

Public Statement

Sustainability disclosure in prospectuses

ESMA supports the Environmental, Social and Governance (ESG) transition by focussing on the effectiveness and integrity of ESG markets¹. As part of this work, ESMA is monitoring the sustainability-related disclosure provided in prospectuses and is issuing this statement to underline the relevant requirements concerning both equity and non-equity securities.

While the Listing Act² proposals envisage disclosures with respect to sustainability matters, there will be a period before they apply. In addition, the Regulation on European green bonds³ is expected to include requirements for prospectuses, although it is not expected to give details of the sustainability-related disclosures that should be included in prospectuses drawn up under the Prospectus Regulation⁴ (PR). Given the importance of these matters to investors, ESMA is issuing this statement in accordance with Article 31 of the ESMA Regulation⁵ to promote coordinated action by NCAs regarding the sustainability-related disclosure that should be included in prospectuses under the current legislation. While this statement is addressed to NCAs, its contents should be taken into account by issuers and advisors when drawing up prospectuses, including sustainability-related disclosure.

This statement relates only to the applicable disclosure requirements under the Prospectus Regulation and does not add any additional disclosure requirements. This statement is without prejudice to the disclosures that may be required by the future Listing Act. ESMA will continue to monitor the market to determine whether this guidance should be modified, for instance, in cases where new products are introduced to the market or there are changes in the legislation.

¹ [ESMA Strategy 2023 – 2028](#), p. 26.

² Proposal for a regulation of the European Parliament and Council amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises, COM/2022/762 final.

³ Proposal for a Regulation of the European Parliament and of the Council on European green bonds, COM/2021/391 final.

⁴ 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).

⁵ 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).

Expected ESG disclosure in prospectuses

ESMA expects that material sustainability-related disclosure is included in equity and non-equity prospectuses as well as final terms in accordance with Article 6(1)⁶ of the Prospectus Regulation (PR), which states that:

“... a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of:

- (a) the assets and liabilities, profits and losses, financial position, and prospects of the issuer and any guarantor;*
- (b) the rights attaching to the securities; and*
- (c) the reasons for the issuance and its impact on the issuer (emphasis added).”*

Sustainability-related disclosures in prospectuses are mentioned in Recital 54 PR, which states that “[...] *environmental, social and governance circumstances can also constitute specific and material risks for the issuer and its securities and, in that case, should be disclosed*”.

ESMA reminds issuers and their advisors to consider sustainability-related matters when preparing prospectuses to the extent that the effects of those matters are material, even if the disclosure requirements in Commission Delegated Regulation 2019/980 (CDR 2019/980)⁷ do not explicitly refer to sustainability-related matters. The type of sustainability information required to satisfy Article 6(1) PR will depend on the materiality of the information to an investor. The circumstances of the issuer and the type of securities in question are critical to determining which information will be material.

Additionally, ESMA recommends that issuers take the following points into consideration in relation to the disclosures on sustainability-related matters in prospectuses:

1. Issuers should provide the basis for any statements concerning their sustainability profile or that of the securities they issue. For example, (i) by stating that the issuer or securities adhere to a specific market standard or label and including the material information about that standard or label in the prospectus, (ii) referring to the underlying data and assumptions and/or (iii) by referring to any research or analysis by third parties. This helps to ensure that the information in the prospectus is as objective as possible in accordance with Recital 27 of the PR. It is important to emphasise that objectivity implies providing a balanced view so that positive and negative aspects should both be presented.

⁶ ESMA considers that this disclosure should also be provided under Article 14(2) PR in prospectuses drawn up using the simplified disclosure regime for secondary issuances.

⁷ Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (OJ L 166 21.6.2019, p. 26).

2. While an issuer might state in a risk factor that its sustainability expectations may differ from those of an investor or that the notion of sustainability may change according to scientific progress, relevant legislation and/or investor preferences, ESMA considers that sustainability-related disclaimers should not be used to excuse non-performance of factors over which the issuer exercises control. For example, a disclaimer stating that the proceeds of the offering may be invested contrary to the criteria for project selection set out in a prospectus concerns a factor over which an issuer exercises control and should not be included as a disclaimer.
3. The comprehensibility of any sustainability disclosure should be ensured by complying with the requirements set out in Article 37(1) of CDR 2019/980. In particular, the prospectus should clearly define the components of mathematical formulas and, where applicable, clearly describe the product structure. Any technical terminology relating to sustainability should also be adequately defined.

Sustainability-related disclosure in equity prospectuses and consistency with non-financial reporting

To the extent that sustainability-related disclosures published in an issuer's non-financial reporting in accordance with the Non-Financial Reporting Directive⁸ and the future sustainability reporting under the Corporate Sustainability Reporting Directive (CSRD)⁹ are material in the context of Article 6(1) PR, issuers should include those disclosures in equity prospectuses.

ESMA also reminds issuers and their advisers of the [2021](#) and [2022](#) European Common Enforcement Priorities concerning issuers' annual financial reports. These publications contain recommendations that disclosures be included in issuers' annual financial statements, as well as their management reports and non-financial statements. Issuers should also take these recommendations into account when including information from their non-financial reporting in a prospectus given the importance of the consistency in the information provided to investors¹⁰.

⁸ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).

⁹ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 as regards corporate sustainability reporting (OJ L 322, 16.12.2022, p. 15). Article 5 of the CSRD envisages a phase-in period for the application of the new sustainability reporting requirements starting from 1 January 2024 for the large undertakings with more than 500 employees up until 2028 for certain disclosures related to third-country undertakings.

¹⁰ The importance of the consistency of the non-financial reporting is also evident in Guideline 4 of Disclosure Requirements under the Prospectus Regulation, which states: "*If the OFR requirement is satisfied by the inclusion of the entire management report prepared in accordance with national laws, regulations and administrative provisions [. . .], the persons responsible for the prospectus should ensure that the management report is comprehensible and consistent with the prospectus*".

Prospectuses relating to non-equity securities with a specific ESG component or objective

ESMA expects prospectuses and final terms relating to non-equity securities advertised as taking into account a specific ESG component or pursuing ESG objectives, such as ‘use of proceeds’ bonds¹¹ and ‘sustainability-linked’ bonds¹², to include the disclosure required pursuant to Article 6(1) PR and the relevant annexes to CDR 2019/980. The necessary disclosure will depend on the characteristics of the non-equity securities in question so that issuers and their advisers are encouraged to reach out to ESMA and NCAs if there are uncertainties about the required disclosure.

In relation to ‘use of proceeds’ bonds, ESMA expects disclosure about the use and the management of the proceeds and information enabling investors to assess the sustainability ambition underpinning the process for project evaluation and selection. For example, prospectuses could include a summary of the material information from their ‘green bond framework’ or reference the legislation (that will be) used to determine the sustainability profile of the projects (if any).

In relation to a prospectus concerning sustainability-linked bonds, ESMA expects information about the selected key performance indicator(s) (KPIs), the sustainability performance target(s) (SPTs) and information enabling investors to assess the consistency of the KPIs and its associated SPTs with the relevant sector-specific science-based targets (if any) and the issuer’s sustainability strategy.

In prospectuses concerning ‘use of proceeds’ bonds or ‘sustainability-linked’ bonds, ESMA recommends that issuers disclose in their prospectus whether they intend to provide post-issuance information. This disclosure should include an indication of what information will be reported and where it can be obtained. For example, an issuer could include the URL to the website where investors will be able to access the post-issuance information.

To assist issuers and their advisers as well as NCAs in determining which information should be included in a prospectus, a table setting out the disclosures that ESMA expects in relation to these types of securities has been included at the end of this statement.

¹¹ For the purposes of this statement, ‘use of proceeds’ bonds are non-equity securities whose proceeds are applied to finance or re-finance green and/or social projects or activities. Examples include green bonds, social bonds, and sustainability bonds.

¹² For the purposes of this statement, ‘sustainability-linked’ bonds are bonds for which the financial and/or structural characteristics can vary depending on whether the issuer achieves predefined sustainability/ESG objectives.

Consistency of sustainability-related disclosure in prospectuses and advertisements

ESMA and NCAs have observed that some issuers include sustainability-related disclosure in their advertisements that is not included in their prospectus. If this disclosure is material under Article 6(1) PR, it should first be included in their prospectus. For example, this could be via a supplement to the prospectus. The importance of the sustainability-related disclosure in the advertisement for investors is an indicator of its materiality. This also ensures the consistency of the information in the advertisement with the information in the prospectus, as required under 22(3) and (4) PR.

Expected disclosure in relation to ‘use of proceeds’ bonds and sustainability-linked bonds

Expected disclosure in relation to ‘ <u>use of proceeds</u> ’ bonds		
Disclosure	Legal basis	
	Annex item CDR 2019/980 (and any corresponding items in other annexes)	Regulation (EU) 2017/1129
Risk factors Issuers of ‘use of proceeds’ bonds should disclose risks that are material and specific to the security. In particular, risks regarding the allocation and management of proceeds should be disclosed as well as risks concerning the viability and achievement of the sustainable project.	Annex 14 item 2.1. <i>“A description of the material risks that are specific to the securities being offered and/or admitted to trading in a limited number of categories, in a section headed ‘Risk Factors’. [...]”</i>	Article 16(1)
Reasons for the offer and use of proceeds Issuers should also describe the goal and characteristics of the relevant sustainable project and how the sustainable goal is expected to be achieved as well as any permissible terms and conditions for deviations to the minimum use of proceeds and the sustainable project. If the sustainable project is not identified at the time of the prospectus approval, issuers should disclose the criteria which will be used to determine how the proceeds are allocated for sustainable purposes.	Annex 14 item 3.2 <i>“Reasons for the offer to the public or for the admission to trading. Where applicable, disclosure of the estimated total expenses of the issue/offer and the estimated net amount of the proceeds. These expenses and proceeds shall be broken into each principal intended use and presented in order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, then state the amount and sources of other funds needed.”</i>	Article 6(1) General relevance
Information concerning the securities to be offered to the public/admitted to trading If advanced amortisation may occur, issuers should disclose any impact which this may have on the sustainability performance of an investment.	Annex 14 item 4.9(b) <i>“Details of the arrangements for the amortisation of the loan, including the repayment procedures. Where advance amortisation is contemplated, on the initiative of the issuer or of the holder, it shall be described, stipulating the amortisation terms and conditions”</i>	Article 6(1) General relevance
Additional information If issuers of ‘use of proceeds’ bonds indicate that any advice or assurances have been provided by advisors or third parties about the sustainability characteristics of the security, the prospectus should contain disclosure concerning the scope of those assurances and by whom they were provided.	Annex 14 item 7.1 <i>“If advisors connected with an issue are referred to in the securities note, a statement of the capacity in which the advisors have acted.”</i>	Article 6(1) General relevance

Additional disclosure for <u>'use of proceeds' bonds secured by cash flows not generated by the issuer or 'asset-backed securities'</u>		
Disclosure	Legal basis	
	Annex item Commission Delegated Regulation 2019/980 (and any corresponding items in other annexes)	Regulation (EU) 2017/1129
Underlying assets If issuers of 'use of proceeds' bonds use the proceeds to purchase underlying loans or other assets which are considered sustainable, the prospectus should contain disclosure on the criteria used to determine their sustainability. If any of those loans do not meet the criteria that fact should be stated in the prospectus.	Annex 19 item 2.2.7 <i>"The method of origination or creation of the assets, and for loans and credit agreements, the principal lending criteria and an indication of any loans which do not meet these criteria and any rights or obligations to make further advances."</i>	Article 6(1) General relevance
Post-issuance reporting If issuers of 'use of proceeds' bonds intend to provide post-issuance information, which includes sustainability-related information, they should indicate what information will be reported and where it should be obtained.	Annex 19 item 4.1 <i>"An indication in the prospectus of where the issuer is under an obligation to, or where the issuer intends to, provide post-issuance transaction information regarding securities to be admitted to trading and the performance of the underlying collateral. The issuer shall indicate what information will be reported, where such information can be obtained, and the frequency with which such information will be reported."</i>	Article 6(1) General relevance

Expected disclosure in relation to <u>Sustainability-Linked Bonds</u>		
Disclosure	Legal basis	
	Annex item Commission Delegated Regulation 2019/980 (and any corresponding items in other annexes)	Regulation (EU) 2017/1129
Risk factors Issuers of 'sustainability-linked' bonds should disclose risks that are material and specific to the security. In particular, risks regarding key performance measures (KPIs) and associated sustainability targets should be disclosed in the prospectus. This disclosure should include, but not be limited to, risks concerning potential conflicts of interest when such KPIs are selected and monitored. Furthermore, owing to the nature of 'sustainability-linked' bonds, the impact of the issuer's overall firm-level sustainability performance on the security should be clear in the risk factors.	Annex 14 item 2.1 <i>"A description of the material risks that are specific to the securities being offered and/or admitted to trading in a limited number of categories, in a section headed 'Risk Factors'. [...]"</i>	Article 16(1)
Reasons for the offer and impact on the issuer Issuers not intending to use the offer proceeds for a specified sustainability project but who issue sustainability-linked bonds for general corporate purposes should disclose the rationale for the issuance as well as its impact on the issuer in the prospectus.	Annex 14 item 3.2 <i>"Reasons for the offer to the public or for the admission to trading. Where applicable, disclosure of the estimated total expenses of the issue/offer and the estimated net amount of the proceeds. These expenses and proceeds shall be broken into each principal intended use and presented in order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, then state the amount and sources of other funds needed."</i>	Article 6(1)(c)
Information concerning the securities to be offered to the public/admitted to trading If interest payments are influenced by the fulfilment or failure to fulfil sustainability objectives this should be disclosed in the prospectus. The means by which interest payments are calculated in such contexts should clearly be disclosed. This information should include references to the selected key performance indicators as well as sustainability performance targets.	Annex 14 item 4.8(b) <i>"the provisions relating to interest payable"</i>	Article 6(1)(b)

Expected disclosure in relation to <u>Sustainability-Linked Bonds</u>		
Disclosure	Legal basis	
	Annex item Commission Delegated Regulation 2019/980 (and any corresponding items in other annexes)	Regulation (EU) 2017/1129
Information concerning the securities to be offered to the public/admitted to trading If advanced amortisation may occur, issuers should disclose any impact which this may have on the sustainability performance of an investment.	Annex 14 item 4.9(b) <i>“Details of the arrangements for the amortisation of the loan, including the repayment procedures. Where advance amortisation is contemplated, on the initiative of the issuer or of the holder, it shall be described, stipulating the amortisation terms and conditions”</i>	Article 6(1) General relevance
Additional information If issuers of ‘sustainability-linked’ bonds indicate that any advice or assurances have been provided by advisors or third parties about the sustainability characteristics of the selected KPIs, the prospectus should contain disclosure concerning the scope of those assurances and by whom they were provided.	Annex 14 item 7.1 <i>“If advisors connected with an issue are referred to in the securities note, a statement of the capacity in which the advisors have acted.”</i>	Article 6(1) General relevance