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European Union

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2021/0191 (COD)**

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#### **INFORMATION NOTE**

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council on European green bonds - Letter to the Chair of the European Parliament Committee on Economic and Monetary Affairs

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Following the Permanent Representatives' Committee meeting of 10 May 2023 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency has sent the attached letter, together with its Annexes, to the Chair of the European Parliament Committee on Economic and Monetary Affairs.



Ms Irene TINAGLI  
Chair of the Committee on Economic and Monetary Affairs  
European Parliament  
Rue Wiertz 60  
B-1047 Brussels

Brussels,

11 0. 05. 2023

Subject: European Green Bonds Regulation (EuGB) - 2021/0191 (COD)

Dear Ms TINAGLI,

Following the informal negotiations between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,

Lars DANIELSSON  
Chair of the Permanent Representatives  
Committee

Copy: Ms Mairéad McGUINNESS, Commissioner  
Mr Paul TANG, European Parliament Rapporteur

In line with the provisional agreement reached between the co-legislators on 28 February 2023, the following statements will be entered in the Council minutes at the moment of the final adoption of the Regulation on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and sustainability-linked bonds:

**Council statement**

“Given the need to prevent greenwashing in the bond market, to avoid arbitrage among different categories of non-equity securities, and in the absence of a harmonised disclosure regime for bonds, derivatives, and other non-equity securities that are advertised as taking into account ESG-factors or pursuing ESG objectives, the Council affirms its intention to examine thoroughly the Commission’s proposal for a requirement to provide information on ESG matters in the Prospectus for non-equity securities in the context of the negotiations on the Listing Act.”

**Commission statement**

“The Commission confirms its intention to treat any potential mandates to develop standardised annexes for the disclosure of Environmental, Social and Governance (ESG)-related information in the EU Prospectus with swiftness, taking into account the experience with the voluntary guidelines prepared for green bonds in the European Green Bond Regulation.”

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and sustainability-linked bonds**

(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,

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<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (-1) The European Parliament asked for an opinion<sup>2</sup> of the European Central Bank which was delivered on 5 November 2021.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJC27, 19.1.2022

- (1) The transition to a climate-neutral, sustainable, energy and resource-efficient, circular and fair economy is key to ensuring the long-term competitiveness of the economy of the Union and the well-being of its peoples. The Paris Agreement adopted under the United Nations Framework Convention on Climate Change (the ‘Paris Agreement’) was approved by the Union on 5 October 2016<sup>3</sup>. Article 2(1), point (c), of the Paris Agreement sets out the objective of strengthening the response to climate change by, among other means, making finance flows consistent with the Union’s target of climate-neutrality by 2050 and climate-resilient development.
- (2) In its communication of 14 January 2020 titled ‘Sustainable Europe Investment Plan. European Green Deal Investment Plan’<sup>4</sup>, the Commission envisaged the establishment of a standard for environmentally sustainable bonds to further increase investment opportunities and facilitate the identification of environmentally sustainable investments through a clear label. In its conclusions of 11 December 2020<sup>5</sup>, the European Council invited the Commission to put forward a legislative proposal for a green bond standard. In its resolution of 29 May 2018 on sustainable finance<sup>6</sup> and of 13 November 2020 on the Sustainable Europe Investment Plan — How to finance the Green Deal<sup>7</sup>, the European Parliament underlined the need for a European green bond standard.
- (3) Environmentally sustainable bonds are one of the main instruments for financing investments related to green technologies, energy and resource efficiency as well as sustainable transport infrastructure and research infrastructure. Financial and non-financial undertakings as well as sovereigns can issue such bonds. The various existing initiatives for environmentally sustainable bonds do not contain common definitions of environmentally sustainable economic activities. This prevents investors from easily identifying bonds the proceeds of which are aligned with, or are contributing to environmental objectives as laid down in the Paris Agreement.

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<sup>3</sup> Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1 ).

<sup>4</sup> COM(2020) 21 final.

<sup>5</sup> EUCO 22/20.

<sup>6</sup> OJ C 76, 9.3.2020, p. 23.

<sup>7</sup> OJ C 415, 13.10.2021, p. 22.

- (3a) The European Central Bank (ECB) adopted, on 8 July 2021, a climate roadmap in order to further incorporate climate change considerations into its monetary policy framework and its operations in the areas of disclosure, risk assessment, collateral framework, and corporate sector asset purchases. This Regulation can be useful in that regard.
- (4) Diverging rules on the disclosure of information, on the transparency and accountability of external reviewers of environmentally sustainable bonds, and on the eligibility criteria for environmentally sustainable projects, impede the ability of investors to identify, trust, and compare environmentally sustainable bonds, and the ability of issuers to use environmentally sustainable bonds to transition their activities towards more environmentally sustainable business models.
- (5) In ensuring alignment with the objectives of the Paris agreement, and given existing divergences and the absence of common rules, it is likely that Member States will adopt diverging measures and approaches, which will have a direct negative impact on, and create obstacles to, the proper functioning of the internal market, and be detrimental to issuers of environmentally sustainable bonds. The parallel development of market practices based on commercially driven priorities that produce divergent results may cause market fragmentation and risks further exacerbating inefficiencies in the functioning of the internal market. Divergent standards and market practices make it difficult to compare different bonds, create uneven market conditions for issuers, cause additional barriers within the internal market, and increase the risk of greenwashing and distorting investment decisions.

- (6) The lack of harmonised rules for the procedures used by external reviewers for reviewing environmentally sustainable bonds and the diverging definitions of environmentally sustainable activities make it increasingly difficult for investors to effectively compare bonds across the Union with respect to their environmental objectives. The market for environmentally sustainable bonds is inherently international, with market participants trading bonds and making use of external review services from third-party providers across borders. Action at Union level could reduce the risk of fragmentation of the internal market for environmentally sustainable bonds and bond-related external review services, and ensure the application of Regulation (EU) 2020/852 of the European Parliament and of the Council<sup>8</sup> in the market for such bonds.
- (7) A uniform set of specific requirements should therefore be laid down for bonds issued by financial and non-financial undertakings and sovereigns that decide to use on a voluntary basis the designation ‘European green bond’ or ‘EuGB’ for such bonds. Specifying quality requirements for European green bonds in the form of a Regulation should ensure that there are uniform conditions for the issuance of such bonds by preventing diverging national requirements that could result from the transposition of a Directive, and should also ensure that those conditions are directly applicable to issuers of such bonds. Issuers that voluntarily use the designation ‘European green bond’ or ‘EuGB’ should follow the same rules across the Union in order to increase market efficiency by reducing discrepancies and thereby also reducing the costs of assessing those bonds for investors. To facilitate comparison and address greenwashing, optional sustainability disclosure requirements are provided for bonds marketed as environmentally sustainable and sustainability-linked bonds.

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<sup>8</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

- (7a) In the bond market, sustainability-linked bonds include any type of bond instrument for which the financial and/or structural characteristics can vary depending on whether the issuer achieves predefined sustainability/ environmental, social and governance (ESG) objectives. Since this Regulation only covers environmental sustainability, the definition is adjusted to reflect the narrower scope of this Regulation, so that the only sustainability-linked bonds included are those whose financial or structural characteristics vary depending on whether the issuer achieves predefined environmental sustainability objectives.
- (7b) Regulation (EU) 2020/852 distinguishes, within environmentally sustainable activities, transitional activities and enabling activities that qualify as environmentally sustainable under certain conditions. The distinction between these categories of economic activities should also be made in the disclosures relating to European Green Bonds as well as bonds marketed as environmentally sustainable and sustainability-linked bonds, with specific transparency requirements for nuclear energy and fossil gas related activities, in the event that those activities are covered by Commission Delegated Regulation (EU) 2022/1214.
- (8) In accordance with Article 4 of Regulation (EU) 2020/852, and in order to provide investors with clear, quantitative, detailed and common definitions, the requirements set out in Article 3 of that Regulation should be used to determine whether an economic activity qualifies as environmentally sustainable. Proceeds of bonds that use the designation ‘European green bond’ or ‘EuGB’ should be allocated to economic activities that either are environmentally sustainable and are thus aligned with the environmental objectives set out in Article 9 of Regulation (EU) 2020/852, or contribute to the transformation of activities so that they can meet those requirements and thereby become environmentally sustainable. Issuers should in any case allocate all proceeds of their European Green Bonds before the maturity of each bond. Issuers should be allowed to deduct costs directly linked to the issuance of the bonds. It should however be possible to use those bonds to finance such environmentally sustainable activities both directly through the financing of assets and expenditures that relate to economic activities that meet the criteria set out in Article 3 of Regulation (EU) 2020/852, and indirectly, under certain conditions, through financial assets that finance economic activities that meet those requirements. It is therefore necessary to specify the categories of expenditures and assets that can be financed with the proceeds of European Green Bonds.



- (9) The proceeds of European Green Bonds should be used to finance economic activities that have a lasting positive impact on the environment. Such lasting positive impact can be attained in several ways. Since fixed assets are long-term assets, a first way is to use the proceeds of such bonds to finance fixed tangible or fixed intangible assets that are not financial assets, provided that those fixed assets relate to economic activities that meet the taxonomy requirements. Since financial assets can be used to finance economic activities with a lasting positive impact on the environment, a second way is to use those proceeds to finance financial assets, created no later than five years after the issuance of the bond, provided that the proceeds from those or subsequent financial assets are allocated to economic activities that meet the taxonomy requirements. Financial assets may be allocated to a maximum of three subsequent financial assets in a row and issuers should guarantee the possibility of external reviewers to effectively review the final allocation of proceeds. Since the assets of households can also have a long-term positive impact on the environment, a third way is to use those proceeds to finance the assets and expenditures of households. Since capital expenditure and selected operating expenditure can be used to acquire, upgrade, or maintain fixed assets, a fourth way is to use the proceeds of such bonds to finance capital and operating expenditures that relate to economic activities that meet the taxonomy requirements or that will meet those requirements within a reasonably short period from the issuance of the bond concerned, provided that the issuer published a CapEx plan in accordance with Annex I to Commission Delegated Regulation (EU) 2021/2178<sup>9</sup>. Finally, issuers may allocate proceeds from a portfolio of one or more outstanding European Green Bonds to a portfolio of fixed assets or financial assets, provided that they demonstrate in allocation reports that the total value of fixed assets or of financial assets in their portfolio exceeds the total value of their portfolio of outstanding bonds.

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<sup>9</sup> Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (OJ L 443, 10.12.2021, p. 9).

- (9a) For certain economic activities for which there are no technical screening criteria under Regulation (EU) 2020/852 that have entered into force or for certain activities in the context of international support that contribute to the environmental objectives of the Taxonomy Regulation, a limited degree of flexibility should be provided. Such flexibility should be appropriately limited in size and scope in order to maintain a very high level of ambition for European Green Bonds. Still, the issuer should demonstrate that the activities contribute substantially to one or more of the environmental objectives, that they do not significantly harm any of the environmental objectives and that they are carried out in compliance with the minimum safeguards. This demonstration should be included in the European green bond factsheet and thus validated by an external reviewer via a positive opinion in the pre-issuance review.
- (9b) To facilitate the issuance of European Green Bonds by smaller issuers, the requirements to allocate the proceeds of European Green Bonds to environmentally sustainable economic activities should apply only to the net proceeds of such bonds. The net proceeds comprise the difference between the total bond proceeds and the direct issuance costs of the bond, which include the costs of financial intermediaries leading the issuance, advisory costs, legal costs, rating costs and the costs related to the external review. Issuers of European green bonds may decide to allocate the gross proceeds, without deduction of costs, to environmentally sustainable economic activities.
- (9c) This Regulation is without prejudice to the requirements of Delegated Regulation (EU) 2021/2178.
- (10) EU and third-country sovereigns are frequent issuers of bonds marketed as environmentally sustainable and should therefore also be allowed to issue ‘European Green Bonds’. EU and third-country sovereigns are allowed to issue European Green Bonds to finance public assets or expenditures that meet or are expected to meet the taxonomy requirements within a reasonably short period from the issuance of the bond concerned, such as tax relief, subsidies, intermediate consumption, current transfers within a general government and current international cooperation.

(11) Article 4 of Regulation (EU) 2020/852 requires Member States and the Union to apply the taxonomy requirements to determine whether an economic activity qualifies as environmentally sustainable for the purposes of any measure setting out requirements for financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable. It is therefore logical that the technical screening criteria referred to in Article 3, point (d), of Regulation (EU) 2020/852 should determine which fixed assets, expenditures and financial assets may be financed with the proceeds of European Green Bonds. In view of the expected technological progress in the field of environmental sustainability, the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 are likely to be reviewed and amended over time. Regardless of such changes, in order to provide legal certainty to issuers and investors and prevent amendments to the technical screening criteria from having a negative impact on the price of European Green Bonds that have already been issued, issuers should be able to apply the technical screening criteria applicable at the moment of issuance of the relevant bond when allocating the proceeds of such bond to eligible fixed assets or expenditures. Where the relevant technical screening criteria are amended, the issuer should ensure that unallocated proceeds and proceeds covered by a CapEx plan that have not yet met the taxonomy requirements, comply with the amended technical screening criteria within seven years. If the issuer foresees that an economic activity funded by bond proceeds is at risk of not complying with the amended technical screening criteria within seven years, it should be allowed to publish a plan for how to align the economic activity to the amended technical screening criteria and to mitigate the negative consequences, to the extent possible. This plan should be published before the end of the grandfathering period and be reviewed by an external reviewer, in order for the bond to remain in compliance with this Regulation.

Under the portfolio approach, issuers should include in their portfolio only those assets aligned with any technical screening criteria applicable at some point during the seven years prior to the time of publication of the allocation report. Thus, if any asset financed by a European Green Bond does not align with the amended technical screening criteria, it can continue to be part of the pool of financed assets for at most seven years.

- (12) The time needed to transform an asset to align the economic activity to which it relates with the taxonomy requirements should be in line with timelines provided in the Commission Delegated Regulation (EU) 2021/2178<sup>10</sup>. For that reason, at the time of adoption of this act, eligible capital expenditure should relate to economic activities that meet or are expected to meet the taxonomy requirements within five years from the issuance of the bond, unless a longer period of up to ten years is justified by the specific features of the economic activities and investments concerned. The issuer should include a summary of its CapEx plan in its prospectus, as well as report on the progress made in the implementation of its plan in the annual allocation reports. At the end of the timeline announced in its CapEx plan, the issuer should obtain an assessment from an external reviewer about the taxonomy-alignment of the expenditures financed by the bond.
- (12a) Third-country jurisdictions included in Annex I of the EU list of non-cooperative jurisdictions for tax purposes or high-risk countries listed in the Delegated Act adopted pursuant to Article 9(2) of Directive (EU) 2015/849, and issuers located in these jurisdictions or countries, should not be authorised to use the European Green Bond designation.
- (12c) Union institutions and bodies should adhere to Union standards in the pursuit of sustainability objectives, including those defined by Regulation (EU) 2020/852. The co-legislators encourage the use of the European green bond standard for the issuance of use of proceeds bonds that have environmental sustainability as their objective. The co-legislators welcome that the European Investment Bank, as a leading global issuer of green bonds, remains committed to gradually align its green bond programme with the European green bond standard.

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<sup>10</sup> Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (OJ L 443, 10.12.2021, p. 9).

- (13) Investors should be provided with all the information that is necessary to evaluate the use of proceeds of European Green Bonds, and to compare such bonds with each other. For that purpose, specific and standardised disclosure requirements need to be set out which provide transparency about how the issuer intends to allocate the proceeds of the bonds to eligible fixed assets, expenditures and financial assets and how those proceeds have actually been allocated. Such transparency can best be achieved by means of European Green Bond factsheets and annual allocation reports. To strengthen the comparability of European Green Bonds and to facilitate the localisation of relevant information, it is necessary to lay down templates for the disclosure of such information.
- (13a) The lack of common and standardised European disclosure templates for issuers of environmentally sustainable bonds or sustainability-linked bonds makes it difficult for investors in such bonds to easily and reliably locate the information they need, and to compare and aggregate data on these bonds. In particular, the lack of a common methodology for issuers to report the alignment of bond proceeds with the Taxonomy according to the requirements of Regulation (EU) 2020/852 creates administrative difficulties and uncertainty for bond investors that report according to Regulation (EU) 2019/2088. For this reason, the Union should create public disclosure templates that issuers of such bonds can voluntarily choose to complete and publish alongside their other disclosure documentation. These templates should contain information on the allocation of bond proceeds to Taxonomy-aligned activities, while clearly identifying the share of proceeds allocated to gas and nuclear energy. The templates should be developed by the Commission by means of a communication for pre-issuance disclosures which can serve as inspiration for any future sustainability-related disclosures under Union legislation, and a delegated act for periodic disclosures. These disclosures should be consistent with the relevant sections of the European Green Bond factsheet and European Green Bond allocation report set out in Annexes I and II of this Regulation, respectively.

- (14) Investors should benefit from cost-effective access to reliable information about European Green Bonds. Issuers of European Green Bonds should therefore contract an independent external reviewer to provide a pre-issuance review of the European Green Bond factsheet, and a post-issuance review of the European Green Bond annual allocation reports.
- (16a) When providing their services under this Regulation, external reviewers should be allowed to use random sampling techniques in line with best market practices for assurance services when assessing the Taxonomy-alignment of multiple projects, if justified by the complexity, scale and practical unfeasibility of a full assessment of the underlying activities. The random sampling should allow external reviewers to be confident that such projects, including those financed through tax incentives and subsidies, are executed in line with the information provided in the Annexes to this Regulation. Such techniques should be performed by taking into account data privacy measures in order to ensure a high level of protection of personal and other sensitive data that is not relevant for the purposes of the external review.
- (16b) In the course of providing their services under this Regulation, external reviewers should give an independent opinion on whether the issuer has aligned with the Taxonomy criteria. When assessing the alignment with quantitative criteria, they should verify that any forward-looking estimations are based on reasonable assumptions, without giving guarantees on outcomes. When assessing the alignment with qualitative criteria, they should verify the existence of appropriate processes and due diligence systems designed to assess, mitigate and remedy risks and issues that may arise in relation to these criteria.

- (17) Certain undertakings that have a portfolio of one or several European Green Bonds on the liability side of a balance sheet may not be able to identify, for each European Green Bond issue, the distinct assets in their balance sheet to which the proceeds of that bond have been allocated. Undertakings should in such cases be allowed to disclose the allocation of the aggregate proceeds of their portfolio of European Green Bonds to a portfolio of environmentally sustainable assets on the undertaking's balance sheet. Those undertakings should then demonstrate in annual allocation reports that the related environmentally sustainable assets comply with applicable technical screening criteria. In order to ensure that all proceeds of European Green Bonds are allocated to environmentally sustainable economic activities, the undertakings should also demonstrate that the value of those environmentally sustainable assets exceeds or equals the value of European Green Bonds that have not yet matured. When issuers use the portfolio approach, the requirement that bond proceeds can only be allocated to those financial assets that are created earlier than five years after bond issuance should not apply. To ensure that the information provided remains complete and up to date, an external reviewer should review the annual allocation reports each year, except when there is no change in allocation in the portfolio of assets. That external reviewer should in particular focus on those assets that were not in the previous annual allocation report.
- (18) To improve transparency, issuers should also disclose the environmental impact of their bonds by publishing, at least once during the lifetime of the bond and after the full allocation of the proceeds of such bonds, an impact report. In order to provide investors with all the relevant information to assess the environmental impact of European green bonds, impact reports should clearly specify the metrics, methodologies and assumptions applied in the assessment of the environmental impact. To strengthen the comparability of European green bonds and to facilitate the localisation of relevant information, it is necessary to lay down templates for the disclosure of such information. To ensure the accuracy of impact reports and to protect investors from greenwashing, issuers may contract an independent external reviewer to provide an impact report review.

- (18a) European Green Bonds, bonds marketed as environmentally sustainable and sustainability-linked bonds can support companies in financing their transition to become sustainable. Issuers of those bonds that are subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU<sup>11</sup>, should therefore have a transition plan in place pursuant to those provisions, and indicate how their bond contributes to the funding and implementing of such plans. Such non-financial information should be disclosed in European Green Bond factsheet and annual allocation report, or, where applicable in the optional pre-issuance and post-issuance periodic disclosure templates. In addition, the issuers of European Green Bonds and the issuers that have decided to use the templates for pre-issuance and post-issuance periodic disclosure, should provide information on how and to what extent the issuance of the bond increases its proportion of entity-level taxonomy alignment, as required to be disclosed under Article 8 of Regulation (EU) 2020/852. This can, for example, be expressed as a percentage point increase in taxonomy-aligned turnover to be achieved using the proceeds of the bond.
- (19) State auditors are statutory entities with responsibility for and expertise in the supervision of public spending, and have legally guaranteed independence. Sovereigns that issue European Green Bonds should therefore be allowed to make use of such state auditors for the purposes of reviewing the allocation of bond proceeds, in complement to the external reviewers who should remain responsible to assess the taxonomy-alignment of the economic activities financed by the bond. Such state auditors should not be registered or supervised under this Regulation.
- (19a) The designation ‘European Green Bond’ can only be used by issuers that publish a prospectus in accordance with Regulation (EU) 2017/1129, with the exception of bonds covered by Article 1(2), points (b) and (d) of Regulation (EU) 2017/1129, which do not require a prospectus. That Regulation includes liability provisions.

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<sup>11</sup> 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).



- (20) To ensure the efficiency of the market for European Green Bonds, issuers should publish on their websites details about the European Green Bonds they issue. To ensure the reliability of information and investor confidence, they shall also publish the pre-issuance review, any post-issuance reviews, as well as, if applicable, any impact report reviews, the CapEx plan and a link to the prospectus. Those publications should be accessible, with clearly displayed dates of publication that allow the user to identify the changes from one review to another. The information contained in these documents should be drawn up in one of the official languages of the home Member State where the bond is offered to the public or admitted to trading, or, alternatively, in a language customary in the sphere of international finance. At the time of adoption of this Regulation, the English language was the language customary in the sphere of international finance but this can evolve in the future.
- (20a) In traditional securitisation transactions, the issuer of the bonds is a securitisation special purpose entity, or ‘SSPE’, that is legally separate from the originator. In turn, the originator is the entity that uses the proceeds of the bonds to allocate financing for economic activities. A European Green Bond securitisation market where all of the underlying exposures should be taxonomy-aligned would face considerable growth constraints in the current situation of scarcity of such taxonomy-aligned assets fit for securitisation. Therefore, applying the use-of-proceeds requirement to the securitisation originator, instead of the SSPEs, is an efficient and pragmatic approach in the transition phase, until the EU economy has generated adequate volume of taxonomy-aligned assets. This is also in line with the EBA recommendations<sup>12</sup>. To ensure enforceability, the responsibility of the originator with respect to the future use of proceeds should be clearly stated in the prospectus.

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<sup>12</sup> EBA REPORT DEVELOPING A FRAMEWORK FOR SUSTAINABLE SECURITISATION EBA/REP/2022/06

- (20b) Specific disclosure and exclusion requirements should apply to securitisations labelled ‘EUGB’ in order to enhance the confidence of investors and ensure that they are fully informed about the green characteristics of the transaction. Sufficient transparency should be assured for investors with different preferences on the green characteristics of the underlying pool of assets. Safeguards are necessary to avoid that the selection of assets to be securitised by the originator would include exposures financing the exploration, mining, extraction, production, processing, storage, refining or distribution of fossil fuels as defined in Regulation (EU) 2018/1999. However, the exclusion requirements should take into account the predominant purpose of the securitised exposures and should not capture exposures where the link with fossil fuel activities is only marginal or incidental, such as a commercial building with a gas storage-tank. In addition, the exclusion requirements should not be based solely on the use of fossil fuels, like in the case of car loans or residential loans. Furthermore, the originator should disclose information about taxonomy-eligibility, taxonomy-alignment and compliance with the DNSH objectives of the activities financed by the securitised exposures. Such disclosure should be on the best effort basis and to the best of the originator’s ability, using available data such as data gathered in the originator’s internal database or IT system. Originators are invited to make this information available also via the repositories registered with ESMA in accordance with Article 10 of the Securitisation Regulation (Regulation (EU) 2017/2402).
- (20c) Effective supervision by competent authorities is necessary in order to check the compliance with the specific requirements applicable to originators and to SSPE. Article 29(5) of Regulation (EU) 2017/2402 designates competent authorities responsible for supervising the compliance of securitisation transactions with the ‘STS’ or ‘simple, transparent and standardised’ designation, which includes also specific disclosure and exclusion requirements. In light of the experience these competent authorities have obtained with reviewing securitisation transactions, it is appropriate that they supervise the compliance of the originator with the requirements envisaged in this Regulation. However, given that both originators and SSPEs are involved in a securitisation, the competent authorities of both the originator and the SSPE should be entrusted with corresponding supervisory powers foreseen in this Regulation, and should cooperate to ensure effective and adequate supervision.

- (20d) Competent authorities should supervise issuers of bonds marketed as environmentally sustainable and sustainability-linked bonds who decide to use the common templates for post-issuance periodic disclosures, to ensure that all the elements contained in those templates are correctly published. In case those issuers are failing to comply with its obligations under this Regulation, competent authorities should make public this fact.
- (20e) The Commission has put forward a proposal to establish a European Single Access Point [footnote reference to COM proposal] providing centralised electronic access to a range of information to be made available to the public. Information about European green bonds will be of value to investors and to other financial market participants, as well as the general public. Therefore, the disclosure documents referred to in this Regulation, including the European green bond factsheet, the allocation report, the impact report, and, where applicable, the CapEx plan, as well as the reviews carried out by external reviewers should be publicly and freely available. ESAP could be an appropriate mechanism to achieve this objective.
- (21) To improve transparency on how external reviewers reach their conclusions, to ensure that external reviewers have adequate qualifications, professional experience, and independence, and to reduce the risk of potential conflicts of interests, and thus to ensure adequate investor protection, issuers of European green bonds should only make use of external reviewers, including from third-countries, that have been registered and are subject to ongoing supervision by the European Securities and Markets Authority (ESMA).
- (22) To strengthen transparency towards investors on how the alignment of bond proceeds with the taxonomy requirements is assessed, external reviewers should disclose to users of pre-issuance, post-issuance and, if applicable, impact report reviews the methodologies and key assumptions they use in their external review activities in sufficient detail, whilst taking due account of the protection of proprietary data and intellectual property.

- (23) External reviewers should have in place arrangements for their own sound corporate governance to ensure that their pre- and post-issuance reviews are independent, objective and of good quality. The senior management of external reviewers should therefore have sufficient expertise in financial services and environmental matters and ensure that a sufficient number of employees with the necessary knowledge and experience perform the external review. For the same reason, the compliance function should be able to report its findings to either a supervisory organ or an administrative organ.
- (24) To ensure their independence and safeguard high standards of transparency and ethical conduct, external reviewers should comply with organisational requirements and rules of conduct to mitigate and avoid situations of actual or potential conflict of interest or manage those conflicts adequately when they are unavoidable. External reviewers should not be entitled to conduct an external review in the case of a conflict of interest that cannot be properly addressed. External reviewers should therefore disclose any conflicts of interest in a transparent manner in the reviews. They should also keep records of all significant threats to their independence, to that of their employees, main shareholders or any other persons involved in the external review process. They should also keep records of the safeguards applied to mitigate those threats.
- (24a) External reviewers should assess and document whether there is a potential or actual conflict of interest with a client. This could include situations where there are significant personal or financial links between the external reviewer and the reviewed entity.
- (24b) Regulation (EU) No 537/2014 prohibits the provision of non-audit services in particular as regards services linked to the financing, capital structure and allocation, and investment strategy of the audited entity, except for assurance services in relation to the financial statements. The provision of external reviews as provided for by this Regulation should be without prejudice to Regulation (EU) No 537/2014.

- (25) It is necessary to avoid divergent application of this Regulation by competent authorities. At the same time, it is necessary to lower transaction and operational costs of external reviewers, to strengthen investor confidence and to increase legal certainty. It is therefore appropriate to give ESMA general competence for the registration and ongoing supervision of external reviewers in the Union. Entrusting ESMA with the exclusive responsibility for those matters should ensure a level playing field in terms of registration requirements and ongoing supervision and eliminate the risk of regulatory arbitrage across Member States. At the same time, such exclusive responsibility should optimise the allocation of supervisory resources at Union level, thus making ESMA the centre of expertise and enhancing the efficiency of supervision.
- (26) 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 external reviewers, persons involved in external review activities, related third parties, third parties to whom the external reviewers have outsourced operational functions and persons otherwise closely and substantially related or connected to external reviewers or external review activities.
- (27) To enable ESMA to perform its supervisory tasks, and in particular to compel external reviewers to put an end to an infringement, to supply complete and correct information or to comply with an investigation or an on-site inspection, ESMA should be able to impose penalties or periodic penalty payments.
- (28) Issuers of European Green Bonds may need to engage the services of third-country external reviewers. It is therefore necessary to lay down a third-country regime for external reviewers on the basis of an equivalence assessment, recognition or endorsement under which third-country external reviewers may provide external review services.
- (29) In order to facilitate access for third-country external reviewers in the absence of an equivalence decision, it is necessary to lay down a process for the recognition by ESMA of external reviewers located in a third country.

- (30) In order to facilitate the provision of services by third-country external reviewers to issuers of European Green Bonds, an endorsement regime should be laid down, allowing, under certain conditions, registered external reviewers located in the Union to endorse services provided by a third country external reviewer. An external reviewer that has endorsed services provided by a third-country external reviewer should be fully responsible for such endorsed services and for ensuring that such third-country external reviewer complies with the requirements laid down in this Regulation.
- (31) In accordance with Article 290 TFEU, power should be delegated to the Commission to specify the procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the 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 which shall be proportionate to the turnover, and the manner in which those fees are to be paid. The power to adopt acts in accordance with Article 290 TFEU should also be delegated to the Commission to supplement this Regulation by establishing the content, methodologies and presentation of the information to be disclosed in the templates for optional periodic post-issuance disclosures. 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 Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>13</sup>. 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.
- (32) As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the development of draft regulatory and implementing technical standards that do not involve policy choices for submission to the Commission.

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<sup>13</sup> OJ L 123, 12.5.2016, p. 1.

- (33) ESMA should be mandated to develop draft regulatory technical standards to further specify the criteria on which it can assess an application for registration by an external reviewer, including the management of conflicts of interest, and the provision of information by that external reviewer to determine its level of compliance with the requirements of this Regulation.
- (34) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>14</sup>.
- (35) ESMA should be mandated to develop draft implementing technical standards to specify the standard forms, templates and procedures for the provision of the information for the registration of external reviewers. The Commission should be empowered to adopt those implementing technical standards by means of an implementing act pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>15</sup>.
- (36) In order to encourage external reviewers to provide their services to the issuers of European green bonds as of the entry into application of this Regulation, this Regulation sets out a transitional regime for the first 18 months following the entry into application of this Regulation.

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<sup>14</sup> 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 the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>15</sup> 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).

- (36a) The application of this Regulation should be reviewed by the Commission five years after its entry into force, and every three years thereafter, on the basis of the input from the Platform on Sustainable Finance and ESMA, where relevant. Three years after the entry into force of this Regulation, the Commission should also produce a report assessing the need to regulate sustainability-linked bonds. By the end of 2024 and every three years thereafter, the Commission should additionally produce a report on the review of the technical screening criteria as foreseen in Article 19(5), subparagraph 3, of Regulation (EU) 2020/852.
- (36b) To ensure that issuers of European green bonds for which a prospectus is required pursuant to Regulation (EU) 2017/1129 comply with the disclosure requirements set out in this Regulation, competent authorities of the home Member State, designated in accordance with Article 36 of this Regulation, should have the necessary supervisory and investigatory powers. The supervisory powers of the competent authorities may be exercised before or after the issuance of the relevant European green bonds. Competent authorities should not be required, under the supervisory powers granted by this Regulation, to verify the truthfulness or accuracy of the information that issuers are required to provide under this Regulation, nor that the obligations regarding the allocation of proceeds have been complied with.
- (36c) Since this Regulation creates a framework that allows for the designation of government debt as environmentally sustainable, financial undertakings should disclose their exposure to environmentally sustainable government debt within their green asset ratio as provided for in Delegated Regulation (EU) 2021/2178. The review foreseen by 30 June 2024 of Delegated Regulation (EU) 2021/2178 in accordance with Article 9(1), point (a), of that Delegated Regulation, should assess the inclusion of sovereign exposures in the numerator and denominator of key performance indicators.



- (36d) In order to facilitate the provision of services by external reviewers while ensuring that ESMA has the appropriate time to develop the framework for registration and supervision of external reviewers, a transitional period should apply during the first 18 months after the entry into application of this Regulation. During this transitional period, external reviewers may provide services after having notified ESMA and make their best efforts to comply with their requirements under this Regulation. Third country external reviewers should, in addition, ensure that they have legal representative located in the Union during this transitional period. ESMA shall monitor whether external reviewers comply with their requirements under this Regulation and take this into account when assessing whether the external reviewer has fulfilled the requirements for registration.
- (37) This Regulation aims to ensure that uniform requirements apply to the use of the designation of ‘European Green Bond’ or ‘EuGB’. The Regulation also aims to establish a simple registration system and supervisory framework for external reviewers by entrusting a single supervisory authority with the registration and supervision of external reviewers in the Union. This Regulation also establishes supervision of issuers of European Green Bonds for which a prospectus is required pursuant to Regulation (EU) 2017/1129. In addition, it provides for optional pre-issuance and post-issuance disclosures for bonds marketed as environmentally sustainable and sustainability-linked bonds to improve transparency and facilitate the comparability of those bonds. All aims should facilitate capital raising for projects that pursue environmentally sustainable objectives, while contributing to the integrity of the market. Since those objectives cannot be sufficiently achieved by the Member States but can 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.

HAVE ADOPTED THIS REGULATION:

## Title I

### Subject matter and definitions

#### Article 1

##### Subject matter

This Regulation lays down uniform requirements for issuers of bonds that wish to use the designation ‘European Green Bond’ or ‘EuGB’ for their bonds made available to investors in the Union, provides optional sustainability disclosure requirements for bonds marketed as environmentally sustainable and sustainability-linked bonds in the Union, and establishes a registration system and supervisory framework for external reviewers of European Green Bonds.

#### Article 2

##### Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘issuer’ means any entity that issues bonds;
- (3) ‘sovereign’ means an entity referred to in Article 1(2), point (b) of Regulation (EU) 2017/1129 of the European Parliament and of the Council<sup>16</sup>;
- (4) ‘taxonomy requirements’ means the criteria set out in Article 3 of Regulation (EU) 2020/852;

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<sup>16</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168 30.6.2017, p. 12).

- (5) ‘regulated market’ means a regulated market as defined in Article 4(1), point (21), of Directive 2014/65/EU of the European Parliament and of the Council<sup>17</sup>.
- (5a) ‘bond marketed as environmentally sustainable’ means a bond whose issuer provides investors with a commitment or any form of pre-contractual claim that the bond proceeds are allocated to economic activities that contribute to an environmental objective;
- (5a) ‘offer to the public’ means offer of securities to the public as defined in Article 2, point (d), of Regulation (EU) 2017/1129;
- (5b) ‘home Member State’ means a home Member State as defined in Article 2, point (m), of Regulation (EU) 2017/1129;
- (5c) ‘host Member State’ means a host Member State as defined in Article 2, point (n), of Regulation (EU) 2017/1129;
- (5d) ‘sustainability-linked bond’ means a bond whose financial or structural characteristics vary depending on the achievement by the issuer of predefined environmental sustainability objectives;
- (5h) ‘financial assets’ means debt or equity, or a combination thereof;
- (5g) ‘made available to investors in the Union’ means:
- (a) any offer to the public within the Union, whether such offer is or is not exempted from the obligation to establish a prospectus pursuant to Regulation (EU) 2017/1129; or
  - (b) the admission to trading of the bonds on a trading venue located in the Union.

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<sup>17</sup> 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).

- (5h) ‘CapEx Plan’ means a CapEx plan as provided for in Annex I, point 1.1.2.2, point (b), and point 1.1.3.2, point (b), to Commission Delegated Regulation (EU) 2021/2178;<sup>18</sup>;
- (5q) ‘issuance costs’ means costs that are directly related to the issuance of bonds, including costs incurred for advice, legal counsel, rating, external review, underwriting and placement;
- (5s) ‘trading venue’ means a trading venue as defined in Article 4(1), point (24) of Directive 2014/65/EU.
- (5u) ‘technical screening criteria’ means the technical screening criteria set out in the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852;
- (5v) ‘transitional economic activity’ means an economic activity that complies with the requirements laid down in Article 10(2) of Regulation (EU) 2020/852;
- (5w) ‘enabling economic activity’ means an economic activity that complies with the requirements laid down in Article 16 of Regulation (EU) 2020/852;
- (5x) ‘securitisation’ means a securitisation as defined in Article 2(1) of Regulation (EU) 2017/2402 of the European Parliament and of the Council;
- (5y) ‘originator’ means an originator as defined in Article 2(3) of Regulation (EU) 2017/2402;
- (5z) ‘securitisation special purpose entity’ or ‘SSPE’ means a securitisation special purpose entity as defined in Article 2(2) of Regulation (EU) 2017/2402;
- (5aa) ‘securitised exposure’ means an exposure included in a securitisation;

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<sup>18</sup> Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (OJ L 443, 10.12.2021, p. 9).

- (5ab) ‘securitisation bond’ is a bond issued by an SSPE in accordance with Chapter IIa of this Regulation;
- (5ac) ‘synthetic securitisation’ means a synthetic securitisation as defined in Article 2, point (10), of Regulation (EU) No 2017/2402;
- (5ad) ‘fossil fuels’ mean fossil fuels as defined in Article 2, point (62), of Regulation (EU) 2018/1999 of the European Parliament and of the Council.

## Title II

Conditions for the use of the designation ‘European green bond’ or ‘EuGB’

### Chapter I

Bond-related requirements

#### Article 3

Designation ‘European green bond’ or ‘EuGB’

The designation ‘European green bond’ or ‘EuGB’ shall be used only for bonds that comply with the requirements set out in this Title.

## Article 4

### Use of the proceeds of European green bonds

1. Before the maturity of a European green bond, the proceeds of that bond, shall be only and fully allocated according to the taxonomy requirements to the following, or a combination thereof:
  - (a) fixed assets that are not financial assets;
  - (b) capital expenditures that fall under 1.1.2.2. in Annex I to Commission Delegated Regulation (EU) 2021/2178;
  - (c) operating expenditures, that fall under point 1.1.3.2. in Annex I to Commission Delegated Regulation (EU) 2021/2178, that were incurred more recently than three years prior to the issuance of the European green bond;
  - (d) financial assets, on the condition that those assets were created no later than five years after the issuance of the European green bond;
  - (da) assets and expenditures of households;

Before allocating proceeds in accordance with paragraph 1, issuers may deduce issuance costs.

- 1a. By way of derogation from paragraph 1, issuers may allocate proceeds from a portfolio of one or more outstanding European green bonds to a portfolio of fixed assets or financial assets according to the taxonomy requirements.

Where issuers allocate proceeds in accordance with the first subparagraph, they shall demonstrate in allocation reports as referred to in Article 9 that the total value of fixed assets or of financial assets in their portfolio exceeds the total value of their portfolio of outstanding European green bonds.

2. By way of derogation from paragraph 1, a sovereign and a third-country issuer which is a state, a member of a federation in the case of a federal state, or a regional or municipal entity, may also allocate the proceeds of European green bonds it has issued to tax relief, subsidies, intermediate consumption, current transfers within a general government, current international cooperation, or other types of public expenditure, provided that the proceeds are allocated according to the taxonomy requirements.

#### Article 4a

##### Flexibility in the use of the proceeds of European green bonds

1. By way of derogation from paragraph 1 of Article 4, issuers may allocate up to 15% of the proceeds of a European green bond to economic activities that comply with the taxonomy requirements, with the exception of the technical screening criteria, where those proceeds are allocated to any of the following activities:
  - (a) economic activities for which no technical screening criteria have entered into force by the date of issuance of the European green bond;
  - (b) activities in the context of international support reported in accordance with internationally agreed guidelines, criteria and reporting cycles, including climate finance reported to the EU and United Nations Framework Convention on Climate Change (UNFCCC) as referred to in Article 19(3) of Regulation (EU) 2018/1999, and official development assistance (ODA) reported to the OECD Development Assistance Committee (DAC).
2. Where the issuer makes use of the provisions in paragraph 1, it shall describe in the European green bond factsheet the activities concerned and the estimated percentage of the proceeds intended to finance such activities as a total and on a per-activity basis.

3. Where the issuer allocates proceeds to the activities mentioned in point (a) of paragraph 1, it shall comply where applicable with the generic criteria for Do No Significant Harm set out in Appendices A, B, C, and D to Annex I to Delegated Regulation (EU) 2021/2139.
4. Where the issuer makes use of the provisions in paragraph 1 to allocate proceeds to the activities mentioned in point (b) of paragraph 1, those activities shall comply with the relevant technical screening criteria on a best effort basis.

## Article 5

### Financial assets

2. The proceeds of financial assets shall only be allocated to the uses set out in Article 4(1), or, where applicable, to the uses set out in Article 4(1a) and Article 4(2).
3. By way of derogation from paragraph 2, the proceeds of financial assets may be allocated to other subsequent financial assets, provided that:
  - (a) there are not more than three subsequent financial assets in a row;
  - (b) that the proceeds from the financial assets last in the row are allocated to the uses set out in Article 4(1), points (a) to (c) and point (da), or, where applicable, to the uses set out in Article 4(2); and
  - (c) that the issuer guarantees the possibility of external reviewers to effectively review the final allocation of proceeds.



## Article 6

### CapEx plans

1. Where the use of proceeds referred to in points (b) and (c) of Article 4(1) relate to economic activities that will meet the taxonomy requirements, the issuer shall publish a CapEx plan. In this case, the following shall apply:
  - (b) The CapEx plan shall specify a deadline by which all the capital and operating expenditures funded by the European green bond shall be taxonomy-aligned, and which shall be set before the European green bond reaches maturity;
  - (c) The issuer shall obtain an assessment from an external reviewer about the taxonomy-alignment of capital and operating expenditures that are included in that CapEx plan and funded by the proceeds of that European green bond. The assessment shall be provided by the external reviewer within 60 days after the deadline referred to in point (b).
  - (d) Where the issuer is publishing a prospectus in accordance with Regulation (EU) 2017/1129, that prospectus shall include a summary of the capex plan. That summary shall list those projects carried out by the issuer that are the most significant, measured as a share of the total capital expenditure covered by the issuer's capex plan, and specify their type, sector, location, and expected finalisation year.

## Article 7

### Application of the technical screening criteria and grandfathering

1. Where issuers allocate bond proceeds to the uses set out in Article 4, they shall ensure that:
  - (a) bond proceeds are allocated in alignment with the technical screening criteria applicable at the time when the bond is issued;
  - (b) where technical screening criteria are amended after the issuance of the bond, the following proceeds [are/be] allocated in alignment with the amended technical screening criteria seven years after their entry into application:
    - (i) proceeds that are not yet allocated, and
    - (ii) proceeds that are covered by a CapEx plan in accordance with Article 6 and that have not yet met the Taxonomy requirements.
2. By derogation from paragraph 1, where issuers allocate proceeds in accordance with the portfolio approach set out in Article 4 (1a), issuers shall include in their portfolio only those fixed assets and financial assets where the underlying economic activity is aligned with any technical screening criteria which were applicable at some point during the seven years prior to the time of publication of the allocation report.
3. Where the proceeds of an outstanding bond are at risk of not being aligned with the technical screening criteria pursuant to paragraph 1(b)(ii), the issuer shall draw up, submit to external review by an external reviewer, and publish a plan for aligning to the extent possible with the amended technical screening criteria, and for mitigating to the extent possible the negative consequences of the lack of full alignment with the amended technical screening criteria.

The issuer shall publish this plan before the time period set out in paragraph 1(b) expires.
4. Alignment with the relevant technical screening criteria shall be demonstrated in the allocation report referred to in Article 9.

## Article 7a

### Exclusion of non-cooperative jurisdictions for tax purposes

1. Competent authorities referred to in Article 36(1) shall not approve a prospectus issued by a jurisdiction mentioned in Annex I to the Council conclusions on the revised EU list on non-cooperative jurisdictions for tax purposes or identified as a high-risk country listed in the Delegated Act adopted pursuant to Article 9(2) of Directive (EU) 2015/849, nor from issuers located in these countries or jurisdictions, where that prospectus refers to this Regulation or to the designation ‘European Green Bond’ or ‘EuGB’.

## Chapter II

### Transparency and external review requirements

## Article 8

### European green bond factsheet and pre-issuance review of the European green bond factsheet

1. Prior to issuing a European green bond, issuers shall:
  - (a) complete the European green bond factsheet laid down in Annex I;
  - (b) ensure that the completed European green bond factsheet has been subject to a pre-issuance review with a positive opinion by an external reviewer.
2. A European green bond factsheet may relate to one or several European green bond issuances.

3. The pre-issuance review of the factsheet referred to in paragraph 1, point (b), shall contain:
  - (a) an assessment of whether the completed European Green Bond factsheet complies with Articles 4 to 7 and Annex I; and
  - (b) the elements set out in Annex IV.

## Article 9

### Allocation reports and post-issuance review of allocation reports

1. For every 12-month period until the date of full allocation of the proceeds of their European green bond, and, where applicable, until the completion of the CapEx plan, issuers of European green bonds shall draw up a European green bond allocation report using the template laid down in Annex II, demonstrating that the proceeds of the European green bond, from its issuance date and until the end of the period referred to in the report, have been allocated in accordance with Articles 4 to 7.

The date on which the first period begins shall be the issuance date.

By way of derogation from the first subparagraph, the issuers may set the end date of the first reporting period to the last day of the calendar year or of the financial year of issuance.
- 1a. The allocation report shall contain, where applicable, information on the progress made in the implementation of the CapEx plan. The issuers shall publish an explanation in the annual allocation report if there is a delay or departure that significantly impacts the implementation of the CapEx plan.
2. A European green bond allocation report may relate to one or several issuances of European green bonds.

3. Issuers of European green bonds shall obtain a post-issuance review by an external reviewer of the allocation report drawn up after the full allocation of the proceeds of the European green bond in accordance with Articles 4 to 7.
4. Where, following the publication of the allocation report in accordance with Article 13(1), point (c), the allocation of proceeds is corrected, issuers of European green bonds concerned shall, without undue delay, amend the allocation report and obtain a post-issuance review by an external reviewer of that amended allocation report.
5. By way of derogation from paragraph 3, every allocation report from issuers that allocate proceeds of a portfolio of one or several European green bonds to a portfolio of assets shall be subject to a post-issuance review by an external reviewer. The external reviewer shall pay particular attention to those assets that were not included in any previously published allocation report.

The post-issuance review referred to in the first subparagraph shall not be required where, during the period covered by the allocation report, no change in allocation was made to the portfolio of assets and no asset in the portfolio was changed or itself subject to a change in allocation, compared to the period covered by the previous allocation report. In such cases, a statement regarding the absence of post-issuance review due to absence of these changes shall be included in the corresponding allocation report.

6. Issuers of European green bonds shall ensure that the annual allocation reports and, where applicable the post-issuance review(s), required under this Article are made public within 270 days following the end of each annual period specified in paragraph 1. Within this timeframe, issuers shall ensure that the external reviewer has at least 90 days to review an allocation report.

7. The post-issuance review referred to in paragraphs 3, 4, and 5 shall contain all of the following:
- (a) an assessment of whether the issuer has allocated the proceeds of the bond in accordance with Articles 4 to 7, based on the information provided to the external reviewer;
  - (b) an assessment of whether the issuer has allocated the proceeds as set out in the green bond factsheet, based on the information provided to the external reviewer;
  - (c) the elements set out in Annex IV.

## Article 10

### European green bond impact report

1. Issuers of European green bonds shall, after the full allocation of the proceeds of such bonds, and at least once during the lifetime of the bond, draw up and make public a European green bond impact report on the environmental impact of the use of the bond proceeds by using the template laid down in Annex III.
2. A single impact report may cover several issuances of European green bonds.
- 2b. Issuers of European green bonds may obtain a review by an external reviewer of the impact report. That impact report review shall contain all of the following:
  - (a) an assessment of whether the bond issuance aligns with the broader environmental strategy of the issuer;
  - (b) an assessment of the indicated environmental impact of the bond proceeds;
  - (c) the elements set out in Annex IV.

## Article 11

### Sovereigns as issuer

A sovereign shall obtain post-issuance reviews of European green bonds from:

- (a) an external reviewer, or
- (b) an external reviewer and a state auditor, whereby the state auditor shall review the allocation of bond proceeds and the external reviewer shall ascertain the compliance of economic activities funded through the bond with taxonomy requirements.

## Article 12

### Prospectus for European green bonds

1. The designation ‘European green bond’ or ‘EuGB’ shall only be used for bonds for which the issuer has published a prospectus in accordance with Regulation (EU) 2017/1129, provided that the following conditions are met:
  - (a) the bonds are designated as European green bonds or EuGB throughout the prospectus;
  - (b) the prospectus states that the European green bonds are issued in accordance with this Regulation, in the section of the prospectus containing the information about the use of proceeds pursuant to Regulation (EU) 2017/1129.
- 1a. By way of derogation from paragraph 1, the designation ‘European green bond’ or ‘EuGB’ may be used for bonds covered by Article 1(2), points (b) and (d) of Regulation (EU) 2017/1129, when those bonds are issued without a prospectus pursuant to that Regulation.
2. For the purposes of Article 19(1), point (c), of Regulation (EU) 2017/1129, ‘regulated information’ shall include the information contained in the European green bond factsheet referred to in Article 8(1), point (a) of this Regulation.

## Article 13

### Publication on the issuer's website and notification to ESMA and competent authorities

1. Issuers of European green bonds shall publish on their websites and make available, free of charge, and, under the conditions provided for in Article 21(3) and (4) of Regulation (EU) 2017/1129, until at least 12 months after the maturity of the bonds concerned, all of the following:
  - (a) the completed European green bond factsheet referred to in Article 8, before the issuance of the bond;
  - (b) the pre-issuance review related to the European green bond factsheet referred to in Article 8, before the issuance of the bond;
  - (c) the European green bond annual allocation reports referred to in Article 9, without undue delay after they are drawn up in accordance with Article 9(1);
  - (ca) where applicable, the CapEx plan referred to in Article 6;
  - (d) the post-issuance reviews of the European green bond allocation reports referred to in Article 9, without undue delay after it is obtained;
  - (e) the European green bond impact report referred to in Article 10, without undue delay after it is drawn up in accordance with Article 10;



(ea) where applicable, the impact report review of the European green bond impact report referred to in Article 10;

(eb) if a prospectus is published pursuant to Regulation (EU) 2017/1129, a link to the website where the prospectus can be consulted, before the issuance of the bond;

and, in each case, any amendments or corrections to those documents.

By way of derogation from point (c), where a post-issuance review takes place, a European green bond allocation report may be published at the same time as the post-issuance review in accordance with point (d).

2. The information contained in the documents referred to in paragraph 1, points (a), (c), and (e), shall be provided, at the choice of the issuer, either in a language customary in the sphere of international finance, or in the following language:

(a) where the European green bonds are offered to the public or are admitted to trading in only one Member State, in a language accepted by the competent authority of that Member State;

(b) where the European green bonds are offered to the public or are admitted to trading in two or more Member States, in a language accepted by the competent authority of each of those Member States;

3. By way of derogation from paragraph 2, where a prospectus for the European green bond is to be published in accordance with Regulation (EU) 2017/1129, the information contained in the documents referred to in paragraph 1, points (a), (c) and (e), shall be provided in the language or languages of that prospectus.

4. Issuers shall, where applicable, notify the competent authority referred to in Article 36, paragraphs 1 and 3, of the publication of each of the documents referred to in paragraph 1 of this Article without undue delay following each publication.

5. Issuers of European green bonds shall notify ESMA of the publication of all the documents referred to in paragraph 1 within 30 days.

## Chapter IIa

### Conditions for a securitisation bond to use the designation 'European green bond' or 'EuGB'

#### Article 13a

##### Use of a European green bond in the case of securitisation

1. In the case of securitisation bonds designated 'European green bond' or 'EuGB', references to the term issuer in this Regulation shall be construed as references to the originator.
2. By way of derogation from paragraph 1, references to the term issuer in Articles 7a, 13, 37(1) and 40 shall be construed as references to the originator or the SSPE and references to the term issuer in Article 12 and Article 36(1) shall be construed as references to the SSPE.
3. References to the proceeds of the bond in Article 4 shall be construed as references to the proceeds obtained by the originator from selling the securitised assets to the SSPE.
4. Where the securitised exposures are created by multiple originators, the following shall apply:
  - (a) the requirements for the use of proceeds set out in Articles 4 to 7 shall be fulfilled by each originator on a pro rata basis, with reference to their share in the pool of the securitised exposures;

- (b) the requirements set out in Articles 8, 9, 10, 13, 13c and 13d shall be fulfilled by all originators jointly, clearly indicating how each originator has complied with its respective requirements;
- (c) the requirements to obtain external review set out in Articles 8 and 9 shall be fulfilled by all originators jointly. Where multiple originators decide to obtain external review referred to in Article 10(2b), they shall all comply with the requirements thereof jointly.

#### Article 13b

Securitisation bonds that shall not use the European green bond or EuGB designation

Bonds issued for the purpose of synthetic securitisation shall not be eligible to use the designation 'European green bond' or 'EuGB'.

#### Article 13c

##### Exclusions for securitised exposures

1. The securitised exposures shall not comprise exposures financing the exploration, mining, extraction, production, processing, storage, refining or distribution, including transportation, and trade of fossil fuels.
2. The securitised exposures financing electricity generation from fossil fuels, co-generation of heat/cool and power from fossil fuels, or production of heat/cool from fossil fuels, where the activity meets the Do No Significant Harm criteria referred to in Annex II to the Commission Delegated Regulation (EU) 2021/2139, may be included in the pool of securitised exposures.

3. The originator shall include a description of how paragraph 1 has been complied with in the European green bond factsheet as referred to in Article 8.
4. Upon request from the competent authority as referred to in Article 36 of this Regulation, the originator shall demonstrate that the requirements in paragraph 1 have been fulfilled.

#### Article 13d

##### Additional disclosure requirements in cases of securitisation

1. The prospectus published pursuant to Regulation (EU) 2017/1129 shall include a statement that the bond is a securitisation bond and that the responsibility for fulfilling the commitments undertaken in the prospectus regarding the use of proceeds falls on the originator.
2. In order provide transparency about the green characteristics of the securitised exposures, the prospectus shall also include the following:
  - (a) the share of securitised exposures in the pool of securitised exposures, that finance economic activities which are taxonomy eligible activities according to Delegated Regulation (EU) 2021/2178;
  - (b) per relevant economic activity listed in the Annex of Delegated Regulation (EU) 2021/2139, in the pool of taxonomy eligible exposures referred to in point a, the share of taxonomy aligned securitised exposures and,
  - (c) where available, per relevant economic activity listed in the Annex of Delegated Regulation (EU) 2021/2139, in the pool of taxonomy eligible exposures referred to in point a, the share of securitised exposures, that fail to meet the Do Not Significantly Harm objectives as referred to in Article 3, point (b) of Regulation (EU) 2020/852.

3. The information provided in accordance with paragraph 2 shall be provided on a best effort basis and to the best of the originator's ability, based on available data.
4. The information provided in accordance with paragraph 2 shall be included in the European green bond factsheet as referred to in Article 8 and, on the basis of yearly updates to be carried out by the originator, in the European green bond allocation report as referred to in Article 9.

## Title IIa

### Optional disclosures for bonds marketed as environmentally sustainable and sustainability-linked bonds

#### Article 13g

##### Guidelines for pre-issuance disclosures for issuers of bonds marketed as environmentally sustainable or sustainability-linked bonds

1. The Commission shall publish guidelines with a view to establishing voluntary templates for pre-issuance disclosures for issuers of bonds marketed as environmentally sustainable and sustainability-linked bonds.
2. These templates shall include information on whether the issuer intends to use an external reviewer and the common template for periodic disclosures as outlined in Article 13h.

3. For issuers of bonds marketed as environmentally sustainable, those templates shall include, in addition to the information under paragraph 2, at least the following elements, which shall reflect the issuer's intent based on available data at the time of bond issuance:
  - (a) where the issuer is subject to an obligation to publish plans pursuant to Article 19a(2)(a)(iii) or, where applicable, Article 29a(2)(a)(iii) of Directive 2013/34/EU, or where the issuer voluntarily published such plans, how bond proceeds are intended to contribute to achieving those plans;
  - (b) where the issuer is subject to Article 8 of Regulation (EU) 2020/852, how bond proceeds are expected to contribute to the issuer's taxonomy-aligned turnover, capital expenditure and operating expenditure;
  - (c) the minimum proportion of bond proceeds to be used on activities that are environmentally sustainable under Article 3 of Regulation (EU) 2020/852.
4. For issuers of sustainability-linked bonds, those templates shall include in addition to the information under paragraph 2, at least the following elements, which shall reflect the issuer's intent based on available data at the time of bond issuance:
  - (a) the rationale, level of ambition, materiality, and calculation methodology of the key performance indicators set by the issuer;
  - (b) where the issuer is subject to an obligation to publish plans pursuant to Article 19a(2)(a)(iii) or, where applicable, Article 29a(2)(a)(iii) of Directive 2013/34/EU, or where the issuer voluntarily published such plans, how the bond is intended to contribute to achieving those plans;
  - (c) where relevant, how the bond is linked to the issuer's taxonomy-aligned turnover, capital expenditure and operating expenditure by applying Delegated Regulation (EU) 2021/2178;
  - (d) a description of the bond structure, including the coupon adjustment mechanism.
5. The Commission shall publish the guidelines by [12 months after entry into force of this Regulation].

## Article 13h

### Common templates for periodic post-issuance disclosures for issuers of bonds marketed as environmentally sustainable or sustainability-linked bonds

1. Issuers of bonds marketed as environmentally sustainable and sustainability-linked bonds may disclose periodic post-issuance information in accordance with the common templates.

Where an issuer discloses periodic post-issuance information in accordance with the first subparagraph, Article 36 shall apply for the duration of their issuance.

2. For issuers of bonds marketed as environmentally sustainable, those templates shall include at least the following elements:
  - (a) where the issuer is subject to an obligation to publish plans pursuant to Article 19a(2)(a)(iii) or, where applicable, Article 29a(2)(a)(iii) of Directive 2013/34/EU, or where the issuer voluntarily published such plans, how bond proceeds contribute to achieving those plans;
  - (b) where the issuer is subject to Article 8 of Regulation (EU) 2020/852, how bond proceeds contribute to the issuer's taxonomy-aligned turnover, capital expenditure and operating expenditure;
  - (c) the minimum proportion of bond proceeds that are used on activities that are environmentally sustainable under Article 3 of Regulation (EU) 2020/852.

3. For issuers of sustainability-linked bonds, those templates shall include at least the following elements:
- (a) the rationale, level of ambition, materiality, and calculation methodology of the key performance indicators set by the issuer;
  - (b) where the issuer is subject to an obligation to publish plans pursuant to Article 19a(2)(a)(iii) or, where applicable, Article 29a(2)(a)(iii) of Directive 2013/34/EU, or where the issuer voluntarily published such plans, how the bond is intended to contribute to achieving those plans;
  - (c) where relevant, how the bond is linked to the issuer's taxonomy-aligned turnover, capital expenditure and operating expenditure by applying Delegated Regulation (EU) 2021/2178;
  - (d) a description of the bond structure, including the coupon adjustment mechanism.
4. The Commission shall adopt delegated acts to supplement this Regulation by establishing the content, methodologies and presentation of the information to be disclosed in the templates referred to in paragraphs 2 and 3 of this Article.

When drafting the delegated act, the Commission shall take into account the information on environmental, social, and governmental aspects that is required to be disclosed under other relevant legal frameworks, including Regulation 2017/1129, in order to avoid overlapping disclosures for issuers.

When drafting the delegated act, the Commission shall also consider the information needs of financial market participants subject to the disclosure requirements of Regulation 2019/2088.

5. The Commission shall adopt that delegated act by [12 months after entry into force of this Regulation].



## Title III

### External reviewers for European Green Bonds

#### Chapter I

#### Conditions for external review of European green bonds

#### Article 14

##### Registration

1. External reviewers for European green bonds shall, before taking up their activities, register with ESMA.
2. External reviewers registered with ESMA shall meet the conditions for registration laid down in Article 15(2) at all times.
3. State auditors shall not be subject to Titles III and IV of this Regulation.

## Article 15

### Application for registration as an external reviewer for European Green Bonds

1. An application for registration as an external reviewer for European green bonds 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;
  - (c) the legal status of the applicant;
  - (d) the ownership structure of the applicant;
  - (e) the identity of the members of the senior management and the board of the applicant with their curriculum vitae showing at least 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 gained prior to and while working for the applicant in the provision of external review or similar services;
  - (g) a description of the procedures and methodologies implemented by the applicant to issue reviews;
  - (h) the corporate governance arrangements and the policies or procedures implemented by the applicant to identify, eliminate or manage, and disclose in a transparent manner any actual or potential conflicts of interests as referred to in Article 27;

- (i) where applicable, documents and information related to any existing or planned outsourcing arrangements for activities of the external reviewer covered by this Regulation, including information on entities assuming outsourcing functions;
  - (j) where applicable, information about other activities carried out by the applicant.
2. ESMA shall only register an applicant as an external reviewer where all of the following conditions are met:
- (a) the senior management and the members of the board of the applicant:
    - (i) are of sufficiently good repute;
    - (ii) are sufficiently skilled to ensure that the applicant can perform the tasks required of external reviewers pursuant to this Regulation;
    - (iii) have sufficient professional qualifications;
    - (iv) have relevant experience in activities such as: quality assurance, quality control, the performance of pre, post-issuance and impact report reviews, the provision of second party alignment opinions or financial services;
  - (b) the number of analysts, employees and other persons directly involved in assessment activities, and their level of experience and training, are sufficient to perform the tasks required from external reviewers pursuant to this Regulation;
  - (c) the internal arrangements implemented to ensure compliance with the requirements of Chapter II of this Section are appropriate and effective;

When assessing the conditions set out in the first subparagraph, ESMA may take account of whether the applicant, where it has provided services pursuant to Articles 62 and 63, made its best efforts to comply with the requirements in Articles 16 to 30. For that purpose, ESMA shall have the power to require the applicant to provide it with the necessary information.

3. ESMA shall assess whether the application is complete within 20 working days after its receipt.

Where the application is not complete, ESMA shall notify the applicant thereof and set a deadline by which the applicant is to provide additional information. ESMA shall assess whether the application is complete within 20 working days after the receipt of that additional information.

Where the application is complete, ESMA shall notify the applicant thereof.

4. ESMA shall register or refuse to register an applicant within 45 working days after receipt of the complete application.

ESMA may extend the period referred to in the first subparagraph by 15 working days where the applicant intends to use outsourcing to perform activities as an external reviewer.

ESMA shall notify an applicant in writing of his or her registration as an external reviewer, or of its refusal to register an applicant. The decision to register or the refusal to register shall provide reasons and take effect on the fifth working day following its adoption.

5. ESMA shall develop draft regulatory technical standards specifying the criteria referred to in paragraph 2, points (a) and (b).

ESMA shall submit those draft regulatory technical standards to the Commission by ...  
[PO: Please insert date 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ESMA shall develop draft implementing technical standards to specify the standard forms, templates and procedures for the provision of the information referred to in paragraph 1.

When developing the draft implementing technical standards, ESMA shall take into account digital means of registration.

ESMA shall submit those draft implementing technical standards to the Commission by ... [PO: Please insert date 12 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

## Article 16

### Material changes relevant for the registration

1. An external reviewer shall notify ESMA of any material changes in the information provided in accordance with Article 15(1) before such changes are implemented.

Where ESMA objects to such material changes, it shall inform the external reviewer within 45 working days of the notification of those changes and shall state the reasons for the rejection. The changes referred to in the first sub-paragraph shall not be implemented if ESMA objects within that period.

2. ESMA shall develop draft implementing technical standards to specify the standard forms, templates and procedures for the provision of the information referred to in paragraph 1.

When developing the draft implementing technical standards ESMA shall take into account digital means of registration.

ESMA shall submit those draft implementing technical standards to the Commission by ...  
[PO: Please insert date 24 months after the date of entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

## Article 17

### Language regime

An external reviewer shall submit the application for registration referred to in Article 15 in any of the official languages of the institutions of the Union. Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community<sup>19</sup> shall apply mutatis mutandis to any other communication between ESMA and the external reviewers and their staff.

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<sup>19</sup> OJ 17, 6.10.1958, p. 385/58.

## Chapter II

### Organisational requirements, processes and documents concerning governance

#### Article 18

##### General principles

1. External reviewers shall employ appropriate systems, resources and procedures to comply with their obligations under this Regulation.
2. External reviewers shall monitor and evaluate the adequacy and effectiveness of their systems, resources and procedures established in accordance with this Regulation at least annually and take appropriate measures to address any deficiencies.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to assess the appropriateness, adequacy, and effectiveness of the systems, resources, and procedures of external reviewers referred to in paragraphs 1 and 2.

ESMA shall submit those draft regulatory technical standards to the Commission by ...  
[PO: Please insert date 24 months after the date of entry into force].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## Article 19

### Senior management

1. The senior management and the members of the board of the external reviewer shall ensure or oversee all of the following:
  - (a) the sound and prudent management of the external reviewer;
  - (b) the independence of assessment activities;
  - (c) that any actual or potential conflicts of interest are properly identified, eliminated or managed, and disclosed in a transparent manner;
  - (d) that the external reviewer complies with the requirements of this Regulation at all times.
  
2. ESMA shall develop draft regulatory technical standards specifying the criteria to assess the sound and prudent management of the external reviewer referred to in paragraph 1, point (a) and the management of conflicts of interest referred to in paragraph 1, point (c).

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 12 months after the date of entry into force].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.



## Article 20

### Analysts and employees of external reviewers, and other persons directly involved in the assessment activities of external reviewers

1. External reviewers shall ensure that their analysts and employees, and any other natural person whose services are placed at their disposal or under their control and who are directly involved in assessment activities, have the necessary knowledge and experience for the duties assigned.
2. External reviewers 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 assessed entity, related third party or any person directly or indirectly linked to the assessed entity by control.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to assess the appropriateness of the knowledge and experience of the persons referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by ...  
[PO: Please insert date 12 months after the date of entry into force].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## Article 21

### Compliance function

1. External reviewers shall establish and maintain a permanent, independent and effective compliance function for the activities performed under this Regulation.
2. External reviewers shall ensure that the compliance function:
  - (a) has the means to discharge its responsibilities properly and independently;
  - (b) has the necessary resources and expertise and access to all relevant information;
  - (c) does not monitor or assess its own activities; and
  - (d) is not compensated in relation to the business performance of the external reviewer.
3. The findings of the compliance function shall be made available to either a supervisory organ or, where applicable, an administrative organ of the external reviewer.
4. ESMA shall develop draft regulatory technical standards specifying the criteria to assess whether the compliance function has the authority to discharge its responsibilities properly and independently as referred to in paragraph 2, point (a), and the criteria to assess whether the compliance function has the necessary resources and expertise and has access to all relevant information as referred to in paragraph 2, point (b).

ESMA shall submit those draft regulatory technical standards to the Commission by ...  
[PO: Please insert date 24 months after the date of entry into force].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## Article 22

### Internal policies and procedures

1. External reviewers shall adopt and implement internal due diligence policies and procedures that ensure their business interests do not impair the independence or accuracy of the assessment activities.
2. External reviewers shall adopt and implement sound administrative and accounting procedures, internal control mechanisms, and effective control and safeguard arrangements for information processing systems.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to assess the sound administrative and accounting procedures, internal control mechanisms, and effective control and safeguard arrangements for information processing systems referred to in paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by ...  
[PO: Please insert date 24 months after the date of entry into force].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## Article 23

### Assessment methodologies and information used for reviews

1. External reviewers shall adopt and implement measures to ensure that their reviews provide an opinion based on a thorough analysis of all the information that is available to them and that, according to their methodologies, is relevant to their analysis.
  - 1a. External reviewers shall make publicly available the key steps taken to arrive at their conclusions of each of their reviews.
2. External reviewers shall use information of sufficient quality and from reliable sources when providing reviews.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to assess whether the information referred to in paragraph 2 is of sufficient quality and whether the sources referred to in paragraph 2 are reliable.

ESMA shall submit those draft regulatory technical standards to the Commission by ...  
[PO: Please insert date 24 months after the date of entry into force].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## Article 24

### Errors in assessment methodologies or in their application

1. External reviewers that become aware of errors in their assessment methodologies or in their application that have a material impact on a review shall immediately notify and explain those errors to ESMA and the issuers of the affected European green bonds.
2. External reviewers shall address errors in a timely manner and publish the errors referred to in paragraph 1 on their websites, together with, where relevant, a revised and corrected review as soon as possible. The revised documents shall state the reasons for the changes.

## Article 25

### Outsourcing

1. External reviewers that outsource their assessment activities to third-party service providers shall ensure that any such third-party service provider has the ability and the capacity to perform those assessment activities reliably and professionally. Those external reviewers shall also ensure that the outsourcing does not materially impair the quality of their internal control and the ability of ESMA to supervise the compliance of those external reviewers with this Regulation.
2. External reviewers shall not outsource all of their assessment activities nor their compliance function.
3. External reviewers shall notify ESMA about the assessment activities that it intends to outsource, including a specification of the level of human and technical resources needed to carry out each of those activities and the justification for such outsourcing.

4. External reviewers that outsource assessment activities shall ensure that such outsourcing does not reduce or impair their ability to perform their function or roles as members of the external reviewer's senior management or management body.
5. External reviewers shall ensure that third party service providers cooperate and comply with any supervisory requests from ESMA in connection with any outsourced assessment activities.
6. External reviewers shall remain responsible for any outsourced activity and shall adopt organisational measures to ensure the following:
  - (a) that they assess whether third party service providers carry out outsourced assessment activities effectively and in compliance with applicable Union and national laws and regulatory requirements and adequately addresses identified failures;
  - (b) the identification of any potential risks in relation to outsourced assessment activities;
  - (c) adequate periodic monitoring of the outsourced assessment activities;
  - (d) adequate control procedures with respect to outsourced assessment activities, including effective supervision of the outsourced assessment activities and of any potential risks within the third party service provider;
  - (e) adequate business continuity of outsourced assessment activities.

For the purposes of point (e), external reviewers shall obtain information about the business continuity arrangements of third party service providers, assess their quality, and request improvements to such arrangements where necessary.

7. ESMA shall develop draft regulatory technical standards specifying:
- (a) the criteria to assess the ability and the capacity of third party service providers to perform the assessment activities reliably and professionally; and
  - (b) the criteria to ensure that the performance of assessment activities does not materially impair the quality of the external reviewers' internal control or the ability of ESMA to supervise the external reviewers' compliance with this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by ...  
[PO: Please insert date 12 months after the date of entry into force].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## Article 26

### Record-keeping requirements

1. External reviewers shall keep adequate records of all of the following:
- (a) the identity of the persons participating in the determination and approval of the reviews, and the date on which the decisions to approve the reviews were taken;
  - (b) the documentation for the established procedures and methodologies used by the external reviewers to carry out and draw up the reviews;
  - (c) the internal documents, including non-public information and work papers, used to form the basis of any published review;

- (d) records of the procedures and measures implemented by the external reviewers to comply with this Regulation; and
  - (e) copies of internal and external communications that relate to assessment activities, including electronic communications, received and sent by the external reviewer and its employees, that relate to assessment activities.
- (ea) the documentation containing pre-contractual assessment referred to in Article 27(1a).
2. The records and documents referred to in paragraph 1 shall be kept until at least five years after the maturity of the bond concerned and shall be made available to ESMA upon its request.
  3. Where ESMA has withdrawn the registration of an external reviewer in accordance with Article 51(1), that external reviewer shall ensure that the records and documents are kept for an additional five years. Records and documents which set out the respective rights and obligations of the external reviewer and the issuer of the European green bond under an agreement to provide assessment services shall be retained for the duration of the relationship with that issuer.



## Article 27

### Conflicts of interest and confidentiality of information

1. External reviewers shall identify, eliminate or manage, and disclose in a transparent manner in the reviews any actual or potential conflicts of interest, irrespective of whether that conflict of interest concerns any of the following:
  - (a) their analysts or employees;
  - (b) shareholders holding at least 10 % of either the capital or the voting rights of the external reviewers or in a company which has the power to exercise control or a dominant influence over the external reviewers;
  - (c) any person that is contractually related to the external reviewers and that is directly involved in assessment activities;
  - (d) any person approving the reviews.
- 1a. The external reviewer shall conduct a pre-contractual assessment of whether there is an actual or potential situation of conflict of interest, and shall document this. The external reviewer shall update the assessment and documentation when a material change to the risk of a conflict of interest arises after the conclusion of the contract between the external reviewer and the issuer.

The external reviewer shall not issue a review where it identifies that there is an actual situation of conflict of interest and the external reviewer is not able to implement measures to eliminate or manage the conflict of interest.

2. Fees charged by external reviewers for assessment services shall not depend on the result of the reviews, or on any other result or outcome of the work performed.
3. Analysts, employees of the external reviewer and any other person contractually related to the external reviewers and directly involved in assessment activities shall be bound by the obligation of professional secrecy.

4. External reviewers shall ensure that their analysts and employees or any other natural person contractually related to the external reviewers and directly involved in assessment activities:
- (a) take all reasonable measures to protect property and records in the possession of the external reviewer from fraud, theft or misuse, taking into account the nature, scale and complexity of their business and the nature and range of their assessment activities;
  - (b) do not disclose any information about reviews, and possible future reviews, to any parties other than the issuers that have requested the assessment by the external reviewer
  - (c) do not use or share confidential information for any other purpose than assessment activities.

## Article 28

### Provision of other services

External reviewers that provide services other than assessment activities shall ensure that those other services do not create conflicts of interest with their assessment activities concerning European green bonds. Such external reviewers shall disclose in their reviews any other services provided for the assessed entity or any related third party.

## Chapter III

### Reviews

#### Article 29

##### References to ESMA or other competent authorities

In their reviews, external reviewers shall not refer to ESMA or any competent authority in a way that could indicate or suggest that ESMA or any competent authority endorses or approves that review or any assessment activities of the external reviewer.

#### Article 30

##### Publication of reviews

1. External reviewers shall publish and make available free of charge on their websites all of the following:
  - (a) within a reasonable period of time before the issuance of the bond concerned, the pre-issuance reviews that they issued;
  - (b) without delay following the completion of the assessment of the allocation reports by the external reviewer the post-issuance reviews that they issued;
  - (ba) without delay following the assessment of the impact reports by the external reviewer the impact report reviews that they have issued.
2. The reviews referred to in paragraph 1 shall remain publicly available until at least the maturity of the bond after their publication on the website of the external reviewer.
3. External reviewers that decide to discontinue providing a review shall provide information about the reasons for that decision on their websites, without delay following such decision.

## Chapter IV

### Provision of services by third-country external reviewers

#### Article 31

##### General provisions

1. A third-country external reviewer may provide its services in accordance with this Regulation to issuers that issue European green bonds where that third-country external reviewer is registered in the register of third-country external reviewers kept by ESMA in accordance with Article 59.
2. ESMA shall register a third-country external reviewer that has applied for the provision of external reviewer services in accordance with this Regulation throughout the Union in accordance with paragraph 1 only where the following conditions are met:
  - (a) the Commission has adopted a decision in accordance with Article 32(1);
  - (b) the third-country external reviewer is registered or authorised to provide the external review services to be provided in the Union and is subject to effective supervision and enforcement ensuring full compliance with the requirements applicable in that third country;
  - (c) cooperation arrangements have been established pursuant to Article 32(3).
3. Where a third-country external reviewer is registered in accordance with this Article, no additional requirements on the third-country external reviewer in respect of matters covered by this Regulation shall be imposed.

4. The third-country external reviewer referred to in paragraph 1 shall submit its application to ESMA after the adoption by the Commission of the decision referred to in Article 32 determining that the legal and supervisory framework of the third country in which the third-country external reviewer is registered or authorised is equivalent to the requirements described in Article 32(1).
5. The third-country external reviewer shall submit its application referred to in the first paragraph by using the forms and templates referred to in Article 15.
6. The applicant third-country external reviewer shall provide ESMA with all information necessary for its registration.
7. Within 20 working days of receipt of the application, ESMA shall assess whether the application is complete. Where the application is not complete, ESMA shall set a deadline by which the applicant third-country external reviewer is to provide additional information.
8. The registration decision shall be based on the conditions set out in paragraph 2.
9. Within 45 working days of the submission of a complete application, ESMA shall inform the applicant third-country external reviewer in writing with a fully reasoned explanation whether the registration has been granted or refused.
- 9a. ESMA may extend the period referred to in the first subparagraph by 15 working days in cases where the applicant third-country external reviewer intends to use outsourcing to perform its activities as an external reviewer.
10. Third-country external reviewers providing services in accordance with this Article shall, before providing any service in relation to issuers of European green bonds established in the Union, offer to submit any disputes relating to those services to the jurisdiction of a court or arbitral tribunal in a Member State.

## Article 32

### Equivalence decision

1. The Commission may adopt a decision in relation to a third country stating that the legal and supervisory arrangements of that third country ensure that external reviewers registered or authorised in that third country comply with legally binding organisational and business conduct requirements which have equivalent effect to the requirements laid down in this Regulation and in the implementing measures adopted pursuant to this Regulation and that the legal framework of that third country provides for an effective equivalent system for the recognition of external reviewers registered or authorised under third-country legal regimes.
2. The organisational and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all the following conditions:
  - (a) entities providing external review services in that third country are subject to registration or authorisation and to effective supervision and enforcement on an ongoing basis;
  - (b) entities providing external review services are subject to adequate organisational requirements in the area of internal control functions; and
  - (c) entities providing external review services are subject to appropriate conduct of business rules.

3. ESMA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as effectively equivalent in accordance with paragraph 1. Such arrangements shall specify all of the following:
- (a) the mechanism for the exchange of information between ESMA and the competent authorities of the third countries concerned, including access to all information regarding the third-country external reviewers registered or authorised in third countries that is requested by ESMA;
  - (b) the mechanism for prompt notification to ESMA where a third-country competent authority deems that a third-country external reviewer that it is supervising and ESMA has registered in the register referred to in Article 59 infringes the conditions of its registration or authorisation or other law to which it is obliged to adhere;
  - (c) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.
4. A third-country external reviewer established in a country whose legal and supervisory framework has been recognised to be effectively equivalent in accordance with paragraph 1, and which is registered in the register referred to in Article 59, shall be able to provide the services covered under the registration to issuers of European green bonds throughout the Union.
5. A third-country external reviewer shall no longer use the rights under Article 31 where the Commission withdraws its decision under paragraph 1 of this Article in relation to that third country.

## Article 33

### Withdrawal of registration of third country external reviewer

1. ESMA shall withdraw the registration of a third-country external reviewer by removing that external reviewer from the register referred to in Article 59 where it has well-founded reasons, based on documented evidence, to believe that, in the provision of the services under this Regulation in the Union, either of the following has occurred:
  - (a) the third-country external reviewer is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets;
  - (b) the third-country external reviewer has seriously infringed the provisions applicable to it in the third country and on the basis of which the Commission has adopted a decision under Article 32(1).
- 1a. ESMA shall take a decision under paragraph 1 only if the following conditions are fulfilled:
  - (a) ESMA has referred the matter to the supervisory authority of the third country and that supervisory authority has not taken the appropriate measures needed to protect investors and the orderly functioning of the markets in the Union or has failed to demonstrate that the third-country external reviewer concerned complies with the requirements applicable to it in the third country;
  - (b) ESMA has informed the supervisory authority of the third country of its intention to withdraw the registration of the third-country external reviewer at least 30 days before the withdrawal.
2. ESMA shall inform the Commission of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.
3. In case of withdrawal of a third-country external reviewer, the Commission shall assess whether the conditions under which a decision in accordance with Article 32(1) has been adopted continue to persist in relation to the third country concerned.



## Article 34

### Recognition of a third-country external reviewer

1. Until such time as an equivalence decision in accordance with Article 32(1) is adopted, a third-country external reviewer may provide its services in accordance with this Regulation provided that the third country external reviewer acquires recognition from ESMA in accordance with this Article.
2. A third-country external reviewer that intends to obtain recognition as referred to in paragraph 1 shall comply with the requirements laid down in Articles 15 to 30 and Articles 47 to 49.
3. A third-country external reviewer intending to obtain prior recognition as referred to in paragraph 1 shall have a legal representative domiciled in the Union. That legal representative shall:
  - (a) be responsible, together with the third-country external reviewer, for ensuring that the provision of services under this Regulation by the third-country external reviewer meets the requirements referred to in paragraph 2 and shall in that respect be accountable to ESMA for the conduct of the third-country external reviewer in the Union;
  - (b) act on behalf of the third-country external reviewer as the main point of contact with ESMA and any other person in the Union with regard to the external reviewer's obligations under this Regulation; and
  - (c) have sufficient knowledge, expertise and resources to fulfil its obligations under this paragraph.

4. An application for prior recognition from ESMA as referred to in paragraph 1 shall contain all information necessary to satisfy ESMA that the third country external reviewer has implemented all the necessary arrangements to meet the requirements referred to in paragraphs 2 and 3 and shall, where applicable, indicate the competent authority responsible for its supervision in the third country.
5. ESMA shall assess whether the application for recognition from ESMA is complete within 30 working days after receipt of the application.

Where the application is not complete, ESMA shall notify the applicant thereof and set a deadline by which the applicant is to provide additional information.

Where the application is complete, ESMA shall notify the applicant thereof.

Within 45 working days of receipt of the complete 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.

ESMA may extend the period referred to in the first subparagraph by 15 working days where the applicant intends to use outsourcing to perform activities as an external reviewer.

ESMA shall notify an applicant of its recognition as a third-country external reviewer or of its refusal. The decision to recognise or the refusal to recognise shall provide reasons and take effect on the fifth working day following its adoption.

6. ESMA shall suspend or, where appropriate, withdraw the recognition granted in accordance with paragraph 5 where it has well-founded reasons, based on documented evidence, to consider that the third-country external reviewer is acting in a manner which is prejudicial to the interests of users of its services or the orderly functioning of markets or the third country external reviewer has seriously infringed the relevant requirements set out in this Regulation, or that the third-country external reviewer made false statements or used any other irregular means to obtain recognition.

7. ESMA shall develop draft regulatory technical standards specifying the information and the form and content of the application referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by ...  
[PO: Please insert date 24 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

#### Article 35

##### Endorsement of services under this Regulation provided in a third country

1. An external reviewer located in the Union registered in accordance with Article 15 and entered in the register in accordance with Article 59, may apply to ESMA to endorse the services provided by a third country external reviewer on an ongoing basis in the Union, provided that all of the following conditions are fulfilled:
  - (a) the endorsing external reviewer has verified and is able to demonstrate on an ongoing basis to ESMA that the provision of services under this Regulation by the endorsed third country external reviewer fulfils, on a mandatory or on a voluntary basis, requirements which are at least as stringent as the requirements of this Regulation;
  - (b) the endorsing external reviewer has the necessary expertise to monitor effectively the activity of the provision of services under this Regulation by that third country external reviewer and to manage the associated risks; and

- (c) the third-country external reviewer is relied upon for any of the following objective reasons:
- (i) Specificities of the underlying markets or investments;
  - (ii) proximity of the endorsed reviewer to third-country markets, issuers or investors; or
  - (iii) expertise of the third-country reviewer in providing the services of external review or in specific markets or investments.
2. An external reviewer that makes an application for endorsement as referred to in paragraph 1 shall provide all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.
3. ESMA shall assess whether the application for endorsement referred to in paragraph 1 is complete within 20 working days after receipt of the application.

Where the application is not complete, ESMA shall notify the applicant thereof and set a deadline by which the applicant is to provide additional information.

Where the application is complete, ESMA shall notify the applicant thereof.

Within 45 working days of receipt of the complete application, ESMA shall examine the application and adopt a decision either to authorise the endorsement or to refuse it.

ESMA shall notify an applicant of its decision regarding endorsement referred to in paragraph 1. The decision shall provide reasons and take effect on the fifth working day following its adoption.

4. Services provided under this Regulation by an third-country external reviewer that has been endorsed shall be considered to be services provided by the endorsing external reviewer. The endorsing external reviewer shall not use the endorsement with the intention of avoiding the requirements of this Regulation.

5. An external reviewer that has endorsed services provided under this Regulation by a third-country external reviewer shall remain fully responsible for such services 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 of this Article are no longer fulfilled, it shall have the power to require the endorsing external reviewer to cease the endorsement.
7. An external reviewer that endorses services provided under this Regulation by a third-country external reviewer shall publish the information referred to in Article 30 on its website.
8. An external reviewer that endorses services provided under this Regulation by a third-country external reviewer shall report to ESMA annually on the services it has endorsed in the previous twelve months.

## Title IV

### Supervision by competent authorities and ESMA

#### Chapter 1

#### Competent authorities

#### Article 36

##### Supervision by competent authorities

1. A competent authority of the home Member State designated pursuant to Article 31 of Regulation (EU) 2017/1129 shall supervise:
  - (a) issuers of European Green Bonds as regards compliance with their obligations under Chapter II and Articles 13c and 13d of Chapter IIa of Title II of this Regulation, and
  - (b) issuers that use the common templates pursuant to Article 13h as regards compliance with their obligations therein.
2. By way of derogation from paragraph 1, the issuers of European green bonds covered by Article 1(2), points (b) and (d) of Regulation (EU) 2017/1129, when those bonds are issued without a prospectus pursuant to that Regulation, shall not be supervised by a competent authority.
3. Competent authorities designated in accordance with Article 29(5) of Regulation (EU) 2017/2402 shall supervise that originators comply with their obligations under Chapter II and Articles 13c and 13d of Chapter IIa of Title II of this Regulation.

## Article 37

### Powers of competent authorities

1. In order to fulfil their duties under this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigatory powers:
  - (a) to require issuers to publish European Green Bond factsheets or to include in those factsheets the information referred to in Annex I;
  - (aa) to require issuers to publish reviews and assessments;
  - (b) to require issuers to publish annual allocation reports or include in annual allocation reports the information about all the elements referred to in Annex II;
  - (c) to require issuers to publish an impact report or include in the impact report the information about all the elements referred to in Annex III;
  - (ca) to require issuers to notify the competent authority of the publication in accordance with Article 13(4) of this Regulation;
  - (cc) where issuers use the common templates pursuant to Article 13h, to require those issuers to include all the elements referred to therein in their periodic post-issuance disclosures;
  - (d) to require auditors and senior management of the issuer to provide information and documents;
  - (e) to suspend an offer or admission to trading on a regulated market of European green bonds for a maximum of ten consecutive working days on any single occasion where there are reasonable grounds for suspecting that the issuer has failed to comply with an obligation pursuant to Chapter II and Articles 13c and 13d of Chapter IIa of Title II of this Regulation;

- (ea) to prohibit an offer or admission to trading on a regulated market of European green bonds where there are reasonable grounds for believing that the issuer continues to fail to comply with an obligation pursuant to Chapter II and Articles 13c and 13d of Chapter IIa of Title II;
- (f) to suspend for a maximum of ten consecutive working days advertisements, or require issuers of European green bonds or financial intermediaries concerned to suspend advertisements for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that the issuer has failed to comply with an obligation pursuant to Chapter II and Articles 13c and 13d of Chapter IIa of Title II;
- (fa) to prohibit advertisements, or require issuers of European green bonds or financial intermediaries concerned to cease advertisements where there are reasonable grounds for believing that the issuer continues to fail to comply with an obligation pursuant to Chapter II and Articles 13c and 13d of Chapter IIa of Title II;
- (g) to make public the fact that an issuer is failing to comply with its obligations under this Regulation, and to require the issuer to publish that information on its website;
- (gb) to prohibit an issuer from issuing European green bonds for a period of time not exceeding one year in the event that an issuer has repeatedly and severely infringed Chapter II and Articles 13c and 13d of Chapter IIa of Title II.
- (gc) following a three-month period after the publication referred to in point (g), to make public the fact that the issuer of European green bonds in question no longer complies with the requirements for the use of the designation ‘European green bond’ or ‘EuGB’ in accordance with Article 3, and to require the issuer to publish that information on its website;



- (h) to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for that purpose to enter premises in order to access documents and other data in any form, where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove an infringement of this Regulation.

Where necessary under national law, the competent authority may ask the relevant judicial authority to decide on the use of the powers referred to in the first subparagraph.

2. Competent authorities shall exercise their functions and powers referred to in paragraph 1 in any of the following ways:
  - (a) directly;
  - (b) in collaboration with other authorities;
  - (c) under their responsibility by delegation to such authorities;
  - (d) by application to the competent judicial authorities.
3. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.
4. A person making information available to the competent authority in accordance with this Regulation shall not be considered to be infringing any restriction on the disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to such notification.

## Article 38

### Cooperation between competent authorities

1. Competent authorities shall cooperate with each other for the purposes of this Regulation. They shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

Member States that have chosen, in accordance with Article 41(3), to lay down criminal sanctions for infringements of this Regulation shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for alleged infringements of this Regulation and provide the same to other competent authorities to fulfil their obligation to cooperate with each other for the purposes of this Regulation.

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in any of the following exceptional circumstances:
  - (a) where complying with the request is likely to adversely affect its own investigation, enforcement activities or a criminal investigation;
  - (b) where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed;
  - (c) where a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

3. The competent authority may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may do any of the following:

- (a) carry out the on-site inspection or investigation itself;
- (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;
- (c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;
- (d) appoint auditors or experts to carry out the on-site inspection or investigation; or
- (e) share specific tasks related to supervisory activities with the other competent authorities.

3a. In case of a securitisation bond, where a competent authority finds that one or more of the requirements under Chapter II and Articles 13c and 13d of Chapter IIa of Title II of this Regulation have been infringed or has a reason to believe so, it shall inform the competent authority of the entity or entities suspected of such infringements of its findings in a sufficiently detailed manner. Upon receipt of this information, the competent authority of the entity suspected of the infringement shall take within 15 working days any necessary action to address the infringement identified and notify the other competent authority involved. When a competent authority disagrees with another competent authority regarding the procedure or content of its action or inaction, it shall notify all other competent authorities involved about its disagreement without undue delay.

4. The competent authorities may refer to ESMA in situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 TFEU, ESMA may in such situations act in accordance with the power conferred on it by Article 19 of Regulation (EU) No 1095/2010.

5. ESMA may develop draft regulatory technical standards to specify the information to be exchanged between competent authorities in accordance with paragraph 1.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

## Article 39

### Professional secrecy

1. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered confidential and shall be subject to professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or such disclosure is necessary for legal proceedings.
2. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority or for any third party to whom the competent authority has delegated its powers. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.

## Article 40

### Precautionary measures

1. A competent authority of the host Member State that has clear and demonstrable grounds for believing that irregularities have been committed by an issuer of a European green bond or that it has infringed its obligations under this Regulation shall refer those findings to the competent authority of the home Member State and to ESMA.
2. Where, despite the measures taken by the competent authority of the home Member State, an issuer of a European green bond persists in infringing this Regulation, the competent authority of the host Member State, after informing the competent authority of the home Member State and ESMA, shall take all appropriate measures to protect investors and shall inform the Commission and ESMA thereof without undue delay.
3. A competent authority that disagrees with any of the measures taken by another competent authority pursuant to paragraph 2 may bring the matter to the attention of ESMA. ESMA may act in accordance with the powers conferred on it by Article 19 of Regulation (EU) No 1095/2010.

## Article 41

### Administrative sanctions and other administrative measures

1. Without prejudice to the supervisory and investigatory powers of competent authorities pursuant to Article 37, and the right of Member States to provide for and impose criminal sanctions, Member States shall, in accordance with national law, provide for competent authorities to have the power to impose administrative sanctions and take appropriate other administrative measures which shall be effective, proportionate and dissuasive. Those administrative sanctions and other administrative measures shall apply to:
  - (a) infringements by issuers of their obligations under Chapter II and Articles 13c and 13d of Chapter IIa of Title II, and Article 13h of this Regulation;
  - (b) failure to cooperate or comply with an investigation, with an inspection or with a requirement under Article 37(1).

Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph where the infringements referred to in point (a) or point (b) of that subparagraph are already subject to criminal sanctions in their national law by [date of application of this Regulation]. Where they so decide, Member States shall notify, in detail, to the Commission and to ESMA, the relevant parts of their criminal law.

By ... [PO: please insert the date of application of this Regulation], Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission and to ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

2. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose the following administrative sanctions and other administrative measures in relation to the infringements listed in paragraph 1, point (a):

- (a) a public statement indicating the natural or legal person responsible and the nature of the infringement in accordance with Article 37(1), point (g);
- (b) an order requiring the natural or legal person responsible to cease the conduct constituting the infringement;
- (ba) an order prohibiting the natural person or entity responsible from issuing European green bonds for a period of time not exceeding one year;
- (c) maximum administrative pecuniary sanctions of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;
- (d) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on ... [PO: please insert the date of entry into force of this Regulation], or 0.5 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body;
- (e) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 50 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on ... [PO: please insert date of entry into force of this Regulation].

For the purposes of point (d), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council<sup>20</sup>, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

3. Member States may provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in this Regulation.

## Article 42

### Exercise of supervisory powers and powers to impose sanctions

1. Competent authorities, when determining the type and level of administrative sanctions and other administrative measures, shall take into account all relevant circumstances including, where appropriate:
  - (a) the gravity and the duration of the infringement;
  - (b) the degree of responsibility of the person responsible for the infringement;
  - (c) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

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<sup>20</sup> 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).



- (d) the impact of the infringement on the interests of retail investors;
- (e) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
- (f) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (g) previous infringements by the person responsible for the infringement; and
- (h) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

2. In the exercise of their powers to impose administrative sanctions and other administrative measures under Article 41, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers and the administrative sanctions and other administrative measures that they impose are effective and appropriate under this Regulation. They shall coordinate their action in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative sanctions and other administrative measures in cross-border cases.

## Article 43

### Right of appeal

Member States shall ensure that decisions taken under this Regulation are properly reasoned and subject to a right of appeal before a court.

## Article 44

### Publication of decisions

1. A decision imposing an administrative sanction or other administrative measure for infringement of this Regulation shall be published by competent authorities on their official websites immediately after the person subject to that decision has been informed of that decision. The publication shall include information on the type and nature of the infringement and the identity of the persons responsible. That obligation shall not apply to decisions imposing measures that are of an investigatory nature.
2. Where the publication of the identity of the legal entities, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise the stability of financial markets or an on-going investigation, Member States shall ensure that the competent authorities do one of the following:
  - (a) defer the publication of the decision to impose a sanction or a measure until the moment where the reasons for non-publication cease to exist;

- (b) publish the decision to impose a sanction or a measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures an effective protection of the personal data concerned; or
- (c) not publish the decision to impose a sanction or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:
  - (i) that the stability of financial markets would not be put in jeopardy; or
  - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a sanction or measure on an anonymous basis, as referred to in point (b) of the first subparagraph, the publication of the relevant data may be deferred for a reasonable period where it is expected that within that period the reasons for anonymous publication shall cease to exist.

3. Where the decision to impose a sanction or measure is subject to an appeal before the relevant judicial or other authorities, competent authorities shall also publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a sanction or a measure shall also be published.
4. Competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years after its publication. Personal data contained in the publication, shall be limited to what is necessary for the purposes of the specific case, and shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.

## Article 45

### Reporting sanctions to ESMA

1. The competent authority shall, on an annual basis, provide ESMA with aggregate information regarding all administrative sanctions and other administrative measures imposed in accordance with Article 41. ESMA shall publish that information in an annual report.

Where Member States have chosen, in accordance with Article 41(3), to lay down criminal sanctions for the infringements of the provisions referred to in that paragraph, their competent authorities shall provide ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal sanctions imposed. ESMA shall publish data on criminal sanctions imposed in an annual report.

2. A competent authority that has disclosed administrative sanctions, other administrative measures or criminal sanctions to the public shall simultaneously report those sanctions or measures to ESMA.
3. Competent authorities shall inform ESMA of all administrative sanctions or other administrative measures imposed but not published in accordance with Article 44(2), first subparagraph, point (c), including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgment in relation to any criminal sanction imposed and submit it to ESMA. ESMA shall maintain a central database of sanctions communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be accessible to competent authorities only and it shall be updated on the basis of the information provided by the competent authorities.

## Chapter 2

### ESMA

#### Article 46

##### Exercise of the powers referred to in Articles 47, 48 and 49

The powers conferred on ESMA, any of its officials or any other person authorised by ESMA by Articles 47, 48 and 49 shall not be used to require the disclosure of information or documents that are subject to legal privilege.

#### Article 47

##### Requests for information

1. ESMA may by simple request or by decision require the following persons to provide all information that is necessary to carry out its duties under this Regulation:
  - (a) persons who effectively conduct the business of the external reviewer;
  - (b) members of the supervisory, management or administrative bodies of the external reviewer;
  - (c) members of the senior management of the external reviewer;
  - (d) any person directly involved in assessment activities of the external reviewer;
  - (e) legal representatives and employees of entities to which an external reviewer has outsourced certain functions in accordance with Article 25;

- (f) persons otherwise closely and substantially related or connected to the process of managing the external reviewer, including shareholders holding at least 10 % of either the capital or the voting rights of the external reviewer or in a company which has the power to exercise control or a dominant influence over the external reviewer;
- (g) anyone that acts like, or pretends to be, an external reviewer, without being registered as such, and any person that performs any of the functions referred to in points (a) to (f) for such person.

2. When sending a simple request for information under paragraph 1, ESMA shall:

- (a) refer to this Article as the legal basis of that 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 in case of a voluntary reply to the request the information provided must not be incorrect or misleading; and
- (f) indicate the potential fine provided for in Article 52, where the answers to the questions asked are incorrect or misleading.

3. When requiring the provision of information by decision under paragraph 1, ESMA shall:

- (a) refer to this Article as the legal basis of that 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) indicate the periodic penalty payments provided for in Article 53 where the production of the required information is incomplete;
  - (f) indicate the fine provided for in Article 52 where the answers to questions asked are incorrect or misleading;
  - (g) indicate the right to appeal the decision before Board of Appeal accordance with Articles 58 and 59 of Regulation (EU) No 1095/2010 and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61 of that Regulation.
4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall provide the information requested. Lawyers duly authorised may provide the information on behalf of their clients. The latter shall remain fully responsible if the information provided proves to be 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 concerned by the request for information are domiciled or established.

## Article 48

### General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 47(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:
  - (a) examine any records, data, procedures and any other material relevant to the execution 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 47(1) or their representatives or staff for oral or written explanations on facts or documents relating 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 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 53 where the production of the required records, data, procedures or any other material, or the answers to questions asked of the persons referred to in Article 47(1), are not provided or are incomplete, and the fines provided for in Article 52 where the answers to questions asked of the persons referred to in Article 47(1) are incorrect or misleading.



3. The persons referred to in Article 47(1) shall submit to investigations initiated 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 53, 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.
4. In good time before the investigation, ESMA shall inform the competent authority referred to in Article 36 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 paragraph 1, point (e), requires a competent authority to be authorised by a judicial authority in accordance with national law, ESMA shall also apply for such authorisation. ESMA may also apply for such authorisation as a precautionary measure.
6. Where authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall verify 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 verification of the proportionality of 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 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 following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

## Article 49

### 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, land or property of the legal persons referred to in Article 47(1). Where the proper conduct and efficiency of the 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, land or property of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers referred to in Article 48(1). They shall also have the power to seal any business premises, property and books or records for the period of, and to the extent necessary for, the inspection.
3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted.
4. The officials of and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 53 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 the inspection is to be conducted.
5. The persons referred to in Article 47(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 53, the legal remedies available under Regulation (EU) No 1095/2010 as well as 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.

6. 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, at 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 that competent authority may also attend the on-site inspections upon request.
7. 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 48(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 48(1).
8. 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, to enable them to conduct their on-site inspection.
9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 8 requires authorisation by a judicial authority in accordance with applicable national law, ESMA shall also apply for such authorisation. ESMA may also apply for such authorisation as a precautionary measure.

10. Where authorisation as referred to in paragraph 9 is applied for, the national judicial authority shall verify that ESMA's decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its verification of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations. Such a request for detailed explanations may in particular relate to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place, as well as to the seriousness of the suspected infringement and the nature of the involvement of the person who is subjected to the coercive measures. The national judicial authority shall, however, 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 following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

## Article 50

### Exchange of information

1. Competent authorities referred to in Article 36, ESMA, and other relevant authorities shall, without undue delay, provide one another with the information required for the purposes of carrying out their duties.
2. Competent authorities referred to in Article 36, ESMA, other relevant authorities and other bodies or natural and legal persons receiving confidential information in the exercise of their duties under this Regulation shall use it only in the course of their duties.

## Article 51

### Supervisory measures by ESMA

1. Where, in accordance with Article 55(8), ESMA finds that a person has committed one of the infringements listed in Article 52(2), it shall take one or more of the following actions:
  - (a) withdraw the registration of an external reviewer;
  - (b) withdraw the recognition of an external reviewer located in a third country;
  - (c) temporarily prohibit the external reviewer from pursuing the activities under this Regulation throughout the Union, until the infringement has been brought to an end;
  - (ca) suspend the registration of a third-country external reviewer;
  - (d) adopt a decision requiring the person to bring the infringement to an end;
  - (e) adopt a decision imposing fines pursuant to Article 52;
  - (f) adopt a decision imposing periodic penalty payments pursuant to Article 53; and
  - (g) issue public notices.
  
2. ESMA shall withdraw the registration or the recognition of an external reviewer in the following circumstances:
  - (a) the external reviewer has expressly renounced the registration or recognition or has not made use of the registration or recognition within 36 months after registration or recognition has been granted;
  - (b) the external reviewer has obtained the registration or recognition by making false statements or by any other irregular means; or

- (c) the external reviewer no longer meets the conditions under which it was registered or recognised.

Where ESMA withdraws the registration or recognition of the external reviewer, it shall provide full reasons in its decision. The withdrawal shall have immediate effect.

3. When adopting a decision as 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 by intent or negligence;
- (d) the degree of responsibility of the person responsible for the infringement;
- (e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;
- (f) the impact of the infringement on the interests of retail investors;
- (g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, to the extent that they can be determined;
- (h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (i) previous infringements by the person responsible for the infringement; and
- (j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

4. Without undue delay, ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement, and shall communicate it to the competent authorities of the Member States and to the Commission. It shall publicly disclose any such action on its website within 10 working days from the date when it was adopted.

The disclosure to the public referred to in the first subparagraph shall include the following:

- (a) a statement affirming the right of the person responsible for the infringement 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; and
- (c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

## Article 52

### Fines

1. Where, in accordance with Article 55(8), ESMA finds that an external reviewer and persons referred to in Article 47(1) have, by intent or negligence, committed one or more of the infringements listed in paragraph 2, it shall adopt a decision imposing a fine in accordance with paragraph 3 of this Article.

An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

2. The infringements referred to in paragraph 1 are the following:
  - (a) non-compliance with Article 16(1), and Articles 18 to 30;
  - (b) the submission of false statements when applying for registration as an external reviewer, or the use of any other irregular means to obtain such registration;
  - (c) failure to provide information in response to a decision requiring information pursuant to Article 47 or the provision of incorrect or misleading information in response to a request for information or a decision;
  - (d) the obstruction of or non-compliance with an investigation pursuant to Article 48, paragraph 1, points (a), (b), (c), or (e);
  - (e) non-compliance with Article 49, by not providing an explanation on facts or documents related to the subject matter and purpose of an inspection, or by providing an incorrect or misleading explanation;
  - (f) taking up the activity of external reviewers or pretending to be an external reviewer, without having been registered as an external reviewer.
3. The minimum amount of the fine referred to in paragraph 1 shall be EUR 20 000. The maximum amount shall be EUR 200 000.

When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 51(3).
4. Where a person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that financial benefit.
5. Where an act or omission constitutes a combination of several infringements, only the fine for the highest fined infringement shall apply.



## Article 53

### Periodic penalty payments

1. ESMA shall, by decision, impose a periodic penalty payment in order to compel:
  - (a) a person to put an end to an infringement, in accordance with a decision taken pursuant to Article 51(1), point (d);
  - (b) a person as referred to in Article 47(1):
    - (i) to provide complete information which has been required by a decision pursuant to Article 47;
    - (ii) 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 pursuant to Article 48; or
    - (iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 49.
2. The periodic penalty payment shall be imposed for each day of delay.
3. 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 the period, ESMA shall review the measure.

## Article 54

### Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 52 and 53, unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.
2. Fines and periodic penalty payments imposed pursuant to Articles 52 and 53 shall be of an administrative nature.
3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.
4. Fines and periodic penalty payments imposed pursuant to Articles 52 and 53 shall be enforceable.

For the purposes of enforcement of fines and periodic penalty payments, ESMA shall apply the rules of civil procedure in force in the Member State or third country in which it is carried out.

5. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the Union.

## Article 55

### Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 52(2), ESMA shall appoint an independent investigating officer within ESMA to investigate the matter. The investigating officer shall not be involved or have been involved in the direct or indirect supervision or registration process of the external reviewer concerned and shall perform his or her functions independently from ESMA's Board of Supervisors.
2. The investigating officer shall investigate the alleged infringements, taking into account any comments submitted by the persons subject to investigation, and shall submit a complete file with his or her findings to ESMA's Board of Supervisors.
3. In order to carry out his or her tasks, the investigating officer may exercise the power to require information in accordance with Article 47 and to conduct investigations and on-site inspections in accordance with Articles 48 and 49. When using those powers, the investigating officer shall comply with Article 46.
4. Where carrying out his or her tasks, the investigating officer shall have access to all documents and information gathered by ESMA in its supervisory activities.
5. Upon completion of his or her investigation and before submitting the file with his or her findings to ESMA's Board of Supervisors, the investigating officer shall give the persons subject to investigation the opportunity to be heard on the matters being investigated. The investigating officer shall base his or her findings only on facts on which the persons subject to investigation have had the opportunity to comment.
6. The rights of defence of the persons concerned shall be fully respected during investigations under this Article.

7. Upon submission of the file with his or her findings to ESMA's Board of Supervisors, the investigating officer shall notify that fact to the persons who are subject to investigations. The persons subject to investigations shall be entitled to have access to the 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 affecting third parties.
8. On the basis of the file containing the investigating officer's findings and, when requested by the persons concerned, after having heard those persons in accordance with Article 56, ESMA shall decide if one or more of the infringements listed in Article 52(2) has been committed by the persons subject to investigation, and in such case, shall take a supervisory measure in accordance with Article 51 and impose a fine in accordance with Article 52.
9. The investigating 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.
10. The Commission shall adopt delegated acts in accordance with Article 60 by ... [PO: please insert date 12 months after the date of entry into force of this Regulation] to further specify the procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the 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.
11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical facts, or from facts which are substantially the same, has acquired the force of res judicata as the result of criminal proceedings under national law.

## Article 56

### Hearing of the persons subject to the proceedings

1. Before taking any decision pursuant to Articles 51 to 53, ESMA shall give the persons subject to the proceedings the opportunity to be heard on ESMA's findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had the opportunity to comment.
2. Paragraph 1 shall not apply if urgent action pursuant to Article 51 is needed in order 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.
3. The rights of defence of the persons subject to the proceedings shall be fully respected during the proceedings. 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 internal preparatory documents of ESMA.

## Article 57

### Review by the Court of Justice of the European Union

The Court of Justice of the European Union 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.

## Article 58

### Registration, recognition, and supervisory fees

1. ESMA shall charge fees to external reviewers for the expenditure relating to their registration, recognition and supervision and for any costs that it may incur in carrying out its tasks pursuant to this Regulation.
2. The total fees charged by ESMA to the applicant external reviewers, registered external reviewers or recognised external reviewers shall cover all the administrative costs incurred by ESMA in its activities in relation to the registration and supervision of external reviewers. Any fee shall be proportionate to the turnover of each of the external reviewers concerned.

By way of derogation from the second sentence of the first subparagraph, external reviewers whose annual turnover is below a certain amount may be exempted from the obligation to pay any fee.

3. The Commission shall adopt a delegated act on fees, in accordance with Article 60 by ... [PO: please insert date 12 months after date of entry into force of this Regulation].

That delegated act shall specify in particular 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.

The delegated act shall specify the threshold of the annual turnover of external reviewers at group level, below which no supervisory fee shall be charged, and shall also specify the manner in which the annual turnover shall be calculated for the purposes of applying that threshold.

- 3a. Prior to the adoption of the delegated act referred to in paragraph 3, the Commission shall consult ESMA regarding fees referred to in paragraph 3.

## Article 59

### ESMA register of external reviewers and third-country external reviewers

1. ESMA shall maintain on its website a publicly accessible register that shall list all of the following:
  - (a) all the external reviewers registered in accordance with Article 15;
  - (b) those external reviewers that are temporarily prohibited from pursuing their activities in accordance with Article 51;
  - (c) those external reviewers that have had their registration withdrawn in accordance with Article 51;
  - (d) third-country external reviewers allowed to provide services in the Union in accordance with Article 31;
  - (e) third-country external reviewers recognised in accordance with Article 34;
  - (f) external reviewers registered in accordance with Article 15 that endorse services of third-country external reviewers in accordance with Article 35;
  - (g) third-country external reviewers that have had their registration withdrawn and that shall no longer use the rights under Article 31, where the Commission adopts a decision on withdrawal in relation to that third country as referred to in Article 32;
  - (h) third-country external reviewers whose recognition has been suspended or withdrawn;
  - (ha) external reviewers registered in accordance with Article 15 that may no longer endorse services of third-country external reviewers.

2. The register shall contain contact details of external reviewers, their websites and the dates by which the decisions of ESMA concerning those external reviewers take effect.
3. For third-country reviewers, the register shall also contain information on the services that third-country external reviewers may provide and the contact details of the competent authority responsible for their supervision in the third country.

## Title V

### Delegated Acts

#### Article 60

##### Exercise of the delegation

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 13h(4), 55(10) and 58(3) shall be conferred on the Commission for an indeterminate period of time from ... [PO: please insert the date of entry into force of this Regulation].
3. The delegation of power referred to in Articles 13h(4), 55(10) and 58(3) 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 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 13h(4), 55(10) and 58(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three 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 three months at the initiative of the European Parliament or of the Council.

## Title VI

### Final provisions

#### Article 62

##### Transitional provision

1. An external reviewer that intends to provide services in accordance with this Regulation from... [OJ please insert the date of application] until... [OJ please insert date 18 months after the application date of this Regulation], shall only provide such services after having notified ESMA to that effect and having provided the information referred to in Article 15(1).
2. Until ... [OJ please insert date 18 months after the application date of this Regulation] external reviewers referred to in paragraph 1 shall make their best efforts to comply with Articles 16 to 30 with the exception of the requirements laid down by the delegated acts referred to in Article 16(2), Article 18(3), Article 19(2), Article 20(3), Article 21(4), Article 22(3), Article 23(3) and Article 25(7).

3. After ... [OJ please insert date 18 months after the application date of this Regulation] external reviewers referred to in paragraph 1 shall only provide services in accordance with this Regulation after having being registered in accordance with Article 15 and comply with Article 14 and Articles 16 to 30 as supplemented by the delegated acts referred to in paragraph 2.

## Article 63

### Transitional provision for third country external reviewers

1. A third-country external reviewer that intends to provide services in accordance with this Regulation from the date of application until ... [OJ: please insert the date 18 months after the date of application of this Regulation], shall only provide such services after having notified ESMA to that effect and having provided the information referred to in Article 15(1).
2. Third country external reviewers referred to in paragraph 1 shall:
  - (a) make their best efforts to comply with Articles 16 to 30 with the exception of the requirements laid down by the delegated acts referred to in Article 16(2), Article 18 (3), Article 19(2), Article 20(3), Article 21(4), Article 22(3), Article 23(3) and Article 25(7);
  - (b) have a legal representative located in the Union that shall comply with Article 34(3), points (a) to (c).
3. After ... [OJ: please insert the date 18 months after the date of application of this Regulation] Articles 32, 34 and 35 shall apply.
- 4a. ESMA may, at any time from [entry into application of this Regulation] until [18 months after the entry into application], enforce compliance by third-country external reviewers with the provisions of paragraph 2 point (b) by imposing supervisory measures in accordance with the provisions of Title IV of this Regulation.

## Article 63a

### Review

1. By ... [five years after the entry into force of this Regulation] and every three years thereafter, the Commission shall, after consulting, where relevant, ESMA and the Platform on Sustainable Finance, submit a report to the European Parliament and to the Council on the application of this Regulation. That report shall evaluate, as far as possible, at least the following:
  - (a) the uptake of the European green bond standard and its market share, both in the Union and globally, and in particular by small and medium sized enterprises;
  - (b) the impact of this Regulation on the transition to a sustainable economy, on the gap of investments needed to meet the Union climate targets as set out in Regulation (EU) 2021/1119, and on redirecting private capital flows towards sustainable investments;
  - (c) the functioning and the supervision by ESMA of the market for external reviewers;
  - (d) the appropriateness and the impact on external reviewers and on ESMA's budget of the provisions on fees as referred to in Article 58(3);
  - (h) the credibility and abuse of environmental claims in the green bond market;
  - (i) the functioning of the sustainability-linked bond market, including the credibility and quality of relevant claims;

- (g) the need to recognise a third-country's criteria for determining environmentally sustainable economic activities as equivalent to the taxonomy requirements, provided that there are specific safeguards in place in order to ensure equivalent objectives, for the purposes of authorising the allocation of the use of proceeds of a European green bond in accordance with such third-country criteria.
  - (h) the practical impact of provisions in Article 4a on the use of European green bonds and the environmental quality of the proceeds. This report shall also justify whether the provisions do not prevent the transition towards the financing of environmentally sustainable activities;
  - (i) the implementation of Title IIa, including the use of the templates as referred to in Title IIa among issuers of bonds marketed as environmentally sustainable or sustainability-linked bonds marketed in the EEA and outside the EEA. The report shall analyse the take-up of the templates, the evolution of the market, and their consistency with other relevant legislation, including Regulation 2019/2088.
2. The report shall where appropriate be accompanied by a legislative proposal, including as regards disclosures for issuers of bonds marketed as environmentally sustainable and sustainability-linked bonds.
  3. By [three years after entry into force of this Regulation], the Commission shall publish a report about the need to regulate sustainability linked bonds, accompanied by a legislative proposal, where relevant.
  4. The Commission shall publish a report by the end of 2024 and every three years thereafter to inform issuers of European green bonds about the review conducted in line with article 19 paragraph 5 subparagraph 3 of Regulation (EU) 2020/852, including the consistency of the Technical Screening Criteria with the criteria set out in Article 10, paragraph 2 of Regulation (EU) 2020/852, taking into account the grandfathering rules set out in Article 7 of this Regulation.

5. By [5 years after entry into force of this Regulation] the EBA, in close cooperation with ESMA and EIOPA, shall publish a report on the feasibility of extending the eligibility to use the designation ‘European green bond’ or ‘EuGB’ for the purpose of synthetic securitisations. By [12 months after that] the Commission may, based on the EBA report, present a report to the European Parliament and the Council. The report may be accompanied, if appropriate, by a legislative proposal.
6. By [5 years after the entry into force of this Regulation and, where appropriate, every three years afterwards], the Joint Committee of the ESAs shall publish a report on the evolution of the market for securitisation bonds. The report shall, in particular, assess whether the volume of Taxonomy-aligned assets eligible to be securitised has increased over that period sufficiently in order to revisit the application of the use of proceeds rules to securitisation bonds. The Commission shall, based on the Joint Committee report, present a report to the European Parliament and the Council. The report shall be accompanied, if appropriate, by a legislative proposal.

## Article 64

### Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall apply from ... [OJ: please insert the date 12 months after the date of entry into force of this Regulation].
3. By way of derogation from paragraph 2 of this Article, Articles 13g, 13h(4), 15(5), 15(6), 16(2), 18(3), 19(2), 20(3), 21(4), 22(3), 23(3), 25(7), 34(7), 38(5) and (6), 55(10) and 58(3) shall apply from [the date of entry into force of this Regulation].

4. Member States shall take the necessary measures to comply with Articles 37 and 41 by ... [OJ: please insert the date of application of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

*For the Council*

*The President*

*For the Parliament*

*The President*

**ANNEX I**  
**EUROPEAN GREEN BOND FACTSHEET**

This document and its contents are not subject to any approval or endorsement from ESMA or any other competent authority

**1. General Information**

- [Date of the publication of the European Green Bond factsheet]
- [The legal name of the issuer]
- [Where available, legal entity identifier (LEI) of the issuer]
- [Website address providing investors with information on how to get in contact with the issuer]
- [Where available, name of the bond or bonds assigned by the issuer]
- [Where available, international securities identification numbers (ISIN) of the bond or bonds]
- [Where available, the foreseen issuance date or period]
- [The identity and contact details of the external reviewer]
- [Where applicable, the name of the competent authority that has approved the bond prospectus or prospectuses]

**2. Important information**

- [The following statement: “This bond uses (or these bonds use) the designation ‘European Green Bond/ EuGB’ in accordance with Regulation (EU) XXX]”]
- [Where bonds proceeds are intended to be allocated in accordance with Article 4a, the following statement: "This European Green Bond makes (or these European Green Bonds make) use of the flexibility permitting a partial non-alignment with the taxonomy technical screening criteria, as further described in Section 4 of this factsheet."]

### **3. Environmental strategy and rationale**

[A statement about whether or not the issuer intends to obtain external review of the information submitted under this heading (“3. Environmental strategy and rationale”) via a review of the impact report. ]

#### Overview

- [Information on how the bond(s) is/are expected to contribute to the broader environmental strategy of the issuer, including the environmental objectives referred to in Article 9 of Regulation (EU) 2020/852 pursued by the bond(s)]

#### Link with the assets, turnover, capex, and opex KPIs

- [To the extent available to the issuer at the time of issuance, and where the issuer is subject to Article 8 of Regulation (EU) 2020/852, a description on how, to what extent (e.g. expressed as the estimated percentage change year-on-year) bond proceeds are expected to contribute to the issuer’s taxonomy-aligned assets, turnover, capital expenditure and operating expenditure.]

#### Link to the transition plans

- [Where the issuer is subject to an obligation to publish plans pursuant to Article 19a(2)(a)(iii) or, where applicable, Article 29a(2)(a)(iii) of Directive 2013/34/EU, or where the issuer voluntarily publishes transition plans:
  - How bond proceeds are intended to contribute to funding and implementing those plans. The information may be given at an economic activity level or at a project-by-project level.
  - A link to the website where those plans are published.]

#### Securitisation

[Where applicable in the case of securitisation, a description of how Article 13c(1) is complied with and the information required in Article 13d(2)]



#### **4. Intended allocation of bond proceeds**

[The following information shall be provided at least at the level of the economic activity, and ideally at the level of the project or group of projects. Confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects and similar considerations may justify limiting the amount of detail that can be made available. Where bond proceeds are allocated to expenditures as referred to in Article 4(2) the information may be provided at programme level.]

##### Intended allocation to Taxonomy-aligned economic activities

- [Whether the issuer is allocating proceeds in accordance with the gradual or portfolio approach, and whether the bond(s) [is a /are] securitisation(s) bond(s)]
- [The minimum proportion of bond proceeds that is required according to the issuer's plans to be used on activities that are environmentally sustainable under Article 3 of Regulation (EU) 2020/852, according to the methodology in the allocation report (the proportion shall be at least 85%): [XX] percent of the bond proceeds
- [Where available, an indication of the share of the bond proceeds to be used for financing (in the year of issuance or after) and refinancing]
- [Where the issuer is a sovereign, and bond proceeds are planned to be allocated to tax relief as set out in Article 4(2), an estimation of the expected volume of revenue loss associated with eligible tax relief]
- [Where available, the targeted environmental objective(s), as referred to in Article 9 of Regulation 2020/852]
- [Information on the types, sectors, and the respective NACE codes of the economic activities to which proceeds are intended to be allocated.]

##### Intended allocation to specific Taxonomy-aligned economic activities

- [Where bond proceeds are intended to be allocated to a transitional or enabling economic activity, specifying which type of transitional or enabling economic activity and, where available, the amount and proportion of proceeds intended to be allocated to each type of transitional or enabling economic activity;]
- [Where applicable, the amount and proportion of proceeds intended to be allocated to taxonomy-aligned nuclear energy and fossil gas related activities in accordance with Article 10(2) and 11(3) of Regulation (EU) 2020/852]

Intended allocation to economic activities not aligned with Taxonomy technical screening criteria

- [Where bond proceeds are intended to be allocated in accordance with Article 4a, a statement that the [net] proceeds of the bond are intended to be partially allocated to economic activities that are not aligned with Taxonomy technical screening criteria. The issuer shall describe such non-alignment, the activities concerned and, where available the estimated percentage of the proceeds intended to finance such activities as a total and on a per-activity basis, including a breakdown describing which point(s) of Article 4a(1) is being used. Furthermore, an explanation of why technical screening criteria cannot be applied and an explanation of how the issuer intends to ensure that those activities comply with Article 4a, paragraph 3 and 4 of this Regulation and Article 3, points (a), (b) and (c), of Regulation (EU) 2020/852]

Process and timeline for allocation

- [The estimated time following bond issuance until the full allocation of bond proceeds]
- [A description of the processes by which the issuer will determine how projects align with the taxonomy requirements]

Issuance costs

- [An estimate of the amount of cumulative issuance costs that are deducted from the proceeds, as permitted under Article 4(1), with an explanation]

**5. Environmental impact of bond proceeds**

- [Where available, an estimation of the anticipated environmental impacts of the bond or bonds. Where this information is not available, this must be justified.]

**6. Information on reporting**

- [A link to the issuer's website referred to in Article 13(1)]
- [Where applicable, a link to the issuer's relevant reports, such as the consolidated management report or the consolidated sustainability report]
- The date on which the first reporting period starts, if different from the issuance date, as set out in Article 9(1).
- [An indication of whether allocation reports will include project-by-project information on amounts allocated and the expected environmental impacts]

**7. Capex plan**

- [Where applicable, a detailed description of the CapEx Plan referred to in Article 6(1), point b, including the main parameters used by the issuer to determine the alignment of the relevant assets or activities with the taxonomy requirements by the end of the period contemplated in that Article]

**8. Other relevant information**

[In the case of a securitisation bond, references to the issuer in this document shall be construed as and, where appropriate, replaced with references to the originator]

## ANNEX II

### EUROPEAN GREEN BOND ANNUAL ALLOCATION REPORT

[where the allocation report is revised, the title shall reflect this]

This document and its contents are not subject to any approval or endorsement from ESMA or any other competent authority.

#### **1. General Information**

- [Date of issuance of the bond(s) or tranches of the bond(s)]
- [Date of publication of the allocation report][date]]
- [The first and the last date of the annual period to which the allocation report refers: [date – date]]
- [The legal name of the issuer]
- [Where available, the legal entity identifier (LEI) of the issuer]
- [Website address providing investors with information on how to get in contact with the issuer]
- [Where available, name of the bond(s) assigned by the issuer]
- [Where available, international securities identification numbers (ISIN) of the bond(s) and its/their tranches]
- [Where the allocation report has been subject to post-issuance review, the identity and contact details of the external reviewer]
- [Where applicable, the name of the competent authority that has approved the bond prospectus or prospectuses]

#### **2. Important information**

- [The following statement: “This bond uses (or these bonds use) the designation ‘European Green Bond/ EuGB’ in accordance with Regulation (EU) XXX”]
- [Where the proceeds of the bonds [are intended to be/ have been] allocated in accordance with Article 4a, the following statement: "This European Green Bond makes (or these European Green Bonds make) use of the flexibility permitting a partial non-alignment with the taxonomy technical screening criteria, as further described in Section 4 of this allocation report."].

### **3. Environmental strategy and rationale**

#### Overview

- [The environmental objectives referred to in Article 9 of Regulation (EU) 2020/852 pursued by the bond(s)]

#### Link with the assets, turnover, capex, and opex KPIs

- [Where the issuer is subject to Article 8 of Regulation (EU) 2020/852, a description on how, to what extent (e.g. expressed as a percentage change year-on-year), and in which financial periods bond proceeds contribute to the issuer's key performance indicators for taxonomy-aligned assets, turnover, capital expenditure and operating expenditure, taking into account the amounts in the 'Totals' table in Table A, where applicable.]

#### Link to the transition plan

- [Where the issuer is subject to an obligation to publish plans pursuant to Article 19a(2)(a)(iii) or, where applicable, Article 29a(2)(a)(iii) of Directive 2013/34/EU, or where the issuer voluntarily publishes transition plans:
  - how bond proceeds contribute to funding and implementing those plans. The information may be given at an economic activity level or at a project-by-project level; and
  - a link to the website where those plans are published.]

#### Securitisation

- [Where applicable in the case of securitisation, the information required in Article 13d(2)]

#### **4. Allocation of bond proceeds**

[The following information shall be provided at least at the level of the economic activity, and ideally at the level of the project or group of projects. Confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects and similar considerations may justify limiting the amount of detail that can be made available. Where bond proceeds are allocated to expenditures as referred to in Article 4(2) the information may be provided at programme level.]

##### Allocation to Taxonomy-aligned economic activities

- [Whether the issuer is allocating proceeds in accordance with the gradual or portfolio approach, and whether the bond(s) [is a/ are] securitisation bond(s)]
- [Where applicable in accordance with Article 9(5), a statement that the composition of the portfolio of financial assets and/or fixed assets has not changed, compared to the year covered by the previous allocation report.]
- [The issuer shall fill out either table A or table B below, depending on whether the gradual approach or the portfolio approach to allocation of proceeds is used. The corresponding totals shall also be filled out.]
- [Confirmation of compliance with point c of Article 3 of Regulation (EU) 2020/852 (minimum safeguards)]
- [Where the issuer is a sovereign, and bond proceeds have been allocated to tax relief as set out in Article 4(2), an estimation of the revenue loss associated with eligible tax relief]

##### Allocation to specific Taxonomy-aligned economic activities

- [Where bond proceeds are allocated to a transitional or enabling economic activity, specifying which type of transitional or enabling economic activity is financed and the amount and proportion of proceeds allocated to each type of transitional or enabling economic activity;]
- [Where applicable, the amount and proportion of assets relating to taxonomy-aligned nuclear energy and fossil gas related activities in accordance with Article 10(2) and 11(3) of Regulation (EU) 2020/852]

##### Allocation to economic activities not aligned with the technical screening criteria

- [Where bond proceeds are allocated in accordance with Article 4a, a statement that the

[net] proceeds of the bond are partially allocated to economic activities that are not aligned with technical screening criteria. The issuer shall describe such non-alignment, the activities concerned and the percentage of the proceeds that have been allocated to such activities as a total and on a per-activity basis, including a breakdown describing which point(s) of Article 4a(1) is being used. Furthermore, an explanation of why technical screening criteria cannot be applied and an explanation of how the issuer has ensured that those activities comply with Article 4a, paragraph 3 and 4 of this Regulation and Article 3 points (a), (b) and (c), of Regulation (EU) 2020/852]

#### Issuance costs

- [An estimate of the amount of cumulative issuance costs that are deducted from the proceeds, as permitted under Article 4(1), with an explanation]

#### **5. Environmental impact of bond proceeds**

[No information is required under this heading for this report]

#### **6. Information on reporting**

- [A link to the issuer's website referred to in Article 13(1)]
- [Where applicable, a link to the issuer's relevant reports, such as the consolidated management report or the consolidated sustainability report]

#### **7. Capex plan**

- [Where applicable, progress made in the implementation of the CapEx Plan referred to in Article 6(1), point b, and the estimated date of completion of the projects therein.
- [Where there have been delays or departures that significantly impact the implementation of the CapEx plan, the issuer shall provide an explanation thereof, in accordance with Article 9(1a).]
- Where applicable, the plan referred to in Article 7(3)

#### **8. Other relevant information**

[In the case of a securitisation bond, references to the issuer in this document shall be construed as and, where appropriate, replaced with references to the originator]

**Table A: Taxonomy-alignment of proceeds information (for bonds making use of the gradual approach to the allocation of bond proceeds)**

[The following information shall be provided at least at the level of the economic activity, and ideally at the level of the project or group of projects. Confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects and similar considerations may justify limiting the amount of detail that can be made available. Where bond proceeds are allocated to expenditures as referred to in Article 4(2) the information may be provided at programme level.]

The information in the table below covers the period from the issuance of the green bond in question, and up to the reporting date.

<b>1. Project (or group of projects or economic activity) name, location, and description (for each project/group of projects/economic activity, as applicable).</b>
1.1 [Name]
1.2 [Location]
1.3 [Basic description]
<b>2. Amount of proceeds allocated from the bond or bonds</b>
2.1 [bond proceeds allocated to this project/group of projects/economic activity since bond issuance date]
2.2 [bond proceeds allocated to this project/group of projects/economic activity in the reporting period. ]
2.3 Share of project that is funded by this bond or these bonds
<b>3. Share of total proceeds used for financing (in the year of issuance or after the year of issuance) or refinancing (earlier)</b>
3.1 [the share of the amount in row 2.1 used for financing and refinancing]
3.2 [the share of the amount in row 2.2 used for financing and refinancing]



<b>4. Type and sector of economic activities funded by the bond or bonds</b>
4.1 [For each of the economic activities related to the project funded by the bond or bonds: the types/sectors]
4.2 [For each of the economic activities related to the project funded by the bond or bonds: where applicable, the respective NACE codes in accordance with the statistical classification of economic activities established by Regulation] (EC) No 1893/2006]
<b>5. Amount of proceeds allocated from the bond that are Taxonomy-aligned</b>
5.1 [of the total bond proceeds allocated to the project, the amount that is allocated to an activity which is Taxonomy-aligned since the issuance date]
5.2 [percentage share of amount given in column 2.1]
5.3 [of the bond proceeds allocated to the project in the reporting period, the amount that is allocated to an activity which is Taxonomy-aligned in the reporting period]
5.4 [percentage share of amount given in column 2.2]
<b>6. Environmental objective, screening criteria</b>
6.1 [The targeted environmental objective(s), as referred to in Article 9 of Regulation 2020/852]
6.2 [An indication of which delegated acts adopted in accordance with Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 are used to determine the taxonomy technical screening criteria, and their application dates]
6.3 [Information on the methodology and assumptions used for the calculation of key impact metrics in accordance with delegated acts adopted under Articles 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) of Regulation (EU) 2020/852, and for any additional impact metrics.]

<b>7. Nature of green assets and expenditure</b>
7.1 [of the amount allocated in the reporting period in column 5.3, capex amount]
7.2 [of the amount allocated in the reporting period in column 5.3, opex amount]
7.3 [of the amount allocated in the reporting period in column 5.3, fixed assets amount]
7.4 [of the amount allocated in the reporting period in column 5.3, financial assets amount]
<b>8. Other relevant information</b>
8.1 [Other relevant information, such as relevant environmental KPIs, and also links to websites with relevant information and links to relevant public documents with more detailed information. Examples: Website of company describing project, report by environmental consultancy]

Totals:

<b>Since issuance</b>	<b>[reporting period]</b>
Total amount of bond proceeds allocated since issuance: [X] Of which, total amount of bond proceeds allocated to Taxonomy-aligned economic activities since issuance: [X]	Total amount of bond proceeds allocated in the reporting period: [X] Of which, total amount of bond proceeds allocated to Taxonomy-aligned economic activities in the reporting period: [X] Of which: <ul style="list-style-type: none"><li>- Total amount of bond proceeds allocated to Taxonomy-aligned capex in the reporting period: [X]</li><li>- Total amount of bond proceeds allocated to Taxonomy-aligned opex in the reporting period: [X]</li><li>- Total amount of bond proceeds allocated to Taxonomy-aligned [other] in the reporting period: [X]</li></ul>

**Table B: Taxonomy-alignment of proceeds information (for bonds making use of the portfolio approach to the allocation of bond proceeds)**

[The following information shall be provided at least at the level of the economic activity, and ideally at the level of the project or group of projects. Confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects and similar considerations may justify limiting the amount of detail that can be made available. Some or all of the required information may be given outside of the table format.]

The information in the table below covers the reporting period.

<b>Outstanding green bonds</b>	<b>Portfolio of green assets</b>
[An overview over all outstanding European green bonds, indicating their individual and combined value.]	<p>[An overview over the eligible financial assets and assets as referred to in Article 4(1) on the issuer’s balance sheet, indicating:</p> <ol style="list-style-type: none"> <li>1. [Name, location, and basic description of project]</li> <li>2. [Where available, an indication of the proceeds that are intended to be allocated to this project from the bond]</li> <li>3. [Where available, an indication of the share of the amount in point 2 to be used for financing and refinancing]</li> <li>4. [For each of the economic activities related to the project funded by the bond: the types/sectors, and, where applicable, the respective NACE codes in accordance with the statistical classification of economic activities established by Regulation] (EC) No 1893/2006]</li> <li>5. [Where available, the amount of the proceeds for that project funded by the bond that are allocated to an activity which is Taxonomy-aligned] [percentage share of amount given in point 2]</li> <li>6. [The targeted environmental objective(s), as referred to in Article 9 of Regulation 2020/852] [An indication of which delegated acts adopted in accordance with Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 are used to determine the taxonomy technical screening criteria, and their application dates] [Information on the methodology and assumptions used for the calculation of key impact</li> </ol>

	<p>metrics in accordance with delegated acts adopted under Articles 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) of Regulation (EU) 2020/852, and for any additional impact metrics.]</p> <p>7. Where available, the breakdown of the amount allocated in the reporting period in point 5 according to whether proceeds are allocated to fixed assets or financial assets.</p> <p>8. Where applicable, additions or removals from the project portfolio in case new green bonds are added to the portfolio or in case (maturing) green bonds are removed from the portfolio].</p> <p>9. Where available, indicate the amount and/or number of new projects versus the amount of new green bond issuance in the calendar year of issuance</p> <p>10. [Other relevant information, such as relevant environmental KPIs, and also links to websites with relevant information and links to relevant public documents with more detailed information</p>
Total value of portfolio of outstanding green bonds:	<p>Total value of portfolio of green asset:</p> <p>Total value of portfolio of green assets related to an activity that is Taxonomy-aligned:</p>

## ANNEX III

### EUROPEAN GREEN BOND IMPACT REPORT

[Where the impact report is revised, the title shall reflect this.]

This document and its contents are not subject to any approval or endorsement from ESMA or any other competent authority.

#### **1. General Information**

- [Date of the publication of the impact report]
- [where applicable, Date of the publication of the revised impact report]
- [Date of the issuance of the bond(s) or tranches of the bond(s)]
- [The legal name of the issuer]
- [Where available, legal entity identifier (LEI) of the issuer],
- [Website address providing investors with information on how to get in contact with the issuer]
- [Where available, name of the bond assigned by the issuer]
- [Where available, international securities identification numbers (ISIN) of the bond(s) and its/their tranches]
- [Where the impact report was assessed by an external reviewer, the identity and contact details of the external reviewer]
- [Where applicable, the name of the competent authority that has approved the bond prospectus or prospectuses]

#### **2. Important information**

- [The following statement: “This bond uses the designation ‘European Green Bond/ EuGB’ in accordance with Regulation (EU) XXX”]
- [Where bond proceeds have been allocated in accordance with Article 4a, the following statement: "This European Green Bond makes (or these European Green Bonds make) use of the flexibility permitting a partial non-alignment with the taxonomy technical screening criteria, as further described in Section 4 of this impact report."]

### **3. Environmental strategy and rationale**

#### Overview

- [Information on how the bond has contributed to the broader environmental strategy of the issuer]
- [Where applicable, an explanation of any changes to broader environmental strategy of the issuer since the publication of the factsheet]
- [The environmental objectives referred to in Article 9 of Regulation 2020/852 pursued by the bond]

#### CapEx, and OpEx KPIs

- [Where the issuer is subject to Article 8 of Regulation (EU) 2020/852, a description on how, to what extent (e.g. expressed as a percentage change year-on-year), and in which financial periods bond proceeds have contributed to the issuer's key performance indicators for taxonomy-aligned assets, turnover, capital expenditure and operating expenditure]

#### Link to the transition plan

- [Where the issuer is subject to an obligation to publish plans pursuant to Article 19a(2)(a)(iii) or, where applicable, Article 29a(2)(a)(iii) of Directive 2013/34/EU, or where the issuer voluntarily publishes transition plans:
  - How bond proceeds have contributed to funding and implementing those plans. The information may be given at an aggregate economic activity level or at a project-by-project level.
  - A link to the website where those plans are published.]

#### **4. Allocation of bond proceeds**

[The following information shall be provided at least at the level of the economic activity, and ideally at the level of the project or group of projects. Confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects and similar considerations may justify limiting the amount of detail that can be made available. Where bond proceeds are allocated to expenditures as referred to in Article 4(2) the information may be provided at programme level.]

##### Allocation to specific Taxonomy-aligned economic activities

[The proportion of bond proceeds that was allocated to activities that are environmentally sustainable under Article 3 of Regulation (EU) 2020/852, according to the annual allocation reports issued for this bond (or these bonds):] [XX] percent of the bond proceeds

[Where bond proceeds were allocated to a transitional or enabling economic activity, specifying which transitional or enabling economic activity and the amount and proportion of proceeds allocated to each type of transitional or enabling economic activity;]

[Where applicable, the amount and proportion of assets relating to taxonomy-aligned nuclear energy and fossil gas related activities in accordance with Article 10(2) and 11(3) of Regulation (EU) 2020/852;]

##### Allocation to economic activities not aligned with the technical screening criteria

[Where bond proceeds were allocated in accordance with Article 4a, a statement that the [net] proceeds of the bond were partially allocated to economic activities which are not aligned with technical screening criteria. The issuer shall describe such non-alignment, the activities concerned and the percentage of the proceeds that have been allocated to such activities as a total and on a per-activity basis, including a breakdown describing which point(s) of Article 4a(1) was used. Furthermore, an explanation of why technical screening criteria could not be applied and an explanation of how the issuer has ensured that those activities comply with Article 4a, paragraph 3 and 4 of this Regulation and Article 3 points (a), (b) and (c), of Regulation (EU) 2020/852]



<p><b>5. Environmental impact of bond proceeds</b></p> <ul style="list-style-type: none"> <li>• [An estimation of positive and adverse environmental impacts in aggregated form]</li> <li>• [Information on the methodology and assumptions used to evaluate the impacts of projects, where the European green bond factsheet of the bond did not include this information]</li> <li>• [Information about the projects’ positive and negative environmental impacts and, where available, related metrics. Where this information is not available at project level, this must be justified]</li> <li>• [Where the issuer seeks to include this, information about whether and how the project has contributed to other sustainability aspects of the bond, including the social aspects of the transition towards climate neutrality, such as by providing new jobs, re-skilling and local infrastructure to communities affected by the transitioning of economic activities.]</li> <li>• Where bond proceeds are allocated in accordance with Article 4a, the issuer shall report this information separately for those projects and activities]</li> </ul>
<p><b>6. Information on reporting</b></p> <ul style="list-style-type: none"> <li>• [A link to the issuer’s website referred to in Article 13(1)]</li> <li>• [Where applicable, a link to the issuer’s relevant reports, such as the consolidated management report or the consolidated sustainability report]</li> </ul>
<p><b>7. Capex plan</b></p> <p>[Where applicable, progress made in the implementation of the CapEx Plan referred to in Article 6(1)]</p>
<p><b>8. Other relevant information</b></p>

[In the case of a securitisation bond, references to the issuer in this document shall be construed as and, where appropriate, replaced with references to the originator]

## ANNEX IV

### CONTENTS OF PRE-ISSUANCE, POST-ISSUANCE, OR IMPACT REPORT REVIEWS

This document and its contents are not subject to any approval or endorsement from ESMA or any other competent authority.

The title 'Pre-issuance review', 'Post-issuance review', or 'Impact Report review' shall appear prominently at the top of the first page of the document.

#### **1. General Information**

1. [Date of the publication of the review]
2. [Date of the issuance of the bond(s) or tranches of the bond(s)]
3. [Date of the publication of the related European green bond factsheet, and where applicable, of the related allocation report, or the impact report]
4. [The legal name of the issuer]
5. [Where available, the legal entity identifier (LEI) of the issuer]
6. [Where available, name of the bond (or bonds) assigned by the issuer]
7. [Where available, international securities identification numbers (ISIN) of the bond(s) and its/their tranches]
8. [The identity and contact details of the external reviewer, including website address]
9. [The name and job title of the lead analyst in a given assessment activity]
10. [The name and position of the person primarily responsible for approving the review]
11. [Where relevant, the date on which the review was last updated and an explanation detailing the reason for the update]
12. [Where applicable, other services provided by the external reviewer for the assessed entity together with a description of any potential conflicts of interests]

## **2. Introductory statements**

[For pre-issuance reviews: A statement that the external reviewer has assessed the completed European Green Bond factsheet laid down in Annex I in accordance with this Regulation;]

[For post-issuance reviews: A statement that the external reviewer has assessed the completed European Green Bond allocation report laid down in Annex II in accordance with this Regulation]

[For impact report reviews: A statement that the external reviewer has assessed the completed European Green Bond impact report laid down in Annex III in accordance with this Regulation]

13. A statement that this review represents an independent opinion of the external reviewer, and is to be relied upon only to a limited degree]

## **3. Statements on the alignment of use of proceeds with the Taxonomy Regulation**

[This section shall only be filled out in the case of a pre-issuance review or a post-issuance review]

[A statement regarding the alignment of the use of proceeds of the European Green Bond (or Bonds) with the Taxonomy Regulation based on the information provided by the issuer to the external reviewer:

14. Where the opinion expressed by the independent reviewer is positive, a statement that the bond (or bonds) meets – or is expected to meet, where relevant - the requirements of the European Green Bond Regulation as regards the use of proceeds;

15. Where the opinion expressed by the independent reviewer is negative, a statement that the bond (or bonds) does not meet – or is not expected to meet, where relevant – the requirements of the European Green Bond Regulation as regards the use of proceeds, and that the designation ‘European Green Bond’ can only be used if the bond is submitted for a new review and obtains a positive opinion]

#### **4. Sources, assessment methodologies, and key assumptions**

16. [Information about the sources relied upon to prepare the review, including links to measurement data and the methodology applied, when available]
17. [An explanation of the assessment methodologies and key assumptions]
18. [An explanation of the assumptions and taxonomy requirements used, of the limits and uncertainties surrounding the methodologies used and a clear statement about whether the external reviewer considers that the quality of information provided by the issuer or related third party is sufficient to perform the review and the extent to which, if any, the external reviewer has attempted to verify the information so provided]

## **5. Assessment and opinion**

[In each case based on the information provided by the issuer to the external reviewer (to be specified where appropriate)]

[For pre-issuance reviews:

19. A detailed assessment of whether the completed factsheet aligns with Articles 4 to 7 of this Regulation.
20. The opinion of the external reviewer on the assessment mentioned above
21. Where bond proceeds are intended to be allocated in accordance with Article 4a, the assessment and opinion shall be provided in a dedicated section.]

[For post-issuance reviews:

22. A detailed assessment of whether the issuer has allocated the proceeds of the bond in alignment with Articles 4 to 7 of this Regulation.
23. An assessment of whether the issuer has complied with the intended use of proceeds set out in the green bond factsheet]
24. The opinion of the external reviewer on the two assessments referred to directly above]
25. For assets or activities that are subject to a CapEx Plan, an assessment upon its completion of whether those assets or activities meet the taxonomy requirements
26. Where bond proceeds are allocated in accordance with Article 4a, the assessment and opinion shall be provided in a dedicated section. The assessment shall indicate whether each of the relevant requirements of Article 4a have been met.

[For impact report reviews:

- An assessment of whether the bond issuance aligns with the broader environmental strategy and rationale of the issuer;
- An assessment of the indicated environmental impact of the bond proceeds;
- The opinion of the external reviewer on the assessments referred to in the above indents.]

## **6. Any other information**

[Any other information that the reviewer may deem relevant to its review]

[In the case of a securitisation bond, references to the issuer in this document shall be construed as and, where appropriate, replaced with references to the originator]