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NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council on European green bonds - Presidency compromise proposal

1. The Slovenian Presidency has produced a comprehensive compromise proposal on the basis of delegations' oral interventions in the Working Party on Financial Services and the Banking Union, as well as their written submissions to the Presidency.
2. The Presidency's compromise proposal is set out in the Annex to this document.

**Presidency Note on revised compromise proposal, as presented in informal videoconference
on 9 December 2021**

The Council Working Party (CWP) will discuss a revised Presidency compromise proposal. The amendments to the first proposal result from the discussion of the last CWP meeting, written comments received from Member States' delegations and the work of a Council lawyer-linguist expert. The amendments aim at a more precise and clear text and remove inconsistencies. The Presidency's aim was not to amend the proposal substantially in most important areas, such as the flexibility pocket, grandfathering, treatment of small and medium-sized enterprises (SMEs) and the decision on ESMA vis-à-vis national competent authorities (NCAs). In terms of substance, the revised compromise makes changes in relation to state auditors and the scope of supervision by NCA.

The above-mentioned are areas of the EuGB (European green bonds) proposal, where Member States' positions diverge the most. The Presidency's revised compromise proposal therefore contains solutions supported by these key arguments:

(a) Sovereign expenditure categories (Art. 4(2))

Sovereigns are issuers of European green bonds with specific expenditures, which are not common for other issuers. The aim of the revised proposal is to cover all such specifics. The following examples are accordingly intended to support the added points f to h in Article 4(2):

- operating expenditures or intermediate consumption (P.2 under ESA20101): could be e.g. programme under the government initiative to promote consumption of cooling appliances for households (compliant with the TSC of subchapter 3.6, prospective climate delegated act) to exchange highly energy-intensive appliances;

¹ [European system of accounts. ESA 2010 \(europa.eu\)](https://ec.europa.eu/economy_finance/european-system-of-accounts-esa-2010)

- current transfers within general government (D.73): to enable channeling of proceeds to green assets/activities through other government entities, e.g. from the central to local level;
- current international cooperation (D.74): to allow for transfers directed, for instance, at multilateral development banks or funds such as the Green Climate Fund or the Climate Investment Funds. These expenditures represent a significant contribution to the EU's climate and environmental objectives from a global perspective.

(b) Flexibility pocket (paragraph 1a of Article 6, paragraph 2 of Article 61a and Annexes)

The use of proceeds of EuGB shall, as far as possible, be used for economic activities that meet the criteria for environmentally sustainable economic activities set out in Article 3 of the Taxonomy Regulation ('taxonomy requirements'). Nevertheless, it is necessary to strike a balance between the ambition and the actual applicability of the taxonomy regime. The Presidency's compromise proposal therefore provides for a 15% flexibility with regard to the Technical Screening Criteria (TSC) for the allocation of bond proceeds in limited cases and for limited activities. In the case of flexibility, its use should be justified and disclosed, the fulfillment of other taxonomy criteria should be explained, and a positive opinion from external reviewer should be acquired. The main arguments for the flexibility are:

- the TSC will be rolled out progressively over time, in specific cases,
- the TSCs are not directly applicable by the issuer due to the innovative nature, complexity, and/or location of the activities. The EuGB regulation shall recognize that classification system such as the EU Taxonomy may not be able to reflect the pace of technological innovation, as well as to anticipate the full complexity of economic and corporate activities or all the specificities of national or regional circumstances,
- robust rules for external review will ensure compliance with high-level principles set out in Article 3, points (a) to (c) of the Taxonomy Regulation.

(c) Grandfathering (Article 7)

The Presidency compromise proposal provides for full grandfathering throughout the lifetime of the EuGB, to avoid the risks that could arise from possible changes to the TSC. The following argument is taken from recital 11 of the EuGB proposal: *'In view of the expected technological progress in the field of environmental sustainability, the Technical Screening Criteria are likely to be reviewed and amended over time. Regardless of such changes, 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 respective European green bond.’.

(d) Post-issuance reviews from a state auditor (Article 11)

Sovereigns from the EU may receive post-issuance reviews of EuGBs from:

(a) an external reviewer, or

(b) an external reviewer and a state auditor, where:

- the state auditor shall review the allocation of bond proceeds and
- the external reviewer shall ascertain the compliance of the economic activities with the requirements of the taxonomy.

The division of tasks anticipated follows current practices in the Member States while taking into account the different areas of expertise of state auditors and external reviewers. In this way a level playing field with other EuGB issuers should be ensured.

(e) ESMA vs NCAs (Title III and Chapter 2 of Title IV)

The Presidency compromise proposal pursues an efficient and effective supervision of external reviewers, considering the principle of proportionality. The main progress on proportionality is an exemption in Article 58(3) for external reviewers, whose income is below a certain threshold, from paying a supervisory fee. Furthermore, the proportionality shall be enshrined in regulatory technical standards in relation to registration and supervision of external reviewers, and in Commission’s delegated acts specifying fees charged by ESMA.

ESMA shall be entrusted powers and tasks of registering and supervising external reviewers, among others, for the following reasons:

- ESMA could already leverage on its experience in supervising credit rating agencies (CRAs) given the similarities of activities and actors. In some cases, it can even be expected that external reviewers will be part of wider CRA groups.
- ESMA has experience in charging supervisory fees on a proportionate basis, consistent with the requirements of the CRA Regulation. This currently allows for an exemption from supervisory fees for entities with an applicable annual turnover from credit rating activities of less than EUR 10 million.

Further to this proposal, the Presidency will also search views of Member states on a possibility for further balancing, if member states would not oppose a solution, where the registration and supervisory authority of external reviewers would be ESMA, except for:

- external reviewers that are already subject to supervision by a national competent authority in accordance with Union or national legislation; and
- not for profit organizations and micro, small, or medium-sized enterprises as defined in Recommendation 2003/361/EC,

in which case the registration and supervisory authority would be the NCA. Given the tasks envisaged for the registration and supervision of the external reviewers, the NCAs' adaptation should be relatively straightforward, as the tasks are similar to the tasks they already perform.

(f) Scope of supervision of competent authorities (Article 36)

In order to ensure that issuers of EuGB comply with the transparency and external review requirements laid down in the EuGB proposal, the NCA of the home Member State should have supervisory and investigatory powers. The use of proceeds compliance as set out in Articles 3 to 7 of the EuGB proposal should be beyond their control, as this part falls under the external reviewers' oversight.

The question of scope, i.e. which issuers should be exempt from NCA's supervision, is still somewhat open. The Presidency's compromise proposal excludes sovereigns, as requested by most Member States.

(g) Treatment of SMEs (paragraph 1 of Article 61a)

A review clause has been introduced, under which the Commission will prepare a report assessing whether amendments to the Regulation are vindicated. Such a solution seems appropriate for the following reasons:

- SMEs usually resort to bank loans and are not frequent bond issuers, and
- the Commission report will be able to address SMEs' response to the Regulation.

**Revised Presidency compromise proposal, as presented in informal videoconference on
9 December 2021**

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on European Green Bonds

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 Central Bank,~~

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The transition to a low-carbon, more sustainable, 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. In 2016, the Union concluded the Paris Agreement³. 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 a pathway towards low greenhouse gas emissions and climate-resilient development.
- (2) The European Green Deal Investment Plan of 14 January 2020⁴ envisages 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 ~~December 2020~~ conclusions **of 11 December 2020**, the European Council invited the Commission to put forward a legislative proposal for a green bond standard.
- (3) Environmentally sustainable bonds are one of the main instruments for financing investments related to low-carbon technologies, energy **efficiency** 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. Various existing initiatives for environmentally sustainable bonds do not ensure common definitions of

² OJ C , , p. .

³ 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 4).

⁴ COM(2020)21 final.

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.

- (4) Diverging rules on the disclosure of information, on the transparency and accountability of external reviewers ~~reviewing~~ of environmentally sustainable bonds, and on the eligibility criteria for ~~eligible~~ environmentally sustainable projects, could 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 ~~the~~ 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 ~~causes~~ 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 risk distorting investment decisions.
- (6) The lack of harmonised rules for the procedures used by external reviewers ~~to~~ 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 internal market 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 Council⁵ in the market for such bonds.
- (7) A uniform set of specific requirements should therefore be laid down for bonds issued by financial ~~and~~ or non-financial undertakings ~~and~~ or sovereigns that voluntarily wish to use 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, to increase market efficiency by reducing discrepancies and thereby also reducing the costs of assessing those bonds for investors.
- (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

5 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).

bond' or 'EuGB' should exclusively be used to fund economic activities that either are environmentally sustainable and ~~are~~**should** thus **be** aligned with the environmental objectives set out in Article 9 of Regulation (EU) 2020/852; or contribute to the transformation of activities to become environmentally sustainable. Those bonds ~~can~~ **should** however be **able to be** used both to finance such environmentally sustainable activities directly through the financing of assets and expenditures that relate to economic activities that meet the **criteria for environmentally sustainable economic activities** requirements set out in Article 3 of Regulation (EU) 2020/852 (**'taxonomy requirements'**), or indirectly 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 ~~bonds that use the designation 'European green bond'~~ or 'EuGB'.

- (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 European green 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 ~~requirements for environmentally sustainable economic activities set out in Article 3 of Regulation (EU) 2020/852 ('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, provided that the proceeds ~~from~~ **of** those **or subsequent** financial assets are allocated to economic activities that meet the taxonomy requirements. Since the assets of households can also have a long-term positive impact on the environment, those financial assets should also include the assets of households. Since capital expenditure and selected operating expenditure can be used to acquire, upgrade or maintain fixed assets, a third 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, which can be extended however where duly justified by the specific features of the economic activities and investments concerned. For ~~those~~ reasons ~~outlined above~~, the capital and operating expenditures should also include the expenditures of households.

- (9a) For certain economic activities the Technical screening criteria under Regulation (EU) 2020/852 are still to be developed or the existing Technical screening criteria are not directly applicable, due to their innovative or complex nature or location, a limited degree of flexibility should be provided for. This flexibility should be adequately circumscribed in order to maintain a very high level of ambition for the European green bond standard. Consequently, 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 bond 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 banks leading the issuance, advisory costs, legal costs and the costs related to the external review.

- (10) Sovereigns are frequent issuers of environmentally sustainable bonds and should therefore also be allowed to issue ‘European green bonds’, provided that the proceeds of such bonds are used to finance either assets or expenditure that meet the taxonomy **requirements**, or assets or expenditure that **are expected to** will meet those requirements within a reasonably short period from the issuance of the bond concerned, which can be extended however where duly justified by the specific features of the economic activities and investments concerned.
- (11) Article 4 of Regulation (EU) 2020/852 requires Member States and the Union to apply the ~~criteria set out in Article 3 of that Regulation~~ **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 ~~can~~ **may** be financed ~~by~~ **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 respective** European green bond ~~was issued~~ when allocating the proceeds of such bonds to eligible fixed assets or expenditures, ~~until maturity of the bond~~. To ensure legal certainty for European green bonds ~~whose~~ **the** proceeds **of which** are allocated to financial assets, it is necessary to clarify that the underlying economic activities funded by those financial assets should comply with the technical screening criteria applicable at the moment ~~those~~ financial assets were created.

~~Where the relevant delegated acts are amended, the issuer should allocate proceeds by applying the amended delegated acts within five years.~~

- (12) The time needed to transform an asset to align the economic activity to which it relates with the taxonomy requirements should ~~reasonably~~ not exceed five years, except in certain circumstances where it may take up to ten years. For that reason, eligible capital expenditure should relate to economic activities that meet or ~~will~~ **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.
- (13) Investors should be provided with all **of the** information necessary to evaluate the **use of proceeds** ~~environmental impact~~ 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 ~~bond~~ 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.

- (14) Investors should benefit from cost-effective access to reliable information about ~~the~~ European green bonds. All issuers of European green bonds, including issuers who are not required to publish a prospectus in accordance with the Regulation (EU) 2017/1129, should therefore contract external reviewers 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. In addition, sovereigns may use state auditors to confirm the allocation of proceeds of the bonds.
- (15) Issuers of European green bonds should abide by their commitments to investors and allocate the proceeds of their European green bonds within a reasonably short time after issuance. At the same time, issuers should not be penalised for allocating ~~bond~~ the proceeds of European green bonds to economic activities that do not yet meet the taxonomy requirements, but will do so within the five-year-period (or the extended ten-year-period). Issuers should in any case allocate all proceeds of their European green bonds before the maturity of each bond.
- (16) Unlike issuers that are financial or non-financial undertakings, issuers that are sovereigns can use the proceeds of European green bonds to indirectly finance economic activities that are aligned with the taxonomy requirements through the use of programmes of tax expenditures or programmes of transfers, including subsidies. ~~In such cases,~~ Where justified by the complexity and scale of programmes, sovereigns should ensure that economic activities funded by such programmes comply with the terms and conditions of those programmes. For that reason, when providing pre- and post-issuance reviews of European green bonds issued by sovereigns ~~and the proceeds of which are allocated to tax expenditures or subsidies in accordance with terms and conditions that are aligned with taxonomy requirements,~~ external reviewers should not be required to assess the taxonomy-alignment of each economic activity funded by such programmes. Where that is the case, it should be sufficient for external reviewers to assess the alignment of the terms and conditions of the funding programmes concerned with the taxonomy requirements.
- (16a) Loans eligible for the allocation of the proceeds of European green bonds may be in the case of public development credit institutions extended to a very large number of final borrowers directly or through intermediary institutions. Therefore, it should be made possible to perform the assessment of the use of proceeds at the level of terms and conditions of the loan programme as set up by the relevant public development credit institution and promulgated by the intermediary institutions.
- (17) Certain ~~financial~~ undertakings that have a portfolio of European green bonds on the liability side of a balance sheet may not be able to identify, for each European green bond, the distinct financial assets on the asset side of a balance sheet to which the proceeds of ~~said~~ that bond have been allocated. This is due to a mismatch between, on the one hand, the time to maturity and the volume of funding of those bonds, and on the other hand the time to maturity and volume of the financial assets on the balance sheet of the ~~financial~~ undertaking. ~~Financial~~ Undertakings should in such cases be required to disclose the allocation of the aggregate proceeds of their portfolio of European green bonds to a portfolio of environmentally sustainable financial assets on the undertaking's balance sheet. Those ~~financial~~ undertakings should then demonstrate in annual allocation reports that the related environmentally sustainable financial assets complied with the taxonomy requirements at the time they were created. In order to ensure that all proceeds of European green bonds are allocated to environmentally sustainable economic activities, the ~~financial~~ undertakings

should also demonstrate that the amount of those environmentally sustainable financial assets exceeds or equals the amount of European green bonds that have not yet matured. To ensure that the information provided remains complete and up to date, an external reviewer should review the annual allocation reports each year. That external reviewer should in particular focus on those financial assets that were not on the issuer's balance sheet in the previous year's **annual** allocation report.

- (18) To improve transparency, issuers should also disclose the environmental impact of their bonds by ~~means of the publication of~~ **publishing, at least once during the lifetime of the bond,** impact reports, ~~which should be published at least once during the lifetime of the bond.~~ In order to provide investors with all **the relevant** information ~~relevant~~ 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 impacts. 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.
- (19) State auditors, ~~or any other public entity that is mandated by a sovereign to assess whether the proceeds of the European green bonds are indeed allocated to eligible fixed assets, expenditures and financial assets,~~ are statutory entities with responsibility for and expertise in the ~~oversight over~~ **supervision of** public spending, and ~~typically~~ have legally guaranteed independence. Sovereigns that issue European green bonds should therefore be allowed to make use of such state auditors ~~or entities~~ for the purposes of the external review of bonds issued by such sovereigns **them**. Such state auditors ~~or entities~~ should not be registered or supervised ~~according~~ **under** to this Regulation.
- (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 as well as any post-issuance reviews.
- (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 **and proportionate** supervision by the European Securities and Markets Authority (ESMA), **established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁶.**
- (22) To strengthen transparency towards investors on how the alignment of ~~bond~~ **the proceeds of bonds** with the taxonomy requirements is assessed, external reviewers should disclose to users of pre-issuance reviews and post-issuance 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.

⁶ **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).**

- (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 of external reviewers~~, external reviewers should avoid ~~situations of conflicts of interests~~ and manage ~~those~~such conflicts adequately when they are unavoidable. External reviewers should therefore disclose conflicts of interests ~~in a timely manner~~ the pre- and post-issuance reports. They should ~~also~~ keep records of all significant threats to their independence, to that of their employees and to that of other persons involved in the external review process. They should ~~also~~ keep records of the safeguards applied to mitigate those threats.
- (25) It is necessary to avoid divergent applications of this Regulation by national 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 registered 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, ~~reviewed entities and~~ 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 ~~seek access to~~ 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, and the manner in which those fees are to be paid. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁷. 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.
- (33) ESMA should be mandated to develop draft regulatory technical standards to further specify, **by taking into account the principle of proportionality**, the criteria on which it can assess an application for registration by an external reviewer and the provision of information by that external reviewer to determine its level of compliance with the requirements of this Regulation.⁸
- (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 Council⁹.
- (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

⁷ OJ L 123, 12.5.2016, p. 1.

~~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).~~

⁹ 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).

TFEU and in accordance with ~~Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council~~¹⁰.

- (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 30 months following the entry into force of this Regulation.

(36a) To ensure that issuers of European green bonds comply with the requirements of transparency and external review set out in this Regulation, competent authorities of the home member state, designated in accordance with Regulation (EU) 2017/1129, should have the necessary supervisory and investigatory powers, including for issuances of European green bonds that are exempted from the requirement to publish a prospectus.

- (37) ~~The objectives of this~~ **This** Regulation are twofold. ~~On the one hand,~~ it aims to ensure that uniform requirements apply to the use of the designation of ‘European green bond’ or ‘EuGB’. ~~On the other hand, it 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 **and to establish supervision of issuers of European green bonds.** All aims should facilitate capital raising for projects that pursue environmentally sustainable objectives. 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:

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).

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 environmentally sustainable bonds made available to investors 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 legal entity that issues bonds;
- ~~(2) ‘financial undertaking’ means an AIFM as defined in Article 4(1), point (b), of Directive 2011/61/EU of the European Parliament and of the Council¹¹, a UCITS management company as defined in Article 2, point (10), of Regulation (EU) 2019/2088 of the European Parliament and of the Council¹², a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹³, an investment firm as defined in Article 4(1), point (2) of Regulation (EU) No 575/2013, an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council¹⁴ or a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;~~

¹¹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

¹² Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

¹³ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

¹⁴ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

- (3) 'sovereign' means ~~any of the following:~~
- (a) Euratom, the Union ~~and or~~ any of their agencies **thereof**;
 - (b) ~~any~~ State, including a government department, an agency, **a legal entity of public law** or a special purpose vehicle ~~of~~ **owned by such a** State;
 - (c) in the case of a federal State, a member of the federation **including a government department, an agency, a legal entity of public law or a special purpose vehicle owned by such member**;
 - (d) a regional or municipal entity **including a government department, an agency, a legal entity of public law or a special purpose vehicle owned by such regional or municipal entity; or**
 - (e) a collective undertaking of several States in the form of an organisation or a special purpose vehicle;
 - ~~(f) a company of private law fully owned by one or more of the entities referred to in points (a) to (e);~~
- (4) 'taxonomy requirements' means the ~~requirements~~ **criteria for environmentally sustainable economic activities** set out in Article 3 of Regulation (EU) 2020/852;
- (5) 'regulated market' means a regulated market as defined Article 4(1), point (21), of Directive 2014/65/EU of the European Parliament and of the Council¹⁵
- (6) 'offer to the public' means an offer of securities to the public as defined in Article 2, point (d), of Regulation (EU) 2017/1129 of the European Parliament and of the Council¹⁶;**
- (7) 'home Member State' means a home Member State as defined in Article 2, point (m), of Regulation (EU) 2017/1129 ;**
- (8) 'host Member State' means a host Member State as defined in Article 2, point (n), of Regulation (EU) 2017/1129;**
- (9) 'financial assets' means debt or equity, or a combination thereof;**
- (10) 'capital expenditures' means additions to fixed tangible and fixed intangible assets:**
- (a) during the financial year considered before depreciation, amortisation and any re-measurements, including the additions resulting from revaluations and impairments for the financial year concerned, and excluding fair value; or**
 - (b) resulting from business combinations;**

15 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).

16 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 (OJ L 168 30.6.2017, p. 12).

- (11) ‘operating expenditures’ means direct non-capitalised costs which relate to research and development, education and training, building renovation measures, short-term lease, maintenance and repair, and any other direct expenditures relating to the day-to-day servicing of property, plant and equipment that are necessary to ensure the continued and effective functioning of such assets.

Title II

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

Chapter I **Bond-related requirements**

Article 3 *Designation*

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

Article 4 *Use of the proceeds of European green bonds*

1. Before ~~the~~ maturity of ~~the~~ a bond, the proceeds of European green bonds, after deducting costs of banks leading the issuance, advisory costs, legal costs and the costs related to the external review, shall be ~~exclusively~~ only and fully allocated, ~~without deducting costs, to the following, or a combination thereof:~~

- (a) fixed assets, including those of households, that are not financial assets;
- (b) capital expenditures, including those of households;
- (c) operating expenditures ~~that were~~ incurred more recently than three years prior to the issuance of the European green bond; or
- (d) financial assets ~~as referred to in Article 5.~~

~~For the purposes of this paragraph, capital expenditures shall mean either additions to fixed tangible and fixed intangible assets during the financial year considered before depreciation, amortisation and any re-measurements, including the additions resulting from revaluations and impairments for the financial year concerned, and excluding fair value or~~

~~any additions to fixed tangible and fixed intangible assets resulting from business combinations.~~

~~For the purposes of this paragraph, operating expenditures shall mean direct non-capitalised costs which relate to research and development, education and training, building renovation measures, short term lease, maintenance and repair, and any other direct expenditures relating to the day-to-day servicing of fixed tangible or fixed intangible assets of property, plant and equipment that are necessary to ensure the continued and effective functioning of such assets.~~

2. By way of derogation from paragraph 1, a sovereign may also allocate the proceeds of European green bonds it has issued to the following, or any combination thereof:

- (a) fixed assets as referred to in ~~point 7.22 of Annex A,~~ **point 7.22**, to Regulation (EU) No 549/2013 of the European Parliament and of the Council¹⁷;
- (b) non-produced non-financial assets as referred to in ~~point 7.24 of Annex A,~~ **point 7.24**, to Regulation (EU) No 549/2013;
- (c) tax relief as referred to in ~~point 20.167 of Annex A,~~ **point 20.167**, to Regulation (EU) No 549/2013, that was granted more recently than three years prior to the issuance of the European green bond;
- (d) subsidies as referred to in ~~point 4.30 of Annex A,~~ **point 4.30**, to Regulation (EU) No 549/2013, that were transferred more recently than three years prior to the issuance of the European green bond;
- (e) capital expenditures as referred to in ~~point 20.104 of Annex A,~~ **point 20.104**, to Regulation (EU) No 549/2013;
- (f) operating expenditures or intermediate consumption as referred to in Annex A, point 3.88, to Regulation (EU) No 549/2013, incurred more recently than three years prior to the issuance of the European green bond;**
- (g) current transfers within general government as referred to in Annex A, point 4.118, to Regulation (EU) No 549/2013, provided that the proceeds of those transfers are allocated according to points (a) to (d) of paragraph 1, or points (a) to (f) of paragraph 2; or**
- (h) current international cooperation as referred to in Annex A, point 4.121, to Regulation (EU) No 549/2013.**

3. ~~A European green bond may be refinanced by issuing a new European green bond.~~

17 Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174, 26.6.2013, p. 1).

Article 5
Financial assets

1. ~~Financial assets as referred to in Article 4(1), point (d), shall mean any of the following assets, or any combination thereof:~~

~~(a) debt;~~

~~(b) equity.~~
2. ~~The proceeds of the financial assets referred to in paragraph 1 shall only be allocated to~~ **the uses listed in Article 4(1) and (2).** ~~fixed assets that are not financial assets as referred to in Article 4(1), point (a), capital expenditures as referred to in Article 4(1), point (b), or operating expenditures as referred to in Article 4(1), point (c).~~
3. **Where the proceeds of financial assets are allocated to one or more subsequent financial assets the terms and conditions of the financial assets to which those proceeds are allocated shall ensure that those proceeds are allocated at the level of the final recipient to the uses listed in Article 4(1), points a to c, and Article 4(2).**

~~By way of derogation from paragraph 2, the proceeds of the financial asset referred to in paragraph 1 may be allocated to other financial assets provided that the proceeds from those financial assets are allocated according to paragraph 2.~~

Article 6
Taxonomy-alignment of use of proceeds

1. The use of proceeds referred to in Article 4 shall relate to:

~~(a) economic activities that meet the taxonomy requirements; or~~
(b) in the case of capital expenditures or operating expenditures to economic activities that will be expected to ~~meet the taxonomy requirements within a defined~~ **certain** ~~period of time as set out in a taxonomy alignment plan.~~

The period of time referred to in point (b) of the first subparagraph shall not exceed five years from bond issuance, unless a longer period of up to ten years is justified by the specific features of the economic activities concerned as documented in either a CapEx plan (for capital expenditure) or an OpEx plan (for operating expenditure), as set out in the Delegated Regulation adopted under Article 8 of Regulation (EU) 2020/852.

The CapEx plan or OpEx plan referred to in the second subparagraph shall demonstrate the ability of the economic activity referred to in point (b) of the first subparagraph to meet the taxonomy requirements, including by describing the actions and expenditures that are necessary for the economic activity to meet the taxonomy requirements within the specified period of time.

~~The taxonomy alignment plan referred to in the first subparagraph shall describe the actions and expenditures that are necessary for an economic activity to meet the taxonomy requirements within the specified period of time.~~

The period referred to in the first and second subparagraph shall not exceed five years from bond issuance, unless a longer period of up to ten years is justified by the specific features of the economic activities concerned as documented in a taxonomy alignment plan.

1a. By way of derogation from Article 6(1), up to 15 % of the proceeds of European green bonds may be allocated to economic activities that are aligned with the taxonomy requirements, with the exception of the technical screening criteria referred to in Article 3, point (d), of Regulation (EU) 2020/852, but only for the following:

- (a) economic activities for which those technical screening criteria have not yet been established;**
- (b) economic activities for which, due to their innovative or complex nature or their location those technical screening criteria are not directly applicable by the issuer.**

The Commission shall adopt delegated acts in accordance with Article 60 by ... [PO: Please insert the date 12 months after date of entry into force of this Regulation] to specify the meaning of the terms ‘innovative nature’, ‘complex nature’ or ‘location’ referred to in point (b) of the first subparagraph.

2. Where proceeds ~~from~~**of** a European green bond are allocated by means of financial assets either to capital expenditures as ~~referred to in Article 4(1), point (b)~~, or to operating expenditures as ~~referred to in Article 4(1), point (e)~~, the defined period of time referred to in paragraph 1, ~~first~~**second** subparagraph, shall start from the moment of the creation of the financial asset.

Article 7

Application of the taxonomy requirements

1. Issuers shall allocate bond proceeds to the uses set out in Article 4(1) points (a), (b) and (c), **listed in** Article 4(2), or **to** the equity ~~referred to in Article 5(1), point (b)~~ by applying ~~the~~**in accordance with 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 applicable at the point in time when the bond ~~was~~**is** issued.

~~[Where 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 amended following the issuance of the bond, the issuer shall allocate bond proceeds to the uses referred to in the first subparagraph by applying the amended delegated acts within five years after their entry into application.]~~

2. When allocating bond proceeds to ~~the debt referred to in Article 5(1), point (a)~~, issuers shall apply 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 applicable at the point in time when the debt was created.

Where, at the time of the creation of the debt referred to in the first subparagraph, no delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 were in force, issuers shall apply the first delegated acts that

were adopted **after the creation of the debt** pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852.

~~[Where 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 amended following the creation of the debt referred to in the first subparagraph, the issuer shall allocate bond proceeds to the debt referred to in the first subparagraph by applying the amended delegated acts within five years after their entry into application.]~~

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 ~~all of the following~~:
 - (a) an assessment of whether the completed green bond factsheet complies with Articles 4 to 7 ~~of this Regulation and Annex I to this Regulation~~;
 - (b) the elements set out in Annex IV.

Article 9

Allocation reports and post-issuance review of allocation reports

1. ~~For Every~~ **annual period** ~~year and until (and including) the~~ **annual period of** full allocation of the proceeds of the European green bond concerned, issuers of European green bonds shall draw up a European green bond allocation report by using the template laid down in Annex II, demonstrating that the proceeds of any European green bonds concerned from their issuance date and until the end of the ~~year~~ **annual period** the report refers to have been allocated in accordance with Articles 4 to 7. **The first annual period starts on the date of issuance.**

- 1a. By way of derogation from paragraph 1, the annual period may be equal to the financial year, if an allocation report relies on audited data or it covers more European green bonds.**
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 ~~the~~ 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 are financial undertakings~~ that allocate proceeds ~~from~~ **of** a portfolio of several European green bonds to a portfolio of financial assets ~~as referred to in Article 5~~ shall be subject to a post-issuance review by an external reviewer, **except where there has been no change in allocation compared to the year covered by the previous allocation report**. The external reviewer shall pay particular attention to those financial assets that were not included in any previously published allocation report.
6. Issuers of European green bonds shall provide the allocation reports referred to in paragraph 3 ~~, 4, and 5~~ to an external reviewer within ~~30~~ **180** days following the end of the ~~year~~ **annual period** to which the allocation reports refer. The post-issuance review must be made public within 90 days following the receipt of the allocation report.
- Issuers of European green bonds shall provide the amended allocation report, referred to in paragraph 4, without undue delay to an external reviewer. The amended allocation report and the post-issuance review shall be made public without undue delay.**
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 compliance with Articles 4 to 7 based on the information provided to the external reviewer;
 - (b) an assessment of whether the issuer has complied with the intended use of proceeds set out in the green bond factsheet based on the information provided to the external reviewer;
 - (ba) an assessment of whether assets or activities subject to the CapEx or Opex plan upon their completion meet the taxonomy requirements based on the information provided to the external reviewer;**
 - (c) the elements set out in Annex IV.
8. Where bond proceeds are allocated to ~~tax-relief~~ **expenditures** as referred to in Article 4(2) ~~, point (e) or subsidies as referred to in Article 4(2), point (d)~~, the post-issuance review

shall may only assess compliance with Articles 4 to 7 of the terms and conditions under which those expenditures or transfers have been disbursed, where justified by the complexity, scale and homogeneity of the underlying activities.

9. Where bond proceeds are allocated in accordance with Article 5(3) to financial assets in the context of activities of public development credit institution, as defined in Article 429a(2) of Regulation (EU) 575/2013, the post-issuance review may only assess compliance with Articles 4 to 7 of the terms and conditions governing the use of proceeds of those financial assets.

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 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.

Article 11

Sovereigns as issuer

1. ~~An iAn EU sovereign ssuers that is a sovereign may~~ shall obtain pre-issuance and post-issuance reviews of European green bonds from:
 - (a) an external reviewer, or
 - (b) from an external reviewer and a state auditor, whereby ~~or any other public entity that is mandated by the sovereign to assess compliance with this Regulation~~ the state auditor shall review the allocation of bond proceeds and the external reviewer shall ascertain the compliance of economic activities funded through a bond with taxonomy requirements.
2. Article 9(7) shall apply to the state auditor when performing post-issuance review of allocation reports.

Article 12

Prospectus Documents for European green bonds

1. Where a prospectus is to be published pursuant to Regulation (EU) 2017/1129 for the European green bond, that prospectus or, where relevant, in accordance with Article 8 of that Regulation, the final terms of a base prospectus, shall clearly state, ~~where required to provide information on the use of proceeds;~~ in the section describing the use of proceeds, where applicable, or in another prominent place, that the European green bond is issued in accordance with this 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.
3. Where the obligation to publish a prospectus pursuant to Regulation (EU) 2017/1129 for the European green bond does not apply, the European green bond legal documentation, such as the Final Terms shall, in the section describing the use of

proceeds or in other prominent place, state that the European green bond is issued in accordance with this Regulation. The legal documentation may, in the section describing the use of proceeds, or in other prominent place, incorporate by reference the European green bond factsheet referred to in Article 8(1), point (a), of this Regulation.

- [4. Issuers shall undertake towards the investors to comply in all material respects with the requirements set out in this Title until the maturity of the bonds.]**

Article 13

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

1. Issuers of European green bonds shall publish on their website, in a distinct section titled 'European green bonds' and make available, free of charge, **and as 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, **for** every ~~year~~ **annual period** until **(and including) the annual period of** the full allocation of the proceeds of the European green bond concerned, no later than ~~three~~ **nine** months following the ~~end of the year~~ **annual period** it refers to;
 - (d) the post-issuance reviews of the European green bond allocation reports referred to in Article 9;
 - (e) the European green bond impact report referred to in Article 10;
 - (f) the post-issuance review of the impact report if obtained; and**
 - (g) if a prospectus is published pursuant to Regulation (EU) 2017/1129, a link to the website where the prospectus is published.**
2. The information contained in the documents referred to in paragraph 1, points (a), (c) and (e), shall be provided in the following language or languages:
 - (a) where the European green bonds are offered to the public **in only one Member State and are not admitted to trading** ~~or are listed on a regulated market in any other~~ ~~in only one Member State~~, in a language accepted by the competent authority, as referred to in Article 36 of this Regulation, of that Member State;
 - (b) where the European green bonds are offered to the public **in more than one Member State** ~~or are listed~~ **admitted to trading** on a **regulated** market **in a Member State different from the Member State in which they are offered to the public** ~~in two or more Member States~~, either in a language accepted by the

competent authority, as referred to in Article 36~~7~~ of this Regulation, of each such Member State, or in a language customary in the sphere of international finance, at the choice of the issuer.

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 ~~1, points (a), (c) and (e)~~, shall be provided in the language or languages of that prospectus.
4. An Issuer of European green bonds, unless it is a sovereign, shall notify the ~~National~~ Competent authority referred to in Article 36 of its home Member State of the publication of all the documents referred to in paragraph 1 without undue delay.
5. The competent authority referred to in paragraph 4 ~~Issuers of European green bonds~~ shall notify ESMA of each notification received pursuant to that paragraph ~~of the publication of all the documents referred to in paragraph 1 within 30~~ days of the receipt thereof.

Title III

External reviewers for European green bonds

Chapter I

Conditions for ~~taking up activities as~~ external reviewer ~~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 ~~and other public entities mandated by sovereign issuers to assess compliance with this Regulation~~ shall not be subject to Titles III and ~~Title 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 of the applicant and their level of qualification, experience and training;
- (f) the number of ~~the~~analysts, employees and other persons directly involved in assessment activities, and their level of experience and training ~~working for the applicant and their level of experience and training~~;
- (g) a description of the procedures and methodologies implemented by the applicant to issue pre-issuance reviews as referred to in Article 8 and post-issuance reviews as referred to in Article 9;
- (h) the policies or procedures implemented by the applicant to identify, manage and disclose any 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; **and**
- (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 of the applicant:
 - (i) is of sufficiently good repute;
 - (ii) is sufficiently skilled to ensure that the applicant can perform the tasks required of external reviewers pursuant to this Regulation;
 - (iii) has sufficient professional qualifications;
 - (iv) **has relevant experience**~~is experienced in quality assurance, quality control, the performance of pre- and post-issuance reviews and 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~~**undertake** this Regulation;
- (c) the internal arrangements implemented to ensure compliance with the requirements of Chapter II of this Section are appropriate and effective.

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.

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 its activities as an external reviewer.

ESMA shall notify **an applicant** in writing ~~an applicant~~ 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].

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) or in the facts concerning the information referred to in Article 15(1) before such changes are implemented.

ESMA shall analyse those material changes. Where ESMA objects to such material changes, it shall inform the external reviewer within two months of the notification of those changes and shall state the reasons for ~~the~~**its** objection. The changes referred to in the first subparagraph **of this paragraph** may only be implemented provided that ESMA does not object to those changes 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 ~~12~~**4** 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 **anyone** of the official languages of the institutions of the Union. ~~The provisions of Regulation~~

No 1 of 15 April 1958 determining the languages to be used by the European Economic Community¹⁸ shall apply *mutatis mutandis* to any other communication between ESMA and the external reviewers and their staff.

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, ~~mechanisms~~, 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 ~~12~~**36** months after the date of entry into force].

¹⁸ OJ 17, 6.10.1958, p. 385/58.

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 of the external reviewer shall ensure ~~all of the following~~:
 - (a) the sound and prudent management of the external reviewer;
 - (b) the independence of assessment activities;
 - (c) that conflicts of interest are properly identified, managed and disclosed; **and**
 - (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).

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 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 means 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 ~~12~~**4** 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 ~~the~~pre-issuance or post-issuance reviews

1. External reviewers shall adopt and implement measures to ensure that their pre-issuance reviews as referred to in Article 8 and their post-issuance reviews as referred to in Article 9 **provide a meaningful opinion** ~~are~~ 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.
2. External reviewers shall use information of sufficient quality and from reliable sources when providing pre-issuance or post-issuance reviews.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to assess **whether the assessment methodology referred to in paragraph 1 yields a meaningful opinion**, 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 pre-issuance review as referred to in Article 8 or a post-issuance review as referred to in Article 9 shall immediately notify and explain those errors to ESMA and the issuers of the affected European green bonds.
2. External reviewers shall publish the errors referred to in paragraph 1 on their websites, together with, where relevant, a revised pre-issuance or post-issuance review. 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 their compliance function.
3. External reviewers shall notify ESMA about ~~those of its~~ **the** assessment activities ~~which that are to be outsourced~~ **it intends to outsource**, including a specification of the level of human and technical resources needed to carry out each of those activities.
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 with 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 ~~are carrying 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; **and**
 - (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 pre-issuance reviews referred to in Article 8 and the post-issuance reviews referred to in Article 9, and the date on which the decisions to approve the pre-issuance and post-issuance reviews were taken;
 - (b) the documentation for the established procedures and methodologies used by the external reviewers to carry out and draw up the pre-issuance and post-issuance reviews;
 - (c) the internal documents, including non-public information and work papers, used to form the basis of any published pre-issuance or post-issuance 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.
2. The records and documents referred to in paragraph 1 shall be kept for five years and shall be made available upon request to ESMA.
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, manage and disclose in a transparent manner **in the pre-issuance and post-issuance reviews** any actual or potential conflicts of interest, irrespective of whether that conflict of interest concerns their analysts or employees, any person that is contractually related to the external reviewers and that is directly involved in assessment activities, or persons approving pre-issuance reviews and post-issuance reviews.
2. Fees charged by external reviewers for assessment services shall not depend on the result of the pre-issuance or post-issuance review, 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 pre-issuance or post-issuance reviews, possible future pre-issuance or post-issuance 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 pre-issuance and post-issuance reviews any other services provided for the assessed entity or any related third party.

Chapter III

Pre-issuance and post-issuance reviews

Article 29

References to ESMA or other competent authorities

In their pre-issuance review or post-issuance 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 pre-issuance reviews and post-issuance reviews

1. External reviewers shall publish and make available free of charge on their websites ~~all of the following~~ **in a separate section titled ‘European green bonds standard - Pre-issuance reviews’ pre-issuance reviews that it issued.**

- 1a. External reviewers shall publish and make available free of charge on their websites**
~~a) in a separate section titled ‘European green bonds standard - Pre-issuance reviews’ pre-issuance reviews that it issued;~~
 (b) in a separate section titled ‘European green bonds standard - Post-issuance reviews’ post-issuance reviews that it issued.
2. The pre-issuance reviews referred to in paragraph 1, ~~point (a)~~, shall be made available to the public within a reasonable period of time prior to the beginning of the offer to the public or the admission to trading of the European green bond concerned.
3. The post-issuance reviews referred to in paragraph 1, ~~point (b)~~, shall be made available to the public without delay following the assessment of the allocation reports by the external reviewer **but not later than 90 days following the receipt of the allocation report from the issuer.**
4. The pre-issuance reviews referred to in paragraph 1, ~~point (a)~~, and the post-issuance reviews referred to in paragraph 1, ~~point (b)~~, shall remain publicly available until at least the maturity of the bonds after their publication on the website of the external reviewer.
5. External reviewers that decide to discontinue providing a pre-issuance review or a post-issuance review shall provide information about the reasons for that decision in the sections referred to in paragraphs 1 **and 1a**, ~~points (a) and (b)~~, 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; **and**

(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 **of this Article** 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.
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; **and**
 - (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 **of this Article**, 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 suspend **or withdraw** the registration of a third-country external reviewer in the register established in accordance with Article 59 where ~~one or more of the following conditions are met~~:
- (a) ESMA has well-founded reasons based on documented evidence to believe that, in the provision of the services in the Union, 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) ESMA has well-founded reasons based on documented evidence to believe that, in the provision of services in the Union, the third-country external reviewer has seriously infringed the ~~provisions~~ **laws and regulations** applicable to it in the third country and on the basis of which the Commission has adopted the decision in accordance with Article 32(1);

- (c) ESMA has referred the matter to the competent authority of the third country and that third-country competent authority has not taken the appropriate measures needed to protect investors and the proper 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.;

- 1a. (d)** ESMA ~~shall~~has informed the third-country competent authority 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 ~~the~~its decision **on suspension or withdrawal** on its website.
3. **In case of suspension or 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 ~~located in a third country~~

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 ~~prior~~ recognition from ESMA in accordance with this Article.
2. A third-country external reviewer ~~that~~intending to obtain ~~prior~~ 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**~~located~~ 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 prior recognition from ESMA 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 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 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 ~~clearly~~ 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 ~~the~~ 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 ~~436~~ 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) ~~s~~Specificities of the underlying markets or investments;
 - (ii) ~~p~~Proximity of the endorsed reviewer to third-country markets, issuers or investors; **or**
 - (iii) ~~e~~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 ~~endorsed~~ 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 under~~ **in** paragraph 1 of this Article are no longer fulfilled, it shall have the power to require the endorsing external reviewer **to suspend or** 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 43**0** 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.** Competent authorities designated in accordance with Article 31 of Regulation (EU) 2017/1129 shall ensure that Article 8(1) and (2), Article 9(1) to (4) and (6) and Articles 10, 12 and 13 of this Regulation are applied to European green bonds, with the exception of bonds issued by sovereigns.
- 2.** Where no prospectus has been drawn up, approved, distributed and published in compliance with Regulation (EU) 2017/1129 the competent authority referred to in the paragraph 1 shall be the competent authority of the home Member State.

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 include the information referred to in Annex I in the European green bond factsheet;
 - (ab) to require issuers to provide for pre- and post-issuance reviews of the factsheet and the allocation reports by an external reviewer;**
 - (b) to require issuers to publish ~~yearly~~**annual** allocation reports or include in ~~yearly~~**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;
 - (d) to require auditors and senior management of the issuer to provide information and documents;

- (e) to **prohibit or** suspend ~~an offer of European green bonds~~ for a maximum of ~~ten~~ 10 consecutive working days **an offer or admission to trading on regulated market of European green bonds** on any single occasion where there are reasonable grounds for suspecting that ~~Articles 8 to~~ **Article 8(1) or (2), Article 9(1) to (4) and (6), Article 10, 12 or** 13 of this Regulation have been infringed;
- (f) to prohibit or suspend **for a maximum of ten consecutive working days** advertisements or require issuers of European green bonds or financial intermediaries concerned to cease or suspend advertisements for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that ~~Articles 8 to~~ **Article 8(1) or (2), Article 9(1) to (4) and (6), Article 10, 12 or** 13 of this Regulation have been infringed;
- (g) to make public the fact that an issuer of European green bonds is failing to comply with its obligations under ~~Articles 8 to~~ **Article 8(1) and (2), Article 9(1) to (4) and (6), Article 10, 12 or** 13 of this Regulation **and, following a three-month-notice period given to the issuer to rectify any identified lack of compliance, make public the fact that the bond in question should no longer be considered a European green bond; and**
- (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 possible 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~~ **where**:

- (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; **or**
- (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.

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 the situations referred to in the first sentence of this paragraph~~ **in such situations** act in accordance with the power conferred on it ~~under~~ **by** Article 19 of Regulation (EU) No 1095/2010.

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

ESMA shall submit those draft regulatory technical standards to the Commission by ... [PO: Please insert date 36 months after the date of entry into force of this Regulation].

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.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [PO: Please insert date 36 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 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 ~~to be~~ confidential and shall be subject to ~~the requirements of~~ 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 an 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 an 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 ~~under~~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 ~~under~~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 of ~~Articles 8 to~~ Article 8(1) and (2), Article 9(1) to(4) and (6), Article 10, 12 or 13;
- (b) failure to cooperate or comply ~~in~~with an investigation, ~~or with an inspection or~~ with a request covered by Article 37 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 ... [PO: please insert the 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 ~~or the legal entity~~ responsible and the nature of the infringement in accordance with Article 37(1), point (g);
 - (b) an order requiring the natural or legal person ~~or legal entity~~ responsible to cease the conduct constituting the infringement;
 - (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 Council¹⁹, 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;
 - (d) the impact of the infringement on **the interests of** retail investors²~~interests~~;
 - (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; **or**

¹⁹ 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).

- (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 ~~tribunal~~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~~persons, 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 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~~**provide for** 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 ~~organ~~**body**, management ~~organ~~**body** or administrative ~~organ~~**body** 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;
 - (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 to supply of the provision of information by decision under paragraph 1 ~~by decision~~, 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 ~~supply~~provide the information requested. Lawyers duly authorised to act may ~~supply~~provide the information on behalf of their clients. The latter shall remain fully responsible if the information ~~supplied~~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~~**prove to be** incorrect or misleading.
 3. The persons referred to in Article 47(1) shall submit to investigations ~~launched~~**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 ~~supervisory~~ 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 ~~rules~~**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 ~~control~~**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 ~~control~~**verification** of the proportionality of ~~the~~coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall 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 ~~supervisory~~ authority of the Member State where the inspection is to be conducted. Inspections in accordance with this Article shall be conducted provided that the ~~relevant~~ **competent** authority has confirmed that it does not object to those inspections.
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 ~~according to~~ in accordance with ~~the applicable national rules~~ 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 ~~control~~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. ~~However, the~~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;
 - (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; or
 - (g) issue public notices.
2. ESMA shall withdraw the registration or ~~the~~recognition of an external reviewer ~~in the following circumstances~~where:

- (a) the external reviewer has expressly renounced the registration or ~~the~~ recognition or has not made use of the registration or ~~the~~ recognition within 36 months after ~~the~~ registration or ~~the~~ recognition has been granted;
- (b) the external reviewer has obtained the registration or ~~the~~ 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 ~~the~~ recognition of the external reviewer, it shall provide full reasons in its decision. The withdrawal shall have immediate effect.

3. When ~~taking~~adopting the a decisions 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 ~~intentionally~~ or negligently;
- (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 investors²~~interests~~;
- (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, ~~insofar to~~ the extent as 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~~ten 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, ~~intentionally or negligently~~ **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 ~~paragraph 1 of~~ **Article 16(1), and** Articles 18 to 30 **of this Regulation**;
 - (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 521(1), point (ed);
 - (b) a person as referred to in Article 47(1):
 - (i) to ~~supply~~**provide** complete information which has been required~~sted~~ 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 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 findings to ESMA's Board of Supervisors.
3. In order to carry out his 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 tasks, the investigating officer shall have access to all documents and information gathered by ESMA in its supervisory activities.
5. Upon completion of his investigation and before submitting the file with his 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 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 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. ~~The first sub~~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 worktasks** pursuant to this Regulation.
2. Any fee charged by ESMA to an applicant external reviewer, ~~or~~ a registered external reviewer or a recognised external reviewer shall cover all administrative costs incurred by ESMA ~~for~~**in** its activities in relation to that particular applicant or external reviewer. Any fee shall be proportionate to the turnover of the external reviewer concerned.
3. The Commission shall adopt delegated acts in accordance with Article 60 by **...** [PO: please insert date 12 months after date of entry into force of this Regulation] to specify the type of fees, the matters for which fees are due, the amount of the fees, ~~and~~ the manner in which they are to be paid, **and the threshold of turnover of external reviewer, below which no supervisory fee shall be charged.**

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) ~~those~~ third-country external reviewers that have had **their** registration withdrawn and that ~~shall~~**may** no longer use the rights under Article 31, where the Commission adopts a ~~withdrawing~~ 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;
 - (i) ~~and~~ external reviewers registered in accordance with Article 15 that ~~shall~~**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 on Procedural rules for taking supervisory measures and imposing fines, Registration, recognition, and supervisory fees, **6(1a)**, 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 on Procedural rules for taking supervisory measures and imposing fines, Registration, recognition, and supervisory fees, **6(1a)**, **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 on Procedural rules for taking supervisory measures and imposing fines, Registration, recognition, and supervisory fees, **6(1a)**, **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 [~~two~~ **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 [~~two~~ **three** months] at the initiative of the European Parliament or of the Council.

Article 61
Committee procedure

The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC²⁰. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council²¹.

Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Title VI
Final provisions

Article 61a
Review

1. By ... [OJ: please insert the date 36 months after the date of application of this Regulation], the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the practical impact of this Regulation on European green bond issuances by small and medium sized enterprises.
2. By ... [OJ: please insert the date 36 months after the date of application date of this Regulation], the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the practical impact of provisions in paragraph 1a of Article 6 on the use of European green bonds and of the environmental quality of the proceeds used in accordance with paragraph 1a of Article 6.

Article 62
Transitional provision

1. Any external reviewer that intends to provide services in accordance with this Regulation from ~~its~~ the date of application ~~entry into force~~ until ... [OJ please insert date ~~30~~ **12** months after the first application date of this Regulation, thank you], 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 ~~30~~ **12** months after the first application date of this Regulation, thank you] external reviewers referred to in paragraph 1 shall 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).

²⁰ 2001/528/EC: Commission Decision of 6 June 2001 establishing the European Securities Committee

²¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers

3. After ... [OJ please insert date ~~one day following~~ **30 12** months after the first application date of this Regulation, thank you] 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.
4. After ... [OJ please insert date ~~one day following~~ **30 12** months after the first application date of this Regulation, thank you] ESMA shall examine whether external reviewers referred to in paragraph 1, and the services provided by those providers until ... [OJ please insert date ~~30 12~~ months after the first application date of this Regulation, thank you] comply with ~~the conditions laid down in this~~ **R**egulation.

Where ESMA considers that the external reviewer or the services provided referred to in the first subparagraph do not comply with ~~the conditions laid down in this~~ **R**egulation, ESMA shall take ~~one or more of the~~ action in accordance with Article 52.

Article 63

Transitional provision for third country external reviewers

1. ~~Any~~ third-country external reviewer that intends to provide services in accordance with this Regulation from ~~its~~ **the date of application** ~~entry into force~~ until ... [OJ: please insert the date ~~30 12~~ 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) 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-~~paragraph (3)~~, points (a) to (c).
3. After ... [OJ: please insert the date ~~30 12~~ months after the date of application of this Regulation] Articles 32, 34 and 35 shall apply.
4. After ... [OJ: please insert the date ~~30 12~~ months after the date of application of this Regulation] ESMA shall examine whether external reviewers referred to in paragraph 1, and the services provided by those providers until ... [OJ: please insert the date ~~30 12~~ months after the date of application of this Regulation] comply with ~~the conditions laid down in this~~ **R**egulation.

Where ESMA considers that the external reviewer or the services provided referred to in the first subparagraph do not comply with ~~the conditions laid down in this~~ Regulation, ESMA shall take ~~one or more of the~~ actions in accordance with Article 52.

Article 64

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from ... [OJ: please insert the date 18 months after the date of entry into force of this Regulation], except for Articles 6(1a), second subparagraph, 15 (5) and (6), 16(2), 18(3), 21(4), 22(3), 23(3), 25(7), 34(7), 38(5) and (6), 55(10), 58(3), 60 and 61, which shall apply from ... [OJ: please insert the date of entry into force of this Regulation].

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 ~~Strasbourg~~...

For the Parliament
The President

For the Council
The President

ANNEX I

EUROPEAN GREEN BOND FACTSHEET

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)] [website address providing investors with information on how to get in contact, and a telephone number] [Name of the bond assigned by the issuer] [where available, international securities identification numbers (ISIN)] [The identity and contact details of the external reviewer, including website address providing investors with information on how to get in contact, and a telephone number] <u>[An explanation and an estimate of cumulative costs directly related to bonds issuances that are not allocated to environmentally sustainable economic activities according to Article 4(1)]</u> <u>[Where article 36 applies, the name of the competent authority of the home Member State]</u>
2. Adherence to the requirements of Regulation (EU) .../... of the European Parliament and of the Council* [A statement showing that the issuer of the bonds, <u>to which this factsheet applies,</u> voluntarily adheres to the requirements of this Regulation]
3. Environmental strategy and rationale [Information on how the <u>allocation of the proceeds of the bonds</u> aligns with the broader environmental strategy of the issuer] [The environmental objectives referred to in Article 9 of Regulation <u>(EU) 2020/852</u> pursued <u>by the issuer with the proceeds of the bonds</u>]
4. Intended allocation of bonds proceeds 4.1 Estimated Time until full allocation of proceeds [The period within which the proceeds are expected to be allocated <u>after the issuance of each bond</u>] [The date by which proceeds are expected to be fully allocated] [If the date above is more than five years after the date of the issuance of the bond: a justification for the longer period, based on the specific features of the economic activities concerned, accompanied by relevant documentation in an annex]

4.2 Process for selecting green projects and activities and estimated environmental impact

[A description of the processes by which the issuer will determine how projects and activities align with the taxonomy requirements]

[A description of the relevant technical screening criteria referred to in Articles 10 to 15 of Regulation (EU) 2020/852, and a specification of which delegated acts adopted under Articles 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) of Regulation (EU) 2020/852 are taken into account (having regard to Article 6(1a))]

[Where available: information on the methodology and assumptions to be 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. ~~Where this information is not available, this must be justified.~~]

[Where the proceeds of the bonds are intended to be allocated in accordance with Article 6(1a), an explanation for including these types of projects and activities in the use of proceeds and how the issuer intends to ensure that the proceeds comply with Article 3, points (a), (b) and (c), of Regulation (EU) 2020/852.]

[Where applicable, information on any related standardisation or certification process in project ~~or activity~~ selection]

[Where available, an estimation of expected positive ~~and adverse~~ environmental impacts in aggregated form. ~~Where this information is not available, this must be justified.~~]

4.3 Intended qualifying green projects and activities

[The issuer shall provide the following information at the project/activity type level.

Where available to the issuer, the ~~following~~ information ~~shall~~ may be provided at project level, ~~unless confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects limit the amount of detail that can be made available, in which case the information shall be provided at least at aggregate level, with an explanation of why project-level information is not given:~~

For ~~intended~~ qualifying types of projects and activities:

~~†~~ Their environmental objectives referred to in Article 9 of Regulation 2020/852;

~~†~~ Their ~~types~~, sectors and, where applicable, the respective NACE codes in accordance with the statistical classification of economic activities established by Regulation (EC) No 1893/2006²²;

²² Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council

tTheir countries; where available, The respective amount to be allocated from bond proceeds, and the <u>indicative or intended</u> percentage of proceeds to be allocated respectively to projects <u>and activities</u> financed after bond issuance and projects financed before bond<u>the issuance of the bonds;</u> wWhere the issuer is a sovereign, and bond <u>the</u> proceeds <u>of the bonds</u> are planned to be allocated to thetax relief <u>as</u> referred to in Article 4(2), point (c), an estimation of the expected volume of revenue loss associated with <u>the</u> eligible tax relief; Where a bond co-finances intended qualifying projects, an indication of the proportion financed by the bond wWhere <u>the proceeds of the bonds are planned to be allocated in accordance with Article 6(1a), an assessment of the proportion of these activities and projects in the use of proceeds;</u> wWhere- available, links to websites with relevant information; wWhere available, links to relevant public documents with more detailed information.] 4.4 Unallocated proceeds [Information on how the temporary use of unallocated proceeds will not affect the delivery of the environmental objectives]
5. Information on reporting [A link to the <u>issuer's</u> website where allocation reports and impact reports will be published <u>referred to in Article 13(1)</u>] [An indication of whether allocation reports will include project-by-project information on amounts disbursed <u>allocated</u> and the expected positive and negative environmental impacts]
6. Other relevant information [A detailed description together with the main parameters of the capex or opex plan referred to in Article 6(1), point b, as the case may be] [Any other relevant information]

Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

ANNEX II

EUROPEAN GREEN BOND ANNUAL ALLOCATION REPORT

[where the allocation report is revised, the title shall reflect this]
1. General Information [Date of the publication of the allocation report] [where applicable, date of the publication of the final allocation report or date of the publication of the revised allocation report]] [The legal name of the issuer] [where available, LEI], [website address providing investors with information on how to get in contact, and a telephone number] [Name of the bonds assigned by the issuer] [where available, ISIN] [where the allocation report has been subject to post-issuance review, the identity and contact details of the external reviewer, including a website address providing investors with information on how to get in contact, and a telephone number]
2. <u>Adherence to the requirements of the European green bonds Regulation</u> [A statement showing that proceeds have been allocated according to the requirements of this Regulation]
3. Allocation of the proceeds of the bonds A. For issuers except those referred to in point B below: [The following information shall be provided at project <u>or activity</u> level, unless confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects limit the amount of detail that can be made available, in which case the information shall be provided at least at aggregate level, with an explanation of why project <u>or activity</u> -level information is not given. <u>Where bond proceeds are allocated to expenditures as referred to in Article 4(2) the information may be provided at programme level.</u> t The environmental objectives referred to in Article 9 of Regulation (EU) 2020/852 of the European Parliament and of the Council*; t The types and sectors of projects <u>and activities</u> , and <u>where applicable</u> the respective NACE codes in accordance with the statistical classification of economic activities

established by Regulation (EC) No 1893/2006 of the European Parliament and of the Council²³;

~~t~~The countries where bonds proceeds have been allocated;

~~t~~The respective amount allocated from ~~bond~~the proceeds **of the bonds**, and the percentage of proceeds allocated respectively to projects **and activities** financed after bonds issuances and projects **and activities** financed before bonds issuances;

~~w~~Where the issuer is a sovereign, and bond proceeds are allocated to tax relief referred to in Article 4(2), point (c), an estimation of the volume of revenue loss associated with eligible tax relief;

~~w~~Where a bond co-finances qualifying projects, an indication of the proportion financed by the bond;

~~f~~For assets that are concerned by a ~~taxonomy alignment~~ **CapEx or OpEx** plan: the progress in the implementation of the plan during the reporting period, and the estimated date of completion;

~~c~~Confirmation of compliance with ~~Point (e) of Article 3, point (c),~~ of Regulation (EU) 2020/852 (minimum safeguards)

~~a~~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 were used to determine the taxonomy technical screening criteria, and their ~~application~~dates **of application**;

where the proceeds of the bonds are allocated in accordance with Article 6(1a), the percentage of these projects and activities in the use of procceds, a list of the specific projects, activities or programmes, and an explanation of how these projects and activities comply with Article 3, points (a) to (c), of Regulation (EU) 2020/852.]

1.

2. B. For issuers ~~that are financial undertakings~~ that allocate proceeds ~~from~~of a portfolio of several European green bonds to a portfolio of financial assets as referred to in Article 5:

3. [The section “Allocation of ~~bond~~proceeds **of the bonds**” shall contain the following information:

An overview over all outstanding European green bonds **of the issuer**, indicating their

²³ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006

establishing the statistical classification of economic activities NACE Revision 2 and amending Council

Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

individual and combined value **and their date of maturity.**

An overview over the eligible financial assets ~~as referred to in Article 5~~ on the issuer's balance sheet, indicating:

- a) their total amortised value,
- b) the environmental objectives referred to in Article 9 of Regulation (EU) 2020/852,
- c) their types, sectors and countries,
- d) where a bond~~s~~ co-finances qualifying projects, an indication of the proportion financed by the bond~~s~~, where available,
- e) 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 were used to determine the taxonomy technical screening criteria, at least at sector and country level, and where applicable, at individual asset level,
- f) **where proceeds of the financial assets are allocated in accordance with Article 6(1a), the percentage of these projects and activities in the use of proceeds, a list of the specific projects and activities, and an explanation of how these projects and activities comply with Article 3, points (a) to (c), of Regulation (EU) 2020/852.**
- g) where relevant, the value of each asset, or group of assets.

A comparison of the total value of outstanding European green bonds **issued by the issuer** and the total amortised value of eligible financial assets ~~as referred to in Article 5~~. The comparison shall show that the latter is either equal to or higher than the former.

For the purposes of the ~~above~~**forementioned** comparison, the total outstanding value of European green bonds shall be based on the yearly average of quarter-end values of such bonds issued by that issuer, and the total amortised value of the financial assets shall be based on the yearly average of quarter-end values of such assets on the issuer's balance sheet.]

~~4. Environmental impact of bond proceeds~~

4. ~~[No information is required under this heading for this report]~~

5. Other relevant information

ANNEX III

EUROPEAN GREEN BOND IMPACT REPORT

[Where the impact report is revised, the title shall reflect this.]
1. General Information [Date of the publication of the impact report] [where applicable, Date of the publication of the revised impact report] [The legal name of the issuer] [where available, LEI], [website address providing investors with information on how to get in contact, and a telephone number] [Name of the bonds assigned by the issuer] [where available, ISIN] [where the impact report was assessed by an external reviewer, the identity and contact details of the external reviewer, including website address providing investors with information on how to get in contact, and a telephone number]
2. Environmental strategy and rationale [Information on how the bonds aligns with the broader environmental strategy of the issuer as set out in the factsheet] [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 (EU) 2020/852 pursued <u>by the issuer with the proceeds of the</u> by the bonds]
3. Allocation of bond proceeds [The following information shall be provided at project <u>or activity</u> level, unless confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects <u>and activities</u> limit the amount of detail that can be made available, in which case the information shall be provided at least at aggregate level, with an explanation of why project <u>activity</u>-level information is not given. <u>Where bond proceeds are allocated to expenditures as referred to in Article 4(2) the information may be provided at program level. The provision of detailed content under this section can be replaced by a reference to the respective allocation report, provided that all information requested in this section are available in that allocation report:</u> The environmental objectives referred to in Article 9 of Regulation 2020/852, The types and sectors of projects <u>and activities</u>, and countries where bond proceeds have been allocated The respective amount to allocated from bonds <u>the</u> proceeds <u>of the bonds</u>, and the percentage of proceeds to allocated respectively to projects <u>and activities</u> financed

after bonds issuances and projects <u>and activities</u> financed before bonds issuances Where the issuer is a sovereign, and bond proceeds are allocated to the tax relief referred to in Article 4(2), point (c), an estimation of the volume of revenue loss associated with eligible tax relief Where a bond co-finances qualifying projects <u>or activities</u>, an indication of the proportion financed by the bond Where applicable, an indication of those assets that were concerned by a taxonomy alignment <u>CapEx or OpEx</u> plan, the duration of each plan, and the date of completion of each asset 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 were used to determine the taxonomy technical screening criteria, and their application date <u>Where bond proceeds are allocated in accordance with Article 6(1a), the percentage of these projects and activities in the use of proceeds, a list of the specific projects/activities or programmes, and an explanation of how these projects and activities comply with Article 3, points (a) and (b), of Regulation (EU) 2020/852]</u>
4. Environmental impact of bond proceeds [An estimation of positive and adverse environmental impacts in aggregated form] [Information on the methodology and assumptions used to evaluate the impacts of projects <u>and activities</u>, where the European green bond factsheet of the bond did not include this information] [Information about the projects' positive and negative environmental impacts and, where available, related metrics <u>of the projects and activities</u>. Where this information is not available at project <u>or activity</u> level, this must be justified.] <u>Where bond proceeds are allocated in accordance with Article 6(1a), the issuer shall report this information separately for those projects and activities]</u>
5. Other relevant information

ANNEX IV:

CONTENTS OF PRE-ISSUANCE AND POST-ISSUANCE REVIEWS

The title ‘Pre-issuance review’ or ‘Post-issuance review’ shall appear prominently at the top of the first page of the document.
1. General Information [Date of the publication of the pre-issuance review or post-issuance review] [The legal name of the issuer] [Name of the bond assigned by the issuer] [where available, ISIN] [The identity and contact details of the external reviewer, including website address providing investors with information on how to get in contact, and a telephone number] [The name and job title of the lead analyst in a given assessment activity] [The name and position of the person primarily responsible for approving the pre-issuance review or post-issuance review] [The date on which the pre-issuance review or the post-issuance review was first released for distribution and, where relevant, when it was last updated] <u>[Other services provided by the external reviewer for the assessed entity or any related third party]</u>
2. Introductory statements [For pre-issuance reviews: A statement that an external reviewer has assessed the completed European green bond factsheet laid down in Annex I in accordance with this Regulation; A statement that this pre-issuance review represents an independent opinion of the external reviewer; A statement that the independent opinion of the external review is to be relied upon only to a limited degree;] [For post-issuance reviews: A statement that an external reviewer has assessed the completed allocation report laid down in Annex II in accordance with this Regulation; A statement that this post-issuance review represents an independent opinion of the external reviewer;

A statement that the independent opinion of the external review is to be relied upon only to a limited degree;]
3. Statements on the compliance with the European green bonds Regulation [a statement regarding the compliance of the European green bonds with this Regulation, and in particular: where the opinion expressed by the independent reviewer is positive, a statement that the bonds meets the requirements of this Regulation and that the designation ‘European green bond’ can be applied to that<u>those</u> bonds; where the opinion expressed by the independent reviewer is negative, a statement that the bonds does not meet the requirements of this Regulation and that the designation ‘European green bond’ cannot be applied to that<u>those</u> bonds; where the opinion expressed by the independent reviewer indicates that the issuer does not intend to comply with Articles 3 to 7, or will not be able to do so, a statement that the designation ‘European green bond’ can only be used for the bond in question if the necessary steps have been will be taken to ensure that the bond complies with the requirements of this Regulation. <u>In such cases, the issuer may take the necessary steps and obtain a new pre- or post-issuance review, that expresses a positive opinion by the independent reviewer, before the issuer can apply the designation ‘European green bond’ to those bonds</u>]
4. Sources, assessment methodologies, and key assumptions [Information about the sources relied upon to prepare the pre-issuance review or the post-issuance review, including links to measurement data and the methodology applied, when available] [An explanation of the assessment methodologies and key assumptions] [An explanation of the assumptions and taxonomy requirements used, of the limits and uncertainties surrounding the methodologies used and a clear statement that the external reviewer considers the quality of information provided by the issuer a or related third party is sufficient to perform the pre-issuance review or the post-issuance review and the extent to which, if any, the external reviewer has attempted to verify the information so provided]
Assessment and opinion [For pre-issuance reviews: a<u>An</u> detailed assessment of whether the completed green bond factsheet complies with Articles 4 to 7 of this Regulation tThe opinion of the external reviewer on the assessment mentioned above] <u>Where bond proceeds are intended to be allocated in accordance with paragraph 1a of Article 6, the assessment and opinion shall be provided in a dedicated section.</u>

[For post-issuance reviews:

~~a~~**An** ~~detailed~~ assessment of whether the issuer has allocated the proceeds of the bonds in compliance with Articles 4 to 7 of, based on the information provided to the external reviewer

~~a~~**An** assessment of whether the issuer has complied with the intended use of proceeds set out in the ~~green bond~~ factsheet, based on the information provided to the external reviewer

for assets or activities that are subject to Capex or Opex plan an assessment of whether those assets or activities meet upon their completion the taxonomy requirements based on the information provided to the external reviewer

~~t~~The opinion of the external reviewer on the two assessments referred to directly above]

Where bond proceeds are allocated in accordance with paragraph 1a of Article 6, the assessment and opinion shall be provided in a dedicated section.

5. Any other information

[Any other information that the reviewer may deem relevant to its pre or post-issuance review]