

# IRSG

INTERNATIONAL  
REGULATORY  
STRATEGY GROUP



# Feedback statement

Responses to the public consultation on the draft Code of Conduct for ESG Ratings and Data Products Providers

DECEMBER 2023

---



This document provides an overview of the comments the ESG Data and Ratings Working group (DRWG) received during the public consultation on the draft Code of Conduct for Environmental, Social and Governance (“ESG”) ratings and data products providers. Furthermore, it explains the amendments made to the relevant sections of the Code as a result of the public consultation and as agreed by the DRWG.

## Introduction and overview of responses

On 5 July 2023, the DRWG launched a 3-month public consultation on the Draft Code of Conduct for ESG ratings and data products providers. The public consultation ended on 5 October 2023. The DRWG has given due consideration to all the comments received during the consultation period.

This feedback statement presents summaries of the comments received during the public consultation together with the DRWG’s feedback in relation to those comments.

The consultation received 37 responses from a range of stakeholders, including trade associations, ESG data and rating providers, asset managers and rated entities. In the following section, the DRWG has grouped together comments concerning similar or identical issues. As a result of the comments and the DRWG’s assessment of them, the DRWG has made a small number of amendments to the revised Code.

In addition to the DRWG’s “key drivers”(table below), the following criteria were applied regarding responses addressing the scope and Principles of the Code:

- > Has the feedback received already been discussed extensively during DRWG meetings (and will therefore not be considered again)?
- > Has there been extensive feedback on a particular issue that needs to be reflected?
- > Is the feedback received related to an issue that has gained traction since the publication of the IOSCO recommendations<sup>1</sup> in November 2021?

### DRWG key drivers

Reference	Test	How to meet
<b>1. Scope</b>	Market participants should know whether they are in scope.	Clear definitions of Data and Ratings Provider.
<b>2. Requirements</b>	In-scope market participants should know which requirements of the Code apply to them.	Clear list of requirements mapped unambiguously to definitions of Data and Ratings Provider.
<b>3. Clarity</b>	The Code should bring clarity to areas of current ambiguity.	Clear exposition and structure.
<b>4. Standards</b>	The recommendations should improve market standards and function.	Credible standards, clearly articulated, meeting known problem areas.
<b>5. Interoperability</b>	In-scope market participants should face minimal friction/duplication in adopting the recommendations.	Consistency with scope / definitions / recommendations in other jurisdictions and IOSCO. No unintentional “gold plating”.

<sup>1</sup> Nov 2021 - <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf>

## Consultation feedback and DRWG responses

### 1. Responses to consultation questions

Issue	Feedback	DRWG response	Amendment
<p><b>Consultation question 1:</b></p> <p><i>How would the proposed scope of this Code of Conduct interact with initiatives related to ESG ratings and data products in other jurisdictions, such as existing or proposals for regulation or Codes of Conduct? Are there any particular issues that you think might limit its international interoperability with other similar initiatives?</i></p>	<p>The majority of respondents were very positive and felt that the voluntary nature of the Code should prevent conflicts between the Code and initiatives in other jurisdictions.</p>	<p>No action required.</p>	<p>No amendment.</p>
<p><b>Consultation question 2:</b></p> <p><i>Taking into account the Code of Conduct's degree of alignment with IOSCO recommendations and the consideration it gives to other international approaches (such as Japan's and Singapore's), do you think the Code of Conduct could and/or should serve as a global baseline for ESG ratings and data products providers?</i></p>	<p>The majority of respondents saw the possibility for the voluntary Code of Conduct to serve as a baseline that can be implemented by ratings and data products providers operating across various jurisdictions and for their respective regulatory authorities.</p>	<p>No action required.</p> <p>The meetings of the DRWG have regularly observed by regulators from various global jurisdictions.</p>	<p>No amendment.</p>
<p><b>Consultation question 3:</b></p> <p><i>Noting the distinction drawn between ESG ratings and data products, is the Code of Conduct sufficiently clear on how its Principles specifically apply to ratings products and/or data products?</i></p>	<p>Respondents suggested to consider including ESG data products providers into the scope of Principle 4 on Transparency, and specifically to actions 4.7-4.16. Respondents argued that transparency of methodologies is fundamental to addressing and improving the functioning of this market, and therefore, needs to encompass products beyond ESG ratings.</p>	<p>The DRWG introduced a reference to data products providers in Principle 4, action 4.7 and clarified that actions outlined in [4.7 to 4.16] may have differential relevance and application across the range of ESG ratings and data products.</p>	<p>Amendment made.</p>
<p><b>Consultation question 4:</b></p> <p><i>Some stakeholders have encouraged there to be an explicit statement as to whether a methodology incorporates forward looking information, such as transition plans. We would welcome views on the proposal to include an action encouraging such disclosure.</i></p>	<p>The majority of respondents agreed that the Code should include a recommended action for explicit statements on forward looking information. As global jurisdictions are planning to move towards net zero economy, and particularly due to the increased focus on transition plans, greater transparency in relation to forward looking statements would be welcomed.</p>	<p>The DRWG revised Principle 4 on Transparency and introduced “forward-looking” and “transition plans” as examples to action 4.13 (F)</p>	<p>Amendment made.</p>

Issue	Feedback	DRWG response	Amendment
-------	----------	---------------	-----------

## 2. General comments on the draft Code of Conduct

<b>Ownership</b>	Several respondents stressed that for the Code to become globally recognised and firmly established, the governance and administration of the Code needs to be clear and taken on from the outset by a sufficiently independent body. This body should provide visibility of adherence to the Code to mark the consistency of adoption across the industry.	The DRWG clarified that the International Capital Market Association (“ICMA”) will take on ownership of the Code and will publish and maintain a list of providers that have signed up to adhere to the Code on their website.	Amendment made.
<b>Adherence</b>	Respondents asked for more clarity around adherence and several respondents queried whether guidance is needed on where this statement should be produced (e.g. annual report, company website).	ICMA will provide guidance related to adherence on its <a href="#">website</a>	No amendment.
<b>Scope</b>	The majority of respondents considered that the DRWG has struck the right balance in creating a Code with broad enough applicability without diluting its purpose. There was broad support for the provisions under ‘Target Scope and Application’ and ‘Negative Scope’ and the majority of respondents thought both provisions were clear and reasonable.	No action required.	No amendment.
<b>Impact on smaller providers</b>	Respondents highlighted the disproportionate impact on smaller providers and suggested some form of a proportionate approach to smaller ratings providers in order to continue to promote effective competition and drive innovative approaches.	The DRWG recommends that this may be addressed in forthcoming regulation in various jurisdictions.	No amendment.
<b>Inclusion of Second Party Opinions (SPOs)</b>	Respondents questioned the inclusion of Second Party Opinions- (SPOs) within the scope and the divergence in the proposed Code from the IOSCO recommendations with regard to SPOs and emerging EU regulation where SPOs are excluded.	The DRWG revised the section on Terminology regarding SPOs to further clarify that it is up to providers to determine whether to include SPOs within the scope in their annual statement [4.8].	Amendment made.
<b>More explicit exclusion (inclusion in negative scope) of activities that are already regulated</b>	There was broad support from respondents to include in negative scope activities which are already covered by authorisation and/or regulatory requirements under existing regulation (e.g., in the case of asset managers or benchmark providers).	The DRWG revised the section on Negative Scope [4.10] to clarify that the Code is intended to introduce Principles and actions in respect of the provision of ESG ratings and data products. It is not intended to overlay upon existing regulated activities where formal rules and guidance already exist.	Amendment made.

Issue	Feedback	DRWG response	Amendment
-------	----------	---------------	-----------

### 3. Comments on the Principles

#### Principle 2 on Securing Quality (Systems and Controls)

<b>Inclusion of quality check mechanisms</b>	Respondents suggested to incorporate a provision on quality-check mechanisms in Principle 2 in accordance with the guidelines on page 22 of the International Organization of Security Commissions (“IOSCO”) final report “Environmental, Social and Governance (ESG) Ratings and Data Products Providers”. <sup>2</sup>	The DRWG introduced a provision on quality check mechanisms in Principle 2, action 2.11 (D) which is aligned with the wording in the final IOSCO report.	Amendment made.
--	--	--	-----------------

#### Principle 4 on Transparency

<b>Relevance and Application of principle 4 for ESG ratings and data products</b>	Respondents suggested to consider including ESG data products providers into the scope of Principle 4, and specifically to Actions 7 to 16.	The DRWG clarified that the actions outlined in Principle 4, actions 4.7-4.16 may have differential relevance and application across the range of ESG ratings and data products.	Amendment made.
<b>Measurement objective of ESG Rating</b>	Respondents asked to provide clarity on whether the purpose of 4.5 (B) is on risk or impact and/or 4.8 (A) “the measurement objective of the ESG rating” includes a certain approach to materiality.	In alignment with IOSCO’s final report, the DRWG introduced a reference to ‘including its measurement objective’ in Principle 4, action 4.5 (B).	Amendment made.

#### Principle 6 on Engagement (Systems and Controls)

<b>Response time from providers</b>	Respondents suggested for rated entities and users to be able to bring factual errors to the attention of the rating provider and for rating providers to have responsibility to correct identified errors in a timely manner and draw attention to the error where a rating has been reviewed.	The DRWG clarified in Principle 6, action 6.10 to allow not just the covered entity but also users to draw attention to any factual errors or omissions in the ESG rating or ESG data product.	Amendment made.
-------------------------------------	---	--	-----------------

<sup>2</sup> Nov 2021 - <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf>