ESMA Regulatory Technical Standard Consultation

European Association of Sustainability Rating Agencies (EASRA)

Joint response of member companies

June 20, 2025

Introduction:
EASRA and its members welcome the EU Regulation 2024/3005, since it will bring increased transparency to the market as well as clear rules for managing conflicts of interest. However, EASRA members believe the way in which the Regulation and its RTS have unfolded, contradicts the initial goal of creating a level playing field for the whole industry, independent of the size and type of providers.

The regulation and its technical standards – as they stand – would create a disproportionate volume of cost for small and medium sized providers. Without a clearly reinforced proportionality approach, this may result in many small and mid-sized providers being pushed out of the market and thus further increase market concentration with a handful of large providers.
Given that the intention of the regulation according to the EU publication is to ensure transparency, reliability, and fairness across the market, we would like to stress that these goals are not yet reached with the current regulatory text and the draft RTS. In addition to the suggestions made in this response to the ESMA consultation, we also request that the ESG Ratings regulation is reconsidered in ongoing “Omnibus” discussions.

Fairness:

- The regulation claims to acknowledge smaller rating providers, but it excludes mid-sized providers from the proportionality rules.
- Additionally, it specifically treats benchmark providers more favourably, specifically through the derogation under Article 16(3).
- Some small entities are part of larger groups not active in ESG ratings, yet the entire group is considered in size assessments.

Reliability:

- Rating providers face strict obligations, but issuers' responsibilities remain vague. Issuers have the right to complain, request corrections, and preview ratings, but there is no clarity on their timelines or proof requirements for disputes.

- This one-sided responsibility undermines the reliability of the process. Moreover, regulatory delays in Europe (e.g. CSRD and CSDDD) further weaken implementation.

Transparency:

- Rating providers must maintain full transparency and face public scrutiny, while issuers and data sources have no obligation to verify facts or be transparent.
- The regulation also lacks clarity on approved data sources. Methodology disclosure requirements, while intended to ensure transparency, risk exposing intellectual property, effectively removing competitive advantage and discouraging innovation.

In the following, we respond to ESMA's five consultation questions in detail.

Summary

1 Question 1: Do you agree with ESMA's proposals for the draft Regulatory Technical Standard under Article 6(3) and 12(9) of EU Regulation 2024/3005?

- Authorisation and Recognition -

EASRA and its members acknowledge that the RTS bring additional information on the authorisation process and recognition regimes but want to raise a series of concerns that need further clarification (1.1 on definitions) or that are not being addressed (1.2 on Non-EU providers).

1.1 Issue of Concern: Need to further specify what is meant by "ESG Ratings" and its related products" (Article 3)

We would appreciate if ESMA could clarify the following:

- What is the exact definition of an "ESG rating product"? Is our understanding correct that where a provider provides different types of quantitative scores or metrics measuring different aspects of ESG risk, these different types of scores or metrics are each an ESG rating product?

- Can ESMA please confirm if the following types of ratings are included in the scope of the RTS and regulation?
  - Fund-level ESG ratings (and if so, how should data providers notify those entities?)
  - Government or supranational ESG ratings (and if so, how should data providers notify those entities?)
  - SDG-alignment scores (leveraging in good part the same "ingredients" utilised to calculate ESG Ratings)

1.2 Issue of Concern: Requirement to Operate in the EU (Regulation 2024/3005, Article 11 and 12)

EASRA and its members agree with ESMA's proposal to merge the requirements for authorisation and recognition to simplify and clarify the process. We however consider that ESMA could provide additional information on the following aspects.

- EASRA would welcome ESMA's clarification on the scope of the authorisation and recognition application in particular for an ESG rating provider established outside the EU which provides different sustainability services to investors. In particular, the “consulting services to investors” is not well defined (see also our remarks under question 2) and it is unsure if an application for Authorisation and recognition should be sought for proxy voting recommendations and engagement activities.

- Part A) of Annex III of the draft RTS mentions additional information to be provided for the legal representative in the member state of reference. EASRA would welcome ESMA’s clarification on the types of legal entity that could act as legal representative and any requirements that those entities should satisfy. It would also be useful to inform on the legal responsibilities endorsed by the legal representative.
- Parts B) and C) of Annex III of the draft RTS mention additional information to be provided on turnover and on ESG ratings intended to be distributed in the EU. EASRA does not see the rationale of asking additional information in the case of a recognition in particular regarding the full list of detailed ratings required under parts C (last rating notch or value). EASRA’s stance is that either this information is essential and required for both recognition and authorisation, or it is optional and shall not be requested for recognition.
- EASRA’s members would welcome ESMA’s clarification on the possibility to apply for recognition for ESG rating providers established outside of the EU with an annual net turnover of all of its activities that is above the amount set in Article 3(2), second subparagraph of Directive 2013/34/EU.

2 Question 2: Do you agree with ESMA’s proposals for the draft Regulatory Technical Standard under Article 16(5) of EU Regulation 2024/3005?

- Separation of Activities -

EASRA’s members understand the necessity to introduce a harmonized management of potential conflicts of interest. However, some aspects of the regulation and the draft RTS could be clarified and/or modified so as to reduce the financial burden notably for small and midsized providers.

2.1 Issue of Concern: Costs linked to the separation of business and activities

EASRA is very concerned by the costs of legal separation and the lack of clarity related to the regulatory requirement on the separation of specific business activities into different legal entities. This greatly affects the competitiveness of small and medium-size providers (especially EASRA members) and favours large providers. In addition, it will constitute a high barrier to entry for many members – or even lead to some players having to exit the market.

The costs of separating legal entities are particularly high and more difficult to support for groups of small and medium size that are active in different business areas. These costs include:

- Upfront, the expenses on legal advice and implementation of the new structure (transfer of assets, transfer of employment contracts, establishment of branches in the different countries of presence).
- On a recurrent basis, ongoing governance costs (separate senior management body / supervisory board, by-laws, corporate governance maintenance, additional service level agreements), ongoing accounting, reporting and financial consolidation costs.

Moreover, the following points should be considered:

- The economic context is very challenging and the margins in the ESG rating industry are low due to high expertise needed and necessary IT investments, which typically penalize the smallest players. Also, investors are asking for large coverage of rated entities and are increasingly looking at "one stop shop" providers/solutions.
- The ESG rating sector is in a phase of transformation due to changing market trends with regards to ESG, developments in IT, AI and innovation, and upcoming regulations.
- The risk of further market concentration of the ESG rating industry among a limited number of large non-European players is very high.
- There are high benefits for sustainable finance to a thriving and diversified ESG rating sector with different players of different sizes, geographical and thematic focus areas, underlying philosophies and methodologies to ensure that issuers and investors' needs are appropriately met.

EASRA therefore recommends the following:

- Applying the same measures as the ones proposed for benchmark providers and/or providers of investment services and credit & insurance services, combined with a review and authorisation by ESMA (as proposed in the RTS) without the need for separate legal entities.
- Enlarging the scope of the current transitory regime defined by ESMA for small ESG rating agencies (Art 5) to both small and medium-sized ESG rating agencies (considering in the size assessment only the entities that are active in ESG rating if part of a larger group) and thus make them benefit from a 3-year transition period.

2.2 Issue of Concern: Clarification on definitions of consulting activities

EASRA acknowledges that remunerated advisory services provided to rated entities represents a strong risk of potential conflicts of interest. Such services, should they be provided, should be strictly separated from ESG rating activities.

However, EASRA is not aligned with the categoric assumption that advisory services provided to investor clients represent a conflict of interest. In fact, such services often go hand-in-hand with the provision of ESG ratings and data to investor subscription clients. Some providers deliver such services via their customer relations teams and their fees are embedded in the subscription fees, while others have decided to deliver them as a paid stand-alone service. Especially from the standpoint of smaller providers, such services allow to diversify their revenues and be able to compete against very large providers.

As an example, the following services are provided to financial institutions by some of EASRA members:

- Reporting services
- Portfolio analysis
- Strategy advice
- ESG client training
- Advisory services to asset managers (funds)
- Proxy advisory services
- Engagement services

The current technical standard does not adequately define what is intended by consulting services to investors. It would thus be appreciated if ESMA could explain and categorise what constitutes a consulting and advisory services and which of the above would constitute, from ESMA's perspective, a conflict of interest.

EASRA members consider that such services should not be considered in the scope of the separation requested and recommend excluding these from the obligation of legal separation.

2.3 Issue of Concern: The Need to Establish a Permanent Independent Oversight Function (Issue III, Ch. 1, Art.15, point 10)

EASRA welcomes the governance requirements set by the regulatory text. However, ESMA does not address the issue of the setting up of an independent oversight function in the RTS, which has both operational and cost impacts.

We would appreciate ESMA providing a more granular definition of this function, and if entities are:

- required to put in place a new function that assumes the above-mentioned role,
- required to outsource this function,
- permitted to include this oversight function in an existing role,
- allowed to mutualise this new function at the group level (if applicable) as a support function.

3 Question 3: Do you agree with ESMA's proposals for the draft Regulatory Technical Standard under Article 23(4) and 24(3) of EU Regulation 2024/3005?

- Disclosures -

EASRA welcomes the efforts to clarify the disclosure obligations of the regulation through the draft RTS. However, some aspects represent strong negative impacts on the operations of providers, which may result in loss of revenues and substantially increased costs. This is especially the case for the pre-notification requirements (3.1). In addition, some clarifications could be provided on the disclosures of underlying data (3.2).

3.1 Issue of Concern: Limitations to Pre-notification Requirements for First Issuance of ESG Ratings

Scope and Volume of Coverage

- For some ESG rating providers (especially controversies providers), the methodology implies continuously analysing billions of news items, web-scraped data feeds, and proprietary data sources to generate ESG scores for over a million issuers (covering large, medium, and smaller entities across multiple jurisdictions).
- Because ESG ratings are computed on a rolling basis (i.e., as soon as new data become available), there is no single "first issuance" event for each issuer in the traditional sense.)

Operational Scalability Challenges

- **Notification Volume**: Complying with a requirement to "notify during its working hours and at least two full working days before the first issuance" would obligate ESG rating providers to send individual pre-notification messages to potentially hundreds of thousands of issuers at any given time.

- **Continuous vs. One-Off Issuance**: Many small- and medium-sized enterprises (SMEs) are not accustomed to receiving regular ESG assessments. Yet, under the current interpretation, each time providers begin monitoring a previously uncovered SME (even if the amount of new data is minimal), they would need to treat that as a “first issuance” and notify the issuer. This creates an unbounded obligation as new entities come into scope.

Implications for product relevance and integrity

- While EASRA fully supports the principle that issuers should have the opportunity to correct material factual errors, applying a “two-day pre-notification” would result in delays in meaningful, timely ESG information to end-investors who are typically expecting real-time updates.

For all the above reasons, EASRA suggest that the pre-notification rule is made applicable only to “standard” ESG ratings but not to ESG controversies.

3.2 Issue of Concern: Practicality of Disclosure requirements

While EASRA is generally in favour of disclosures on methodology, some suggested items go too far from its’ members’ perspective, and some others need further clarification.

(a) <u>Clarification of link between RTS and Regulation</u>

We believe that there is a discrepancy between RTS on Articles 23(4) and 24(3) Article 3, Section 1 and the reference to the Regulations Annex 3 Article 1(f). With that in mind, could ESMA clarify the proposed Article 3(1) of the RTS?

(b) <u>Clarification on disclosure of list of rated entities</u>

Can ESMA confirm that providers are **not** expected to disclose to the public the names of every rated item covered by the provider’s ESG ratings, thus disclosing publicly each provider’s confidential ratings coverage universe?

(c) <u>Clarification on Annex III Point 2.a.vi</u>

Annex III 2.a.vi states: “when an ESG rating has been upgraded or downgraded due to any material changes to rating methodologies, models, key rating assumptions or data sources (including estimates), the reasons for those changes and their implications for the given rating must be disclosed”.

We would appreciate if ESMA could clarify whether this disclosure requirement demands item-level explanations tied to a specific score change, or whether providing a high-level methodology update (e.g., “we modified our controversy severity weights on 1 March 2025, affecting all scores by ±5 points”) is sufficient.

Without this clarification, it is unclear if providers must track and report every issuer-specific impact of a methodological modification (which could entail recalculating historical scores and issuing individualized downgrade/upgrade notices), or if a general methodology bulletin suffices.

(d) Clarification on pre-notification on single score changes

Is it the view of ESMA that scores attached to singular datapoints constitute ESG ratings? And more broadly, does the 48-hour pre-notification duty apply to every metric/KPI contributing to an overall ESG assessment? Similarly, if a provider produces various types of ratings and scores (e.g. climate, biodiversity, SDG, human rights etc.) that packages into single products, will the pre-notification obligation apply to every single product?

3.3 Issue of Concern: Requirements of "deep" disclosures of underlying data and scoring models

EASRA is concerned with the risk of giving away too much of its members' intellectual property when disclosing the full set of derived variables, intermediate "engineered features" or detailed scoring algorithms, which effectively reveals proprietary data-science processes. Competitors could reverse-engineer the approaches, weakening our ability to invest in ongoing research and penalizing innovation. In addition, providers' underlying data is sometimes subject to premium news licensing agreements and thus cannot be legally shared without a license.

Can ESMA confirm that it won't be mandatory to disclose such detailed information?

4 Question 4: Do you consider that the draft technical standards under Articles 23(4) or 24(3) should instead provide an expanded table in Annex proposing a sequence and structure for all disclosures to be made under parts 1 and 2 of Annex III? If yes, please explain the benefits of such an approach.

- Disclosures in an Expanded Table-

Yes, it would be more readable and easier to understand. Also, it would be more efficient to have only one table with all the disclosure requirements, instead of two separate documents.

5 Question 5: Do you agree with ESMA's proposed cost benefit analysis? If not, please explain.

EASRA appreciates ESMA's first draft of cost-benefit analysis. However, we see two issues of concern around supervisory costs (5.1) and operational costs (5.2) that are not adequately represented.

5.1 Issue of Concern: Supervisory Costs

The costs of supervision are not mentioned in the RTS. Our concern notably comes from the fact that very high costs have been announced in the case of the EUGBS at registration and annually (EUR 40K as one-off costs; minimum of EUR 30K on an annual basis). This is all the more surprising that it relates to one product only (provided by many ESG ratings providers). Costs of this level may lead to many small players not applying for supervision and thus reinforce market concentration.

We would therefore recommend defining:

- A tiered approach to supervision fees that would consider the revenues of the activities at stake instead of the level of the group of entities (as it is currently the case for credit rating agencies). For example, below EUR 10 million of revenues in ESG ratings, no charging of fees; above this threshold, EUR 10,000 annual supervision fees.
- A transition period of 3 years for small and medium providers before charging any fees.

We note that the definitive supervisory fees are expected to be adopted by January 2026. EASRA's members would therefore welcome ESMA's clarification on the intended nature, recurrence and materiality thresholds of these fees.

5.2 Issue of Concern: Operational costs

Becoming fully compliant with the ESG rating regulation will also imply important operational costs and investments for providers. This includes but is not limited to IT developments and maintenance for disclosure obligations. EASRA's members will be happy to provide more detailed information to ESMA on cost estimations for compliance.

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