

Consultation Paper

Technical Standards on the European Green Bond Regulation



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by 14 June 2024.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Respondents are expected to use the response forms made available on the ESMA website.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

All interested stakeholders are invited to respond to this consultation paper. In particular, ESMA invites entities that intend to apply for registration as external reviewers, second party opinion providers, issuers, issuer associations and financial market participants who have or intend to issue or invest in green bonds or sustainability-linked bonds.

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1 Executive Summary

Reasons for publication

The Regulation on European Green Bonds¹ was published in the Official Journal of the European Union on 30 November 2023. The European Securities and Markets Authority (ESMA) has been empowered to develop technical standards and guidelines specifying certain provisions. ESMA intends to publish two consultation packages in Q1 2024 and Q1 2025. This consultation paper is the first of those two consultation packs. The aim of the paper is to collect views, comments and opinions from stakeholders and market participants on the appropriate implementation of the European Green Bonds Regulation.

Contents

This body of this consultation paper contains five sections (chapters 3 – 7) explaining the background to ESMA's proposal relating to the technical standards on senior management requirements and analytical resourcing, sound and prudent management, analytical knowledge, outsourcing of assessment activities and forms, templates and processes for registration.

- Annex I contains the full text of the proposed draft technical standards.
- Annex II sets out the preliminary cost-benefit analysis related to each draft technical standard.
- Annex III sets out the list of questions contained in this paper.

Next Steps

ESMA will consider the feedback received to this consultation and expects to publish a final report in Q4 and submit the draft technical standards to the European Commission for endorsement by 21 December 2024 at the latest.

¹ Regulation (EU) 2023/2631 of the European Parliament and the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds.

2 Introduction

1. On 12 July 2021, the European Commission published a legislative proposal for a Regulation of European Green Bonds (COM/2fi021/391²).
2. The Regulation on European Green Bonds (EuGB Regulation)³ was published in the Official Journal on 30 November 2023 and entered into force on 21 December 2023.
3. The EuGB Regulation requires ESMA to develop a series of regulatory technical standards (RTS) and implementing technical standards (ITS). These will be delivered in two main packages.
4. This first and current consultation package covers 4 draft RTS and 1 ITS on: (i) criteria to be assessed at the time of registration relating to senior management, board members and analytical resources⁴; (ii) criteria to assess sound and prudent management and management of conflicts of interest⁵; (iii) criteria for assessing knowledge and experience of analysts⁶; (iv) criteria applicable to outsourcing of assessment activities⁷; and (v) the standard forms, templates and procedures for the provision of registration information⁸.
5. ESMA has developed its draft RTS and ITS considering the principle of proportionality and possible costs for market participants. In so doing, it has prepared a preliminary cost-benefit analysis (Annex II) which will be finalised in the final report, after taking respondents' feedback into account.
6. These technical standards should be submitted by ESMA to the European Commission by 21 December 2024.

² Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0391>

³ Regulation (EU) 2023/2631 of the European Parliament and the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds.

⁴ Article 23(6) Regulation (EU) 2023/2631

⁵ Article 27(2) Regulation (EU) 2023/2631

⁶ Article 28(3) Regulation (EU) 2023/2631

⁷ Article 33(7) Regulation (EU) 2023/2631

⁸ Article 23(7) Regulation (EU) 2023/2631

3 Senior management and analytical resources

3.1 Background

Article 23(2)(a) and(b)

2. ESMA shall register an applicant as an external reviewer only where the following conditions are met:

(a) the senior management and the members of the board of the applicant:

(i) are of sufficiently good repute;

(ii) are sufficiently skilled to ensure that the applicant can perform the tasks required of external reviewers pursuant to this Regulation;

(iii) have sufficient professional qualifications;

(iv) have relevant experience in activities such as quality assurance, quality control, the performance of pre-issuance, post-issuance and impact report reviews, the provision of second party alignment opinions or financial services;

(b) the number of analysts, employees and other persons directly involved in the assessment activities of the applicant, and their level of knowledge, experience and training, are sufficient in order for the applicant to perform the tasks required from external reviewers pursuant to this Regulation;

Article 23(6)

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

7. In order to continue providing external review services after the end of the transition period, external reviewers must be registered with ESMA. Article 23 of the Regulation sets out the requirements necessary for an external reviewer to be registered with ESMA.
8. There are two main parts to Article 23. The first part, set out in paragraph 1, lists the information that an external reviewer must submit to ESMA in order to be registered. The second part, stipulated in paragraph 2, sets out the standards that an external reviewer must meet and ESMA shall assess in order for that external reviewer to be registered.
9. ESMA is empowered to develop an RTS to specify the criteria it will refer to in order to judge whether the information provided under Article 23(1) has demonstrated that the external reviewer meets the standards of Article 23(2).
10. In addition, ESMA is empowered to develop an ITS to specify the standard forms, templates and procedures for submitting the information required by Article 23(1). Further details on this ITS can be found in Section 7 of this document.

3.2 Assessment

11. It is important to the functioning of the EuGB Regulation that the management and oversight of external reviewers is undertaken by individuals with the necessary skills and background to ensure their adherence to the requirements of the Regulation.
12. In order to allow ESMA to assess the good repute of the members of senior management and the board of an external reviewer, ESMA deems it necessary to receive information on any criminal convictions, penalties, disciplinary action, instances of misconduct or mismanagement or potential threats to their independence and best judgement. ESMA notes that this information will be useful in assessing the suitability of management of the external reviewer to set the tone at the top and direct the entity with diligence and integrity.
13. In order to allow ESMA to assess the professional qualifications and experience of the members of senior management and the board of an external reviewer, ESMA deems it necessary to receive a recent curriculum vitae, with updated information on education, training and employment history. In order to autonomously evaluate skill, it is important to separate this assessment from that of professional qualifications and experience. As such, the draft RTS envisages the submission of an individual assessment of skill for each member of senior management and the board, complemented by an evaluation of their collective suitability, so as to judge complementarity and overall diversity of profiles.
14. Similarly, in fulfilling the professional qualifications and relevant experience requirements referred to in Article 23(2)(a)(iii)(iv), an external reviewer should be able to demonstrate that its senior management and board members collectively possess a mature and current understanding of the activities of the external reviewer and the risks it is exposed to. ESMA recognises that a reasonable level of diversity of competencies among key function holders will help ensure appropriate and experienced oversight by bringing a variety of management perspectives.
15. To allow ESMA to assess the sufficiency of the number of analysts, employees and other persons directly involved in assessment activities, an external reviewer should provide detailed information on its analytical human resources, from contractual arrangements and the rank and experience of analysts to the expected duration and volume of assessment activities. Using this information, ESMA will be able to judge the adequacy of the number of employees involved in assessment activities and whether it is proportionate to the envisaged size and scale of business activities of the external reviewer.
16. To allow ESMA to assess the sufficient levels of knowledge, experience and training of analysts, employees and other persons directly involved in assessment activities, an external reviewer should provide detailed information on their education, professional training and employment history. ESMA expects this to include details on the academic history, professional qualifications and on the nature and duration of past functions performed. ESMA will then use these elements to assess whether an external reviewer's analytical resources possess the necessary expertise for the discharge of the responsibilities allocated to them.
17. To ensure the knowledge and competencies of its analytical resources remain up-to-date, an external reviewer should implement and submit to ESMA an ongoing training and development plan for all employees involved in assessment activities.

3.3 Proposal

18. In specifying the criteria that will be assessed as part of the registration application, ESMA has split the RTS according to the different parts of Article 23(2). While Articles 2 to 4 deal with the fitness and propriety of senior management and board members, Articles 5 and 6 relate to the Level 1 requirements on the analytical function of external reviewers.
19. ESMA's proposals for the draft RTS on the criteria to be assessed at time of registration referred to in Article 23(2)(a) and (b) of the EuGB Regulation are set out in Annex II (section 9.2.1).

Q1: Do you agree with ESMA's proposals to specify the criteria to assess the sufficiently good repute, skill, professional qualifications and experience of senior management and members of the board of the external reviewer?

Q2: Do you agree with ESMA's proposals to specify the criteria to assess the sufficiency of the number of analysts, employees and persons directly involved in the assessment activities and of their level of knowledge, experience and training?

4 Sound and prudent management and conflicts of interest

4.1 Background

Article 27(1) and (2)

1. *The senior management and the members of the board of the external reviewer shall, respectively, ensure or oversee the following:*

- (a) the sound and prudent management of the external reviewer;*
- (b) the independence of assessment activities;*
- (c) that any actual or potential conflicts of interest are properly identified, eliminated or managed, and disclosed in a transparent manner;*
- (d) that the external reviewer complies with the requirements of this Regulation at all times.*

2. **ESMA shall develop draft regulatory technical standards specifying the criteria to assess the sound and prudent management of the external reviewer referred to in paragraph 1, point (a), and the management of conflicts of interest referred to in paragraph 1, point (c).**

20. Article 27(1) and (2) of the EuGB Regulation empowers ESMA to develop draft regulatory technical standards to specify criteria related to the sound and prudent management and the conflicts of interest management framework of external reviewers.

4.2 Assessment

21. ESMA notes that the implementation of robust organisational and corporate governance arrangements and internal control mechanisms is essential to the sound and prudent management of an external reviewer.

22. In order to allow ESMA to assess the adequacy of its internal governance, an external reviewer should provide information on the composition and functioning of its governing bodies. This will permit ESMA to be able to judge whether their structure and operability promote the sound governance and independence of the entity.

23. In order to allow ESMA to assess the appropriateness of its organisational structure, arrangements and measures, an external reviewer should provide:

- a) A detailed organisational chart, including the identity, responsibilities and reporting lines of each role;

- b) Information on its business continuity, disaster recovery, record keeping, information systems and security arrangements; and
 - c) The administrative and accounting procedures by which it handles contracting and payments and records and reports its financial information.
24. In order to allow ESMA to judge the adequacy of the internal control framework, an external reviewer should provide a self-assessment of its internal control mechanisms and how it ensures the independence of each of its internal control functions vis-à-vis the business lines.
25. In an inherently issuer-pays model (i.e. one where voluntary issuers of European Green Bonds are required, under the EuGB Regulation, to seek the services of an external reviewer), conflicts of interest pose a key concern, as there may be negative incentives for an external reviewer to favour an issuer in its assessment activities for commercial reasons. For instance, providing an overly favourable external review in anticipation of being selected by the issuer to provide similar services for future issuances of European Green Bonds, on the premise of advantageous treatment. Also, given the potential for the existence of parallel conflicting businesses (e.g. credit ratings, consulting, advisory or audit services), it is important that policies and procedures are put in place by external reviewers to adequately identify, eliminate, manage and disclose in a transparent manner, actual or potential conflicts of interest.
26. In order for ESMA to assess if any conflicts of interest arising from the activities and business interests of an external reviewer could affect its independence, an applicant should provide a copy of its conflicts of interest policy and detailed information on its wider conflicts of interest framework, including:
- a) An up-to-date inventory of existing and potential conflicts of interest applicable to it, with the proposed mitigation measures; and
 - b) Policies and procedures related to reporting and whistleblowing, remuneration, transactions with related parties, personal account dealing, outside business activities and gifts and hospitality.
27. Given the potential, under Article 35(2) of the EuGB Regulation, for external reviewers not to issue a review when they identify an actual conflict of interest that cannot be eliminated or managed, it is important that the conflicts of interest policy sets out, based on the risk, which conflicts of interest the external reviewer believes should be managed or disclosed in a transparent manner and which should be eliminated.

4.3 Proposal

28. ESMA's proposals for the draft RTS specifying the criteria to assess the sound and prudent management of the external reviewer and the management of conflicts of interest are set out in Annex II (section 9.1.2).

Q3: Do you agree with ESMA's proposals to specify the criteria to assess the sound and prudent management of the external reviewer?

Q4: Do you agree with ESMA's proposals to specify the criteria to assess that any actual or potential conflicts of interest are properly identified, eliminated or managed, and disclosed in a transparent manner by the external reviewer?

5 Knowledge and experience of analysts

5.1 Background

Article 28(1) and (3)

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.

*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.***

29. In accordance with the provisions of Article 28(1) of the EuGB Regulation, external reviewers shall ensure that their analysts and employees, and any other natural persons whose services are placed at their disposal or under their control and who are directly involved in assessment activities, have the necessary knowledge, experience and training for the duties assigned.

30. In this context, Article 28(3) of EuGB Regulation states that ESMA will develop draft regulatory technical standards to specify the criteria for assessing the appropriateness of the knowledge, experience and training of the persons referred to in Article 28(1).

5.2 Assessment

31. To a large degree the function of Article 28(1) under EuGB Regulation is to ensure that the requirements an external reviewer is assessed against at registration, relating to its analytical resources are met on an ongoing basis thereafter. In this regard, it is important that the manner in which ESMA considers compliance with Article 28(1) is aligned with how it assesses compliance with the conditions for registration relating to the analytical function set out in Article 23(2)(b). For this reason, ESMA has predicated its draft RTS on the alignment between the parameters of both assessments.

32. In addition to ensuring uniformity with the parameters of ESMA's assessment of analytical resources at registration, it is also necessary to consider the relevance of the requirements applicable to an external reviewer under Article 28(1) and those under Article 33(1), in respect of outsourced assessment activities. In other words, it is necessary to ensure coherence between how an external reviewer adheres to the requirements of knowledge, experience and training when assessment activities are performed by 'in-house' staff, and when they are performed externally by analysts employed by third-party service providers. For example, at registration an external reviewer must demonstrate that its analytical staff meet the requirements of Article 23(2)(b). It must then be able to demonstrate that its

analytical staff meet the requirements of Article 28(1), and when it outsources assessment activities it must be able to demonstrate that it adheres to the requirements of Article 33(1) in respect of the ability and capacity of third-party service providers.

33. On this basis, ESMA proposes that the draft RTS under Article 28(3) be structured in such a manner that the criteria according to which an external reviewer's analytical staff and employees are assessed as appropriate are aligned with those that are assessed at registration. In addition, the process according to which an external reviewer assesses that its analytical staff meet the requirements of knowledge, experience and training is aligned with the assessment it conducts in respect of third-party service providers to whom it outsources assessment activities. This approach ensures consistency between what an external reviewer is assessing with respect to its analytical capabilities and outsourced assessment activities, from both a substance and process perspective.

5.3 Proposal

34. To implement the approach described in Section 5.2, ESMA's proposed draft regulatory technical standard under Article 28(3), specifies the criteria and process according to which an external reviewer must assess its analysts, employees and any other natural person whose services are placed at its disposal or under its control and who are directly involved in assessment activities.
35. ESMA's proposals for the draft RTS specifying the knowledge and experience of the persons listed in Article 28(1) is set out in Annex II (section 9.1.3)

Q5: Do you agree with ESMA's approach to specifying the criteria for assessing the appropriateness of the knowledge, experience and training of the persons referred to in Article 28(1)?

6 Outsourcing of assessment activities

6.1 Background

Article 33(7)

ESMA shall develop draft regulatory technical standards specifying the criteria for:

(a) assessing the ability and the capacity of third-party service providers to perform the assessment activities reliably and professionally; and

(b) ensuring that the performance of assessment activities does not materially impair the quality of the external reviewers' internal control or ESMA's ability to supervise the external reviewers' compliance with this Regulation.

36. In accordance with the provisions of Article 33(1) of the EuGB Regulation, external reviewers that outsource their assessment activities to third-party services providers must ensure that any such third-party service provider has the ability and the capacity to perform those assessment activities reliably and professionally. External reviewers are additionally required to ensure that the outsourcing does not materially impair the quality of their internal control and ESMA's ability to supervise the compliance of those external reviewers with the EuGB Regulation.

37. In this context, Article 33(7) of EUGB sets out that ESMA will develop draft regulatory technical standards to specify criteria related to the outsourcing activities.

6.2 Assessment

38. ESMA considers that the ability of an external reviewer to outsource certain parts of its assessment can be an important tool for ensuring the high quality of reviews, given the access to the expertise of specialist third-party providers, and lowering barriers to entry in the external review market, given the support from external resources. However, it is necessary to ensure that when activities are outsourced the safeguards put in place by the regulation are not undermined.

39. In developing the proposed RTS, ESMA considered two possible approaches. Under the first option, the RTS under Article 33(7) would specify the criteria by which an external reviewer would assess whether a third-party service provider has (i) the ability and the capacity to perform outsourced assessment activities reliably and professionally; and (ii) the criteria for ensuring that the outsourcing of the assessment activities does not materially impair the quality of their internal control and ESMA's ability to supervise the external reviewers compliance with the EuGB Regulation. The advantages of this approach are that it would give a clear direction to external reviewers as to what abilities and capacities are considered necessary for a third-party service provider to perform assessment activities. It would also establish specific criteria that must be met in order to ensure that the external

reviewer's internal control was not impaired and ESMA's ability to supervise was not limited by the outsourcing arrangement.

40. The disadvantages of this approach are that it could lead to an RTS that is overly prescriptive, inflexible with unintended consequences in the development of the market for external reviewers. For example, in setting criteria in such an explicit manner, it may result in external reviewers performing a "tick-box" assessment as to whether a third-party service provider met the criteria set out in the RTS, rather than taking responsibility for ensuring its adherence to the high-level principles of Article 33(1). Likewise for the criteria specifying that outsourced assessment activities should not result in a material impairment of internal control and ESMA's ability to supervise. An approach that was overly prescriptive when setting these, could result in external reviewers structuring their activities in a manner that was overly concerned with meeting these criteria, rather than the overall objective of Article 33(1).
41. For this reason, ESMA has taken the alternative approach of specifying the process that ESMA expects an external reviewer to follow and the criteria that an external reviewer should look at when it is determining whether the third-party service provider is meeting the requirements of Article 33(1).
42. This approach has the advantage of ensuring that each external reviewer puts in place a process according to which it assesses the third-party service providers to whom it outsources assessment activities. This assessment process should be conducted on an annual basis and subject to appropriate levels of approval by senior management. Through putting in place this process, ESMA's supervisory process will benefit from external reviewer's keeping a documented record of how they assessed and determined whether any third-party service provider to whom they outsourced assessment activities is meeting the requirements of Article 33(1).

6.3 Proposal

43. To implement the approach described in Section 6.2 ESMA's proposals for the draft RTS have taken a split approach, first specifying the criteria to be used to assess whether the outsourcing of activities can proceed without jeopardising the quality of the assessment, second specifying the criteria to ensure that ESMA's ability to supervise will not be impaired.
44. ESMA's proposals for the draft RTS specifying criteria under Article 33(7) are set out in Annex II (section 9.1.4).

Q6: Do you agree with ESMA's approach to specify the criteria for assessing the reliability and capacity of a third-party service provider?

Q7: Do you agree with ESMA's approach to specify the criteria for assessing that the internal control of an external reviewer is not materially impaired and ESMA's ability to supervise is not limited?

7 Forms, templates and procedures for registration

7.1 Background

Article 23(7)

1. An application for registration as an external reviewer for European Green Bonds shall contain the following information:

- (a) the full name of the applicant, the address of its 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 form of the applicant;
- (d) the ownership structure of the applicant;
- (e) the identities of the members of the senior management and the board of the applicant with their curriculum vitae showing at least their levels of qualification, experience and training;
- (f) the number of the analysts, employees and other persons directly involved in assessment activities, and their level of experience and training gained prior to and while working for the applicant in the provision of external review or similar services;
- (g) a description of the procedures and methodologies implemented by the applicant to issue reviews;
- (h) the corporate governance arrangements and the policies or procedures implemented by the applicant to identify, eliminate or manage, and disclose in a transparent manner, any actual or potential conflicts of interest as referred to in Article 35;
- (i) where applicable, documents and information related to any existing or planned outsourcing arrangements for activities of the external reviewer covered by this Regulation, including information on entities assuming outsourcing functions;
- (j) where applicable, information about other activities carried out by the applicant.

7. 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.*

45. Article 23(7) of the EuGB Regulation requires ESMA to develop draft implementing technical standards to specify the standard forms, templates and procedures for the provision of the information that an application for registration as external reviewer of European Green Bonds should contain.

7.2 Assessment

46. ITS are a useful tool to foster the harmonisation of the information requirements in registration procedures, ensuring a level playing field across applications.

47. In developing the draft ITS, ESMA has taken the approach that simple and uniform forms and templates improve the efficiency of the registration process for all parties involved. For instance, by minimising internal burden and compliance costs for applicants, whilst simultaneously streamlining assessment for ESMA.

48. ESMA has been mandated by Article 23(7) of the EuGB Regulation to take into account “digital means of registration” when developing the ITS. Therefore, ESMA highlights the importance that any information provided in an application for registration is submitted in a machine-readable way and which allows the unchanged reproduction of the information stored.

49. ESMA considers the oversight of individuals in positions of responsibility to be a fundamental aspect of good governance. As such, an application for registration should be accompanied by a letter signed by a member of the external reviewer’s senior management, attesting that the submitted information is accurate and complete to the best of their knowledge.

7.3 Proposal

50. ESMA’s proposals for the draft ITS specifying the standard forms, templates and procedures for the provision of the information for an application for registration as an external reviewer for European Green Bonds are set out in Annex I (section 9.1.5, in particular Annex I to VII).

Q8: Do you agree with the practicality and efficiency of ESMA’s proposals to specify the standard forms, templates and procedures for the provision of the information

Q9: Do you have any views or comments on the relevance of the registration information contained in Annex I to VII of the draft ITS?

8 Next Steps

51. ESMA welcomes the views of all relevant stakeholders on the appropriateness of the proposed technical standards to supplement the EuGB Regulation.
52. ESMA is looking for feedback on this Consultation Paper by 14 June 2024. ESMA will then consider the responses it receives and expects to publish a final report by the end of Q4 2024.
53. ESMA will submit the drafts RTS and ITS to the European Commission by 21 December 2024 for endorsement in the form of a Commission Delegated Regulation.

9 Annexes

9.1 Annex I

Draft technical standards

9.1.1 RTS on criteria to be assessed at registration relating to senior management and members of the board, as well as analysts, employees and other persons directly involved in assessment activities

COMMISSION DELEGATED REGULATION (EU) 2024/...

of **XXX**

supplementing Regulation 2023/2631 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria to be assessed at registration relating to the good repute, skill, professional qualifications and experience of the senior management and the members of the board of an external reviewer, as well as the number of analysts, employees and other persons directly involved in its assessment activities and their level of knowledge, experience and training

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds⁹, and in particular paragraph 6, third subparagraph of Article 23 thereof,

Whereas:

- (1) Under the empowerment provided by Article 23(6) of Regulation (EU) 2023/2631, this Delegated Regulation sets out the information that the European Securities and Markets Authority (ESMA) should consider from an applicant for registration as an external reviewer of European Green Bonds, in relation to the members of its senior management and board and its analytical resources.
- (2) The fitness and propriety of the members of senior management and the board of an external reviewer is of paramount importance, given their key role in ensuring that the external reviewer meets its regulatory obligations. In assessing an application, ESMA should be able to form a view, based on information on any criminal offence convictions, indications of past misconduct or gross negligence or situations of conflicts of interest or impairments to their independence and objectivity, on the honesty,

⁹ OJ L, 2023/2631, 30.11.2023.

integrity and reputation of members of senior management and the board of an external reviewer.

- (3) The suitability of the skill, professional qualifications and experience of the members of senior management and the board is fundamental, given their accountability for the external reviewer's business strategy. As part of its application, an external reviewer should provide the curriculum vitae of all members of senior management and the board, with up-to-date information on education, training and employment history, as well as an individual and collective assessment of skill for ESMA's assessment.
- (4) An external reviewer should ensure that the composition and diversity of its senior management and board allows it to maintain an up-to-date understanding of the activities of the external reviewer and the risks it is exposed to.
- (5) To safeguard the continuity and regularity of external reviews, an applicant should ensure an appropriate number of analysts, employees and persons directly involved in assessment activities. In this regard, an application should contain detailed information on an external reviewer's analytical staffing arrangements, such as the number of permanent and fixed-term contracts, the seniority of analysts or the planned effort of external reviews and any foreseen outsourcing of assessment activities.
- (6) To uphold the quality of external reviews, an applicant should ensure adequate levels of knowledge, experience and training among its analysts, employees and other persons directly involved in assessment activities. With an application, ESMA should receive detailed information on their education, training and employment history. Furthermore, an external reviewer should put in place a training and development plan for all employees involved in assessment activities.
- (7) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission in accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.
- (8) ESMA conducted open public consultations on the draft regulatory technical standards on which this Regulation is based and analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) 1095/2010 of the European Parliament and of the Council¹⁰,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation specifies the criteria which shall be referred to in the assessment of members of senior management and the board of an external reviewer and its analysts, employees and other persons directly involved in its assessment activities as part of an application for registration as an external reviewer for European Green Bonds, pursuant to paragraph 2, first subparagraph, points (a) and (b) of Article 23 of Regulation (EU) 2023/2631.

¹⁰ 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).

Article 2

Criteria to assess good repute

In order to assess the good repute referred to in subpoint (i) of point (a) of paragraph 2 of Article 23 of Regulation (EU) 2023/2631, an external reviewer shall provide ESMA with the following up-to-date information regarding each member of its senior management and the board:

- a) a recent criminal-record file from the country of origin of the relevant natural person;
- b) a self-declaration of fitness and propriety, where each member declares whether he or she:
 - i) has been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government body or is the subject of any such proceedings which are not concluded;
 - ii) has been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or sustainability-related services, or for impropriety or fraud in the management of a business;
 - iii) has been part of the senior management or board of an undertaking which was subject to an adverse decision or penalty by a regulatory authority or whose registration or authorisation was withdrawn by a regulatory authority;
 - iv) has been refused the right to carry out activities which require registration or authorisation by a regulatory authority;
 - v) has been subject to a fitness and propriety assessment by a regulatory body to determine whether a candidate is suitable to perform a regulated function, including details of the competent authority, the functions involved and if any previous assessment has resulted in a negative decision, withdrawal of authorisation, or a positive assessment but with conditions, recommendations or obligations, as well as the reasons for this;
 - vi) has been part of the senior management or board of an undertaking which has gone into insolvency, liquidation or administration while the person was employed by the undertaking or within a year of the person ceasing to be employed by the undertaking;
 - vii) has been fined, suspended, disqualified, or been subject to any other sanction by a professional body; or
 - viii) has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice.
- c) a self-declaration where each member of the senior management and board of an external reviewer declares whether he, she or his or her close relatives have or have had any relationships, positions or involvement that could, directly or indirectly, affect the interests of an external reviewer and the integrity of its assessment activities.

Article 3

Criteria to assess professional qualifications and experience

1. In order to assess their professional qualifications and relevant experience, an external reviewer shall provide ESMA with an up-to-date curriculum vitae of each member of its senior management and board, containing in particular:

- a) details of education, including academic and professional certifications and other relevant training;

b) employment history, including the scope and duration of the functions performed, highlighting any activities relevant to the position occupied in the external reviewer.

2. As regards the professional qualifications, consideration shall be given to the level of education and training and whether it relates to financial or sustainability-related services or any other relevant area of knowledge for the business of external reviewers.

For this purpose, ESMA shall take into consideration both the theoretical knowledge and skills attained through education and training, as well as the practical experience gained in previous occupations by the members of the senior management and the board of an external reviewer.

3. As regards the experience, consideration shall be given to the professional experience gained from a managerial position over a sufficiently long period in activities such as quality assurance, quality control, the performance of pre, post-issuance and impact report reviews, the provision of second party alignment opinions or financial services.

4. An external reviewer shall ensure that its senior management and board possess a collective and up-to-date understanding of the activities of the external reviewer and related risks.

Article 4

Criteria to assess skill

1. In order to assess the skill of its senior management and board, an external reviewer shall provide ESMA with an assessment of how members of its senior management and board are sufficiently skilled to ensure that it can perform the tasks required of external reviewers pursuant to point (ii) of point (a) of paragraph 2 of Article 23 of Regulation (EU) 2023/2631, including the requirements of Article 27 of Regulation (EU) 2023/2631.

2. The assessment referred to in paragraph 1 shall be complemented by an evaluation of the collective suitability of the senior management and board of an external reviewer to perform its role and duties.

3. The assessment referred to in paragraph 1 shall be conducted by an external reviewer having due regard for the criteria set out in Article 3.

Article 5

Criteria to assess number of analysts, employees and other persons directly involved in assessment activities

In order to assess the sufficiency of the number of analysts, employees and other persons directly involved in assessment activities, an external reviewer shall provide ESMA with detailed information on:

a) the roles, related job descriptions and assigned headcount, including the ratio of permanent to temporary employees;

b) the total number of analysts, employees and other persons directly involved in assessment activities, with a breakdown by seniority;

c) the expected number of assessments to be allocated in the next 12 months per employee and the estimated duration of an external review of European Green Bonds;

d) other tasks or expected allocation for analysts, employees and other persons directly involved in assessment activities; and

e) assessment activities planned to be outsourced.

Article 6

Criteria to assess level of knowledge, experience and training of analysts, employees and other persons directly involved in assessment activities

1. In order to assess the level of knowledge, experience and training of its analysts, employees and other persons directly involved in assessment activities, an external reviewer shall provide ESMA with an assessment as to how its analysts, employees and other persons directly involved in assessment activities enable it to effectively perform its external reviews.

This assessment should include detailed information on:

- a) the employment history of analysts, employees and other persons directly involved in assessment activities, including the nature and length of services rendered in previous posts, information on the employer and responsibilities held;
- b) the educational background of analysts, employees and other persons directly involved in assessment activities and any relevant professional certifications or qualifications obtained;
- c) other relevant professional and academic achievements of analysts, employees and other persons directly involved in assessment activities for the nature of the functions at hand; and
- d) a training and development plan for analysts, employees and other persons directly involved in assessment activities.

2. For the purposes of paragraph 1, relevant activities are deemed to be those related to quality assurance, quality control, the performance of pre, post-issuance and impact report reviews, the provision of second party alignment opinions or financial services.

Article 7

Entry into force

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

Done at Brussels,

*For the Commission
On behalf of the President*

9.1.2 RTS on criteria to assess sound and prudent management and management of conflicts of interest

COMMISSION DELEGATED REGULATION (EU) 2024/...

of **XXX**

supplementing Regulation 2023/2631 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the sound and prudent management and the management of conflicts of interest of an external reviewer

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds¹¹, and in particular paragraph 2, third subparagraph of Article 27 thereof,

Whereas:

- (1) Under the empowerment provided by Article 27 of Regulation (EU) 2023/2361, this Delegated Regulation sets out the information that the European Securities and Markets Authority (ESMA) will consider when reviewing an application for registration as an external reviewer of European Green Bonds and the criteria an external reviewer shall refer to in order to determine and demonstrate on an ongoing basis the sound and prudent management and the adequate management of conflicts of interest.
- (2) An application should contain information on the external reviewer's corporate governance arrangements, including the organisation, scope, purpose and functioning of its governance bodies, such as the board, supervisory body or relevant committees, in order to demonstrate appropriate decision-making structures are in place.
- (3) Maintaining a transparent and effective organisational structure is a key component of sound and prudent management. In this regard, an external reviewer is expected to demonstrate clear hierarchies and communication channels encouraging accountability and positive decision-making, as well as appropriate responsibilities for each role.
- (4) With a view to taking all reasonable steps to comply with their obligations under Regulation (EU) 2023/2361, external reviewers should demonstrate they have implemented appropriate business continuity, information systems, record keeping, administrative and accounting procedures.
- (5) To ensure that external reviewers comply with the requirements set out in Regulation (EU) 2023/2361, applicants should demonstrate that they have implemented an adequate and proportionate internal control framework embedding the external reviewer's risk management strategy. Given the importance of the internal control functions to the

¹¹ OJ L, 2023/2631, 30.11.2023.

sound and prudent management of an external reviewer, it is important that they are appropriately empowered in their roles and there is clear segregation vis- à-vis the business lines they are overseeing. As such, an external reviewer should conduct a self-assessment on the proportionality of its implemented internal control mechanisms and on the independence of its internal control functions.

- (6) An external reviewer should demonstrate that it operates and maintains effective and transversal risk management procedures and controls with a view to taking all reasonable steps to identify, eliminate or manage and disclose in a transparent manner actual or potential conflicts of interest.
- (7) To that end, an application should contain all the elements of an external reviewer's conflicts of interest management framework, from its board-approved conflicts of interest policy to its inventory of conflicts of interest and reporting mechanisms. The policy should include, among other elements, which conflicts of interest the external reviewer considers can be managed or disclosed in a transparent manner and which conflicts of interest must be eliminated. Appropriate oversight of situations where an employee's professional judgement or decision making may be compromised should also be demonstrated, such as the internal review of transactions with related parties, personal account dealing, engagement in outside business activities and acceptance of gifts and hospitality.
- (8) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission in accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.
- (9) ESMA conducted open public consultations on the draft regulatory technical standards on which this Regulation is based and analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) 1095/2010 of the European Parliament and of the Council¹²,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation specifies the criteria which shall be referred to in the assessment of an application for registration as an external reviewer for European Green Bonds, pursuant to paragraph 1, points (a) and (c) of Article 27 of Regulation (EU) 2023/2631.

Article 2

Corporate governance

An external reviewer shall provide ESMA with the policies and procedures, terms of reference and the most recent meeting minute of its governance bodies, including the board and, where established, its committees.

¹² 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).

Article 3

Organisational structure

1. An external reviewer shall provide ESMA with a detailed organisational chart, including the clear identification of reporting lines and the identity and responsibilities of each role.
2. An external reviewer shall provide ESMA with detailed information on the organisational arrangements put in place to ensure the continuity and regularity in the performance of assessment activities, the safeguarding of the confidentiality and security of records and documents on the services provided, sound administrative and accounting procedures and the adequacy of information processing systems implemented to meet its obligations under Regulation (EU) 2023/2631.

Article 4

Internal control

1. An external reviewer shall provide ESMA with the policies and procedures outlining its internal control framework.
2. An external reviewer shall provide ESMA with an assessment of the adequacy of the implemented internal control mechanisms to the nature, scale and complexity of the external reviewer and of the independence of the internal control functions from the business lines conducting assessment activities.
3. As part of its internal control arrangements, an external reviewer shall implement a risk management framework which sets out its approach to the identification, assessment, monitoring and mitigation of all risks materially impacting the external reviewer.

Article 5

Conflicts of interest policy

1. As part of the risk management framework described in Article 4, an external reviewer shall assess the risks posed by conflicts of interest to the quality and independence of its external reviews and to compliance with the requirements of this Regulation.
2. In order to assess whether actual or potential conflicts of interest are properly identified, eliminated or managed and disclosed in a transparent manner, an external reviewer shall provide ESMA with its conflicts of interest policy, which shall specify, at least:
 - a) the responsibility of the board for the approval and overall oversight of the policy;
 - b) the risk management procedures and preventative and detective controls with respect to the identification, elimination, management and disclosure of conflicts of interest;
 - c) the duty of the external reviewer and its employees, including board members, to avoid, to the extent possible, activities that could create conflicts of interest;
 - d) where relevant, examples of where conflicts of interests could arise at the external reviewer, including at employee, senior management, board, shareholder, issuer, investor or parent undertaking level;
 - e) an appropriate and effective compliance process for monitoring the implementation of the policy;
 - f) the procedures for training and raising the awareness of all employees of an external reviewer to the content of the policy, including new employees; and

- g) rules to ensure the independence of analysts, employees and other persons directly involved in assessment activities, including the prohibition of any participation in negotiations regarding fees or payments with any client of an external reviewer or related third-party.
3. In the procedures referred to in paragraph 2, point (b), an external reviewer shall set out which conflicts of interest are to be managed or disclosed in a transparent manner and which conflicts of interest are to be eliminated.
4. An external reviewer shall provide ESMA with the following policies, procedures and internal documents:
- a) the updated inventory of actual or potential conflicts of interest relevant to the external reviewer, as well as proposed mitigation measures;
 - b) the reporting mechanisms for the disclosure of any matter that may result, or has already resulted, in a conflict of interest, including a whistleblowing policy safeguarding the anonymity of the informant and prohibiting reprisals;
 - c) the review and approval process for transactions with related parties, employee personal account dealing, outside business activities and the acceptance of gifts and hospitality; and
 - d) the remuneration policy, including the controls put in place to preserve the independence of employees in scope of variable compensation arrangements.

Article 6

Entry into force

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

Done at Brussels,

For the Commission
On behalf of the President

9.1.3 RTS on criteria for assessing knowledge and experience of analysts

COMMISSION DELEGATED REGULATION (EU) 2024/...

of **XXX**

supplementing Regulation 2023/2631 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the appropriateness of the knowledge, experience and training of 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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds¹³, and in particular paragraph 3 of Article 28 thereof,

Whereas:

- (1) Under the empowerment provided by Article 28 of Regulation (EU) 2023/2361, this Delegated Regulation sets out the criteria an external reviewer shall refer to in order to determine and demonstrate the appropriateness of the knowledge, experience and training of 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.
- (2) An external reviewer should conduct its assessment of these criteria on a regular basis, the outcome of which will be subject to appropriate levels of internal approval. At a minimum, the subject matter of the assessment should be the expected volume and characteristics of the external reviewer's assessment activities and the profiles of the analytical staff and employees who will carry out these activities.
- (3) When assessing the profiles of the persons listed under Article 28 of Regulation (EU) 2023/2361, an external reviewer should first consider the existing or anticipated nature of the assessment activities that the external reviewer foresees it will conduct over the forthcoming period. This enables the external reviewer to establish a baseline for establishing its staffing needs in respect of Article 28 of Regulation (EU) 2023/2361. Once the nature and volume of the expected assessment activities have been established, the external reviewer should assess the knowledge, experience and training of its analytical resources according to the criteria included in the [Commission Delegated Regulation (EU) 2024/... on the good repute, skill, professional qualifications and experience of the senior management and the members of the board of an external reviewer, as well as the number of analysts, employees and other persons directly involved in its assessment activities and their level of knowledge, experience and training] assessed at registration, in order to reach a determination as to whether they are appropriate.

¹³ OJ L, 2023/2631, 30.11.2023.

- (4) In order to ensure that this process is subject to an adequate level of oversight, the outcome of the assessment process should be subject to approval by the senior management and board of the external reviewer.
- (5) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission in accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.
- (6) ESMA conducted open public consultations on the draft regulatory technical standards on which this Regulation is based and analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) 1095/2010 of the European Parliament and of the Council¹⁴.

Article 1

Subject matter

This Regulation sets out the process that an external reviewer shall put in place in order to ensure its compliance with the requirements of paragraph 1 of Article 28 of Regulation (EU) 2023/2361.

Article 2

Process of assessment

1. An external reviewer shall put in place an assessment taking into account the level of knowledge, experience and training of analysts, employees and any other natural person whose services are placed at its disposal or under its control and who are directly involved in assessment activities.
2. The process of assessment shall be carried out on a regular basis and at least annually.
3. The process of assessment shall be subject to approval by the senior management and board of the external reviewer.

Article 3

Nature and scale of assessment activities

1. The assessment carried out in accordance with Article 2, shall consider all of the following criteria as the basis for establishing the nature and scale of an external reviewer's assessment activities under Regulation (EU) 2023/2361:
 - a) an estimate of the types of issuances, issuers and assessment activities that the persons referred to in paragraph 1 of Article 28 of Regulation (EU) 2023/2631 are expected to provide for the forthcoming 12 month period;
 - b) an explanation of how the external reviewer has determined the relevance of knowledge, experience and training for the persons referred to in paragraph 1 of Article 28 of Regulation (EU) 2023/2631 and of how the level of knowledge, experience and training has been determined as appropriate for the duties assigned; and

¹⁴ 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).

- c) the role, if any, of artificial intelligence or artificial general intelligence in the assessment activities of the external reviewer.
2. An external reviewer shall update the information referred to in paragraph 1 on a regular basis and at least annually.

Article 4

Assessment of knowledge, experience and training

1. The process of assessment referred to in Article 2 shall take into account the estimates and information provided in accordance with Article 3 against the following criteria:
 - a) the employment history of analysts, employees and any other natural persons directly involved in assessment activities, including the nature and length of services rendered in previous posts, information on the employer and responsibilities held;
 - b) the educational background of analysts, employees and other persons directly involved in assessment activities and any relevant professional certifications or qualifications obtained;
 - c) other relevant professional and academic achievements of analysts, employees and other persons directly involved in assessment activities for the nature of the functions at hand;
 - d) a training and development plan for analysts, employees and other persons directly involved in assessment activities; and
 - e) the change in the composition of staff assessed under points (a) to (d) of the present Article since the previous assessment.
2. An external reviewer shall ensure that where an assessment is being updated, the updated assessment includes an explanation of the revisions carried out.

Article 5

Entry into force

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

Done at Brussels,

*For the Commission
On behalf of the President*

9.1.4 RTS on criteria applicable to outsourcing of assessment activities

COMMISSION DELEGATED REGULATION (EU) 2024/...

of **XXX**

supplementing Regulation 2023/2631 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the ability and the capacity of third-party service providers to perform assessment activities reliably and professionally and for ensuring that the performance of assessment activities does not materially impair the quality of the external reviewers' internal control or ESMA's ability to supervise the external reviewers' compliance with Regulation (EU) 2023/2631

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds¹⁵, and in particular Article 33(7), third subparagraph thereof,

Whereas:

- (1) Under the empowerment provided by Article 33 of Regulation (EU) 2023/2361, this Delegated Regulation sets out the criteria an external reviewer shall refer to in order to assess the ability and the capacity of third-party service providers to perform assessment activities reliably and professionally and ensure that the performance of assessment activities does not materially impair the quality of the external reviewers' internal control or ESMA's ability to supervise the external reviewers' compliance with Regulation (EU) 2023/2631.
- (2) The ability of an external reviewer to outsource certain parts of the assessment of a European Green Bond to a specialist provider can be an important tool for ensuring the high quality of an assessment and also a means of lowering barrier to entry into the market for external reviewers who may not possess the necessary in-house expertise for undertaking assessment activities.
- (3) However, it is necessary to ensure that safeguards are put in place for quality assurance and to safeguard a sufficient degree of oversight over the outsourced activities. To achieve this objective, ESMA has specified the process an external reviewer should follow in order to ensure the necessary criteria on quality and oversight are met.
- (4) The process of assessment aims to evaluate the ability and capacity of third-party service providers to carry out assessment activities reliably and professionally by considering the rationale and benefits of the arrangement, the business model, knowledge and

¹⁵ OJ L, 2023/2631, 30.11.2023.

experience of staff, control framework and regulatory compliance of the third-party service provider and use of artificial intelligence in the outsourced assessment activities.

- (5) The process of assessment aims to evaluate that the outsourcing of assessment activities does not materially impair the quality of the external reviewer's internal control by considering the business model and risks to the external reviewer, as well as the third-party service provider's internal control staffing arrangements or use of suboutsourcing.
- (6) The process of assessment aims to evaluate ESMA's ability to supervise the external reviewer's compliance with Regulation (EU) 2023/2631 by considering documentation, record keeping, audit trail or access to information practices.
- (7) An external reviewer should conduct its assessment of these elements on a regular basis, the outcome of which should be subject to appropriate levels of internal approval.
- (8) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission in accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.
- (9) ESMA conducted open public consultations on the draft regulatory technical standards on which this Regulation is based and analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) 1095/2010 of the European Parliament and of the Council¹⁶,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out the process that an external reviewer shall put in place in order to ensure compliance with the requirements of paragraph 1 of Article 33 of Regulation (EU) 2023/2631.

Article 2

Process of assessment

1. An external reviewer shall put in place an assessment taking into account the ability of third-party service providers to perform the assessment activities reliably and professionally and whether the performance of the assessment activities does not materially impair the quality of the external reviewer's internal control or ESMA's ability to supervise the external reviewer's compliance with Regulation (EU) 2023/2631.
2. The process of assessment shall be carried out on a regular basis and at least annually.
3. The process of assessment shall be subject to approval by the senior management or management body of the external reviewer.

Article 3

¹⁶ 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).

Criteria for assessing the ability and capacity of third-party service providers

1. The process of assessment referred to in Article 2 shall consider all of the following criteria as the basis for establishing the ability and capacity of the third-party service provider to perform the assessment activities reliably and professionally:
 - a) the rationale for the outsourcing arrangement and the expected benefits;
 - b) the business model of the third-party service provider, including financial resources, services offered, ownership and group structure, its status as a regulated or supervised entity and past performance for similar services;
 - c) the knowledge and experience of the staff who will be involved in the outsourced assessment activities;
 - d) the controls that the third-party service provider has in place to ensure that the third-party service provider uses accurate and reliable information and data for the purposes of the assessment activities performed;
 - e) where applicable, the role, if any, of artificial intelligence or artificial general intelligence in the assessment activities of the third-party service provider; and
 - f) the ability and capacity of the third-party service provider to meet applicable legal and regulatory requirements.
2. An external reviewer shall review the information referred to in paragraph 1 on a regular basis and at least annually as part of the assessment referred to in Article 2.

Article 4

Criteria for ensuring the quality of the external reviewer's internal control

1. The process of assessment referred to in Article 2, shall consider all of the following criteria as the basis for ensuring the quality of the external reviewer's internal control is not materially impaired by the outsourcing arrangement:
 - a) the impact of the outsourcing arrangement on the business model of the external reviewer and whether the outsourcing arrangement is appropriate to the expected number and type of assessment activities to be outsourced;
 - b) the risks involved in the outsourcing arrangement, including with respect to reputational impact on the external reviewer, operational efficiency, continuity of service, contingency plans including periodic testing of back-up facilities, security of data and systems and use of cloud technology;
 - c) the level of staffing and resources allocated to the third-party service provider's internal control functions;
 - d) whether and to what extent the third-party service provider is contractually permitted to utilise sub-outsourcing for the performance of the assessment activities and whether it has in place procedures to ensure these activities are carried out in a reliable and professional manner; and
 - e) the extent to which there may be an over-reliance on the third-party service provider or the creation of dependency risks for the provision of the outsourced assessment activities.
2. An external reviewer shall ensure that the information considered for the purposes of paragraph 1 is up-to-date and shall review it on a regular basis and at least annually.

Article 5

ESMA's ability to supervise external reviewer's compliance

1. An external reviewer shall put in place measures to ensure all of the following elements in respect of the assessment process referred to in Article 2:

- a) that there is an appropriate level of documentation and record keeping as regards the outcome of the assessment performed in accordance with Articles 3 and 4 of this Regulation;
- b) that a record is kept of all the names and positions of the persons responsible for conducting and approving such assessment; and
- c) the third-party service provider is capable of providing all necessary information concerning outsourced assessment activities to demonstrate the external reviewer's compliance with the requirements of Regulation (EU) 2023/2631.

2. Where assessment activities are outsourced to third-country third-party service providers, an external reviewer shall additionally include in its assessment the following criteria:

- a) the rationale for outsourcing to a third-party service provider located in a third-country jurisdiction;
- b) the safeguards and precautionary measures in place to ensure that the external reviewer is capable of monitoring and overseeing the outsourced assessment activities; and
- c) whether the third-party service provider has in place procedures to ensure the management of potential risks stemming from possible diverging regulatory requirements or legal systems, the timely execution of exit strategies, information and data security, confidentiality protection and prompt access of ESMA and the external reviewer to records maintained in the third-country jurisdiction.

Article 6

Entry into force

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

Done at Brussels,

For the Commission
On behalf of the President

9.1.5 ITS on forms, templates and procedures for providing registration information

COMMISSION IMPLEMENTING REGULATION (EU) 2024/...

of **XXX**

laying down implementing technical standards for the application of Regulation 2023/2631 of the European Parliament and of the Council with regard to the standard forms, templates and procedures for the provision of the information for an application for registration as an external reviewer for European Green Bonds

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to to Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds¹⁷, and in particular and in particular paragraph 7, fourth subparagraph of Article 23 thereof,

Whereas:

- (1) This Regulation is based on Article 23(7) of Regulation (EU) 2631/2023, empowering European Securities and Markets Authority (ESMA) to develop draft implementing technical standards to specify the standard forms, templates and procedures for the provision of the information in an application for registration as an external reviewer for European Green Bonds to be submitted to the ESMA.
- (2) To safeguard security and enhance data management and usability, digital means of registration have been taken into account in setting out the standard forms, templates and procedures to be used in an application for registration by an external reviewer. Any information submitted to ESMA in an application should be in a machine-readable way and in a durable medium.
- (3) In order to facilitate the identification of the information submitted by an external reviewer, documents included with an application should bear a unique reference number.
- (4) For assurance and accountability purposes, any information submitted to ESMA during the registration process should be accompanied by a letter signed by a member of the external reviewer's senior management, attesting that the submitted information is accurate and complete to the best of their knowledge.
- (5) This Regulation is based on the draft implementing technical standards submitted to the Commission by ESMA.
- (6) ESMA conducted open public consultations on the draft implementing technical standards on which this Regulation is based and analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group

¹⁷ OJ L, 2023/2631, 30.11.2023.

established in accordance with Article 37 of Regulation (EU) 1095/2010 of the European Parliament and of the Council¹⁸,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the standard forms, templates and procedures for the information to be provided to ESMA by an external reviewer in its application for registration, as set out by paragraph 7 of Article 23 of Regulation (EU) 2023/2631.

Article 2

Format of the application for registration as an external reviewer for European Green Bonds

1. An application for registration shall be provided in a format which stores information in a machine-readable way and which allows the unchanged reproduction of the information stored.
2. An application for registration shall be submitted in the format set out in the Annexes of this Regulation.
3. An external reviewer shall give a unique reference number to each document it submits. It shall ensure that the information it submits clearly identifies to which specific requirement of this Regulation it refers and in which document that information is provided. The external reviewer shall submit the table set out in Annex I as part of its application to clearly identify the document in which information required under this Regulation is provided.
4. If a requirement of this Regulation does not apply to the application of an external reviewer, it shall state this in the table set out in Annex I and provide an explanation.
5. Any information submitted to ESMA during the registration process shall be accompanied by a letter signed by a member of the external reviewer's senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

Article 3

General information

An external reviewer shall provide ESMA with the information referred to in paragraph 1, points (a), (b) and (c) of Article 23 of Regulation (EU) 2023/2631, by using the templates set out in Annex II and in points (1), (2), (3), (4), (5) and (6) of Annex VI of this Regulation.

Article 4

Ownership structure

¹⁸ 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).

An external reviewer shall provide ESMA with the information referred to in paragraph 1, point (d) of Article 23 of Regulation (EU) 2023/2631 by using the templates set out in Annex III of this Regulation.

Article 5

Senior management and board members

An external reviewer shall provide ESMA with the information referred to in paragraph 1, point (e) of Article 23 of Regulation (EU) 2023/2631 by using the templates set out in Annex IV and in point (7) of this Regulation.

Article 6

Analytical resources

An external reviewer shall provide ESMA with the information referred to in paragraph 1, point (f) of Article 23 of Regulation (EU) 2023/2631 by using the templates set out in Annex V and in points (8) and (9) of Annex VI of this Regulation.

Article 7

Procedures and methodologies

An external reviewer shall provide ESMA with the information referred to in paragraph 1, point (g) of Article 23 of Regulation (EU) 2023/2631 by using the templates set out in point (10) of Annex VI of this Regulation.

Article 8

Conflict of interests

An external reviewer shall provide ESMA with the information referred to in paragraph 1, point (h) of Article 23 of Regulation (EU) 2023/2631 by using the templates set out in points (11), (12), (13), (14) and (15) of Annex VI of this Regulation.

Article 9

Outsourcing arrangements

In case of existing or planned outsourcing arrangements for assessment activities of the external reviewer covered by Regulation (EU) 2023/2631, an external reviewer shall provide ESMA with information referred to in paragraph 1, point (i) of Article 23 of Regulation (EU) 2631/2023-by using the templates set out in points (16), (17) and (18) of Annex VI of this Regulation.

Article 10

Other activities of the external reviewer

In case of other activities being carried out by the external reviewer, an external reviewer shall provide ESMA with information referred to in paragraph 1, point (j) of Article 23 of Regulation (EU) 2023/2631 by using the templates set out in Annex VII of this Regulation.

Article 11

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

Done at Brussels,

For the Commission
On behalf of the President

ANNEX I

DOCUMENT REFERENCES

(Article 2)

Article of, or Annex to, this Regulation	External reviewer reference number	Title of the document	Chapter or section or page of the document where the information is provided <i>or reason why the information is not provided</i>

ANNEX II

GENERAL INFORMATION

(Article 3)

Full name of the external reviewer	
Address of registered office within the Union	<i>[Country, city, street address, postal code]</i>

Website		
Legal Entity Identifier (LEI)	<i>[If available]</i>	
Contact person(s)	Name	
	Title	
	Address	<i>[Country, city, street address, postal code]</i>
	Email address	
	Telephone number	
Legal form of the external reviewer		

ANNEX III

INFORMATION TO BE PRESENTED WITH REGARD TO THE OWNERSHIP STRUCTURE

(Article 4)

1. An external reviewer shall provide ESMA with a list of each person who directly or indirectly holds 10% or more of the external review's capital or of voting rights or whose holding makes it possible to exercise a significant influence over the management of the external reviewer.

Owner	Percentage of capital	Nature of the holding	Percentage of the voting rights
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		<i>[direct or indirect]</i>	

ANNEX IV

INFORMATION TO BE PRESENTED WITH REGARD OF MEMBERS OF SENIOR MANAGEMENT AND THE BOARD

(Article 5)

1. Identification of members of the board and of the senior management of the external reviewer referred to in Article 5.

Name	<i>Please flag the cell</i>		Role	Submitted documents				
	Board member	Member of senior management		CV	Criminal records	Declaration of fit and propriety	Conflict of interests self-declaration	Assessment of skill
<i>[First name] [Last name]</i>				<i>[Reference number]</i>	<i>[Reference number]</i>	<i>[Reference number]</i>	<i>[Reference number]</i>	<i>[Reference number]</i>

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ANNEX V

INFORMATION TO BE PRESENTED WITH REGARD TO THE ANALYTICAL RESOURCES

(Article 6)

1. Information regarding the number of personnel involved in assessment activities or similar services.

Name	Role	<i>Please flag the column</i>		Years in role	Years in the industry	CV
		Temporary	Permanent			

Any information regarding the number of employees shall be provided on a full-time equivalent (FTE) basis calculated as the total hours worked divided by the maximum number of hours subject to compensation within a working year as defined by the relevant national law.

2. Information regarding the assessment activities

Estimated duration of an external review	<i>[number of days]</i>
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Expected number of assessments to be allocated in the next 12 months on an FTE basis	<i>[number]</i>
Other tasks or expected allocation for persons directly involved in assessment activities	<i>[Activity 1]</i>
	<i>[Activity 2]</i>
	<i>[Activity n]</i>

ANNEX VI

POLICIES AND PROCEDURES

(Articles 5, 6, 7, 8 and 9)

Point	Legal ref.	Topic	Ref. Num. (Art. 2)
1	<i>Art. 3 - General information</i>	Corporate governance policies and procedures, terms of reference and the most recent meeting minute of the governance bodies, including the board and, where established, its committees	
2	<i>Art. 3 - General information</i>	Detailed organisational chart, including the identification of reporting lines, job descriptions and assigned headcount for each role	
3	<i>Art. 3 - General information</i>	Information on the organisational arrangements put in place to ensure: <ul style="list-style-type: none"> a) the continuity and regularity in the performance of assessment activities; 	

		<p>b) the safeguarding of the confidentiality and security of records and documents on the services provided;</p> <p>c) sound administrative and accounting procedures; and</p> <p>d) the adequacy of information processing systems implemented to meet its obligations.</p>	
4	<i>Art. 3 - General information</i>	<p>Policies and procedures outlining the internal control framework</p> <p><i>[In case there is a large number of documents, these should be grouped according to the relevant areas of the internal control framework]</i></p>	
5	<i>Art. 3 - General information</i>	<p>Assessment of the adequacy of the implemented internal control mechanism to the nature scale and complexity of the external reviewer and of the independence of internal control functions from the business lines conducting assessment activities</p>	
6	<i>Art. 3 - General information</i>	<p>Risk management framework which sets out the approach to the identification, assessment, monitoring and mitigation of all risks that could materially impact the external reviewer</p>	
7	<i>Art. 5 - Senior management and board members</i>	<p>Evaluation of the collective suitability of the senior management and board to perform its role and duties</p>	
8	<i>Art. 6 - Analytical resources</i>	<p>Training and development plan for analysts, employees and other persons directly involved in assessment activities</p>	
9	<i>Art. 6 - Analytical resources</i>	<p>Assessment of the knowledge, experience and training of analysts, employees and other persons directly involved in assessment activities</p>	

10	<i>Art. 7 - Procedures and methodologies</i>	Procedures and methodologies implemented to issue reviews	
11	<i>Art. 8 - Conflict of interests</i>	Conflict of interests policy	
12	<i>Art. 8 - Conflict of interests</i>	Inventory of actual or potential conflicts of interest and proposed mitigation measures	
13	<i>Art. 8 - Conflict of interests</i>	Description of the reporting mechanism for the disclosure of any matter that may result, or has already resulted, in a conflict of interest, including a whistleblowing policy safeguarding the anonymity of the informant and prohibiting reprisals	
14	<i>Art. 8 - Conflict of interests</i>	Review and approval process for potential conflicts of interest situations: transactions with related parties, employee personal account dealing, outside business activities and the acceptance of gifts and hospitality	
15	<i>Art. 8 - Conflict of interests</i>	Remuneration policy, including the controls put in place to preserve the independence of employees in scope of variable compensation arrangements	
16	<i>Art. 9 - Outsourcing arrangements</i>	Documents and information related to any existing or planned outsourcing arrangements for activities covered by this Regulation, including information on entities assuming outsourcing functions	
17	<i>Art. 9 - Outsourcing arrangements</i>	Assessment activities planned to be outsourced to a third-party provider	
18	<i>Art. 9 - Outsourcing arrangements</i>	Internal assessment evaluating: a) the ability of third-party service providers to perform the assessment activities reliably and professionally; and	

		b) that the performance of assessment activities does not materially impair the quality of external reviewer’s internal control or ESMA’s ability to supervise the external reviewer's compliance with Regulation (EU) 2023/2631.	
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ANNEX VII

OTHER ACTIVITIES OF THE EXTERNAL REVIEWER

(Article 10)

Information on activities, other than external reviews of European Green Bonds, carried out by the external reviewer.

Activity	Description	Offered through subsidiaries or affiliates
		<i>[Yes/No: if Yes, please provide the name of the entity]</i>

9.2 Annex II

Cost-benefit analysis

1. This Consultation Paper sets out proposals for the RTS and ITS required under Articles 23(7), 27(2), 28(3), 33(7) and 23(6) of the European Green Bonds Regulation which relate to senior management and board members and analytical resources, sound and prudent management and conflicts of interest, analytical knowledge, experience and training, outsourcing of assessment activities and provision of registration information, respectively. ESMA has decided to conduct a preliminary Cost-Benefit Analysis (CBA) and individual impact assessments in relation to each of the draft technical standards.
2. This draft CBA is qualitative in nature, as ESMA is not able to quantify a monetary value for benefits or costs of the envisaged technical options at this stage.
3. However, a specific question has been introduced in order to obtain market participants' input on the quantitative impact of the proposals. Should relevant data be received through the consultation process, ESMA will take it into account when finalising its work and will include it in the CBA accompanying the final report.

9.2.1 Technical options available to ESMA

4. The following options were identified and analysed by ESMA to address the policy objectives of the Level 2 tasks required under the EuGB Regulation.
5. In identifying the options set out below and in choosing the preferred one, ESMA was guided by the relevant provisions of the EuGB Regulation and its objectives of enhancing the effectiveness, transparency, comparability and credibility of the European Green Bonds market.

Policy Objective	The EuGB Regulation covers rules on: The senior management and the members of the board of the applicant under Article 23 (2)(a); The analysts, employees and other persons directly involved in the assessment activities of the applicant under Article 23(2)(b); The sound and prudent management and management of conflicts of interest by the external reviewer under Article 27(1)(a)(c); The knowledge, experience and training of analysts and employees under Article 28; The outsourcing of assessment activities to third-party service providers under Article 33; and
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The content of the application for registration as an external reviewer under Article 23 (1).

Under the Regulation, ESMA is requested to develop draft regulatory technical standards specifying the circumstances and criteria for the above, notably for:

- The sufficiency of the good repute, skill, professional qualifications and experience of senior management and members of the board of applicants, as well as the sufficiency of its number of analysts, employees and other persons directly involved in the assessment activities and their level of knowledge, experience and training;
- The establishment and oversight of the sound and prudent management and conflicts of interest management framework of the external reviewer;
- The assessment of the appropriateness of the knowledge, experience and training of analysts, employees and other natural persons involved in assessment activities; and
- The assessment of the ability and the capacity of third-party service providers to perform outsourced assessment activities reliably and professionally and for ensuring that it does not materially impair the quality of external reviewer's internal control or ESMA's supervision; and
- The standard forms, templates and procedures for the submission of registration information by applicants.

Baseline Scenario

The baseline scenario for this CBA would be the application of the requirements in the Level 1 Regulation without any further specification. This would leave discretion to ESMA and external reviewers to determine the necessary specificities, leading to a lack of harmonisation in the application of key provisions of the EuGB Regulation. For instance:

The content and form of registration applications could differ significantly, making it onerous and time-consuming for application completion and submission and for ESMA's application review, at risk of not complying with the legal deadlines set out in the EuGB Regulation;

Some applicants could adopt stricter rules than others in the fulfilment of the requirements imposed on senior management and board members and analytical resourcing, contributing to an unlevel playing field;

There could be insufficient clarity as to how senior management and the members of the board of an external reviewer should

	<p>ensure its sound and prudent management and the identification, elimination, management or disclosure of conflicts of interest, potentially resulting in corporate governance and independence failings;</p> <p>There could be insufficient clarity as to how external reviewers should ensure that their analysts, employees and other natural persons involved in assessment activities have the necessary knowledge, experience and training for the duties assigned, potentially affecting the quality of external reviews; or</p> <p>There could a rise in unsound third-party outsourcing arrangements, given the potential for poor selection and monitoring practices due to the insufficient guidance available to market participants.</p> <p>Moreover, for ESMA, this baseline scenario would mean that a high level of resources could be required for supervisory activities. This is due to the level of bilateral engagement expected to communicate or clarify ESMA's expectations and to address market queries or remedy concerns on registration and supervision matters, in the absence of Level 2 acts.</p>
<p>Options</p>	<p>ESMA has been entrusted, under the EuGB Regulation, with the development of draft regulatory and implementing technical standards for submission to the European Commission for consideration and approval.</p> <p>The RTS and ITS aim to promote the objectives of the Level 1 Regulation by clarifying the scope of application of certain of its provisions. This should contribute to the creation of a level playing field across the industry and reduce supervisory costs for ESMA. This should also reduce the scope for regulatory arbitrage, which could otherwise hamper the key objectives of the EuGB Regulation.</p> <p>Moreover, ESMA considers that the provisions included in the draft RTS and ITS do not create significant new costs for concerned market participants beyond the ones that naturally stem from Level 1 obligations.</p>
<p>Preferred Option</p>	<p>The development of RTS and ITS gives ESMA, in its role as gatekeeper of financial markets, an opportunity to further specify the formulation of the Level 1 provisions, enhancing clarity for</p>

	<p>market participants and avoiding undue burden on its registration and supervision tasks.</p> <p>Furthermore, ESMA will be able to receive feedback from relevant stakeholders through a public consultation, ensuring the technical standards are sufficiently tailored to market reality.</p> <p>This option has been retained.</p>
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9.2.2 Assessment of the impact for draft RTS on criteria to be assessed at registration relating to senior management and members of the board, as well as analysts, employees and other persons directly involved in assessment activities of external reviewers

Options	Qualitative description
Benefits	ESMA envisages that developing an RTS will benefit all market participants. It is foreseen this will be achieved by providing greater clarity on the elements set out in Article 23(2)(a) and (b) of the EuGB Regulation.
Costs	<p>ESMA took the view that the proposed approach was unlikely to lead to significant additional costs to the extent that it only provided clarifications on the Level 1 provisions and does not impose additional obligations beyond those already set by the EuGB Regulation. Rather, the Level 2 measures define how ESMA will undertake its assessment of the conditions for registration vis-à-vis an applicant's senior management, board and analytical function.</p> <p>As compared to the baseline scenario, it is also unlikely that at their own initiative and without further specification, applicants would interpret in the same way the requirements imposed on senior management and the board and analytical staff, leading to inconsistent understandings of the conditions for registration. As such, this approach would hardly prove to be less costly for applicants and ESMA – forced to dedicate additional resources to increased engagement with pre-applicants to clarify its supervisory expectations – than the approach taken in the present CP.</p>
Costs to regulator	The proposed approach will lead to additional costs for ESMA in the form of supervisory efforts allocated to the initial assessment

	<p>of the conditions for registration, notably the fitness and propriety of senior management and board members and the sufficiency of the resourcing, knowledge, experience and training of the analytical function of applicants.</p> <p>However, the benefits of such tasks, in terms of ensuring appropriate oversight and adequate staffing at the external reviewer in line with ESMA's supervisory mandate, clearly outweigh the costs. This is also in line with ESMA's important role as gatekeeper of financial markets.</p> <p>Additionally, it is considered that the approach of the draft RTS will be compatible with a risk-based approach to supervision, in line with ESMA's current supervisory model.</p>
Compliance costs	<p>The proposed approach may add certain compliance costs for applicants, in particular relating to specific information required by ESMA at registration phase, such as assessments of skill of senior management or board members or FTE calculation for resource planning.</p> <p>However, the benefits of such duties, in terms of facilitating ESMA's critical gatekeeping role of assessing the fitness and propriety and analytical resources of applicants and preventing future investor protection and financial stability related issues, clearly outweigh the costs.</p>
ESG-related aspects	<p>Under the EuGB Regulation, the purpose of contracting ESMA-registered external reviewers is to receive an independent opinion on whether the issuer has aligned with the EU Taxonomy requirements. As such, all issues discussed in this CBA are of relevance to ESG-related aspects.</p>
Innovation-related aspects	<p>Innovation-related aspects are not of direct relevance to the specific nature of the proposed technical standards.</p>
Proportionality-related aspects	<p>The identified benefits outweigh the comparably limited costs, hence no proportionality-related aspects are expected to be impacted by this option.</p>

9.2.3 Assessment of the impact for draft RTS on criteria for assessing sound and prudent management of external reviewers

Options	Qualitative description
Benefits	<p>ESMA envisages that developing an RTS will benefit all market participants. It is foreseen this will be achieved by providing greater clarity on the elements set out in Article 27(1)(a)(c) of the EuGB Regulation.</p>
Costs	<p>ESMA took the view that the proposed approach was unlikely to lead to significant additional costs to the extent that it only provided clarifications on the Level 1 provisions and does not impose additional obligations beyond those already set by the EuGB Regulation. Rather, the Level 2 measures clarify how sound and prudent management and the conflicts of interest framework of external reviewers are ensured and overseen.</p> <p>As compared to the baseline scenario, it is also unlikely that at their own initiative and without further specification, external reviewers would interpret in the same way the requirements around sound and prudent management and the management of conflicts of interest, leading to inconsistencies across the industry from diverging market practices. As such, this approach would hardly prove to be less costly for market participants and ESMA – forced to dedicate additional supervisory resources to provide clarification and remediate concerns – than the approach taken in the present CP.</p>
Costs to regulator	<p>The proposed approach will lead to additional costs for ESMA in the form of supervisory efforts allocated to monitoring compliance with the RTS, notably the organisational and governance arrangements, internal control framework and conflicts of interest management framework of external reviewers.</p> <p>However, the benefits of such tasks, in terms of ensuring the sound and prudent management of external reviewers in line with ESMA's supervisory mandate, clearly outweigh the costs.</p> <p>Additionally, it is considered that the approach of the draft RTS will be compatible with a risk-based approach to supervision, in line with ESMA's current supervisory model.</p>

Compliance costs	<p>The proposed approach may add certain compliance costs for external reviewers, in particular relating to specific policies and procedures prescribed by ESMA that the entity may not have put in place.</p> <p>However, the benefits of such duties, in terms of ensuring the transparency and accountability of external reviewers, clearly outweigh the costs.</p>
ESG-related aspects	<p>Under the EuGB Regulation, the purpose of contracting ESMA-registered external reviewers is to receive an independent opinion on whether the issuer has aligned with the EU Taxonomy requirements. As such, all issues discussed in this CBA are of relevance to ESG-related aspects.</p>
Innovation-related aspects	<p>Innovation-related aspects are not of direct relevance to the specific nature of the proposed technical standards.</p>
Proportionality-related aspects	<p>ESMA foresees that larger, more established entities in the market for external reviews or analogous products (SPOs, certification schemes, etc), will have more established internal control and governance arrangements and policies and procedures in the area of conflicts of interest than micro-entities. As such, the draft RTS/ITS may require a greater effort to adapt and place a burden on the latter.</p> <p>However, conducting a public consultation will provide all entities, including issuers, investors and other financial market participants, with an opportunity to provide ESMA with input on the proportionality of its proposed measures. In line with its risk-based approach to supervision, ESMA seeks to commit its supervisory resources and the intensity of its supervisory action in line with the risk profile identified at supervised entity level.</p>

9.2.4 Assessment of the impact for draft RTS on criteria for assessing knowledge and experience of analysts of external reviewers

Options	Qualitative description
Benefits	<p>ESMA considers that the proposed draft RTS will ensure that external reviewers put in place a robust process for determining and subsequently demonstrating that the staff referred to in Article 28(1) have the necessary knowledge, experience and</p>

	<p>training. The proposed draft RTS will ensure that external reviewers conduct a regular assessment of their analytical staff's capabilities vis-à-vis the duties and tasks to which they have been assigned. This approach has the benefit of ensuring that the proposed draft RTS does not prescribe the specific knowledge, experience or skills that are relevant for an external reviewer's assessment activities.</p>
Costs	<p>ESMA considers that the proposed draft RTS does not add significantly to the costs already imposed on external reviewers under Article 28(1). Under this provision an external reviewer is already required to ensure that the staff members listed under Article 28(1) have the necessary skills experience and training for the duties assigned. The implication of this provision is that external reviewers were already required to comply with and ensure continued compliance with this requirement.</p> <p>The additional costs imposed by the proposed draft RTS are those relating to the requirement for the external reviewer to undertake the prescribed annual, documented, assessment. By mandating such a process the proposed draft RTS is removing the discretion of an external reviewer to decide how it will demonstrate compliance with Article 28(1).</p>
Costs to regulator	<p>The proposed draft RTS is not considered to propose any significant or additional costs to ESMA. It is considered that the approach of the draft RTS will be compatible with a risk-based approach to supervision, in line with ESMA's current supervisory model.</p>
Compliance costs	<p>The proposed draft RTS will result in external reviewers incurring initial compliance costs at the point of defining and establishing the assessment. There will then be an ongoing and recurring annual cost relating to the conduct of the assessment process.</p>
ESG-related aspects	<p>Under the EuGB Regulation, the purpose of contracting ESMA-registered external reviewers is to receive an independent opinion on whether the issuer has aligned with the EU Taxonomy requirements. As such, all issues discussed in this CBA are of relevance to ESG-related aspects.</p>
Innovation-related aspects	<p>Innovation-related aspects are not of direct relevance to the specific nature of the proposed technical standards.</p>

Proportionality-related aspects	<p>The approach of the proposed draft RTS to impose a standardised and recurring assessment process imposes a minimum level of internal administration on external reviewers that is unavoidable, regardless of the capabilities of the external reviewer. However, beyond this initial effort, ESMA expects the scale of the assessment required to adapt to the nature, scale and complexity of an external reviewer’s assessment activities. In this respect, the approach of the proposed draft RTS is inherently proportionate.</p>
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9.2.5 Assessment of the impact for draft RTS on criteria applicable to outsourcing of assessment activities of external reviewers

Options	Qualitative description
Benefits	<p>ESMA considers that proposed draft RTS will ensure that external reviewers put in place a robust process for determining and subsequently demonstrating that requirements of Article 33(1) are adhered to when an external reviewer outsources assessment activities to a third-party service provider.</p> <p>This approach has the benefit of ensuring that the proposed draft RTS does not adopt an overly intrusive approach with regards to specifying the characteristics of an ‘eligible’ or ‘ineligible’ third-party service provider. It has the additional benefit that it reinforces and formalises the responsibility of the external reviewer to conduct robust and ongoing due diligence on the ability and capacities of third-party service providers to whom it outsources assessment activities.</p>
Costs	<p>ESMA considers that the proposed draft RTS will not impose significant additional costs over those already imposed by Article 33(1) wherein external reviewers have a responsibility to ensure that the entities to whom they outsource assessment activities meet certain requirements. The proposed draft RTS does not change or impact the responsibility.</p> <p>Where the proposed draft RTS does impose additional costs is on the establishment and conduct of the assessment that is to be conducted in accordance with the proposed draft RTS. This assessment will create an initial and then ongoing administrative burden for the external reviewer.</p>

Costs to regulator	The proposed draft RTS is not considered to propose any significant or additional costs to ESMA. It is considered that the approach of the draft RTS will be compatible with a risk-based approach to supervision, and as a result will be compatible with ESMA's current supervisory model.
Compliance costs	<p>The proposed draft RTS will result in external reviewers incurring initial compliance costs at the point of defining and establishing the assessment. There will then be an ongoing and recurring annual cost relating to the conduct of the assessment process.</p> <p>In order to minimise these costs to the extent possible, the proposed draft RTS has been aligned with the assessment required under Article 28(3). This will ensure that external reviewers will not have to conduct separate, conflicting, or competing assessments.</p>
ESG-related aspects	Under the EuGB Regulation, the purpose of contracting ESMA-registered external reviewers is to receive an independent opinion on whether the issuer has aligned with the EU Taxonomy requirements. As such, all issues discussed in this CBA are of relevance to ESG-related aspects.
Innovation-related aspects	Innovation-related aspects are not of direct relevance to the specific nature of the proposed technical standards.
Proportionality-related aspects	The approach of the proposed draft RTS to impose a standardised and recurring assessment process imposes a minimum level of internal administration on external reviewers that is unavoidable, regardless of the capabilities of the external reviewer. However, beyond this initial effort, ESMA expects the scale of the assessment required to adapt to the nature, scale and complexity of an external reviewer's assessment activities. In this respect, the approach of the proposed draft RTS is inherently proportionate.

9.2.6 Assessment of the impact for draft ITS on registration information for external reviewers

Options	Qualitative description
Benefits	The main benefit of the option proposed is the standardisation of information requirements by providing a harmonised set of forms

	and templates for the submission of an application for registration for all external reviewers of European Green Bonds.
Costs	<p>ESMA took the view that the proposed approach was unlikely to lead to significant additional costs to the extent that it provided clarifications on the Level 1 provisions and does not impose substantial additional obligations, other than form, beyond those already set by the EuGB Regulation.</p> <p>As compared to the baseline scenario, it is also unlikely that at their own initiative and without further clarification, prospective applicants would submit to ESMA the required registration information in the same form and structure and with equal levels of granularity. Thus, it is difficult to envisage this approach proving to be less costly for applicants.</p>
Costs to regulator	Despite the inevitable costs related to the processing of additional flows of information, the proposed approach is highly beneficial for ESMA in its important role as gatekeeper of financial markets. In particular, with respect to the required supervisory resources for the handling of information contained in registration applications, given the expected harmonisation and digital user-friendliness across all submissions.
Compliance costs	While applicants may experience costs in populating the necessary fields, the absence of an ITS standardising forms and templates would lead to uncertainty in the preparation and structuring of an application. Thus, the benefits clearly outweigh the costs for prospective external reviewers.
ESG-related aspects	Under the EuGB Regulation, the purpose of contracting ESMA-registered external reviewers is to receive an independent opinion on whether the issuer has aligned with the EU Taxonomy requirements. As such, all issues discussed in this CBA are of relevance to ESG-related aspects.
Innovation-related aspects	Innovation-related aspects are not of direct relevance to the specific nature of the proposed technical standards.
Proportionality-related aspects	The identified benefits clearly outweigh the comparably limited costs, hence no proportionality-related aspects are expected to be impacted by this option.

Q10: Do you have any comments on the CBA or impact assessments outlined under the preferred option?

Q11: Do you have any quantitative information to provide on the estimated costs of the options considered and proposed by ESMA that would benefit the analysis?

9.3 Annex III

List of Questions

Q1	Do you agree with ESMA's proposals to specify the criteria to assess the sufficiently good repute, skill, professional qualifications and experience of senior management and members of the board of an external reviewer?
Q2	Do you agree with ESMA's proposals to specify the criteria to assess the sufficiency of the number of analysts, employees and persons directly involved in the assessment activities and of their level of knowledge, experience and training?
Q3	Do you agree with ESMA's proposals to specify the criteria to assess the sound and prudent management of the external reviewer?
Q4	Do you agree with ESMA's proposals to specify the criteria to assess that any actual or potential conflicts of interest are properly identified, eliminated or managed, and disclosed in a transparent manner by the external reviewer?
Q5	Do you agree with ESMA's proposals to specify the criteria for assessing the appropriateness of the knowledge, experience and training of the persons referred to in Article 28(1)?
Q6	Do you agree with ESMA's proposals to specify the criteria for assessing the reliability and capacity of a third-party service provider?
Q7	Do you agree with ESMA's proposals to specify the criteria for assessing that the internal control of an external reviewer is not materially impaired and ESMA's ability to supervise is not limited?
Q8	Do you agree with the practicality and efficiency of ESMA's proposals to specify the standard forms, templates and procedures for the provision of the information for an application for registration as an external reviewer?
Q9	Do you have any views or comments on the relevance of the information contained in Annex I to VII of the draft ITS?
Q10	Do you have any comments on the CBA or impact assessments outlined under the preferred option?
Q11	Do you have any quantitative information to provide on the estimated costs of the options considered and proposed by ESMA that would benefit the analysis?