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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on European green bonds

(Text with EEA relevance)

{SEC(2021) 390 final} - {SWD(2021) 181 final} - {SWD(2021) 182 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

This proposal is part of the broader European Commission agenda on sustainable finance. It lays the foundation for a common framework of rules regarding the use of the designation ‘European green bond’ or ‘EuGB’ for bonds that pursue environmentally sustainable objectives within the meaning of Regulation (EU) 2020/852¹ (Taxonomy Regulation). It also sets up a system for registering and supervising companies that act as external reviewers for green bonds aligned with this framework. It will facilitate further developing the market for high quality green bonds, thereby contributing to the Capital Markets Union, while minimising disruption to existing green bond markets and reducing the risk of greenwashing. The designation ‘European green bond’ shall be available to all issuers, whether within or outside the Union, that meet the requirements of this proposal.

This legislative proposal aims to better exploit the potential of the single market and the Capital Markets Union to contribute to meeting the Union’s climate and environmental objectives in accordance with Article 2(1)c of the **2016 Paris Agreement** on climate change², and the European Green Deal³.

The European Green Deal made clear that significant investment is required across all sectors of the economy to transition to a climate-neutral economy and reach the Union’s environmental sustainability objectives. In the 2021-2030 period, the achievement of the Union’s current 2030 climate and energy targets will require energy system investments (excluding transport) of EUR 336 billion per annum (in constant prices of 2015), equivalent to 2.3% of GDP.⁴ A substantial part of these financial flows will have to come from the private sector. Closing this investment gap means significantly redirecting private capital flows towards more environmentally sustainable investments and requires comprehensively rethinking the European financial framework.

In particular, the European Green Deal underlined that it should be made easier for investors and companies to identify environmentally sustainable investments and ensure that they are credible. This could be done via clear labels for retail investment products and by developing a European green bond standard that facilitates environmentally sustainable investment in the most convenient way. Despite vigorous market growth, issuance of green bonds remains at a fraction of overall bond issuance, representing about 4 % of overall corporate bond issuance in 2020⁵. Further growth in the market for high quality green bonds will be a source of significant green investment, thereby helping to meet the investment gap of the European Green Deal.

¹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

² Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 4).

³ Communication from the Commission on the European Green Deal, COM(2019)640 final.

⁴ Impact Assessment Accompanying the Communication “Stepping up Europe’s 2030 climate ambition Investing in a climate-neutral future for the benefit of our people” [SWD/2020/176 final](#)

⁵ [2021 European Financial Stability and Integration Review](#)

To this end, the European Green Deal Investment Plan of 14 January 2020⁶ announced the establishment of a green bond standard. In its December 2020 conclusions on climate change, the European Council⁷ stressed the importance of developing common, global standards for green finance and invited the European Commission to put forward a legislative proposal for a green bond standard by June 2021. Finally, in its work programme for 2021, the Commission highlighted “an economy that works for people” as a priority and stressed the importance of continuing progress on sustainable financing, notably by proposing to establish an EU green bond standard⁸.

Because of the widespread use of proprietary market frameworks for green bonds, and despite the fact that some of these frameworks are commonly accepted as setting a standard, it can be costly and difficult for investors to determine the positive environmental impact of bond-based investments and compare different green bonds on the market. For issuers, the lack of common definitions of environmentally sustainable economic activities creates uncertainty about which economic activities can be considered to be legitimately green. In such conditions, issuers may face reputational risks from potential accusations of greenwashing, especially in transitional sectors. In addition, the fragmentation of practices in the area of external review can create additional costs for them. These obstacles may affect the profitability of projects with substantial climate and environmental impact, thereby reducing the supply of such investment opportunities and impeding the achievement of the Union’s environmental goals.

This proposal aims to address these obstacles by setting a standard for high-quality green bonds. This should: (1) improve the ability of investors to identify and trust high quality green bonds, (2) facilitate the issuance of these high quality green bonds by clarifying definitions of green economic activities and reducing potential reputational risks for issuers in transitional sectors, and (3) standardise the practice of external review and improve trust in external reviewers by introducing a voluntary registration and supervision regime.

This proposal for a European Green Bond is anchored to the Taxonomy Regulation. The Taxonomy Regulation sets out a classification of economic activities as environmentally sustainable, including as one of the defining criteria the full compliance with minimum social safeguards. This framework can be used as a benchmark to classify whether an economic activity and, by extension, related assets or projects are green. According to Article 4 of the Taxonomy Regulation⁹, the Union must apply the criteria of the Taxonomy when setting out any standards for environmentally sustainable corporate bonds.¹⁰ Hence, for the purposes of European green bonds, the Commission proposes that the Taxonomy Regulation, and – as they are developed - its Delegated Acts, should define what counts as ‘green’.

This proposal provides a framework for all green bond issuers, including those from the public and private sector, and including financial and non-financial undertakings. The

⁶ Communication from the Commission on the Sustainable Europe Investment Plan / European Green Deal Investment Plan, COM(2020) 21 final.

⁷ European Council conclusions of 12 December 2020. (EUCO 22/20).

⁸ Commission Work Programme 2021, 20.10.2020, COM(2020) 690 final.

⁹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

¹⁰ Article 4 of the EU Taxonomy Regulation: “*Member States and the Union shall apply the same criteria set out in Article 3 to determine whether an economic activity qualifies as environmentally sustainable for the purposes of any measure setting out requirements for financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable.*”

framework is also intended to be usable for issuers of covered bonds as well as securitisations, the securities of which are issued by a special purpose vehicle¹¹. The link with the Taxonomy Regulation allows the proceeds from European green bonds to be used for a broad range of economic activities that provide a substantial contribution to environmental sustainability objectives. Building on current market best practices for green bonds, this proposal presents many potential uses, such as a bank issuing a European green bond to finance green mortgages, a steel manufacturer issuing a European green bond to finance a new lower emitting production technology, or a sovereign issuing a European green bond to finance a subsidy scheme for renewable energy installation, to name a few.

This proposal builds on market best practices, as well as feedback and recommendations received from a High-Level Expert Group on Sustainable Finance. The Group's report, published on 31 January 2018¹² recommended the introduction of an official EU Green Bond Standard, as it was referred to then. As a follow-up, the Commission committed to developing an EU Green Bond Standard in its Action plan for financing sustainable growth¹³ adopted on 8 March 2018. It tasked the Technical Expert Group (TEG) on Sustainable Finance, consisting of market participants from different sectors, with drawing up recommendations for an EU Green Bond Standard. The TEG did so in its final report in June 2019, which was followed up by a usability guide for a draft standard in March 2020. Finally, the Commission gathered further insights and input on green bonds in its public consultation on the renewed sustainable finance strategy (open April-July 2020) and its targeted consultation on the EU Green Bond Standard (open June-October 2020).

- **Consistency with existing policy provisions in the policy area**

This proposal introduces a set of rules that issuers of green bonds must follow in order to call a bond a 'European green bond' or 'EuGB'. It builds on existing market best practices and puts in place additional requirements based on relevant legislation already in place. These requirements are consistent with the objectives of existing policy provisions in the policy area, and in particular the Taxonomy Regulation. This proposal requires issuers of a European green bond to ensure that the proceeds of the bond are allocated to assets and expenditure in full compliance with the requirements of the Taxonomy Regulation, in order to ensure that the bond itself is fully environmentally sustainable. This proposal is also consistent with other sustainable finance initiatives, including the Commission proposal for a Corporate Sustainability Reporting Directive¹⁴, which will promote the reporting of sustainability-related information by all large corporations and most corporations listed on regulated markets, which therefore also concerns many bond-issuers.

¹¹ In this context, it may be noted that Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis requires the Commission to report on the creation of a specific sustainable securitisation framework, based on a report from the European Banking Authority, in close cooperation with the European Securities and Markets Authority and the European Insurance and Occupational Pension Authority by 1 November 2021. The present proposal does not prejudge this report. A specific sustainable securitisation framework, if desirable, could differ in scope and other respects from the securitisation securities qualifying as EuGBs

¹² https://ec.europa.eu/info/publications/sustainable-finance-high-level-expert-group_en

¹³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Action Plan: Financing Sustainable Growth, 8.3.2018 (COM(2018)097 final).

¹⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0189>

This proposal is also consistent with the Capital Markets Union, which aims to improve the ability of the Union's capital markets to mobilise and channel investments, which can help to fund the green transition.

- **Consistency with other Union policies**

This proposal complies with the overarching policy goals of the European Green Deal. The European Green Deal is the Union's response to the climate and environment-related challenges that define this generation. It aims to transform the Union into a modern, resource-efficient and competitive economy with no net emissions of greenhouse gases by 2050¹⁵. Moreover, providing a trusted regulated environment that supports the issuance and creation of European green bonds will have a prominent role in promoting the international role of the euro, and help to achieve the goal of developing Union financial markets into a new 'green finance' hub, thereby further supporting EU green investments¹⁶. The Commission could provide technical support to Member States under Regulation (EU) 2021/240¹⁷ to promote European green bonds at national level.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal falls within the area of shared competence in accordance with Article 4(2)(a) of the Treaty on the Functioning of the European Union (TFEU) and is based on Article 114 TFEU, which confers the competence to lay down appropriate provisions that have as their objective the establishment and functioning of the internal market.

Article 114 TFEU allows the Union to take measures not only to eliminate existing obstacles to the exercise of the fundamental freedoms, but also to prevent the likely emergence of such obstacles in the future. This also includes those obstacles that make it difficult for market participants, such as issuers of green bonds or investors, to take full advantage of the benefits of the internal market.

The current market for green bonds is entirely based around market-defined standards and practices, with assurance to investors provided by companies acting as external reviewers. These existing standards set out high-level process-based guidelines or recommendations, but the underlying definitions of green projects are insufficiently standardised, rigorous, and comprehensive. This prevents investors from easily identifying bonds whose proceeds are aligned with or are contributing to environmental objectives, including notably the target of limiting the increase in the global average temperature to well below 2°C and pursuing efforts to limit this to 1.5°C above pre-industrial levels, as set out in the Paris Agreement. This situation also limits the ability of issuers to make use of environmentally sustainable bonds to transition their activities towards more environmentally sustainable business models.

In addition, currently used market-based standards do not adequately ensure transparency and accountability of external reviewers, and there is no ongoing supervision of companies acting

¹⁵ On 4 March 2020, the Commission adopted the Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) (2020/0036 (COD)), proposing to make the objective of climate neutrality by 2050 legally binding on the EU.

¹⁶ The European economic and financial system: fostering openness, strength and resilience, 19.1.2021, COM(2021) 32 final.

¹⁷ Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021

as external reviewers. Consequently, investors have further difficulties in identifying, trusting, and comparing environmentally sustainable bonds.

Different practices therefore co-exist across the Union, which makes it costly for investors to identify genuine green bonds and at the same time prevents the market for green bonds from growing according to its potential.

So far, no Member State has yet legislated to establish an official green bond standard at national level. However, national labelling schemes already set out various requirements for environmentally sustainable financial products, which in some cases may result in requirements on bonds, for example in the case of requirements on bond funds. When comparing sovereign green bonds issued by EU Member States, there are already examples where divergent definitions of environmentally sustainable activities have been applied across Member States. Furthermore, in light of the continued growth of the green bond market and its role in funding the type of fixed investments needed to reach the goals of the Paris Agreement, it is likely that some Member States will consider creating standards or establishing guidelines at national level.

Such national initiatives would likely seek to address the same problems that the proposed EuGB initiative aims to address, but the results may diverge across Member States. It is therefore likely that disparities between national laws would emerge, and these would obstruct the free movement of capital, undermine a European level playing field, and act against the objectives of the Capital Markets Union. Therefore, there is a clear need for a harmonised green bond standard to be applied across the Union by both public and private green bond issuers. The adoption of this Regulation would aim to ensure such harmonised requirements. Article 114 TFEU is therefore the appropriate legal basis.

- **Subsidiarity (for non-exclusive competence)**

This proposal complies with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU), according to which Union action may only take place if the envisaged aims cannot be achieved by Member States alone.

The green bond market is inherently international, with participants trading bonds across national borders. Issuers of and investors in financial products require common metrics and definitions to determine which projects and activities are environmentally sustainable, and compare them with each other. Given this situation, national legislative action to tackle the failures identified in the green bond market would have the potential effect of fragmenting the European market for green bonds.

Furthermore, the market for external reviewers of green bonds is a cross-border market. In order to preserve a level playing field for the actors providing these services, a centralised registration and supervisory regime for external reviewers of European green bonds is needed at European level, coordinated by the European Securities and Markets Authority (ESMA).

Therefore, such an initiative cannot be limited to the territory of a single Member State, and coordinated action at Union level is needed. Only an intervention at Union level can define consistent and standardised requirements for European green bonds to improve the functioning of the Single Market and prevent market distortion.

Finally, given the many interactions between the European green bonds proposal and other relevant Union-level legislation, such as the Taxonomy Regulation, a Union instrument appears to be more suitable to address the current situation.

For the reasons given above, uniformity and legal certainty of the exercise of the Treaty freedoms can be better ensured by action at Union level.

- **Proportionality**

This proposal complies with the principle of proportionality as set out in Article 5 TEU. The proposed measures are necessary to achieve the objectives, and also the most suitable.

Putting in place a harmonised voluntary standard for a green bond at Union level will set the benchmark for high-quality green bonds on European and possibly global markets, without imposing the use of the standard on current market participants. By allowing the removal of certain impediments to the proper functioning of the market for high quality green bonds, this Regulation could help to direct capital flows to environmentally sustainable projects and facilitate cross-border green investments. Given the risk that inaction will lead to market fragmentation and investor confusion, this proposal will provide for legal clarity, transparency and comparability of European green bonds across the Union.

The stakeholder feedback and impact assessment for this proposal both identified the main problem drivers to be the lack of a consistent definition of what are environmentally sustainable ways to use of proceeds green bonds, and the lack of ongoing supervision of external reviewers. This proposal goes no further than what is necessary to address and remedy each of these issues, namely by: (1) creating a voluntary standard for green bonds requiring that the use of proceeds is in alignment with the requirements of the Taxonomy Regulation, and (2) requiring issuers of European green bonds to obtain a pre- and post-issuance review from an external reviewer registered and supervised in line with the requirements of this Regulation. State auditors or other public entities mandated by sovereign issuers are not subject to the registration and supervision requirements of this Regulation, as they are statutory entities with responsibility for oversight over public spending and typically have legally guaranteed independence.

- **Choice of the instrument**

This proposal aims to put in place a common set of requirements for a harmonised standard for European green bonds, which will further simplify environmentally sustainable investments and support a coordinated way of improving the functioning of the single market. A directly applicable Regulation is necessary to achieve these policy objectives and is the best way to deliver maximum harmonisation while avoiding divergences related to uneven implementation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

There is currently no EU-level legal regime for green bonds.

- **Stakeholder consultations**

The Commission launched an open public consultation on the renewed sustainable finance strategy on 8 April 2020, which was open for 16 weeks. This consultation included over 100 questions, including several on standards and labels for financial products as well as on the EU Green Bond Standard, as it was known then. The Commission received over 600 replies

to this consultation from a wide range of stakeholders. A feedback statement with an overview of the contributions received has been published on the Commission's website¹⁸.

As part of the process, the Commission also launched a targeted consultation on 12 June 2020 to seek further input from stakeholders on the EU GBS. This consultation was open for 16 weeks and closed on 2 October 2020 after receiving 167 responses. The replies have been published online¹⁹. The consultation document consisted of 19 questions in total and focused on two main topics, namely on the EU GBS and on social bonds and COVID-19. Contributions were received from a wide range of stakeholders, including company/business organisations, business associations, consumer organisations, NGOs and public authorities. Geographically, replies were received from 20 Member States, 2 other European countries and 2 non-European countries.

- **Collection and use of expertise**

The Commission carried out structured in-depth interviews with 11 selected stakeholders from different sectors and Member States in May and June 2020.

In addition, between 2 December and 23 December 2020, the Commission carried out a short consultation of national debt management officers through the Council's Economic and Financial Committee (EFC) subgroup on European sovereign debt markets (ESDM) green bonds working group, using a targeted questionnaire. The questionnaire was also circulated to the Member States Expert Group on sustainable finance (MSEG), and respondents were asked to coordinate their responses per Member State. 17 Member States provided feedback.

The Commission also held regular calls with the European Securities Markets Authority (ESMA) for its opinion and advice, including regarding a potential registration and supervision regime for external reviewers at Union level.

The Commission's Joint Research Centre prepared several academic papers, working papers, and reports regarding green bonds: (1) "Green bonds and companies' environmental performance: a feasibility study"; (2) "Green bonds and use of proceeds reporting: what do we know from market data providers?"; (3) "The pricing of green bonds. Are financial institutions special?"; (4) "Green Bonds as a tool against climate change".

The European green bonds initiative has been discussed at regular meetings of the Member State Expert Group on sustainable finance since 2019: Member States were updated on a regular basis and took part in discussions on specific issues, such as the link to the Taxonomy Regulation and the format and the nature of a potential European green bonds initiative.

- **Impact assessment**

The impact assessment considered a range of policy options across three key policy dimensions, in addition to the baseline situation where no Union action is taken:

- (1) On the scope of application of the standard for green bond issuers, the options considered were (1) a voluntary approach whereby green bond issuers would be free to choose whether or not to align with the future European green bonds initiative and (2) a mandatory approach whereby all green bonds issued in the EU or by an EU-based issuer would have to make use of the future European green bonds initiative.

¹⁸ https://ec.europa.eu/info/consultations/finance-2020-sustainable-finance-strategy_en

¹⁹ https://ec.europa.eu/info/consultations/finance-2020-eu-green-bond-standard_en

- (2) Concerning the regulatory treatment of external reviewers of European green bonds, the options considered were (1) tasking ESMA with authorising external reviewers of European green bonds, with limited supervisory oversight and requirements, and (2) tasking ESMA with authorising and supervising external reviewers of the EU GBS under a more stringent framework.
- (3) On the potential flexibility afforded to sovereign issuers who wish to issue European green bonds, compared to non-sovereign issuers, the options considered were (1) no flexibility, (2) flexibility with regards to bond-related requirements but not the application and implementation of the Taxonomy Regulation, and (3) flexibility with regards to bond-related requirements and with regards to the Taxonomy Regulation.

Results from two online consultations on this subject showed that a large majority of stakeholders supported the concept for an EU Green Bond Standard, as it was known then, as proposed by the Technical Expert Group for sustainable finance, including the requirement for a voluntary standard. Only a very small minority expressed support for a mandatory standard.

A large majority of respondents expressed their support for a regulatory regime for external reviewers under ESMA's supervision, with many asking for a proportionate regime. This indicates that most stakeholders would mostly favour the option of a lighter or more targeted supervisory regime.

Current and potential sovereign green bond issuers in the Union were consulted on potential flexibility for sovereign issuers, and were evenly divided on the question of whether or not to have flexibility with regards to the Taxonomy Regulation. However, there was strong support for maintaining a consistent approach with regards to sovereign and corporate issuers.

Based on an analysis of the various options and feedback received from stakeholders, the impact assessment identified as preferred option that:

- (1) the European green bond initiative is established as a voluntary standard aligned with market best practice and the Taxonomy Regulation,
- (2) ESMA is tasked with authorising external reviewers of European green bonds with limited supervisory requirements, and
- (3) sovereign issuers are afforded some flexibility in relation to the enforcement of European green bonds, but not with regards to their application and interpretation of the Taxonomy Regulation.

The preferred option builds on market best practices in the field of reporting and external review, and on the alignment with the Taxonomy Regulation. These elements would position the European green bond initiative as the foremost standard in terms of transparency and environmental credibility, in line with the objective of developing and supporting the market for higher quality green bonds. The proposed voluntary standard in conjunction with a light supervisory approach would ensure that the Union's objectives are achieved in the most cost-efficient and effective way.

A voluntary standard would appeal to issuers of high quality green bonds, many of whom expressed support for the European green bond initiative, as it would allow them to communicate more clearly with investors and others about their environmental credentials and commitments. At the same time, it would help avoid disruptive impacts on existing green

bond markets, which can continue to operate freely. This would facilitate the creation of a competitive market environment that would allow investor demand rather than regulatory requirements to drive future issuances.

A lighter, targeted supervisory approach to external reviewers would increase transparency for issuers and investors of external review procedures, improve harmonisation of certain aspects of the various approaches and address issues related to conflicts of interest, without discouraging existing providers from registering under the regime and acting as reviewers for European green bonds.

By implementing the option of limited flexibility for sovereigns, Member States would be able to issue European green bonds on a level playing field with corporations, while still benefiting from some flexibility that takes into account their institutional specificities. Just as for other users, the decision to align with the requirements of the European green bond initiative would be voluntary for sovereigns to apply.

Overall, the standard would provide clear advantages in terms of trust, which may translate into pricing advantages in the bond and provide a new incentive for issuers to use it. Likewise, issuers may want to demonstrate a stronger green commitment by issuing under the standard.

Investors would be provided with a green bond segment that ensures a high degree of market integrity, transparency and comparability, and provides a common definition of green, thereby increasing comparability and trust. The initiative would provide investors with more choice and would benefit especially the most committed green investors, who value a stricter green definition. Institutional investors could clearly set themselves apart from the rest of the market by focusing their bond investments on European green bonds.

External reviewers may incur additional costs if they want to comply with the standard. In addition to supervisory fees, which should be kept to a minimum for the time being, reviewers would have to incur some direct compliance and legal advisory costs as well as organisational costs in order to be authorised by ESMA.

Issuers would still be able to issue green bonds under different market standards. The costs of using the standard are mainly costs that may be passed on from external reviewers as well as costs relating to applying the taxonomy. However, costs related to applying the taxonomy would be already incurred under other initiatives (e.g. the Non-Financial Reporting Directive 2014/95/EU²⁰), meaning that parts of these costs would be offset.

The initiative provides a clear definition of ‘environmental sustainability’ and facilitates the identification of high-quality green bonds in the market. The increase in transparency should improve market efficiency and drive more investments into higher-quality green projects and assets, especially in conjunction with new disclosure requirements stemming from other parts of the wider sustainable finance action-plan. Higher market trust may furthermore lead to pricing advantages, which can promote the financing of taxonomy-aligned assets and projects. These factors should help the European economy to transition to carbon neutral and overall less polluting technologies and production processes more quickly, resulting in positive impacts on both the environment and society in general.

²⁰ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).

- **Regulatory fitness and simplification**

This proposal was not part of a fitness check.

- **Fundamental rights**

This proposal respects fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

This proposal empowers ESMA to carry out a new function to register and supervise external reviewers providing their services under this Regulation. This will require ESMA to charge fees to external reviewers, which should cover all administrative costs incurred by ESMA for its activities in relation to registration and supervision of an external reviewer.

Based on an estimation of 0.2 full-time equivalents per entity and a total of three external reviewers seeking registration in the first four year-period,²¹ the requirement would only be for 0.6 full-time equivalents to carry out registration and ongoing supervision. However, there should be strong potential synergies with ESMA's existing responsibilities resulting from the review of the operations of the European Supervisory Authorities (ESAs) for which ESMA was provided with additional staff and budgetary resources²². In addition, in the context of the planning of the draft Union budget for 2022, all agencies have been encouraged to realise reasonable annual efficiency gains of between 1% and 2%. As such, it is envisaged that no additional resources would be required specifically for this proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

When evaluating this initiative, the Commission will take the sources and indicators mentioned below into account and rely on a public consultation and discussions with ESMA and competent authorities. The evaluation shall be conducted according to the Commission's better regulation Guidelines.

Indicators:

- (1) total amount issued, total amount outstanding, total volume, and prices of bonds making use of the designation 'European green bond', and of bonds earmarked as 'green' (but not necessarily making use of the designation 'European green bond') issued per annum and outstanding [EU and globally];
- (2) data on liquidity in the markets for bonds making use of the designation 'European green bonds', bonds earmarked as 'green', and other bonds outstanding (as a benchmark i.e. from the same/similar issuers);

²¹ According to research conducted by CBI in 2018, the external review market was dominated by a group of mainly European service providers currently holding more than 90% of the market and six specific providers account for almost 75% of the market – CICERO, Sustainalytics, Vigeo Eiris, EY, ISS-oekom and DNV GL. The estimation is based on half of them choosing to register with ESMA under the EuGB framework, see Annex 9 of the Impact Assessment on external review.

²² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R2175>

- (3) number of external reviewers registered under the present Regulation;
- (4) data on regulatory fees paid by these external reviewers;
- (5) complaints and/or supervisory reports concerning compliance with this Regulation.

Sources:

- (1) ESMA database of registered external reviewers,
- (2) ESMA database of regulatory fees and charges,
- (3) ESMA database of notifications and complaints,
- (4) external databases related to the bond market,
- (5) direct and consultative input from stakeholders.

IT development and procurement choices will be subject to pre-approval by the European Commission Information Technology and Cybersecurity Board.

- **Detailed explanation of the specific provisions of the proposal**

Title I, by means of Article 1, lays down the subject matter of the Regulation, namely uniform requirements for issuers of bonds that voluntarily wish to use the designation ‘European green bond’ or ‘EuGB’ (European green bonds) for their environmentally sustainable bonds made available to investors in the Union, and the establishment of a registration system and supervisory framework for external reviewers of European green bonds.

Article 2 sets out the definitions for the purposes of this Regulation.

Title II of the Regulation sets out the conditions for the use of the designation ‘European green bond’ or ‘EuGB’.

Chapter 1 covers the bond-related requirements.

Article 3 limits the use of the designation ‘European green bond’ or ‘EuGB’ to issuers of bonds that comply with the requirements of this Title, until maturity of the bond. The framework is intended to be usable by any bond issuer, including issuers of covered bonds as well as securitisations, the securities of which are issued by a special purpose vehicle. Furthermore, the framework is intended to be usable by issuers both within and outside the Union, when making bonds available to Union investors.

Article 4 lays down that issuers must allocate the proceeds only to financing eligible fixed assets, eligible expenditures or eligible financial assets, or a combination thereof. The article maintains that bond issuers are not allowed to deduct costs from the collected proceeds for the purposes of this allocation. It also allows sovereign issuers to allocate bond proceeds to certain other types of expenditure, in addition to those mentioned in Article 4(1).

Article 5 determines to which categories eligible financial assets must belong for the purposes of this Regulation, and what types of assets and expenditure such financial assets should finance.

Article 6 requires that all use of bond proceeds shall relate to economic activities that meet the requirements for environmentally sustainable economic activities set out in Article 3 of Regulation (EU) 2020/852, namely (1) making a substantial contribution to one or more of the environmental objectives set out in Article 9 of that Regulation, (2) not significantly harming any of those environmental objectives, (3) being carried out in compliance with the minimum safeguards laid down in Article 18 of that Regulation, and (4) complying with the technical screening criteria established by the Commission in accordance with Articles 10(3), 11(3), 12(2), 13(2), 14(2), and 15(2) of that Regulation.

In view of the expected technological advancements in the field of environmental sustainability, delegated acts adopted in accordance with Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 laying down the technical screening criteria are likely to be reviewed and amended over time. This is why Article 7 sets out which taxonomy requirements referred to in Articles 4 to 6 have to be used by issuers.

For the purposes of this chapter, it should be noted that the use of the designation ‘European green bond’ or ‘EuGB’ is without prejudice to the requirements of Regulation (EU) No 575/2013 of the European Parliament and of the Council²³, Regulation (EU) No 806/2014 of the European Parliament and of the Council²⁴, Regulation (EU) 2017/1129 of the European Parliament and of the Council²⁵, Regulation (EU) 2019/2033 of the European Parliament and the Council²⁶, Directive 2013/36/EU of the European Parliament and of the Council²⁷, Directive 2014/59/EU of the European Parliament and of the Council²⁸, and of Directive (EU) 2019/2034 of the European Parliament and the Council²⁹. Moreover, no provision in this Regulation should be interpreted as restricting the issuer’s ability to use the bonds to cover losses resulting from other activities, assets or parts of the entity. Neither should any provision in this Regulation be interpreted as restricting the power to write down or convert relevant capital instruments or liabilities of an institution pursuant to Directive 2014/59/EU, or upon the occurrence of a trigger event in accordance with Regulation (EU) No 575/2013 or Regulation (EU) 2019/2033 as applicable.

²³ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

²⁴ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1)

²⁵ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 1).

²⁶ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014

²⁷ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

²⁸ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

²⁹ Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU

For the purposes of this chapter, it should also be noted that the requirement to allocate the proceeds of European green bonds to the financing of eligible assets or expenditures should not prohibit the issuer of such bonds from using fixed or financial assets as a security for the bond, nor should it prohibit such issuers from linking the return paid to holders of the bond to the performance of the project financed by the bond.

Chapter II sets out the transparency and external review requirements for European green bonds.

Article 8 clarifies that the bond may only be offered to the public in the Union after prior publication of the European green bond factsheet, drawn up in accordance with Annex I, on the issuer's website together with the pre-issuance review of the European green bond factsheet by an external reviewer.

Article 9 imposes an obligation upon the issuer to draw up European green bond annual allocation reports yearly, in accordance with Annex II, until the full allocation of the proceeds of the bond, and publish them no later than three months following the end of the reference year. The issuer is also required to obtain post-issuance review by an external reviewer of the first allocation report following full allocation of bond proceeds.

Article 10 sets out the requirement for the issuer to draw up an impact report in accordance with Annex III after the full allocation of the proceeds at least once during the lifetime of the bond.

Issuers that are sovereigns may, in accordance with Article 11, also obtain pre- and post-issuance reviews from a state auditor or any other public entity that is mandated by the sovereign to assess alignment with this Regulation.

Article 12 sets out requirements for those European green bonds for which a prospectus must be issued.

Article 13 sets out obligations for issuers to maintain on their websites until the maturity of the bonds all the documents drawn up by the issuer subject to Articles 8 to 12, including respective pre-issuance and post-issuance reviews. This Article also introduces requirements regarding the use of languages and requires the notification of certain documents drawn up in accordance with this Regulation to ESMA.

Title III of the Regulation sets out the conditions for taking up activities as external reviewers for European green bonds. This title does not apply to state auditors and other public entities mandated by sovereign issuers to assess compliance with the Regulation.

Chapter I introduces the conditions for taking up activities as external reviewers. This includes the requirement to be registered and to meet the conditions for registration on an ongoing basis. Article 15 envisages RTS and ITS mandates to further specify certain criteria for the registration of external reviewers and certain standard forms, templates and procedures. Once registered, an external reviewer may conduct its activities throughout the entire territory of the Union. An external reviewer has to apply for registration from ESMA. An external reviewer has to notify ESMA in case of material changes to the conditions for its initial registration before such changes are implemented. ESMA has a possibility to refuse to register an external reviewer under Article 15 and to withdraw its registration under certain conditions under Article 51. Article 59 introduces a requirement for ESMA to maintain a database on its website with all registered external reviewers, including those that are

temporarily prohibited from pursuing activities under this Regulation and whose registration was withdrawn.

Chapter II sets out requirements regarding the organization, processes and documents concerning governance for external reviewers. It sets out the general principles in Article 18 by requiring the external reviewer to employ appropriate systems, resources and procedures and by requiring the external reviewer to monitor and evaluate at least annually the adequacy and effectiveness of its systems, internal control mechanisms and arrangements and take appropriate measures to address any deficiencies. Articles 19 to 28 lay down in more detail the requirements regarding the senior management; analysts, employees and other persons directly involved in assessment activities; compliance function; internal policies and procedures; assessment methodologies and used information; errors in assessment methodologies or in their application; outsourcing; record-keeping requirements; avoidance of conflicts of interest; and the provision of other services. Articles 18 to 23, and 25 lay down RTS mandates to further specify the criteria necessary to assess the organizational requirements, processes and documents concerning governance of external reviewers.

Chapter III sets out requirements regarding pre-issuance and post-issuance reviews. Article 29 makes it clear that neither a pre-issuance review nor a post-issuance review may refer to ESMA or any competent authority in such a way that could indicate or suggest endorsement or approval by ESMA or any competent authority of the relevant document or any assessment activities of the external reviewer. Article 30 establishes requirements for the information external reviewers shall make available free of charge on their websites, which includes all pre-and post-issuance reviews under this Regulation.

Chapter IV establishes rules on the provision of services by third-country external reviewers.

Title IV lays down, in its Chapter I, the powers of national competent authorities to supervise bond issuers to ensure that Articles 8 to 13 of this Regulation are applied. It also includes several provisions that specify the administrative sanctions and other administrative measures that competent authorities may impose as well as rules on the publication and reporting to ESMA of those sanctions.

In its Chapter II, this title sets out ESMA's powers with regard to the supervision of external reviewers. These include the power to request information by simple request or by decision, the power to conduct general investigations as well as the power to conduct on-site inspections. The chapter also sets out the conditions under which ESMA may exercise its supervisory powers. Several provisions specify the supervisory measures, fines and periodic penalties ESMA may impose. ESMA is also enabled to charge registration and supervisory fees.

Title V on Delegated Acts confers on the Commission the power to adopt delegated acts subject to the conditions laid down in Article 60.

Title VI on final provisions sets out a transitional provision for external reviewers in the first 30 months following the entry into application of this Regulation.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on European green bonds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee³⁰,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The transition to a low-carbon, more sustainable, resource-efficient, circular and fair economy is key to ensuring the long-term competitiveness of the economy of the Union and the well-being of its peoples. In 2016, the Union concluded the Paris Agreement³¹. Article 2(1), point (c), of the Paris Agreement sets out the objective of strengthening the response to climate change by, among other means, making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
- (2) The European Green Deal Investment Plan of 14 January 2020³² envisages the establishment of a standard for environmentally sustainable bonds to further increase investment opportunities and facilitate the identification of environmentally sustainable investments through a clear label. In its December 2020 conclusions, the European Council invited the Commission to put forward a legislative proposal for a green bond standard³³.

³⁰ OJ C , , p. .

³¹ Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 4).

³² COM(2020) 21 final.

³³ EUCO 22/20.

- (3) Environmentally sustainable bonds are one of the main instruments for financing investments related to low-carbon technologies, energy and resource efficiency as well as sustainable transport infrastructure and research infrastructure. Financial or non-financial undertakings or sovereigns can issue such bonds. Various existing initiatives for environmentally sustainable bonds do not ensure common definitions of environmentally sustainable economic activities. This prevents investors from easily identifying bonds the proceeds of which are aligned with, or are contributing to environmental objectives as laid down in the Paris Agreement.
- (4) Diverging rules on the disclosure of information, on the transparency and accountability of external reviewers reviewing environmentally sustainable bonds, and on the eligibility criteria for eligible environmentally sustainable projects, impede the ability of investors to identify, trust, and compare environmentally sustainable bonds, and the ability of issuers to use environmentally sustainable bonds to transition their activities towards more environmentally sustainable business models.
- (5) In ensuring alignment with the objectives of the Paris agreement, and given the existing divergences and absence of common rules, it is likely that Member States will adopt diverging measures and approaches, which will have a direct negative impact on, and create obstacles to, the proper functioning of the internal market, and be detrimental to issuers of environmentally sustainable bonds. The parallel development of market practices based on commercially driven priorities that produce divergent results causes market fragmentation and risks further exacerbating inefficiencies in the functioning of the internal market. Divergent standards and market practices make it difficult to compare different bonds, create uneven market conditions for issuers, cause additional barriers within the internal market, and risk distorting investment decisions.
- (6) The lack of harmonised rules for the procedures used by external reviewers to review environmentally sustainable bonds and the diverging definitions of environmentally sustainable activities make it increasingly difficult for investors to effectively compare bonds across the internal market with respect to their environmental objectives. The market for environmentally sustainable bonds is inherently international, with market participants trading bonds and making use of external review services from third party providers across borders. Action at Union level could reduce the risk of fragmentation of the internal market for environmentally sustainable bonds and bond-related external review services, and ensure the application of Regulation (EU) 2020/852 of the European Parliament and of the Council³⁴ in the market for such bonds.
- (7) A uniform set of specific requirements should therefore be laid down for bonds issued by financial or non-financial undertakings or sovereigns that voluntarily wish to use the designation ‘European green bond’ or ‘EuGB’ for such bonds. Specifying quality requirements for European green bonds in the form of a Regulation should ensure that there are uniform conditions for the issuance of such bonds by preventing diverging national requirements that could result from a transposition of a Directive, and should also ensure that those conditions are directly applicable to issuers of such bonds. Issuers that voluntarily use the designation ‘European green bond’ or ‘EuGB’ should follow the same rules across the Union, to increase market efficiency by reducing

³⁴ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

discrepancies and thereby also reducing the costs of assessing those bonds for investors.

- (8) In accordance with Article 4 of Regulation (EU) 2020/852, and in order to provide investors with clear, quantitative, detailed and common definitions, the requirements set out in Article 3 of that Regulation should be used to determine whether an economic activity qualifies as environmentally sustainable. Proceeds of bonds that use the designation ‘European green bond’ or ‘EuGB’ should exclusively be used to fund economic activities that either are environmentally sustainable and are thus aligned with the environmental objectives set out in Article 9 of Regulation (EU) 2020/852, or contribute to the transformation of activities to become environmentally sustainable. Those bonds can however be used both to finance such environmentally sustainable activities directly through the financing of assets and expenditures that relate to economic activities that meet the requirements set out in Article 3 of Regulation (EU) 2020/852, or indirectly through financial assets that finance economic activities that meet those requirements. It is therefore necessary to specify the categories of expenditures and assets that can be financed with the proceeds of bonds that use the designation ‘European green bond’ or ‘EuGB’.
- (9) The proceeds of European green bonds should be used to finance economic activities that have a lasting positive impact on the environment. Such lasting positive impact can be attained in several ways. Since fixed assets are long-term assets, a first way is to use the proceeds of such European green bonds to finance fixed tangible or fixed intangible assets that are not financial assets, provided that those fixed assets relate to economic activities that meet the requirements for environmentally sustainable economic activities set out in Article 3 of Regulation (EU) 2020/852 (‘taxonomy requirements’). Since financial assets can be used to finance economic activities with a lasting positive impact on the environment, a second way is to use those proceeds to finance financial assets, provided that the proceeds from those financial assets are allocated to economic activities that meet the taxonomy requirements. Since the assets of households can also have a long-term positive impact on the environment, those financial assets should also include the assets of households. Since capital expenditure and selected operating expenditure can be used to acquire, upgrade, or maintain fixed assets, a third way is to use the proceeds of such bonds to finance capital and operating expenditures that relate to economic activities that meet the taxonomy requirements or that will meet those requirements within a reasonably short period from the issuance of the bond concerned, which can be extended however where duly justified by the specific features of the economic activities and investments concerned. For the reasons outlined above, the capital and operating expenditures should also include the expenditures of households.
- (10) Sovereigns are frequent issuers of environmentally sustainable bonds and should therefore also be allowed to issue ‘European green bonds’, provided that the proceeds of such bonds are used to finance either assets or expenditure that meet the taxonomy, or assets or expenditure that will meet those requirements within a reasonably short period from the issuance of the bond concerned, which can be extended however where duly justified by the specific features of the economic activities and investments concerned.
- (11) Article 4 of Regulation (EU) 2020/852 requires Member States and the Union to apply the criteria set out in Article 3 of that Regulation to determine whether an economic

activity qualifies as environmentally sustainable for the purposes of any measure setting out requirements for financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable. It is therefore logical that the technical screening criteria referred to in Article 3, point (d), of Regulation (EU) 2020/852 should determine which fixed assets, expenditures and financial assets can be financed by the proceeds of European green bonds. In view of the expected technological progress in the field of environmental sustainability, the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 are likely to be reviewed and amended over time. Regardless of such changes, in order to provide legal certainty to issuers and investors and prevent amendments to the technical screening criteria from having a negative impact on the price of European green bonds that have already been issued, issuers should be able to apply the technical screening criteria applicable at the moment the European green bond was issued when allocating the proceeds of such bonds to eligible fixed assets or expenditures, until maturity of the bond. To ensure legal certainty for European green bonds whose proceeds are allocated to financial assets, it is necessary to clarify that the underlying economic activities funded by those financial assets should comply with the technical screening criteria applicable at the moment the financial assets were created. Where the relevant delegated acts are amended, the issuer should allocate proceeds by applying the amended delegated acts within five years.

- (12) The time needed to transform an asset to align the economic activity to which it relates with the taxonomy requirements should reasonably not exceed five years, except in certain circumstances where it may take up to ten years. For that reason, eligible capital expenditure should relate to economic activities that meet or will meet the taxonomy requirements within five years from the issuance of the bond, unless a longer period of up to ten years is justified by the specific features of the economic activities and investments concerned.
- (13) Investors should be provided with all information necessary to evaluate the environmental impact of European green bonds, and to compare such bonds with each other. For that purpose, specific and standardised disclosure requirements need to be set out which provide transparency about how the issuer intends to allocate the bond proceeds to eligible fixed assets, expenditures and financial assets and how those proceeds have actually been allocated. Such transparency can best be achieved by means of European green bond factsheets and annual allocation reports. To strengthen the comparability of European green bonds and to facilitate the localisation of relevant information, it is necessary to lay down templates for the disclosure of such information.
- (14) Investors should benefit from cost-effective access to reliable information about the European green bonds. Issuers of European Green Bonds should therefore contract external reviewers to provide a pre-issuance review of the European green bond factsheet, and post-issuance reviews of European green bond annual allocation reports.
- (15) Issuers of European green bonds should abide by their commitments to investors and allocate the proceeds of their bonds within a reasonably short time after issuance. At the same time, issuers should not be penalised for allocating bond proceeds to economic activities that do not yet meet the taxonomy requirements, but will do so

within the five year period (or extended ten year period). Issuers should in any case allocate all proceeds of their European green bonds before the maturity of each bond.

- (16) Unlike issuers that are financial or non-financial undertakings, issuers that are sovereigns can use the proceeds of European green bonds to indirectly finance economic activities that are aligned with the taxonomy requirements through the use of programmes of tax expenditures or programmes of transfers, including subsidies. In such cases, sovereigns ensure that economic activities funded by such programmes comply with the terms and conditions of those programmes. For that reason, when providing pre- and post-issuance reviews of European green bonds issued by sovereigns and the proceeds of which are allocated to tax expenditures or subsidies in accordance with terms and conditions that are aligned with taxonomy requirements, external reviewers should not be required to assess the taxonomy-alignment of each economic activity funded by such programmes. Where that is the case, it should be sufficient for external reviewers to assess the alignment of the terms and conditions of the funding programmes concerned with the taxonomy requirements.
- (17) Certain financial undertakings that have a portfolio of European green bonds may not be able to identify, for each European green bond, the distinct financial assets to which the proceeds of said bond have been allocated. This is due to a mismatch between, on the one hand, the time to maturity and the volume of funding of those bonds, and on the other hand the time to maturity and volume of the financial assets on the balance sheet of the financial undertaking. Financial undertakings should in such cases be required to disclose the allocation of the aggregate proceeds of their portfolio of European green bonds to a portfolio of environmentally sustainable financial assets on the undertaking's balance sheet. Those financial undertakings should then demonstrate in annual allocation reports that the related environmentally sustainable financial assets complied with the taxonomy requirements at the time they were created. In order to ensure that all proceeds of European green bonds are allocated to environmentally sustainable economic activities, the financial undertakings should also demonstrate that the amount of those environmentally sustainable financial assets exceeds or equals the amount of European green bonds that have not yet matured. To ensure that the information provided remains complete and up to date, an external reviewer should review the annual allocation reports each year. That external reviewer should in particular focus on those financial assets that were not on the issuer's balance sheet in the previous year's allocation report.
- (18) To improve transparency, issuers should also disclose the environmental impact of their bonds by means of the publication of impact reports, which should be published at least once during the lifetime of the bond. In order to provide investors with all information relevant to assess the environmental impact of European green bonds, impact reports should clearly specify the metrics, methodologies and assumptions applied in the assessment of the environmental impacts. To strengthen the comparability of European green bonds and to facilitate the localisation of relevant information, it is necessary to lay down templates for the disclosure of such information.
- (19) State auditors, or any other public entity that is mandated by a sovereign to assess whether the proceeds of the European green bonds are indeed allocated to eligible fixed assets, expenditures and financial assets, are statutory entities with responsibility for and expertise in the oversight over public spending, and typically have legally

guaranteed independence. Sovereigns that issue European green bonds should therefore be allowed to make use of such state auditors or entities for the purposes of the external review of bonds issued by such sovereigns. Such state auditors or entities should not be registered or supervised according to this Regulation.

- (20) To ensure the efficiency of the market for European green bonds, issuers should publish on their websites details about the European green bonds they issue. To ensure the reliability of information and investor confidence, they shall also publish the pre-issuance review as well as any post-issuance reviews.
- (21) To improve transparency on how external reviewers reach their conclusions, to ensure that external reviewers have adequate qualifications, professional experience, and independence, and to reduce the risk of potential conflicts of interests, and thus to ensure adequate investor protection, issuers of European green bonds should only make use of external reviewers, including from third-countries, that have been registered and are subject to ongoing supervision by the European Securities and Markets Authority (ESMA).
- (22) To strengthen transparency towards investors on how the alignment of bond proceeds with the taxonomy requirements is assessed, external reviewers should disclose to users of pre-issuance reviews and post-issuance reviews the methodologies and key assumptions they use in their external review activities in sufficient detail, whilst taking due account of the protection of proprietary data and intellectual property.
- (23) External reviewers should have in place arrangements for their own sound corporate governance to ensure that their pre- and post-issuance reviews are independent, objective and of good quality. The senior management of external reviewers should therefore have sufficient expertise in financial services and environmental matters and ensure that a sufficient number of employees with the necessary knowledge and experience perform the external review. For the same reason, the compliance function should be able to report its findings to either a supervisory organ or an administrative organ.
- (24) To ensure the independence of external reviewers, external reviewers should avoid situations of conflict of interest and manage those conflicts adequately when they are unavoidable. External reviewers should therefore disclose conflicts of interest in a timely manner. They should also keep records of all significant threats to their independence, to that of their employees and to that of other persons involved in the external review process. They should also keep records of the safeguards applied to mitigate those threats.
- (25) It is necessary to avoid divergent applications of this Regulation by national competent authorities. At the same time, it is necessary to lower transaction and operational costs of external reviewers, to strengthen investor confidence and to increase legal certainty. It is therefore appropriate to give ESMA general competence for the registration and ongoing supervision of registered external reviewers in the Union. Entrusting ESMA with the exclusive responsibility for those matters should ensure a level playing field in terms of registration requirements and on-going supervision and eliminate the risk of regulatory arbitrage across Member States. At the same time, such exclusive responsibility should optimise the allocation of supervisory resources at Union level,

thus making ESMA the centre of expertise and enhancing the efficiency of supervision.

- (26) ESMA should be able to require all information necessary to carry out its supervisory tasks effectively. It should therefore be able to demand such information from external reviewers, persons involved in external review activities, reviewed entities and related third parties, third parties to whom the external reviewers have outsourced operational functions and persons otherwise closely and substantially related or connected to external reviewers or external review activities.
- (27) To enable ESMA to perform its supervisory tasks, and in particular to compel external reviewers to put an end to an infringement, to supply complete and correct information or to comply with an investigation or an on-site inspection, ESMA should be able to impose penalties or periodic penalty payments.
- (28) Issuers of European green bonds may seek access to the services of third country external reviewers. It is therefore necessary to lay down a third-country regime for external reviewers on the basis of an equivalence assessment, recognition or endorsement under which third country external reviewers may provide external review services.
- (29) In order to facilitate access for third country external reviewers in the absence of an equivalence decision, it is necessary to lay down a process for the recognition by ESMA of external reviewers located in a third country.
- (30) In order to facilitate the provision of services by third-country external reviewers to issuers of European green bonds, an endorsement regime should be laid down, allowing, under certain conditions, registered external reviewers located in the Union to endorse services provided by a third country external reviewer. An external reviewer that has endorsed services provided by a third country external reviewer should be fully responsible for such endorsed services and for ensuring that such third country external reviewer complies with the requirements laid down in this Regulation.
- (31) In accordance with Article 290 TFEU, power should be delegated to the Commission to specify the procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, the collection of fines or periodic penalty payments, and detailed rules on the limitation periods for the imposition and enforcement of penalties and the type of fees, the matters for which fees are due, the amount of the fees, and the manner in which those fees are to be paid. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making³⁵. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

³⁵ OJ L 123, 12.5.2016, p. 1.

- (32) As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the development of draft regulatory and implementing technical standards that do not involve policy choices for submission to the Commission.
- (33) ESMA should be mandated to develop draft regulatory technical standards to further specify the criteria on which it can assess an application for registration by an external reviewer and the provision of information by that external reviewer to determine its level of compliance with the requirements of this Regulation.³⁶
- (34) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council³⁷.
- (35) ESMA should be mandated to develop draft implementing technical standards to specify the standard forms, templates and procedures for the provision of the information for the registration of external reviewers. The Commission should be empowered to adopt those implementing technical standards by means of an implementing act pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council³⁸.
- (36) In order to encourage external reviewers to provide their services to the issuers of European green bonds as of the entry into application of this Regulation, this Regulation sets out a transitional regime for the first 30 months following the entry into force of this Regulation.
- (37) The objectives of this Regulation are twofold. On the one hand, it aims to ensure that uniform requirements apply to the use of the designation of ‘European green bond’ or ‘EuGB’. On the other hand, it aims to establish a simple registration system and supervisory framework for external reviewers by entrusting a single supervisory authority with the registration and supervision of external reviewers in the Union. Both aims should facilitate capital raising for projects that pursue environmentally sustainable objectives. Since those objectives cannot be sufficiently achieved by the Member States but can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

³⁶ 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).

³⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

³⁸ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Title I

Subject matter and definitions

Article 1 **Subject matter**

This Regulation lays down uniform requirements for issuers of bonds that wish to use the designation ‘European green bond’ or ‘EuGB’ for their environmentally sustainable bonds made available to investors in the Union, and establishes a registration system and supervisory framework for external reviewers of European green bonds.

Article 2 **Definitions**

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

- (1) ‘issuer’ means any legal entity that issues bonds;
- (2) ‘financial undertaking’ means an AIFM as defined in Article 4(1), point (b), of Directive 2011/61/EU of the European Parliament and of the Council³⁹, a UCITS management company as defined in Article 2, point (10), of Regulation (EU) 2019/2088 of the European Parliament and of the Council⁴⁰, a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁴¹, an investment firm as defined in Article 4(1), point (2) of Regulation (EU) No 575/2013, an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council⁴² or a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;
- (3) ‘sovereign’ means any of the following:
 - (a) Euratom, the Union and any of their agencies;
 - (b) any State, including a government department, an agency, or a special purpose vehicle of such State;
 - (c) in the case of a federal State, a member of the federation;

³⁹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

⁴⁰ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

⁴¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁴² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

- (d) a regional or municipal entity;
 - (e) a collective undertaking of several States in the form of an organisation or a special purpose vehicle;
 - (f) a company of private law fully owned by one or more of the entities referred to in points (a) to (e);
- (4) 'taxonomy requirements' means the requirements set out in Article 3 of Regulation (EU) 2020/852;
- (5) 'regulated market' means a regulated market as defined in Article 4(1), point (21), of Directive 2014/65/EU of the European Parliament and of the Council⁴³.

⁴³ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Title II

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

Chapter I

Bond-related requirements

Article 3

Designation

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

Article 4

Use of the proceeds of European green bonds

1. Before maturity of the bond, the proceeds of European green bonds shall be exclusively and fully allocated, without deducting costs, to the following, or a combination thereof:
 - (a) fixed assets, including those of households, that are not financial assets;
 - (b) capital expenditures, including those of households;
 - (c) operating expenditures that were incurred more recently than three years prior to the issuance of the European green bond;
 - (d) financial assets as referred to in Article 5.

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

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

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

- (a) fixed assets referred to in point 7.22 of Annex A to Regulation (EU) No 549/2013 of the European Parliament and of the Council⁴⁴;
 - (b) non-produced non-financial assets referred to in point 7.24 of Annex A to Regulation (EU) No 549/2013;
 - (c) tax relief referred to in point 20.167 of Annex A to Regulation (EU) No 549/2013 that was granted more recently than three years prior to the issuance of the European green bond;
 - (d) subsidies referred to in point 4.30 of Annex A to Regulation (EU) No 549/2013 that were transferred more recently than three years prior to the issuance of the European green bond;
 - (e) capital expenditures referred to in point 20.104 of Annex A to Regulation (EU) No 549/2013.
3. A European green bond may be refinanced by issuing a new European green bond.

Article 5
Financial assets

1. Financial assets as referred to in Article 4(1), point (d), shall mean any of the following assets, or any combination thereof:
 - (a) debt;
 - (b) equity.
2. The proceeds of the financial assets referred to in paragraph 1 shall only be allocated to fixed assets that are not financial assets as referred to in Article 4(1), point (a), capital expenditures as referred to in Article 4(1), point (b), or operating expenditures as referred to in Article 4(1), point (c).
3. By way of derogation from paragraph 2, the proceeds of the financial asset referred to in paragraph 1 may be allocated to other financial assets provided that the proceeds from those financial assets are allocated according to paragraph 2.

Article 6
Taxonomy-alignment of use of proceeds

1. The use of proceeds referred to in Article 4 shall relate to economic activities that meet the taxonomy requirements, or that will meet the taxonomy requirements within a defined period of time as set out in a taxonomy-alignment plan.

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

⁴⁴ Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174, 26.6.2013, p. 1).

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

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

Article 7

Application of the taxonomy requirements

1. Issuers shall allocate bond proceeds to the uses set out in Article 4(1) points (a), (b) and (c), Article 4(2), or the equity referred to in Article 5(1), point (b) by applying the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 applicable at the point in time when the bond was issued.

Where the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 are amended following the issuance of the bond, the issuer shall allocate bond proceeds to the uses referred to in the first subparagraph by applying the amended delegated acts within five years after their entry into application.

2. When allocating bond proceeds to the debt referred to in Article 5(1), point (a), issuers shall apply the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 applicable at the point in time when the debt was created.

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

Where the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 are amended following the creation of the debt referred to in the first subparagraph, the issuer shall allocate bond proceeds to the debt referred to in the first subparagraph by applying the amended delegated acts within five years after their entry into application.

Chapter II

Transparency and external review requirements

Article 8

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

1. Prior to issuing a European green bond, issuers shall:
 - (a) complete the European green bond factsheet laid down in Annex I;
 - (b) ensure that the completed European green factsheet has been subject to a pre-issuance review with a positive opinion by an external reviewer.
2. A European green bond factsheet may relate to one or several European green bond issuances.
3. The pre-issuance review of the factsheet referred to in paragraph 1, point (b) shall contain all of the following:
 - (a) an assessment of whether the completed green bond factsheet complies with Articles 4 to 7 of this Regulation and Annex I to this Regulation;
 - (b) the elements set out in Annex IV.

Article 9

Allocation reports and post-issuance review of allocation reports

1. Every year and until the full allocation of the proceeds of the European green bond concerned, issuers of European green bonds shall draw up a European green bond allocation report by using the template laid down in Annex II, demonstrating that the proceeds of any European green bonds concerned from their issuance date and until the end of the year the report refers to have been allocated in accordance with Articles 4 to 7.
2. A European green bond allocation report may relate to one or several issuances of European green bonds.
3. Issuers of European green bonds shall obtain a post-issuance review by an external reviewer of the allocation report drawn up after the full allocation of the proceeds of the European green bond in accordance with Articles 4 to 7.
4. Where, following the publication of the allocation report in accordance with Article 13(1), point (c), the allocation of proceeds is corrected, issuers of the European green bonds concerned shall amend the allocation report and obtain a post-issuance review by an external reviewer of that amended allocation report.
5. By way of derogation from paragraph 3, every allocation report from issuers that are financial undertakings that allocate proceeds from a portfolio of several European

green bonds to a portfolio of financial assets as referred to in Article 5 shall be subject to a post-issuance review by an external reviewer. The external reviewer shall pay particular attention to those financial assets that were not included in any previously published allocation report.

6. Issuers of European green bonds shall provide the allocation reports referred to in paragraph 3, 4, and 5 to an external reviewer within 30 days following the end of the year to which the allocation reports refer. The post-issuance review must be made public within 90 days following the receipt of the allocation report.
7. The post-issuance review referred to in paragraphs 3, 4, and 5 shall contain all of the following:
 - (a) an assessment of whether the issuer has allocated the proceeds of the bond in compliance with Articles 4 to 7 based on the information provided to the external reviewer;
 - (b) an assessment of whether the issuer has complied with the intended use of proceeds set out in the green bond factsheet based on the information provided to the external reviewer;
 - (c) the elements set out in Annex IV.
8. Where bond proceeds are allocated to tax relief as referred to in Article 4(2), point (c) or subsidies as referred to in Article 4(2), point (d), the post-issuance review shall only assess compliance with Articles 4 to 7 of the terms and conditions under which those expenditures or transfers have been disbursed.

Article 10

European green bond impact report

1. Issuers of European green bonds shall, after the full allocation of the proceeds of such bonds and at least once during the lifetime of the bond, draw up a European green bond impact report on the environmental impact of the use of the bond proceeds by using the template laid down in Annex III.
2. A single impact report may cover several issuances of European green bonds.

Article 11

Sovereigns as issuer

An issuer that is a sovereign may obtain pre-issuance and post-issuance reviews from an external reviewer, or from a state auditor or any other public entity that is mandated by the sovereign to assess compliance with this Regulation.

Article 12
Prospectus for European green bonds

1. Where a prospectus is to be published pursuant to Regulation (EU) 2017/1129, that prospectus shall clearly state, where required to provide information on the use of proceeds, that the European green bond is issued in accordance with this Regulation.
2. For the purposes of Article 19(1), point (c), of Regulation (EU) 2017/1129, ‘regulated information’ shall include the information contained in the European green bond factsheet referred to in Article 8(1), point (a) of this Regulation.

Article 13
Publication on the issuer’s website and notification to ESMA and national competent authorities

1. Issuers of European green bonds shall publish on their website, in a distinct section titled ‘European green bonds’ and make available free of charge until at least the maturity of the bonds concerned, all of the following:
 - (a) the completed European green bond factsheet referred to in Article 8, before the issuance of the bond;
 - (b) the pre-issuance review related to the European green bond factsheet referred to in Article 8, before the issuance of the bond;
 - (c) the European green bond annual allocation reports referred to in Article 9, every year until the full allocation of the proceeds of the European green bond concerned, no later than three months following the end of the year it refers to;
 - (d) the post-issuance reviews of the European green bond allocation reports referred to in Article 9;
 - (e) the European green bond impact report referred to in Article 10.
2. The information contained in the documents referred to in paragraph 1, points (a), (c) and (e), shall be provided in the following language or languages:
 - (a) where the European green bonds are offered to the public or are listed on a market in only one Member State, in a language accepted by the competent authority, as referred to in Article 36 of this Regulation, of that Member State;
 - (b) where the European green bonds are offered to the public or are listed on a market in two or more Member States, either in a language accepted by the competent authority, as referred to in Article 37 of this Regulation, of each Member State, or in a language customary in the sphere of international finance, at the choice of the issuer.
3. By way of derogation from paragraph 2, where a prospectus for the European green bond is to be published in accordance with Regulation (EU) 2017/1129, the information contained in the documents referred to in paragraph 1, points (a), (c) and (e), shall be provided in the language or languages of that prospectus.

4. Issuers of European green bonds shall notify the National Competent Authority referred to in Article 36 of the publication of all the documents referred to in paragraph 1 without undue delay.
5. Issuers of European green bonds shall notify ESMA of the publication of all the documents referred to in paragraph 1 within 30 days.

Title III

External reviewers for European Green Bonds

Chapter I

Conditions for taking up activities as external reviewer for European green bonds

Article 14

Registration

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

Article 15

Application for registration as an external reviewer for European Green Bonds

1. An application for registration as an external reviewer for European green bonds shall contain all of the following information:
 - (a) the full name of the applicant, the address of the registered office within the Union, the applicant's website and, where available, the legal entity identifier (LEI);
 - (b) the name and contact details of a contact person;
 - (c) the legal status of the applicant;
 - (d) the ownership structure of the applicant;
 - (e) the identity of the members of the senior management of the applicant and their level of qualification, experience and training;
 - (f) the number of the analysts, employees and other persons directly involved in assessment activities, and their level of experience and training working for the applicant and their level of experience and training;
 - (g) a description of the procedures and methodologies implemented by the applicant to issue pre-issuance reviews as referred to in Article 8 and post-issuance reviews as referred to in Article 9;

- (h) the policies or procedures implemented by the applicant to identify, manage and disclose any conflicts of interests as referred to in Article 27;
 - (i) where applicable, documents and information related to any existing or planned outsourcing arrangements for activities of the external reviewer covered by this Regulation, including information on entities assuming outsourcing functions;
 - (j) where applicable, information about other activities carried out by the applicant.
2. ESMA shall only register an applicant as an external reviewer where all of the following conditions are met:
- (a) the senior management of the applicant:
 - (i) is of sufficiently good repute;
 - (ii) is sufficiently skilled to ensure that the applicant can perform the tasks required of external reviewers pursuant to this Regulation;
 - (iii) has sufficient professional qualifications;
 - (iv) is experienced in quality assurance, quality control, the performance of pre- and post-issuance reviews and financial services;
 - (b) the number of analysts, employees and other persons directly involved in assessment activities, and their level of experience and training, are sufficient to perform the tasks required from external reviewers pursuant to this Regulation;
 - (c) the internal arrangements implemented to ensure compliance with the requirements of Chapter II of this Section are appropriate and effective.
3. ESMA shall assess whether the application is complete within 20 working days after its receipt.

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

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

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

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

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

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

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

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

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

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

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

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

Article 16

Material changes relevant for the registration

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

ESMA shall analyse those material changes. Where ESMA objects to such material changes, it shall inform the external reviewer within two months of the notification of those changes and shall state the reasons for the objection. The changes referred to in the first subparagraph may only be implemented provided that ESMA does not object to those changes within that period.

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

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

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

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

Article 17
Language regime

An external reviewer shall submit the application for registration referred to in Article 15 in any of the official languages of the institutions of the Union. The provisions of Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community⁴⁵ shall apply mutatis mutandis to any other communication between ESMA and the external reviewers and their staff.

Chapter II
Organisational requirements, processes and documents
concerning governance

Article 18
General principles

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

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

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

Article 19
Senior management

1. The senior management of the external reviewer shall ensure all of the following:
 - (a) the sound and prudent management of the external reviewer;
 - (b) the independence of assessment activities;
 - (c) that conflicts of interest are properly identified, managed and disclosed;
 - (d) that the external reviewer complies with the requirements of this Regulation at all times.

⁴⁵ OJ L7, 6.10.1958, p. 385/58.

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

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

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

Article 20

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

1. External reviewers shall ensure that their analysts and employees, and any other natural person whose services are placed at their disposal or under their control and who are directly involved in assessment activities, have the necessary knowledge and experience for the duties assigned.
2. External reviewers shall ensure that the persons referred to in paragraph 1 are not allowed to initiate or participate in negotiations regarding fees or payments with any assessed entity, related third party or any person directly or indirectly linked to the assessed entity by control.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to assess the appropriateness of the knowledge and experience of the persons referred to in paragraph 1.

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

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

Article 21

Compliance function

1. External reviewers shall establish and maintain a permanent and effective compliance function for the activities performed under this Regulation.
2. External reviewers shall ensure that the compliance function:
 - (a) has the means to discharge its responsibilities properly and independently;
 - (b) has the necessary resources and expertise and access to all relevant information;
 - (c) does not monitor or assess its own activities;

- (d) is not compensated in relation to the business performance of the external reviewer.
3. The findings of the compliance function shall be made available to either a supervisory organ or, where applicable, an administrative organ of the external reviewer.
 4. ESMA shall develop draft regulatory technical standards specifying the criteria to assess whether the compliance function has the means to discharge its responsibilities properly and independently as referred to in paragraph 2, point (a), and the criteria to assess whether the compliance function has the necessary resources and expertise and has access to all relevant information as referred to in paragraph 2, point (b).

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

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

Article 22 **Internal policies and procedures**

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

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

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

Article 23 **Assessment methodologies and information used for the pre-issuance or post-issuance reviews**

1. External reviewers shall adopt and implement measures to ensure that their pre-issuance reviews as referred to in Article 8 and their post-issuance reviews as

referred to in Article 9 are based on a thorough analysis of all the information that is available to them and that, according to their methodologies, is relevant to their analysis.

2. External reviewers shall use information of sufficient quality and from reliable sources when providing pre-issuance or post-issuance reviews.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to assess whether the information referred to in paragraph 2 is of sufficient quality and whether the sources referred to in paragraph 2 are reliable.

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

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

Article 24

Errors in assessment methodologies or in their application

1. External reviewers that become aware of errors in their assessment methodologies or in their application that have a material impact on a pre-issuance review as referred to in Article 8 or a post-issuance review as referred to in Article 9 shall immediately notify and explain those errors to ESMA and the issuers of the affected European green bonds.
2. External reviewers shall publish the errors referred to in paragraph 1 on their websites, together with, where relevant, a revised pre-issuance or post-issuance review. The revised documents shall state the reasons for the changes.

Article 25

Outsourcing

1. External reviewers that outsource their assessment activities to third party service providers shall ensure that any such third party service provider has the ability and the capacity to perform those assessment activities reliably and professionally. Those external reviewers shall also ensure that the outsourcing does not materially impair the quality of their internal control and the ability of ESMA to supervise the compliance of those external reviewers with this Regulation.
2. External reviewers shall not outsource their compliance function.
3. External reviewers shall notify ESMA about those of its assessment activities which are to be outsourced, including a specification of the level of human and technical resources needed to carry out each of those activities.
4. External reviewers that outsource assessment activities shall ensure that such outsourcing does not reduce or impair their ability to perform their function or roles as members of the external reviewer's senior management or management body.

5. External reviewers shall ensure that third party service providers cooperate with ESMA in connection with any outsourced assessment activities.
6. External reviewers shall remain responsible for any outsourced activity and shall adopt organisational measures to ensure the following:
 - (a) that they assess whether third party service providers are carrying out outsourced assessment activities effectively and in compliance with applicable Union and national laws and regulatory requirements and adequately addresses identified failures;
 - (b) the identification of any potential risks in relation to outsourced assessment activities;
 - (c) adequate periodic monitoring of the outsourced assessment activities;
 - (d) adequate control procedures with respect to outsourced assessment activities, including effective supervision of the outsourced assessment activities and of any potential risks within the third party service provider;
 - (e) adequate business continuity of outsourced assessment activities.

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

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

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

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

Article 26 **Record-keeping requirements**

1. External reviewers shall keep adequate records of all of the following:
 - (a) the identity of the persons participating in the determination and approval of the pre-issuance reviews referred to in Article 8 and the post-issuance reviews referred to in Article 9, and the date on which the decisions to approve the pre-issuance and post-issuance reviews were taken;

- (b) the documentation for the established procedures and methodologies used by the external reviewers to carry out and draw up the pre-issuance and post-issuance reviews;
 - (c) the internal documents, including non-public information and work papers, used to form the basis of any published pre-issuance or post-issuance review;
 - (d) records of the procedures and measures implemented by the external reviewers to comply with this Regulation;
 - (e) copies of internal and external communications that relate to assessment activities, including electronic communications, received and sent by the external reviewer and its employees, that relate to assessment activities.
2. The records and documents referred to in paragraph 1 shall be kept for five years and shall be made available upon request to ESMA.
 3. Where ESMA has withdrawn the registration of an external reviewer in accordance with Article 51(1), that external reviewer shall ensure that the records and documents are kept for an additional five years. Records and documents which set out the respective rights and obligations of the external reviewer and the issuer of the European green bond under an agreement to provide assessment services shall be retained for the duration of the relationship with that issuer.

Article 27

Conflicts of interest and confidentiality of information

1. External reviewers shall identify, eliminate, manage and disclose in a transparent manner any actual or potential conflicts of interest, irrespective of whether that conflict of interest concerns their analysts or employees, any person that is contractually related to the external reviewers and that is directly involved in assessment activities, or persons approving pre-issuance reviews and post-issuance reviews.
2. Fees charged by external reviewers for assessment services shall not depend on the result of the pre-issuance or post-issuance review, or on any other result or outcome of the work performed.
3. Analysts, employees of the external reviewer and any other person contractually related to the external reviewers and directly involved in assessment activities shall be bound by the obligation of professional secrecy.
4. External reviewers shall ensure that their analysts and employees or any other natural person contractually related to the external reviewers and directly involved in assessment activities:
 - (a) take all reasonable measures to protect property and records in the possession of the external reviewer from fraud, theft or misuse, taking into account the nature, scale and complexity of their business and the nature and range of their assessment activities;

- (b) do not disclose any information about pre-issuance or post-issuance reviews, possible future pre-issuance or post-issuance reviews, to any parties other than the issuers that have requested the assessment by the external reviewer
- (c) do not use or share confidential information for any other purpose than assessment activities.

Article 28
Provision of other services

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

Chapter III

Pre-issuance and post-issuance reviews

Article 29
References to ESMA or other competent authorities

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

Article 30
Publication of pre-issuance reviews and post-issuance reviews

1. External reviewers shall publish and make available free of charge on their websites all of the following:
 - (a) in a separate section titled ‘European green bond standard - Pre-issuance reviews’ pre-issuance reviews that it issued;
 - (b) in a separate section titled ‘European green bond standard - Post-issuance reviews’ post-issuance reviews that it issued.
2. The pre-issuance reviews referred to in paragraph 1, point (a), shall be made available to the public within a reasonable period of time prior to the beginning of the offer to the public or the admission to trading of the European green bond concerned.
3. The post-issuance reviews referred to in paragraph 1, point (b), shall be made available to the public without delay following the assessment of the allocation reports by the external reviewer.

4. The pre-issuance reviews referred to in paragraph 1, point (a), and the post-issuance reviews referred to in paragraph 1, point (b), shall remain publicly available until at least the maturity of the bond after their publication on the website of the external reviewer.
5. External reviewers that decide to discontinue providing a pre-issuance review or a post-issuance review shall provide information about the reasons for that decision in the sections referred to in paragraph 1, points (a) and (b), without delay following such decision.

Chapter IV

Provision of services by third-country external reviewers

Article 31 **General provisions**

1. A third-country external reviewer may provide its services in accordance with this Regulation to issuers that issue European green bonds where that third-country external reviewer is registered in the register of third-country external reviewers kept by ESMA in accordance with Article 59.
2. ESMA shall register a third-country external reviewer that has applied for the provision of external reviewer services in accordance with this Regulation throughout the Union in accordance with paragraph 1 only where the following conditions are met:
 - (a) the Commission has adopted a decision in accordance with Article 32(1);
 - (b) the third-country external reviewer is registered or authorised to provide the external review services to be provided in the Union and is subject to effective supervision and enforcement ensuring full compliance with the requirements applicable in that third country;
 - (c) cooperation arrangements have been established pursuant to Article 32(3).
3. Where a third-country external reviewer is registered in accordance with this Article, no additional requirements on the third-country external reviewer in respect of matters covered by this Regulation shall be imposed.
4. The third-country external reviewer referred to in paragraph 1 shall submit its application to ESMA after the adoption by the Commission of the decision referred to in Article 32 determining that the legal and supervisory framework of the third country in which the third-country external reviewer is registered or authorised is equivalent to the requirements described in Article 32(1).
5. The third-country external reviewer shall submit its application referred to in the first paragraph by using the forms and templates referred to in Article 15.
6. The applicant third-country external reviewer shall provide ESMA with all information necessary for its registration.

7. Within 20 working days of receipt of the application, ESMA shall assess whether the application is complete. Where the application is not complete, ESMA shall set a deadline by which the applicant third-country external reviewer is to provide additional information.
8. The registration decision shall be based on the conditions set out in paragraph 2.
9. Within 45 working days of the submission of a complete application, ESMA shall inform the applicant third-country external reviewer in writing with a fully reasoned explanation whether the registration has been granted or refused.
10. Third-country external reviewers providing services in accordance with this Article shall, before providing any service in relation to issuers of European green bonds established in the Union, offer to submit any disputes relating to those services to the jurisdiction of a court or arbitral tribunal in a Member State.

Article 32
Equivalence decision

1. The Commission may adopt a decision in relation to a third country stating that the legal and supervisory arrangements of that third country ensure that external reviewers registered or authorised in that third country comply with legally binding organisational and business conduct requirements which have equivalent effect to the requirements laid down in this Regulation and in the implementing measures adopted pursuant to this Regulation and that the legal framework of that third country provides for an effective equivalent system for the recognition of external reviewers registered or authorised under third-country legal regimes.
2. The organisational and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all the following conditions:
 - (a) entities providing external review services in that third country are subject to registration or authorisation and to effective supervision and enforcement on an ongoing basis;
 - (b) entities providing external review services are subject to adequate organisational requirements in the area of internal control functions; and
 - (c) entities providing external review services are subject to appropriate conduct of business rules.
3. ESMA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as effectively equivalent in accordance with paragraph 1. Such arrangements shall specify all of the following:
 - (a) the mechanism for the exchange of information between ESMA and the competent authorities of the third countries concerned, including access to all information regarding the third-country external reviewers registered or authorised in third countries that is requested by ESMA;

- (b) the mechanism for prompt notification to ESMA where a third-country competent authority deems that a third-country external reviewer that it is supervising and ESMA has registered in the register referred to in Article 59 infringes the conditions of its registration or authorisation or other law to which it is obliged to adhere;
 - (c) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.
4. A third-country external reviewer established in a country whose legal and supervisory framework has been recognised to be effectively equivalent in accordance with paragraph 1, and which is registered in the register referred to in Article 59, shall be able to provide the services covered under the registration to issuers of European green bonds throughout the Union.
5. A third-country external reviewer shall no longer use the rights under Article 31 where the Commission withdraws its decision under paragraph 1 of this Article in relation to that third country.

Article 33

Withdrawal of registration of third country external reviewer

1. ESMA shall withdraw the registration of a third-country external reviewer in the register established in accordance with Article 59 where one or more of the following conditions are met:
- (a) ESMA has well-founded reasons based on documented evidence to believe that, in the provision of the services in the Union, the third-country external reviewer is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets;
 - (b) ESMA has well-founded reasons based on documented evidence to believe that, in the provision of services in the Union, the third-country external reviewer has seriously infringed the provisions applicable to it in the third country and on the basis of which the Commission has adopted the decision in accordance with Article 32(1);
 - (c) ESMA has referred the matter to the competent authority of the third country and that third-country competent authority has not taken the appropriate measures needed to protect investors and the proper functioning of the markets in the Union or has failed to demonstrate that the third-country external reviewer concerned complies with the requirements applicable to it in the third country;
 - (d) ESMA has informed the third-country competent authority of its intention to withdraw the registration of the third-country external reviewer at least 30 days before the withdrawal.
2. ESMA shall inform the Commission of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.

3. The Commission shall assess whether the conditions under which a decision in accordance with Article 32(1) has been adopted continue to persist in relation to the third country concerned.

Article 34

Recognition of an external reviewer located in a third country

1. Until such time as an equivalence decision in accordance with Article 32(1) is adopted, a third country external reviewer may provide its services in accordance with this Regulation provided that the third country external reviewer acquires prior recognition from ESMA in accordance with this Article.
2. A third country external reviewer intending to obtain prior recognition as referred to in paragraph 1 shall comply with the requirements laid down in Articles 15 to 30 and Articles 47 to 49.
3. A third country external reviewer intending to obtain prior recognition referred to in paragraph 1 shall have a legal representative located in the Union. That legal representative shall:
 - (a) be responsible, together with the third country external reviewer, for ensuring that the provision of services under this Regulation by the third country external reviewer meets the requirements referred to in paragraph 2 and shall in that respect be accountable to ESMA for the conduct of the third country external reviewer in the Union;
 - (b) act on behalf of the third country external reviewer as the main point of contact with ESMA and any other person in the Union with regard to the external reviewer's obligations under this Regulation;
 - (c) have sufficient knowledge, expertise and resources to fulfil its obligations under this paragraph.
4. An application for prior recognition from ESMA as referred to paragraph 1 shall contain all information necessary to satisfy ESMA that the third country external reviewer has implemented all the necessary arrangements to meet the requirements referred to in paragraphs 2 and 3 and shall, where applicable, indicate the competent authority responsible for its supervision in the third country.
5. ESMA shall assess whether the application for prior recognition from ESMA is complete within 20 working days after receipt of the application.

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

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

Within 45 working days of receipt of the complete application referred to in the first subparagraph of this paragraph, ESMA shall verify that the conditions laid down in paragraphs 2 and 3 are fulfilled.

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

6. ESMA shall suspend or, where appropriate, withdraw the recognition granted in accordance with paragraph 5 where it has well-founded reasons, based on documented evidence, to consider that the third country external reviewer is acting in a manner which is clearly prejudicial to the interests of users of its services or the orderly functioning of markets or the third country external reviewer has seriously infringed the relevant requirements set out in this Regulation, or that the third country external reviewer made false statements or used any other irregular means to obtain the recognition.
7. ESMA shall develop draft regulatory technical standards specifying the information and the form and content of the application referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 16 months after the date of entry into force].

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

Article 35

Endorsement of services under this Regulation provided in a third country

1. An external reviewer located in the Union registered in accordance with Article 15 and entered in the register in accordance with Article 59, may apply to ESMA to endorse the services provided by a third country external reviewer on an ongoing basis in the Union, provided that all of the following conditions are fulfilled:
 - (a) the endorsing external reviewer has verified and is able to demonstrate on an on-going basis to ESMA that the provision of services under this Regulation by the endorsed third country external reviewer fulfils, on a mandatory or on a voluntary basis, requirements which are at least as stringent as the requirements of this Regulation;
 - (b) the endorsing external reviewer has the necessary expertise to monitor effectively the activity of the provision of services under this Regulation by that third country external reviewer and to manage the associated risks;
 - (c) the third country external reviewer is relied upon for any of the following objective reasons:
 - i. Specificities of the underlying markets or investments;
 - ii. Proximity of the endorsed reviewer to third country markets, issuers or investors;
 - iii. Expertise of the third country reviewer in providing the services of external review or in specific markets or investments.

2. An external reviewer that makes an application for endorsement as referred to in paragraph 1 shall provide all information necessary to satisfy ESMA that, at the time of application, all the conditions referred to in that paragraph are fulfilled.
3. ESMA shall assess whether the application for endorsement referred to in paragraph 1 is complete within 20 working days after receipt of the application.

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

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

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

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

4. Services provided under this Regulation by an endorsed third country external reviewer shall be considered to be services provided by the endorsing external reviewer. The endorsing external reviewer shall not use the endorsement with the intention of avoiding the requirements of this Regulation.
5. An external reviewer that has endorsed services provided under this Regulation by a third country external reviewer shall remain fully responsible for such services and for compliance with the obligations under this Regulation.
6. Where ESMA has well-founded reasons to consider that the conditions laid down under paragraph 1 of this Article are no longer fulfilled, it shall have the power to require the endorsing external reviewer to cease the endorsement.
7. An external reviewer that endorses services provided under this Regulation by a third country external reviewer shall publish the information referred to in Article 13 on its website.
8. An external reviewer that endorses services provided under this Regulation by a third country external reviewer shall report to ESMA annually on the services it has endorsed in the previous twelve months.

Title IV

Supervision by competent authorities and ESMA

Chapter 1

Competent authorities

Article 36
Supervision by competent authorities

Competent authorities designated in accordance with Article 31 of Regulation (EU) 2017/1129 shall ensure that Articles 8 to 13 of this Regulation are applied.

Article 37
Powers of competent authorities

1. In order to fulfil their duties under this Regulation, competent authorities shall have, in accordance with national law, the following supervisory and investigatory powers:
 - (a) to require issuers to include the information referred to in Annex I in the European green bond factsheet;
 - (b) to require issuers to publish yearly allocation reports or include in yearly allocation reports the information about all the elements referred to in Annex II;
 - (c) to require issuers to publish an impact report or include in the impact report the information about all the elements referred to in Annex III;
 - (d) to require auditors and senior management of the issuer to provide information and documents;
 - (e) to suspend an offer of European green bonds for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for suspecting that Articles 8 to 13 of this Regulation have been infringed;
 - (f) to prohibit or suspend advertisements or require issuers of European green bonds or financial intermediaries concerned to cease or suspend advertisements for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that Articles 8 to 13 of this Regulation have been infringed;
 - (g) to make public the fact that an issuer of European green bonds is failing to comply with its obligations under Articles 8 to 13 of this Regulation;
 - (h) to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for that purpose to enter premises in order to access documents and other data in any form, where a reasonable suspicion

exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove an infringement of this Regulation.

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

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

Article 38

Cooperation between competent authorities

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

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

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in any of the following exceptional circumstances:
 - (a) where complying with the request is likely to adversely affect its own investigation, enforcement activities or a criminal investigation;

- (b) where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed;
 - (c) where a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.
3. The competent authority may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

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

- (a) carry out the on-site inspection or investigation itself;
 - (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;
 - (c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;
 - (d) appoint auditors or experts to carry out the on-site inspection or investigation;
 - (e) share specific tasks related to supervisory activities with the other competent authorities.
4. The competent authorities may refer to ESMA situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 TFEU, ESMA may, in the situations referred to in the first sentence of this paragraph, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.
5. ESMA is empowered to develop draft regulatory technical standards to specify the information to be exchanged between competent authorities in accordance with paragraph 1.

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

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

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

Article 39
Professional secrecy

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

Article 40
Precautionary measures

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

Article 41
Administrative sanctions and other administrative measures

1. Without prejudice to the supervisory and investigatory powers of competent authorities under Article 37, and the right of Member States to provide for and impose criminal sanctions, Member States shall, in accordance with national law, provide for competent authorities to have the power to impose administrative sanctions and take appropriate other administrative measures which shall be effective, proportionate and dissuasive. Those administrative sanctions and other administrative measures shall apply to:
 - (a) infringements of Articles 8 to 13;

- (b) failure to cooperate or comply in an investigation or with an inspection or request covered by Article 37.

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

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

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

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

For the purposes of point (d), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council⁴⁶, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the

⁴⁶ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

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

Article 42

Exercise of supervisory powers and powers to impose sanctions

1. Competent authorities, when determining the type and level of administrative sanctions and other administrative measures, shall take into account all relevant circumstances including, where appropriate:
 - (a) the gravity and the duration of the infringement;
 - (b) the degree of responsibility of the person responsible for the infringement;
 - (c) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;
 - (d) the impact of the infringement on retail investors' interests;
 - (e) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
 - (f) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
 - (g) previous infringements by the person responsible for the infringement;
 - (h) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.
2. In the exercise of their powers to impose administrative sanctions and other administrative measures under Article 41, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers and the administrative sanctions and other administrative measures that they impose are effective and appropriate under this Regulation. They shall coordinate their action in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative sanctions and other administrative measures in cross-border cases.

Article 43

Right of appeal

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

Article 44
Publication of decisions

1. A decision imposing an administrative sanction or other administrative measure for infringement of this Regulation shall be published by competent authorities on their official websites immediately after the person subject to that decision has been informed of that decision. The publication shall include information on the type and nature of the infringement and the identity of the persons responsible. That obligation shall not apply to decisions imposing measures that are of an investigatory nature.
2. Where the publication of the identity of the legal entities, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise the stability of financial markets or an on-going investigation, Member States shall ensure that the competent authorities do one of the following:
 - (a) defer the publication of the decision to impose a sanction or a measure until the moment where the reasons for non-publication cease to exist;
 - (b) publish the decision to impose a sanction or a measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures an effective protection of the personal data concerned;
 - (c) not publish the decision to impose a sanction or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:
 - (i) that the stability of financial markets would not be put in jeopardy;
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

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

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

Article 45
Reporting sanctions to ESMA

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

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

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

Chapter 2
ESMA

Article 46
Exercise of the powers referred to in Articles 47, 48 and 49

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

Article 47
Requests for information

1. ESMA may by simple request or by decision require the following persons to provide all information that is necessary to carry out its duties under this Regulation:
 - (a) persons who effectively conduct the business of the external reviewer;
 - (b) members of the supervisory organ, management organ or administrative organ of the external reviewer;

- (c) members of the senior management of the external reviewer;
 - (d) any person directly involved in assessment activities of the external reviewer;
 - (e) legal representatives and employees of entities to which an external reviewer has outsourced certain functions in accordance with Article 25;
 - (f) persons otherwise closely and substantially related or connected to the process of managing the external reviewer;
 - (g) anyone that acts like, or pretends to be, an external reviewer, without being registered as such, and any person that performs any of the functions referred to in points (a) to (f) for such person.
2. When sending a simple request for information under paragraph 1, ESMA shall:
- (a) refer to this Article as the legal basis of that request;
 - (b) state the purpose of the request;
 - (c) specify what information is required;
 - (d) set a time-limit within which the information is to be provided;
 - (e) inform the person from whom the information is requested that there is no obligation to provide the information but that in case of a voluntary reply to the request the information provided must not be incorrect or misleading;
 - (f) indicate the potential fine provided for in Article 52, where the answers to the questions asked are incorrect or misleading.
3. When requiring to supply of information under paragraph 1 by decision, ESMA shall:
- (a) refer to this Article as the legal basis of that request;
 - (b) state the purpose of the request;
 - (c) specify what information is required;
 - (d) set a time-limit within which the information is to be provided;
 - (e) indicate the periodic penalty payments provided for in Article 53 where the production of the required information is incomplete;
 - (f) indicate the fine provided for in Article 52 where the answers to questions asked are incorrect or misleading;
 - (g) indicate the right to appeal the decision before Board of Appeal accordance with Articles 58 and 59 of Regulation (EU) No 1095/2010 and to have the decision reviewed by the Court of Justice of the European Union in accordance with Articles 60 and 61 of that Regulation.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.
5. ESMA shall, without delay, send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 48

General investigations

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of persons referred to in Article 47(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:
 - (a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;
 - (b) take or obtain certified copies of or extracts from such records, data, procedures and other material;
 - (c) summon and ask any person referred to in Article 47(1) or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;
 - (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
 - (e) request records of telephone and data traffic.
2. The officials of and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 53 where the production of the required records, data, procedures or any other material, or the answers to questions asked of the persons referred to in Article 47(1), are not provided or are incomplete, and the fines provided for in Article 52 where the answers to questions asked of the persons referred to in Article 47(1) are incorrect or misleading.
3. The persons referred to in Article 47(1) shall submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 53, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice of the European Union.

4. In good time before the investigation, ESMA shall inform the competent supervisory authority referred to in Article 36 of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.
5. If a request for records of telephone or data traffic referred to in paragraph 1, point (e) requires a competent authority to be authorised by a judicial authority in accordance with national rules, ESMA shall also apply for such authorisation. ESMA may also apply for such authorisation as a precautionary measure.
6. Where authorisation as referred to in paragraph 5 is applied for, the national judicial authority shall control that the decision of ESMA is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the investigations. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

Article 49
On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at the business premises, land or property of the legal persons referred to in Article 47(1). Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on-site inspection without prior announcement.
2. The officials of and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises, land or property of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers referred to in Article 48(1). They shall also have the power to seal any business premises, property and books or records for the period of, and to the extent necessary for, the inspection.
3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent supervisory authority of the Member State where the inspection is to be conducted. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.
4. The officials of and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty

payments provided for in Article 53 where the persons concerned do not submit to the inspection. In good time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted.

5. The persons referred to in Article 47(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 53, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice of the European Union. ESMA shall take such decisions after consulting the competent authority of the Member State where the inspection is to be conducted.
6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials of and other persons authorised by ESMA. To that end, they shall enjoy the powers set out in paragraph 2. Officials of that competent authority may also attend the on-site inspections upon request.
7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 48(1) on its behalf. To that end, competent authorities shall enjoy the same powers as ESMA as set out in this Article and in Article 48(1).
8. Where the officials of and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.
9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 8 requires authorisation by a judicial authority according to the applicable national rules, ESMA shall also apply for such authorisation. ESMA may also apply for such authorisation as a precautionary measure.
10. Where authorisation as referred to in paragraph 9 is applied for, the national judicial authority shall verify that ESMA's decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations. Such a request for detailed explanations may in particular relate to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place, as well as to the seriousness of the suspected infringement and the nature of the involvement of the person who is subjected to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Article 61 of Regulation (EU) No 1095/2010.

Article 50
Exchange of information

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

Article 51
Supervisory measures by ESMA

1. Where, in accordance with Article 55(8), ESMA finds that a person has committed one of the infringements listed in Article 52(2), it shall take one or more of the following actions:
 - (a) withdraw the registration of an external reviewer
 - (b) withdraw the recognition of an external reviewer located in a third country;
 - (c) temporarily prohibit the external reviewer from pursuing the activities under this Regulation throughout the Union, until the infringement has been brought to an end;
 - (d) adopt a decision requiring the person to bring the infringement to an end;
 - (e) adopt a decision imposing fines pursuant to Article 52;
 - (f) adopt a decision imposing periodic penalty payments pursuant to Article 53;
 - (g) issue public notices.
2. ESMA shall withdraw the registration or the recognition of an external reviewer in the following circumstances:
 - (a) the external reviewer has expressly renounced the registration or the recognition or has not made use of the registration or the recognition within 36 months after the registration or the recognition has been granted;
 - (b) the external reviewer has obtained the registration or the recognition by making false statements or by any other irregular means;
 - (c) the external reviewer no longer meets the conditions under which it was registered or recognised.

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

3. When taking the decisions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:
- (a) the duration and frequency of the infringement;
 - (b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;
 - (c) whether the infringement has been committed intentionally or negligently;
 - (d) the degree of responsibility of the person responsible for the infringement;
 - (e) the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;
 - (f) the impact of the infringement on retail investors' interests;
 - (g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
 - (h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
 - (i) previous infringements by the person responsible for the infringement;
 - (j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

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

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

- (a) a statement affirming the right of the person responsible for the infringement to appeal the decision;
- (b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;
- (c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

Article 52

Fines

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

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

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

When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 51(3).

4. Where a person has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that financial benefit.
5. Where an act or omission constitutes a combination of several infringements, only the fine for the highest fined infringement shall apply.

Article 53

Periodic penalty payments

1. ESMA shall, by decision, impose a periodic penalty payment in order to compel:
 - (a) a person to put an end to an infringement, in accordance with a decision taken pursuant to Article 52(1), point (c);

- (b) a person as referred to in Article 47(1):
- (i) to supply complete information which has been requested by a decision pursuant to Article 47;
 - (ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 48;
 - (iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 49.
2. The periodic penalty payment shall be imposed for each day of delay.
3. The amount of the periodic penalty payments shall be 3% of the average daily turnover in the preceding business year, or, in the case of natural persons, 2% of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.
4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 54

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

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

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

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

Article 55

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Article 52(2), ESMA shall appoint an independent investigating officer within ESMA to investigate the matter. The investigating officer shall not be involved or have been involved in the direct or indirect supervision or registration process of the external reviewer concerned and shall perform his functions independently from ESMA's Board of Supervisors.
2. The investigating officer shall investigate the alleged infringements, taking into account any comments submitted by the persons subject to investigation, and shall submit a complete file with his findings to ESMA's Board of Supervisors.
3. In order to carry out his tasks, the investigating officer may exercise the power to require information in accordance with Article 47 and to conduct investigations and on-site inspections in accordance with Articles 48 and 49. When using those powers, the investigating officer shall comply with Article 46.
4. Where carrying out his tasks, the investigating officer shall have access to all documents and information gathered by ESMA in its supervisory activities.
5. Upon completion of his investigation and before submitting the file with his findings to ESMA's Board of Supervisors, the investigating officer shall give the persons subject to investigation the opportunity to be heard on the matters being investigated. The investigating officer shall base his findings only on facts on which the persons subject to investigation have had the opportunity to comment.
6. The rights of defence of the persons concerned shall be fully respected during investigations under this Article.
7. Upon submission of the file with his findings to ESMA's Board of Supervisors, the investigating officer shall notify that fact to the persons who are subject to investigations. The persons subject to investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.
8. On the basis of the file containing the investigating officer's findings and, when requested by the persons concerned, after having heard those persons in accordance with Article 56, ESMA shall decide if one or more of the infringements listed in Article 52(2) has been committed by the persons subject to investigation, and in such case, shall take a supervisory measure in accordance with Article 51 and impose a fine in accordance with Article 52.
9. The investigating officer shall not participate in the deliberations of ESMA's Board of Supervisors or in any other way intervene in the decision-making process of ESMA's Board of Supervisors.
10. The Commission shall adopt delegated acts in accordance with Article 60 by [*PO: Please insert date 12 months after date of entry into force*] to further specify the

procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on rights of defence, temporal provisions, the collection of fines or periodic penalty payments, and detailed rules on the limitation periods for the imposition and enforcement of penalties.

11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical facts, or from facts which are substantially the same, has acquired the force of *res judicata* as the result of criminal proceedings under national law.

Article 56

Hearing of the persons subject to the proceedings

1. Before taking any decision pursuant to Articles 51 to 53, ESMA shall give the persons subject to the proceedings the opportunity to be heard on ESMA's findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had the opportunity to comment.
2. The first subparagraph shall not apply if urgent action pursuant to Article 51 is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.
3. The rights of defence of the persons subject to the proceedings shall be fully respected during the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of ESMA.

Article 57

Review by the Court of Justice of the European Union

The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 58

Registration, recognition, and supervisory fees

1. ESMA shall charge external reviewers for the expenditure relating to their registration, recognition, and supervision and for any costs that it may incur carrying out work pursuant to this Regulation.
2. Any fee charged by ESMA to an applicant external reviewer or a registered external reviewer or a recognised external reviewer shall cover all administrative costs incurred by ESMA for its activities in relation to that particular applicant or external

reviewer. Any fee shall be proportionate to the turnover of the external reviewer concerned.

3. The Commission shall adopt delegated acts in accordance with Article 60 by [*PO: Please insert date 12 months after date of entry into force*] to specify the type of fees, the matters for which fees are due, the amount of the fees, and the manner in which they are to be paid.

Article 59

ESMA register of external reviewers and third-country external reviewers

1. ESMA shall maintain on its website a publicly accessible register that shall list all of the following:
 - (a) all the external reviewers registered in accordance with Article 15
 - (b) those external reviewers that are temporarily prohibited from pursuing their activities in accordance with Article 51;
 - (c) those external reviewers that have had their registration withdrawn in accordance with Article 51;
 - (d) third-country external reviewers allowed to provide services in the Union in accordance with Article 31;
 - (e) third-country external reviewers recognised in accordance with Article 34;
 - (f) external reviewers registered in accordance with Article 15 that endorse services of third country external reviewers in accordance with Article 35;
 - (g) those third-country external reviewers that have had registration withdrawn and that shall no longer use the rights under Article 31 where the Commission adopts a withdrawing decision in relation to that third country referred to in Article 32;
 - (h) third-country external reviewers whose recognition has been suspended or withdrawn and external reviewers registered in accordance with Article 15 that shall no longer endorse services of third country external reviewers.
2. The register shall contain contact details of external reviewers, their websites and the dates by which the decisions of ESMA concerning those external reviewers take effect.
3. For third-country reviewers, the register shall also contain information on the services that third-country external reviewers may provide and the contact details of the competent authority responsible for their supervision in the third country.

Title V

Delegated Acts

Article 60

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles on Procedural rules for taking supervisory measures and imposing fines, Registration, recognition, and supervisory fees, 55(10) and 58(3) shall be conferred on the Commission for an indeterminate period of time from [*PO: Please insert date of entry into force*].
3. The delegation of power referred to in Articles on Procedural rules for taking supervisory measures and imposing fines, Registration, recognition, and supervisory fees may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles on Procedural rules for taking supervisory measures and imposing fines, Registration, recognition, and supervisory fees shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 61

Committee procedure

The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC⁴⁷. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴⁸.

⁴⁷ 2001/528/EC: Commission Decision of 6 June 2001 establishing the European Securities Committee

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

⁴⁸ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers

Title VI

Final provisions

Article 62

Transitional provision

1. Any external reviewer that intends to provide services in accordance with this Regulation from its entry into force until [OJ please insert date 30 months after the first application date of this Regulation, thank you], shall only provide such services after having notified ESMA to that effect and having provided the information referred to in Article 15(1).
2. Until [OJ please insert date 30 months after the first application date of this Regulation, thank you] external reviewers referred to in paragraph 1 shall comply with Articles 16 to 30 with the exception of the requirements laid down by the delegated acts referred to in Article 16(2), Article 19(2), Article 20(3), Article 21(4), Article 22(3), Article 23(3) and Article 25(7).
3. After [OJ please insert date one day following 30 months after the first application date of this Regulation, thank you] external reviewers referred to in paragraph 1 shall only provide services in accordance with this Regulation after having being registered in accordance with Article 15 and comply with Articles 14 and Articles 16 to 30 as supplemented by the delegated acts referred to in paragraph 2.
4. After [OJ please insert date one day following 30 months after the first application date of this Regulation, thank you] ESMA shall examine whether external reviewers referred to in paragraph 1, and the services provided by those providers until [OJ please insert date 30 months after the first application date of this Regulation, thank you] comply with the conditions laid down in this regulation.

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

Article 63

Transitional provision for third country external reviewers

1. Any third country external reviewer that intends to provide services in accordance with this Regulation from its entry into force until [OJ please insert date 30 months after the first application date of this Regulation, thank you], shall only provide such services after having notified ESMA to that effect and having provided the information referred to in Article 15 (1).
2. Third country external reviewers referred to in paragraph 1 shall:

- (a) comply with Articles 16 to 30 with the exception of the requirements laid down by the delegated acts referred to in Article 16(2), Article 19(2), Article 20(3), Article 21(4), Article 22(3), Article 23(3) and Article 25(7).
 - (b) have a legal representative located in the Union that shall comply with Article 34, paragraph 3, points (a) to (c).
3. After [OJ please insert date one day following 30 months after the first application date of this Regulation, thank you] Articles 32, 34 and 35 shall apply.
4. After [OJ please insert date one day following 30 months after the first application date of this Regulation, thank you] ESMA shall examine whether external reviewers referred to in paragraph 1, and the services provided by those providers until [OJ please insert date 30 months after the first application date of this Regulation, thank you] comply with the conditions laid down in this regulation.

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

Article 64 ***Entry into force***

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 Strasbourg,

For the Council For the Parliament
The President The President