and the proportionality applicable to EU and non-EU*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		SMEs as well as the proposed proportionate regime for EU SMEs.
		(17a0) The European Union represents one of the main markets for ESG ratings consumption and concentrates the large majority of global spendings. It is also one of the first jurisdictions to develop a regulation on the transparency and integrity of ESG rating activities. The Commission should continue to work with its international partners to foster convergence of the rules applying to ESG rating providers.
		(17a00) The market for ESG ratings demonstrates a strong concentration resulting both from the mergers and acquisitions that reshaped the sector over the

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		last decade and to the competitive advantage of larger providers, as the depth (historical data) and the breadth (geographical coverage, number of data points) of their data sets give them a competitive edge. A concentrated market favours imbalances between service providers and their clients and present risks of higher prices, barriers to entry, lower competition, reduced innovation and poor coverage of smaller issuers. This regulation introduces measures aiming at ensuring smaller ESG ratings providers' visibility through the constitution of a public register of ESG ratings providers and proportionality of the governance requirements ; tailored transitional provision should also help smaller providers to adapt to

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		this Regulation. Nevertheless, EU entities belonging to a group of ESG rating should not be able to benefit from the proportionality regime unless the group of ESG rating providers itself meets the criteria of a smaller provider.
(18) To ensure a high level of investor and consumer confidence in the internal market, ESG rating providers which provide ESG ratings in the Union should be authorised. It is therefore necessary to lay down harmonised conditions for such authorisation and the procedure for the granting, suspension and withdrawal of such authorisation.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(19) To ensure a high level of information to investors and other users of ESG ratings, information on ESG ratings and ESG rating providers should be made available on the European Single Access Point (ESAP)[15]. ESAP should provide the public with an easy centralised access to such information.	(19) To ensure a high level of information to investors and other users of ESG ratings, information on ESG ratings and ESG rating providers should be made available on the European Single Access Point (ESAP)**, to the extent that they do not contain commercially sensitive information**. ESAP should provide the public with an easy centralised access to such information.	(19) To ensure a high level of information to investors and other users of ESG ratings, information on ESG ratings and ESG rating providers should be made available on the European Single Access Point (ESAP)~~, to the extent that they do not contain commercially sensitive information~~. ESAP should provide the public with an easy centralised access to such information. *Comment: The information centralised in ESAP is the one that is already required to be published under this Regulation with no caveat.*

[15] Regulation (EU) XX/XXXX of the European Parliament and of the Council establishing a European Single Access Point (ESAP) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L [...], […], p. […]).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(20) To ensure the quality and reliability of ESG ratings, ESG rating providers should use rating methodologies that are rigorous, systematic, objective, continuous and subject to validation. ESG rating providers should review ESG ratings methodologies on an on-going basis and at least annually.		
(21) To ensure a higher-level transparency, ESG rating providers should disclose information to the public on the methodologies, models and key rating assumptions which those providers use in their ESG rating activities and in each of their ESG ratings product. In light of the uses of ESG ratings by investors, the rating products should explicitly disclose which dimension of the double materiality the rating		(21) To ensure a higher-level transparency, ESG rating providers should disclose information to the public on the methodologies, models and key rating assumptions which those providers use in their ESG rating activities and in each of their ESG ratings product. In light of the uses of ESG ratings by investors, the rating products should explicitly disclose which dimension of the double materiality the rating

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
addresses, whether it is both material financial risk to the rated entity and the material impact of the rated entity on the environment and society in general or whether it takes into account only one of them. They should also explicitly disclose whether the rating addresses other dimensions. For the same reason, ESG rating providers should provide more detailed information on the methodologies, models and key rating assumptions to subscribers of ESG ratings. That information should enable users of ESG ratings to perform their own due diligence when assessing whether to rely or not on those ESG ratings. Disclosure of information concerning models should however not reveal sensitive business information or impede innovation.		addresses, whether it is both material financial risk to the rated entity and the material impact of the rated entity on the environment and society in general or whether it takes into account only one of them. They should also explicitly disclose whether the rating addresses other dimensions. For the same reason, ESG rating providers should provide more detailed information on the methodologies, models and key rating assumptions to ~~subscribers~~ **users** of ESG ratings. That information should enable users of ESG ratings to perform their own due diligence when assessing whether to rely or not on those ESG ratings. Disclosure of information concerning models should however not reveal sensitive business information or impede innovation.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(22) ESG rating providers should ensure that they provide ESG ratings that are independent, objective and of adequate quality. It is important to introduce organisational requirements ensuring the prevention and mitigation of potential conflicts of interests. To ensure their independence, ESG rating providers should avoid situations of conflict of interest and manage those conflicts adequately where they are unavoidable. ESG rating providers should disclose conflicts of interest in a timely manner. They should also keep records of all significant threats to the independence of the ESG rating provider and that of its employees and other persons involved in the rating process, and the safeguards applied to mitigate those threats. In		(22) ESG rating providers should ensure that they provide ESG ratings that are independent, objective and of adequate quality. It is important to introduce organisational requirements ensuring the prevention and mitigation of potential conflicts of interests. To ensure their independence, ESG rating providers should avoid situations of conflict of interest and manage those conflicts adequately where they are unavoidable. ESG rating providers should disclose conflicts of interest in a timely manner. They should also keep records of all significant threats to the independence of the ESG rating provider and that of its employees and other persons involved in the rating process, and the safeguards applied to mitigate those threats. In

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
addition, to avoid potential conflicts of interest, ESG rating providers should not be allowed to offer a number of other services including consulting services, credit ratings, benchmarks, investment activities, audit, or banking, insurance and reinsurance activities. Finally, to prevent, identify, eliminate or manage and disclose any conflicts of interest and ensure the quality, integrity and thoroughness of the ESG rating and review process at all times, ESG rating providers should establish appropriate internal policies and procedures in relation to employees and other persons involved in the rating process. Such policies and procedures should, in particular, include internal control mechanisms and a compliance function.		addition, to avoid potential conflicts of interest, ESG rating providers should not be allowed to offer a number of other services including consulting services, credit ratings, benchmarks, investment activities, audit, or banking, insurance and reinsurance activities. **Consulting activities in scope of this regulation include support to develop sustainability strategies and/or to manage sustainability risks or impacts as well as proxy advisory services.** Finally, to prevent, identify, eliminate or manage and disclose any conflicts of interest and ensure the quality, integrity and thoroughness of the ESG rating and review process at all times, ESG rating providers should establish appropriate internal policies and procedures in relation to employees and

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		other persons involved in the rating process. Such policies and procedures should, in particular, include internal control mechanisms and **an oversight** function. *Comment: clarification of the notion of consulting, as expressed in the last WP. However, it needs to be clarified to which business model it applies.*
(23) To bring more clarity and to enhance trust on the operations of ESG rating providers, it is necessary to lay down requirements for ongoing supervision of ESG rating providers at Union level. To ensure a level playing field in terms of on-going supervision and to eliminate the risk of regulatory arbitrage across Member		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
States, the European Securities and Markets Authority (ESMA) should be entrusted with the exclusive responsibility for such authorisation and supervision. At the same time, such exclusive responsibility should optimise the allocation of supervisory resources at Union level, thus making ESMA the centre of supervision.		
(24) ESMA should be able to require all information necessary to carry out its supervisory tasks effectively. It should therefore be able to demand such information from ESG rating providers, persons involved in ESG rating activities, rated entities and third parties to whom the ESG rating providers have outsourced operational functions and persons otherwise		(24) ESMA should be able to require all information necessary to carry out its supervisory tasks effectively. It should therefore be able to demand such information from ESG rating providers, persons involved in ESG rating activities, rated entities, **legal representatives designated under the recognition regime,** and third parties to whom the ESG rating providers

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
closely and substantially related or connected to ESG rating providers or ESG rating activities.		have outsourced operational functions and persons otherwise closely and substantially related or connected to ESG rating providers or ESG rating activities.
(25) ESMA should be able to perform its supervisory tasks, and in particular to compel ESG rating providers to end an infringement, to supply complete and correct information, or to comply with an investigation or an on-site inspection. To ensure that ESMA is able to perform those supervisory tasks, ESMA should be able to impose penalties or periodic penalty payments.		
(26) Given its role to authorise and supervise ESG rating providers, ESMA should develop		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
draft regulatory technical standards that do not involve policy choices for submission to the Commission. ESMA should specify further the information needed for the authorisation of ESG rating providers. The Commission should be empowered to adopt those implementing technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[16].		
(27) In its role to authorise and supervise ESG rating providers, ESMA should be able to		

[16] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
charge supervisory fees to supervised entities. Such fees should be paid by the supervised entities.		
(28) In order to specify further technical elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the specifications of the procedure impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, the collection of fines or periodic penalty payments, and detailed rules on the limitation periods for the imposition and enforcement of penalties and the type of fees, the matters for which fees are due, the amount		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of the fees, and the manner in which those fees are to be paid. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making[17]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings		

[17] OJ L 123, 12.5.2016, p. 1.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of Commission expert groups dealing with the preparation of delegated acts.		
(29) It is necessary to have a number of measures supporting smaller ESG rating providers to enable them to continue their activities, or to enter the market after the date of application of this Regulation. Such measures should include the possibility for ESMA to exempt smaller ESG rating providers from a number of organisational requirements where they meet certain criteria. In addition, a transitional regime should be introduced for the first months following the application of this Regulation, to facilitate the initial phase of application for smaller ESG rating providers. Finally, supervisory fees should be	(29) It is necessary to have a number of measures supporting smaller ESG rating providers to enable them to continue their activities, or to enter the market after the date of application of this Regulation. Such measures should include the possibility for ESMA to exempt smaller ESG rating providers from a number of organisational requirements where they meet certain criteria. In addition, a transitional regime should be introduced ~~**for the first months following the application of this Regulation,**~~ to facilitate the **market entry** ~~**initial phase of application**~~ for smaller ESG rating providers. Finally, supervisory fees	(29) It is necessary to have a number of measures supporting smaller ESG rating providers to enable them to continue their activities, or to enter the market after the date of application of this Regulation. Such measures should include the possibility for ESMA to exempt smaller ESG rating providers from a number of organisational requirements where they meet certain criteria. In addition, a transitional regime should be introduced ~~**for the first months following the application of this Regulation,**~~ to facilitate the **market entry** ~~**initial phase of application**~~ for smaller **EU** ESG rating providers **and for existing smaller**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
proportionate to the annual net turnover of the ESG ratings provider concerned.	should be proportionate to the annual net turnover of the ESG ratings provider concerned.	**EU ESG rating providers already operating in the Union before the entry into force of the Regulation.** Finally, supervisory fees should be proportionate to the annual net turnover of the ESG ratings provider concerned. *Comment:* *ESG rating providers, including non-EU SMES are considered to be dealt with article 48(1).* EU SMEs already operating in the EU at the date of the entry into force of this Regulation should be covered by article 48(2). EU SMEs entering the market after the entry into force of this Regulation are covered by article 4a. The proportionality regime of article 20 should apply to both EU and non-EU SMEs.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		(29a) Smaller EU ESG rating providers benefitting from the transitional provisions are encouraged to ensure a sufficient level of transparency over their methodologies. To that end, the transparency requirements defined in this Regulation could serve as a basis.
(30) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, namely to lay down a consistent and effective regime to address the shortcomings and vulnerabilities that ESG ratings pose, but can rather, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.		
(31) This Regulation should apply without prejudice to the application of Aricles 101 and 102 TFEU,		
HAVE ADOPTED THIS REGULATION		
TITLE I		
SUBJECT MATTER, SCOPE AND DEFINITIONS		
Article 1		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Subject-matter		
This Regulation introduces a common regulatory approach to enhance the integrity, transparency, responsibility, good governance, and independence of ESG rating activities, contributing to the transparency and quality of ESG ratings. It aims to contribute to the smooth functioning of the internal market, while achieving a high level of consumer and investor protection and preventing greenwashing or other types of misinformation, including social-washing, by introducing transparency requirements related to ESG ratings and rules on the organisation and conduct of ESG rating providers.	This Regulation introduces a common regulatory approach to enhance the integrity, transparency, responsibility, good governance, and independence of ESG rating activities, contributing to the transparency and quality of ESG ratings. It aims to contribute to the smooth functioning of the internal market , while achieving a high level of consumer and investor protection and preventing greenwashing or other types of **practices which may be misleading to consumers, investors or other market participants** ~~**misinformation, including social-washing**~~, by introducing transparency requirements related to ESG ratings and rules on	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	the organisation and conduct of ESG rating providers.	
Article 2		
Scope		
1. This Regulation applies to ESG ratings issued by ESG rating providers operating in the Union that are disclosed publicly or that are distributed to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or Union or Member States public authorities.	1. This Regulation applies to ESG ratings issued by ESG rating providers operating in the Union ~~**that are disclosed publicly or that are distributed to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or Union or Member States public authorities**~~. **ESG rating providers shall be**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	considered to be operating in the Union in the following cases: **a) For ESG rating providers established in the Union, when they publish their ESG ratings on their website or by other means or when they distribute their ESG ratings by subscription or other contractual relationship to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or to Union or Member States public authorities.** **b) For ESG rating providers established outside the Union, when they [actively market their services within the Union and subsequently] distribute their ratings by subscription or other contractual relationship**	b) For ESG rating providers established outside the Union **and meeting the requirements of article 4**, when they **~~[actively market their services within the Union and subsequently]~~** distribute their ratings by subscription or other contractual relationship to regulated financial

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or to Union or Member States public authorities.	undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, **to undertakings that fall under the scope of directive 2004/109/EC**, or to Union or Member States public authorities. ***Comment:*** 1) *For providers based outside of the EU the text should be make it clear that they shall apply for the appropriate third country regime.* 2) *France strongly opposes the notion of "actively marketing" proposed in art. 2(1), which could pave the way to cases of reverse solicitation, where regulated financial institutions would solicit ESG*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		ratings from third country providers not authorised and subject to supervision in the Union. This would put EU providers at a competitive disadvantage. *3) Non-EU companies listed on an EU regulated market should be included in the scope as investors that this regulation aims to protect are likely to want the same quality safeguards on ratings for EU and non EU listed issuers. As a result, companies falling under directive 2004/109/EC should be brought into scope.*
2. This Regulation does not apply to any of the following:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) private ESG ratings which are not intended for public disclosure or for distribution;	(a) private ESG ratings which are not ~~intended for public disclosure or for distribution~~ **published on a website or by other means or that are not distributed by subscription or by other contractual relationship**;	(a) private ESG ratings which are not **intended for public disclosure or for distribution** ~~**published on a website or by other means or that are not distributed by subscription or by other contractual relationship**~~; ***Comment****: the definition of private rating should match the one from the CRA Regulation, which ESMA specified in the guidelines on the scope of the CRA Regulation.*
(b) 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;	(b) ESG ratings produced by regulated financial undertakings in the Union that are used **internally, including within intragroup relationships,** for ~~**internal purposes or for**~~	(b) ESG ratings produced by regulated financial undertakings in the Union that are : i) used ~~**internally for internal purposes,**~~ or provided to other entities that are part of the

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	providing ~~**in-house**~~ financial services and products;	same consolidated group~~**; or provided, including within intragroup relationships,** for **internal purposes or for** providing **in-house** financial services and products~~; **or ii) provided or disclosed as an element in conjunction with, and limited to, a regulated financial service or product; or iii) required by or derived from the regulations applicable to EU regulated financial undertakings, services or products;** *Comment: the amendment clarifies that financial services and products that are already covered by other EU regulation should be excluded from the scope of the regulation (MiFID, UCITS…). This exemption also covers the exclusion proposed under 2(2)(e).*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) the provision of raw ESG data that do not contain an element of rating or scoring, and is not subject to any modelling or analysis resulting in the development of an ESG rating;	***Option 1*** (c) the ~~provision~~ **publication or distribution** of ~~raw ESG~~ data **on environmental, social and human rights, and governance factors** that do not ~~contain an element of rating or scoring, and is not subject to any modelling or analysis resulting~~ **result** in the development of an ESG rating;	~~***Option 1***~~ ~~(c) the~~ **provision** ~~**publication or distribution** of raw ESG data~~ **on environmental, social and human rights, and governance factors** ~~that do not contain an element of rating or scoring, and is not subject to any modelling or analysis resulting~~ **result** ~~in the development of an ESG rating;~~

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	Option 2 (c) the ~~provision~~ **publication or distribution** of ~~raw ESG~~ data **on environmental, social and human rights, and governance factors** that do not contain an element of rating or scoring, and is not subject to any modelling or analysis ~~resulting in the development of an ESG rating~~	***Option 2*** (c) the ~~provision~~ **publication or distribution** of ~~raw ESG~~ data **on environmental, social and human rights, and governance factors** that do not contain an element of rating or scoring, and is not subject to any modelling or analysis ~~resulting in the development of an ESG rating~~ *Comment: we retain option 2, as explained orally.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) credit ratings issued pursuant to Regulation (EC) No 1060/2009 of the European Parliament and of the Council[18];		
(e) products or services that incorporate an element of an ESG rating;	(e) products or services that **use** ~~**incorporate an element of**~~ an ESG rating **as a benchmark or as an evaluation or screening tool**;	~~(e) products or services that **use** **incorporate an element of** an ESG rating **as a benchmark or as an evaluation or screening** **tool**;~~ *Comment: this exclusion is already covered under article 2(2)(b).*
(f) second-party opinions on sustainability bonds;	(f) ~~**second -party opinions on sustainability bonds**~~ **external reviews of European Green Bonds, bonds marketed as**	

[18] Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	environmentally sustainable, sustainability-linked bonds, loans and other types of debt instruments, to the extent that such external reviews do not contain ESG ratings produced by the reviewer;	
(g) ESG ratings produced by Union or Member States' public authorities;		
(h) ESG ratings from an authorised ESG rating provider that are made available to users by a third party;	(h) ESG ratings ~~**from**~~ **produced by** an authorised ESG rating provider **when they** ~~**that**~~ are **published or distributed** ~~**made available to users**~~ by a third party;	(h) ESG ratings ~~**from**~~ **produced by** an authorised ESG rating provider **when they** ~~**that**~~ are **published or distributed** ~~**made available to users**~~ by a third party, **provided that third party does not belong to the same group as the ESG rating provider**;

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		Comment: As explained in previous WP, we want to avoid any risk of circumvention of this provision, as identified in the CRA Regulation. As a consequence, the exemption should only be applicable when the third party does not belong to the same group to avoid the situation of Credit Ratings where credit rating agencies placed the distribution activity in a separate entity in the same group so they were out of scope of the regulation and therefore escaped the requirement on fees (ESMA80-196-3218 - Follow-up Report on fees charged by CRAs and TRs).
(i) ESG ratings produced by central banks that fulfil all of the following conditions:	(i) ESG ratings produced by **members of the European System of Central Banks**;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	~~central banks that fulfil all of the following conditions:~~	
(a) they are not paid for by the rated entity;	~~(a) they are not paid for by the rated entity;~~	
(b) they are not disclosed to the public;	~~(b) they are not disclosed to the public;~~	
(c) they are provided in accordance with the principles, standards and procedures which ensure the adequacy, integrity and independence of rating activities, as provided for by this Regulation, and	~~(c) they are provided in accordance with the principles, standards and procedures which ensure the adequacy, integrity and independence of rating activities, as provided for by this Regulation, and~~	
(d) they do not relate to financial instruments issued by the respective central banks' Member States.	~~(d) they do not relate to financial instruments issued by the respective central banks' Member States.~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(j) ESG ratings produced by non-profit civil society organisations for non-commercial purposes;	
	(k) scores and ratings developed for the purpose of the accreditation or certification process, which are not primary targeting investment and financial analysis or decision making;	~~**(k) scores and ratings developed for the purpose of the accreditation or certification process, which are not primary targeting investment and financial analysis or decision making;**~~ *Comment: it is not clear from this exemption who/what we are trying to exclude from the scope.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(k) labelling activities provided that the labels granted to the relevant entities, financial instruments or financial products do not involve the disclosure of an ESG rating.	**Comment**: We wonder whether this exclusion should be specifed in the recitals but not in this article.
Article 3		
Definitions		
For the purposes of this Regulation, the following definitions apply:		
(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	***Option 1*** (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	~~***Option 1***~~ ~~(1) 'ESG rating' means an opinion, a score or a combination of both, regarding an entity, a financial instrument, a financial product, or~~

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
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, irrespective of whether such ESG rating is explicitly labelled as 'rating' or 'ESG score';	characteristics **with regards to environmental, social and human rights, or governance factors** or exposure to ~~**ESG**~~ risks or the impact on **environmental, social and human rights, or governance matters** ~~**people, society and the environment**~~, that are based on **both** an established methodology and **a** defined ranking system ~~**of rating categories and that are provided to third parties**~~, irrespective of whether such ESG rating is explicitly labelled as '**ESG** rating'**, 'ESG opinion'** or 'ESG score'; ***Option 2*** (1) 'ESG rating' means **a product marketed as** an opinion, a score or a combination of both, **or the analysis or modelling of data** regarding an entity~~, a~~	~~**an undertaking**'s **ESG** profile or characteristics **with regards to environmental, social and human rights, or governance factors** or exposure to **ESG** risks or the impact on **environmental, social and human rights, or governance matters** **people, society and the environment**, that are based on **both** an established methodology and **a** defined ranking system **of rating categories and that are provided to third parties**, irrespective of whether such ESG rating is explicitly labelled as '**ESG** rating'**, 'ESG opinion'** or 'ESG score';~~ ***Option 2*** (1) 'ESG rating' means **a product marketed as** an opinion, a score or a combination of both, **or the analysis or**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	~~financial instrument, a financial product, or an undertaking~~'s ~~ESG~~ profile or characteristics **with regards to environmental, social and human rights, or governance factors** or exposure to ~~ESG~~ risks or the impact on **environmental, social and human rights, or governance matters** ~~people, society and the environment~~, that are based on an established methodology ~~and~~ **or** defined ranking system ~~of rating categories and that are provided to third parties~~, irrespective of whether such ESG rating is explicitly labelled as '**ESG** rating', '**ESG opinion**' or 'ESG score'.	**modelling of data** regarding an entity~~, a financial instrument, a financial product, or an undertaking~~'s ~~ESG~~ profile or characteristics **with regards to environmental, social and human rights, or governance factors** or exposure to ~~ESG~~ risks or the impact on **environmental, social and human rights, or governance matters** ~~people, society and the environment~~, that are based on an established methodology ~~and~~ **or** defined ranking system ~~of rating categories and that are provided to third parties~~, irrespective of whether such ESG rating is explicitly labelled as '**ESG** rating', '**ESG opinion**' or 'ESG score'. ***Comment:*** We retain option 2.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		*The option 2 ensures that **the scope of the regulation adequately covers assessments of companies' ESG profile that are sold on the market**, and that do not contain a ranking scale.* *We deem it necessary to **limit the risks of regulatory arbitrage** that the current definition of ESG rating entails. According to our own market analysis, there are many products on the market which could easily be considered exempted from the regulation if the definition is too narrow:* • *Net-zero alignment tools, that assess whether a company is aligned with climate objectives – under the current definition, some products would be covered when their final assessment takes the form of "aligned" or "misaligned" with Paris agreement, (so it includes a ranking scale), while others' providers' final assessement would take the form of a data point (implied temperature rise) and would not be covered. These are the same products!*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		• *<u>Screening tools/controversies tool:</u> such products assess exposures of companies to certain issues or factors. Some controversies tool would be covered, as they imply the use of a ranking scale (classified according to the level of gravity/importance of controversies). However, some other tools (for instance, a list of companies' based on their involvement in controversial activities) would NOT be covered.* • *<u>Measure of exposure to environmental risks</u>: some providers sell "risk ratings" that assess the level of carbon exposure of companies on a ranking scale, and would be covered. Some others assess the amount of exposure of companies to carbon trough a indicator (for instance, part of earnings exposed) and would not be covered. Once again, the use of the product is the same!* *If we do not clarify and expand the definition, it will be left to ESMA to clarify which products fall in the scope.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		On top of that, there is also a need for colegislators to be accountable and provide <u>transparency for data sets used for regulatory purposes</u>*. The sustainable finance framework requires financial market participants to be transparent on data sets required by regulation, and to be responsible in case of greenwashing on such data sets (for instance, SFDR data sets, Pilar 3 Banking data sets). As information on third-country companies and SMEs will still be lacking after entry into force of CSRD, transparency will remain essential on the source of estimates provided by data providers for such regulatory data. This would allow to ensure the whole value chain of regulatory data sets is covered and the quality of data is ensured (transparency from the companies through CSRD, from financial institutions through SFDR/Pillar 3, and from Data providers acting as intermediaries).* *Regardless of which option is retained,* ***we are strongly in favour of a review clause*** *that would*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		assess the impact of the regulation on the market, how the structure of the market has evolved and whether the regulatory provisions are still sufficient and adequate
(2) 'opinion' means an assessment that based on a rules-based methodology and defined ranking system of rating categories, involving directly a rating analyst in the rating process or systems process;	(2) 'opinion' means an assessment ~~that~~ based on a rules-based methodology and defined ranking system ~~of rating categories~~, involving directly a rating analyst in the rating process or systems process;	
(3) 'score' means a measure derived from data, using a rule-based methodology, and based only on a pre-established statistical or algorithmic system or model, without any additional substantial analytical input from an analyst;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(3a) 'defined ranking system' means a system whereby rated entities are graded against pre-defined criteria across a ranking scale;	
(4) 'ESG rating providers' means a legal person whose occupation includes the offering and distribution of ESG ratings or scores on a professional basis;	(4) 'ESG rating provider~~s~~' means a legal person whose occupation includes the **publication or** ~~**offering and**~~ distribution of ESG ~~**ratings**~~ **opinions** or scores on a professional basis;	(4) 'ESG rating provider~~s~~' means a legal person whose occupation includes the **provision** ~~**publication or**~~ ~~**offering and**~~ ~~distribution~~ of ESG **ratings** ~~**opinions**~~ ~~or scores~~ on a professional basis; ***Comment:*** *As expressed in WP, we suggest to use the term provision, which would encompass the issuance, distribution and publication activities of an ESG rating provider. The term*

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		"provision" should be defined in the recitals to ensure a common understanding. *In addition, as ESG ratings are defined in art. 3(1), this definition should be built by reference to it.*
(5) 'regulated financial undertaking in the Union' means an undertaking, regardless of its legal form, that is:		
– (i) a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council[19];		

[19] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (ii) an investment firm as defined in Article 4(1), point (1), of Directive 2014/65/EU the European Parliament and of the Council[20];		
– (iii) an alternative investment fund manager (AIFM) as defined in Article 4(1), point (b), of Directive 2011/61/EU of the European Parliament and of the Council[21], including a manager of a qualifying venture capital fund as defined in Article 3, point (c) of		

[20] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

[21] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Regulation (EU) No 345/2013 of the European Parliament and of the Council[22], a manager of a qualifying social entrepreneurship fund as defined in Article 3, point (c) of Regulation (EU) No 346/2013 of the European Parliament and of the Council[23] and a manager of the ELTIF as defined in Article 2, point (12) of Regulation (EU) 2015/760 of the European Parliament and of the Council[24];		
– (iv) an undertaking for collective investment in transferable securities (UCITS)		

[22] Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).
[23] Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).
[24] Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
management company as defined Article 2(1), point (b), of Directive 2009/65/EC of the European Parliament and of the Council[25];		
– (v) an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council[26];		

[25] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

[26] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (vi) a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;		
– (vii) an institution for occupational retirement provision as defined in Article 1, point (6) of Directive 2016/2341 of the European Parliament and of the Council[27];		
– (viii) pension institutions operating pension schemes which are considered to be social security schemes covered by Regulation		

[27] Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(EC) No 883/2004 of the European Parliament and of the Council[28] and Regulation (EC) No 987/2009 of the European Parliament and of the Council[29], and any legal entity set up for the purpose of investment of such social security schemes;		
– (ix) an alternative investment fund (AIF) managed by an AIFM as defined in Article 4(1), point (b), of Directive 2011/61/EU or an AIF supervised under the applicable national law;		

[28] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

[29] Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (x) a UCITS as defined in Article 1(2) of Directive 2009/65/EC;		
– (xi) a central counterparty as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council[30];		
– (xii) a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014 of the European Parliament and of the Council[31];		

[30] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

[31] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (xiii) an insurance or reinsurance special purpose vehicle authorised in accordance with Article 211 of Directive 2009/138/EC;		
– (xiv) a 'securitisation special purpose entity' as defined in Article 2, point (2), of Regulation (EU) No 2017/2402 of the European Parliament and of the Council[32];		
– (xv) an insurance holding company as defined in Article 212(1), point (f), of Directive 2009/138/EC or a mixed financial holding company as defined in Article 212(1), point (h),		

[32] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of Directive 2009/138/EC, which is part of an insurance group that is subject to supervision at the level of the group pursuant to Article 213 of that Directive and which is not exempted from group supervision pursuant to Article 214(2) of that Directive;		
	(xv bis) a financial holding company as defined in Article 4(1), point (20), of Regulation (EU) No 575/2013 of the European Parliament and of the Council;	
– (xvi) a payment institution as defined in Article 1(1), point (d), of Directive (EU)		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2015/2366 of the European Parliament and of the Council[33];		
– (xvii) an electronic money institution as defined in Article 2, point (1), of Directive 2009/110/EC of the European Parliament and of the Council[34];		
– (xviii) a crowdfunding service provider as defined in Article 2(1), point (e), of Regulation (EU) 2020/1503 of the European Parliament and of the Council[35];		

[33] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

[34] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

[35] Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (xix) a crypto-asset service provider as defined in Article 3(1), point (8), of [the proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets[36]] where performing one or more crypto-asset services as defined in Article 3(1), point (9), of [the proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets];		
– (xx) a trade repository as defined in Article 2, point (2), of Regulation (EU) No 648/2012;		

[36] COM/2020/593 final.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (xxi) a securitisation repository as defined in Article 2, point (23), of Regulation (EU) 2017/2402;		
– (xxii) an administrator of benchmarks as defined in Article 3(1), point (3), of Regulation (EU) 2016/1011 of the European Parliament and of the Council[37] ;		
– (xxiii) a credit rating agency as defined in Article 3(1), point (b), of Regulation (EC) No 1060/2009;		

[37] Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(6) 'rating analyst' means a person who performs analytical functions for the purpose of issuing ESG ratings;		
(7) 'rated entity' means a legal person, a financial instrument, a financial product or a public authority or a body governed by public law which is explicitly or implicitly rated in the ESG rating or score, irrespective of whether such rating has been requested for and irrespective of whether the legal person has provided information for that ESG rating or score;	(7) 'rated entity' means a legal person, a financial instrument, a financial product or a public authority or a body governed by public law which is explicitly or implicitly rated in the ESG rating ~~or score~~, irrespective of whether such rating has been requested for and irrespective of whether the legal person has provided information for that ESG rating ~~or score~~;	
	(7a) 'financial instrument' means any of the instruments listed Section C of Annex I of Directive 2014/65/EU of the European	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, including such instruments issued by means of distributed ledger technology;	
(8) ‘user’ means a natural or legal person, including a public authority or a body governed by public law, to which an ESG rating is provided;	(8) ‘user’ means a natural or legal person, including a public authority or a body governed by public law, to which an ESG rating is ~~provided~~ **published or distributed**;	(8) ‘user’ means a natural or legal person, including a public authority or a body governed by public law, to which an ESG rating is ~~provided~~ ~~published or~~ **distributed by subscription or other contractual relationship or who accesses the ESG rating via the ESG rating provider’s website or by other means**; **Comment**:

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		To mirror the scope of the regulation as defined in art.2(1) : "*For ESG rating providers established in the Union, when they publish their ESG ratings on their website or by other means or when they distribute their ESG ratings by subscription or other contractual relationship to regulated financial undertakings in the Union […]*"
(9) 'competent authorities' means the authorities designated by each Member State for the purposes of this Regulation;	(9) 'competent authorities' means the authorities designated by each Member State **in accordance with Article 28 and** for the purposes of this Regulation;	
(10) 'senior management' means the person or persons who effectively direct the business of the ESG rating provider and the member or		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
members of the ESG rating provider's administrative or supervisory board.		
(11) 'group of ESG rating providers' means a group of undertakings established in the Union consisting of a parent undertaking and its subsidiaries within the meaning of Article 2 of Directive 2013/34/EU, and undertakings linked to each other by a relationship and whose occupation includes the provision of ESG ratings.		
TITLE II		
PROVISION OF ESG RATINGS IN THE UNION		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 4		
Requirements to provide ESG ratings in the Union	**Requirements to ~~provide ESG ratings~~ operate in the Union**	
Any legal person who wishes to provide ESG ratings in the Union shall be subject to either of the following:	Any ~~legal person~~ **ESG rating provider** who wishes to ~~provide ESG ratings~~ **operate** in the Union shall be subject to either of the following:	
(a) an authorisation issued by ESMA as referred to in Article 5;		
(b) an implementing decision as referred to in Article 9;		
(c) an authorisation for endorsement as referred to in Article 10.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) a recognition as referred to in Article 11;		
	[Article 4a]	
	Exemptions for new entrants	**Exemptions for new Small and medium-sized EU ESG rating providers entering the EU market ~~entrants~~** ***Comment :*** *this proportionate regime should be limited to EU providers.*
	1. Without prejudice to the powers referred to in Articles 30 to 32, ESG rating providers with a consolidated annual net turnover on all their activities below EUR [3 million] will be exempted from complying	**1. Without prejudice to the powers referred to in Articles 30 to 32, EU ESG rating providers categorized as small and medium-sized undertaking under article 3 of Directive 2013/34/EU ~~with a consolidated annual net turnover on all their activities~~**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	with other provisions of this Regulation as long as those rating providers: **(a) have been registered by ESMA;** **(b) identify themselves to ESMA at the time of registration;** **(c) notify ESMA in the event that they no longer meet the condition referred to in the first subparagraph.**	**~~b~~elow EUR [3 million] who want to operate in the EU will be exempted from complying with ~~other~~ the provisions of this Regulation as long as those rating providers:** **(a) have ~~been registered~~ notified ESMA prior to starting offering their services in the EU;** **(aa) are registered with ESMA as new entrants in the EU ESG rating market~~;~~** **~~(b) identify themselves to ESMA~~ at the time of registration;** **(c) ~~notify ESMA in the event that they no longer~~ meet the condition referred to in the first subparagraph. For this purpose, the ESG rating provider can provide ESMA with an assessment by an independent external auditor.**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		Comment *:* *1) We propose to retain a threshold by reference to the Accounting directive in order to ensure more lisibility and limit the risks of greater instability and arbitrage linked to a 1-year threshold.* *2) In inspiration to art. 48(3) we support to maintain the registration with ESMA as a condition prior to any offer of services in the Union.* *3) ESG ratings providers that would be exempted from complying with this regulation should still be encouraged to comply with the transparency requirements and therefore a recital could be inserted to that effect.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		4) *Similar to article 11, ESG rating providers could demonstrate their eligibility by providing ESMA with an assessment by an independent external auditor.*
	2. Where the condition referred to in the first subparagraph is no longer met or [five] years after their registration in the Union, the ESG rating provider shall become subject to the other provisions of this Regulation and shall apply for authorization pursuant to Chapter 1 of Title II within [30] calendar days.	**2. Where the condition referred to in the first subparagraph is no longer met or [three ~~five~~] years after their registration in the Union, whichever occurs first, the ESG rating provider shall become subject to the ~~other~~ provisions of this Regulation and shall apply for authorization pursuant to Chapter 1 of Title II within ~~[30] calendar days~~ 12 months.** **Comment:** *We suggest to apply the exemption for 3 years only and not 5, however, this is*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		compensated by giving the ESG rating provider more time to apply for authorisation after the exemption time has elapsed (while already applying the requirements).
	3. ESG rating providers referred to in paragraph 1 can choose to opt in under this Regulation. Where ESG rating providers choose to opt in, this Regulation shall become applicable in its entirety.	
	4. ESMA shall develop draft implementing technical standards to specify (a) the procedures applicable to ESG rating providers that choose to opt in, in accordance with the paragraph 3.	**~~4. ESMA shall develop draft implementing technical standards to specify (a) the procedures applicable to ESG rating providers that choose to opt in, in accordance with the paragraph 3.~~**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(b) the treatment of ESG rating providers that occasionally exceed and/or fall below the relevant threshold in the same calendar year and the obligation to notify ESMA when they no longer meet the condition referred to in paragraph 1. **ESMA shall submit those draft implementing technical standards to the Commission.** **Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.**	~~**(b) the treatment of ESG rating providers that occasionally exceed and/or fall below the relevant threshold in the same calendar year and the obligation to notify ESMA when they no longer meet the condition referred to in paragraph 1.**~~ ~~**ESMA shall submit those draft implementing technical standards to the Commission.**~~ ~~**Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.**~~ ***Comment:***

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		1) If the ESG rating provider opts in, the full regulation should apply and there is no need for ESMA to develop an ITS. *2) As proposed above, we suggest to use the Accounting directive threshold, which does not require an ITS.*
CHAPTER 1		
Authorisation to provide ESG ratings in the Union	**Authorisation of ESG rating providers established in the Union to ~~provide ESG ratings~~ operate in the Union**	
Article 5		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Application for an authorisation to provide an ESG rating	**Application for an authorisation to ~~provide an ESG ratings~~ operate in the Union**	
1. Legal persons established in the Union that wish to provide ESG ratings in the Union shall apply for authorisation to ESMA.	1. ~~Legal persons~~ **ESG rating providers** established in the Union that wish to ~~provide ESG ratings~~ **operate in the Union pursuant to paragraph a of Article 2** shall apply for authorisation to ESMA.	1. ~~Legal persons~~ **ESG rating providers** established in the Union that wish to ~~provide ESG ratings~~ **operate in the Union pursuant to paragraph 1, point (a) of Article 2** shall apply for authorisation to ESMA.
2. The application for authorisation shall contain all of the information listed in Annex I and shall be submitted in any of the official languages of the Union. Council Regulation No 1[38] shall apply mutatis mutandis to any other		

[38] Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
communication between ESMA and the ESG rating providers and their staff.		
3. ESMA shall develop draft regulatory technical standards to specify further the information listed in Annex I.		
ESMA shall submit those draft regulatory technical standards to the Commission by XX XXXX XXXX.	ESMA shall submit those draft regulatory technical standards to the Commission by **[12 months after the date of entry into force].**	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. An authorised ESG rating provider shall comply with the conditions for initial authorisation at all times.		
5. ESG rating providers shall notify ESMA of any material changes to the conditions for initial authorisation, including any opening or closing of a branch within the Union, without undue delay.		
Article 6		
Examination of the application for authorisation of ESG rating providers by ESMA		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. Within 30 working days of receipt of the application referred to in Article 5(2), ESMA shall assess whether the application is complete. Where the application is not complete, ESMA shall set a deadline by which the applicant is to provide additional information.	1. Within 30 working days of receipt of the application referred to in Article 5(2), ESMA shall assess whether the application is complete. Where the application is not complete, ESMA shall set a deadline by which the applicant is to provide additional information. **If the applicant does not provide additional information within the impaired deadline, the application shall be rejected.**	
2. After having assessed whether an application is complete, ESMA shall notify the applicant of the result of that assessment.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. Within 120 working days of the notification referred to in paragraph 2, ESMA shall adopt a fully reasoned decision to authorise or refuse authorisation.	3. Within ~~120~~ 90 working days of the notification referred to in paragraph 2, ESMA shall adopt a fully reasoned decision to authorise or refuse authorisation.	**When reviewing an ESG rating provider's application, ESMA shall carefully assess the substance, staffing and operational resources of the EU entity seeking authorisation in the Union to ensure it has the capacity to develop and distribute robust ESG ratings in the Union.** ***Comment****: the drafting remains relatively vague in terms of the substance that should be expected in the Union to develop robust and*

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		quality ESG ratings and serve EU financial entities.
4. ESMA may extend the period referred to in the paragraph 3 to 140 working days in particular where the applicant:	4. ESMA may extend the period referred to in the paragraph 3 to ~~140~~ 120 working days in particular where the applicant:	
(a) envisages endorsing ESG ratings as referred to in Article 10;		
(b) envisages using outsourcing; or		
(c) requests exemption from compliance in accordance with Article 20.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. The decision adopted by ESMA pursuant to paragraph 3 shall take effect on the fifth working day following its adoption.		
Article 7		
Decision to grant or to refuse the authorisation to provide ESG ratings and notification of that decision	**Decision to grant or to refuse the authorisation to ~~provide ESG ratings~~ operate in the Union and notification of that decision**	
1. ESMA shall authorise the applicant as ESG rating provider where it concludes from the examination of the application referred to in Article 6 that the applicant complies with the conditions for the provision of ratings set out in this Regulation.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. ESMA shall inform the applicant within five working days of that decision referred to in the first paragraph.	2. ESMA shall inform the applicant within five working days of ~~that~~ **the** decision referred to in the first paragraph **and the reasons thereof**.	
3. ESMA shall inform the Commission, the EBA and EIOPA of any decision taken pursuant to paragraph 2.		
4. The authorisation shall be effective for the entire territory of the Union.		
Article 8		
Withdrawal or suspension of authorisation		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. ESMA shall withdraw or suspend the authorisation of an ESG rating provider in any of the following cases:		
(a) the ESG rating provider has expressly renounced the authorisation or has provided no ESG ratings for nine months preceding that withdrawal or suspension;		
(b) the ESG rating provider has obtained its authorisation by making false statements or by any other irregular means;		
(c) the ESG rating provider no longer meets the conditions under which it was authorised;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) the ESG rating provider has seriously or repeatedly infringed this Regulation.		
2. The decision on the withdrawal or suspension of authorisation shall take immediate effect throughout the Union.	2. The decision on the withdrawal or suspension of authorisation shall take immediate effect throughout the Union. **ESMA shall inform the competent authority where the ESG rating provider is located, the Commission, the EBA and EIOPA of any decision taken pursuant to paragraph 1. The ESG rating provider shall also be informed of the decision taken pursuant to paragraph 1.**	
CHAPTER 2		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Provision of ESG ratings in the Union by third country ESG rating providers	~~**Provision of ESG ratings**~~ **Operation** in the Union by ~~**third country**~~ ESG rating providers **established outside the Union**	**Provision of ESG ratings** ~~**Operation**~~ in the Union by ~~**third country**~~ ESG rating providers **established outside the Union** **Comment:** *As mentioned before, we strongly suggest to retain the term "provision", which includes the process of issuance and distribution.*
Article 9		
Equivalence decision		
1. A third country ESG rating provider that wishes to provide ESG ratings in the Union shall only be able to do so where it is included in the register referred to in Article 13 and	1. A ~~**third country**~~ ESG rating provider **established outside the Union** that wishes to ~~**provide ESG ratings**~~ **operate** in the Union **pursuant to point b of the first paragraph of**	1. A**n** ~~**third country**~~ ESG rating provider **established outside the Union** that wishes to **provide ESG ratings** ~~**operate**~~ in the Union ~~**pursuant**~~ **as referred to in Article 2,**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
provided that all of the following conditions have been complied with:	**Article 2** shall only be able to do so where it is included in the register referred to in Article 13 and provided that all of the following conditions have been complied with:	**paragraph 1, point (b)** ~~**of the first paragraph of Article 2**~~ shall only be able to do so where it is included in the register referred to in Article 13 and provided that all of the following conditions have been complied with:
(a) the third country ESG rating provider is a legal person, is authorised or registered as an ESG rating provider in the third country concerned, and is subject to supervision by that third country;	(a) the ~~**third country**~~ ESG rating provider is a legal person, is authorised or registered as an ESG rating provider in ~~**the**~~ **a** third country concerned, and is subject to supervision ~~**by**~~ **in** that third country;	(a) the ~~**third country**~~ ESG rating provider is a legal person, is authorised or registered as an ESG rating provider in ~~**the**~~ **a** third country ~~concerned~~, and is subject to supervision ~~**by**~~ **in** that third country;
(b) the third country ESG rating provider has notified ESMA that it wishes to provide ESG ratings in the Union and has informed ESMA with the name of the	(b) the ~~**third country**~~ ESG rating provider has notified ESMA that it wishes to ~~**provide ESG ratings**~~ **operate** in the Union and has informed ESMA with the name of the	(b) the ~~**third country**~~ ESG rating provider has notified ESMA that it wishes to **provide ESG ratings** ~~**operate**~~ in the Union and has informed ESMA with the name of the

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
competent authority responsible for its supervision in the third country;	competent authority responsible for its supervision in the third country;	competent authority responsible for its supervision in the third country;
(c) the Commission has adopted an equivalence decision pursuant to paragraph 2;		
(d) the cooperation arrangements referred to in paragraph 4 are operational.		
2. The Commission may adopt an implementing decision stating that the legal framework and supervisory practice of a third country ensures that:		
(a) ESG rating providers authorised or registered in that third country comply with		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
binding requirements which are equivalent to the requirements under this Regulation,		
(b) compliance with the binding requirements referred to in point (a) is subject to effective supervision and enforcement on an on-going basis in that third country.		
For the purposes of point (a), the Commission shall take into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO recommendations for ESG Ratings published in November 2021.	~~**For the purposes of point (a), the Commission shall take into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO recommendations for ESG Ratings published in November 2021.**~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 47.		
3. The Commission may adopt a delegated act in accordance with Article 45 to specify the conditions referred to in points (a) and (b) of the first subparagraph. The Commission may subject the application of the implementing decision referred to in paragraph 2 to:	3. The Commission ~~may~~ **shall** adopt a delegated act in accordance with Article 45 to specify the conditions referred to in points (a) and (b) of the ~~first~~ **second** ~~sub~~paragraph. The Commission ~~may~~ **shall** subject the application of the implementing decision referred to in paragraph 2 to:	
(a) the effective fulfilment on an ongoing basis by that third country of any condition set out in that implementing decision that aims at ensuring equivalent supervisory and regulatory standards;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) the ability of ESMA to effectively exercise the monitoring responsibilities referred to in Article 33 of Regulation (EU) No 1095/2010.		
4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2. Such arrangements shall specify all of the following:	4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2. Such arrangements shall specify ~~all of~~ **at least** the following:	
(a) the mechanism for exchanging information between ESMA and the competent authorities of third countries concerned,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
including access to all relevant information requested by ESMA regarding the ESG rating provider authorised or registered in that third country;		
(b) the mechanism for prompt notification to ESMA where a third country competent authority deems that the ESG rating provider authorised or registered in that third country and that is supervised by that third country competent authority is breaching the conditions of its authorisation or registration, or other national law in that third country;		
(c) the procedures concerning the coordination of supervisory activities, including on-site inspections.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 10		
Endorsement of ESG ratings provided by a third country ESG rating provider	**Endorsement of ESG ratings ~~provided by~~ of an ~~third country~~ ESG rating provider established outside the Union**	
1. An ESG rating provider located in the Union and authorised in accordance with Article 7 may endorse ESG ratings provided by a third country ESG rating provider belonging to the same group, provided that all of the following conditions have been met:	1. An ESG rating provider ~~located~~ established in the Union and authorised in accordance with Article 7 may endorse ESG ratings ~~provided by~~ of a ~~third country~~ ESG rating provider established outside the Union which belongs ~~belonging~~ to the same group, provided that all of the following conditions have been met:	1. An ESG rating provider ~~located~~ established in the Union and authorised in accordance with Article 7 may endorse ESG ratings ~~provided by~~ of an ~~third country~~ ESG rating provider established outside the Union which belongs ~~belonging~~ to the same group, provided that all of the following conditions have been met:

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) the ESG rating provider located in the Union has applied to ESMA for authorisation of such endorsement;	(a) the ESG rating provider ~~**located**~~ **established** in the Union has applied to ESMA for authorisation of such endorsement;	
(b) the ESG rating provider located in the Union has verified and is able to demonstrate on an on-going basis to ESMA that the provision of the ESG rating to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation;	(b) the ESG rating provider ~~**located**~~ **established** in the Union has verified and is able to demonstrate on an on-going basis to ESMA that the ~~**provision**~~ **distribution** of the **endorsed** ESG rating**s** ~~**to be endorsed**~~ fulfils requirements which are at least as stringent as the requirements of this Regulation**. The ESG rating provider shall prove compliance with these requirements without having to reference the specific process followed for each individual rating**;	(b) the ESG rating provider ~~**located**~~ **established** in the Union has verified and is able to demonstrate on an on-going basis to ESMA that the **provision** ~~**distribution**~~ of the **endorsed** ESG rating**s** ~~**to be endorsed**~~ fulfils requirements which are at least as stringent as the requirements of this Regulation**.** ~~**The ESG rating provider shall prove compliance with these requirements without having to reference the specific process followed for each individual rating**~~; ***Comment:***

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		1) *Please refer to our previous comment with regards to the term "provision".* 2) *The last part of the sentence may be too restrictive with regards to ESMA's ability to supervise the endorsement regime.*
(c) the ESG rating provider located in the Union has the necessary expertise to monitor the provision of ESG ratings by the third country ESG rating provider effectively, and to manage any associated risks;	(c) the ESG rating provider ~~located~~ **established** in the Union has the necessary expertise to monitor the ~~provision of~~ ESG ratings ~~by~~ **of** the ~~third country~~ ESG rating provider **established outside the Union** effectively, ~~and~~ to manage any associated risks**, and has appropriate analytical presence in the Union considering the nature, scale or complexity of its activities in the Union**;	(c) the ESG rating provider ~~located~~ **established** in the Union has the necessary expertise to monitor the **provision of** ESG ratings **by** ~~of~~ the ~~third country~~ ESG rating provider **established outside the Union** effectively, ~~and~~ to manage any associated risks**, and has appropriate analytical and decision-making presence in the Union considering the nature, scale or complexity of its activities in the Union**;

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		Comment: *As commented in the last WP, Substance should not be limited to analytical functions but should also include decision-making capacities.*
(d) there is an objective reason why the third country ESG rating provider has to provide the ESG rating and why that ESG rating has to be endorsed for their use in the Union;	(d) there is an objective reason why the ~~third country~~ ESG rating provider **established outside the Union** ~~has to provide~~ **produces** the ESG rating**s** and why ~~that~~ **these** ESG rating**s** ~~has~~ **have** to be endorsed for their ~~use~~ **distribution** in the Union;	(d) there is an objective reason why the ~~third country~~ ~~ESG rating provider~~ ~~established outside the Union~~ ~~has to provide~~ ~~produces~~ ~~the ESG ratings and why that these~~ **the** ESG rating**s** ~~has~~ **have** to be endorsed for their **use** ~~distribution~~ in the Union; **Comment**: 1) *Please refer to previous comments on the distribution term.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		2) *Proposed simplification of the paragraph.*
(e) the ESG rating provider located in the Union provides ESMA at its request with all the information necessary to enable ESMA to supervise the compliance by the third country ESG rating provider with this Regulation on an ongoing basis;	(e) the ESG rating provider ~~**located**~~ **established** in the Union provides ESMA at its request with all the information necessary to enable ESMA to supervise the compliance by the ~~**third country**~~ ESG rating provider **established outside the Union** with this Regulation on an ongoing basis;	(e) the ESG rating provider ~~**located**~~ **established** in the Union provides ESMA at its request with all the information necessary to enable ESMA to supervise the compliance ~~by~~ **of the provision of the endorsed ESG ratings in the Union** ~~the third country ESG rating provider established outside the Union~~ with this Regulation on an ongoing basis; *Comment: the text should address the supervision of the* ***provision*** *of ESG ratings*
(f) where a third country ESG rating provider is subject to supervision, an	(f) where a ~~**third country**~~ ESG rating provider **established outside the Union** is	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information;	subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the ESG rating provider is ~~**located**~~ **established**, to ensure an efficient exchange of information;	
For the purposes of point (b) of the first subparagraph, ESMA may consider that compliance of the provision of the ESG rating to be endorsed with the IOSCO recommendations for ESG ratings is equivalent to compliance with the requirements of this Regulation.	~~**For the purposes of point (b) of the first subparagraph, ESMA may consider that compliance of the provision of the ESG rating to be endorsed with the IOSCO recommendations for ESG ratings is equivalent to compliance with the requirements of this Regulation.**~~	
	For the purpose of point (d), ESMA shall develop draft regulatory technical standards	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	to determine the conditions under which ESMA may assess whether there is an objective reason for the production of ESG ratings outside the Union and for the endorsement and distribution of ESG ratings by the ESG rating provider established in the Union. ESMA shall take into account elements such as the specificities of the underlying ESG rating, the need for proximity of the production of the rating to specific economic reality, the material availability of input data or the availability of specific skills required for the production of specific ratings. **The draft regulatory technical standards shall include a non-exhaustive list of objective reasons and examples of**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	circumstances that would represent a circumvention to the requirements of this Regulation. **ESMA shall sublit those draft regulatory technical standards to the Commission by [12 months after the date of entry into force].** **Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.**	
2. An ESG rating provider that applies for endorsement as referred to in paragraph 1 shall provide ESMA with all information necessary to satisfy ESMA that, at the time of application, all	2. An ESG rating provider that applies for endorsement as referred to in paragraph 1 **point (a)** shall provide ESMA with all information necessary to satisfy ESMA that, at the time of	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the conditions referred to in that paragraph are fulfilled.	application, all the conditions referred to in that paragraph are fulfilled.	
3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, ESMA shall examine the application and decide either to authorise the endorsement or to refuse it. ESMA shall publicly notify the decision to endorse provided by a third country ESG rating provider.	3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1 **point (a)**, ESMA shall examine the application and decide either to authorise the endorsement or to refuse it. ESMA shall **inform the applicant within five working days of that decision** ~~**publicly notify the decision to endorse provided by a third country ESG rating provider**~~.	
4. An endorsed ESG rating shall be considered to be an ESG rating provided by the endorsing ESG rating provider. The endorsing provider shall not use the endorsement to avoid		4. An endorsed ESG rating shall be considered to be an ESG rating provided by the endorsing ESG rating provider. The endorsing provider shall not use the endorsement to avoid

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
or circumvent the requirements of this Regulation.		or circumvent the requirements of this Regulation. **<u>The activity of endorsing ESG ratings shall not represent the sole or essential activity of an ESG rating provider.</u>** *Comment: As expressed in WP, we deem it important to stress and ensure that the endorsing entity is not a letter box entity.*
5. An ESG rating provider that has endorsed an ESG rating provided by a third country ESG rating provider shall remain fully responsible for such an ESG rating and for compliance with the obligations under this Regulation.	5. An ESG rating provider that has endorsed ~~an~~ ESG rating<u>s</u> ~~provided~~ <u>produced</u> by a ~~third country~~ ESG rating provider <u>established outside the Union</u> shall remain fully responsible for such ~~an~~ ESG rating<u>s</u> and	5. An ESG rating provider that has endorsed ~~an~~ ESG rating<u>s</u> **<u>provided</u>** ~~produced~~ by a ~~third country~~ ESG rating provider <u>established outside the Union</u> shall remain fully responsible for such ~~an~~ ESG rating<u>s</u> and

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	for compliance with the obligations under this Regulation.	for compliance with the obligations under this Regulation.
6. Where ESMA has well-founded reasons to consider that the conditions laid down in paragraph 1 are no longer fulfilled, it shall have the power to require the endorsing ESG rating provider to cease the endorsement.	6. Where ESMA has well-founded reasons to consider that the conditions laid down in **this Article** ~~**paragraph 1**~~ are no longer fulfilled, it shall have the power to require the endorsing ESG rating provider to cease the endorsement**, without prejudice to the applicable sanctions in accordance with Articles 33 to 35 of this Regulation.**	
Article 11		
Recognition of third country ESG rating providers	**Recognition of** ~~**third country**~~ **ESG rating provider established outside the Union**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. Until the Commission has adopted an equivalence decision as referred to in Article 9 or, where adopted, in the event that the equivalence decision is repealed, third country ESG rating providers with an annual net turnover on their ESG rating activities below EUR 12 million for three consecutive years may provide ESG ratings to regulated financial undertakings in the Union, provided that ESMA has recognised that third country ESG rating provider in accordance with this paragraphs XX and YY.	1. Until the Commission has adopted an equivalence decision as referred to in Article 9 or, where adopted, in the event that the equivalence decision is repealed, ~~third country~~ ESG rating providers **established outside the Union** with a~~n~~ **consolidated** annual net turnover on **all** their ~~ESG rating~~ activities below EUR 12 million for three consecutive years may ~~provide ESG ratings to regulated financial undertakings~~ **operate** in the Union, provided that ESMA has recognised that ~~third country~~ ESG rating provider in accordance with this **Article** ~~paragraphs XX and YY~~.	1. Until the Commission has adopted an equivalence decision as referred to in Article 9 or, where adopted, in the event that the equivalence decision is repealed, ~~third country~~ ESG rating providers **established outside the Union** with a~~n~~ **consolidated** annual net turnover on **all** their ~~ESG rating~~ activities below EUR 12 million for three consecutive years may ~~provide ESG ratings to regulated financial undertakings~~ **operate** in the Union, provided that ESMA has recognised that ~~third country~~ ESG rating provider in accordance with this **Article** ~~paragraphs XX and YY~~.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		<u>Where the ESG rating provider established outside the Union belongs to a group in accordance with article 2(11) of Directive 2013/34/EU, the consolidated net turnover should be assessed on a consolidated basis.</u> **<u>Comment</u>**: *The turnover threshold should be assessed on a consolidated basis, by adding up all turnover deriving from ESG rating activities within the group, where the ESG rating provider belongs to a group. By only specifying with a "consolidated annual net turnover" we could consider that it encompasses only the ESG rating provider and related subsidiaries and not the parent company of the ESG rating provider.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	~~**For the purposes of the first subparagraph**~~**To that end**, ESMA may take into account either an assessment by an independent external auditor or a certification of the competent authority of the third country where the ~~**third country**~~ ESG rating provider is ~~**located**~~ **established**.	
2. Third country ESG rating providers that wish to be recognised as referred to in paragraph 1 shall comply with the requirements established in this Regulation and apply for recognition to ESMA. ESG rating providers may fulfil that condition by applying the IOSCO recommendations on ESG ratings provided that	2. ~~**Third country**~~ ESG rating providers **established outside the Union** that wish to be recognised as referred to in paragraph 1 shall comply with the requirements established in this Regulation and apply for recognition to ESMA. ~~**ESG rating providers may fulfil that condition by applying the IOSCO**~~	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
such application is equivalent to compliance with the requirements established in this Regulation.	~~**recommendations on ESG ratings provided that such application is equivalent to compliance with the requirements established in this Regulation.**~~	
For the purposes of the first subparagraph, ESMA may take into account either an assessment by an independent external auditor or a certification of the competent authority of the third country where the third country ESG rating provider is located.	~~**For the purposes of the first subparagraph, ESMA may take into account either an assessment by an independent external auditor or a certification of the competent authority of the third country where the third country ESG rating provider is located.**~~	
3. Third country ESG rating providers that wish to be recognised as referred to in paragraph 1 shall have a legal representative. That legal representative shall be a legal person located in the Union and expressly appointed by that third	3. ~~**Third country**~~ ESG rating providers **established outside the Union** that wish to be recognised as referred to in paragraph 1 shall have a legal representative. That legal representative shall be a legal person located in	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
country ESG rating provider to act on behalf of that ESG rating provider with regard to that ESG rating provider's obligations under this Regulation and, in that respect, be accountable to ESMA.	the Union and expressly appointed by that ~~third country~~ ESG rating provider to act on **its** behalf ~~**of that ESG rating provider with regard to that**~~ **, demonstrating and being accountable to ESMA that the** ESG rating provider~~'s~~ **meets the** obligations **laid down in** ~~**under**~~ this Regulation **on an ongoing basis** ~~**and, in that respect, be accountable to ESMA**~~. **The legal representative shall, upon request, provide ESMA with all the information necessary to satisfy ESMA that the ESG rating provider fulfills the requirements established in this Regulation.**	
4. The third country ESG rating provider shall provide ESMA, prior to the recognition	4. The ~~**third country**~~ ESG rating providers **established outside the Union** shall provide	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
referred to in paragraph 1, with the following information:	ESMA, prior to the recognition referred to in paragraph 1, with the following information:	
	(a1) all information necessary to desmonstrate that the condition laid down in paragraph 1 is met;	
(a) all information necessary to satisfy ESMA that that third country ESG rating provider has established all the necessary arrangements to meet the requirements referred to in paragraph 2;	(a) all information necessary to satisfy ESMA that that ~~**third country**~~ ESG rating provider has established all the necessary arrangements to meet the requirements referred to in paragraph 2 **and 3**;	(a) all information necessary to satisfy ESMA that ~~that~~ **the** ~~**third country**~~ ESG rating provider has established all the necessary arrangements to meet the requirements referred to in paragraph 2 **and 3**; **Comment**:*Typo in the initial text.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) the list of its actual or prospective ESG ratings which are intended for provision in the Union;	(b) the list of its actual or prospective ESG ratings which are intended for ~~provision~~ **distribution** in the Union;	**Comment**: *We agree with this change. The use of distribution here seems appropriate as given the ESG rating provider is established outside the EU, the issuance process will be based outside as well and we are only targeting here the distribution.*
(c) where applicable, the name and contact details of the competent authority in the third country responsible for its supervision.		
ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph.	~~ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph.~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	Within 90 working days of receipt of the application for recognition referred to in paragraph 2, ESMA shall examine the application and decide on the recognition. ESMA shall inform the applicant of its decision within five working days of the decision.	
5. ESMA shall recognise the third country ESG rating provider as referred to in paragraph 1 provided that all of the following conditions are met:	5. ESMA shall recognise the ~~third country~~ ESG rating provider as referred to in paragraph 1 provided that all of the following conditions are met:	
(a) the third country ESG rating provider has complied with all the conditions laid down in paragraphs 2, 3 and 4	(a) the ~~third country~~ ESG rating provider has complied with all the conditions laid down in paragraphs 2, 3 and 4**;**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) where the third country ESG rating provider is subject to supervision, ESMA shall seek to put in place an appropriate cooperation arrangement with the relevant competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information;	(b) where the ~~third country~~ ESG rating provider is subject to supervision, ESMA shall seek to put in place an appropriate cooperation arrangement with the relevant competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information;	(b) where the ~~third country~~ ESG rating provider is subject to supervision, ESMA shall ~~seek to~~ put in place an appropriate cooperation arrangement with the relevant competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information; *Comment: ESMA shall not "seek to" put in place cooperation arrangement but will have to do it on the basis on this article.*
6. No recognition shall be granted where the effective exercise by ESMA of its supervisory functions under this Regulation is either prevented by the laws, regulations or administrative provisions of the third country	6. No recognition shall be granted where the effective exercise by ESMA of its supervisory functions under this Regulation is either prevented by the laws, regulations or administrative provisions of the third country	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
where the third country ESG rating provider is established, or, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.	where the ~~third country~~ ESG rating provider is established, or, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.	
7. ESMA shall impose fines, in accordance with Article 30, suspend or, where appropriate, withdraw the recognition referred to in paragraph 1 where it has well-founded reasons, based on documented evidence, to consider that the ESG rating provider:		
(a) is acting, or has been acting, in a manner which is clearly prejudicial to the interests of users of its ESG ratings or to the orderly functioning of markets;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) has seriously infringed the applicable requirements set out in this Regulation;		
(c) made false statements or used any other irregular means to obtain the recognition.		
	7a. Where the ESG rating provider recognised under the provision of this Article by ESMA no longer meets the condition laid down in paragraph 1, it shall notify ESMA without undue delay. **The ESG rating provider shall notify ESMA within 3 months if it wants to continue offering its services in the Union and apply for authorisation within 12 months.**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	In the absence of such notification, the ESG rating provider shall cease to operate in the Union.	
8. ESMA shall develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 2 and, in particular, the presentation of the information required in paragraph 4. ESMA shall submit them to the Commission.	8. ESMA shall develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 2 and, in particular, the presentation of the information required in paragraph 4. ESMA shall submit them to the Commission **by [12 months after the date of entry into force]**.	
Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 12		
Cooperation arrangements		
1. Any cooperation arrangement as referred to in Article 9(4), Article 10(1), point (f) and Article 11(5), point (b), shall be subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 44. The exchange of information performed under such cooperation arrangements shall be intended for the performance of the tasks of ESMA or the competent authorities.		
2. With regard to transfer of personal data to a third country, ESMA shall apply Regulation		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(EU) 2018/1725 of the European Parliament and of the Council[39].		
CHAPTER 3		
Register and accessibility of information		
Article 13		
Register of ESG rating providers and accessibility of information on the European Single Access Point (ESAP)		

[39] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. ESMA shall establish and maintain a register that contains information on all of the following:		
(a) the identities of the ESG rating providers authorised pursuant to Article 7;		
(b) the identities of third country ESG rating providers that comply with the conditions laid down in Article 9 and the third country competent authorities responsible for the supervision of those third country ESG rating providers;	(b) the identities of ~~third country~~ ESG rating providers **established outside the Union** that comply with the conditions laid down in Article 9 and the third country competent authorities responsible for the supervision of those ~~third country~~ ESG rating providers;	
(c) the identities of the endorsing ESG rating provider and the endorsed third	(c) the identities of the endorsing ESG rating provider and the endorsed ~~third~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
country ESG rating provider referred to in Article 10, and, where applicable, the third country competent authorities that are responsible for the supervision of the endorsed third country ESG rating provider;	~~country~~ ESG rating providers **established outside the Union** referred to in Article 10, and, where applicable, the third country competent authorities that are responsible for the supervision of the endorsed ~~third country~~ ESG rating provider;	
(d) the identities of the third country ESG rating providers that have been recognised in accordance with Article 11, and, where applicable, the third country competent authorities responsible for the supervision of those third country ESG rating providers;	(d) the identities of the ~~third country~~ ESG rating providers **established outside the Union** that have been recognised in accordance with Article 11, and, where applicable, the third country competent authorities responsible for the supervision of those ~~third country~~ ESG rating providers;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. The register referred to in paragraph 1 shall be publicly accessible on the website of ESMA and shall be updated promptly, as necessary.		2. The register referred to in paragraph 1 shall be publicly accessible on the website of ESMA and shall be updated **<u>without delay</u>** ~~promptly~~, as necessary.
3. From 1 January 2028, when making public any information pursuant to Article 18(1) and 21(1), the ESG rating provider shall submit that information to the relevant collection body referred to in paragraph 6 of this Article at the same time for accessibility on ESAP established under Regulation (EU) XX/XXXX [ESAP Regulation] of the European Parliament and of the Council*.		
4. That information shall comply with all of the following requirements:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) the information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation] or, where required under Union law, in a machine-readable format, as defined in Article 2, point (4), of Regulation (EU) XX/XXXX [ESAP Regulation];		
(b) the information shall be accompanied by the following metadata:		
(1) all the names of the ESG rating provider submitting the information;	(1) ~~all the names~~ **a full business name and, if applicable, the name used for marketing purposes and the abbreviation of the name** of the ESG rating provider submitting the information;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(2) the legal entity identifier of the ESG rating provider as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];		
(3) the size of the ESG rating provider as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];		
(4) the type of information as classified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];		
(5) metadata specifying whether the information includes personal data.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. For the purposes of paragraph 1, point (b)(ii) the ESG rating provider shall acquire the legal entity identifier as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation].		5. For the purposes of paragraph 1, point (b)(~~ii~~**2**) the ESG rating provider shall acquire the legal entity identifier as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation].
6. For the purposes of making accessible on ESAP the information referred to in paragraph 1, the collection body as defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] shall be ESMA.		6. For the purposes of making accessible on ESAP the information referred to in paragraph ~~1~~ **3**, the collection body as defined in Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] shall be ESMA. **Comment**: *the information referred to in this paragraph is about ESAP and not the register.*
7. From 1 January 2028, the information referred to in paragraph 1 and in Articles 10(3),		7. From 1 January 2028, the information referred to in paragraph ~~1~~ **3** and in Articles

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
33(1), 34 and 35 shall be made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of that Regulation shall be ESMA. That information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation], include the metadata as regards the names and, where available, the legal entity identifier of the ESG rating provider as specified pursuant to Article 7(4) of that Regulation, the type of information as classified pursuant to Article 7(4) of that Regulation and whether the information includes personal data.		10(3), 33(~~1~~ **4**), ~~34 and 35~~ **and 36(1)** shall be made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of that Regulation shall be ESMA. That information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation], include the metadata as regards the names and, where available, the legal entity identifier of the ESG rating provider as specified pursuant to Article 7(4) of that Regulation, the type of information as classified pursuant to Article 7(4) of that Regulation and whether the information includes personal data. **Comment**: *ESAP relies on an obligation to publish information yet under articles 34 and 35*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		there is no transparency obligation, which is found under article 36(1).
8. For the purposes of ensuring an efficient collection and administration of data submitted in accordance with paragraph 3, ESMA shall develop draft implementing technical standards to specify:		
(a) any other metadata to accompany the information;		
(b) the structuring of data in the information;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) for which information a machine-readable format is required and which machine-readable format is to be used.		
Before developing the draft implementing technical standards, ESMA shall carry out a cost-benefit analysis. For the purposes of point (c), ESMA shall assess the advantages and disadvantages of different machine-readable formats and conduct appropriate field tests.		
ESMA shall submit those draft implementing technical standards to the Commission.		
Power is conferred on the Commission to adopt the implementing technical standards referred to		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.		
9. If necessary, ESMA shall adopt guidelines for entities to ensure that the metadata submitted in accordance with paragraph 8, first subparagraph, point (a), is correct.		
TITLE III		
INTEGRITY AND RELIABILITY OF ESG RATING ACTIVITIES		
CHAPTER 1		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Organisational requirements, processes and documents concerning governance		
Article 14		
General principles		
1. ESG rating providers shall ensure the independence of their rating activities, including from all political and economic influences or constraints.		
2. ESG rating providers shall have in place rules and procedures that ensure that their ESG rating are provided and published or made available in accordance with this Regulation.	2. ESG rating providers shall have in place rules and procedures that ensure that their ESG ratings are ~~**provided and**~~ published or **distributed** ~~**made available**~~ in accordance with this Regulation. **In order to ensure consistent**	2. ESG rating providers shall have in place rules and procedures that ensure that their ESG ratings are **provided** ~~**and**~~ ~~published or~~ ~~**distributed made available**~~ in accordance with this Regulation. **In order to ensure consistent**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	application of this Article, ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to determine procedures for the publication and distribution of ESG ratings.	**application of this Article, ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to determine procedures for the ~~publication and distribution~~ provision of ESG ratings.** **Comment:** *As mentioned before, the notion of "provision" and the terms that derives from it (provide, ...) should encompass the process of issuance and distribution/publication.*
3. ESG rating providers shall employ systems, resources and procedures that are adequate and effective to comply with their obligations under this Regulation.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. ESG rating providers shall adopt and implement written policies and procedures that ensure that their ESG ratings are based on a thorough analysis of all relevant information available to them.		
5. ESG rating providers shall adopt and implement internal due diligence policies and procedures that ensure that their business interests do not impair the independence or accuracy of the assessment activities.		
6. ESG rating providers shall adopt and implement sound administrative and accounting procedures, internal control mechanisms, and effective control and safeguard arrangements for information processing systems.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
7. ESG rating providers shall use rating methodologies for the ESG ratings they provide that are rigorous, systematic, objective and capable of validation and shall apply those rating methodologies continuously.	ESG rating providers shall use rating methodologies for the ESG ratings they provide that are rigorous, systematic **and impartial**, ~~**objective and capable of validation**~~ and shall apply those rating methodologies continuously and **in a transparent manner**.	ESG rating providers shall use rating methodologies for the ESG ratings they provide that are rigorous, systematic ~~**and impartial**~~, **independent** ~~**objective**~~ **and capable of validation** and shall apply those rating methodologies continuously and **in a transparent manner**. **Comment**: *We understand capable of validation as a requirement for ESG ratings providers to have an audit trail to demonstrate that the methodology was applied continuously and suggest to retain this notion (or a close synonym). With regards to "objective" it is important to ensure that the ESG rating issued*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		is free from external influence, therefore, we suggest retaining the term "independent" instead of "objective".
8. ESG rating providers shall review the rating methodologies referred to in paragraph 6 on an on-going basis and at least annually.	8.ESG rating providers shall review the rating methodologies referred to in paragraph ~~6~~ 7 on an on-going basis and at least annually **and review accordingly the affected ESG ratings**.	8.ESG rating providers shall review the rating methodologies referred to in paragraph ~~6~~ 7 on an on-going basis and at least annually. **Where rating methodologies are changed, the ESG rating provider shall ~~and~~ review accordingly the affected ESG ratings without undue delay**.
9. ESG rating providers shall monitor and evaluate the adequacy and effectiveness of the systems, resources and procedures referred to in paragraph 2 at least annually and take	ESG rating providers shall monitor and evaluate the adequacy and effectiveness of the systems, resources and procedures referred to in paragraph ~~2~~ 3 at least annually and take	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
appropriate measures to address any deficiencies.	appropriate measures to address any deficiencies.	
10. ESG rating providers shall establish and maintain a permanent and effective oversight function to ensure oversight of all aspects of the provision of their ESG ratings.		
ESG rating providers shall develop and maintain robust procedures regarding their oversight function.		
11. ESG rating providers shall adopt, implement, and enforce measures to ensure that their ESG ratings are based on a thorough analysis of all the information that is available to them and that is relevant to their analysis in	11. ESG rating providers ~~shall adopt, implement, and enforce measures to ensure that their ESG ratings are based on a thorough analysis of all the information that is available to them and that is relevant to~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
accordance with their rating methodologies. They shall adopt all necessary measures to ensure that the information they use in assigning ESG ratings is of sufficient quality and from reliable sources. ESG rating providers shall explicitly mention that their ESG ratings are their own opinion .	~~their analysis in accordance with their rating methodologies. They~~ shall adopt all necessary measures to ensure that the information they use in assigning ESG ratings is of sufficient quality and from reliable sources. ESG rating providers shall **clearly and** explicitly ~~mention~~ **inform** that their ESG ratings are their own opinion.	
	[11a. ESG rating providers shall inform the rated entity during working hours of the rated entity and at least a full working day before publication of the ESG rating. The information shall include at least the principal grounds on which the ESG rating is based in order to give the rated entity an opportunity to inform the ESG rating provider of any factual errors.]	**[11a. ESG rating providers shall inform the rated entity during working hours of the rated entity and at least a full working day before the first publication of the ESG rating. The information shall include at least the principal grounds on which the ESG rating is based in order to give the rated entity an opportunity to inform the ESG rating**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		provider of any factual errors in relation to the underlying data.] **In addition, ESG rating providers should make available to rated undertakings any data related to them that were collected, estimated or computed by the provider, at regular interval of at least once a year. This is to enable rated entities to highlight, if they want to, any factual errors in the dataset used that could hinder the quality of future ratings.** **Access by the rated entities to the dataset used by the ESG rating providers should be made free of charge and on a non-commercial basis.**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		Comment: *To answer some interrogations expressed in the WP about the feasibility of such measure, we suggest that the notification to the issuer should only apply before the first publication of the rating (and not to any following update). This is to avoid cases where providers update their ratings regularly through continuous data inputs and a notification to the rated entity each time the rating is modified would be a burden for the provider and rated entity as well.* *However, ESG rating providers should regularly make available the underlying data used for the rating. This would help the rated*

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		entity to highlight in their own time and if they want to, any factual errors in the datasets used.
12. ESG rating providers shall not disclose information about their intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets as defined in Article 2, point (1), of Directive (EU) 2016/943 of the European Parliament and of the Council[40].	12. ESG rating providers shall not disclose information **related to the rated entity** about their intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets as defined in Article 2, point (1), of Directive (EU) 2016/943 of the European Parliament and of the Council .	12. ESG rating providers shall not disclose information ~~**related to the rated entity**~~ about their intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets as defined in Article 2, point (1), of Directive (EU) 2016/943 of the European Parliament and of the Council. **Comment**: *This paragraph relates to the provider's IP and not the rated entity.*

[40] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
13. ESG rating providers shall only make changes to their ESG ratings in accordance with their rating methodologies published pursuant to Article 21.		
Article 15		
Separation of business and activities		
1. ESG rating providers shall not provide any of the following activities:		
(a) consulting activities to investors or undertakings;		*Comment: there needs to be a clear definition of what consulting activities entail and how the article applies to business models which are not investor-paid (example of ratings provided to companies to improve their ESG performance*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		on their value-chain). What are the conflicts of interests we want to deal with in this case?
(b) the issuance and sale of credit ratings;	(b) the issuance and sale of credit ratings **in the sense of Regulation (EC) No 1060/2009**;	
(c) the development of benchmarks;	(c) the development of benchmarks **in the sense of Regulation (EU) 2016/1011**;	
(d) investment activities;	(d) investment activities **in the sense of Directive 2004/39/E**C;	
(e) audit activities;	(e) audit activities **in the sense of Regulation (EU) No 537/2014**;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(f) banking, insurance, or reinsurance activities.	(f) banking, insurance, or reinsurance activities **in the sense of Directive 2013/36/EU and Directive 2009/138/EC**.	
	1a. By way of derogation of the first paragraph, ESG rating providers may provide the activities listed in that paragraph, when they put in place specific measures to ensure that each activity is exercised autonomously and avoids creating risks of conflicts of interest within its ESG rating activities. In addition, ESG rating providers and any other entity of the same group shall take appropriate measures, including the measures in Articles 23 and 24, to ensure that conflicts of interest do not arise	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	in decision-making, both within the institution itself and between institutions belonging to the same group. This derogation shall not be applicable to the activities listed in paragraph 1 point (a) and (e) when they are provided to entities that are or have been rated by the ESG rating provider.	
	For the purposes of the first subparagraph, ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to determine the conditions under which ESMA may assess that the measures put in place ensure avoidance of conflict of interests and autonomy in the exercise of the different actitivies.	**For the purposes of the first subparagraph, ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to ~~determine the conditions under which ESMA may assess that~~ specify the measures ~~put in place~~ to ensure the avoidance of conflict of interests and autonomy in the exercise of the different actitivies.**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		Comment: *Prescribing ESMA to develop guidelines that it should apply itself seems relatively odd. The guidelines should be directed to ESG ratings providers.*
2. ESG rating providers shall ensure that the provision of other services than those referred to in paragraph 1 does not create risks of conflicts of interest within its ESG rating activities.	2. ESG rating providers shall ensure that the provision of other services than those referred to in paragraph 1 does not create risks of conflicts of interest within its ESG rating activities. **In the latter case, ESG rating providers shall refrain from offering the other services.**	
Article 16		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Rating analysts, employees and other persons involved in the provision of ESG ratings		
1. ESG rating providers shall ensure that rating analysts, employees and any other natural person whose services are placed at its disposal or under its control and who are directly involved in the provision of ESG ratings, including analysts directly involved in the rating process and persons involved in the provision of scores, have the knowledge and experience that is necessary for the performance of the duties and tasks assigned.	1. ESG rating providers shall ensure that rating analysts, employees and any other natural person **under its control or** whose services are placed at its disposal**, for example by way of a contractual arrangement,** ~~**or under its control**~~ and who are directly involved in the provision of ESG ratings, including analysts directly involved in the rating process and persons involved in the provision of scores, **are appropriately trained and** have the knowledge and experience that is necessary for the performance of the duties and tasks assigned.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. ESG rating providers shall ensure that the persons referred to in paragraph 1 are not allowed to initiate or participate in negotiations regarding fees or payments with any rated entity or any person directly or indirectly linked to the rated entity by control.		
3. The persons referred to in paragraph 1 shall not buy or sell any financial instrument issued, guaranteed, or otherwise supported by any rated entity other than holdings in diversified collective investment schemes, including managed funds, nor engage in any transaction in such financial instruments.		
4. The persons referred to in paragraph 1 shall not participate in or otherwise influence		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the determination of an ESG rating of any rated entity where those persons:		
(a) own financial instruments of the rated entity, other than holdings in diversified collective investment schemes;		
(b) own financial instruments of any entity related to a rated entity, the ownership of which may cause or may be generally perceived as causing a conflict of interest, other than holdings in diversified collective investment schemes;		
(c) have had a recent employment, business or other relationship with the rated entity that	(c) have had **in the last two years** a ~~**recent**~~ employment, business or other relationship with the rated entity that may cause or may be	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
may cause or may be generally perceived as causing a conflict of interest.	generally perceived as causing a conflict of interest.	
5. ESG rating providers shall ensure that the persons referred to in paragraph 1:		
(a) take all reasonable measures to protect property and records in possession of the ESG rating provider from fraud, theft or misuse, taking into account the nature, scale and complexity of the ESG rating provider's business and the nature and range of ESG rating activities;		
(b) do not share confidential information that has been entrusted to the ESG rating provider with anyone who is not directly	(b) do not share confidential information that has been entrusted to the ESG rating provider with anyone who is not directly	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
involved in the provision ofESG rating activities, including rating analysts and employees of any person directly or indirectly linked to the ESG rating provider by control, and any other natural person whose services are or have been placed at the disposal of, or are under the control of, any person directly or indirectly linked to the ESG rating provider by control;	involved in the provision of ESG rating activities, including rating analysts and employees of any person directly or indirectly linked to the ESG rating provider by control, and any other natural person whose services are or have been placed at the disposal of, or are under the control of, any person directly or indirectly linked to the ESG rating provider by control;	
(c) do not use or share confidential information for any other purpose than the provision of ESG rating activities, including for the trading of financial instruments.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(ca) do not solicit or accept money, gifts or favours from anyone with whom the ESG rating provider does business.	
6. Persons as referred to in paragraph 1 that consider that any other person as referred to in paragraph 1 has engaged in conduct that they consider to be illegal shall immediately inform the compliance function thereof. The ESG rating provider shall ensure that such reporting does not have any negative consequences for the person reporting.	6. Persons as referred to in paragraph 1 that consider that any other person as referred to in paragraph 1 has engaged in conduct that they consider to be illegal shall immediately inform the ~~compliance~~ **oversight** function thereof. The ESG rating provider shall ensure that such reporting does not have any negative consequences for the person reporting.	
7. Where a rating analyst terminates his or her employment with the ESG rating provider and joins a rated entity which he or she has been		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
involved in rating, the ESG rating provider shall review the work of the rating analyst over one year preceding his or her departure.		
8. Persons as referred to in paragraph 1 shall not take up a key management position within a rated entity which they have been involved in rating for six months after the provision of such rating.		
Article 17		
Record-keeping requirements		
1. ESG rating providers shall record their ESG rating activities. Those records shall contain the information listed in Annex II.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. ESG rating providers shall keep the information referred to in paragraph 1 for at least five years and in such a form that it is possible to replicate and fully understand the determination of an ESG rating.		
Article 18		
Complaints-handling mechanism		
1. ESG rating providers shall have in place and publish on their website procedures for receiving, investigating and retaining records concerning complaints made.	1. ESG rating providers shall have in place and publish on their website procedures for receiving, investigating and retaining records concerning complaints made **by users of ESG ratings and rated entities. ESG rating**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	providers shall also clearly inform on their website about their contact details.	
2. The procedures referred to in paragraph 1 shall ensure that:		
(a) the ESG rating provider makes publicly available the complaints-handling policy through which complaints may be submitted on:	(a) the ESG rating provider makes publicly available the complaints-handling policy; ~~through which complaints may be submitted on:~~	
(1) the sources of data used for a specific ESG rating;	~~(1) the sources of data used for a specific ESG rating;~~	
(2) the way in which the rating methodology in relation to a specific ESG rating has been applied;	~~(2) the way in which the rating methodology in relation to a specific ESG rating has been applied;~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(3) whether a specific ESG rating is representative of the rated entity;	~~(3) whether a specific ESG rating is representative of the rated entity;~~	
(4) a proposed change to the ESG rating determination process;	~~(4) a proposed change to the ESG rating determination process;~~	
(5) other decisions in relation to the ESG rating;	~~(5) other decisions in relation to the ESG rating;~~	
(b) complaints are investigated in a timely and fair manner and that the outcome of the investigation is communicated to the complainant within a reasonable period of time, unless such communication would be contrary to objectives of public policy or to Regulation		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(EU) No 596/2014 of the European Parliament and of the Council[41];		
(c) the inquiry is conducted independently of any personnel that has been involved in the subject-matter of the complaint.		
	3. Complaints may be submitted on:	
	(1) the sources of data used for a specific ESG rating, factual errors and mistakes;	

[41] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(2) the way in which the rating methodology in relation to a specific ESG rating has been applied;	
	(3) whether a specific ESG rating is representative of the rated entity;	
Article 19		
Outsourcing		
1. ESG rating providers shall not outsource important operational functions where such outsourcing would materially impair the quality of the ESG rating provider's internal control policies and procedures, or the ability of the	1. ESG rating providers shall not outsource important operational functions where such outsourcing would materially impair the quality of the ESG rating provider's internal control policies and procedures, or the ability of ~~the~~	1. ~~ESG rating providers shall not outsource important operational functions where such outsourcing would materially impair the quality of the ESG rating provider's internal control policies and procedures, or the ability of the~~

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
European Supervisory and Markets Authority (ESMA) to supervise the ESG rating provider's compliance with its obligations under this Regulation.	~~European Supervisory and Markets Authority (~~ESMA~~)~~ to supervise the ESG rating provider's compliance with its obligations under this Regulation. **In determining whether an operational function could be considered important and, as a consequence, could not be outsourced, consideration shall be given to the fact that it is performed on a recurrent or an ongoing basis, or the function would normally fall within the scope of functions that would be reasonably expected to be performed by the ESG rating provider itself.**	~~European Supervisory and Markets Authority (~~ESMA~~)~~ ~~to supervise the ESG rating provider's compliance with its obligations under this Regulation.~~ ~~**In determining whether an operational function could be considered important and, as a consequence, could not be outsourced, consideration shall be given to the fact that it is performed on a recurrent or an ongoing basis, or the function would normally fall within the scope of functions that would be reasonably expected to be performed by the ESG rating provider itself.**~~ **1. Outsourcing of important operational functions shall not be undertaken in such a way as to impair materially the quality of the ESG rating provider's**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		internal control and the ability of ESMA to supervise the ESG rating provider's compliance with obligations under this Regulation. *Comment: we suggest to keep the drafting of the CRA Regulation (article 9).*
2. ESG rating providers that outsource functions or any services or activities that are relevant for the provision of an ESG rating shall remain fully responsible for discharging all of the obligations under this Regulation.		
3. ESG rating providers that outsource functions or any services or activities that are relevant for the provision of an ESG rating shall		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
remain fully responsible for disclosing the information referred to in Annex II.		
Article 20		
Exemptions on governance requirements		
1. ESMA may exempt an ESG rating provider at its request from complying with some of the requirements laid down in Article 14 where that ESG rating provider is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of the issuance of ESG ratings and provided that:	1. ESMA may exempt an ESG rating provider at its request**, mostly if not only at the time of its registration, in all or part,** from complying with some of the requirements laid down in Article 14 where that ESG rating provider is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of the issuance of ESG ratings and provided that:	1. ESMA may exempt an ESG rating provider at its request~~, mostly if not only at the time of its registration, in all or part,~~ from complying with some of the requirements laid down in Article 14 where that ESG rating provider is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of the issuance of ESG ratings and provided that:

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		Comment: ESG rating providers should not be exempted from all the high level requirements established in article 14.
(a) the ESG rating provider is a small or medium-sized undertaking according to the criteria laid down in Article 3 of Directive 2013/34/EU;		
(b) the ESG rating provider has implemented measures and procedures, and in particular internal control mechanisms, reporting arrangements and measures, that ensure the independence of rating analysts and persons approving ESG ratings and that ensure the effective compliance with this Regulation;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) the size of the ESG rating provider is not determined in such a way as to avoid compliance with the requirements of this Regulation by an ESG rating provider or a group of ESG rating providers.		
	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be exempted in accordance with paragraph 1. **ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the date of entry into force].** **Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 1 in accordance**	**1a. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be exempted in accordance with paragraph 1.** **ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the date of entry into force].** **Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 1 in accordance**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.	**with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.** **Comment:** *Re-numbering to be consistent with the rest of the Regulation.* *We strongly support the mandate given to ESMA to draft regulatory technical standard to further define the elements SMEs should be exempted from.*
2. In the case of a group of ESG rating providers, ESMA shall ensure that at least one of the ESG rating providers in the group is not exempted from the requirements laid down in this Regulation.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
CHAPTER 2		
Transparency requirements		
Article 21		
Disclosure of the methodologies, models, and key rating assumptions used in ESG rating activities to the public		
1. ESG rating providers shall disclose on their website the methodologies, models and key rating assumptions they use in their ESG rating activities, including the information referred to in point 1 of Annex III.		1. ESG rating providers shall disclose on their website the methodologies, models and key rating assumptions they use in their ESG rating activities, ~~including~~ **and at least** the information referred to in point 1 of Annex III.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		This information should be published in clear and transparent manner and identified in a separate section of the ESG rating provider's website.
2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1.	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1. **These elements shall not include any other disclosure requirement than those listed in Annex III.**	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1. **These elements shall not include any ~~other~~ additional disclosure requirement than those listed in Annex III.**
3. ESMA shall submit those draft regulatory technical standards to the Commission by XX XXXX XXXX.	3. ESMA shall submit those draft regulatory technical standards to the Commission by **[12 months after the date of entry into force]**.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		
Article 22		
Disclosures to subscribers of ESG ratings and rated entities	**Disclosures to ~~subscribers~~ users of ESG ratings and rated entities**	
1. ESG rating providers shall disclose, as a minimum, the information referred to in point 2 of Annex III to their subscribers and to the rated entities.	1. ESG rating providers shall disclose, as a minimum, the information referred to in point 2 of Annex III to ~~their subscribers~~ **users of ESG ratings** and to the rated entities.	*Comment : based on the definition of users in article 3, the proposed drafting implies that ESG rating providers publishing ESG ratings on their website shall disclose all information under articles 21 and 22 and related annex III.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		We are not opposed to this approach but just want to clarify.
2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1.	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1. **These elements shall not include any other disclosure requirement than those listed in Annex III.**	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1. **These elements shall not include any ~~other~~ additional disclosure requirement than those listed in Annex III.**
3. ESMA shall submit those draft regulatory technical standards to the Commission by XX XXXX XXXX.	3. ESMA shall submit those draft regulatory technical standards to the Commission by **[12 months after the date of entry into force]**.	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		
CHAPTER 3		
Independence and conflicts of interest		
Article 23		
Independence and avoidance of conflicts of interest		
1. ESG rating providers shall have in place robust governance arrangements, including a clear organisational structure with well-defined, transparent, and consistent roles and		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
responsibilities for all persons involved in the provision of an ESG rating.		
2. ESG rating providers shall take all necessary steps to ensure that any ESG rating provided is not affected by any existing or potential conflict of interest, or by any business relationship, either from the ESG rating provider itself or from their shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the ESG rating providers, or any person directly or indirectly linked to them by control.	2. ESG rating providers shall take all necessary steps to ensure that any ESG rating provided is not affected by any existing or potential conflict of interest, or by any business relationship, either from the ESG rating provider itself, **from the data provider** or from their shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the ESG rating providers, or any person directly or indirectly linked to them by control.	**2.** ESG rating providers shall take all necessary steps to ensure that any ESG rating provided is not affected by any existing or potential conflict of interest, or by any business relationship, either from the ESG rating provider itself, ~~**from the data provider**~~ or from their shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the ESG rating providers, or any person directly or indirectly linked to them by control.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		Comment: the concept of "data provider" is not defined in this Regulation and we are not sure what type of conflict of interest is targeted here.
3. Where there is a risk of a conflict of interest within an ESG rating provider due to the ownership structure, controlling interests, or activities of that ESG rating provider, of any entity owning or controlling the ESG rating provider, of an entity that is owned or controlled by the ESG rating provider, or of any the ESG rating provider's affiliates, ESMA may require the ESG rating provider to take measures to mitigate that risk. Such measures may include the establishment of an independent oversight function representing stakeholders, including		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
users of the ESG ratings and contributors to such ratings, in a balanced manner.		
Where a conflict of interest as referred to in the first subparagraph cannot be adequately managed, ESMA may require the ESG rating provider to cease the activities or relationships that create the conflict of interest, or may require the ESG rating provider to cease providing the ESG ratings.		
4. ESG rating providers shall disclose to ESMA all existing or potential conflicts of interest, including conflicts of interest arising from the ownership or control of the ESG rating providers.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. ESG rating providers shall establish and operate policies, procedures, and effective organisational arrangements for the identification, disclosure, prevention, management and mitigation of conflicts of interest. ESG rating providers shall regularly review and update those policies, procedures and arrangements. Those policies, procedures and arrangements shall specifically prevent, manage and mitigate conflicts of interest due to the ESG rating provider's ownership or control or due to other interests in the ESG rating provider's group, or conflicts of interest that are caused by other persons that exercise influence or control over the ESG rating provider in relation to determining the ESG rating.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. ESG rating providers shall review their operations to identify potential conflicts of interests at least each year.		
Article 24		
Management of potential conflicts of interests from employees		
1. ESG rating providers shall ensure that their employees and any other natural persons whose services are placed at their disposal or under their control and who are directly involved in the provision of an ESG rating:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) have the skills that are necessary for performing their tasks and duties and are subject to effective management and supervision;		
(b) are not subject to undue influence or conflicts of interest;		
(c) that the compensation and performance evaluation of those persons do not create conflicts of interest or otherwise impinge upon the integrity of the ESG rating determination process;		
(d) do not have any interests or business connections that compromise the activities of the ESG rating provider;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(e) are prohibited from contributing to an ESG rating determination by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except where such contribution is explicitly required as part of the ESG rating methodology and is subject to specific rules laid down therein;		
(f) are subject to effective procedures to control the exchange of information with other employees involved in activities that may create a risk of conflicts of interest or with third parties, where that information may affect the ESG rating.		
2. ESG rating providers shall establish specific internal control procedures to ensure the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
integrity and reliability of the employee or person determining the ESG rating, including internal sign-off by management before the dissemination of the ESG rating.		
Article 25		
Fair, reasonable, transparent and non-discriminatory treatment of users of ESG ratings		
1. ESG rating providers shall take steps that are adequate to ensure that fees charged to clients are fair, reasonable, transparent, non-discriminatory and are based on costs.	1. ESG rating providers shall take steps that are adequate to ensure that fees charged to clients are fair, reasonable, transparent~~,~~ **and** non-discriminatory ~~**and are based on costs**~~.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. For the purposes of paragraph 1, ESMA may require ESG rating providers to provide it with documented evidence, may take supervisory measures in accordance with Article 33, and may decide to impose fines in accordance with Article 34 where it finds that fees from ESG rating providers are not fair, reasonable, transparent, non-discriminatory and not based on actual costs.	2. For the purposes of paragraph 1, ~~**ESMA may require ESG rating providers to provide it with documented evidence,**~~ **ESG rating providers shall annually provide ESMA with information on their pricing policy, including the fee structure and pricing criteria. ESMA** may take supervisory measures in accordance with Article 33, and may decide to impose fines in accordance with Article 34 where it finds that fees from ESG rating providers are not fair, reasonable, transparent~~**,** **and** non-discriminatory ~~**and not based on actual costs**~~.	**Comment**: *As expressed in the last WP, we were not in favor of the deletion of the reference to "based on costs". As a countermeasure, and in order to make the provision of paragraph 1 applicable, we strongly support transparency towards ESMA and the possibility for ESMA to take supervisory measures. Public transparency would have been a more effective way to ensure the application of the principles of paragraph 1. However, transparency to ESMA only represents a good balance between MS's views.*
CHAPTER 4		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Supervision by ESMA		
Section 1		
General principles		
Article 26		
Non-interference with the content of ratings or methodologies		
In carrying out their duties under this Regulation, ESMA, the Commission or any public authorities of a Member State shall not interfere with the content of ESG ratings or methodologies.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 27		
ESMA		
1. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall issue and update guidelines on the cooperation between ESMA and the competent authorities for the purposes of this Regulation, including the procedures and detailed conditions relating to the delegation of tasks.		
2. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall, in cooperation with the EBA and EIOPA, issue and update guidelines on the application of the	2. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall, in cooperation with the EBA and EIOPA, issue and update guidelines on the application of the	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
endorsement regime referred to in Article 10 of this Regulation by XX XXXX XXXX.	endorsement regime referred to in Article 10 of this Regulation by **[12 months after the date of entry into force]**.	
3. ESMA shall publish an annual report on the application of this Regulation, including on supervisory measures taken and penalties imposed by ESMA under this Regulation, including fines and periodic penalty payments. That report shall contain, in particular, information on the evolution of ESG Ratings market and an assessment of the application of the third country regimes referred to in Articles 9, 10 and 11.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ESMA shall present the annual report referred to in the first subparagraph to the European Parliament, the Council and the Commission.		
4. ESMA shall cooperate with the EBA and EIOPA in performing its tasks and shall consult the EBA and EIOPA before issuing and updating guidelines and submitting draft regulatory technical standards.		
Article 28		
Competent authorities		
1. By XX XXXX XXXX, each Member State shall designate a competent authority for the purposes of this Regulation.	1. By **[18 months after the entry into force]**, each Member State shall designate a	*Comment: the designation of the NCA should happen before the Regulation enter into application.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	competent authority for the purposes of this Regulation.	
2. Competent authorities shall be adequately staffed, with regard to capacity and expertise, to be able to apply this Regulation.		
Article 29		
Exercise of the powers referred to in Articles 30 to 32		
The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 30 to 32 shall not be used to require the disclosure of information or documents which are subject to legal privilege.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 30		
Requests for information		
1. ESMA may by simple request or by decision require ESG rating providers, persons involved in ESG rating activities, rated entities, third parties to whom the ESG rating providers have outsourced operational functions or activities, and persons otherwise closely and substantially related or connected to ESG rating providers or ESG rating activities, to provide all information that it needs to carry out its duties under this Regulation.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. When sending a simple request for information under paragraph 1, ESMA shall:		
(a) refer to this Article as the legal basis for the request;		
(b) state the purpose of the request;		
(c) specify what information is required;		
(d) set a time-limit within which the information is to be provided;		
(e) inform the person from whom the information is requested that there is no obligation to provide the information but that		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
any reply to the request for information must not be incorrect or misleading;		
(f) indicate the fine provided for in Article 34, where the answers to questions asked are incorrect or misleading.		
3. When requiring the supply of information under paragraph 1 by decision, ESMA shall:		
(a) refer to this Article as the legal basis for the request;		
(b) state the purpose of the request;		
(c) specify what information is required;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) set a time-limit within which the information is to be provided;		
(e) indicate the periodic penalty payments provided for in Article 35 where the production of the required information is incomplete;		
(f) indicate the fine provided for in Article 34, where the answers to questions asked are incorrect or misleading;		
(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or of associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. Those clients shall remain fully responsible if the information supplied by the lawyers is incomplete, incorrect or misleading.		
5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 who are		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
concerned by the request for information are domiciled or established.		
Article 31		
General investigations		
1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary investigations of persons referred to in Article 30(1). To that end, the officials of and other persons authorised by ESMA shall be empowered to:		
(a) examine any records, data, procedures and any other material relevant to the execution		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of its tasks irrespective of the medium on which they are stored;		
(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;		
(c) summon and ask any person referred to in Article 30(1),or their representatives or staff for oral or written explanations on facts or documents related to the subject matter and purpose of the inspection and to record the answers;		
(d) interview any other natural or legal person who consents to be interviewed for the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
purpose of collecting information relating to the subject matter of an investigation;		
(e) request records of telephone and data traffic.		
2. The officials of and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 35(1) where the production of the required records, data, procedures or any other material, or the answers to questions asked of the persons		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
referred to in Article are not provided or are incomplete, and the fines provided for in Article 34, where the answers to questions asked of the persons referred to in Article are incorrect or misleading.		
3. The persons referred to in Article 30(1) shall submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 3, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice of the European Union.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. In good time before the investigation, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.		
5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. Where authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.		
Article 32		
On-site inspections		
1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 30(1). Where the proper conduct and efficiency of the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
inspection so require, ESMA may carry out the on-site inspection without prior announcement.		
2. The officials of and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 31(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.		
3. The officials of and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
production of a written authorisation specifying the subject matter and purpose of the inspection, and the periodic penalty payments provided for in Article 31 where the persons concerned do not submit to the inspection. In good time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where it is to be conducted.		
4. The persons referred to in Article 30(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, specify the date on which it is to begin and indicate the periodic penalty payments provided for in Article 31, the legal remedies available under Regulation (EU) No 1095/2010 as well as		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the right to have the decision reviewed by the Court of Justice of the European Union. ESMA shall take such decisions after consulting the competent authority of the Member State where the inspection is to be conducted.		
5. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, upon the request of ESMA, actively assist the officials of and other persons authorised by ESMA. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the competent authority of the Member State concerned may also attend the on-site inspections upon request.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 31(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 31(1).		
7. Where the officials of and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
8. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.		
9. Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.		
Section 2		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Administrative sanctions and other administrative measures		
Article 33		
Supervisory measures by ESMA		
1. Where ESMA' finds that a ESG rating provider has not complied with its obligations under this Regulation, it shall take one or more of the following supervisory measures:	1. Where ESMA' finds that a**n** ESG rating provider has not complied with its obligations under this Regulation, it shall take one or more of the following supervisory measures:	
(a) withdraw the authorisation of the ESG rating provider;	(a) withdraw **or suspend** the authorisation of the ESG rating provider **in the cases referred to in Article 8, paragraph 1 of this Regulation**;	(a) withdraw ~~**or suspend**~~ the authorisation of the ESG rating provider **in the cases referred to in Article 8, paragraph 1 of this Regulation**;

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) temporarily prohibit the ESG rating provider from providing ESG ratings, until the infringement has been brought to an end;	(b) temporarily prohibit the ESG rating provider from ~~providing~~ **publishing or distributing** ESG ratings, until the infringement has been brought to an end;	(b) temporarily prohibit the ESG rating provider from **providing** ~~publishing or distributing~~ ESG ratings, until the infringement has been brought to an end;
(c) suspend the use of the ESG ratings provided by the ESG rating provider, until the infringement has been brought to an end;	~~(c) suspend the use of the ESG ratings provided by the ESG rating provider, until the infringement has been brought to an end;~~	**(c) suspend the use of the ESG ratings provided by the ESG rating provider, until the infringement has been brought to an end;** *Comment: we suggest to retain the initial drafting as it provides that the suspension would end with the end of the infringement.*
(d) require the ESG rating provider to bring the infringement to an end;	~~(d)~~**(c)** require the ESG rating provider to bring the infringement to an end;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(e) impose fines pursuant to Article 34;	~~(e)~~**(d)** impose fines pursuant to Article 34;	
(f) issue public notices.	~~(f)~~**(e)** issue public notices.	
	ESMA may also take one or more of the supervisory measures, referred to in paragraph 1 points (b) to (e), in case the ESG rating provider has not applied for authorisation or when ESMA has withdrawn or suspended the authorisation in accordance with Article 8 of this Regulation.	**ESMA may also take one or more of the supervisory measures, referred to in paragraph 1 points (b), (d), (e) and ~~to (e~~ (f), in case the ESG rating provider has not applied for authorisation or when ESMA has withdrawn or suspended the authorisation in accordance with Article 8 of this Regulation.**
2. The supervisory measures referred to in paragraph 1 shall be effective, proportionate, and dissuasive.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. When taking the supervisory measures referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:		
(a) the duration and frequency of the infringement;		
(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;		
(c) whether the infringement has been committed intentionally or negligently;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) the degree of responsibility of the person responsible for the infringement;		
(e) the financial strength of the ESG rating provider, as indicated by its total annual net turnover;		
(f) the impact of the infringement on retail investors' interests;	(f) the impact of the infringement on ~~retail~~ investors' interests;	
(g) the importance of the profits gained and losses avoided by the ESG rating provider or the losses for third parties derived from the infringement, insofar as such profits and losses can be determined;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(h) the level of cooperation of the ESG rating provider with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that ESG rating provider;		
(i) previous infringements by the ESG rating provider;		
(j) measures taken after the infringement by the ESG rating provider to prevent its repetition.		
4. ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement without undue delay. ESMA shall publish any such action on		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
its website within 10 working days from the date when it was adopted.		
The publication referred to in the first subparagraph shall contain all of the following:		
(a) a statement affirming the right of the ESG rating provider to appeal the decision;		
(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;		
(c) a statement asserting that it is possible for ESMA to suspend the application of the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.		
Article 34		
Fines		
1. Where ESMA finds that an ESG rating provider, or, where applicable, its legal representative, has, intentionally or negligently, infringed this Regulation, it shall adopt a decision imposing a fine. The maximum amount of the fine shall be 10 % of the total annual net turnover of the ESG rating provider, calculated on the basis of the most recent available financial statements approved by the management body of the ESG rating provider.	1. Where ESMA finds that an ESG rating provider, or, where applicable, its legal representative, has, intentionally or negligently, infringed this Regulation, it shall adopt a decision imposing a fine. The maximum amount of the fine shall be 10 % of the total annual net turnover of the ESG rating provider, calculated on the basis of the most recent available financial statements approved by the management body of the ESG rating provider.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	An infringement shall be considered to have been committed intentionally if ESMA finds objective elements which demonstrate that a person acted deliberately to commit the infringement. When determining the amount of the fine, ESMA shall take into account whether the infringment was committed intentionally or negligently.	
2. Where the ESG ratings provider is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU, the relevant total annual net turnover shall be either the total annual net turnover, or the corresponding type of income in accordance with the relevant Union law in the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
area of accounting, according to the most recent available consolidated accounts approved by the management body of the ultimate parent undertaking.		
3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 33(3).		
4. Notwithstanding paragraph 3, where the ESG rating provider has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.		
5. Where an act or omission of a ESG rating provider constitutes more than one	5. Where an act or omission of a**n** ESG rating provider constitutes more than one	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
infringement to this Regulation, only the higher fine calculated in accordance with paragraph 2 and relating to one of those infringements shall apply.	infringement to this Regulation, only the higher fine calculated in accordance with paragraph 2 and relating to one of those infringements shall apply.	
Article 35		
Periodic penalty payments		
1. ESMA shall, by decision, impose periodic penalty payments to compel:		
(a) an ESG ratings provider to put an end to an infringement in accordance with a decision taken pursuant to Article 33;		
(b) the persons referred to in Article 30(1):		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(1) to supply complete information which has been requested by a decision taken pursuant to Article 30;		
(2) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision taken pursuant to Article 30;		
(3) to submit to an on-site inspection ordered by a decision taken pursuant to Article 32.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. A periodic penalty payment shall be effective and proportionate. ESMA shall impose the periodic penalty payment on a daily basis until the ESG rating provider or person concerned complies with the relevant decision referred to in paragraph 1.		
3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of that period, ESMA shall review the measure.		
Article 36		
Disclosure, nature, enforcement and allocation of fines and periodic penalty payments		
1. ESMA shall disclose to the public every fine and every periodic penalty payment that it has imposed pursuant to Articles 34 and 35, unless such disclosure to the public would seriously jeopardise the Union financial markets		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2018/1725 of the European Parliament and of the Council[42].		
2. Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be of an administrative nature.		
3. Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be enforceable.		

[42] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Enforcement of the fines and periodic payments shall be governed by the rules of procedure in force in the Member State or third country in which it is carried out.		
4. The fines and periodic penalty payments shall be allocated to the general budget of the European Union.		
Section 3		
Procedures and review		
Article 37		
Procedural rules for taking supervisory measures and imposing fines		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. Where ESMA finds that there are serious indications of a possible infringement of this Regulation, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. That appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the ESG ratings to which the infringement relates and shall perform his or her functions independently from ESMA's Board of Supervisors.		
2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, take into account any comments submitted by the persons who are subject to the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
investigation, and shall submit a complete file with his or her findings to ESMA's Board of Supervisors.		
3. The investigation officer shall have the power to request information in accordance with Article 30 and to conduct investigations and on-site inspections in accordance with Articles 31 and 32.		
4. When carrying out his or her tasks, the investigation officer shall have access to all documents and information that have been gathered by ESMA in its supervisory activities.		
5. The rights of defence of the persons subject to the investigation shall be fully		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
respected during investigations under this Article.		
6. Upon submission of the file with his or her findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigation.		
7. On the basis of the file containing the investigation officer's findings and, where requested by the persons concerned after having heard those persons in accordance with Article 38, the Board of Supervisors of ESMA shall assess whether one or more persons subject to the investigation have committed the infringements concerned and shall, where it comes to the conclusion that such infringements		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
have been committed, take a supervisory measure as referred to in Article 33 and impose a fine in accordance with Article 34.		
8. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.		
9. The Commission shall supplement this Regulation by adopting further rules of procedure for the exercise of ESMA's power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and by adopting		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
detailed rules on the limitation periods for the imposition and enforcement of penalties.		
The rules referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 45.		
10. ESMA shall refer matters for criminal prosecution to the national authorities concerned where, in carrying out its tasks under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from an identical fact or facts which are substantially the same has already		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
acquired the force of res judicata as the result of criminal proceedings under national law.		
Article 38		
Hearing of the persons subject to investigations		
1. Before taking any decision pursuant to Article 33, 34 and 35, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
The first subparagraph shall not apply where urgent action pursuant to Article 33 is needed to prevent significant and imminent damage to the financial system. In such a case, ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.		
2. The rights of defence of the persons subject to the proceedings shall be fully respected in the investigations. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 39		
Review by the Court of Justice		
The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce, or increase the fine or periodic penalty payment imposed.		
Section 4		
Fees and delegation		
Article 40		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Supervisory fees		
1. ESMA shall charge fees to the ESG rating providers in accordance with the delegated act adopted pursuant to paragraph 2. Those fees shall fully cover ESMA's necessary expenditure relating to the supervision of ESG rating providers and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, and in particular as a result of any delegation of tasks in accordance with Article 41.		
2. The amount of an individual fee shall be proportionate to the annual net turnover of the ESG ratings provider concerned.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
By XX XXXX XXXX, the Commission shall adopt delegated acts in accordance with Article 45 to supplement this Regulation by specifying the type of fees, the matters for which fees are due, the amount of the fees, the manner in which they are to be paid and, where applicable, the way in which ESMA is to reimburse competent authorities in respect of any costs that they may have incurred carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks as referred to in Article 41.	By **[12 months after the date of entry into force]**, the Commission shall adopt delegated acts in accordance with Article 45 to supplement this Regulation by specifying the type of fees, the matters for which fees are due, the amount of the fees, the manner in which they are to be paid and, where applicable, the way in which ESMA is to reimburse competent authorities in respect of any costs that they may have incurred carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks as referred to in Article 41. **Those delegated acts shall establish fees which are proportionate, adequate and not excessively burdensome for SMEs, [and may exempt ESG ratings providers whose annual turnover is below a certain amount from the**	By **[12 months after the date of entry into force]**, the Commission shall adopt delegated acts in accordance with Article 45 to supplement this Regulation by specifying the type of fees, the matters for which fees are due, the amount of the fees, the manner in which they are to be paid and, where applicable, the way in which ESMA is to reimburse competent authorities in respect of any costs that they may have incurred carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks as referred to in Article 41. **Those delegated acts shall establish fees which are proportionate, adequate and not excessively burdensome for SMEs, ~~[and may exempt ESG ratings providers whose annual turnover is below a certain amount from the~~**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	obligation to pay a fee.whose annual turnover is below a certain amount may be exempted from the obligation to pay a fee.]	~~**obligation to pay a fee.whose annual turnover is below a certain amount may be exempted from the obligation to pay a fee.]**~~ *Comment: as long as the ESG rating provider is not subject to ESMA's supervision under the transitional provisions it should not have to pay a fee. However, as soon as the SME applies for authorisation and is supervised by ESMA, it should pay a fee that is proportionate to the nature, size and complexity of it business. If an SME is exempted from paying a fee while supervised, ESMA will have to retrieve that fee somewhere else.*
CHAPTER 5		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Cooperation between ESMA and national competent authorities		
Article 41		
Delegation of tasks by ESMA to competent authorities		
1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 30 and to conduct investigations and on-site inspections in accordance with Article 31 and Article 32.		
2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:		
(a) the scope of the task to be delegated;		
(b) the timetable for the performance of the task;		
(c) the transmission of necessary information by and to ESMA.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the delegated act adopted pursuant to Article 45.		
4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. ESMA may revoke a delegation at any time.		
5. A delegation of tasks shall not affect the responsibility of ESMA nor limit ESMA's ability to conduct and oversee the delegated activity. ESMA shall not delegate supervisory responsibilities, including authorisation decisions, final assessments and follow-up decisions concerning infringements.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 42		
Exchange of information		
ESMA and the competent authorities, shall, without undue delay, provide each other with the information required for carrying out their duties under this Regulation.		
Article 43		
Notifications and suspension requests by competent authorities		
1. A competent authority of a Member State that finds that acts infringing this		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Regulation are being, or have been, carried out on the territory of its own or of another Member State shall inform ESMA thereof. A competent authority that considers it appropriate for investigatory purposes may suggest to ESMA that it assesses the need to use the powers under Article 30 in relation to the ESG rating provider involved in those acts.		
2. ESMA shall take appropriate action. ESMA shall inform the notifying competent authority of the outcome and, as far as possible, of any significant interim developments.		
3. A notifying competent authority of a Member State that considers that an ESG rating provider that is listed in the register referred to		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
in Article 13 and whose ESG ratings are used within the territory of that Member State has infringed this Regulation in such a way that the protection of investors or the stability of the financial system in that Member State are significantly impacted, may request ESMA to suspend the provision of ESG ratings by the ESG rating provider concerned. The notifying competent authority shall provide ESMA with full reasons for its request.		
4. Where ESMA considers that the request referred to in paragraph 3 is not justified, it shall inform the notifying competent authority thereof in writing, setting out the reasons for its opinion. Where ESMA considers that the request is	4. Where ESMA considers that the request referred to in paragraph 3 is not justified, it shall inform the notifying competent authority thereof in writing, setting out the reasons for its opinion. Where ESMA considers that the request is justified, it shall take the measures appropriate	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
justified, it shall take the measures appropriate to resolve the issue.	to resolve the issue **and it shall inform the notifying competent authority thereof in writing**.	
Article 44		
Professional secrecy		
1. The obligation of professional secrecy shall apply to ESMA, the competent authorities, and all persons who work or who have worked for ESMA, for the competent authorities or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. All the information exchanged under this Regulation between ESMA, the competent authorities, the EBA, EIOPA and the ESRB shall be considered confidential, except:		
(a) where ESMA or the competent authority or another authority or body concerned states at the time of communication that such information may be disclosed;		
(b) where disclosure is necessary for legal proceedings;		
(c) where the information disclosed is used in a summary or in an aggregate form in which individual financial market participants cannot be identified.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
TITLE IV		
DELEGATED AND IMPLEMENTING ACTS		
Article 45		
Exercise and revocation of the delegation and objections to delegated acts		
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		
2. The power to adopt delegated acts referred to in Articles 5, 21, 22 and 40 shall be conferred on the Commission for an	2. The power to adopt delegated acts referred to in Articles **[4a],** 5, **10,** 21, 22 and 40 shall be conferred on the Commission for an	2. The power to adopt delegated acts referred to in Articles **[4a],** 5, **10, 11**, 21, 22 and 40 shall be conferred on the Commission for an

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
indeterminate period of time from [*PO: Please insert date of entry into force*].	indeterminate period of time from [PO: Please insert date of entry into force].	indeterminate period of time from [PO: Please insert date of entry into force].
3. The delegation of power referred to in Articles 5, 21, 22 and 40 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	3. The delegation of power referred to in Articles **[4a],** 5, **10,** 21, 22 and 40 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.		
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.		
6. A delegated act adopted pursuant to Articles 7, 33, 34 and 40 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.		
7. If, on expiry of the period referred to in paragraph 6, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
8. If either the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 of the Treaty on the Functioning of the European Union, the institution which objects shall state the reasons for objecting to the delegated act.		
Article 46		
Amendments to Annexes		
To take account of developments, including international developments, on financial markets, in particular in relation to sustainable finance, the Commission may adopt, by means		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of delegated acts in accordance with Article 45, measures to amend the Annexes.		
Article 47		
Committee procedure		
1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[43]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.[44]	1. The Commission shall be assisted by the European Securities Committee **and the Member States Expert Group on Sustainable Finance** established by Commission Decision 2001/528/EC . That committee shall be a committee within the meaning of Regulation	

[43] Commission Decision of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45)
[44] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(EU) No 182/2011 of the European Parliament and of the Council.	
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.		
TITLE V		
TRANSITIONAL AND FINAL PROVISIONS		
Article 48		
Transitional provisions		
1. ESG rating providers which provided their services at the date of entry into force of	1. ESG rating providers which **operated in the Union** ~~**provided their services**~~ at the date	1. ESG rating providers which **operated in the Union** ~~**provided their services**~~ at the date

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
this Regulation shall notify ESMA within 3 months if they want to continue offering their services and apply for authorisation in accordance with Article 5. In that case, they shall apply for authorisation within 6 months after the date of application of this Regulation.	of entry into force of this Regulation shall notify ESMA within ~~3~~12 months if they want to continue **operating in the Union** ~~**offering their services**~~ and apply for authorisation in accordance with **the procedures under Title II**~~**Article 5**~~. In that case, they shall apply for authorisation within ~~6~~12 months after the date of application of this Regulation. **ESG ratings providers which did not notify ESMA within that period of 12 months of their intention to continue operating in the Union shall cease their activities.**	of entry into force of this Regulation shall notify ESMA within ~~312~~ **18** months if they want to continue **operating in the Union** ~~**offering their services**~~ and apply for authorisation in accordance with **the procedures under Title II**~~**Article 5**~~. In that case, they shall apply for authorisation within **6**~~12~~ months after the date of application of this Regulation. **ESG ratings providers which did not notify ESMA within that period of 18**~~2~~ **months after the entry into force of this Regulation, of their intention to continue operating in the Union shall cease their activities.** *Comment: we suggest to have the entry into application set at 18 months post entry into force to ensure ESMA has sufficient time to*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		develop RTS and the market to digest the finalised requirements of the regulation. *The providers should notify ESMA at the time of the entry into application (i.e. 18 months after the entry into force) if they wish to continue offering their services in the EU.*
2. By way of derogation of the first paragraph, ESG rating providers categorized as small and medium-sized undertaking under Article 3 of the Directive 2013/34/EU shall apply for authorisation within 24 months after the date of application of this Regulation.	~~**2. By way of derogation of the first paragraph, ESG rating providers categorized as small and medium-sized undertaking under Article 3 of the Directive 2013/34/EU shall apply for authorisation within 24 months after the date of application of this Regulation.**~~	**2. By way of derogation of the first paragraph, ESG rating providers established in the Union and categorized as small and medium-sized undertaking under Article 3 of the Directive 2013/34/EU shall apply for authorisation within 24 months after the date of application of this Regulation.** *Comment: this provision should be kept to ensure that EU SMEs already active in the*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		market can benefit from transitional provisions as well and not only new market entrants. *To sum up:* - *ESG rating providers, including non-EU SMES, are considered to be dealt with under article 48(1).* - *EU SMEs already operating in the EU at the date of the entry into force of this Regulation should be covered by article 48(2).* - *EU SMEs entering the market after the entry into force of this Regulation are covered by article 4a. The proportionality regime of article 20 should apply to both EU and non-EU SMEs.*

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. ESG rating providers categorized as small and medium-sized undertaking under Article 3 of Directive 2013/34/EU entering the market after [*please insert the date of entry into application*] shall notify ESMA prior to starting offering their services and shall apply for authorisation within 12 months of that notification.	~~**3. ESG rating providers categorized as small and medium-sized undertaking under Article 3 of Directive 2013/34/EU entering the market after [*please insert the date of entry into application*] shall notify ESMA prior to starting offering their services and shall apply for authorisation within 12 months of that notification.**~~	
Article 49		
Review		
1. The Commission shall evaluate the application of this Regulation by [*five years after the entry into force of this Regulation*].		1. The Commission shall evaluate the application of this Regulation by [~~*five*~~ ***three*** *years after the entry into force of this Regulation*].

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. The Commission shall present a report on the main findings of the evaluation to the European Parliament and the Council. In carrying out the evaluation, the Commission shall take into account market developments and the relevant evidence at its disposal.	2. The Commission shall present a report on the main findings of the evaluation to the European Parliament and the Council. **The report shall in particular assess whether the scope of this Regulation is appropriate to achieve its objectives in accordance with Article 1, including whether providers of data on environmental, social and human rights, and governance factors should be included in the scope of this Regulation.** In carrying out the evaluation, the Commission shall take into account market developments and the relevant evidence at its disposal.	2. The Commission shall, **in close cooperation with ESMA and building upon the feedback collected through periodic surveys of investors, undertakings and ESG rating providers,** present a report on the main findings of the evaluation to the European Parliament and the Council. **The report shall in particular assess the impact of the regulation on the market, how the structure of the market has evolded and whether the scope of this Regulation is appropriate and sufficient to achieve its objectives in accordance with Article 1, including whether providers of data on environmental, social and human rights, and governance factors should be included in the scope of this Regulation.** In

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		carrying out the evaluation, the Commission shall take into account market developments and the relevant evidence at its disposal.
		2a. The report referred to in paragraph 2 shall in particular develop an understanding of the market for ESG data products providers active in the EU and shall evaluate, to the extent possible, at least the following: **a. the types of ESG data products proposed and the structure of the market of ESG data products;** **b. whether ESG data products providers are located within or outside of the EU and, where applicable if they are subject to any third country legal framework, or any private code of conduct;** **c. the use made of ESG data products by regulated financial undertakings in the Union and**

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		by undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council and third country entities listed on EU regulated markets; **d. the quality of the ESG data products provided, and the transparency of the methodologies used for the analysis or modelling of data;** **e. whether and to what extend factual errors are frequently identified in these products by entities to which these products relate or by users;** **f. issues identified by users of ESG data products, including issues relating to the pricing policies.**
3. Where the Commission finds it appropriate, the report shall be accompanied by		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
a legislative proposal for amendment of relevant provisions of this Regulation.		
Article 50		
Entry into force and application		
This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.		
It shall apply from [*6 months after the entry into force of this Regulation*].	It shall apply from [**2**~~**4**~~**6** months after the entry into force of this Regulation].	It shall apply from [**18**~~**2**~~~~**4**~~**6** months after the entry into force of this Regulation].
This Regulation shall be binding in its entirety and directly applicable in all Member States.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Done at Strasbourg,		
For the European Parliament For the Council		
The President The President		
ANNEX I Information to be provided in the application for authorisation		
An application for authorisation shall contain all of the following information :		
(a) the full name of the applicant, the address of the registered office within the Union, the applicant's website and, where available, the legal entity identifier (LEI);		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) the name and contact details of a contact person;		
(c) the legal status of the applicant;		
(d) the ownership structure of the applicant;		
(e) the identity of the members of the senior management of the applicant and their level of qualification, experience and training;		
(f) the number of the analysts, employees and other persons directly involved in assessment activities, and their level of experience and training working for the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
applicant and their level of experience and training;		
(g) a description of the procedures and methodologies used to issue and review ESG ratings implemented by the applicant;		
(h) the policies or procedures implemented by the applicant to identify, manage and disclose any conflicts of interests as referred to in Article 14 of the Regulation;		
(i) where applicable, documents and information related to any existing or planned outsourcing arrangements for activities covered by this Regulation;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(j) where applicable, information about other activities carried out by the applicant, or which the applicant intends to provide.		
ANNEX II Organisational requirements		
1. Record Keeping information		
ESG rating providers shall keep records of all of the following:		
(a) for each ESG rating in the form of an opinion, the identity of the rating analysts participating in the determination of the ESG	(a) for each ESG rating in the form of an opinion, ~~**the identity of the rating analysts participating in the determination of the ESG**~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
rating, the identity of the persons who have approved the ESG rating, information as to whether the ESG rating was solicited or unsolicited, and the date on which the ESG rating action was taken;	~~rating~~, the identity of the persons who have approved the ESG rating, information as to whether the ESG rating was solicited or unsolicited, and the date on which the ESG rating action was taken;	
(b) for each ESG rating in the form of a score, the identity of the persons responsible for the development of the rule-based methodology, and the identity of the persons who have approved the rating methodology;		
(c) the account records relating to fees received from any rated entity or related third party or any user of ratings;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) the account records for each subscriber to the ESG ratings;		
(e) the records documenting the established procedures and rating methodologies used by the ESG rating provider to determine ESG ratings;		
(f) the internal records and external communications and files, including non-public information and work papers, used to form the basis of any ESG rating decision taken;		
(g) records of the procedures and measures implemented by the ESG rating provider to comply with this Regulation;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(h) the methodology used for the determination of an ESG rating;		
(i) changes in or deviations from standard procedures and methodologies;		
(j) all documents relating to any complaint, including those submitted by a complainant.		
2. Outsourcing		
Where ESG rating providers outsource to a service provider functions or any relevant services or activities in the provision of an ESG		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
rating, the ESG rating provider shall ensure that the following conditions are met:		
(a) the service provider has the ability, capacity, and any authorisation required by law, to perform the outsourced functions, services or activities reliably and professionally;		
(b) the ESG rating provider takes appropriate action if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;		
(c) the ESG rating provider retains the necessary expertise to supervise the outsourced		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
functions effectively and to manage the risks associated with the outsourcing;		
(d) the service provider discloses to the ESG rating provider any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;		
(e) the ESG rating provider is able to terminate the outsourcing arrangements where necessary;		
(f) the ESG rating provider takes reasonable steps, including contingency plans, to avoid undue operational risk related to the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
participation of the service provider in the ESG rating determination process.		
ANNEX III Disclosure requirements		
1. Minimum disclosures to the public		
In accordance with Article 12 of the Regulation, ESG rating providers shall, at the minimum, disclose to the public on their website and through the European Single Access Point (ESAP) the following:	In accordance with Article ~~12~~ **21** of the Regulation, ESG rating providers shall, at the minimum, disclose **in an organised manner** to the public on their website and through the European Single Access Point (ESAP) the following:	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) high level overview of the rating methodologies used (and changes thereto), including whether analysis is backward-looking or forward-looking;	(a) ~~high level overview~~ **a description** of the rating methodologies used (and changes thereto), including whether analysis is backward-looking or forward-looking;	
(b) high level overview of data processes (data sources, including if they are public or non–public, and if they are sourced from sustainability statements required by Directive (EU) 2022/2464, estimation of input data in case of unavailability, frequency of data updates);	(b) ~~high level overview~~ **a description** of data processes (data sources, including if they are public or non–public, and if they are sourced from sustainability statements required by Directive (EU) **2013/34/EU**~~2022/2464~~, estimation of input data in case of unavailability, frequency of data updates)**;**	
(c) information on whether and how the methodologies are based on scientific evidence;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) information on the ratings' objective, clearly marking whether the rating is assessing risks, impacts or some other dimensions;	(d) information on the ratings' objective, clearly **defined and** marking whether the rating is assessing risks, impacts or **both according to the double materiality principle, or any** ~~some~~ other dimensions;	
(e) the rating's scope – i.e., is it an aggregated rating (aggregating E and S and G factor), or a rating of individual factors or specific issues (e.g., transition risks);		
(f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the	**Alternative 1:** (f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
weighting method, including weight per individual E, S and G factors;	weighting method, including weight per individual E, S and G factors **and a materiality assessment**; **Alternative 2**: ~~**(f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per individual E, S and G factors;**~~	
(g) within the E, S or G factors, specification of the topics covered by the ESG rating/score, and whether they correspond to the	(g) within the E, S or G factors, specification of the topics covered by the ESG rating/score, and whether they correspond to the	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
topics from the sustainability reporting standards developed pursuant to Article 29b of Directive 2013/34/EU;	topics from the sustainability reporting standards developed pursuant to Article 29b of Directive 2013/34/EU;	
(h) information on whether the rating is expressed in absolute or relative values,		
(i) Where applicable, reference to the use of Artificial Intelligence (AI) in the data collection or rating/scoring process;		
(j) general information on criteria used for establishing fees to clients, specifying the various elements taken into consideration, such	(j) general information on criteria used for establishing fees to clients, specifying the various elements taken into consideration, such as the involvement of data analysts, IT	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
as the involvement of data analysts, IT equipment, purchasing data;	equipment, purchasing data **and general information on the business/payment model**;	
(k) any limitation in data sources used for the construction of ESG ratings.		
2. Additional disclosures to users of ESG rating and rated undertakings in scope of Directive 2013/34/EU	2. Additional disclosures to users of ESG rating**s** and rated undertakings in scope of Directive 2013/34/EU	
In addition to the elements referred to in Article 13 of the Regulation, ESG rating providers shall make available the following information to European regulated financial undertakings and to undertakings in the scope of Directive 2013/34/EU that are subject of such rating:	In **accordance with Article 22 and in** addition to the **minimum disclosures to the public** ~~**elements**~~ referred to in **point 1 of this Annex** ~~**article 13 of the Regulation**~~, ESG rating providers shall make available the following information to European regulated financial undertakings and to undertakings in the scope of	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	Directive 2013/34/EU that are subject of such rating:	
(a) a more granular overview of the rating methodologies used (and changes thereto), including:		
(1) where applicable, scientific evidence and assumptions on which the ratings are based,		
(2) whether the analysis is backward-looking or forward-looking,	~~(2) whether the analysis is backward-looking or forward-looking,~~	
(3) which metrics have been selected as relevant,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(4) the relevant KPIs per E, S and G factor, and weighting method,		
(5) any potential shortcomings of methodologies,		
(6) policies for the revision of methodologies,		
(7) last date of the revision;		
(b) a more granular overview of data processes, including:	(a) a more granular **description**~~overview~~ of data processes, including:	
(1) more detailed explanation of data sources used – including whether public or non-	(1) more detailed explanation of data sources used – including whether public or non-	Support; transparency on use of transition plans is important.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
public, mentioning whether derived from the sustainability reporting standards developed pursuant to Article 29b of Directive 2013/34/EU /Taxonomy/SFDR],	public, mentioning whether derived from the sustainability reporting standards developed pursuant to ~~**Article 29b of Directive 2013/34/EU/Taxonomy/SFDR]**~~ **Articles 19 and 29 of Directive 2013/34/EU concerning sustainable economic activities, Commission Delegated Regulation (EU) 2021/2178 and disclosure of information pursuant to Regulation (EU) 2019/2088, including whether and how information on companies' transition plans derived from such sustainability reporting standards is used;**	
(2) where applicable the use of estimation and industry average and explanation of the underlying methodology,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(3) the policies for updating data and revising historical data, date of last updates of data,		
(4) data quality controls,	(4) data quality controls**, their frequency and the remediation process if issues arise**,	
(5) any steps taken to address limitations in data sources, where applicable;		
(c) where applicable, information about engagement with rated entities;		
(d) where applicable, an explanation of any AI methodology used in the data collection or rating process;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(e) in case of a major new information on a rated entity that has the possibility to affect the result of an ESG rating, ESG rating providers shall inform how they have taken that information into account and whether they have amended the corresponding ESG rating.		
	Alternative 2: **(f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per individual E, S and G factors and a materiality assessment.**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM FRANCE		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	End	

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2023/0177 (COD) **Proposal for a** **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** **on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities** **(Text with EEA relevance)**		Malta agrees with the Presidency compromise text as proposed.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,		
Having regard to the proposal from the European Commission,		
After transmission of the draft legislative act to the national parliaments,		
Having regard to the opinion of the European Economic and Social Committee[45],		

[45] OJ C , , p. .

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Acting in accordance with the ordinary legislative procedure,		
Whereas:		
(1) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development[46], having at its core the Sustainable Development Goals (SDGs). The Commission's Communication of 2016 on the next steps for a sustainable European future[47] links the SDGs to the Union policy		

[46] Transforming our World: The 2030 Agenda for Sustainable Development (UN 2015).
[47] COM(2016) 739 final.

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
framework to ensure that all Union actions and policy initiatives, within the Union and globally, take the SDGs on board at the outset. The European Council conclusions of 20 June 2017[48] confirmed the commitment of the Union and the Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner and in close cooperation with partners and other stakeholders. On 11 December 2019, the Commission published its communication on 'The European Green Deal'[49].		

[48] CO EUR 17, CONCL. 5.
[49] Communication from the Commission of 11 December 2019 on the European Green Deal, COM(2019) 640 final.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(2) The transition to a sustainable economy is key to ensuring the long-term competitiveness of the Union economy. Sustainability has long been at the heart of the Union project and the Union Treaties give recognition to its social and environmental dimensions.		
(3) Achieving SDG objectives in the Union requires the channelling of capital flows towards sustainable investments. It is important to exploit fully the potential of the internal market for the achievement of those goals. In that context, it is crucial to remove obstacles to the efficient movement of capital towards sustainable investments in the internal market and to prevent such obstacles from emerging.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(4) The EU's approach to sustainable and inclusive growth is anchored in the 20 principles of the European Pillar of Social Rights to ensure a fair transition towards this goal and policies which leave no one behind. Furthermore, the EU social acquis including the Union of Equality Strategies[50] provides standards in the areas of labour law, equality, accessibility, health and safety at work, and anti-discrimination.		
(5) In March 2018, the Commission published its Action Plan 'Financing Sustainable Growth'[51], setting up its strategy on sustainable		

[50] Gender equality strategy; LGBTIQ equality strategy; Roma strategic framework; Strategy for the Rights of Persons with Disability.

[51] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final.

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
finance. The objectives of that Action Plan are to mainstream sustainability factors into risk management and reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth.		
(6) As part of the Action Plan, the Commission commissioned a study entitled "Study on Sustainability Related Ratings, Data and Research"[52] to take stock of the developments in the sustainability-related products and services market, identify the main market participants and highlight potential shortcomings. That study provided an inventory		

[52] European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Study on sustainability-related ratings, data and research, Publications Office of the European Union, 2021, https://data.europa.eu/doi/10.2874/14850.

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
and classification of market actors, sustainability products and services available in the market and an analysis of the use and perceived quality of sustainability-related products and services by market participants. The study highlighted the lack of transparency and accuracy of Environmental, Social and Governance ('ESG') ratings methodologies and the lack of clarity over the operations of ESG rating providers.		
(7) In the framework of the European Green Deal, the Commission put forward a renewed sustainable strategy. The renewed sustainable finance strategy was adopted on 6 July 2021[53].		

[53] Communication from the Commission on the Strategy for Financing the Transition to a Sustainable Economy COM(2021) 390 final.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(8) As a follow-up, the Commission announced in the renewed sustainable finance strategy, a public consultation on ESG ratings to feed into an impact assessment. In the public consultation that took place in 2022, stakeholders confirmed concerns with the lack of transparency of ESG ratings methodologies and objectives and clarity over ESG rating activities.		
(9) At international level, the International Organization of Securities Commissions ('IOSCO') has issued a report in November		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2021 containing a set of recommendations on ESG ratings providers[54].		
(10) ESG ratings play an important role in global capital markets, as investors, borrowers and issuers increasingly use those ESG ratings as part of making informed, sustainable investment and financing decisions. Credit institutions, investment firms, insurance undertakings, assurance undertakings, and reinsurance undertakings, amongst others, often use those ESG ratings as a reference for the sustainability performance or for the sustainability risks and opportunities in their investment activity. Consequently, ESG ratings		

[54] IOSCO Report on ESG ratings and data products providers, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
have a significant impact on the operation of the markets and on the trust and confidence of investors and consumers. To ensure that ESG ratings used in the Union are independent, objective and of adequate quality, it is important that ESG rating activities are conducted in accordance with the principles of integrity, transparency, responsibility, and good governance. Better comparability and increased reliability of ESG ratings would enhance the efficiency of that fast-growing market, thereby facilitating progress towards the objectives of the Green Deal.		
(11) ESG ratings play an enabling role for the proper functioning of the Union sustainable finance market by providing important		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
information for investment strategies, risk management and disclosure obligations by investors and financial institutions. It is therefore necessary to ensure that ESG ratings provide material decision-useful information to the users, and that users of ESG ratings better understand the objectives which ESG ratings pursue and what specific issues and metrics those ratings measure.		
	(11a) (new): ESG ratings at large encompass a wide and diverse range of products marketed as providing information on an undertaking's exposure to risk and opportunities and/or impacts on environmental, social and governance matters. These products may consist of an	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	opinion, a score, or a combination of both, that rely on a ranking system. ESG ratings may also cover the analysis or modelling of quantitative and/or qualitative information. To avoid circumvention strategies that would inevitably result from adopting too narrow a definition for ESG ratings, the scope of this Regulation should include not only those products explicitly labeled as ratings or scores, but also products like regulatory compliance tools (providing users with e.g. indicators of principal adverse impacts under Regulation (EU) 2019/2088, taxonomy alignment, Pillar 3 requirement), net zero alignment tools (implied temperature rise metrics, transition analysis, climate targets and commitment dataset…) and footprint	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	calculation tools (carbon emissions data, climate solutions…). Likewise, products that purport to analyse an entity's exposure to controversies, sectors or types of activities (screening solutions or involvement screening search…) as well as to physical and transition risks should also be considered in the scope of this Regulation. Since all these products raise similar issues of transparency of methodology and management of conflicts of interests, they should be equally captured by this Regulation.	
(12) It is necessary to acknowledge the various business models of the ESG rating market. A first business model is the user-paid model, where users are mainly investors that		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
purchase ESG ratings for investment decisions. A second business model is the issuer-pay model, where undertakings purchase ESG ratings for assessing risks and opportunities with their operations.		
(13) Member States neither regulate nor supervise the activities of ESG rating providers or the conditions for the provision of ESG ratings. In ensuring alignment with the objectives of the SDGs and the European Green Deal, and given the existing divergences, lack of transparency and absence of common rules, it is likely that Member States would adopt diverging measures and approaches, which would have a direct negative impact on, and create obstacles to, the proper functioning of the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
internal market, and be detrimental to the ESG rating market. ESG rating providers issuing ESG ratings for the use of financial institutions and undertakings in the Union would be subject to different rules in different Member States. Divergent standards and market practices would make it difficult to have clarity over the construction of ESG ratings and allow for their comparison, thus creating uneven market conditions for users, causing additional barriers within the internal market, and risking distorting investment decisions.		
(14) This Regulation complements the existing EU sustainable finance framework. Ultimately, ESG ratings should facilitate		

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
information flows in order to facilitate investment decisions.		
(15) Rules on ESG rating providers should not apply to private ESG ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription or other means. Neither should such rules apply to ESG ratings produced by European financial undertakings that are used for internal purposes. ESG ratings developed by European or national authorities and by central banks should also be exempted from such rules. Finally, such rules should not apply to the provision of ESG data that do not include an element of rating or scoring and are	(15) Rules on ESG rating providers should not apply to private ESG ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription or other means. Neither should such rules apply to ESG ratings produced by European financial undertakings that are used for internal purposes. ESG ratings developed by European or national authorities and by central banks should also be exempted from such rules. Finally, such rules should not apply to the provision of ESG data that do not include an element of rating or scoring and are	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
not subject to any modelling or analysis resulting in the development of an ESG rating.	not subject to any modelling or analysis resulting in the development of an ESG rating. **Such rules should not apply to product or services that use an ESG rating as a benchmark or as an evaluation or screening tool, including for instance ESG ratings used for the purpose of a research, academic, consumer paper or where ESG ratings which are not primary targeting investment and financial analysis or decision making. Finally, such rules should not apply to ESG labelling where ESG labels are granted by labelling agencies to entities, financial instruments or products, provided that the ESG labels are not based on a defined ranking system and do not involve the disclosure of a score.**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(15a) Where an undertaking or financial institution discloses information about its own sustainability impacts, risks and opportunities or those of its value chain, such information should not be considered as an ESG rating pursuant to the meaning of this Regulation.	
	(15b) This Regulation should not apply to providers that collect, aggregate and distribute publicly disclosed ESG data where such providers do not transform, approximate or complete the data through further analysis or by applying modelling techniques. The European Single Access point (ESAP) or the Collection bodies that provide ESAP with financial and non-	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	financial information should not be considered as ESG rating providers pursuant to the meaning of this Regulation.	
(16) It is important to lay down rules ensuring that ESG ratings provided by ESG rating providers authorised in the Union are of adequate quality, are subject to appropriate requirements and ensure market integrity. Those rules would apply to overall ESG ratings capturing Environmental, Social and Governance factors, and to ratings that are only looking at a single Environmental, Social or Governance factor or sub-component of that factor.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(17) Given the use of ESG ratings from providers located outside the Union, it is necessary to introduce requirements based on which third-country ESG rating providers may offer their services in the Union. This is necessary to ensure market integrity, investor protection and proper enforcement. Therefore, three possible regimes are proposed for those third countries ESG rating providers: equivalence, endorsement and recognition. As an overarching principle, supervision and regulation in a third country should be equivalent to Union supervision and regulation of ESG ratings. Therefore, ESG ratings provided by an ESG rating provider located in a third country can only be offered in the Union where a positive decision on equivalence of the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
third-country regime has been taken by the Commission. However, to avoid any adverse impact resulting from a possible abrupt cessation of the offering in the Union of ESG ratings provided by a third country ESG rating provider, it is also necessary to provide for certain other mechanisms, that is endorsement and recognition. Any ESG rating provider with a group structure should be able to use the mechanism of endorsement for the ESG ratings developed outside the Union, provided they establish, within the group, an authorised ESG rating provider in the Union. Smaller ESG rating providers, within the meaning of the maximum threshold of net turnover to define		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
small undertakings in Directive 2013/34/EU[55], that generally do not belong to a group, and may not have the means to have a legal entity authorised in the Union, should be able to continue or start offering their services in the Union and should therefore benefit from a lighter regime, that is recognition. Where the third country ESG provider is subject to supervision, appropriate cooperation arrangements should be put in place in order to ensure the proper exchange of information with the relevant competent authority of the third country.		

[55] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(18) To ensure a high level of investor and consumer confidence in the internal market, ESG rating providers which provide ESG ratings in the Union should be authorised. It is therefore necessary to lay down harmonised conditions for such authorisation and the procedure for the granting, suspension and withdrawal of such authorisation.		
(19) To ensure a high level of information to investors and other users of ESG ratings, information on ESG ratings and ESG rating providers should be made available on the European Single Access Point (ESAP)[56]. ESAP	(19) To ensure a high level of information to investors and other users of ESG ratings, information on ESG ratings and ESG rating providers should be made available on the European Single Access Point (ESAP)**, to the**	

[56] Regulation (EU) XX/XXXX of the European Parliament and of the Council establishing a European Single Access Point (ESAP) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L [...], […], p. […]).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
should provide the public with an easy centralised access to such information.	**extent that they do not contain commercially sensitive information**. ESAP should provide the public with an easy centralised access to such information.	
(20) To ensure the quality and reliability of ESG ratings, ESG rating providers should use rating methodologies that are rigorous, systematic, objective, continuous and subject to validation. ESG rating providers should review ESG ratings methodologies on an on-going basis and at least annually.		
(21) To ensure a higher-level transparency, ESG rating providers should disclose information to the public on the methodologies, models and key rating assumptions which those		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
providers use in their ESG rating activities and in each of their ESG ratings product. In light of the uses of ESG ratings by investors, the rating products should explicitly disclose which dimension of the double materiality the rating addresses, whether it is both material financial risk to the rated entity and the material impact of the rated entity on the environment and society in general or whether it takes into account only one of them. They should also explicitly disclose whether the rating addresses other dimensions. For the same reason, ESG rating providers should provide more detailed information on the methodologies, models and key rating assumptions to subscribers of ESG ratings. That information should enable users of ESG ratings to perform their own due diligence		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
when assessing whether to rely or not on those ESG ratings. Disclosure of information concerning models should however not reveal sensitive business information or impede innovation.		
(22) ESG rating providers should ensure that they provide ESG ratings that are independent, objective and of adequate quality. It is important to introduce organisational requirements ensuring the prevention and mitigation of potential conflicts of interests. To ensure their independence, ESG rating providers should avoid situations of conflict of interest and manage those conflicts adequately where they are unavoidable. ESG rating providers should disclose conflicts of interest in a timely manner.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
They should also keep records of all significant threats to the independence of the ESG rating provider and that of its employees and other persons involved in the rating process, and the safeguards applied to mitigate those threats. In addition, to avoid potential conflicts of interest, ESG rating providers should not be allowed to offer a number of other services including consulting services, credit ratings, benchmarks, investment activities, audit, or banking, insurance and reinsurance activities. Finally, to prevent, identify, eliminate or manage and disclose any conflicts of interest and ensure the quality, integrity and thoroughness of the ESG rating and review process at all times, ESG rating providers should establish appropriate internal policies and procedures in relation to		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
employees and other persons involved in the rating process. Such policies and procedures should, in particular, include internal control mechanisms and a compliance function.		
(23) To bring more clarity and to enhance trust on the operations of ESG rating providers, it is necessary to lay down requirements for ongoing supervision of ESG rating providers at Union level. To ensure a level playing field in terms of on-going supervision and to eliminate the risk of regulatory arbitrage across Member States, the European Securities and Markets Authority (ESMA) should be entrusted with the exclusive responsibility for such authorisation and supervision. At the same time, such exclusive responsibility should optimise the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
allocation of supervisory resources at Union level, thus making ESMA the centre of supervision.		
(24) ESMA should be able to require all information necessary to carry out its supervisory tasks effectively. It should therefore be able to demand such information from ESG rating providers, persons involved in ESG rating activities, rated entities and third parties to whom the ESG rating providers have outsourced operational functions and persons otherwise closely and substantially related or connected to ESG rating providers or ESG rating activities.		
(25) ESMA should be able to perform its supervisory tasks, and in particular to compel		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ESG rating providers to end an infringement, to supply complete and correct information, or to comply with an investigation or an on-site inspection. To ensure that ESMA is able to perform those supervisory tasks, ESMA should be able to impose penalties or periodic penalty payments.		
(26) Given its role to authorise and supervise ESG rating providers, ESMA should develop draft regulatory technical standards that do not involve policy choices for submission to the Commission. ESMA should specify further the information needed for the authorisation of ESG rating providers. The Commission should be empowered to adopt those implementing technical standards by means of delegated acts		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[57].		
(27) In its role to authorise and supervise ESG rating providers, ESMA should be able to charge supervisory fees to supervised entities. Such fees should be paid by the supervised entities.		
(28) In order to specify further technical elements of this Regulation, the power to adopt acts in accordance with Article 290 of the		

[57] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the specifications of the procedure impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, the collection of fines or periodic penalty payments, and detailed rules on the limitation periods for the imposition and enforcement of penalties and the type of fees, the matters for which fees are due, the amount of the fees, and the manner in which those fees are to be paid. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Agreement of 13 April 2016 on Better Law-Making[58]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.		
(29) It is necessary to have a number of measures supporting smaller ESG rating providers to enable them to continue their activities, or to enter the market after the date of application of this Regulation. Such measures	(29) It is necessary to have a number of measures supporting smaller ESG rating providers to enable them to continue their activities, or to enter the market after the date of application of this Regulation. Such measures	

[58] OJ L 123, 12.5.2016, p. 1.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
should include the possibility for ESMA to exempt smaller ESG rating providers from a number of organisational requirements where they meet certain criteria. In addition, a transitional regime should be introduced for the first months following the application of this Regulation, to facilitate the initial phase of application for smaller ESG rating providers. Finally, supervisory fees should be proportionate to the annual net turnover of the ESG ratings provider concerned.	should include the possibility for ESMA to exempt smaller ESG rating providers from a number of organisational requirements where they meet certain criteria. In addition, a transitional regime should be introduced ~~**for the first months following the application of this Regulation,**~~ to facilitate the **market entry** ~~**initial phase of application**~~ for smaller ESG rating providers. Finally, supervisory fees should be proportionate to the annual net turnover of the ESG ratings provider concerned.	
(30) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, namely to lay down a consistent and effective regime to address the shortcomings and vulnerabilities that ESG ratings pose, but		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
can rather, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.		
(31) This Regulation should apply without prejudice to the application of Aricles 101 and 102 TFEU,		
HAVE ADOPTED THIS REGULATION		
TITLE I		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
SUBJECT MATTER, SCOPE AND DEFINITIONS		
Article 1		
Subject-matter		
This Regulation introduces a common regulatory approach to enhance the integrity, transparency, responsibility, good governance, and independence of ESG rating activities, contributing to the transparency and quality of ESG ratings. It aims to contribute to the smooth functioning of the internal market, while achieving a high level of consumer and investor protection and preventing greenwashing or other	This Regulation introduces a common regulatory approach to enhance the integrity, transparency, responsibility, good governance, and independence of ESG rating activities, contributing to the transparency and quality of ESG ratings. It aims to contribute to the smooth functioning of the internal market , while achieving a high level of consumer and investor protection and preventing greenwashing or other	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
types of misinformation, including social-washing, by introducing transparency requirements related to ESG ratings and rules on the organisation and conduct of ESG rating providers.	types of **practices which may be misleading to consumers, investors or other market participants** ~~**misinformation, including social-washing**~~, by introducing transparency requirements related to ESG ratings and rules on the organisation and conduct of ESG rating providers.	
Article 2		
Scope		
1. This Regulation applies to ESG ratings issued by ESG rating providers operating in the Union that are disclosed publicly or that are distributed to regulated financial undertakings in the Union, undertakings that fall under the scope	1. This Regulation applies to ESG ratings issued by ESG rating providers operating in the Union ~~**that are disclosed publicly or that are distributed to regulated financial undertakings in the Union, undertakings that**~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of Directive 2013/34/EU of the European Parliament and of the Council, or Union or Member States public authorities.	~~**fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or Union or Member States public authorities**~~. **ESG rating providers shall be considered to be operating in the Union in the following cases:** **a) For ESG rating providers established in the Union, when they publish their ESG ratings on their website or by other means or when they distribute their ESG ratings by subscription or other contractual relationship to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or to Union or Member States public authorities.**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	b) For ESG rating providers established outside the Union, when they [actively market their services within the Union and subsequently] distribute their ratings by subscription or other contractual relationship to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or to Union or Member States public authorities.	
2. This Regulation does not apply to any of the following:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) private ESG ratings which are not intended for public disclosure or for distribution;	(a) private ESG ratings which are not ~~intended for public disclosure or for distribution~~ **published on a website or by other means or that are not distributed by subscription or by other contractual relationship**;	
(b) 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;	(b) ESG ratings produced by regulated financial undertakings in the Union that are used **internally, including within intragroup relationships,** for ~~**internal purposes or for**~~ providing ~~**in-house**~~ financial services and products;	
(c) the provision of raw ESG data that do not contain an element of rating or scoring, and	***Option 1*** (c) the ~~**provision**~~ **publication or distribution** of ~~**raw ESG**~~ data **on environmental, social and human rights, and**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
is not subject to any modelling or analysis resulting in the development of an ESG rating;	**governance factors** that do not ~~**contain an element of rating or scoring, and is not subject to any modelling or analysis resulting**~~ **result** in the development of an ESG rating; ***Option 2*** (c) the ~~**provision**~~ **publication or distribution** of ~~**raw ESG**~~ data **on environmental, social and human rights, and governance factors** that do not contain an	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	element of rating or scoring, and is not subject to any modelling or analysis ~~resulting in the development of an ESG rating~~	
(d) credit ratings issued pursuant to Regulation (EC) No 1060/2009 of the European Parliament and of the Council[59];		
(e) products or services that incorporate an element of an ESG rating;	(e) products or services that **use** ~~incorporate an element of~~ an ESG rating **as a benchmark or as an evaluation or screening tool**;	
(f) second-party opinions on sustainability bonds;	(f) ~~second -party opinions on sustainability bonds~~ **external reviews of**	

[59] Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	European Green Bonds, bonds marketed as environmentally sustainable, sustainability-linked bonds, loans and other types of debt instruments, to the extent that such external reviews do not contain ESG ratings produced by the reviewer;	
(g) ESG ratings produced by Union or Member States' public authorities;		
(h) ESG ratings from an authorised ESG rating provider that are made available to users by a third party;	(h) ESG ratings ~~**from**~~ **produced by** an authorised ESG rating provider **when they** ~~**that**~~ are **published or distributed** ~~**made available to users**~~ by a third party;	
(i) ESG ratings produced by central banks that fulfil all of the following conditions:	(i) ESG ratings produced by **members of the European System of Central Banks**;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	~~central banks that fulfil all of the following conditions:~~	
(a) they are not paid for by the rated entity;	~~(a) they are not paid for by the rated entity;~~	
(b) they are not disclosed to the public;	~~(b) they are not disclosed to the public;~~	
(c) they are provided in accordance with the principles, standards and procedures which ensure the adequacy, integrity and independence of rating activities, as provided for by this Regulation, and	~~(c) they are provided in accordance with the principles, standards and procedures which ensure the adequacy, integrity and independence of rating activities, as provided for by this Regulation, and~~	
(d) they do not relate to financial instruments issued by the respective central banks' Member States.	~~(d) they do not relate to financial instruments issued by the respective central banks' Member States.~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(j) ESG ratings produced by non-profit civil society organisations for non-commercial purposes;	
	(k) scores and ratings developed for the purpose of the accreditation or certification process, which are not primary targeting investment and financial analysis or decision making;	
	(k) labelling activities provided that the labels granted to the relevant entities, financial instruments or financial products do not involve the disclosure of an ESG rating.	
Article 3		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Definitions		
For the purposes of this Regulation, the following definitions apply:		
(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, irrespective of whether such	***Option 1*** (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 **with regards to environmental, social and human rights, or governance factors** or exposure to ~~ESG~~ risks or the impact on **environmental, social and human rights, or governance matters** ~~people, society and the environment~~, that are based on **both** an	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ESG rating is explicitly labelled as 'rating' or 'ESG score';	established methodology and **a** defined ranking system ~~**of rating categories and that are provided to third parties**~~, irrespective of whether such ESG rating is explicitly labelled as '**ESG** rating'**, 'ESG opinion'** or 'ESG score'; ***Option 2*** (1) 'ESG rating' means **a product marketed as** an opinion, a score or a combination of both, **or the analysis or modelling of data** regarding an entity~~**, a financial instrument, a financial product, or an undertaking**~~'s ~~**ESG**~~ profile or characteristics **with regards to environmental, social and human rights, or governance factors** or exposure to ~~**ESG**~~ risks or the impact on **environmental, social and human rights,**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	or governance matters ~~**people, society and the environment**~~, that are based on an established methodology ~~**and**~~ **or** defined ranking system ~~**of rating categories and that are provided to third parties**~~, irrespective of whether such ESG rating is explicitly labelled as '**ESG** rating', **'ESG opinion'** or 'ESG score'.	
(2) 'opinion' means an assessment that based on a rules-based methodology and defined ranking system of rating categories, involving directly a rating analyst in the rating process or systems process;	(2) 'opinion' means an assessment ~~**that**~~ based on a rules-based methodology and defined ranking system ~~**of rating categories**~~, involving directly a rating analyst in the rating process or systems process;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(3) 'score' means a measure derived from data, using a rule-based methodology, and based only on a pre-established statistical or algorithmic system or model, without any additional substantial analytical input from an analyst;		
	(3a) 'defined ranking system' means a system whereby rated entities are graded against pre-defined criteria across a ranking scale;	
(4) 'ESG rating providers' means a legal person whose occupation includes the offering and distribution of ESG ratings or scores on a professional basis;	(4) 'ESG rating provider~~s~~' means a legal person whose occupation includes the **publication or** ~~**offering and**~~ distribution of ESG ~~**ratings**~~ **opinions** or scores on a professional basis;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(5) ‘regulated financial undertaking in the Union’ means an undertaking, regardless of its legal form, that is:		
– (i) a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council[60];		
– (ii) an investment firm as defined in Article 4(1), point (1), of Directive 2014/65/EU the European Parliament and of the Council[61];		

[60] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

[61] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (iii) an alternative investment fund manager (AIFM) as defined in Article 4(1), point (b), of Directive 2011/61/EU of the European Parliament and of the Council[62], including a manager of a qualifying venture capital fund as defined in Article 3, point (c) of Regulation (EU) No 345/2013 of the European Parliament and of the Council[63], a manager of a qualifying social entrepreneurship fund as defined in Article 3, point (c) of Regulation (EU) No 346/2013 of the European Parliament		

[62] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

[63] Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
and of the Council[64] and a manager of the ELTIF as defined in Article 2, point (12) of Regulation (EU) 2015/760 of the European Parliament and of the Council[65];		
– (iv) an undertaking for collective investment in transferable securities (UCITS) management company as defined Article 2(1), point (b), of Directive 2009/65/EC of the European Parliament and of the Council[66];		

64 Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).
65 Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).
66 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (v) an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council[67];		
– (vi) a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;		
– (vii) an institution for occupational retirement provision as defined in Article 1, point (6) of Directive 2016/2341 of the European Parliament and of the Council[68];		

[67] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

[68] Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (viii) pension institutions operating pension schemes which are considered to be social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council[69] and Regulation (EC) No 987/2009 of the European Parliament and of the Council[70], and any legal entity set up for the purpose of investment of such social security schemes;		
– (ix) an alternative investment fund (AIF) managed by an AIFM as defined in Article 4(1), point (b), of Directive 2011/61/EU		

[69] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

[70] Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
or an AIF supervised under the applicable national law;		
– (x) a UCITS as defined in Article 1(2) of Directive 2009/65/EC;		
– (xi) a central counterparty as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council[71];		

[71] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (xii) a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014 of the European Parliament and of the Council[72];		
– (xiii) an insurance or reinsurance special purpose vehicle authorised in accordance with Article 211 of Directive 2009/138/EC;		
– (xiv) a 'securitisation special purpose entity' as defined in Article 2, point (2), of		

[72] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Regulation (EU) No 2017/2402 of the European Parliament and of the Council[73];		
– (xv) an insurance holding company as defined in Article 212(1), point (f), of Directive 2009/138/EC or a mixed financial holding company as defined in Article 212(1), point (h), of Directive 2009/138/EC, which is part of an insurance group that is subject to supervision at the level of the group pursuant to Article 213 of that Directive and which is not exempted from group supervision pursuant to Article 214(2) of that Directive;		

[73] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(xv bis) a financial holding company as defined in Article 4(1), point (20), of Regulation (EU) No 575/2013 of the European Parliament and of the Council;	
– (xvi) a payment institution as defined in Article 1(1), point (d), of Directive (EU) 2015/2366 of the European Parliament and of the Council[74];		
– (xvii) an electronic money institution as defined in Article 2, point (1), of Directive		

[74] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2009/110/EC of the European Parliament and of the Council[75];		
– (xviii) a crowdfunding service provider as defined in Article 2(1), point (e), of Regulation (EU) 2020/1503 of the European Parliament and of the Council[76];		
– (xix) a crypto-asset service provider as defined in Article 3(1), point (8), of [the proposal for a Regulation of the European		

[75] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

[76] Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Parliament and of the Council on Markets in Crypto-assets[77]] where performing one or more crypto-asset services as defined in Article 3(1), point (9), of [the proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets];		
– (xx) a trade repository as defined in Article 2, point (2), of Regulation (EU) No 648/2012;		
– (xxi) a securitisation repository as defined in Article 2, point (23), of Regulation (EU) 2017/2402;		

[77] COM/2020/593 final.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (xxii) an administrator of benchmarks as defined in Article 3(1), point (3), of Regulation (EU) 2016/1011 of the European Parliament and of the Council[78] ;		
– (xxiii) a credit rating agency as defined in Article 3(1), point (b), of Regulation (EC) No 1060/2009;		
(6) 'rating analyst' means a person who performs analytical functions for the purpose of issuing ESG ratings;		

[78] Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(7) 'rated entity' means a legal person, a financial instrument, a financial product or a public authority or a body governed by public law which is explicitly or implicitly rated in the ESG rating or score, irrespective of whether such rating has been requested for and irrespective of whether the legal person has provided information for that ESG rating or score;	(7) 'rated entity' means a legal person, a financial instrument, a financial product or a public authority or a body governed by public law which is explicitly or implicitly rated in the ESG rating ~~**or score**~~, irrespective of whether such rating has been requested for and irrespective of whether the legal person has provided information for that ESG rating ~~**or score**~~;	
	(7a) 'financial instrument' means any of the instruments listed Section C of Annex I of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, including such	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	instruments issued by means of distributed ledger technology;	
(8) ‘user’ means a natural or legal person, including a public authority or a body governed by public law, to which an ESG rating is provided;	(8) ‘user’ means a natural or legal person, including a public authority or a body governed by public law, to which an ESG rating is ~~**provided**~~ **published or distributed**;	
(9) ‘competent authorities’ means the authorities designated by each Member State for the purposes of this Regulation;	(9) ‘competent authorities’ means the authorities designated by each Member State **in accordance with Article 28 and** for the purposes of this Regulation;	
(10) ‘senior management’ means the person or persons who effectively direct the business of the ESG rating provider and the member or		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
members of the ESG rating provider's administrative or supervisory board.		
(11) 'group of ESG rating providers' means a group of undertakings established in the Union consisting of a parent undertaking and its subsidiaries within the meaning of Article 2 of Directive 2013/34/EU, and undertakings linked to each other by a relationship and whose occupation includes the provision of ESG ratings.		
TITLE II		
PROVISION OF ESG RATINGS IN THE UNION		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 4		
Requirements to provide ESG ratings in the Union	**Requirements to ~~provide ESG ratings~~ operate in the Union**	
Any legal person who wishes to provide ESG ratings in the Union shall be subject to either of the following:	Any ~~legal person~~ **ESG rating provider** who wishes to ~~provide ESG ratings~~ **operate** in the Union shall be subject to either of the following:	
(a) an authorisation issued by ESMA as referred to in Article 5;		
(b) an implementing decision as referred to in Article 9;		
(c) an authorisation for endorsement as referred to in Article 10.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) a recognition as referred to in Article 11;		
	[Article 4a]	
	Exemptions for new entrants	
	1. Without prejudice to the powers referred to in Articles 30 to 32, ESG rating providers with a consolidated annual net turnover on all their activities below EUR [3 million] will be exempted from complying with other provisions of this Regulation as long as those rating providers: **(a) have been registered by ESMA;** **(b) identify themselves to ESMA at the time of registration;**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(c) notify ESMA in the event that they no longer meet the condition referred to in the first subparagraph.	
	2. Where the condition referred to in the first subparagraph is no longer met or [five] years after their registration in the Union, the ESG rating provider shall become subject to the other provisions of this Regulation and shall apply for authorization pursuant to Chapter 1 of Title II within [30] calendar days.	
	3. ESG rating providers referred to in paragraph 1 can choose to opt in under this Regulation. Where ESG rating providers	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	choose to opt in, this Regulation shall become applicable in its entirety.	
	4. ESMA shall develop draft implementing technical standards to specify **(a) the procedures applicable to ESG rating providers that choose to opt in, in accordance with the paragraph 3.** **(b) the treatment of ESG rating providers that occasionally exceed and/or fall below the relevant threshold in the same calendar year and the obligation to notify ESMA when they no longer meet the condition referred to in paragraph 1.** **ESMA shall submit those draft implementing technical standards to the Commission.** **Power is conferred on the Commission to**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	
CHAPTER 1		
Authorisation to provide ESG ratings in the Union	**Authorisation of ESG rating providers established in the Union to ~~provide ESG ratings~~ operate in the Union**	
Article 5		
Application for an authorisation to provide an ESG rating	**Application for an authorisation to ~~provide an ESG ratings~~ operate in the Union**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. Legal persons established in the Union that wish to provide ESG ratings in the Union shall apply for authorisation to ESMA.	1. ~~**Legal persons**~~ **ESG rating providers** established in the Union that wish to ~~**provide ESG ratings**~~ **operate in the Union pursuant to paragraph a of Article 2** shall apply for authorisation to ESMA.	
2. The application for authorisation shall contain all of the information listed in Annex I and shall be submitted in any of the official languages of the Union. Council Regulation No 1[79] shall apply mutatis mutandis to any other communication between ESMA and the ESG rating providers and their staff.		

[79] Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. ESMA shall develop draft regulatory technical standards to specify further the information listed in Annex I.		
ESMA shall submit those draft regulatory technical standards to the Commission by XX XXXX XXXX.	ESMA shall submit those draft regulatory technical standards to the Commission by **[12 months after the date of entry into force].**	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		
4. An authorised ESG rating provider shall comply with the conditions for initial authorisation at all times.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. ESG rating providers shall notify ESMA of any material changes to the conditions for initial authorisation, including any opening or closing of a branch within the Union, without undue delay.		
Article 6		
Examination of the application for authorisation of ESG rating providers by ESMA		
1. Within 30 working days of receipt of the application referred to in Article 5(2), ESMA shall assess whether the application is complete. Where the application is not complete, ESMA	1. Within 30 working days of receipt of the application referred to in Article 5(2), ESMA shall assess whether the application is complete. Where the application is not complete, ESMA	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
shall set a deadline by which the applicant is to provide additional information.	shall set a deadline by which the applicant is to provide additional information. **If the applicant does not provide additional information within the impaired deadline, the application shall be rejected.**	
2. After having assessed whether an application is complete, ESMA shall notify the applicant of the result of that assessment.		
3. Within 120 working days of the notification referred to in paragraph 2, ESMA shall adopt a fully reasoned decision to authorise or refuse authorisation.	3. Within ~~120~~ **90** working days of the notification referred to in paragraph 2, ESMA shall adopt a fully reasoned decision to authorise or refuse authorisation.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. ESMA may extend the period referred to in the paragraph 3 to 140 working days in particular where the applicant:	4. ESMA may extend the period referred to in the paragraph 3 to ~~140~~ 120 working days in particular where the applicant:	
(a) envisages endorsing ESG ratings as referred to in Article 10;		
(b) envisages using outsourcing; or		
(c) requests exemption from compliance in accordance with Article 20.		
5. The decision adopted by ESMA pursuant to paragraph 3 shall take effect on the fifth working day following its adoption.		
Article 7		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Decision to grant or to refuse the authorisation to provide ESG ratings and notification of that decision	**Decision to grant or to refuse the authorisation to ~~provide ESG ratings~~ operate in the Union and notification of that decision**	
1. ESMA shall authorise the applicant as ESG rating provider where it concludes from the examination of the application referred to in Article 6 that the applicant complies with the conditions for the provision of ratings set out in this Regulation.		
2. ESMA shall inform the applicant within five working days of that decision referred to in the first paragraph.	2. ESMA shall inform the applicant within five working days of ~~that~~ the decision referred to in the first paragraph and the reasons thereof.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. ESMA shall inform the Commission, the EBA and EIOPA of any decision taken pursuant to paragraph 2.		
4. The authorisation shall be effective for the entire territory of the Union.		
Article 8		
Withdrawal or suspension of authorisation		
1. ESMA shall withdraw or suspend the authorisation of an ESG rating provider in any of the following cases:		
(a) the ESG rating provider has expressly renounced the authorisation or has provided no		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ESG ratings for nine months preceding that withdrawal or suspension;		
(b) the ESG rating provider has obtained its authorisation by making false statements or by any other irregular means;		
(c) the ESG rating provider no longer meets the conditions under which it was authorised;		
(d) the ESG rating provider has seriously or repeatedly infringed this Regulation.		
2. The decision on the withdrawal or suspension of authorisation shall take immediate effect throughout the Union.	2. The decision on the withdrawal or suspension of authorisation shall take immediate effect throughout the Union. **ESMA shall inform the competent authority where the**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	ESG rating provider is located, the Commission, the EBA and EIOPA of any decision taken pursuant to paragraph 1. The ESG rating provider shall also be informed of the decision taken pursuant to paragraph 1.	
CHAPTER 2		
Provision of ESG ratings in the Union by third country ESG rating providers	~~**Provision of ESG ratings**~~ **Operation** in the Union by ~~**third country**~~ ESG rating providers **established outside the Union**	
Article 9		
Equivalence decision		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. A third country ESG rating provider that wishes to provide ESG ratings in the Union shall only be able to do so where it is included in the register referred to in Article 13 and provided that all of the following conditions have been complied with:	1. A ~~third country~~ ESG rating provider **established outside the Union** that wishes to ~~provide ESG ratings~~ **operate** in the Union **pursuant to point b of the first paragraph of Article 2** shall only be able to do so where it is included in the register referred to in Article 13 and provided that all of the following conditions have been complied with:	
(a) the third country ESG rating provider is a legal person, is authorised or registered as an ESG rating provider in the third country concerned, and is subject to supervision by that third country;	(a) the ~~third country~~ ESG rating provider is a legal person, is authorised or registered as an ESG rating provider in ~~the~~ **a** third country concerned, and is subject to supervision ~~by~~ **in** that third country;	
(b) the third country ESG rating provider has notified ESMA that it wishes to	(b) the ~~third country~~ ESG rating provider has notified ESMA that it wishes to	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
provide ESG ratings in the Union and has informed ESMA with the name of the competent authority responsible for its supervision in the third country;	~~**provide ESG ratings**~~ **operate** in the Union and has informed ESMA with the name of the competent authority responsible for its supervision in the third country;	
(c) the Commission has adopted an equivalence decision pursuant to paragraph 2;		
(d) the cooperation arrangements referred to in paragraph 4 are operational.		
2. The Commission may adopt an implementing decision stating that the legal framework and supervisory practice of a third country ensures that:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) ESG rating providers authorised or registered in that third country comply with binding requirements which are equivalent to the requirements under this Regulation,		
(b) compliance with the binding requirements referred to in point (a) is subject to effective supervision and enforcement on an on-going basis in that third country.		
For the purposes of point (a), the Commission shall take into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO recommendations for ESG Ratings published in November 2021.	~~**For the purposes of point (a), the Commission shall take into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO recommendations for ESG Ratings published in November 2021.**~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 47.		
3. The Commission may adopt a delegated act in accordance with Article 45 to specify the conditions referred to in points (a) and (b) of the first subparagraph. The Commission may subject the application of the implementing decision referred to in paragraph 2 to:	3. The Commission ~~may~~ **shall** adopt a delegated act in accordance with Article 45 to specify the conditions referred to in points (a) and (b) of the ~~first~~ **second** ~~sub~~paragraph. The Commission ~~may~~ **shall** subject the application of the implementing decision referred to in paragraph 2 to:	
(a) the effective fulfilment on an ongoing basis by that third country of any condition set out in that implementing decision that aims at ensuring equivalent supervisory and regulatory standards;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) the ability of ESMA to effectively exercise the monitoring responsibilities referred to in Article 33 of Regulation (EU) No 1095/2010.		
4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2. Such arrangements shall specify all of the following:	4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2. Such arrangements shall specify ~~all of~~ **at least** the following:	
(a) the mechanism for exchanging information between ESMA and the competent authorities of third countries concerned,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
including access to all relevant information requested by ESMA regarding the ESG rating provider authorised or registered in that third country;		
(b) the mechanism for prompt notification to ESMA where a third country competent authority deems that the ESG rating provider authorised or registered in that third country and that is supervised by that third country competent authority is breaching the conditions of its authorisation or registration, or other national law in that third country;		
(c) the procedures concerning the coordination of supervisory activities, including on-site inspections.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 10		
Endorsement of ESG ratings provided by a third country ESG rating provider	**Endorsement of ESG ratings ~~provided by~~ of an ~~third country~~ ESG rating provider established outside the Union**	
1. An ESG rating provider located in the Union and authorised in accordance with Article 7 may endorse ESG ratings provided by a third country ESG rating provider belonging to the same group, provided that all of the following conditions have been met:	1. An ESG rating provider ~~located~~ established in the Union and authorised in accordance with Article 7 may endorse ESG ratings ~~provided by~~ of a ~~third country~~ ESG rating provider established outside the Union which belongs ~~belonging~~ to the same group, provided that all of the following conditions have been met:	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) the ESG rating provider located in the Union has applied to ESMA for authorisation of such endorsement;	(a) the ESG rating provider ~~**located**~~ **established** in the Union has applied to ESMA for authorisation of such endorsement;	
(b) the ESG rating provider located in the Union has verified and is able to demonstrate on an on-going basis to ESMA that the provision of the ESG rating to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation;	(b) the ESG rating provider ~~**located**~~ **established** in the Union has verified and is able to demonstrate on an on-going basis to ESMA that the ~~**provision**~~ **distribution** of the **endorsed** ESG rating**s** ~~**to be endorsed**~~ fulfils requirements which are at least as stringent as the requirements of this Regulation**. The ESG rating provider shall prove compliance with these requirements without having to reference the specific process followed for each individual rating**;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) the ESG rating provider located in the Union has the necessary expertise to monitor the provision of ESG ratings by the third country ESG rating provider effectively, and to manage any associated risks;	(c) the ESG rating provider ~~**located**~~ **established** in the Union has the necessary expertise to monitor the ~~**provision of**~~ ESG ratings ~~**by**~~ **of** the ~~**third country**~~ ESG rating provider **established outside the Union** effectively, ~~**and**~~ to manage any associated risks**, and has appropriate analytical presence in the Union considering the nature, scale or complexity of its activities in the Union**;	
(d) there is an objective reason why the third country ESG rating provider has to provide the ESG rating and why that ESG rating has to be endorsed for their use in the Union;	(d) there is an objective reason why the ~~**third country**~~ ESG rating provider **established outside the Union** ~~**has to provide**~~ **produces** the ESG rating**s** and why ~~**that**~~ **these** ESG rating**s** ~~**has**~~ **have** to be endorsed for their ~~**use**~~ **distribution** in the Union;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(e) the ESG rating provider located in the Union provides ESMA at its request with all the information necessary to enable ESMA to supervise the compliance by the third country ESG rating provider with this Regulation on an ongoing basis;	(e) the ESG rating provider ~~**located**~~ **established** in the Union provides ESMA at its request with all the information necessary to enable ESMA to supervise the compliance by the ~~**third country**~~ ESG rating provider **established outside the Union** with this Regulation on an ongoing basis;	
(f) where a third country ESG rating provider is subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information;	(f) where a ~~**third country**~~ ESG rating provider **established outside the Union** is subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the ESG rating provider is ~~**located**~~ **established**, to ensure an efficient exchange of information;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
For the purposes of point (b) of the first subparagraph, ESMA may consider that compliance of the provision of the ESG rating to be endorsed with the IOSCO recommendations for ESG ratings is equivalent to compliance with the requirements of this Regulation.	~~**For the purposes of point (b) of the first subparagraph, ESMA may consider that compliance of the provision of the ESG rating to be endorsed with the IOSCO recommendations for ESG ratings is equivalent to compliance with the requirements of this Regulation.**~~	
	For the purpose of point (d), ESMA shall develop draft regulatory technical standards to determine the conditions under which ESMA may assess whether there is an objective reason for the production of ESG ratings outside the Union and for the endorsement and distribution of ESG ratings by the ESG rating provider established in the Union. ESMA shall take into account	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	elements such as the specificities of the underlying ESG rating, the need for proximity of the production of the rating to specific economic reality, the material availability of input data or the availability of specific skills required for the production of specific ratings. **The draft regulatory technical standards shall include a non-exhaustive list of objective reasons and examples of circumstances that would represent a circumvention to the requirements of this Regulation.** **ESMA shall sublit those draft regulatory technical standards to the Commission by [12 months after the date of entry into force].**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.	
2. An ESG rating provider that applies for endorsement as referred to in paragraph 1 shall provide ESMA with all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.	2. An ESG rating provider that applies for endorsement as referred to in paragraph 1 **point (a)** shall provide ESMA with all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.	
3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, ESMA shall examine the	3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1 **point (a)**, ESMA shall examine the	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
application and decide either to authorise the endorsement or to refuse it. ESMA shall publicly notify the decision to endorse provided by a third country ESG rating provider.	application and decide either to authorise the endorsement or to refuse it. ESMA shall **inform the applicant within five working days of that decision** ~~**publicly notify the decision to endorse provided by a third country ESG rating provider**~~.	
4. An endorsed ESG rating shall be considered to be an ESG rating provided by the endorsing ESG rating provider. The endorsing provider shall not use the endorsement to avoid or circumvent the requirements of this Regulation.		
5. An ESG rating provider that has endorsed an ESG rating provided by a third country ESG rating provider shall remain fully	5. An ESG rating provider that has endorsed ~~**an**~~ ESG rating**s** ~~**provided**~~ **produced** by a ~~**third country**~~ ESG rating provider	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
responsible for such an ESG rating and for compliance with the obligations under this Regulation.	**established outside the Union** shall remain fully responsible for such ~~an~~ ESG rating**s** and for compliance with the obligations under this Regulation.	
6. Where ESMA has well-founded reasons to consider that the conditions laid down in paragraph 1 are no longer fulfilled, it shall have the power to require the endorsing ESG rating provider to cease the endorsement.	6. Where ESMA has well-founded reasons to consider that the conditions laid down in **this Article** ~~**paragraph 1**~~ are no longer fulfilled, it shall have the power to require the endorsing ESG rating provider to cease the endorsement**, without prejudice to the applicable sanctions in accordance with Articles 33 to 35 of this Regulation.**	
Article 11		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Recognition of third country ESG rating providers	**Recognition of ~~third country~~ ESG rating provider established outside the Union**	
1. Until the Commission has adopted an equivalence decision as referred to in Article 9 or, where adopted, in the event that the equivalence decision is repealed, third country ESG rating providers with an annual net turnover on their ESG rating activities below EUR 12 million for three consecutive years may provide ESG ratings to regulated financial undertakings in the Union, provided that ESMA has recognised that third country ESG rating provider in accordance with this paragraphs XX and YY.	1. Until the Commission has adopted an equivalence decision as referred to in Article 9 or, where adopted, in the event that the equivalence decision is repealed, ~~third country~~ ESG rating providers established outside the Union with a~~n~~ consolidated annual net turnover on all their ~~ESG rating~~ activities below EUR 12 million for three consecutive years may ~~provide ESG ratings to regulated financial undertakings~~ operate in the Union, provided that ESMA has recognised that ~~third country~~ ESG rating provider in accordance with this Article ~~paragraphs XX and YY~~.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	~~**For the purposes of the first subparagraph**~~**To that end**, ESMA may take into account either an assessment by an independent external auditor or a certification of the competent authority of the third country where the ~~**third country**~~ ESG rating provider is ~~**located**~~ **established**.	
2. Third country ESG rating providers that wish to be recognised as referred to in paragraph 1 shall comply with the requirements established in this Regulation and apply for recognition to ESMA. ESG rating providers may fulfil that condition by applying the IOSCO recommendations on ESG ratings provided that	2. ~~**Third country**~~ ESG rating providers **established outside the Union** that wish to be recognised as referred to in paragraph 1 shall comply with the requirements established in this Regulation and apply for recognition to ESMA. ~~**ESG rating providers may fulfil that condition by applying the IOSCO**~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
such application is equivalent to compliance with the requirements established in this Regulation.	~~**recommendations on ESG ratings provided that such application is equivalent to compliance with the requirements established in this Regulation.**~~	
For the purposes of the first subparagraph, ESMA may take into account either an assessment by an independent external auditor or a certification of the competent authority of the third country where the third country ESG rating provider is located.	~~**For the purposes of the first subparagraph, ESMA may take into account either an assessment by an independent external auditor or a certification of the competent authority of the third country where the third country ESG rating provider is located.**~~	
3. Third country ESG rating providers that wish to be recognised as referred to in paragraph 1 shall have a legal representative. That legal representative shall be a legal person located in the Union and expressly appointed by that third	3. ~~**Third country**~~ ESG rating providers **established outside the Union** that wish to be recognised as referred to in paragraph 1 shall have a legal representative. That legal representative shall be a legal person located in	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
country ESG rating provider to act on behalf of that ESG rating provider with regard to that ESG rating provider's obligations under this Regulation and, in that respect, be accountable to ESMA.	the Union and expressly appointed by that ~~third country~~ ESG rating provider to act on **its** behalf ~~**of that ESG rating provider with regard to that**~~ **, demonstrating and being accountable to ESMA that the** ESG rating provider~~**'s**~~ **meets the** obligations **laid down in** ~~**under**~~ this Regulation **on an ongoing basis** ~~**and, in that respect, be accountable to ESMA**~~. **The legal representative shall, upon request, provide ESMA with all the information necessary to satisfy ESMA that the ESG rating provider fulfills the requirements established in this Regulation.**	
4. The third country ESG rating provider shall provide ESMA, prior to the recognition	4. The ~~**third country**~~ ESG rating providers **established outside the Union** shall provide	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
referred to in paragraph 1, with the following information:	ESMA, prior to the recognition referred to in paragraph 1, with the following information:	
	(a1) all information necessary to desmonstrate that the condition laid down in paragraph 1 is met;	
(a) all information necessary to satisfy ESMA that that third country ESG rating provider has established all the necessary arrangements to meet the requirements referred to in paragraph 2;	(a) all information necessary to satisfy ESMA that that ~~**third country**~~ ESG rating provider has established all the necessary arrangements to meet the requirements referred to in paragraph 2 **and 3**;	
(b) the list of its actual or prospective ESG ratings which are intended for provision in the Union;	(b) the list of its actual or prospective ESG ratings which are intended for ~~**provision**~~ **distribution** in the Union;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) where applicable, the name and contact details of the competent authority in the third country responsible for its supervision.		
ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph.	~~**ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph.**~~ **Within 90 working days of receipt of the application for recognition referred to in paragraph 2, ESMA shall examine the application and decide on the recognition. ESMA shall inform the applicant of its decision within five working days of the decision.**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. ESMA shall recognise the third country ESG rating provider as referred to in paragraph 1 provided that all of the following conditions are met:	5. ESMA shall recognise the ~~third country~~ ESG rating provider as referred to in paragraph 1 provided that all of the following conditions are met:	
(a) the third country ESG rating provider has complied with all the conditions laid down in paragraphs 2, 3 and 4	(a) the ~~third country~~ ESG rating provider has complied with all the conditions laid down in paragraphs 2, 3 and 4**:**	
(b) where the third country ESG rating provider is subject to supervision, ESMA shall seek to put in place an appropriate cooperation arrangement with the relevant competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information;	(b) where the ~~third country~~ ESG rating provider is subject to supervision, ESMA shall seek to put in place an appropriate cooperation arrangement with the relevant competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. No recognition shall be granted where the effective exercise by ESMA of its supervisory functions under this Regulation is either prevented by the laws, regulations or administrative provisions of the third country where the third country ESG rating provider is established, or, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.	6. No recognition shall be granted where the effective exercise by ESMA of its supervisory functions under this Regulation is either prevented by the laws, regulations or administrative provisions of the third country where the ~~**third country**~~ ESG rating provider is established, or, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.	
7. ESMA shall impose fines, in accordance with Article 30, suspend or, where appropriate, withdraw the recognition referred to in paragraph 1 where it has well-founded reasons, based on documented evidence, to consider that the ESG rating provider:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) is acting, or has been acting, in a manner which is clearly prejudicial to the interests of users of its ESG ratings or to the orderly functioning of markets;		
(b) has seriously infringed the applicable requirements set out in this Regulation;		
(c) made false statements or used any other irregular means to obtain the recognition.		
	7a. Where the ESG rating provider recognised under the provision of this Article by ESMA no longer meets the condition laid down in paragraph 1, it shall notify ESMA without undue delay.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	The ESG rating provider shall notify ESMA within 3 months if it wants to continue offering its services in the Union and apply for authorisation within 12 months. **In the absence of such notification, the ESG rating provider shall cease to operate in the Union.**	
8. ESMA shall develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 2 and, in particular, the presentation of the information required in paragraph 4. ESMA shall submit them to the Commission.	8. ESMA shall develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 2 and, in particular, the presentation of the information required in paragraph 4. ESMA shall submit them to the Commission **by [12 months after the date of entry into force]**.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		
Article 12		
Cooperation arrangements		
1. Any cooperation arrangement as referred to in Article 9(4), Article 10(1), point (f) and Article 11(5), point (b), shall be subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 44. The exchange of information performed under such cooperation arrangements shall be intended		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
for the performance of the tasks of ESMA or the competent authorities.		
2. With regard to transfer of personal data to a third country, ESMA shall apply Regulation (EU) 2018/1725 of the European Parliament and of the Council[80].		
CHAPTER 3		
Register and accessibility of information		
Article 13		

[80] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Register of ESG rating providers and accessibility of information on the European Single Access Point (ESAP)		
1. ESMA shall establish and maintain a register that contains information on all of the following:		
(a) the identities of the ESG rating providers authorised pursuant to Article 7;		
(b) the identities of third country ESG rating providers that comply with the conditions laid down in Article 9 and the third country competent authorities responsible for	(b) the identities of ~~**third country**~~ ESG rating providers **established outside the Union** that comply with the conditions laid down in Article 9 and the third country competent authorities responsible for the	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the supervision of those third country ESG rating providers;	supervision of those ~~third country~~ ESG rating providers;	
(c) the identities of the endorsing ESG rating provider and the endorsed third country ESG rating provider referred to in Article 10, and, where applicable, the third country competent authorities that are responsible for the supervision of the endorsed third country ESG rating provider;	(c) the identities of the endorsing ESG rating provider and the endorsed ~~third country~~ ESG rating providers **established outside the Union** referred to in Article 10, and, where applicable, the third country competent authorities that are responsible for the supervision of the endorsed ~~third country~~ ESG rating provider;	
(d) the identities of the third country ESG rating providers that have been recognised in accordance with Article 11, and, where applicable, the third country competent	(d) the identities of the ~~third country~~ ESG rating providers **established outside the Union** that have been recognised in accordance with Article 11, and, where	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
authorities responsible for the supervision of those third country ESG rating providers;	applicable, the third country competent authorities responsible for the supervision of those ~~third country~~ ESG rating providers;	
2. The register referred to in paragraph 1 shall be publicly accessible on the website of ESMA and shall be updated promptly, as necessary.		
3. From 1 January 2028, when making public any information pursuant to Article 18(1) and 21(1), the ESG rating provider shall submit that information to the relevant collection body referred to in paragraph 6 of this Article at the same time for accessibility on ESAP established under Regulation (EU) XX/XXXX [ESAP		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Regulation] of the European Parliament and of the Council*.		
4. That information shall comply with all of the following requirements:		
(a) the information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation] or, where required under Union law, in a machine-readable format, as defined in Article 2, point (4), of Regulation (EU) XX/XXXX [ESAP Regulation];		
(b) the information shall be accompanied by the following metadata:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(1) all the names of the ESG rating provider submitting the information;	(1) ~~all the names~~ **a full business name and, if applicable, the name used for marketing purposes and the abbreviation of the name** of the ESG rating provider submitting the information;	
(2) the legal entity identifier of the ESG rating provider as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];		
(3) the size of the ESG rating provider as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(4) the type of information as classified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];		
(5) metadata specifying whether the information includes personal data.		
5. For the purposes of paragraph 1, point (b)(ii) the ESG rating provider shall acquire the legal entity identifier as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation].		
6. For the purposes of making accessible on ESAP the information referred to in paragraph 1, the collection body as defined in		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] shall be ESMA.		
7. From 1 January 2028, the information referred to in paragraph 1 and in Articles 10(3), 33(1), 34 and 35 shall be made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of that Regulation shall be ESMA. That information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation], include the metadata as regards the names and, where available, the legal entity identifier of the ESG rating provider as specified pursuant to Article 7(4) of that Regulation, the type of information as classified pursuant to Article 7(4) of that		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Regulation and whether the information includes personal data.		
8. For the purposes of ensuring an efficient collection and administration of data submitted in accordance with paragraph 3, ESMA shall develop draft implementing technical standards to specify:		
(a) any other metadata to accompany the information;		
(b) the structuring of data in the information;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) for which information a machine-readable format is required and which machine-readable format is to be used.		
Before developing the draft implementing technical standards, ESMA shall carry out a cost-benefit analysis. For the purposes of point (c), ESMA shall assess the advantages and disadvantages of different machine-readable formats and conduct appropriate field tests.		
ESMA shall submit those draft implementing technical standards to the Commission.		
Power is conferred on the Commission to adopt the implementing technical standards referred to		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.		
9. If necessary, ESMA shall adopt guidelines for entities to ensure that the metadata submitted in accordance with paragraph 8, first subparagraph, point (a), is correct.		
TITLE III		
INTEGRITY AND RELIABILITY OF ESG RATING ACTIVITIES		
CHAPTER 1		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Organisational requirements, processes and documents concerning governance		
Article 14		
General principles		
1. ESG rating providers shall ensure the independence of their rating activities, including from all political and economic influences or constraints.		
2. ESG rating providers shall have in place rules and procedures that ensure that their ESG rating are provided and published or made available in accordance with this Regulation.	2. ESG rating providers shall have in place rules and procedures that ensure that their ESG rating**s** are ~~**provided and**~~ published or **distributed** ~~**made available**~~ in accordance with this Regulation. **In order to ensure consistent**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	application of this Article, ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to determine procedures for the publication and distribution of ESG ratings.	
3. ESG rating providers shall employ systems, resources and procedures that are adequate and effective to comply with their obligations under this Regulation.		
4. ESG rating providers shall adopt and implement written policies and procedures that ensure that their ESG ratings are based on a thorough analysis of all relevant information available to them.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. ESG rating providers shall adopt and implement internal due diligence policies and procedures that ensure that their business interests do not impair the independence or accuracy of the assessment activities.		
6. ESG rating providers shall adopt and implement sound administrative and accounting procedures, internal control mechanisms, and effective control and safeguard arrangements for information processing systems.		
7. ESG rating providers shall use rating methodologies for the ESG ratings they provide that are rigorous, systematic, objective and capable of validation and shall apply those rating methodologies continuously.	ESG rating providers shall use rating methodologies for the ESG ratings they provide that are rigorous, systematic **and impartial**, ~~**objective and capable of validation**~~ and shall	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	apply those rating methodologies continuously and **in a transparent manner**.	
8. ESG rating providers shall review the rating methodologies referred to in paragraph 6 on an on-going basis and at least annually.	8.ESG rating providers shall review the rating methodologies referred to in paragraph ~~6~~ 7 on an on-going basis and at least annually **and review accordingly the affected ESG ratings**.	
9. ESG rating providers shall monitor and evaluate the adequacy and effectiveness of the systems, resources and procedures referred to in paragraph 2 at least annually and take appropriate measures to address any deficiencies.	ESG rating providers shall monitor and evaluate the adequacy and effectiveness of the systems, resources and procedures referred to in paragraph ~~2~~ 3 at least annually and take appropriate measures to address any deficiencies.	
10. ESG rating providers shall establish and maintain a permanent and effective oversight		

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
function to ensure oversight of all aspects of the provision of their ESG ratings.		
ESG rating providers shall develop and maintain robust procedures regarding their oversight function.		
11. ESG rating providers shall adopt, implement, and enforce measures to ensure that their ESG ratings are based on a thorough analysis of all the information that is available to them and that is relevant to their analysis in accordance with their rating methodologies. They shall adopt all necessary measures to ensure that the information they use in assigning ESG ratings is of sufficient quality and from reliable sources. ESG rating providers shall	11. ESG rating providers ~~shall adopt, implement, and enforce measures to ensure that their ESG ratings are based on a thorough analysis of all the information that is available to them and that is relevant to their analysis in accordance with their rating methodologies. They~~ shall adopt all necessary measures to ensure that the information they use in assigning ESG ratings is of sufficient quality and from reliable sources. ESG rating providers	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
explicitly mention that their ESG ratings are their own opinion .	shall **clearly and** explicitly ~~**mention**~~ **inform** that their ESG ratings are their own opinion.	
	[11a. ESG rating providers shall inform the rated entity during working hours of the rated entity and at least a full working day before publication of the ESG rating. The information shall include at least the principal grounds on which the ESG rating is based in order to give the rated entity an opportunity to inform the ESG rating provider of any factual errors.]	
12. ESG rating providers shall not disclose information about their intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets as defined in Article 2, point (1), of Directive (EU)	12. ESG rating providers shall not disclose information **related to the rated entity** about their intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets as defined in	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2016/943 of the European Parliament and of the Council[81].	Article 2, point (1), of Directive (EU) 2016/943 of the European Parliament and of the Council .	
13. ESG rating providers shall only make changes to their ESG ratings in accordance with their rating methodologies published pursuant to Article 21.		
Article 15		
Separation of business and activities		
1. ESG rating providers shall not provide any of the following activities:		

[81] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) consulting activities to investors or undertakings;		
(b) the issuance and sale of credit ratings;	(b) the issuance and sale of credit ratings **in the sense of Regulation (EC) No 1060/2009**;	
(c) the development of benchmarks;	(c) the development of benchmarks **in the sense of Regulation (EU) 2016/1011**;	
(d) investment activities;	(d) investment activities **in the sense of Directive 2004/39/E**C;	
(e) audit activities;	(e) audit activities **in the sense of Regulation (EU) No 537/2014**;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(f) banking, insurance, or reinsurance activities.	(f) banking, insurance, or reinsurance activities **in the sense of Directive 2013/36/EU and Directive 2009/138/EC**.	
	1a. By way of derogation of the first paragraph, ESG rating providers may provide the activities listed in that paragraph, when they put in place specific measures to ensure that each activity is exercised autonomously and avoids creating risks of conflicts of interest within its ESG rating activities. In addition, ESG rating providers and any other entity of the same group shall take appropriate measures, including the measures in Articles 23 and 24, to ensure that conflicts of interest do not arise in decision-making, both within the	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	institution itself and between institutions belonging to the same group. This derogation shall not be applicable to the activities listed in paragraph 1 point (a) and (e) when they are provided to entities that are or have been rated by the ESG rating provider.	
	For the purposes of the first subparagraph, ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to determine the conditions under which ESMA may assess that the measures put in place ensure avoidance of conflict of interests and autonomy in the exercise of the different actitivies.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. ESG rating providers shall ensure that the provision of other services than those referred to in paragraph 1 does not create risks of conflicts of interest within its ESG rating activities.	2. ESG rating providers shall ensure that the provision of other services than those referred to in paragraph 1 does not create risks of conflicts of interest within its ESG rating activities. **In the latter case, ESG rating providers shall refrain from offering the other services.**	
Article 16		
Rating analysts, employees and other persons involved in the provision of ESG ratings		
1. ESG rating providers shall ensure that rating analysts, employees and any other natural person whose services are placed at its disposal or under its control and who are directly	1. ESG rating providers shall ensure that rating analysts, employees and any other natural person **under its control or** whose services are placed at its disposal**, for example by way of a**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
involved in the provision of ESG ratings, including analysts directly involved in the rating process and persons involved in the provision of scores, have the knowledge and experience that is necessary for the performance of the duties and tasks assigned.	**contractual arrangement,** ~~**or under its control**~~ and who are directly involved in the provision of ESG ratings, including analysts directly involved in the rating process and persons involved in the provision of scores, **are appropriately trained and** have the knowledge and experience that is necessary for the performance of the duties and tasks assigned.	
2. ESG rating providers shall ensure that the persons referred to in paragraph 1 are not allowed to initiate or participate in negotiations regarding fees or payments with any rated entity or any person directly or indirectly linked to the rated entity by control.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. The persons referred to in paragraph 1 shall not buy or sell any financial instrument issued, guaranteed, or otherwise supported by any rated entity other than holdings in diversified collective investment schemes, including managed funds, nor engage in any transaction in such financial instruments.		
4. The persons referred to in paragraph 1 shall not participate in or otherwise influence the determination of an ESG rating of any rated entity where those persons:		
(a) own financial instruments of the rated entity, other than holdings in diversified collective investment schemes;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) own financial instruments of any entity related to a rated entity, the ownership of which may cause or may be generally perceived as causing a conflict of interest, other than holdings in diversified collective investment schemes;		
(c) have had a recent employment, business or other relationship with the rated entity that may cause or may be generally perceived as causing a conflict of interest.	(c) have had **in the last two years** a ~~**recent**~~ employment, business or other relationship with the rated entity that may cause or may be generally perceived as causing a conflict of interest.	
5. ESG rating providers shall ensure that the persons referred to in paragraph 1:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) take all reasonable measures to protect property and records in possession of the ESG rating provider from fraud, theft or misuse, taking into account the nature, scale and complexity of the ESG rating provider's business and the nature and range of ESG rating activities;		
(b) do not share confidential information that has been entrusted to the ESG rating provider with anyone who is not directly involved in the provision ofESG rating activities, including rating analysts and employees of any person directly or indirectly linked to the ESG rating provider by control, and any other natural person whose services are or have been placed at the disposal of, or are	(b) do not share confidential information that has been entrusted to the ESG rating provider with anyone who is not directly involved in the provision of ESG rating activities, including rating analysts and employees of any person directly or indirectly linked to the ESG rating provider by control, and any other natural person whose services are or have been placed at the disposal of, or are	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
under the control of, any person directly or indirectly linked to the ESG rating provider by control;	under the control of, any person directly or indirectly linked to the ESG rating provider by control;	
(c) do not use or share confidential information for any other purpose than the provision of ESG rating activities, including for the trading of financial instruments.		
	(ca) do not solicit or accept money, gifts or favours from anyone with whom the ESG rating provider does business.	
6. Persons as referred to in paragraph 1 that consider that any other person as referred to in paragraph 1 has engaged in conduct that they	6. Persons as referred to in paragraph 1 that consider that any other person as referred to in paragraph 1 has engaged in conduct that they	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
consider to be illegal shall immediately inform the compliance function thereof. The ESG rating provider shall ensure that such reporting does not have any negative consequences for the person reporting.	consider to be illegal shall immediately inform the ~~compliance~~ **oversight** function thereof. The ESG rating provider shall ensure that such reporting does not have any negative consequences for the person reporting.	
7. Where a rating analyst terminates his or her employment with the ESG rating provider and joins a rated entity which he or she has been involved in rating, the ESG rating provider shall review the work of the rating analyst over one year preceding his or her departure.		
8. Persons as referred to in paragraph 1 shall not take up a key management position within a rated entity which they have been		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
involved in rating for six months after the provision of such rating.		
Article 17		
Record-keeping requirements		
1. ESG rating providers shall record their ESG rating activities. Those records shall contain the information listed in Annex II.		
2. ESG rating providers shall keep the information referred to in paragraph 1 for at least five years and in such a form that it is possible to replicate and fully understand the determination of an ESG rating.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 18		
Complaints-handling mechanism		
1. ESG rating providers shall have in place and publish on their website procedures for receiving, investigating and retaining records concerning complaints made.	1. ESG rating providers shall have in place and publish on their website procedures for receiving, investigating and retaining records concerning complaints made **by users of ESG ratings and rated entities. ESG rating providers shall also clearly inform on their website about their contact details**.	
2. The procedures referred to in paragraph 1 shall ensure that:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) the ESG rating provider makes publicly available the complaints-handling policy through which complaints may be submitted on:	(a) the ESG rating provider makes publicly available the complaints-handling policy**;** ~~**through which complaints may be submitted on:**~~	
(1) the sources of data used for a specific ESG rating;	~~**(1) the sources of data used for a specific ESG rating;**~~	
(2) the way in which the rating methodology in relation to a specific ESG rating has been applied;	~~**(2) the way in which the rating methodology in relation to a specific ESG rating has been applied;**~~	
(3) whether a specific ESG rating is representative of the rated entity;	~~**(3) whether a specific ESG rating is representative of the rated entity;**~~	
(4) a proposed change to the ESG rating determination process;	~~**(4) a proposed change to the ESG rating determination process;**~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(5) other decisions in relation to the ESG rating;	~~(5) other decisions in relation to the ESG rating;~~	
(b) complaints are investigated in a timely and fair manner and that the outcome of the investigation is communicated to the complainant within a reasonable period of time, unless such communication would be contrary to objectives of public policy or to Regulation (EU) No 596/2014 of the European Parliament and of the Council[82];		

[82] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) the inquiry is conducted independently of any personnel that has been involved in the subject-matter of the complaint.		
	3. Complaints may be submitted on:	
	(1) the sources of data used for a specific ESG rating, factual errors and mistakes;	
	(2) the way in which the rating methodology in relation to a specific ESG rating has been applied;	
	(3) whether a specific ESG rating is representative of the rated entity;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 19		
Outsourcing		
1. ESG rating providers shall not outsource important operational functions where such outsourcing would materially impair the quality of the ESG rating provider's internal control policies and procedures, or the ability of the European Supervisory and Markets Authority (ESMA) to supervise the ESG rating provider's compliance with its obligations under this Regulation.	1. ESG rating providers shall not outsource important operational functions where such outsourcing would materially impair the quality of the ESG rating provider's internal control policies and procedures, or the ability of ~~**the European Supervisory and Markets Authority (**~~ESMA~~)~~ to supervise the ESG rating provider's compliance with its obligations under this Regulation. **In determining whether an operational function could be considered important and, as a consequence, could not be outsourced, consideration shall be given to the fact that it is performed on a recurrent or**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	an ongoing basis, or the function would normally fall within the scope of functions that would be reasonably expected to be performed by the ESG rating provider itself.	
2. ESG rating providers that outsource functions or any services or activities that are relevant for the provision of an ESG rating shall remain fully responsible for discharging all of the obligations under this Regulation.		
3. ESG rating providers that outsource functions or any services or activities that are relevant for the provision of an ESG rating shall remain fully responsible for disclosing the information referred to in Annex II.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 20		
Exemptions on governance requirements		
1. ESMA may exempt an ESG rating provider at its request from complying with some of the requirements laid down in Article 14 where that ESG rating provider is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of the issuance of ESG ratings and provided that:	1. ESMA may exempt an ESG rating provider at its request**, mostly if not only at the time of its registration, in all or part,** from complying with some of the requirements laid down in Article 14 where that ESG rating provider is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of the issuance of ESG ratings and provided that:	
(a) the ESG rating provider is a small or medium-sized undertaking according to the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
criteria laid down in Article 3 of Directive 2013/34/EU;		
(b) the ESG rating provider has implemented measures and procedures, and in particular internal control mechanisms, reporting arrangements and measures, that ensure the independence of rating analysts and persons approving ESG ratings and that ensure the effective compliance with this Regulation;		
(c) the size of the ESG rating provider is not determined in such a way as to avoid compliance with the requirements of this Regulation by an ESG rating provider or a group of ESG rating providers.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be exempted in accordance with paragraph 1. **ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the date of entry into force].** **Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 1 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.**	
2. In the case of a group of ESG rating providers, ESMA shall ensure that at least one of the ESG rating providers in the group is not		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
exempted from the requirements laid down in this Regulation.		
CHAPTER 2		
Transparency requirements		
Article 21		
Disclosure of the methodologies, models, and key rating assumptions used in ESG rating activities to the public		
1. ESG rating providers shall disclose on their website the methodologies, models and key rating assumptions they use in their ESG		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
rating activities, including the information referred to in point 1 of Annex III.		
2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1.	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1. **These elements shall not include any other disclosure requirement than those listed in Annex III.**	
3. ESMA shall submit those draft regulatory technical standards to the Commission by XX XXXX XXXX.	3. ESMA shall submit those draft regulatory technical standards to the Commission by **[12 months after the date of entry into force]**.	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		
Article 22		
Disclosures to subscribers of ESG ratings and rated entities	**Disclosures to ~~subscribers~~ users of ESG ratings and rated entities**	
1. ESG rating providers shall disclose, as a minimum, the information referred to in point 2 of Annex III to their subscribers and to the rated entities.	1. ESG rating providers shall disclose, as a minimum, the information referred to in point 2 of Annex III to ~~their subscribers~~ **users of ESG ratings** and to the rated entities.	
2. ESMA shall develop draft regulatory technical standards to specify further the	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
elements that are to be disclosed in accordance with paragraph 1.	with paragraph 1. **These elements shall not include any other disclosure requirement than those listed in Annex III.**	
3. ESMA shall submit those draft regulatory technical standards to the Commission by XX XXXX XXXX.	3. ESMA shall submit those draft regulatory technical standards to the Commission by **[12 months after the date of entry into force]**.	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		
CHAPTER 3		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Independence and conflicts of interest		
Article 23		
Independence and avoidance of conflicts of interest		
1. ESG rating providers shall have in place robust governance arrangements, including a clear organisational structure with well-defined, transparent, and consistent roles and responsibilities for all persons involved in the provision of an ESG rating.		
2. ESG rating providers shall take all necessary steps to ensure that any ESG rating provided is not affected by any existing or	2. ESG rating providers shall take all necessary steps to ensure that any ESG rating provided is not affected by any existing or	

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
potential conflict of interest, or by any business relationship, either from the ESG rating provider itself or from their shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the ESG rating providers, or any person directly or indirectly linked to them by control.	potential conflict of interest, or by any business relationship, either from the ESG rating provider itself, **from the data provider** or from their shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the ESG rating providers, or any person directly or indirectly linked to them by control.	
3. Where there is a risk of a conflict of interest within an ESG rating provider due to the ownership structure, controlling interests, or activities of that ESG rating provider, of any entity owning or controlling the ESG rating provider, of an entity that is owned or controlled		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
by the ESG rating provider, or of any the ESG rating provider's affiliates, ESMA may require the ESG rating provider to take measures to mitigate that risk. Such measures may include the establishment of an independent oversight function representing stakeholders, including users of the ESG ratings and contributors to such ratings, in a balanced manner.		
Where a conflict of interest as referred to in the first subparagraph cannot be adequately managed, ESMA may require the ESG rating provider to cease the activities or relationships that create the conflict of interest, or may require the ESG rating provider to cease providing the ESG ratings.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. ESG rating providers shall disclose to ESMA all existing or potential conflicts of interest, including conflicts of interest arising from the ownership or control of the ESG rating providers.		
5. ESG rating providers shall establish and operate policies, procedures, and effective organisational arrangements for the identification, disclosure, prevention, management and mitigation of conflicts of interest. ESG rating providers shall regularly review and update those policies, procedures and arrangements. Those policies, procedures and arrangements shall specifically prevent, manage and mitigate conflicts of interest due to the ESG rating provider's ownership or control		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
or due to other interests in the ESG rating provider's group, or conflicts of interest that are caused by other persons that exercise influence or control over the ESG rating provider in relation to determining the ESG rating.		
6. ESG rating providers shall review their operations to identify potential conflicts of interests at least each year.		
Article 24		
Management of potential conflicts of interests from employees		
1. ESG rating providers shall ensure that their employees and any other natural persons		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
whose services are placed at their disposal or under their control and who are directly involved in the provision of an ESG rating:		
(a) have the skills that are necessary for performing their tasks and duties and are subject to effective management and supervision;		
(b) are not subject to undue influence or conflicts of interest;		
(c) that the compensation and performance evaluation of those persons do not create conflicts of interest or otherwise impinge upon the integrity of the ESG rating determination process;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) do not have any interests or business connections that compromise the activities of the ESG rating provider;		
(e) are prohibited from contributing to an ESG rating determination by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except where such contribution is explicitly required as part of the ESG rating methodology and is subject to specific rules laid down therein;		
(f) are subject to effective procedures to control the exchange of information with other employees involved in activities that may create a risk of conflicts of interest or with third		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
parties, where that information may affect the ESG rating.		
2. ESG rating providers shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining the ESG rating, including internal sign-off by management before the dissemination of the ESG rating.		
Article 25		
Fair, reasonable, transparent and non-discriminatory treatment of users of ESG ratings		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. ESG rating providers shall take steps that are adequate to ensure that fees charged to clients are fair, reasonable, transparent, non-discriminatory and are based on costs.	1. ESG rating providers shall take steps that are adequate to ensure that fees charged to clients are fair, reasonable, transparent~~,~~ **and** non-discriminatory ~~**and are based on costs**~~.	
2. For the purposes of paragraph 1, ESMA may require ESG rating providers to provide it with documented evidence, may take supervisory measures in accordance with Article 33, and may decide to impose fines in accordance with Article 34 where it finds that fees from ESG rating providers are not fair, reasonable, transparent, non-discriminatory and not based on actual costs.	2. For the purposes of paragraph 1, ~~**ESMA may require ESG rating providers to provide it with documented evidence,**~~ **ESG rating providers shall annually provide ESMA with information on their pricing policy, including the fee structure and pricing criteria. ESMA** may take supervisory measures in accordance with Article 33, and may decide to impose fines in accordance with Article 34 where it finds that fees from ESG rating providers are not fair,	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	reasonable, transparent~~,~~ **and** non-discriminatory ~~**and not based on actual costs**~~.	
CHAPTER 4		
Supervision by ESMA		
Section 1		
General principles		
Article 26		
Non-interference with the content of ratings or methodologies		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
In carrying out their duties under this Regulation, ESMA, the Commission or any public authorities of a Member State shall not interfere with the content of ESG ratings or methodologies.		
Article 27		
ESMA		
1. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall issue and update guidelines on the cooperation between ESMA and the competent authorities for the purposes of this Regulation, including the procedures and detailed conditions relating to the delegation of tasks.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall, in cooperation with the EBA and EIOPA, issue and update guidelines on the application of the endorsement regime referred to in Article 10 of this Regulation by XX XXXX XXXX.	2. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall, in cooperation with the EBA and EIOPA, issue and update guidelines on the application of the endorsement regime referred to in Article 10 of this Regulation by **[12 months after the date of entry into force]**.	
3. ESMA shall publish an annual report on the application of this Regulation, including on supervisory measures taken and penalties imposed by ESMA under this Regulation, including fines and periodic penalty payments. That report shall contain, in particular, information on the evolution of ESG Ratings market and an assessment of the application of		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the third country regimes referred to in Articles 9, 10 and 11.		
ESMA shall present the annual report referred to in the first subparagraph to the European Parliament, the Council and the Commission.		
4. ESMA shall cooperate with the EBA and EIOPA in performing its tasks and shall consult the EBA and EIOPA before issuing and updating guidelines and submitting draft regulatory technical standards.		
Article 28		
Competent authorities		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. By XX XXXX XXXX, each Member State shall designate a competent authority for the purposes of this Regulation.	1. By **[18 months after the entry into force]**, each Member State shall designate a competent authority for the purposes of this Regulation.	
2. Competent authorities shall be adequately staffed, with regard to capacity and expertise, to be able to apply this Regulation.		
Article 29		
Exercise of the powers referred to in Articles 30 to 32		
The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 30 to 32 shall not be used to require the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
disclosure of information or documents which are subject to legal privilege.		
Article 30		
Requests for information		
1. ESMA may by simple request or by decision require ESG rating providers, persons involved in ESG rating activities, rated entities, third parties to whom the ESG rating providers have outsourced operational functions or activities, and persons otherwise closely and substantially related or connected to ESG rating providers or ESG rating activities, to provide all information that it needs to carry out its duties under this Regulation.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. When sending a simple request for information under paragraph 1, ESMA shall:		
(a) refer to this Article as the legal basis for the request;		
(b) state the purpose of the request;		
(c) specify what information is required;		
(d) set a time-limit within which the information is to be provided;		
(e) inform the person from whom the information is requested that there is no obligation to provide the information but that		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
any reply to the request for information must not be incorrect or misleading;		
(f) indicate the fine provided for in Article 34, where the answers to questions asked are incorrect or misleading.		
3. When requiring the supply of information under paragraph 1 by decision, ESMA shall:		
(a) refer to this Article as the legal basis for the request;		
(b) state the purpose of the request;		
(c) specify what information is required;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) set a time-limit within which the information is to be provided;		
(e) indicate the periodic penalty payments provided for in Article 35 where the production of the required information is incomplete;		
(f) indicate the fine provided for in Article 34, where the answers to questions asked are incorrect or misleading;		
(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or of associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. Those clients shall remain fully responsible if the information supplied by the lawyers is incomplete, incorrect or misleading.		
5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 who are		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
concerned by the request for information are domiciled or established.		
Article 31		
General investigations		
1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary investigations of persons referred to in Article 30(1). To that end, the officials of and other persons authorised by ESMA shall be empowered to:		
(a) examine any records, data, procedures and any other material relevant to the execution		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of its tasks irrespective of the medium on which they are stored;		
(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;		
(c) summon and ask any person referred to in Article 30(1),or their representatives or staff for oral or written explanations on facts or documents related to the subject matter and purpose of the inspection and to record the answers;		
(d) interview any other natural or legal person who consents to be interviewed for the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
purpose of collecting information relating to the subject matter of an investigation;		
(e) request records of telephone and data traffic.		
2. The officials of and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 35(1) where the production of the required records, data, procedures or any other material, or the answers to questions asked of the persons		

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
referred to in Article are not provided or are incomplete, and the fines provided for in Article 34, where the answers to questions asked of the persons referred to in Article are incorrect or misleading.		
3. The persons referred to in Article 30(1) shall submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 3, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice of the European Union.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. In good time before the investigation, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.		
5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. Where authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.		
Article 32		
On-site inspections		
1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 30(1). Where the proper conduct and efficiency of the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
inspection so require, ESMA may carry out the on-site inspection without prior announcement.		
2. The officials of and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 31(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.		
3. The officials of and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
production of a written authorisation specifying the subject matter and purpose of the inspection, and the periodic penalty payments provided for in Article 31 where the persons concerned do not submit to the inspection. In good time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where it is to be conducted.		
4. The persons referred to in Article 30(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, specify the date on which it is to begin and indicate the periodic penalty payments provided for in Article 31, the legal remedies available under Regulation (EU) No 1095/2010 as well as		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the right to have the decision reviewed by the Court of Justice of the European Union. ESMA shall take such decisions after consulting the competent authority of the Member State where the inspection is to be conducted.		
5. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, upon the request of ESMA, actively assist the officials of and other persons authorised by ESMA. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the competent authority of the Member State concerned may also attend the on-site inspections upon request.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 31(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 31(1).		
7. Where the officials of and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
8. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.		
9. Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.		
Section 2		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Administrative sanctions and other administrative measures		
Article 33		
Supervisory measures by ESMA		
1. Where ESMA' finds that a ESG rating provider has not complied with its obligations under this Regulation, it shall take one or more of the following supervisory measures:	1. Where ESMA' finds that a**n** ESG rating provider has not complied with its obligations under this Regulation, it shall take one or more of the following supervisory measures:	
(a) withdraw the authorisation of the ESG rating provider;	(a) withdraw **or suspend** the authorisation of the ESG rating provider **in the cases referred to in Article 8, paragraph 1 of this Regulation**;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) temporarily prohibit the ESG rating provider from providing ESG ratings, until the infringement has been brought to an end;	(b) temporarily prohibit the ESG rating provider from ~~providing~~ **publishing or distributing** ESG ratings, until the infringement has been brought to an end;	
(c) suspend the use of the ESG ratings provided by the ESG rating provider, until the infringement has been brought to an end;	~~(c) suspend the use of the ESG ratings provided by the ESG rating provider, until the infringement has been brought to an end;~~	
(d) require the ESG rating provider to bring the infringement to an end;	~~(d)~~**(c)** require the ESG rating provider to bring the infringement to an end;	
(e) impose fines pursuant to Article 34;	~~(e)~~**(d)** impose fines pursuant to Article 34;	
(f) issue public notices.	~~(f)~~**(e)** issue public notices.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	ESMA may also take one or more of the supervisory measures, referred to in paragraph 1 points (b) to (e), in case the ESG rating provider has not applied for authorisation or when ESMA has withdrawn or suspended the authorisation in accordance with Article 8 of this Regulation.	
2. The supervisory measures referred to in paragraph 1 shall be effective, proportionate, and dissuasive.		
3. When taking the supervisory measures referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) the duration and frequency of the infringement;		
(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;		
(c) whether the infringement has been committed intentionally or negligently;		
(d) the degree of responsibility of the person responsible for the infringement;		
(e) the financial strength of the ESG rating provider, as indicated by its total annual net turnover;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(f) the impact of the infringement on retail investors' interests;	(f) the impact of the infringement on ~~retail~~ investors' interests;	
(g) the importance of the profits gained and losses avoided by the ESG rating provider or the losses for third parties derived from the infringement, insofar as such profits and losses can be determined;		
(h) the level of cooperation of the ESG rating provider with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that ESG rating provider;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(i) previous infringements by the ESG rating provider;		
(j) measures taken after the infringement by the ESG rating provider to prevent its repetition.		
4. ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement without undue delay. ESMA shall publish any such action on its website within 10 working days from the date when it was adopted.		
The publication referred to in the first subparagraph shall contain all of the following:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) a statement affirming the right of the ESG rating provider to appeal the decision;		
(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;		
(c) a statement asserting that it is possible for ESMA to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.		
Article 34		
Fines		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. Where ESMA finds that an ESG rating provider, or, where applicable, its legal representative, has, intentionally or negligently, infringed this Regulation, it shall adopt a decision imposing a fine. The maximum amount of the fine shall be 10 % of the total annual net turnover of the ESG rating provider, calculated on the basis of the most recent available financial statements approved by the management body of the ESG rating provider.	1. Where ESMA finds that an ESG rating provider, or, where applicable, its legal representative, has, intentionally or negligently, infringed this Regulation, it shall adopt a decision imposing a fine. The maximum amount of the fine shall be 10 % of the total annual net turnover of the ESG rating provider, calculated on the basis of the most recent available financial statements approved by the management body of the ESG rating provider. **An infringement shall be considered to have been committed intentionally if ESMA finds objective elements which demonstrate that a person acted deliberately to commit the infringement. When determining the amount of the fine, ESMA shall take into account**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	whether the infringment was committed intentionally or negligently.	
2. Where the ESG ratings provider is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU, the relevant total annual net turnover shall be either the total annual net turnover, or the corresponding type of income in accordance with the relevant Union law in the area of accounting, according to the most recent available consolidated accounts approved by the management body of the ultimate parent undertaking.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 33(3).		
4. Notwithstanding paragraph 3, where the ESG rating provider has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.		
5. Where an act or omission of a ESG rating provider constitutes more than one infringement to this Regulation, only the higher fine calculated in accordance with paragraph 2 and relating to one of those infringements shall apply.	5. Where an act or omission of a**n** ESG rating provider constitutes more than one infringement to this Regulation, only the higher fine calculated in accordance with paragraph 2 and relating to one of those infringements shall apply.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 35		
Periodic penalty payments		
1. ESMA shall, by decision, impose periodic penalty payments to compel:		
(a) an ESG ratings provider to put an end to an infringement in accordance with a decision taken pursuant to Article 33;		
(b) the persons referred to in Article 30(1):		
(1) to supply complete information which has been requested by a decision taken pursuant to Article 30;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(2) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision taken pursuant to Article 30;		
(3) to submit to an on-site inspection ordered by a decision taken pursuant to Article 32.		
2. A periodic penalty payment shall be effective and proportionate. ESMA shall impose the periodic penalty payment on a daily basis until the ESG rating provider or person concerned complies with the relevant decision referred to in paragraph 1.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.		
4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of that period, ESMA shall review the measure.		
Article 36		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Disclosure, nature, enforcement and allocation of fines and periodic penalty payments		
1. ESMA shall disclose to the public every fine and every periodic penalty payment that it has imposed pursuant to Articles 34 and 35, unless such disclosure to the public would seriously jeopardise the Union financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(EU) 2018/1725 of the European Parliament and of the Council[83].		
2. Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be of an administrative nature.		
3. Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be enforceable.		
Enforcement of the fines and periodic payments shall be governed by the rules of procedure in		

[83] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
force in the Member State or third country in which it is carried out.		
4. The fines and periodic penalty payments shall be allocated to the general budget of the European Union.		
Section 3		
Procedures and review		
Article 37		
Procedural rules for taking supervisory measures and imposing fines		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. Where ESMA finds that there are serious indications of a possible infringement of this Regulation, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. That appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the ESG ratings to which the infringement relates and shall perform his or her functions independently from ESMA's Board of Supervisors.		
2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, take into account any comments submitted by the persons who are subject to the investigation, and shall submit a complete file		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
with his or her findings to ESMA's Board of Supervisors.		
3. The investigation officer shall have the power to request information in accordance with Article 30 and to conduct investigations and on-site inspections in accordance with Articles 31 and 32.		
4. When carrying out his or her tasks, the investigation officer shall have access to all documents and information that have been gathered by ESMA in its supervisory activities.		
5. The rights of defence of the persons subject to the investigation shall be fully		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
respected during investigations under this Article.		
6. Upon submission of the file with his or her findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigation.		
7. On the basis of the file containing the investigation officer's findings and, where requested by the persons concerned after having heard those persons in accordance with Article 38, the Board of Supervisors of ESMA shall assess whether one or more persons subject to the investigation have committed the infringements concerned and shall, where it comes to the conclusion that such infringements		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
have been committed, take a supervisory measure as referred to in Article 33 and impose a fine in accordance with Article 34.		
8. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.		
9. The Commission shall supplement this Regulation by adopting further rules of procedure for the exercise of ESMA's power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and by adopting		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
detailed rules on the limitation periods for the imposition and enforcement of penalties.		
The rules referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 45.		
10. ESMA shall refer matters for criminal prosecution to the national authorities concerned where, in carrying out its tasks under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from an identical fact or facts which are substantially the same has already		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
acquired the force of res judicata as the result of criminal proceedings under national law.		
Article 38		
Hearing of the persons subject to investigations		
1. Before taking any decision pursuant to Article 33, 34 and 35, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
The first subparagraph shall not apply where urgent action pursuant to Article 33 is needed to prevent significant and imminent damage to the financial system. In such a case, ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.		
2. The rights of defence of the persons subject to the proceedings shall be fully respected in the investigations. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 39		
Review by the Court of Justice		
The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce, or increase the fine or periodic penalty payment imposed.		
Section 4		
Fees and delegation		
Article 40		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Supervisory fees		
1. ESMA shall charge fees to the ESG rating providers in accordance with the delegated act adopted pursuant to paragraph 2. Those fees shall fully cover ESMA's necessary expenditure relating to the supervision of ESG rating providers and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, and in particular as a result of any delegation of tasks in accordance with Article 41.		
2. The amount of an individual fee shall be proportionate to the annual net turnover of the ESG ratings provider concerned.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
By XX XXXX XXXX, the Commission shall adopt delegated acts in accordance with Article 45 to supplement this Regulation by specifying the type of fees, the matters for which fees are due, the amount of the fees, the manner in which they are to be paid and, where applicable, the way in which ESMA is to reimburse competent authorities in respect of any costs that they may have incurred carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks as referred to in Article 41.	By **[12 months after the date of entry into force]**, the Commission shall adopt delegated acts in accordance with Article 45 to supplement this Regulation by specifying the type of fees, the matters for which fees are due, the amount of the fees, the manner in which they are to be paid and, where applicable, the way in which ESMA is to reimburse competent authorities in respect of any costs that they may have incurred carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks as referred to in Article 41. **Those delegated acts shall establish fees which are proportionate, adequate and not excessively burdensome for SMEs, [and may exempt ESG ratings providers whose annual turnover is below a certain amount from the**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	obligation to pay a fee.whose annual turnover is below a certain amount may be exempted from the obligation to pay a fee.]	
CHAPTER 5		
Cooperation between ESMA and national competent authorities		
Article 41		
Delegation of tasks by ESMA to competent authorities		
1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 30 and to conduct investigations and on-site inspections in accordance with Article 31 and Article 32.		
2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:		
(a) the scope of the task to be delegated;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) the timetable for the performance of the task;		
(c) the transmission of necessary information by and to ESMA.		
3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the delegated act adopted pursuant to Article 45.		
4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. ESMA may revoke a delegation at any time.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. A delegation of tasks shall not affect the responsibility of ESMA nor limit ESMA's ability to conduct and oversee the delegated activity. ESMA shall not delegate supervisory responsibilities, including authorisation decisions, final assessments and follow-up decisions concerning infringements.		
Article 42		
Exchange of information		
ESMA and the competent authorities, shall, without undue delay, provide each other with the information required for carrying out their duties under this Regulation.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 43		
Notifications and suspension requests by competent authorities		
1. A competent authority of a Member State that finds that acts infringing this Regulation are being, or have been, carried out on the territory of its own or of another Member State shall inform ESMA thereof. A competent authority that considers it appropriate for investigatory purposes may suggest to ESMA that it assesses the need to use the powers under Article 30 in relation to the ESG rating provider involved in those acts.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. ESMA shall take appropriate action. ESMA shall inform the notifying competent authority of the outcome and, as far as possible, of any significant interim developments.		
3. A notifying competent authority of a Member State that considers that an ESG rating provider that is listed in the register referred to in Article 13 and whose ESG ratings are used within the territory of that Member State has infringed this Regulation in such a way that the protection of investors or the stability of the financial system in that Member State are significantly impacted, may request ESMA to suspend the provision of ESG ratings by the ESG rating provider concerned. The notifying		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
competent authority shall provide ESMA with full reasons for its request.		
4. Where ESMA considers that the request referred to in paragraph 3 is not justified, it shall inform the notifying competent authority thereof in writing, setting out the reasons for its opinion. Where ESMA considers that the request is justified, it shall take the measures appropriate to resolve the issue.	4. Where ESMA considers that the request referred to in paragraph 3 is not justified, it shall inform the notifying competent authority thereof in writing, setting out the reasons for its opinion. Where ESMA considers that the request is justified, it shall take the measures appropriate to resolve the issue **and it shall inform the notifying competent authority thereof in writing**.	
Article 44		
Professional secrecy		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. The obligation of professional secrecy shall apply to ESMA, the competent authorities, and all persons who work or who have worked for ESMA, for the competent authorities or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA.		
2. All the information exchanged under this Regulation between ESMA, the competent authorities, the EBA, EIOPA and the ESRB shall be considered confidential, except:		
(a) where ESMA or the competent authority or another authority or body concerned states at the time of communication that such information may be disclosed;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) where disclosure is necessary for legal proceedings;		
(c) where the information disclosed is used in a summary or in an aggregate form in which individual financial market participants cannot be identified.		
TITLE IV		
DELEGATED AND IMPLEMENTING ACTS		
Article 45		
Exercise and revocation of the delegation and objections to delegated acts		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		
2. The power to adopt delegated acts referred to in Articles 5, 21, 22 and 40 shall be conferred on the Commission for an indeterminate period of time from [*PO: Please insert date of entry into force*].	2. The power to adopt delegated acts referred to in Articles **[4a],** 5, **10,** 21, 22 and 40 shall be conferred on the Commission for an indeterminate period of time from [PO: Please insert date of entry into force].	
3. The delegation of power referred to in Articles 5, 21, 22 and 40 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following	3. The delegation of power referred to in Articles **[4a],** 5, **10,** 21, 22 and 40 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.		
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. A delegated act adopted pursuant to Articles 7, 33, 34 and 40 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.		
7. If, on expiry of the period referred to in paragraph 6, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of the European Union and shall enter into force on the date stated therein. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.		
8. If either the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 of the Treaty on the Functioning of the European Union, the institution which objects shall state the reasons for objecting to the delegated act.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 46		
Amendments to Annexes		
To take account of developments, including international developments, on financial markets, in particular in relation to sustainable finance, the Commission may adopt, by means of delegated acts in accordance with Article 45, measures to amend the Annexes.		
Article 47		
Committee procedure		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[84]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.[85]	1. The Commission shall be assisted by the European Securities Committee **and the Member States Expert Group on Sustainable Finance** established by Commission Decision 2001/528/EC . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.	
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.		
TITLE V		

[84] Commission Decision of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45)

[85] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
TRANSITIONAL AND FINAL PROVISIONS		
Article 48		
Transitional provisions		
1. ESG rating providers which provided their services at the date of entry into force of this Regulation shall notify ESMA within 3 months if they want to continue offering their services and apply for authorisation in accordance with Article 5. In that case, they shall apply for authorisation within 6 months after the date of application of this Regulation.	1. ESG rating providers which **operated in the Union** ~~**provided their services**~~ at the date of entry into force of this Regulation shall notify ESMA within ~~**3**~~**12** months if they want to continue **operating in the Union** ~~**offering their services**~~ and apply for authorisation in accordance with **the procedures under Title II**~~**Article 5**~~. In that case, they shall apply for authorisation within ~~**6**~~**12** months after the date of application of this Regulation. **ESG ratings**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	providers which did not notify ESMA within that period of 12 months of their intention to continue operating in the Union shall cease their activities.	
2. By way of derogation of the first paragraph, ESG rating providers categorized as small and medium-sized undertaking under Article 3 of the Directive 2013/34/EU shall apply for authorisation within 24 months after the date of application of this Regulation.	~~**2. By way of derogation of the first paragraph, ESG rating providers categorized as small and medium-sized undertaking under Article 3 of the Directive 2013/34/EU shall apply for authorisation within 24 months after the date of application of this Regulation.**~~	
3. ESG rating providers categorized as small and medium-sized undertaking under Article 3 of Directive 2013/34/EU entering the market after [*please insert the date of entry into*	~~**3. ESG rating providers categorized as small and medium-sized undertaking under Article 3 of Directive 2013/34/EU entering the market after [*please insert the date of entry*~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
application] shall notify ESMA prior to starting offering their services and shall apply for authorisation within 12 months of that notification.	~~***into application***~~**~~] shall notify ESMA prior to starting offering their services and shall apply for authorisation within 12 months of that notification.~~**	
Article 49		
Review		
1. The Commission shall evaluate the application of this Regulation by [*five years after the entry into force of this Regulation*].		
2. The Commission shall present a report on the main findings of the evaluation to the European Parliament and the Council. In carrying out the evaluation, the Commission	2. The Commission shall present a report on the main findings of the evaluation to the European Parliament and the Council. **The report shall in particular assess whether the**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
shall take into account market developments and the relevant evidence at its disposal.	**scope of this Regulation is appropriate to achieve its objectives in accordance with Article 1, including whether providers of data on environmental, social and human rights, and governance factors should be included in the scope of this Regulation.** In carrying out the evaluation, the Commission shall take into account market developments and the relevant evidence at its disposal.	
3. Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal for amendment of relevant provisions of this Regulation.		
Article 50		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Entry into force and application		
This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.		
It shall apply from [*6 months after the entry into force of this Regulation*].	It shall apply from [**24~~6~~** months after the entry into force of this Regulation].	
This Regulation shall be binding in its entirety and directly applicable in all Member States.		
Done at Strasbourg,		
For the European Parliament For the Council		
The President The President		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ANNEX I Information to be provided in the application for authorisation		
An application for authorisation shall contain all of the following information :		
(a) the full name of the applicant, the address of the registered office within the Union, the applicant's website and, where available, the legal entity identifier (LEI);		
(b) the name and contact details of a contact person;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) the legal status of the applicant;		
(d) the ownership structure of the applicant;		
(e) the identity of the members of the senior management of the applicant and their level of qualification, experience and training;		
(f) the number of the analysts, employees and other persons directly involved in assessment activities, and their level of experience and training working for the applicant and their level of experience and training;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(g) a description of the procedures and methodologies used to issue and review ESG ratings implemented by the applicant;		
(h) the policies or procedures implemented by the applicant to identify, manage and disclose any conflicts of interests as referred to in Article 14 of the Regulation;		
(i) where applicable, documents and information related to any existing or planned outsourcing arrangements for activities covered by this Regulation;		
(j) where applicable, information about other activities carried out by the applicant, or which the applicant intends to provide.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ANNEX II Organisational requirements		
1. Record Keeping information		
ESG rating providers shall keep records of all of the following:		
(a) for each ESG rating in the form of an opinion, the identity of the rating analysts participating in the determination of the ESG rating, the identity of the persons who have approved the ESG rating, information as to whether the ESG rating was solicited or	(a) for each ESG rating in the form of an opinion, ~~**the identity of the rating analysts participating in the determination of the ESG rating**~~, the identity of the persons who have approved the ESG rating, information as to whether the ESG rating was solicited or	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
unsolicited, and the date on which the ESG rating action was taken;	unsolicited, and the date on which the ESG rating action was taken;	
(b) for each ESG rating in the form of a score, the identity of the persons responsible for the development of the rule-based methodology, and the identity of the persons who have approved the rating methodology;		
(c) the account records relating to fees received from any rated entity or related third party or any user of ratings;		
(d) the account records for each subscriber to the ESG ratings;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(e) the records documenting the established procedures and rating methodologies used by the ESG rating provider to determine ESG ratings;		
(f) the internal records and external communications and files, including non-public information and work papers, used to form the basis of any ESG rating decision taken;		
(g) records of the procedures and measures implemented by the ESG rating provider to comply with this Regulation;		
(h) the methodology used for the determination of an ESG rating;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(i) changes in or deviations from standard procedures and methodologies;		
(j) all documents relating to any complaint, including those submitted by a complainant.		
2. Outsourcing		
Where ESG rating providers outsource to a service provider functions or any relevant services or activities in the provision of an ESG rating, the ESG rating provider shall ensure that the following conditions are met:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) the service provider has the ability, capacity, and any authorisation required by law, to perform the outsourced functions, services or activities reliably and professionally;		
(b) the ESG rating provider takes appropriate action if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;		
(c) the ESG rating provider retains the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) the service provider discloses to the ESG rating provider any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;		
(e) the ESG rating provider is able to terminate the outsourcing arrangements where necessary;		
(f) the ESG rating provider takes reasonable steps, including contingency plans, to avoid undue operational risk related to the participation of the service provider in the ESG rating determination process.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ANNEX III Disclosure requirements		
1. Minimum disclosures to the public		
In accordance with Article 12 of the Regulation, ESG rating providers shall, at the minimum, disclose to the public on their website and through the European Single Access Point (ESAP) the following:	In accordance with Article ~~12~~ **21** of the Regulation, ESG rating providers shall, at the minimum, disclose **in an organised manner** to the public on their website and through the European Single Access Point (ESAP) the following:	
(a) high level overview of the rating methodologies used (and changes thereto),	(a) ~~high level overview~~ **a description** of the rating methodologies used (and changes	

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
including whether analysis is backward-looking or forward-looking;	thereto), including whether analysis is backward-looking or forward-looking;	
(b) high level overview of data processes (data sources, including if they are public or non–public, and if they are sourced from sustainability statements required by Directive (EU) 2022/2464, estimation of input data in case of unavailability, frequency of data updates);	(b) ~~high level overview~~ **a description** of data processes (data sources, including if they are public or non–public, and if they are sourced from sustainability statements required by Directive (EU) **2013/34/EU**~~2022/2464~~, estimation of input data in case of unavailability, frequency of data updates)**;**	
(c) information on whether and how the methodologies are based on scientific evidence;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) information on the ratings' objective, clearly marking whether the rating is assessing risks, impacts or some other dimensions;	(d) information on the ratings' objective, clearly **defined and** marking whether the rating is assessing risks, impacts or **both according to the double materiality principle, or any** ~~**some**~~ other dimensions;	
(e) the rating's scope – i.e., is it an aggregated rating (aggregating E and S and G factor), or a rating of individual factors or specific issues (e.g., transition risks);		
(f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per individual E, S and G factors;	**Alternative 1:** (f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	individual E, S and G factors **and a materiality assessment**; **Alternative 2**: ~~**(f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per individual E, S and G factors;**~~	
(g) within the E, S or G factors, specification of the topics covered by the ESG rating/score, and whether they correspond to the topics from the sustainability reporting	(g) within the E, S or G factors, specification of the topics covered by the ESG rating/score, and whether they correspond to the topics from the sustainability reporting	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
standards developed pursuant to Article 29b of Directive 2013/34/EU;	standards developed pursuant to Article 29b of Directive 2013/34/EU;	
(h) information on whether the rating is expressed in absolute or relative values,		
(i) Where applicable, reference to the use of Artificial Intelligence (AI) in the data collection or rating/scoring process;		
(j) general information on criteria used for establishing fees to clients, specifying the various elements taken into consideration, such as the involvement of data analysts, IT equipment, purchasing data;	(j) general information on criteria used for establishing fees to clients, specifying the various elements taken into consideration, such as the involvement of data analysts, IT	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	equipment, purchasing data **and general information on the business/payment model**;	
(k) any limitation in data sources used for the construction of ESG ratings.		
2. Additional disclosures to users of ESG rating and rated undertakings in scope of Directive 2013/34/EU	2. Additional disclosures to users of ESG rating**s** and rated undertakings in scope of Directive 2013/34/EU	
In addition to the elements referred to in Article 13 of the Regulation, ESG rating providers shall make available the following information to European regulated financial undertakings and to undertakings in the scope of Directive 2013/34/EU that are subject of such rating:	In **accordance with Article 22 and in** addition to the **minimum disclosures to the public** ~~**elements**~~ referred to in **point 1 of this Annex** ~~**article 13 of the Regulation**~~, ESG rating providers shall make available the following information to European regulated financial undertakings and to undertakings in the scope of	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	Directive 2013/34/EU that are subject of such rating:	
(a) a more granular overview of the rating methodologies used (and changes thereto), including:		
(1) where applicable, scientific evidence and assumptions on which the ratings are based,		
(2) whether the analysis is backward-looking or forward-looking,	~~(2) whether the analysis is backward-looking or forward-looking,~~	
(3) which metrics have been selected as relevant,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(4) the relevant KPIs per E, S and G factor, and weighting method,		
(5) any potential shortcomings of methodologies,		
(6) policies for the revision of methodologies,		
(7) last date of the revision;		
(b) a more granular overview of data processes, including:	(a) a more granular **description**~~overview~~ of data processes, including:	
(1) more detailed explanation of data sources used – including whether public or non-	(1) more detailed explanation of data sources used – including whether public or non-	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
public, mentioning whether derived from the sustainability reporting standards developed pursuant to Article 29b of Directive 2013/34/EU /Taxonomy/SFDR],	public, mentioning whether derived from the sustainability reporting standards developed pursuant to ~~**Article 29b of Directive 2013/34/EU/Taxonomy/SFDR]**~~ **Articles 19 and 29 of Directive 2013/34/EU concerning sustainable economic activities, Commission Delegated Regulation (EU) 2021/2178 and disclosure of information pursuant to Regulation (EU) 2019/2088, including whether and how information on companies' transition plans derived from such sustainability reporting standards is used;**	
(2) where applicable the use of estimation and industry average and explanation of the underlying methodology,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(3) the policies for updating data and revising historical data, date of last updates of data,		
(4) data quality controls,	(4) data quality controls**, their frequency and the remediation process if issues arise**,	
(5) any steps taken to address limitations in data sources, where applicable;		
(c) where applicable, information about engagement with rated entities;		
(d) where applicable, an explanation of any AI methodology used in the data collection or rating process;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(e) in case of a major new information on a rated entity that has the possibility to affect the result of an ESG rating, ESG rating providers shall inform how they have taken that information into account and whether they have amended the corresponding ESG rating.		
	Alternative 2: **(f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per individual E, S and G factors and a materiality assessment.**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM MALTA		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	End	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2023/0177 (COD) **Proposal for a** **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** **on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities** **(Text with EEA relevance)**		
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Having regard to the proposal from the European Commission,		
After transmission of the draft legislative act to the national parliaments,		
Having regard to the opinion of the European Economic and Social Committee[86],		
Acting in accordance with the ordinary legislative procedure,		
Whereas:		

[86] OJ C , , p. .

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(1) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development[87], having at its core the Sustainable Development Goals (SDGs). The Commission's Communication of 2016 on the next steps for a sustainable European future[88] links the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, within the Union and globally, take the SDGs on board at the outset. The European Council conclusions of 20 June 2017[89] confirmed the commitment of the Union and the Member States to the implementation of		

87 Transforming our World: The 2030 Agenda for Sustainable Development (UN 2015).
88 COM(2016) 739 final.
89 CO EUR 17, CONCL. 5.

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner and in close cooperation with partners and other stakeholders. On 11 December 2019, the Commission published its communication on 'The European Green Deal'[90].		
(2) The transition to a sustainable economy is key to ensuring the long-term competitiveness of the Union economy. Sustainability has long been at the heart of the Union project and the Union Treaties give recognition to its social and environmental dimensions.		

[90] Communication from the Commission of 11 December 2019 on the European Green Deal, COM(2019) 640 final.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(3) Achieving SDG objectives in the Union requires the channelling of capital flows towards sustainable investments. It is important to exploit fully the potential of the internal market for the achievement of those goals. In that context, it is crucial to remove obstacles to the efficient movement of capital towards sustainable investments in the internal market and to prevent such obstacles from emerging.		
(4) The EU's approach to sustainable and inclusive growth is anchored in the 20 principles of the European Pillar of Social Rights to ensure a fair transition towards this goal and policies which leave no one behind. Furthermore, the EU social acquis including the Union of		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Equality Strategies[91] provides standards in the areas of labour law, equality, accessibility, health and safety at work, and anti-discrimination.		
(5) In March 2018, the Commission published its Action Plan 'Financing Sustainable Growth'[92], setting up its strategy on sustainable finance. The objectives of that Action Plan are to mainstream sustainability factors into risk management and reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth.		

[91] Gender equality strategy; LGBTIQ equality strategy; Roma strategic framework; Strategy for the Rights of Persons with Disability.
[92] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(6) As part of the Action Plan, the Commission commissioned a study entitled "Study on Sustainability Related Ratings, Data and Research"[93] to take stock of the developments in the sustainability-related products and services market, identify the main market participants and highlight potential shortcomings. That study provided an inventory and classification of market actors, sustainability products and services available in the market and an analysis of the use and perceived quality of sustainability-related products and services by market participants. The study highlighted the lack of transparency		

[93] European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Study on sustainability-related ratings, data and research, Publications Office of the European Union, 2021, https://data.europa.eu/doi/10.2874/14850.

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
and accuracy of Environmental, Social and Governance ('ESG') ratings methodologies and the lack of clarity over the operations of ESG rating providers.		
(7) In the framework of the European Green Deal, the Commission put forward a renewed sustainable strategy. The renewed sustainable finance strategy was adopted on 6 July 2021[94].		
(8) As a follow-up, the Commission announced in the renewed sustainable finance strategy, a public consultation on ESG ratings to feed into an impact assessment. In the public consultation that took place in 2022,		

[94] Communication from the Commission on the Strategy for Financing the Transition to a Sustainable Economy COM(2021) 390 final.

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
stakeholders confirmed concerns with the lack of transparency of ESG ratings methodologies and objectives and clarity over ESG rating activities.		
(9) At international level, the International Organization of Securities Commissions ('IOSCO') has issued a report in November 2021 containing a set of recommendations on ESG ratings providers[95].		
(10) ESG ratings play an important role in global capital markets, as investors, borrowers and issuers increasingly use those ESG ratings as part of making informed, sustainable		

95 IOSCO Report on ESG ratings and data products providers, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
investment and financing decisions. Credit institutions, investment firms, insurance undertakings, assurance undertakings, and reinsurance undertakings, amongst others, often use those ESG ratings as a reference for the sustainability performance or for the sustainability risks and opportunities in their investment activity. Consequently, ESG ratings have a significant impact on the operation of the markets and on the trust and confidence of investors and consumers. To ensure that ESG ratings used in the Union are independent, objective and of adequate quality, it is important that ESG rating activities are conducted in accordance with the principles of integrity, transparency, responsibility, and good governance. Better comparability and increased		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
reliability of ESG ratings would enhance the efficiency of that fast-growing market, thereby facilitating progress towards the objectives of the Green Deal.		
(11) ESG ratings play an enabling role for the proper functioning of the Union sustainable finance market by providing important information for investment strategies, risk management and disclosure obligations by investors and financial institutions. It is therefore necessary to ensure that ESG ratings provide material decision-useful information to the users, and that users of ESG ratings better understand the objectives which ESG ratings pursue and what specific issues and metrics those ratings measure.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(11a) (new): ESG ratings at large encompass a wide and diverse range of products marketed as providing information on an undertaking's exposure to risk and opportunities and/or impacts on environmental, social and governance matters. These products may consist of an opinion, a score, or a combination of both, that rely on a ranking system. ESG ratings may also cover the analysis or modelling of quantitative and/or qualitative information. To avoid circumvention strategies that would inevitably result from adopting too narrow a definition for ESG ratings, the scope of this Regulation should include not only those products explicitly labeled as ratings or	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	scores, but also products like regulatory compliance tools (providing users with e.g. indicators of principal adverse impacts under Regulation (EU) 2019/2088, taxonomy alignment, Pillar 3 requirement), net zero alignment tools (implied temperature rise metrics, transition analysis, climate targets and commitment dataset…) and footprint calculation tools (carbon emissions data, climate solutions…). Likewise, products that purport to analyse an entity's exposure to controversies, sectors or types of activities (screening solutions or involvement screening search…) as well as to physical and transition risks should also be considered in the scope of this Regulation. Since all these products raise similar issues of transparency of	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	methodology and management of conflicts of interests, they should be equally captured by this Regulation.	
(12) It is necessary to acknowledge the various business models of the ESG rating market. A first business model is the user-paid model, where users are mainly investors that purchase ESG ratings for investment decisions. A second business model is the issuer-pay model, where undertakings purchase ESG ratings for assessing risks and opportunities with their operations.		
(13) Member States neither regulate nor supervise the activities of ESG rating providers or the conditions for the provision of ESG		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ratings. In ensuring alignment with the objectives of the SDGs and the European Green Deal, and given the existing divergences, lack of transparency and absence of common rules, it is likely that Member States would adopt diverging measures and approaches, which would have a direct negative impact on, and create obstacles to, the proper functioning of the internal market, and be detrimental to the ESG rating market. ESG rating providers issuing ESG ratings for the use of financial institutions and undertakings in the Union would be subject to different rules in different Member States. Divergent standards and market practices would make it difficult to have clarity over the construction of ESG ratings and allow for their comparison, thus creating uneven market		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
conditions for users, causing additional barriers within the internal market, and risking distorting investment decisions.		
(14) This Regulation complements the existing EU sustainable finance framework. Ultimately, ESG ratings should facilitate information flows in order to facilitate investment decisions.		
(15) Rules on ESG rating providers should not apply to private ESG ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription or other means. Neither should such rules apply to ESG ratings	(15) Rules on ESG rating providers should not apply to private ESG ratings produced pursuant to an individual order and provided exclusively to the person who placed the order and which are not intended for public disclosure or distribution by subscription or other means. Neither should such rules apply to ESG ratings	PL: We agree that non-commercial applications should be excluded from the scope of regulation. What is not clear to us, however, is why ESG labels awarded by agencies (labeling agencies), to entities, financial instruments or products, are excluded from the scope of regulation, provided that ESG labels are not

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
produced by European financial undertakings that are used for internal purposes. ESG ratings developed by European or national authorities and by central banks should also be exempted from such rules. Finally, such rules should not apply to the provision of ESG data that do not include an element of rating or scoring and are not subject to any modelling or analysis resulting in the development of an ESG rating.	produced by European financial undertakings that are used for internal purposes. ESG ratings developed by European or national authorities and by central banks should also be exempted from such rules. Finally, such rules should not apply to the provision of ESG data that do not include an element of rating or scoring and are not subject to any modelling or analysis resulting in the development of an ESG rating. **Such rules should not apply to product or services that use an ESG rating as a benchmark or as an evaluation or screening tool, including for instance ESG ratings used for the purpose of a research, academic, consumer paper or where ESG ratings which are not primary targeting investment and financial analysis or decision making. Finally,**	based on a specific ranking system and do not involve disclosure of scores. This raises a very serious risk of greenwashing both as to the ESG profile of an entity and a product. Such a provision also provides the opportunity to easily circumvent the regulation by assigning ESG designations without relying on a scoring or rating system or any verifiable methodology.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	such rules should not apply to ESG labelling where ESG labels are granted by labelling agencies to entities, financial instruments or products, provided that the ESG labels are not based on a defined ranking system and do not involve the disclosure of a score.	
	(15a) Where an undertaking or financial institution discloses information about its own sustainability impacts, risks and opportunities or those of its value chain, such information should not be considered as an ESG rating pursuant to the meaning of this Regulation.	
	(15b) This Regulation should not apply to providers that collect, aggregate and	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	distribute publicly disclosed ESG data where such providers do not transform, approximate or complete the data through further analysis or by applying modelling techniques. The European Single Access point (ESAP) or the Collection bodies that provide ESAP with financial and non-financial information should not be considered as ESG rating providers pursuant to the meaning of this Regulation.	
(16) It is important to lay down rules ensuring that ESG ratings provided by ESG rating providers authorised in the Union are of adequate quality, are subject to appropriate requirements and ensure market integrity. Those rules would apply to overall ESG ratings		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
capturing Environmental, Social and Governance factors, and to ratings that are only looking at a single Environmental, Social or Governance factor or sub-component of that factor.		
(17) Given the use of ESG ratings from providers located outside the Union, it is necessary to introduce requirements based on which third-country ESG rating providers may offer their services in the Union. This is necessary to ensure market integrity, investor protection and proper enforcement. Therefore, three possible regimes are proposed for those third countries ESG rating providers: equivalence, endorsement and recognition. As an overarching principle, supervision and		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
regulation in a third country should be equivalent to Union supervision and regulation of ESG ratings. Therefore, ESG ratings provided by an ESG rating provider located in a third country can only be offered in the Union where a positive decision on equivalence of the third-country regime has been taken by the Commission. However, to avoid any adverse impact resulting from a possible abrupt cessation of the offering in the Union of ESG ratings provided by a third country ESG rating provider, it is also necessary to provide for certain other mechanisms, that is endorsement and recognition. Any ESG rating provider with a group structure should be able to use the mechanism of endorsement for the ESG ratings developed outside the Union, provided they		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
establish, within the group, an authorised ESG rating provider in the Union. Smaller ESG rating providers, within the meaning of the maximum threshold of net turnover to define small undertakings in Directive 2013/34/EU[96], that generally do not belong to a group, and may not have the means to have a legal entity authorised in the Union, should be able to continue or start offering their services in the Union and should therefore benefit from a lighter regime, that is recognition. Where the third country ESG provider is subject to supervision, appropriate cooperation arrangements should be put in place in order to		

[96] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ensure the proper exchange of information with the relevant competent authority of the third country.		
(18) To ensure a high level of investor and consumer confidence in the internal market, ESG rating providers which provide ESG ratings in the Union should be authorised. It is therefore necessary to lay down harmonised conditions for such authorisation and the procedure for the granting, suspension and withdrawal of such authorisation.		
(19) To ensure a high level of information to investors and other users of ESG ratings, information on ESG ratings and ESG rating providers should be made available on the	(19) To ensure a high level of information to investors and other users of ESG ratings, information on ESG ratings and ESG rating providers should be made available on the	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
European Single Access Point (ESAP)[97]. ESAP should provide the public with an easy centralised access to such information.	European Single Access Point (ESAP)**, to the extent that they do not contain commercially sensitive information**. ESAP should provide the public with an easy centralised access to such information.	
(20) To ensure the quality and reliability of ESG ratings, ESG rating providers should use rating methodologies that are rigorous, systematic, objective, continuous and subject to validation. ESG rating providers should review ESG ratings methodologies on an on-going basis and at least annually.		

[97] Regulation (EU) XX/XXXX of the European Parliament and of the Council establishing a European Single Access Point (ESAP) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OJ L [...], […], p. […]).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(21) To ensure a higher-level transparency, ESG rating providers should disclose information to the public on the methodologies, models and key rating assumptions which those providers use in their ESG rating activities and in each of their ESG ratings product. In light of the uses of ESG ratings by investors, the rating products should explicitly disclose which dimension of the double materiality the rating addresses, whether it is both material financial risk to the rated entity and the material impact of the rated entity on the environment and society in general or whether it takes into account only one of them. They should also explicitly disclose whether the rating addresses other dimensions. For the same reason, ESG rating providers should provide more detailed		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
information on the methodologies, models and key rating assumptions to subscribers of ESG ratings. That information should enable users of ESG ratings to perform their own due diligence when assessing whether to rely or not on those ESG ratings. Disclosure of information concerning models should however not reveal sensitive business information or impede innovation.		
(22) ESG rating providers should ensure that they provide ESG ratings that are independent, objective and of adequate quality. It is important to introduce organisational requirements ensuring the prevention and mitigation of potential conflicts of interests. To ensure their independence, ESG rating providers should		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
avoid situations of conflict of interest and manage those conflicts adequately where they are unavoidable. ESG rating providers should disclose conflicts of interest in a timely manner. They should also keep records of all significant threats to the independence of the ESG rating provider and that of its employees and other persons involved in the rating process, and the safeguards applied to mitigate those threats. In addition, to avoid potential conflicts of interest, ESG rating providers should not be allowed to offer a number of other services including consulting services, credit ratings, benchmarks, investment activities, audit, or banking, insurance and reinsurance activities. Finally, to prevent, identify, eliminate or manage and disclose any conflicts of interest and ensure the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
quality, integrity and thoroughness of the ESG rating and review process at all times, ESG rating providers should establish appropriate internal policies and procedures in relation to employees and other persons involved in the rating process. Such policies and procedures should, in particular, include internal control mechanisms and a compliance function.		
(23) To bring more clarity and to enhance trust on the operations of ESG rating providers, it is necessary to lay down requirements for ongoing supervision of ESG rating providers at Union level. To ensure a level playing field in terms of on-going supervision and to eliminate the risk of regulatory arbitrage across Member States, the European Securities and Markets		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Authority (ESMA) should be entrusted with the exclusive responsibility for such authorisation and supervision. At the same time, such exclusive responsibility should optimise the allocation of supervisory resources at Union level, thus making ESMA the centre of supervision.		
(24) ESMA should be able to require all information necessary to carry out its supervisory tasks effectively. It should therefore be able to demand such information from ESG rating providers, persons involved in ESG rating activities, rated entities and third parties to whom the ESG rating providers have outsourced operational functions and persons otherwise		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
closely and substantially related or connected to ESG rating providers or ESG rating activities.		
(25) ESMA should be able to perform its supervisory tasks, and in particular to compel ESG rating providers to end an infringement, to supply complete and correct information, or to comply with an investigation or an on-site inspection. To ensure that ESMA is able to perform those supervisory tasks, ESMA should be able to impose penalties or periodic penalty payments.		
(26) Given its role to authorise and supervise ESG rating providers, ESMA should develop draft regulatory technical standards that do not involve policy choices for submission to the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Commission. ESMA should specify further the information needed for the authorisation of ESG rating providers. The Commission should be empowered to adopt those implementing technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[98].		
(27) In its role to authorise and supervise ESG rating providers, ESMA should be able to charge supervisory fees to supervised entities.		

[98] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Such fees should be paid by the supervised entities.		
(28) In order to specify further technical elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the specifications of the procedure impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, the collection of fines or periodic penalty payments, and detailed rules on the limitation periods for the imposition and enforcement of penalties and the type of fees, the matters for which fees are due, the amount of the fees, and the manner in which those fees		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
are to be paid. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making[99]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.		

[99] OJ L 123, 12.5.2016, p. 1.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(29) It is necessary to have a number of measures supporting smaller ESG rating providers to enable them to continue their activities, or to enter the market after the date of application of this Regulation. Such measures should include the possibility for ESMA to exempt smaller ESG rating providers from a number of organisational requirements where they meet certain criteria. In addition, a transitional regime should be introduced for the first months following the application of this Regulation, to facilitate the initial phase of application for smaller ESG rating providers. Finally, supervisory fees should be proportionate to the annual net turnover of the ESG ratings provider concerned.	(29) It is necessary to have a number of measures supporting smaller ESG rating providers to enable them to continue their activities, or to enter the market after the date of application of this Regulation. Such measures should include the possibility for ESMA to exempt smaller ESG rating providers from a number of organisational requirements where they meet certain criteria. In addition, a transitional regime should be introduced ~~for the first months following the application of this Regulation,~~ to facilitate the **market entry** ~~initial phase of application~~ for smaller ESG rating providers. Finally, supervisory fees should be proportionate to the annual net turnover of the ESG ratings provider concerned.	PL: Introducing a new relief solution only for emerging ESG rating providers could be discriminatory against existing SME entities over new ones. However, we would like to point out that the draft Regulation in general is very complicated in terms of the rules of operation of entities providing such services on the territory of the EU. Indeed, the Regulation provides for several modes of such activity: - Application for an authorisation to provide an ESG rating (Article 5), - Equivalence decision (Article 9), - Endorsement of ESG ratings provided by a third country ESG rating provider (Article 10), and

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
		- Recognition of third country ESG rating providers (Article 11). This seems to be a different solution from those functioning for the purposes of other financial market regulations, and contains much more scope for action by non-EU entities. We suggest that the solutions for the regulation of ESG ratings should be as similar as possible to those functioning for the broader financial market, so that the situation and regulatory burdens for entities operating within the EU are identical to those for entities based in the EU and outside the EU. Only in such a functioning legal framework can exemptions or facilitations be introduced for SME businesses registered in the EU.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(30) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, namely to lay down a consistent and effective regime to address the shortcomings and vulnerabilities that ESG ratings pose, but can rather, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(31) This Regulation should apply without prejudice to the application of Aricles 101 and 102 TFEU,		
HAVE ADOPTED THIS REGULATION		
TITLE I		
SUBJECT MATTER, SCOPE AND DEFINITIONS		
Article 1		
Subject-matter		
This Regulation introduces a common regulatory approach to enhance the integrity,	This Regulation introduces a common regulatory approach to enhance the integrity,	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
transparency, responsibility, good governance, and independence of ESG rating activities, contributing to the transparency and quality of ESG ratings. It aims to contribute to the smooth functioning of the internal market, while achieving a high level of consumer and investor protection and preventing greenwashing or other types of misinformation, including social-washing, by introducing transparency requirements related to ESG ratings and rules on the organisation and conduct of ESG rating providers.	transparency, responsibility, good governance, and independence of ESG rating activities, contributing to the transparency and quality of ESG ratings. It aims to contribute to the smooth functioning of the internal market , while achieving a high level of consumer and investor protection and preventing greenwashing or other types of **practices which may be misleading to consumers, investors or other market participants** ~~**misinformation, including social-washing**~~, by introducing transparency requirements related to ESG ratings and rules on the organisation and conduct of ESG rating providers.	
Article 2		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Scope		
1. This Regulation applies to ESG ratings issued by ESG rating providers operating in the Union that are disclosed publicly or that are distributed to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or Union or Member States public authorities.	1. This Regulation applies to ESG ratings issued by ESG rating providers operating in the Union ~~**that are disclosed publicly or that are distributed to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or Union or Member States public authorities**~~. **ESG rating providers shall be considered to be operating in the Union in the following cases:** **a) For ESG rating providers established in the Union, when they publish their ESG ratings on their website or by other means or when they distribute their ESG ratings by**	PL: Regarding the issue of clarifying the concept of *"operating on EU territory"* - we point out that concepts such as *"active search"* or *"appropriate scale of activity"* will be very difficult to verify, and provide room for abuse in order for an entity not to be considered to be operating in the EU territory.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	subscription or other contractual relationship to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or to Union or Member States public authorities. **b) For ESG rating providers established outside the Union, when they [actively market their services within the Union and subsequently] distribute their ratings by subscription or other contractual relationship to regulated financial undertakings in the Union, undertakings that fall under the scope of Directive 2013/34/EU of the European Parliament and of the Council, or to Union or Member States public authorities.**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. This Regulation does not apply to any of the following:		
(a) private ESG ratings which are not intended for public disclosure or for distribution;	(a) private ESG ratings which are not ~~intended for public disclosure or for distribution~~ **published on a website or by other means or that are not distributed by subscription or by other contractual relationship**;	
(b) 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;	(b) ESG ratings produced by regulated financial undertakings in the Union that are used **internally, including within intragroup relationships,** for ~~**internal purposes or for**~~ providing ~~**in-house**~~ financial services and products;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) the provision of raw ESG data that do not contain an element of rating or scoring, and is not subject to any modelling or analysis resulting in the development of an ESG rating;	***Option 1*** (c) the ~~provision~~ **publication or distribution** of ~~raw ESG~~ data **on environmental, social and human rights, and governance factors** that do not ~~contain an element of rating or scoring, and is not subject to any modelling or analysis resulting~~ **result** in the development of an ESG rating; ***Option 2***	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(c) the ~~provision~~ **publication or distribution** of ~~raw ESG~~ data **on environmental, social and human rights, and governance factors** that do not contain an element of rating or scoring, and is not subject to any modelling or analysis ~~resulting in the development of an ESG rating~~	
(d) credit ratings issued pursuant to Regulation (EC) No 1060/2009 of the European Parliament and of the Council[100];		
(e) products or services that incorporate an element of an ESG rating;	(e) products or services that **use** ~~incorporate an element of~~ an ESG rating **as a**	

[100] Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	benchmark or as an evaluation or screening tool;	
(f) second-party opinions on sustainability bonds;	(f) ~~**second-party opinions on sustainability bonds**~~ **external reviews of European Green Bonds, bonds marketed as environmentally sustainable, sustainability-linked bonds, loans and other types of debt instruments, to the extent that such external reviews do not contain ESG ratings produced by the reviewer**;	
(g) ESG ratings produced by Union or Member States' public authorities;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(h) ESG ratings from an authorised ESG rating provider that are made available to users by a third party;	(h) ESG ratings ~~from~~ **produced by** an authorised ESG rating provider **when they** ~~that~~ are **published or distributed** ~~made available to users~~ by a third party;	
(i) ESG ratings produced by central banks that fulfil all of the following conditions:	(i) ESG ratings produced by **members of the European System of Central Banks**; ~~central banks that fulfil all of the following conditions:~~	
(a) they are not paid for by the rated entity;	~~(a) they are not paid for by the rated entity;~~	
(b) they are not disclosed to the public;	~~(b) they are not disclosed to the public;~~	
(c) they are provided in accordance with the principles, standards and procedures which	~~(c) they are provided in accordance with the principles, standards and procedures~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ensure the adequacy, integrity and independence of rating activities, as provided for by this Regulation, and	~~which ensure the adequacy, integrity and independence of rating activities, as provided for by this Regulation, and~~	
(d) they do not relate to financial instruments issued by the respective central banks' Member States.	~~(d) they do not relate to financial instruments issued by the respective central banks' Member States.~~	
	(j) ESG ratings produced by non-profit civil society organisations for non-commercial purposes;	
	(k) scores and ratings developed for the purpose of the accreditation or certification process, which are not primary targeting investment and financial analysis or decision making;	PL: document contains two proposals marked as (k)

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(k) labelling activities provided that the labels granted to the relevant entities, financial instruments or financial products do not involve the disclosure of an ESG rating.	
Article 3		
Definitions		
For the purposes of this Regulation, the following definitions apply:		
(1) ‘ESG rating’ means an opinion, a score or a combination of both, regarding an entity, a financial instrument, a financial product, or an	***Option 1*** (1) ‘ESG rating’ means an opinion, a score or a combination of both, regarding an entity~~, a financial instrument, a financial product, or~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
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, irrespective of whether such ESG rating is explicitly labelled as 'rating' or 'ESG score';	~~an undertaking~~'s ~~ESG~~ profile or characteristics **with regards to environmental, social and human rights, or governance factors** or exposure to ~~ESG~~ risks or the impact on **environmental, social and human rights, or governance matters** ~~people, society and the environment~~, that are based on **both** an established methodology and **a** defined ranking system ~~of rating categories and that are provided to third parties~~, irrespective of whether such ESG rating is explicitly labelled as '**ESG** rating'**, 'ESG opinion'** or 'ESG score'; ***Option 2*** (1) 'ESG rating' means **a product marketed as** an opinion, a score or a combination of both, **or the analysis or**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	modelling of data regarding an entity**~~, a financial instrument, a financial product, or an undertaking~~**'s **~~ESG~~** profile or characteristics **with regards to environmental, social and human rights, or governance factors** or exposure to **~~ESG~~** risks or the impact on **environmental, social and human rights, or governance matters ~~people, society and the environment~~**, that are based on an established methodology **~~and~~ or** defined ranking system **~~of rating categories and that are provided to third parties~~**, irrespective of whether such ESG rating is explicitly labelled as '**ESG** rating', '**ESG opinion**' or 'ESG score'.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(2) 'opinion' means an assessment that based on a rules-based methodology and defined ranking system of rating categories, involving directly a rating analyst in the rating process or systems process;	(2) 'opinion' means an assessment ~~**that**~~ based on a rules-based methodology and defined ranking system ~~**of rating categories**~~, involving directly a rating analyst in the rating process or systems process;	
(3) 'score' means a measure derived from data, using a rule-based methodology, and based only on a pre-established statistical or algorithmic system or model, without any additional substantial analytical input from an analyst;		
	(3a) 'defined ranking system' means a system whereby rated entities are graded against pre-defined criteria across a ranking scale;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(4) ‘ESG rating providers’ means a legal person whose occupation includes the offering and distribution of ESG ratings or scores on a professional basis;	(4) ‘ESG rating provider~~s~~’ means a legal person whose occupation includes the **publication or** ~~**offering and**~~ distribution of ESG ~~**ratings**~~ **opinions** or scores on a professional basis;	PL: This definition is inconsistent with the concept of an ESG rating as used in Article 3 (1)-both in the original version and in any option for its wording currently under discussion. Indeed, an ESG rating in any wording of the definition is an opinion, a score or a combination of both. Meanwhile, the definition of Article 3 (4) removes the phrase "ESG rating" replacing it with *“ESG opinions or scores.”* The correct definition should include wording that refers to the concept of ESG rating (ESG rating).
(5) ‘regulated financial undertaking in the Union’ means an undertaking, regardless of its legal form, that is:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (i) a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council[101];		
– (ii) an investment firm as defined in Article 4(1), point (1), of Directive 2014/65/EU the European Parliament and of the Council[102];		

[101] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

[102] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (iii) an alternative investment fund manager (AIFM) as defined in Article 4(1), point (b), of Directive 2011/61/EU of the European Parliament and of the Council[103], including a manager of a qualifying venture capital fund as defined in Article 3, point (c) of Regulation (EU) No 345/2013 of the European Parliament and of the Council[104], a manager of a qualifying social entrepreneurship fund as defined in Article 3, point (c) of Regulation (EU) No 346/2013 of the European Parliament		

[103] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

[104] Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
and of the Council[105] and a manager of the ELTIF as defined in Article 2, point (12) of Regulation (EU) 2015/760 of the European Parliament and of the Council[106];		
– (iv) an undertaking for collective investment in transferable securities (UCITS) management company as defined Article 2(1), point (b), of Directive 2009/65/EC of the European Parliament and of the Council[107];		

[105] Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).
[106] Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).
[107] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (v) an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council[108];		
– (vi) a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;		
– (vii) an institution for occupational retirement provision as defined in Article 1, point (6) of Directive 2016/2341 of the European Parliament and of the Council[109];		

[108] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

[109] Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (viii) pension institutions operating pension schemes which are considered to be social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council[110] and Regulation (EC) No 987/2009 of the European Parliament and of the Council[111], and any legal entity set up for the purpose of investment of such social security schemes;		
– (ix) an alternative investment fund (AIF) managed by an AIFM as defined in Article 4(1), point (b), of Directive 2011/61/EU		

[110] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

[111] Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
or an AIF supervised under the applicable national law;		
– (x) a UCITS as defined in Article 1(2) of Directive 2009/65/EC;		
– (xi) a central counterparty as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council[112];		

[112] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (xii) a central securities depository as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014 of the European Parliament and of the Council[113];		
– (xiii) an insurance or reinsurance special purpose vehicle authorised in accordance with Article 211 of Directive 2009/138/EC;		
– (xiv) a 'securitisation special purpose entity' as defined in Article 2, point (2), of		

[113] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Regulation (EU) No 2017/2402 of the European Parliament and of the Council[114];		
– (xv) an insurance holding company as defined in Article 212(1), point (f), of Directive 2009/138/EC or a mixed financial holding company as defined in Article 212(1), point (h), of Directive 2009/138/EC, which is part of an insurance group that is subject to supervision at the level of the group pursuant to Article 213 of that Directive and which is not exempted from group supervision pursuant to Article 214(2) of that Directive;		

[114] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(xv bis) a financial holding company as defined in Article 4(1), point (20), of Regulation (EU) No 575/2013 of the European Parliament and of the Council;	
– (xvi) a payment institution as defined in Article 1(1), point (d), of Directive (EU) 2015/2366 of the European Parliament and of the Council[115];		
– (xvii) an electronic money institution as defined in Article 2, point (1), of Directive		

[115] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2009/110/EC of the European Parliament and of the Council[116];		
– (xviii) a crowdfunding service provider as defined in Article 2(1), point (e), of Regulation (EU) 2020/1503 of the European Parliament and of the Council[117];		
– (xix) a crypto-asset service provider as defined in Article 3(1), point (8), of [the proposal for a Regulation of the European		

[116] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

[117] Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Parliament and of the Council on Markets in Crypto-assets[118]] where performing one or more crypto-asset services as defined in Article 3(1), point (9), of [the proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets];		
– (xx) a trade repository as defined in Article 2, point (2), of Regulation (EU) No 648/2012;		
– (xxi) a securitisation repository as defined in Article 2, point (23), of Regulation (EU) 2017/2402;		

[118] COM/2020/593 final.

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
– (xxii) an administrator of benchmarks as defined in Article 3(1), point (3), of Regulation (EU) 2016/1011 of the European Parliament and of the Council[119] ;		
– (xxiii) a credit rating agency as defined in Article 3(1), point (b), of Regulation (EC) No 1060/2009;		
(6) 'rating analyst' means a person who performs analytical functions for the purpose of issuing ESG ratings;		

[119] Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(7) 'rated entity' means a legal person, a financial instrument, a financial product or a public authority or a body governed by public law which is explicitly or implicitly rated in the ESG rating or score, irrespective of whether such rating has been requested for and irrespective of whether the legal person has provided information for that ESG rating or score;	(7) 'rated entity' means a legal person, a financial instrument, a financial product or a public authority or a body governed by public law which is explicitly or implicitly rated in the ESG rating ~~**or score**~~, irrespective of whether such rating has been requested for and irrespective of whether the legal person has provided information for that ESG rating ~~**or score**~~;	
	(7a) 'financial instrument' means any of the instruments listed Section C of Annex I of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, including such	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	instruments issued by means of distributed ledger technology;	
(8) ‘user’ means a natural or legal person, including a public authority or a body governed by public law, to which an ESG rating is provided;	(8) ‘user’ means a natural or legal person, including a public authority or a body governed by public law, to which an ESG rating is ~~provided~~ **published or distributed**;	PL: The concept of rating distribution is unclear. A customer should be any recipient of an ESG rating (as defined in the regulations), regardless of whether they receive the rating by subscription, opinion, or whether it is published and by whom.
(9) ‘competent authorities’ means the authorities designated by each Member State for the purposes of this Regulation;	(9) ‘competent authorities’ means the authorities designated by each Member State **in accordance with Article 28 and** for the purposes of this Regulation;	
(10) ‘senior management’ means the person or persons who effectively direct the business of		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the ESG rating provider and the member or members of the ESG rating provider's administrative or supervisory board.		
(11) 'group of ESG rating providers' means a group of undertakings established in the Union consisting of a parent undertaking and its subsidiaries within the meaning of Article 2 of Directive 2013/34/EU, and undertakings linked to each other by a relationship and whose occupation includes the provision of ESG ratings.		
TITLE II		
PROVISION OF ESG RATINGS IN THE UNION		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 4		
Requirements to provide ESG ratings in the Union	**Requirements to ~~provide ESG ratings~~ operate in the Union**	
Any legal person who wishes to provide ESG ratings in the Union shall be subject to either of the following:	Any ~~legal person~~ **ESG rating provider** who wishes to ~~provide ESG ratings~~ **operate** in the Union shall be subject to either of the following:	
(a) an authorisation issued by ESMA as referred to in Article 5;		
(b) an implementing decision as referred to in Article 9;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) an authorisation for endorsement as referred to in Article 10.		
(d) a recognition as referred to in Article 11;		
	[Article 4a]	
	Exemptions for new entrants	
	1. Without prejudice to the powers referred to in Articles 30 to 32, ESG rating providers with a consolidated annual net turnover on all their activities below EUR [3 million] will be exempted from complying with other provisions of this Regulation as long as those rating providers: **(a) have been registered by ESMA;**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	(b) identify themselves to ESMA at the time of registration; **(c) notify ESMA in the event that they no longer meet the condition referred to in the first subparagraph.**	
	2. Where the condition referred to in the first subparagraph is no longer met or [five] years after their registration in the Union, the ESG rating provider shall become subject to the other provisions of this Regulation and shall apply for authorization pursuant to Chapter 1 of Title II within [30] calendar days.	
	3. ESG rating providers referred to in paragraph 1 can choose to opt in under this	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	Regulation. Where ESG rating providers choose to opt in, this Regulation shall become applicable in its entirety.	
	4. ESMA shall develop draft implementing technical standards to specify **(a) the procedures applicable to ESG rating providers that choose to opt in, in accordance with the paragraph 3.** **(b) the treatment of ESG rating providers that occasionally exceed and/or fall below the relevant threshold in the same calendar year and the obligation to notify ESMA when they no longer meet the condition referred to in paragraph 1.** **ESMA shall submit those draft implementing technical standards to the Commission.**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	
CHAPTER 1		
Authorisation to provide ESG ratings in the Union	**Authorisation of ESG rating providers established in the Union to ~~provide ESG ratings~~ operate in the Union**	
Article 5		
Application for an authorisation to provide an ESG rating	**Application for an authorisation to ~~provide an ESG ratings~~ operate in the Union**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. Legal persons established in the Union that wish to provide ESG ratings in the Union shall apply for authorisation to ESMA.	1. ~~**Legal persons**~~ **ESG rating providers** established in the Union that wish to ~~**provide ESG ratings**~~ **operate in the Union pursuant to paragraph a of Article 2** shall apply for authorisation to ESMA.	PL: The use of the phrase *"ESG rating provider"* here is incorrect, as the entity is not an *"ESG rating provider"* as defined by the regulation until it is registered by ESMA.
2. The application for authorisation shall contain all of the information listed in Annex I and shall be submitted in any of the official languages of the Union. Council Regulation No 1[120] shall apply mutatis mutandis to any other communication between ESMA and the ESG rating providers and their staff.		

[120] Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. ESMA shall develop draft regulatory technical standards to specify further the information listed in Annex I.		
ESMA shall submit those draft regulatory technical standards to the Commission by XX XXXX XXXX.	ESMA shall submit those draft regulatory technical standards to the Commission by **[12 months after the date of entry into force].**	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		
4. An authorised ESG rating provider shall comply with the conditions for initial authorisation at all times.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. ESG rating providers shall notify ESMA of any material changes to the conditions for initial authorisation, including any opening or closing of a branch within the Union, without undue delay.		
Article 6		
Examination of the application for authorisation of ESG rating providers by ESMA		
1. Within 30 working days of receipt of the application referred to in Article 5(2), ESMA shall assess whether the application is complete. Where the application is not complete, ESMA	1. Within 30 working days of receipt of the application referred to in Article 5(2), ESMA shall assess whether the application is complete. Where the application is not complete, ESMA	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
shall set a deadline by which the applicant is to provide additional information.	shall set a deadline by which the applicant is to provide additional information. **If the applicant does not provide additional information within the impaired deadline, the application shall be rejected.**	
2. After having assessed whether an application is complete, ESMA shall notify the applicant of the result of that assessment.		
3. Within 120 working days of the notification referred to in paragraph 2, ESMA shall adopt a fully reasoned decision to authorise or refuse authorisation.	3. Within ~~120~~ **90** working days of the notification referred to in paragraph 2, ESMA shall adopt a fully reasoned decision to authorise or refuse authorisation.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. ESMA may extend the period referred to in the paragraph 3 to 140 working days in particular where the applicant:	4. ESMA may extend the period referred to in the paragraph 3 to ~~140~~ 120 working days in particular where the applicant:	
(a) envisages endorsing ESG ratings as referred to in Article 10;		
(b) envisages using outsourcing; or		
(c) requests exemption from compliance in accordance with Article 20.		
5. The decision adopted by ESMA pursuant to paragraph 3 shall take effect on the fifth working day following its adoption.		
Article 7		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Decision to grant or to refuse the authorisation to provide ESG ratings and notification of that decision	**Decision to grant or to refuse the authorisation to ~~provide ESG ratings~~ operate in the Union and notification of that decision**	
1. ESMA shall authorise the applicant as ESG rating provider where it concludes from the examination of the application referred to in Article 6 that the applicant complies with the conditions for the provision of ratings set out in this Regulation.		
2. ESMA shall inform the applicant within five working days of that decision referred to in the first paragraph.	2. ESMA shall inform the applicant within five working days of ~~that~~ the decision referred to in the first paragraph and the reasons thereof.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. ESMA shall inform the Commission, the EBA and EIOPA of any decision taken pursuant to paragraph 2.		
4. The authorisation shall be effective for the entire territory of the Union.		
Article 8		
Withdrawal or suspension of authorisation		
1. ESMA shall withdraw or suspend the authorisation of an ESG rating provider in any of the following cases:		
(a) the ESG rating provider has expressly renounced the authorisation or has provided no		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ESG ratings for nine months preceding that withdrawal or suspension;		
(b) the ESG rating provider has obtained its authorisation by making false statements or by any other irregular means;		
(c) the ESG rating provider no longer meets the conditions under which it was authorised;		
(d) the ESG rating provider has seriously or repeatedly infringed this Regulation.		
2. The decision on the withdrawal or suspension of authorisation shall take immediate effect throughout the Union.	2. The decision on the withdrawal or suspension of authorisation shall take immediate effect throughout the Union. **ESMA shall inform the competent authority where the**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	ESG rating provider is located, the Commission, the EBA and EIOPA of any decision taken pursuant to paragraph 1. The ESG rating provider shall also be informed of the decision taken pursuant to paragraph 1.	
CHAPTER 2		
Provision of ESG ratings in the Union by third country ESG rating providers	~~**Provision of ESG ratings**~~ **Operation** in the Union by ~~**third country**~~ ESG rating providers **established outside the Union**	
Article 9		
Equivalence decision		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. A third country ESG rating provider that wishes to provide ESG ratings in the Union shall only be able to do so where it is included in the register referred to in Article 13 and provided that all of the following conditions have been complied with:	1. A ~~third country~~ ESG rating provider **established outside the Union** that wishes to ~~provide ESG ratings~~ **operate** in the Union **pursuant to point b of the first paragraph of Article 2** shall only be able to do so where it is included in the register referred to in Article 13 and provided that all of the following conditions have been complied with:	
(a) the third country ESG rating provider is a legal person, is authorised or registered as an ESG rating provider in the third country concerned, and is subject to supervision by that third country;	(a) the ~~third country~~ ESG rating provider is a legal person, is authorised or registered as an ESG rating provider in ~~the~~ **a** third country concerned, and is subject to supervision ~~by~~ **in** that third country;	
(b) the third country ESG rating provider has notified ESMA that it wishes to	(b) the ~~third country~~ ESG rating provider has notified ESMA that it wishes to	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
provide ESG ratings in the Union and has informed ESMA with the name of the competent authority responsible for its supervision in the third country;	~~**provide ESG ratings**~~ **operate** in the Union and has informed ESMA with the name of the competent authority responsible for its supervision in the third country;	
(c) the Commission has adopted an equivalence decision pursuant to paragraph 2;		
(d) the cooperation arrangements referred to in paragraph 4 are operational.		
2. The Commission may adopt an implementing decision stating that the legal framework and supervisory practice of a third country ensures that:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) ESG rating providers authorised or registered in that third country comply with binding requirements which are equivalent to the requirements under this Regulation,		
(b) compliance with the binding requirements referred to in point (a) is subject to effective supervision and enforcement on an on-going basis in that third country.		
For the purposes of point (a), the Commission shall take into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO recommendations for ESG Ratings published in November 2021.	~~For the purposes of point (a), the Commission shall take into account whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO recommendations for ESG Ratings published in November 2021.~~	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 47.		
3. The Commission may adopt a delegated act in accordance with Article 45 to specify the conditions referred to in points (a) and (b) of the first subparagraph. The Commission may subject the application of the implementing decision referred to in paragraph 2 to:	3. The Commission ~~may~~ **shall** adopt a delegated act in accordance with Article 45 to specify the conditions referred to in points (a) and (b) of the ~~first~~ **second** ~~sub~~paragraph. The Commission ~~may~~ **shall** subject the application of the implementing decision referred to in paragraph 2 to:	
(a) the effective fulfilment on an ongoing basis by that third country of any condition set out in that implementing decision that aims at ensuring equivalent supervisory and regulatory standards;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) the ability of ESMA to effectively exercise the monitoring responsibilities referred to in Article 33 of Regulation (EU) No 1095/2010.		
4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2. Such arrangements shall specify all of the following:	4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2. Such arrangements shall specify ~~all of~~ **at least** the following:	
(a) the mechanism for exchanging information between ESMA and the competent authorities of third countries concerned,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
including access to all relevant information requested by ESMA regarding the ESG rating provider authorised or registered in that third country;		
(b) the mechanism for prompt notification to ESMA where a third country competent authority deems that the ESG rating provider authorised or registered in that third country and that is supervised by that third country competent authority is breaching the conditions of its authorisation or registration, or other national law in that third country;		
(c) the procedures concerning the coordination of supervisory activities, including on-site inspections.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 10		
Endorsement of ESG ratings provided by a third country ESG rating provider	**Endorsement of ESG ratings ~~provided by~~ of an ~~third country~~ ESG rating provider established outside the Union**	
1. An ESG rating provider located in the Union and authorised in accordance with Article 7 may endorse ESG ratings provided by a third country ESG rating provider belonging to the same group, provided that all of the following conditions have been met:	1. An ESG rating provider ~~located~~ established in the Union and authorised in accordance with Article 7 may endorse ESG ratings ~~provided by~~ of a ~~third country~~ ESG rating provider established outside the Union which belongs ~~belonging~~ to the same group, provided that all of the following conditions have been met:	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) the ESG rating provider located in the Union has applied to ESMA for authorisation of such endorsement;	(a) the ESG rating provider ~~**located**~~ **established** in the Union has applied to ESMA for authorisation of such endorsement;	
(b) the ESG rating provider located in the Union has verified and is able to demonstrate on an on-going basis to ESMA that the provision of the ESG rating to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation;	(b) the ESG rating provider ~~**located**~~ **established** in the Union has verified and is able to demonstrate on an on-going basis to ESMA that the ~~**provision**~~ **distribution** of the **endorsed** ESG rating**s** ~~**to be endorsed**~~ fulfils requirements which are at least as stringent as the requirements of this Regulation**. The ESG rating provider shall prove compliance with these requirements without having to reference the specific process followed for each individual rating**;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) the ESG rating provider located in the Union has the necessary expertise to monitor the provision of ESG ratings by the third country ESG rating provider effectively, and to manage any associated risks;	(c) the ESG rating provider ~~**located**~~ **established** in the Union has the necessary expertise to monitor the ~~**provision of**~~ ESG ratings ~~**by**~~ **of** the ~~**third country**~~ ESG rating provider **established outside the Union** effectively, ~~**and**~~ to manage any associated risks**,** **and has appropriate analytical presence in the Union considering the nature, scale or complexity of its activities in the Union**;	
(d) there is an objective reason why the third country ESG rating provider has to provide the ESG rating and why that ESG rating has to be endorsed for their use in the Union;	(d) there is an objective reason why the ~~**third country**~~ ESG rating provider **established outside the Union** ~~**has to provide**~~ **produces** the ESG rating**s** and why ~~**that**~~ **these** ESG rating**s** ~~**has**~~ **have** to be endorsed for their ~~**use**~~ **distribution** in the Union;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(e) the ESG rating provider located in the Union provides ESMA at its request with all the information necessary to enable ESMA to supervise the compliance by the third country ESG rating provider with this Regulation on an ongoing basis;	(e) the ESG rating provider ~~**located**~~ **established** in the Union provides ESMA at its request with all the information necessary to enable ESMA to supervise the compliance by the ~~**third country**~~ ESG rating provider **established outside the Union** with this Regulation on an ongoing basis;	
(f) where a third country ESG rating provider is subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information;	(f) where a ~~**third country**~~ ESG rating provider **established outside the Union** is subject to supervision, an appropriate cooperation arrangement is in place between ESMA and the competent authority of the third country where the ESG rating provider is ~~**located**~~ **established**, to ensure an efficient exchange of information;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
For the purposes of point (b) of the first subparagraph, ESMA may consider that compliance of the provision of the ESG rating to be endorsed with the IOSCO recommendations for ESG ratings is equivalent to compliance with the requirements of this Regulation.	~~**For the purposes of point (b) of the first subparagraph, ESMA may consider that compliance of the provision of the ESG rating to be endorsed with the IOSCO recommendations for ESG ratings is equivalent to compliance with the requirements of this Regulation.**~~	
	For the purpose of point (d), ESMA shall develop draft regulatory technical standards to determine the conditions under which ESMA may assess whether there is an objective reason for the production of ESG ratings outside the Union and for the endorsement and distribution of ESG ratings by the ESG rating provider established in the Union. ESMA shall take into account	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	elements such as the specificities of the underlying ESG rating, the need for proximity of the production of the rating to specific economic reality, the material availability of input data or the availability of specific skills required for the production of specific ratings. **The draft regulatory technical standards shall include a non-exhaustive list of objective reasons and examples of circumstances that would represent a circumvention to the requirements of this Regulation.** **ESMA shall sublit those draft regulatory technical standards to the Commission by [12 months after the date of entry into force].**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.	
2. An ESG rating provider that applies for endorsement as referred to in paragraph 1 shall provide ESMA with all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.	2. An ESG rating provider that applies for endorsement as referred to in paragraph 1 **point (a)** shall provide ESMA with all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.	
3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, ESMA shall examine the	3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1 **point (a)**, ESMA shall examine the	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
application and decide either to authorise the endorsement or to refuse it. ESMA shall publicly notify the decision to endorse provided by a third country ESG rating provider.	application and decide either to authorise the endorsement or to refuse it. ESMA shall **inform the applicant within five working days of that decision** ~~**publicly notify the decision to endorse provided by a third country ESG rating provider**~~.	
4. An endorsed ESG rating shall be considered to be an ESG rating provided by the endorsing ESG rating provider. The endorsing provider shall not use the endorsement to avoid or circumvent the requirements of this Regulation.		
5. An ESG rating provider that has endorsed an ESG rating provided by a third country ESG rating provider shall remain fully	5. An ESG rating provider that has endorsed ~~**an**~~ ESG rating**s** ~~**provided**~~ **produced** by a ~~**third country**~~ ESG rating provider	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
responsible for such an ESG rating and for compliance with the obligations under this Regulation.	**established outside the Union** shall remain fully responsible for such ~~an~~ ESG rating**s** and for compliance with the obligations under this Regulation.	
6. Where ESMA has well-founded reasons to consider that the conditions laid down in paragraph 1 are no longer fulfilled, it shall have the power to require the endorsing ESG rating provider to cease the endorsement.	6. Where ESMA has well-founded reasons to consider that the conditions laid down in **this Article** ~~**paragraph 1**~~ are no longer fulfilled, it shall have the power to require the endorsing ESG rating provider to cease the endorsement**, without prejudice to the applicable sanctions in accordance with Articles 33 to 35 of this Regulation.**	
Article 11		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Recognition of third country ESG rating providers	**Recognition of ~~third country~~ ESG rating provider established outside the Union**	
1. Until the Commission has adopted an equivalence decision as referred to in Article 9 or, where adopted, in the event that the equivalence decision is repealed, third country ESG rating providers with an annual net turnover on their ESG rating activities below EUR 12 million for three consecutive years may provide ESG ratings to regulated financial undertakings in the Union, provided that ESMA has recognised that third country ESG rating provider in accordance with this paragraphs XX and YY.	1. Until the Commission has adopted an equivalence decision as referred to in Article 9 or, where adopted, in the event that the equivalence decision is repealed, ~~third country~~ ESG rating providers established outside the Union with a~~n~~ consolidated annual net turnover on all their ~~ESG rating~~ activities below EUR 12 million for three consecutive years may ~~provide ESG ratings to regulated financial undertakings~~ operate in the Union, provided that ESMA has recognised that ~~third country~~ ESG rating provider in accordance with this Article ~~paragraphs XX and YY~~.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	~~**For the purposes of the first subparagraph**~~**To that end**, ESMA may take into account either an assessment by an independent external auditor or a certification of the competent authority of the third country where the ~~**third country**~~ ESG rating provider is ~~**located**~~ **established**.	
2. Third country ESG rating providers that wish to be recognised as referred to in paragraph 1 shall comply with the requirements established in this Regulation and apply for recognition to ESMA. ESG rating providers may fulfil that condition by applying the IOSCO recommendations on ESG ratings provided that	2. ~~**Third country**~~ ESG rating providers **established outside the Union** that wish to be recognised as referred to in paragraph 1 shall comply with the requirements established in this Regulation and apply for recognition to ESMA. ~~**ESG rating providers may fulfil that condition by applying the IOSCO**~~	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
such application is equivalent to compliance with the requirements established in this Regulation.	~~**recommendations on ESG ratings provided that such application is equivalent to compliance with the requirements established in this Regulation.**~~	
For the purposes of the first subparagraph, ESMA may take into account either an assessment by an independent external auditor or a certification of the competent authority of the third country where the third country ESG rating provider is located.	~~**For the purposes of the first subparagraph, ESMA may take into account either an assessment by an independent external auditor or a certification of the competent authority of the third country where the third country ESG rating provider is located.**~~	
3. Third country ESG rating providers that wish to be recognised as referred to in paragraph 1 shall have a legal representative. That legal representative shall be a legal person located in the Union and expressly appointed by that third	3. ~~**Third country**~~ ESG rating providers **established outside the Union** that wish to be recognised as referred to in paragraph 1 shall have a legal representative. That legal representative shall be a legal person located in	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
country ESG rating provider to act on behalf of that ESG rating provider with regard to that ESG rating provider's obligations under this Regulation and, in that respect, be accountable to ESMA.	the Union and expressly appointed by that ~~third country~~ ESG rating provider to act on **its** behalf ~~**of that ESG rating provider with regard to that**~~ **, demonstrating and being accountable to ESMA that the** ESG rating provider~~**'s**~~ **meets the** obligations **laid down in** ~~**under**~~ this Regulation **on an ongoing basis** ~~**and, in that respect, be accountable to ESMA**~~. **The legal representative shall, upon request, provide ESMA with all the information necessary to satisfy ESMA that the ESG rating provider fulfills the requirements established in this Regulation.**	
4. The third country ESG rating provider shall provide ESMA, prior to the recognition	4. The ~~**third country**~~ ESG rating providers **established outside the Union** shall provide	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
referred to in paragraph 1, with the following information:	ESMA, prior to the recognition referred to in paragraph 1, with the following information:	
	(a1) all information necessary to desmonstrate that the condition laid down in paragraph 1 is met;	
(a) all information necessary to satisfy ESMA that that third country ESG rating provider has established all the necessary arrangements to meet the requirements referred to in paragraph 2;	(a) all information necessary to satisfy ESMA that that ~~**third country**~~ ESG rating provider has established all the necessary arrangements to meet the requirements referred to in paragraph 2 **and 3**;	
(b) the list of its actual or prospective ESG ratings which are intended for provision in the Union;	(b) the list of its actual or prospective ESG ratings which are intended for ~~**provision**~~ **distribution** in the Union;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) where applicable, the name and contact details of the competent authority in the third country responsible for its supervision.		
ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph.	~~**ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph.**~~ **Within 90 working days of receipt of the application for recognition referred to in paragraph 2, ESMA shall examine the application and decide on the recognition. ESMA shall inform the applicant of its decision within five working days of the decision.**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. ESMA shall recognise the third country ESG rating provider as referred to in paragraph 1 provided that all of the following conditions are met:	5. ESMA shall recognise the ~~third country~~ ESG rating provider as referred to in paragraph 1 provided that all of the following conditions are met:	
(a) the third country ESG rating provider has complied with all the conditions laid down in paragraphs 2, 3 and 4	(a) the ~~third country~~ ESG rating provider has complied with all the conditions laid down in paragraphs 2, 3 and 4**:**	
(b) where the third country ESG rating provider is subject to supervision, ESMA shall seek to put in place an appropriate cooperation arrangement with the relevant competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information;	(b) where the ~~third country~~ ESG rating provider is subject to supervision, ESMA shall seek to put in place an appropriate cooperation arrangement with the relevant competent authority of the third country where the ESG rating provider is located, to ensure an efficient exchange of information;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. No recognition shall be granted where the effective exercise by ESMA of its supervisory functions under this Regulation is either prevented by the laws, regulations or administrative provisions of the third country where the third country ESG rating provider is established, or, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.	6. No recognition shall be granted where the effective exercise by ESMA of its supervisory functions under this Regulation is either prevented by the laws, regulations or administrative provisions of the third country where the ~~**third country**~~ ESG rating provider is established, or, where applicable, by limitations in the supervisory and investigatory powers of that third country's competent authority.	
7. ESMA shall impose fines, in accordance with Article 30, suspend or, where appropriate, withdraw the recognition referred to in paragraph 1 where it has well-founded reasons, based on documented evidence, to consider that the ESG rating provider:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) is acting, or has been acting, in a manner which is clearly prejudicial to the interests of users of its ESG ratings or to the orderly functioning of markets;		
(b) has seriously infringed the applicable requirements set out in this Regulation;		
(c) made false statements or used any other irregular means to obtain the recognition.		
	7a. Where the ESG rating provider recognised under the provision of this Article by ESMA no longer meets the condition laid down in paragraph 1, it shall notify ESMA without undue delay.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	The ESG rating provider shall notify ESMA within 3 months if it wants to continue offering its services in the Union and apply for authorisation within 12 months. **In the absence of such notification, the ESG rating provider shall cease to operate in the Union.**	
8. ESMA shall develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 2 and, in particular, the presentation of the information required in paragraph 4. ESMA shall submit them to the Commission.	8. ESMA shall develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 2 and, in particular, the presentation of the information required in paragraph 4. ESMA shall submit them to the Commission **by [12 months after the date of entry into force]**.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		
Article 12		
Cooperation arrangements		
1. Any cooperation arrangement as referred to in Article 9(4), Article 10(1), point (f) and Article 11(5), point (b), shall be subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 44. The exchange of information performed under such cooperation arrangements shall be intended		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
for the performance of the tasks of ESMA or the competent authorities.		
2. With regard to transfer of personal data to a third country, ESMA shall apply Regulation (EU) 2018/1725 of the European Parliament and of the Council[121].		
CHAPTER 3		
Register and accessibility of information		
Article 13		

[121] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Register of ESG rating providers and accessibility of information on the European Single Access Point (ESAP)		
1. ESMA shall establish and maintain a register that contains information on all of the following:		
(a) the identities of the ESG rating providers authorised pursuant to Article 7;		
(b) the identities of third country ESG rating providers that comply with the conditions laid down in Article 9 and the third country competent authorities responsible for	(b) the identities of ~~**third country**~~ ESG rating providers **established outside the Union** that comply with the conditions laid down in Article 9 and the third country competent authorities responsible for the	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the supervision of those third country ESG rating providers;	supervision of those ~~third country~~ ESG rating providers;	
(c) the identities of the endorsing ESG rating provider and the endorsed third country ESG rating provider referred to in Article 10, and, where applicable, the third country competent authorities that are responsible for the supervision of the endorsed third country ESG rating provider;	(c) the identities of the endorsing ESG rating provider and the endorsed ~~third country~~ ESG rating providers **established outside the Union** referred to in Article 10, and, where applicable, the third country competent authorities that are responsible for the supervision of the endorsed ~~third country~~ ESG rating provider;	
(d) the identities of the third country ESG rating providers that have been recognised in accordance with Article 11, and, where applicable, the third country competent	(d) the identities of the ~~third country~~ ESG rating providers **established outside the Union** that have been recognised in accordance with Article 11, and, where	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
authorities responsible for the supervision of those third country ESG rating providers;	applicable, the third country competent authorities responsible for the supervision of those ~~third country~~ ESG rating providers;	
2. The register referred to in paragraph 1 shall be publicly accessible on the website of ESMA and shall be updated promptly, as necessary.		
3. From 1 January 2028, when making public any information pursuant to Article 18(1) and 21(1), the ESG rating provider shall submit that information to the relevant collection body referred to in paragraph 6 of this Article at the same time for accessibility on ESAP established under Regulation (EU) XX/XXXX [ESAP		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Regulation] of the European Parliament and of the Council*.		
4. That information shall comply with all of the following requirements:		
(a) the information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation] or, where required under Union law, in a machine-readable format, as defined in Article 2, point (4), of Regulation (EU) XX/XXXX [ESAP Regulation];		
(b) the information shall be accompanied by the following metadata:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(1) all the names of the ESG rating provider submitting the information;	(1) ~~**all the names**~~ **a full business name and, if applicable, the name used for marketing purposes and the abbreviation of the name** of the ESG rating provider submitting the information;	
(2) the legal entity identifier of the ESG rating provider as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];		
(3) the size of the ESG rating provider as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(4) the type of information as classified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation];		
(5) metadata specifying whether the information includes personal data.		
5. For the purposes of paragraph 1, point (b)(ii) the ESG rating provider shall acquire the legal entity identifier as specified pursuant to Article 7(4) of Regulation (EU) XX/XXXX [ESAP Regulation].		
6. For the purposes of making accessible on ESAP the information referred to in paragraph 1, the collection body as defined in		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 2, point (2), of Regulation (EU) XX/XXXX [ESAP Regulation] shall be ESMA.		
7. From 1 January 2028, the information referred to in paragraph 1 and in Articles 10(3), 33(1), 34 and 35 shall be made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of that Regulation shall be ESMA. That information shall be prepared in a data extractable format as defined in Article 2, point (3), of Regulation (EU) XX/XXXX [ESAP Regulation], include the metadata as regards the names and, where available, the legal entity identifier of the ESG rating provider as specified pursuant to Article 7(4) of that Regulation, the type of information as classified pursuant to Article 7(4) of that		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Regulation and whether the information includes personal data.		
8. For the purposes of ensuring an efficient collection and administration of data submitted in accordance with paragraph 3, ESMA shall develop draft implementing technical standards to specify:		
(a) any other metadata to accompany the information;		
(b) the structuring of data in the information;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) for which information a machine-readable format is required and which machine-readable format is to be used.		
Before developing the draft implementing technical standards, ESMA shall carry out a cost-benefit analysis. For the purposes of point (c), ESMA shall assess the advantages and disadvantages of different machine-readable formats and conduct appropriate field tests.		
ESMA shall submit those draft implementing technical standards to the Commission.		
Power is conferred on the Commission to adopt the implementing technical standards referred to		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.		
9. If necessary, ESMA shall adopt guidelines for entities to ensure that the metadata submitted in accordance with paragraph 8, first subparagraph, point (a), is correct.		
TITLE III		
INTEGRITY AND RELIABILITY OF ESG RATING ACTIVITIES		
CHAPTER 1		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Organisational requirements, processes and documents concerning governance		
Article 14		
General principles		
1. ESG rating providers shall ensure the independence of their rating activities, including from all political and economic influences or constraints.		
2. ESG rating providers shall have in place rules and procedures that ensure that their ESG rating are provided and published or made available in accordance with this Regulation.	2. ESG rating providers shall have in place rules and procedures that ensure that their ESG rating**s** are ~~**provided and**~~ published or **distributed** ~~**made available**~~ in accordance with this Regulation. **In order to ensure consistent**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	application of this Article, ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to determine procedures for the publication and distribution of ESG ratings.	
3. ESG rating providers shall employ systems, resources and procedures that are adequate and effective to comply with their obligations under this Regulation.		
4. ESG rating providers shall adopt and implement written policies and procedures that ensure that their ESG ratings are based on a thorough analysis of all relevant information available to them.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. ESG rating providers shall adopt and implement internal due diligence policies and procedures that ensure that their business interests do not impair the independence or accuracy of the assessment activities.		
6. ESG rating providers shall adopt and implement sound administrative and accounting procedures, internal control mechanisms, and effective control and safeguard arrangements for information processing systems.		
7. ESG rating providers shall use rating methodologies for the ESG ratings they provide that are rigorous, systematic, objective and capable of validation and shall apply those rating methodologies continuously.	ESG rating providers shall use rating methodologies for the ESG ratings they provide that are rigorous, systematic **and impartial**, ~~**objective and capable of validation**~~ and shall	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	apply those rating methodologies continuously and **in a transparent manner**.	
8. ESG rating providers shall review the rating methodologies referred to in paragraph 6 on an on-going basis and at least annually.	8.ESG rating providers shall review the rating methodologies referred to in paragraph ~~6~~ 7 on an on-going basis and at least annually **and review accordingly the affected ESG ratings**.	
9. ESG rating providers shall monitor and evaluate the adequacy and effectiveness of the systems, resources and procedures referred to in paragraph 2 at least annually and take appropriate measures to address any deficiencies.	ESG rating providers shall monitor and evaluate the adequacy and effectiveness of the systems, resources and procedures referred to in paragraph ~~2~~ 3 at least annually and take appropriate measures to address any deficiencies.	
10. ESG rating providers shall establish and maintain a permanent and effective oversight		

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
function to ensure oversight of all aspects of the provision of their ESG ratings.		
ESG rating providers shall develop and maintain robust procedures regarding their oversight function.		
11. ESG rating providers shall adopt, implement, and enforce measures to ensure that their ESG ratings are based on a thorough analysis of all the information that is available to them and that is relevant to their analysis in accordance with their rating methodologies. They shall adopt all necessary measures to ensure that the information they use in assigning ESG ratings is of sufficient quality and from reliable sources. ESG rating providers shall	11. ESG rating providers ~~**shall adopt, implement, and enforce measures to ensure that their ESG ratings are based on a thorough analysis of all the information that is available to them and that is relevant to their analysis in accordance with their rating methodologies. They**~~ shall adopt all necessary measures to ensure that the information they use in assigning ESG ratings is of sufficient quality and from reliable sources. ESG rating providers	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
explicitly mention that their ESG ratings are their own opinion .	shall **clearly and** explicitly ~~**mention**~~ **inform** that their ESG ratings are their own opinion.	
	[11a. ESG rating providers shall inform the rated entity during working hours of the rated entity and at least a full working day before publication of the ESG rating. The information shall include at least the principal grounds on which the ESG rating is based in order to give the rated entity an opportunity to inform the ESG rating provider of any factual errors.]	PL: The purpose of this provision is not clear, given that the rated entity is unlikely to have a practical opportunity to correct or address the rating within the 1 business day deadline. In addition, the provision does not state whether the rating provider in any way has to address or publish these objections, and how to treat objections raised after the 1 business day deadline has passed.
12. ESG rating providers shall not disclose information about their intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets as defined in Article 2, point (1), of Directive (EU)	12. ESG rating providers shall not disclose information **related to the rated entity** about their intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets as defined in	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2016/943 of the European Parliament and of the Council[122].	Article 2, point (1), of Directive (EU) 2016/943 of the European Parliament and of the Council .	
13. ESG rating providers shall only make changes to their ESG ratings in accordance with their rating methodologies published pursuant to Article 21.		
Article 15		
Separation of business and activities		
1. ESG rating providers shall not provide any of the following activities:		

[122] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) consulting activities to investors or undertakings;		
(b) the issuance and sale of credit ratings;	(b) the issuance and sale of credit ratings **in the sense of Regulation (EC) No 1060/2009**;	
(c) the development of benchmarks;	(c) the development of benchmarks **in the sense of Regulation (EU) 2016/1011**;	
(d) investment activities;	(d) investment activities **in the sense of Directive 2004/39/E**C;	
(e) audit activities;	(e) audit activities **in the sense of Regulation (EU) No 537/2014**;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(f) banking, insurance, or reinsurance activities.	(f) banking, insurance, or reinsurance activities **in the sense of Directive 2013/36/EU and Directive 2009/138/EC**.	
	1a. By way of derogation of the first paragraph, ESG rating providers may provide the activities listed in that paragraph, when they put in place specific measures to ensure that each activity is exercised autonomously and avoids creating risks of conflicts of interest within its ESG rating activities. In addition, ESG rating providers and any other entity of the same group shall take appropriate measures, including the measures in Articles 23 and 24, to ensure that conflicts of interest do not arise in decision-making, both within the	PL: In our opinion it's a need for a formal separation of audit/or consulting and rating activities due to the likely conflict of interest. This also appears to be a preferable solution than the introduction of appropriate independence procedures in functioning entities

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	institution itself and between institutions belonging to the same group. This derogation shall not be applicable to the activities listed in paragraph 1 point (a) and (e) when they are provided to entities that are or have been rated by the ESG rating provider.	
	For the purposes of the first subparagraph, ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to determine the conditions under which ESMA may assess that the measures put in place ensure avoidance of conflict of interests and autonomy in the exercise of the different actitivies.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. ESG rating providers shall ensure that the provision of other services than those referred to in paragraph 1 does not create risks of conflicts of interest within its ESG rating activities.	2. ESG rating providers shall ensure that the provision of other services than those referred to in paragraph 1 does not create risks of conflicts of interest within its ESG rating activities. **In the latter case, ESG rating providers shall refrain from offering the other services.**	
Article 16		
Rating analysts, employees and other persons involved in the provision of ESG ratings		
1. ESG rating providers shall ensure that rating analysts, employees and any other natural person whose services are placed at its disposal or under its control and who are directly	1. ESG rating providers shall ensure that rating analysts, employees and any other natural person **under its control or** whose services are placed at its disposal**, for example by way of a**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
involved in the provision of ESG ratings, including analysts directly involved in the rating process and persons involved in the provision of scores, have the knowledge and experience that is necessary for the performance of the duties and tasks assigned.	**contractual arrangement,** ~~**or under its control**~~ and who are directly involved in the provision of ESG ratings, including analysts directly involved in the rating process and persons involved in the provision of scores, **are appropriately trained and** have the knowledge and experience that is necessary for the performance of the duties and tasks assigned.	
2. ESG rating providers shall ensure that the persons referred to in paragraph 1 are not allowed to initiate or participate in negotiations regarding fees or payments with any rated entity or any person directly or indirectly linked to the rated entity by control.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. The persons referred to in paragraph 1 shall not buy or sell any financial instrument issued, guaranteed, or otherwise supported by any rated entity other than holdings in diversified collective investment schemes, including managed funds, nor engage in any transaction in such financial instruments.		
4. The persons referred to in paragraph 1 shall not participate in or otherwise influence the determination of an ESG rating of any rated entity where those persons:		
(a) own financial instruments of the rated entity, other than holdings in diversified collective investment schemes;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) own financial instruments of any entity related to a rated entity, the ownership of which may cause or may be generally perceived as causing a conflict of interest, other than holdings in diversified collective investment schemes;		
(c) have had a recent employment, business or other relationship with the rated entity that may cause or may be generally perceived as causing a conflict of interest.	(c) have had **in the last two years** a ~~**recent**~~ employment, business or other relationship with the rated entity that may cause or may be generally perceived as causing a conflict of interest.	
5. ESG rating providers shall ensure that the persons referred to in paragraph 1:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) take all reasonable measures to protect property and records in possession of the ESG rating provider from fraud, theft or misuse, taking into account the nature, scale and complexity of the ESG rating provider's business and the nature and range of ESG rating activities;		
(b) do not share confidential information that has been entrusted to the ESG rating provider with anyone who is not directly involved in the provision ofESG rating activities, including rating analysts and employees of any person directly or indirectly linked to the ESG rating provider by control, and any other natural person whose services are or have been placed at the disposal of, or are	(b) do not share confidential information that has been entrusted to the ESG rating provider with anyone who is not directly involved in the provision of ESG rating activities, including rating analysts and employees of any person directly or indirectly linked to the ESG rating provider by control, and any other natural person whose services are or have been placed at the disposal of, or are	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
under the control of, any person directly or indirectly linked to the ESG rating provider by control;	under the control of, any person directly or indirectly linked to the ESG rating provider by control;	
(c) do not use or share confidential information for any other purpose than the provision of ESG rating activities, including for the trading of financial instruments.		
	(ca) do not solicit or accept money, gifts or favours from anyone with whom the ESG rating provider does business.	
6. Persons as referred to in paragraph 1 that consider that any other person as referred to in paragraph 1 has engaged in conduct that they	6. Persons as referred to in paragraph 1 that consider that any other person as referred to in paragraph 1 has engaged in conduct that they	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
consider to be illegal shall immediately inform the compliance function thereof. The ESG rating provider shall ensure that such reporting does not have any negative consequences for the person reporting.	consider to be illegal shall immediately inform the ~~**compliance**~~ **oversight** function thereof. The ESG rating provider shall ensure that such reporting does not have any negative consequences for the person reporting.	
7. Where a rating analyst terminates his or her employment with the ESG rating provider and joins a rated entity which he or she has been involved in rating, the ESG rating provider shall review the work of the rating analyst over one year preceding his or her departure.		
8. Persons as referred to in paragraph 1 shall not take up a key management position within a rated entity which they have been		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
involved in rating for six months after the provision of such rating.		
Article 17		
Record-keeping requirements		
1. ESG rating providers shall record their ESG rating activities. Those records shall contain the information listed in Annex II.		
2. ESG rating providers shall keep the information referred to in paragraph 1 for at least five years and in such a form that it is possible to replicate and fully understand the determination of an ESG rating.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 18		
Complaints-handling mechanism		
1. ESG rating providers shall have in place and publish on their website procedures for receiving, investigating and retaining records concerning complaints made.	1. ESG rating providers shall have in place and publish on their website procedures for receiving, investigating and retaining records concerning complaints made **by users of ESG ratings and rated entities. ESG rating providers shall also clearly inform on their website about their contact details**.	
2. The procedures referred to in paragraph 1 shall ensure that:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) the ESG rating provider makes publicly available the complaints-handling policy through which complaints may be submitted on:	(a) the ESG rating provider makes publicly available the complaints-handling policy~~;~~ ~~through which complaints may be submitted on:~~	
(1) the sources of data used for a specific ESG rating;	~~(1) the sources of data used for a specific ESG rating;~~	
(2) the way in which the rating methodology in relation to a specific ESG rating has been applied;	~~(2) the way in which the rating methodology in relation to a specific ESG rating has been applied;~~	
(3) whether a specific ESG rating is representative of the rated entity;	~~(3) whether a specific ESG rating is representative of the rated entity;~~	
(4) a proposed change to the ESG rating determination process;	~~(4) a proposed change to the ESG rating determination process;~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(5) other decisions in relation to the ESG rating;	~~(5) other decisions in relation to the ESG rating;~~	
(b) complaints are investigated in a timely and fair manner and that the outcome of the investigation is communicated to the complainant within a reasonable period of time, unless such communication would be contrary to objectives of public policy or to Regulation (EU) No 596/2014 of the European Parliament and of the Council[123];		

[123] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) the inquiry is conducted independently of any personnel that has been involved in the subject-matter of the complaint.		
	3. Complaints may be submitted on:	
	(1) the sources of data used for a specific ESG rating, factual errors and mistakes;	
	(2) the way in which the rating methodology in relation to a specific ESG rating has been applied;	
	(3) whether a specific ESG rating is representative of the rated entity;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 19		
Outsourcing		
1. ESG rating providers shall not outsource important operational functions where such outsourcing would materially impair the quality of the ESG rating provider's internal control policies and procedures, or the ability of the European Supervisory and Markets Authority (ESMA) to supervise the ESG rating provider's compliance with its obligations under this Regulation.	1. ESG rating providers shall not outsource important operational functions where such outsourcing would materially impair the quality of the ESG rating provider's internal control policies and procedures, or the ability of ~~**the European Supervisory and Markets Authority (**~~ESMA~~)~~ to supervise the ESG rating provider's compliance with its obligations under this Regulation. **In determining whether an operational function could be considered important and, as a consequence, could not be outsourced, consideration shall be given to the fact that it is performed on a recurrent or**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	an ongoing basis, or the function would normally fall within the scope of functions that would be reasonably expected to be performed by the ESG rating provider itself.	
2. ESG rating providers that outsource functions or any services or activities that are relevant for the provision of an ESG rating shall remain fully responsible for discharging all of the obligations under this Regulation.		
3. ESG rating providers that outsource functions or any services or activities that are relevant for the provision of an ESG rating shall remain fully responsible for disclosing the information referred to in Annex II.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 20		
Exemptions on governance requirements		
1. ESMA may exempt an ESG rating provider at its request from complying with some of the requirements laid down in Article 14 where that ESG rating provider is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of the issuance of ESG ratings and provided that:	1. ESMA may exempt an ESG rating provider at its request**, mostly if not only at the time of its registration, in all or part,** from complying with some of the requirements laid down in Article 14 where that ESG rating provider is able to demonstrate that those requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of the issuance of ESG ratings and provided that:	
(a) the ESG rating provider is a small or medium-sized undertaking according to the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
criteria laid down in Article 3 of Directive 2013/34/EU;		
(b) the ESG rating provider has implemented measures and procedures, and in particular internal control mechanisms, reporting arrangements and measures, that ensure the independence of rating analysts and persons approving ESG ratings and that ensure the effective compliance with this Regulation;		
(c) the size of the ESG rating provider is not determined in such a way as to avoid compliance with the requirements of this Regulation by an ESG rating provider or a group of ESG rating providers.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be exempted in accordance with paragraph 1. **ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the date of entry into force].** **Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 1 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.**	
2. In the case of a group of ESG rating providers, ESMA shall ensure that at least one of the ESG rating providers in the group is not		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
exempted from the requirements laid down in this Regulation.		
CHAPTER 2		
Transparency requirements		
Article 21		
Disclosure of the methodologies, models, and key rating assumptions used in ESG rating activities to the public		
1. ESG rating providers shall disclose on their website the methodologies, models and key rating assumptions they use in their ESG		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
rating activities, including the information referred to in point 1 of Annex III.		
2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1.	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance with paragraph 1. **These elements shall not include any other disclosure requirement than those listed in Annex III.**	
3. ESMA shall submit those draft regulatory technical standards to the Commission by XX XXXX XXXX.	3. ESMA shall submit those draft regulatory technical standards to the Commission by **[12 months after the date of entry into force]**.	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		
Article 22		
Disclosures to subscribers of ESG ratings and rated entities	**Disclosures to ~~subscribers~~ users of ESG ratings and rated entities**	
1. ESG rating providers shall disclose, as a minimum, the information referred to in point 2 of Annex III to their subscribers and to the rated entities.	1. ESG rating providers shall disclose, as a minimum, the information referred to in point 2 of Annex III to ~~their subscribers~~ **users of ESG ratings** and to the rated entities.	
2. ESMA shall develop draft regulatory technical standards to specify further the	2. ESMA shall develop draft regulatory technical standards to specify further the elements that are to be disclosed in accordance	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
elements that are to be disclosed in accordance with paragraph 1.	with paragraph 1. **These elements shall not include any other disclosure requirement than those listed in Annex III.**	
3. ESMA shall submit those draft regulatory technical standards to the Commission by XX XXXX XXXX.	3. ESMA shall submit those draft regulatory technical standards to the Commission by **[12 months after the date of entry into force]**.	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.		
CHAPTER 3		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Independence and conflicts of interest		
Article 23		
Independence and avoidance of conflicts of interest		
1. ESG rating providers shall have in place robust governance arrangements, including a clear organisational structure with well-defined, transparent, and consistent roles and responsibilities for all persons involved in the provision of an ESG rating.		
2. ESG rating providers shall take all necessary steps to ensure that any ESG rating provided is not affected by any existing or	2. ESG rating providers shall take all necessary steps to ensure that any ESG rating provided is not affected by any existing or	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
potential conflict of interest, or by any business relationship, either from the ESG rating provider itself or from their shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the ESG rating providers, or any person directly or indirectly linked to them by control.	potential conflict of interest, or by any business relationship, either from the ESG rating provider itself, **from the data provider** or from their shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the ESG rating providers, or any person directly or indirectly linked to them by control.	
3. Where there is a risk of a conflict of interest within an ESG rating provider due to the ownership structure, controlling interests, or activities of that ESG rating provider, of any entity owning or controlling the ESG rating provider, of an entity that is owned or controlled		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
by the ESG rating provider, or of any the ESG rating provider's affiliates, ESMA may require the ESG rating provider to take measures to mitigate that risk. Such measures may include the establishment of an independent oversight function representing stakeholders, including users of the ESG ratings and contributors to such ratings, in a balanced manner.		
Where a conflict of interest as referred to in the first subparagraph cannot be adequately managed, ESMA may require the ESG rating provider to cease the activities or relationships that create the conflict of interest, or may require the ESG rating provider to cease providing the ESG ratings.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. ESG rating providers shall disclose to ESMA all existing or potential conflicts of interest, including conflicts of interest arising from the ownership or control of the ESG rating providers.		
5. ESG rating providers shall establish and operate policies, procedures, and effective organisational arrangements for the identification, disclosure, prevention, management and mitigation of conflicts of interest. ESG rating providers shall regularly review and update those policies, procedures and arrangements. Those policies, procedures and arrangements shall specifically prevent, manage and mitigate conflicts of interest due to the ESG rating provider's ownership or control		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
or due to other interests in the ESG rating provider's group, or conflicts of interest that are caused by other persons that exercise influence or control over the ESG rating provider in relation to determining the ESG rating.		
6. ESG rating providers shall review their operations to identify potential conflicts of interests at least each year.		
Article 24		
Management of potential conflicts of interests from employees		
1. ESG rating providers shall ensure that their employees and any other natural persons		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
whose services are placed at their disposal or under their control and who are directly involved in the provision of an ESG rating:		
(a) have the skills that are necessary for performing their tasks and duties and are subject to effective management and supervision;		
(b) are not subject to undue influence or conflicts of interest;		
(c) that the compensation and performance evaluation of those persons do not create conflicts of interest or otherwise impinge upon the integrity of the ESG rating determination process;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) do not have any interests or business connections that compromise the activities of the ESG rating provider;		
(e) are prohibited from contributing to an ESG rating determination by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except where such contribution is explicitly required as part of the ESG rating methodology and is subject to specific rules laid down therein;		
(f) are subject to effective procedures to control the exchange of information with other employees involved in activities that may create a risk of conflicts of interest or with third		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
parties, where that information may affect the ESG rating.		
2. ESG rating providers shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining the ESG rating, including internal sign-off by management before the dissemination of the ESG rating.		
Article 25		
Fair, reasonable, transparent and non-discriminatory treatment of users of ESG ratings		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. ESG rating providers shall take steps that are adequate to ensure that fees charged to clients are fair, reasonable, transparent, non-discriminatory and are based on costs.	1. ESG rating providers shall take steps that are adequate to ensure that fees charged to clients are fair, reasonable, transparent~~,~~ **and** non-discriminatory ~~**and are based on costs**~~.	
2. For the purposes of paragraph 1, ESMA may require ESG rating providers to provide it with documented evidence, may take supervisory measures in accordance with Article 33, and may decide to impose fines in accordance with Article 34 where it finds that fees from ESG rating providers are not fair, reasonable, transparent, non-discriminatory and not based on actual costs.	2. For the purposes of paragraph 1, ~~**ESMA may require ESG rating providers to provide it with documented evidence,**~~ **ESG rating providers shall annually provide ESMA with information on their pricing policy, including the fee structure and pricing criteria. ESMA** may take supervisory measures in accordance with Article 33, and may decide to impose fines in accordance with Article 34 where it finds that fees from ESG rating providers are not fair,	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	reasonable, transparent~~,~~ **and** non-discriminatory ~~**and not based on actual costs**~~.	
CHAPTER 4		
Supervision by ESMA		
Section 1		
General principles		
Article 26		
Non-interference with the content of ratings or methodologies		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
In carrying out their duties under this Regulation, ESMA, the Commission or any public authorities of a Member State shall not interfere with the content of ESG ratings or methodologies.		
Article 27		
ESMA		
1. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall issue and update guidelines on the cooperation between ESMA and the competent authorities for the purposes of this Regulation, including the procedures and detailed conditions relating to the delegation of tasks.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall, in cooperation with the EBA and EIOPA, issue and update guidelines on the application of the endorsement regime referred to in Article 10 of this Regulation by XX XXXX XXXX.	2. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall, in cooperation with the EBA and EIOPA, issue and update guidelines on the application of the endorsement regime referred to in Article 10 of this Regulation by **[12 months after the date of entry into force]**.	
3. ESMA shall publish an annual report on the application of this Regulation, including on supervisory measures taken and penalties imposed by ESMA under this Regulation, including fines and periodic penalty payments. That report shall contain, in particular, information on the evolution of ESG Ratings market and an assessment of the application of		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the third country regimes referred to in Articles 9, 10 and 11.		
ESMA shall present the annual report referred to in the first subparagraph to the European Parliament, the Council and the Commission.		
4. ESMA shall cooperate with the EBA and EIOPA in performing its tasks and shall consult the EBA and EIOPA before issuing and updating guidelines and submitting draft regulatory technical standards.		
Article 28		
Competent authorities		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. By XX XXXX XXXX, each Member State shall designate a competent authority for the purposes of this Regulation.	1. By **[18 months after the entry into force]**, each Member State shall designate a competent authority for the purposes of this Regulation.	
2. Competent authorities shall be adequately staffed, with regard to capacity and expertise, to be able to apply this Regulation.		
Article 29		
Exercise of the powers referred to in Articles 30 to 32		
The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 30 to 32 shall not be used to require the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
disclosure of information or documents which are subject to legal privilege.		
Article 30		
Requests for information		
1. ESMA may by simple request or by decision require ESG rating providers, persons involved in ESG rating activities, rated entities, third parties to whom the ESG rating providers have outsourced operational functions or activities, and persons otherwise closely and substantially related or connected to ESG rating providers or ESG rating activities, to provide all information that it needs to carry out its duties under this Regulation.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. When sending a simple request for information under paragraph 1, ESMA shall:		
(a) refer to this Article as the legal basis for the request;		
(b) state the purpose of the request;		
(c) specify what information is required;		
(d) set a time-limit within which the information is to be provided;		
(e) inform the person from whom the information is requested that there is no obligation to provide the information but that		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
any reply to the request for information must not be incorrect or misleading;		
(f) indicate the fine provided for in Article 34, where the answers to questions asked are incorrect or misleading.		
3. When requiring the supply of information under paragraph 1 by decision, ESMA shall:		
(a) refer to this Article as the legal basis for the request;		
(b) state the purpose of the request;		
(c) specify what information is required;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) set a time-limit within which the information is to be provided;		
(e) indicate the periodic penalty payments provided for in Article 35 where the production of the required information is incomplete;		
(f) indicate the fine provided for in Article 34, where the answers to questions asked are incorrect or misleading;		
(g) indicate the right to appeal the decision before the Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or of associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. Those clients shall remain fully responsible if the information supplied by the lawyers is incomplete, incorrect or misleading.		
5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 who are		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
concerned by the request for information are domiciled or established.		
Article 31		
General investigations		
1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary investigations of persons referred to in Article 30(1). To that end, the officials of and other persons authorised by ESMA shall be empowered to:		
(a) examine any records, data, procedures and any other material relevant to the execution		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of its tasks irrespective of the medium on which they are stored;		
(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;		
(c) summon and ask any person referred to in Article 30(1),or their representatives or staff for oral or written explanations on facts or documents related to the subject matter and purpose of the inspection and to record the answers;		
(d) interview any other natural or legal person who consents to be interviewed for the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
purpose of collecting information relating to the subject matter of an investigation;		
(e) request records of telephone and data traffic.		
2. The officials of and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 35(1) where the production of the required records, data, procedures or any other material, or the answers to questions asked of the persons		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
referred to in Article are not provided or are incomplete, and the fines provided for in Article 34, where the answers to questions asked of the persons referred to in Article are incorrect or misleading.		
3. The persons referred to in Article 30(1) shall submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 3, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice of the European Union.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
4. In good time before the investigation, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.		
5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. Where authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.		
Article 32		
On-site inspections		
1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 30(1). Where the proper conduct and efficiency of the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
inspection so require, ESMA may carry out the on-site inspection without prior announcement.		
2. The officials of and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 31(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.		
3. The officials of and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
production of a written authorisation specifying the subject matter and purpose of the inspection, and the periodic penalty payments provided for in Article 31 where the persons concerned do not submit to the inspection. In good time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where it is to be conducted.		
4. The persons referred to in Article 30(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, specify the date on which it is to begin and indicate the periodic penalty payments provided for in Article 31, the legal remedies available under Regulation (EU) No 1095/2010 as well as		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the right to have the decision reviewed by the Court of Justice of the European Union. ESMA shall take such decisions after consulting the competent authority of the Member State where the inspection is to be conducted.		
5. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, upon the request of ESMA, actively assist the officials of and other persons authorised by ESMA. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the competent authority of the Member State concerned may also attend the on-site inspections upon request.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 31(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 31(1).		
7. Where the officials of and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
8. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.		
9. Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice of the European Union following the procedure set out in Regulation (EU) No 1095/2010.		
Section 2		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Administrative sanctions and other administrative measures		
Article 33		
Supervisory measures by ESMA		
1. Where ESMA' finds that a ESG rating provider has not complied with its obligations under this Regulation, it shall take one or more of the following supervisory measures:	1. Where ESMA' finds that a**n** ESG rating provider has not complied with its obligations under this Regulation, it shall take one or more of the following supervisory measures:	
(a) withdraw the authorisation of the ESG rating provider;	(a) withdraw **or suspend** the authorisation of the ESG rating provider **in the cases referred to in Article 8, paragraph 1 of this Regulation**;	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) temporarily prohibit the ESG rating provider from providing ESG ratings, until the infringement has been brought to an end;	(b) temporarily prohibit the ESG rating provider from ~~providing~~ **publishing or distributing** ESG ratings, until the infringement has been brought to an end;	
(c) suspend the use of the ESG ratings provided by the ESG rating provider, until the infringement has been brought to an end;	~~(c) suspend the use of the ESG ratings provided by the ESG rating provider, until the infringement has been brought to an end;~~	
(d) require the ESG rating provider to bring the infringement to an end;	~~(d)~~**(c)** require the ESG rating provider to bring the infringement to an end;	
(e) impose fines pursuant to Article 34;	~~(e)~~**(d)** impose fines pursuant to Article 34;	
(f) issue public notices.	~~(f)~~**(e)** issue public notices.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	ESMA may also take one or more of the supervisory measures, referred to in paragraph 1 points (b) to (e), in case the ESG rating provider has not applied for authorisation or when ESMA has withdrawn or suspended the authorisation in accordance with Article 8 of this Regulation.	
2. The supervisory measures referred to in paragraph 1 shall be effective, proportionate, and dissuasive.		
3. When taking the supervisory measures referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) the duration and frequency of the infringement;		
(b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;		
(c) whether the infringement has been committed intentionally or negligently;		
(d) the degree of responsibility of the person responsible for the infringement;		
(e) the financial strength of the ESG rating provider, as indicated by its total annual net turnover;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(f) the impact of the infringement on retail investors' interests;	(f) the impact of the infringement on ~~**retail**~~ investors' interests;	
(g) the importance of the profits gained and losses avoided by the ESG rating provider or the losses for third parties derived from the infringement, insofar as such profits and losses can be determined;		
(h) the level of cooperation of the ESG rating provider with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that ESG rating provider;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(i) previous infringements by the ESG rating provider;		
(j) measures taken after the infringement by the ESG rating provider to prevent its repetition.		
4. ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement without undue delay. ESMA shall publish any such action on its website within 10 working days from the date when it was adopted.		
The publication referred to in the first subparagraph shall contain all of the following:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) a statement affirming the right of the ESG rating provider to appeal the decision;		
(b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;		
(c) a statement asserting that it is possible for ESMA to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.		
Article 34		
Fines		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. Where ESMA finds that an ESG rating provider, or, where applicable, its legal representative, has, intentionally or negligently, infringed this Regulation, it shall adopt a decision imposing a fine. The maximum amount of the fine shall be 10 % of the total annual net turnover of the ESG rating provider, calculated on the basis of the most recent available financial statements approved by the management body of the ESG rating provider.	1. Where ESMA finds that an ESG rating provider, or, where applicable, its legal representative, has, intentionally or negligently, infringed this Regulation, it shall adopt a decision imposing a fine. The maximum amount of the fine shall be 10 % of the total annual net turnover of the ESG rating provider, calculated on the basis of the most recent available financial statements approved by the management body of the ESG rating provider. **An infringement shall be considered to have been committed intentionally if ESMA finds objective elements which demonstrate that a person acted deliberately to commit the infringement. When determining the amount of the fine, ESMA shall take into account**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	whether the infringment was committed intentionally or negligently.	
2. Where the ESG ratings provider is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU, the relevant total annual net turnover shall be either the total annual net turnover, or the corresponding type of income in accordance with the relevant Union law in the area of accounting, according to the most recent available consolidated accounts approved by the management body of the ultimate parent undertaking.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 33(3).		
4. Notwithstanding paragraph 3, where the ESG rating provider has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.		
5. Where an act or omission of a ESG rating provider constitutes more than one infringement to this Regulation, only the higher fine calculated in accordance with paragraph 2 and relating to one of those infringements shall apply.	5. Where an act or omission of a**n** ESG rating provider constitutes more than one infringement to this Regulation, only the higher fine calculated in accordance with paragraph 2 and relating to one of those infringements shall apply.	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 35		
Periodic penalty payments		
1. ESMA shall, by decision, impose periodic penalty payments to compel:		
(a) an ESG ratings provider to put an end to an infringement in accordance with a decision taken pursuant to Article 33;		
(b) the persons referred to in Article 30(1):		
(1) to supply complete information which has been requested by a decision taken pursuant to Article 30;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(2) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision taken pursuant to Article 30;		
(3) to submit to an on-site inspection ordered by a decision taken pursuant to Article 32.		
2. A periodic penalty payment shall be effective and proportionate. ESMA shall impose the periodic penalty payment on a daily basis until the ESG rating provider or person concerned complies with the relevant decision referred to in paragraph 1.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.		
4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of that period, ESMA shall review the measure.		
Article 36		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Disclosure, nature, enforcement and allocation of fines and periodic penalty payments		
1. ESMA shall disclose to the public every fine and every periodic penalty payment that it has imposed pursuant to Articles 34 and 35, unless such disclosure to the public would seriously jeopardise the Union financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(EU) 2018/1725 of the European Parliament and of the Council[124].		
2. Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be of an administrative nature.		
3. Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be enforceable.		
Enforcement of the fines and periodic payments shall be governed by the rules of procedure in		

[124] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
force in the Member State or third country in which it is carried out.		
4. The fines and periodic penalty payments shall be allocated to the general budget of the European Union.		
Section 3		
Procedures and review		
Article 37		
Procedural rules for taking supervisory measures and imposing fines		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. Where ESMA finds that there are serious indications of a possible infringement of this Regulation, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. That appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the ESG ratings to which the infringement relates and shall perform his or her functions independently from ESMA's Board of Supervisors.		
2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, take into account any comments submitted by the persons who are subject to the investigation, and shall submit a complete file		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
with his or her findings to ESMA's Board of Supervisors.		
3. The investigation officer shall have the power to request information in accordance with Article 30 and to conduct investigations and on-site inspections in accordance with Articles 31 and 32.		
4. When carrying out his or her tasks, the investigation officer shall have access to all documents and information that have been gathered by ESMA in its supervisory activities.		
5. The rights of defence of the persons subject to the investigation shall be fully		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
respected during investigations under this Article.		
6. Upon submission of the file with his or her findings to ESMA's Board of Supervisors, the investigation officer shall notify the persons who are subject to the investigation.		
7. On the basis of the file containing the investigation officer's findings and, where requested by the persons concerned after having heard those persons in accordance with Article 38, the Board of Supervisors of ESMA shall assess whether one or more persons subject to the investigation have committed the infringements concerned and shall, where it comes to the conclusion that such infringements		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
have been committed, take a supervisory measure as referred to in Article 33 and impose a fine in accordance with Article 34.		
8. The investigation officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.		
9. The Commission shall supplement this Regulation by adopting further rules of procedure for the exercise of ESMA's power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of fines or periodic penalty payments, and by adopting		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
detailed rules on the limitation periods for the imposition and enforcement of penalties.		
The rules referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 45.		
10. ESMA shall refer matters for criminal prosecution to the national authorities concerned where, in carrying out its tasks under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from an identical fact or facts which are substantially the same has already		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
acquired the force of res judicata as the result of criminal proceedings under national law.		
Article 38		
Hearing of the persons subject to investigations		
1. Before taking any decision pursuant to Article 33, 34 and 35, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
The first subparagraph shall not apply where urgent action pursuant to Article 33 is needed to prevent significant and imminent damage to the financial system. In such a case, ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.		
2. The rights of defence of the persons subject to the proceedings shall be fully respected in the investigations. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 39		
Review by the Court of Justice		
The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce, or increase the fine or periodic penalty payment imposed.		
Section 4		
Fees and delegation		
Article 40		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Supervisory fees		
1. ESMA shall charge fees to the ESG rating providers in accordance with the delegated act adopted pursuant to paragraph 2. Those fees shall fully cover ESMA's necessary expenditure relating to the supervision of ESG rating providers and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation, and in particular as a result of any delegation of tasks in accordance with Article 41.		
2. The amount of an individual fee shall be proportionate to the annual net turnover of the ESG ratings provider concerned.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
By XX XXXX XXXX, the Commission shall adopt delegated acts in accordance with Article 45 to supplement this Regulation by specifying the type of fees, the matters for which fees are due, the amount of the fees, the manner in which they are to be paid and, where applicable, the way in which ESMA is to reimburse competent authorities in respect of any costs that they may have incurred carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks as referred to in Article 41.	By **[12 months after the date of entry into force]**, the Commission shall adopt delegated acts in accordance with Article 45 to supplement this Regulation by specifying the type of fees, the matters for which fees are due, the amount of the fees, the manner in which they are to be paid and, where applicable, the way in which ESMA is to reimburse competent authorities in respect of any costs that they may have incurred carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks as referred to in Article 41. **Those delegated acts shall establish fees which are proportionate, adequate and not excessively burdensome for SMEs, [and may exempt ESG ratings providers whose annual turnover is below a certain amount from the**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	obligation to pay a fee.whose annual turnover is below a certain amount may be exempted from the obligation to pay a fee.]	
CHAPTER 5		
Cooperation between ESMA and national competent authorities		
Article 41		
Delegation of tasks by ESMA to competent authorities		
1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 30 and to conduct investigations and on-site inspections in accordance with Article 31 and Article 32.		
2. Prior to the delegation of a task in accordance with paragraph 1, ESMA shall consult the relevant competent authority about:		
(a) the scope of the task to be delegated;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) the timetable for the performance of the task;		
(c) the transmission of necessary information by and to ESMA.		
3. ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks in accordance with the delegated act adopted pursuant to Article 45.		
4. ESMA shall review any delegation made in accordance with paragraph 1 at appropriate intervals. ESMA may revoke a delegation at any time.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
5. A delegation of tasks shall not affect the responsibility of ESMA nor limit ESMA's ability to conduct and oversee the delegated activity. ESMA shall not delegate supervisory responsibilities, including authorisation decisions, final assessments and follow-up decisions concerning infringements.		
Article 42		
Exchange of information		
ESMA and the competent authorities, shall, without undue delay, provide each other with the information required for carrying out their duties under this Regulation.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 43		
Notifications and suspension requests by competent authorities		
1. A competent authority of a Member State that finds that acts infringing this Regulation are being, or have been, carried out on the territory of its own or of another Member State shall inform ESMA thereof. A competent authority that considers it appropriate for investigatory purposes may suggest to ESMA that it assesses the need to use the powers under Article 30 in relation to the ESG rating provider involved in those acts.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
2. ESMA shall take appropriate action. ESMA shall inform the notifying competent authority of the outcome and, as far as possible, of any significant interim developments.		
3. A notifying competent authority of a Member State that considers that an ESG rating provider that is listed in the register referred to in Article 13 and whose ESG ratings are used within the territory of that Member State has infringed this Regulation in such a way that the protection of investors or the stability of the financial system in that Member State are significantly impacted, may request ESMA to suspend the provision of ESG ratings by the ESG rating provider concerned. The notifying		

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
competent authority shall provide ESMA with full reasons for its request.		
4. Where ESMA considers that the request referred to in paragraph 3 is not justified, it shall inform the notifying competent authority thereof in writing, setting out the reasons for its opinion. Where ESMA considers that the request is justified, it shall take the measures appropriate to resolve the issue.	4. Where ESMA considers that the request referred to in paragraph 3 is not justified, it shall inform the notifying competent authority thereof in writing, setting out the reasons for its opinion. Where ESMA considers that the request is justified, it shall take the measures appropriate to resolve the issue **and it shall inform the notifying competent authority thereof in writing**.	
Article 44		
Professional secrecy		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. The obligation of professional secrecy shall apply to ESMA, the competent authorities, and all persons who work or who have worked for ESMA, for the competent authorities or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA.		
2. All the information exchanged under this Regulation between ESMA, the competent authorities, the EBA, EIOPA and the ESRB shall be considered confidential, except:		
(a) where ESMA or the competent authority or another authority or body concerned states at the time of communication that such information may be disclosed;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(b) where disclosure is necessary for legal proceedings;		
(c) where the information disclosed is used in a summary or in an aggregate form in which individual financial market participants cannot be identified.		
TITLE IV		
DELEGATED AND IMPLEMENTING ACTS		
Article 45		
Exercise and revocation of the delegation and objections to delegated acts		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		
2. The power to adopt delegated acts referred to in Articles 5, 21, 22 and 40 shall be conferred on the Commission for an indeterminate period of time from [*PO: Please insert date of entry into force*].	2. The power to adopt delegated acts referred to in Articles **[4a],** 5, **10,** 21, 22 and 40 shall be conferred on the Commission for an indeterminate period of time from [PO: Please insert date of entry into force].	
3. The delegation of power referred to in Articles 5, 21, 22 and 40 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following	3. The delegation of power referred to in Articles **[4a],** 5, **10,** 21, 22 and 40 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.		
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
6. A delegated act adopted pursuant to Articles 7, 33, 34 and 40 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.		
7. If, on expiry of the period referred to in paragraph 6, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal		

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
of the European Union and shall enter into force on the date stated therein. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.		
8. If either the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 of the Treaty on the Functioning of the European Union, the institution which objects shall state the reasons for objecting to the delegated act.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Article 46		
Amendments to Annexes		
To take account of developments, including international developments, on financial markets, in particular in relation to sustainable finance, the Commission may adopt, by means of delegated acts in accordance with Article 45, measures to amend the Annexes.		
Article 47		
Committee procedure		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[125]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.[126]	1. The Commission shall be assisted by the European Securities Committee **and the Member States Expert Group on Sustainable Finance** established by Commission Decision 2001/528/EC . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.	
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.		
TITLE V		

[125] Commission Decision of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45)

[126] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
TRANSITIONAL AND FINAL PROVISIONS		
Article 48		
Transitional provisions		
1. ESG rating providers which provided their services at the date of entry into force of this Regulation shall notify ESMA within 3 months if they want to continue offering their services and apply for authorisation in accordance with Article 5. In that case, they shall apply for authorisation within 6 months after the date of application of this Regulation.	1. ESG rating providers which **operated in the Union** ~~**provided their services**~~ at the date of entry into force of this Regulation shall notify ESMA within ~~**3**~~**12** months if they want to continue **operating in the Union** ~~**offering their services**~~ and apply for authorisation in accordance with **the procedures under Title II**~~**Article 5**~~. In that case, they shall apply for authorisation within ~~**6**~~**12** months after the date of application of this Regulation. **ESG ratings**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	providers which did not notify ESMA within that period of 12 months of their intention to continue operating in the Union shall cease their activities.	
2. By way of derogation of the first paragraph, ESG rating providers categorized as small and medium-sized undertaking under Article 3 of the Directive 2013/34/EU shall apply for authorisation within 24 months after the date of application of this Regulation.	~~**2. By way of derogation of the first paragraph, ESG rating providers categorized as small and medium-sized undertaking under Article 3 of the Directive 2013/34/EU shall apply for authorisation within 24 months after the date of application of this Regulation.**~~	
3. ESG rating providers categorized as small and medium-sized undertaking under Article 3 of Directive 2013/34/EU entering the market after [*please insert the date of entry into*	~~**3. ESG rating providers categorized as small and medium-sized undertaking under Article 3 of Directive 2013/34/EU entering the market after [*please insert the date of entry*~~	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
application] shall notify ESMA prior to starting offering their services and shall apply for authorisation within 12 months of that notification.	~~***into application***~~**] shall notify ESMA prior to starting offering their services and shall apply for authorisation within 12 months of that notification.**	
Article 49		
Review		
1. The Commission shall evaluate the application of this Regulation by [*five years after the entry into force of this Regulation*].		
2. The Commission shall present a report on the main findings of the evaluation to the European Parliament and the Council. In carrying out the evaluation, the Commission	2. The Commission shall present a report on the main findings of the evaluation to the European Parliament and the Council. **The report shall in particular assess whether the**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
shall take into account market developments and the relevant evidence at its disposal.	**scope of this Regulation is appropriate to achieve its objectives in accordance with Article 1, including whether providers of data on environmental, social and human rights, and governance factors should be included in the scope of this Regulation.** In carrying out the evaluation, the Commission shall take into account market developments and the relevant evidence at its disposal.	
3. Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal for amendment of relevant provisions of this Regulation.		
Article 50		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
Entry into force and application		
This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.		
It shall apply from [*6 months after the entry into force of this Regulation*].	It shall apply from [**24**~~6~~ months after the entry into force of this Regulation].	
This Regulation shall be binding in its entirety and directly applicable in all Member States.		
Done at Strasbourg,		
For the European Parliament For the Council		
The President The President		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ANNEX I Information to be provided in the application for authorisation		
An application for authorisation shall contain all of the following information :		
(a) the full name of the applicant, the address of the registered office within the Union, the applicant's website and, where available, the legal entity identifier (LEI);		
(b) the name and contact details of a contact person;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(c) the legal status of the applicant;		
(d) the ownership structure of the applicant;		
(e) the identity of the members of the senior management of the applicant and their level of qualification, experience and training;		
(f) the number of the analysts, employees and other persons directly involved in assessment activities, and their level of experience and training working for the applicant and their level of experience and training;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(g) a description of the procedures and methodologies used to issue and review ESG ratings implemented by the applicant;		
(h) the policies or procedures implemented by the applicant to identify, manage and disclose any conflicts of interests as referred to in Article 14 of the Regulation;		
(i) where applicable, documents and information related to any existing or planned outsourcing arrangements for activities covered by this Regulation;		
(j) where applicable, information about other activities carried out by the applicant, or which the applicant intends to provide.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ANNEX II Organisational requirements		
1. Record Keeping information		
ESG rating providers shall keep records of all of the following:		
(a) for each ESG rating in the form of an opinion, the identity of the rating analysts participating in the determination of the ESG rating, the identity of the persons who have approved the ESG rating, information as to whether the ESG rating was solicited or	(a) for each ESG rating in the form of an opinion, ~~**the identity of the rating analysts participating in the determination of the ESG rating**~~, the identity of the persons who have approved the ESG rating, information as to whether the ESG rating was solicited or	

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
unsolicited, and the date on which the ESG rating action was taken;	unsolicited, and the date on which the ESG rating action was taken;	
(b) for each ESG rating in the form of a score, the identity of the persons responsible for the development of the rule-based methodology, and the identity of the persons who have approved the rating methodology;		
(c) the account records relating to fees received from any rated entity or related third party or any user of ratings;		
(d) the account records for each subscriber to the ESG ratings;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(e) the records documenting the established procedures and rating methodologies used by the ESG rating provider to determine ESG ratings;		
(f) the internal records and external communications and files, including non-public information and work papers, used to form the basis of any ESG rating decision taken;		
(g) records of the procedures and measures implemented by the ESG rating provider to comply with this Regulation;		
(h) the methodology used for the determination of an ESG rating;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(i) changes in or deviations from standard procedures and methodologies;		
(j) all documents relating to any complaint, including those submitted by a complainant.		
2. Outsourcing		
Where ESG rating providers outsource to a service provider functions or any relevant services or activities in the provision of an ESG rating, the ESG rating provider shall ensure that the following conditions are met:		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(a) the service provider has the ability, capacity, and any authorisation required by law, to perform the outsourced functions, services or activities reliably and professionally;		
(b) the ESG rating provider takes appropriate action if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;		
(c) the ESG rating provider retains the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) the service provider discloses to the ESG rating provider any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;		
(e) the ESG rating provider is able to terminate the outsourcing arrangements where necessary;		
(f) the ESG rating provider takes reasonable steps, including contingency plans, to avoid undue operational risk related to the participation of the service provider in the ESG rating determination process.		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
ANNEX III Disclosure requirements		
1. Minimum disclosures to the public		
In accordance with Article 12 of the Regulation, ESG rating providers shall, at the minimum, disclose to the public on their website and through the European Single Access Point (ESAP) the following:	In accordance with Article ~~12~~ **21** of the Regulation, ESG rating providers shall, at the minimum, disclose **in an organised manner** to the public on their website and through the European Single Access Point (ESAP) the following:	
(a) high level overview of the rating methodologies used (and changes thereto),	(a) ~~high level overview~~ **a description** of the rating methodologies used (and changes	

Compilation of replies from FR, MT, PL

PUBLIC

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
including whether analysis is backward-looking or forward-looking;	thereto), including whether analysis is backward-looking or forward-looking;	
(b) high level overview of data processes (data sources, including if they are public or non–public, and if they are sourced from sustainability statements required by Directive (EU) 2022/2464, estimation of input data in case of unavailability, frequency of data updates);	(b) ~~high level overview~~ **a description** of data processes (data sources, including if they are public or non–public, and if they are sourced from sustainability statements required by Directive (EU) **2013/34/EU**~~2022/2464~~, estimation of input data in case of unavailability, frequency of data updates)**;**	
(c) information on whether and how the methodologies are based on scientific evidence;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(d) information on the ratings' objective, clearly marking whether the rating is assessing risks, impacts or some other dimensions;	(d) information on the ratings' objective, clearly **defined and** marking whether the rating is assessing risks, impacts or **both according to the double materiality principle, or any** ~~**some**~~ other dimensions;	
(e) the rating's scope – i.e., is it an aggregated rating (aggregating E and S and G factor), or a rating of individual factors or specific issues (e.g., transition risks);		
(f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per individual E, S and G factors;	**Alternative 1:** (f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	individual E, S and G factors **and a materiality assessment**; **Alternative 2**: ~~**(f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per individual E, S and G factors;**~~	
(g) within the E, S or G factors, specification of the topics covered by the ESG rating/score, and whether they correspond to the topics from the sustainability reporting	(g) within the E, S or G factors, specification of the topics covered by the ESG rating/score, and whether they correspond to the topics from the sustainability reporting	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
standards developed pursuant to Article 29b of Directive 2013/34/EU;	standards developed pursuant to Article 29b of Directive 2013/34/EU;	
(h) information on whether the rating is expressed in absolute or relative values,		
(i) Where applicable, reference to the use of Artificial Intelligence (AI) in the data collection or rating/scoring process;		
(j) general information on criteria used for establishing fees to clients, specifying the various elements taken into consideration, such as the involvement of data analysts, IT equipment, purchasing data;	(j) general information on criteria used for establishing fees to clients, specifying the various elements taken into consideration, such as the involvement of data analysts, IT	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	equipment, purchasing data **and general information on the business/payment model**;	
(k) any limitation in data sources used for the construction of ESG ratings.		
2. Additional disclosures to users of ESG rating and rated undertakings in scope of Directive 2013/34/EU	2. Additional disclosures to users of ESG rating**s** and rated undertakings in scope of Directive 2013/34/EU	
In addition to the elements referred to in Article 13 of the Regulation, ESG rating providers shall make available the following information to European regulated financial undertakings and to undertakings in the scope of Directive 2013/34/EU that are subject of such rating:	In **accordance with Article 22 and in** addition to the **minimum disclosures to the public** ~~**elements**~~ referred to in **point 1 of this Annex** ~~**article 13 of the Regulation**~~, ESG rating providers shall make available the following information to European regulated financial undertakings and to undertakings in the scope of	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	Directive 2013/34/EU that are subject of such rating:	
(a) a more granular overview of the rating methodologies used (and changes thereto), including:		
(1) where applicable, scientific evidence and assumptions on which the ratings are based,		
(2) whether the analysis is backward-looking or forward-looking,	~~(2) whether the analysis is backward-looking or forward-looking,~~	
(3) which metrics have been selected as relevant,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(4) the relevant KPIs per E, S and G factor, and weighting method,		
(5) any potential shortcomings of methodologies,		
(6) policies for the revision of methodologies,		
(7) last date of the revision;		
(b) a more granular overview of data processes, including:	(a) a more granular **description**~~overview~~ of data processes, including:	
(1) more detailed explanation of data sources used – including whether public or non-	(1) more detailed explanation of data sources used – including whether public or non-	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
public, mentioning whether derived from the sustainability reporting standards developed pursuant to Article 29b of Directive 2013/34/EU /Taxonomy/SFDR],	public, mentioning whether derived from the sustainability reporting standards developed pursuant to ~~**Article 29b of Directive 2013/34/EU/Taxonomy/SFDR]**~~ **Articles 19 and 29 of Directive 2013/34/EU concerning sustainable economic activities, Commission Delegated Regulation (EU) 2021/2178 and disclosure of information pursuant to Regulation (EU) 2019/2088, including whether and how information on companies' transition plans derived from such sustainability reporting standards is used;**	
(2) where applicable the use of estimation and industry average and explanation of the underlying methodology,		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(3) the policies for updating data and revising historical data, date of last updates of data,		
(4) data quality controls,	(4) data quality controls**, their frequency and the remediation process if issues arise**,	
(5) any steps taken to address limitations in data sources, where applicable;		
(c) where applicable, information about engagement with rated entities;		
(d) where applicable, an explanation of any AI methodology used in the data collection or rating process;		

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
(e) in case of a major new information on a rated entity that has the possibility to affect the result of an ESG rating, ESG rating providers shall inform how they have taken that information into account and whether they have amended the corresponding ESG rating.		
	Alternative 2: **(f) in the case of an aggregated ESG rating, weighting of the three overarching ESG factors categories (e.g., 33% Environment, 33% Social, 33% Governance), and the explanation of the weighting method, including weight per individual E, S and G factors and a materiality assessment.**	

Drafting suggestions on Presidency compromise text as discussed in CWP on 22 November 2023 (WK 15148/2023)

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells, columns or rows.

Compiled 30/11/2023 at 18:04

PUBLIC

Compilation of replies from FR, MT, PL

INPUT FROM POLAND		
Commission proposal	**Presidency proposed amendments**	**MS comments and drafting**
	End	