

NEW EU AND UK RULES ON ESG RATINGS: IMPACT ON CROSS-BORDER ACCESS TO ESG RATINGS

Both the EU and the UK are creating new regulatory regimes for providers of ESG ratings which could significantly affect cross-border access to ESG ratings. The new EU regime includes a relatively restrictive third-country regime for non-EU rating providers while the UK has yet to specify what market access regime will be available to non-UK rating providers.

WHAT IS THE EXPECTED TIMING?

The EU adopted its [Regulation](#) on the transparency and integrity of environmental, social and governance (ESG) rating activities in 2024. The Regulation applies from 2 July 2026 and the European Securities and Markets Authority (ESMA) has already [consulted](#) on draft regulatory technical standards under the Regulation (scheduled to be delivered by October).

HM Treasury [consulted](#) on bringing ESG rating providers into the UK regulatory perimeter in March 2023 and in November 2024 [published](#) its consultation response with a draft statutory instrument extending the scope of the regulated activities under the Financial Services and Markets Act 2000 (FSMA 2000) to cover the provision of ESG ratings. The government intends to introduce the statutory instrument by end-2025 and, following this, the Financial Conduct Authority (FCA) will consult on its proposals for the future regulatory regime, meaning that the UK regime may not be in place until after, or at least only shortly before, the EU regime begins to apply. This briefing assumes that the statutory instrument is made in its published draft form.

WHAT RATINGS WILL BE REGULATED IN THE EU AND THE UK?

The EU and the UK regimes define the scope of regulated ESG ratings in similar ways (see Box 1). However, the EU definition is somewhat wider in that it specifically includes opinions or scores based on human rights factors and is not limited to ratings likely to influence an investment decision with respect to regulated investments.

Key issues

- EU and UK will both regulate providers of ESG ratings
- Regulation will apply to foreign providers distributing ratings by subscription or other business relationship to EU and UK users
- Exemptions from regulation will not always be available to cross-border providers
- EU regime includes a reverse solicitation exemption and an equivalence, endorsement and recognition regime
- New EU third-country regime is relatively restrictive compared to EU third-country regimes for credit ratings and benchmarks
- UK government has yet to specify what market access regimes will be available to non-UK providers but 'overseas persons exclusion' does not apply
- New regimes may have adverse impact on cross-border access to ESG ratings
- EU regime applies from 2 July 2026
- UK government plans to introduce secondary legislation by end-2025, followed by FCA consultation
- No indication yet that EU or UK will recognise the other's regime as equivalent

BOX 1: WHAT IS A REGULATED ESG RATING?

	EU	UK
Core elements	An opinion or a score (or a combination) regarding a rated item's profile or characteristics with regard to ESG or human rights factors, or regarding a rated item's exposure to risks or impact on ESG or human rights factors.	An assessment regarding one or more ESG factors, produced in the form of an opinion or score (or a combination).
Subject matter	A rated item is: <ul style="list-style-type: none"> • a financial instrument or financial product; or • a legal person, public authority or public body. 	Rating must be likely to influence a decision to make an investment specified by the Regulated Activities Order under FSMA 2000.
Common element	<ul style="list-style-type: none"> • Rating must be based on an established methodology and a defined ranking system of rating categories. 	
ESG opinion	<ul style="list-style-type: none"> • EU: Rating based on a rule-based methodology involving directly a rating analyst in the rating process. • UK: Rating involving substantial analytical input from an analyst. 	
ESG score	<ul style="list-style-type: none"> • EU & UK: Rating derived from data and a pre-established statistical or algorithmic system or model, without additional substantial analytical input from an analyst (and, in EU, using a rule-based methodology). 	
Irrelevant whether:	<ul style="list-style-type: none"> • Rating is described as an ESG rating, ESG opinion or ESG score. • Rating is solicited or unsolicited. 	

Both the EU and the UK regimes also provide for extensive and broadly corresponding (albeit not identical) lists of exemptions and exclusions (see Box 2).

However, some EU exemptions only apply where the rating provider is an EU regulated financial undertaking and thus may not be available where non-EU entities provide ratings cross-border to EU users. For example, non-EU members of asset management groups providing ESG ratings to EU affiliates may not be able to rely on the exemption for ratings used exclusively for internal purposes or for providing in-house or intragroup financial services or products.

Similarly, non-UK firms may not be able to rely on the UK exclusion covering the provision of ESG ratings in the course of carrying on another 'regulated activity'. For example, non-UK firms currently relying on the existing 'overseas persons exclusion' under FSMA 2000 to provide investment research incorporating ESG ratings as part of the cross-border delivery of their investment services to UK persons may not be able to rely on the new exclusion because the overseas persons exclusion would mean that the non-UK firm is not carrying on any 'regulated activities' within the meaning of FSMA 2000.

BOX 2: SUMMARY COMPARISON OF EXEMPTIONS AND EXCLUSIONS FROM REGULATION

	EU	UK
Private ratings	<ul style="list-style-type: none"> • Private ratings not intended for public disclosure or distribution. • Ratings issued by EU regulated financial undertakings for internal purposes or for in-house or intragroup financial services or products. 	<ul style="list-style-type: none"> • Ratings about a person provided to that person under a contract and not for distribution outside that person's group. • Ratings only provided to other members of the rating provider's group (not for external distribution).
Ratings subject to other regulation	<ul style="list-style-type: none"> • Ratings issued by EU regulated financial undertakings incorporated in a product or service regulated under EU law and disclosed to a third party.* • Credit ratings issued under the CRAR (and related scores or assessments). • Mandatory disclosures under the Sustainable Finance Disclosure Regulation or Taxonomy Regulation. • Products or services incorporating an element of a rating, including investment research. • External reviews of European Green Bonds required by EU Regulation. • External reviews or opinions of sustainable finance bonds or debt not containing a rating issued by the reviewer or opinion provider. 	<ul style="list-style-type: none"> • Provision of ratings in the course of carrying on another regulated activity or an activity subject to FCA approval (but not as a stand-alone product or service).†
Accreditation or certification	<ul style="list-style-type: none"> • Ratings for accreditation or certification processes not targeting investment or financial analysis or decision-making. • Labelling activities not involving the disclosure of a rating. 	<ul style="list-style-type: none"> • Ratings for accreditation or certification processes, not for the purpose of influencing an investment decision.
Data	<ul style="list-style-type: none"> • Publication of data on ESG and human rights factors. 	
Non-commercial ratings	<ul style="list-style-type: none"> • Ratings issued by EU institutions, bodies, offices and agencies, Member State public authorities or ESCB members for non-commercial purposes. 	<ul style="list-style-type: none"> • Ratings provided by a public authority, a central bank or an international organisation. • Rating provided as integral part of activities as a journalist, an academic or a charity (without

	EU	UK
	<ul style="list-style-type: none"> Ratings published by non-profit organisations for non-commercial purposes (without charge to rated items or users). 	a separate business relationship).
Redistribution	<ul style="list-style-type: none"> Ratings issued by an EU authorised provider distributed by a third party. 	
<p>* Website disclosure requirements apply to the EU regulated financial undertaking relying on the exemption.</p> <p>† FCA may make rules applicable to UK authorised firms to ensure a level playing field for providers of ESG ratings.</p> <p>See briefing for the EU reverse solicitation exemption and the possible UK market access regime.</p>		

HOW WILL RATING PROVIDERS BE REGULATED IN THE EU AND THE UK?

Entities established in the EU whose activities include the issuance, and the publication or distribution, of ESG ratings on a professional basis and not benefitting from an exemption must seek authorisation from ESMA. Authorised providers will be subject to requirements relating to their organisation and governance, the separation of ESG rating activities from other activities, rating analysts, record-keeping, complaints handling, outsourcing, transparency and disclosure, independence and conflicts of interest, and pricing. There is a temporary registration regime with reduced requirements for small EU providers of ESG ratings.

The proposed statutory instrument would extend the UK 'general prohibition' to entities that carry on the activity of providing ESG ratings by way of business in the UK without authorisation by FCA (unless an exclusion applies). However, it will be up to the FCA, once the instrument is adopted, to develop the standards and regulatory requirements that will need to be met by authorised ESG ratings providers, based on the regulatory outcomes of transparency, good governance, management of conflicts of interest and robust systems and controls set out in the 2021 [recommendations](#) of the International Organisation of Securities Commissions (IOSCO). The FCA will publish draft rules and guidance for consultation before the regulatory regime is finalised and implemented.

WHAT IS THE TERRITORIAL SCOPE OF THE EU AND UK REGIMES?

Both regimes start with a similar approach to cross-border activity:

- The EU regime will regulate non-EU rating providers that issue and distribute their ESG ratings by subscription or other contractual relationships to EU regulated financial undertakings, EU corporates, issuers subject to EU transparency rules, EU institutions, bodies, offices and agencies, and Member State public authorities.
- The UK regime would regulate an ESG rating provider not located in the UK which makes ESG ratings available by way of a business relationship (including a subscription or any other contractual relationship) with a person located in the UK.

The UK prohibition would also explicitly cover the indirect provision of ratings to a UK person via a person outside the UK where the non-UK provider could reasonably have expected the ESG rating to be made available to a UK person. In contrast, the EU regime provides an exemption for the redistribution of ESG ratings but only where the ratings are issued by an EU-authorised provider.

However, the EU regulation includes a third-country regime allowing some cross-border business (albeit subject to restrictive conditions), while the UK has yet to specify what market access regime will be available to non-UK providers.

WHAT IS THE THIRD-COUNTRY REGIME UNDER THE EU REGULATION?

The new EU Regulation allows non-EU entities to issue and distribute ESG ratings in the EU on the basis of a 'reverse solicitation' exemption or if ratings provided by the non-EU provider are qualified for use in the EU under the equivalence, endorsement or recognition regimes set out in the Regulation. However, it may be difficult for UK and other non-EU providers of ESG ratings to rely on any of these routes:

- **Reverse solicitation.** A non-EU provider of ESG ratings can only rely on the 'reverse solicitation' exemption where the rating is provided at the own exclusive initiative of the EU user without any prior contact, solicitation, promotion, advertisement or any other initiative by the provider (or by any third party on behalf of the provider). In addition, the provider cannot rely on the exemption if the provider's EU market share is substantial, the provider has a website in an EU official language (other than English), an EU authorised provider provides a substitute for the provider's ratings or the non-EU provider provides the EU user with ratings on a recurrent basis.
- **Equivalence.** The Regulation includes a regime allowing non-EU rating providers to provide ESG ratings to EU users if they are authorised under a non-EU regime determined to be equivalent to the EU regime by the European Commission. As already noted, the UK regime may not be in place in time for the Commission to make an equivalence determination in respect of the UK under the new Regulation, even if the Commission has by then changed its policy of not making new equivalence decisions in respect of the UK. The Commission's 2023 impact assessment did not identify any other countries planning to introduce an authorisation regime that might benefit from the equivalence regime under the Regulation.
- **Endorsement.** The Regulation allows an EU authorised rating provider to obtain authorisation by ESMA to endorse ESG ratings provided by a non-EU provider for use in the EU if the ratings fulfil requirements at least as stringent as those in the Regulation and subject to other restrictive conditions. The endorsing entity must be a member of the same group as the non-EU provider and must meet requirements as to minimum EU 'substance' and expertise (meaning that non-EU providers must establish a substantive EU presence and cannot make use of third-party endorsement services). Moreover, there must be an 'objective reason' why the ratings are endorsed for use in the EU (rather than issued by an EU provider). ESMA has adopted a restrictive interpretation of the corresponding condition for endorsement by EU credit rating agencies (CRAs) of ratings

provided by non-EU CRAs under the EU Credit Rating Agencies Regulation (CRAR), although the new Regulation provides a somewhat more helpful list of relevant factors.

- **Recognition.** Where the Commission has not adopted an equivalence decision in relation to a non-EU country, the Regulation allows a non-EU provider from that country to seek recognition by ESMA to provide ESG ratings in the EU. Similar to the corresponding regime under the amended EU Benchmarks Regulation (BMR), a recognised non-EU provider must ensure that the ratings comply with the requirements of the Regulation and must have an EU legal representative which is accountable to ESMA for compliance. However, unlike under the BMR, a non-EU provider can only seek recognition under the new Regulation if its or its group's net annual turnover is below €15 million (the maximum permissible threshold for small companies and groups for the purposes of the EU Accounting Directive).

Therefore, the third-country regime under the Regulation is, in practice, likely to be even more restrictive of the cross-border provision of services than the third-country regimes under the existing CRAR or the recently amended BMR (see Box 3).

The Regulation applies from 2 July 2026, but there is a transitional regime for existing EU and non-EU providers if they apply for authorisation or recognition by 2 November 2026. However, it is unclear how this transitional regime works for existing non-EU providers of ESG ratings seeking to rely on the equivalence or endorsement regime (for example, where their turnover exceeds the maximum turnover permitted for use of the recognition regime).

WHAT HAS THE UK GOVERNMENT SAID ABOUT UK MARKET ACCESS?

HM Treasury's consultation had noted the possibility of introducing a market access framework providing for recognition of appropriate overseas jurisdictions, where those jurisdictions have regulation compatible with the UK regime and there are appropriate cooperation mechanisms.

The government's consultation response indicated that it is still considering the appropriate approach to third country regimes for inclusion in the legislation and exploring other access routes into the UK for overseas providers (as an alternative to full UK authorisation). Its initial review identified three main products and services provided by overseas firms benefitting from existing UK market access arrangements which might be suitable for exclusion as part of the exclusion regulated products and services: credit ratings, benchmarks and overseas funds. However, the government has not stated whether the UK might recognise the regime under the EU Regulation in a way that would allow EU ratings providers authorised under the Regulation to provide ESG ratings to UK persons without authorisation under the UK regime. The draft statutory instrument includes a placeholder for a market access framework covering both equivalence and overseas regimes but does not extend the 'overseas persons exclusion' to cover non-UK rating providers.

The consultation response also indicated that the FCA is considering its approach to overseas ESG ratings providers applying for UK authorisation, including whether to require some ESG rating providers to be incorporated in the UK, based on criteria such as size, significance or market impact in the UK (and the FCA does not normally grant authorisation to non-UK firms unless

they have a branch in the UK). The FCA will consult on any proposals as part of its consultation on the firm-facing rules under the new regime.

WHAT DOES THIS MEAN FOR CROSS-BORDER ACCESS TO RATINGS?

Some firms providing ESG ratings or ratings-adjacent services will focus on the extent to which they can continue existing cross-border business in reliance on exemptions or exclusions from the requirements of the new regimes. However, as indicated above, this may not always be straightforward.

Providers of ESG ratings not able to rely on exemptions and exclusions may face a locational challenge where their ratings are used in both the EU and the UK. The restrictive nature of the third-country regime under the EU Regulation and the uncertainty about the availability of equivalence treatment for the UK under that Regulation may create incentives for rating providers to locate their business in the EU instead of the UK. However, rating providers must await the publication of the final form of the statutory instrument and for the FCA consultation to know whether and if so how ESG ratings produced outside the UK can be provided to UK users otherwise than by a UK authorised entity.

For EU and UK users of ratings, the risk remains that some ESG rating providers based outside the EU or the UK may restrict access to their ratings rather than seeking to qualify their ratings for use in the EU or the UK under the new regimes.

For more information, see our briefing, [ESG ratings and ESG data: Regulation and practical issues in the equity and debt capital markets](#) (July 2024).

BOX 3: SUMMARY COMPARISON OF EU THIRD-COUNTRY REGIMES

	EU ESG Ratings Regulation	EU CRAR	Amended EU BMR
Scope	ESG ratings.	Credit ratings.	<ul style="list-style-type: none"> • Critical and significant benchmarks. • Commodity benchmarks. • EU low-carbon benchmarks.
In-scope users	<ul style="list-style-type: none"> • EU regulated financial undertakings. • EU corporates. • Issuers. • EU institutions, bodies, offices and agencies. • Member State public authorities. 	<ul style="list-style-type: none"> • EU regulated financial undertakings. • Issuers and offerors. 	<ul style="list-style-type: none"> • EU supervised entities. • Issuers and offerors.
Ratings or benchmarks of non-EU providers not qualified in EU			
Prohibition on use by in-scope users?	No.	Yes (use by EU regulated financial undertakings for regulatory purposes).	Yes (specified uses by EU supervised entities in financial instruments, financial contracts or for fund performance measurement).
Prospectus disclosure?	No.	Yes.	Yes.
Non-EU providers			
Required to seek EU qualification of rating or benchmark?	Yes if provider issues and distributes rating by subscription or other contractual relationship to in-scope users.	No.	Yes if: <ul style="list-style-type: none"> • benchmark is 'significant' in EU; or • administrator provides or endorses (or describes benchmark as) an EU low-carbon benchmark.
Reverse solicitation exemption?	Yes if: <ul style="list-style-type: none"> • provider's EU market share is not substantial; • provider's website is not in an EU official language (other than English); 	Not applicable.	No.

	EU ESG Ratings Regulation	EU CRAR	Amended EU BMR
	<ul style="list-style-type: none"> • there is no substitute for provider's ratings; and • there is no recurrent provision of ratings to the EU user. 		
Equivalence regime			
Common conditions	<ul style="list-style-type: none"> • Commission equivalence decision. • Non-EU provider authorised or registered in home country. • Regulatory cooperation agreement. 		
Additional conditions	None.	<ul style="list-style-type: none"> • Only for ratings of non-EU issuers and instruments. • Ratings must not be systemically important in EU. • Certification by ESMA. 	<ul style="list-style-type: none"> • Administrator's consent to use of benchmarks in EU.
Endorsement regime			
Common conditions	<ul style="list-style-type: none"> • Objective reason for endorsement in the EU. • Rating/benchmark fulfils requirements at least as stringent as EU regulation. • Endorsing provider is authorised or registered in EU. • Endorsing provider has necessary expertise (ESG Ratings Regulation and BMR). • Endorsing provider gives information to ESMA on request (ESG Ratings Regulation and CRAR). 		
Additional conditions	<ul style="list-style-type: none"> • ESMA authorises endorsement by EU provider. • Endorsing provider is in same group as non-EU provider. • Endorsing provider meets minimum EU substance conditions. • Endorsement does not impair ratings' quality. • Regulatory cooperation agreement (if non-EU provider is supervised). 	<ul style="list-style-type: none"> • All rating activities performed by endorsing EU CRA (or CRAs in its group). • ESMA has adequate access to information to monitor compliance. • Non-EU CRA authorised or registered in home country. • Non-EU regime does not permit interference in ratings content or methodology. • Regulatory cooperation agreement. 	<ul style="list-style-type: none"> • ESMA authorises endorsement by EU administrator. • Endorsing administrator has well-defined role in benchmark's control framework.

	EU ESG Ratings Regulation	EU CRAR	Amended EU BMR
Recognition regime (not applicable to CRAR)			
Common conditions	<ul style="list-style-type: none">• Non-EU provider complies with EU Regulation.• Legal representative in EU accountable to ESMA.• ESMA's supervision not prevented by non-EU provider's home country rules.• Regulatory cooperation agreement (if non-EU provider supervised).		
Additional conditions	<ul style="list-style-type: none">• No Commission equivalence decision.• Provider is a small company or member of a small group.	N/A.	None.

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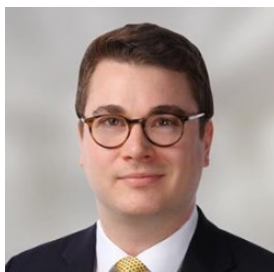
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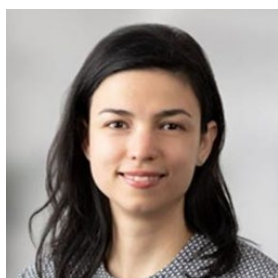
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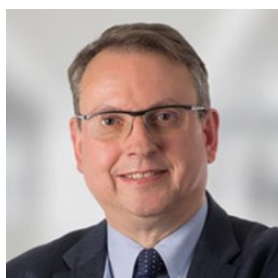
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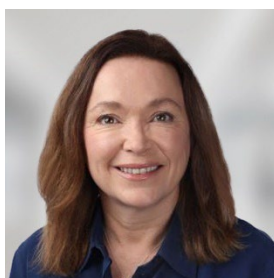
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