



european contact group

ESMA  
Attn Ms Van Laere  
Head of Unit Credit Rating Agencies

14 June 2024

Dear Ms Van Laere,

**ECG response to ESMA Consultation on European Green Bond Regulation (EUGBR) Regulatory Technical Standards (RTS)**

The ECG supports ESMA's recent recommendations to promote EU capital markets<sup>1</sup> as a hub for green finance, including by simplifying the disclosure of sustainability information to help investors. The EU green bond standard can help attract investment into EU markets and external reviews have an important role to play by bringing trust to the market.

In our opinion, as set out in recital (5) of the EUGBR, reviews should be consistent across the EU and seek to limit unnecessary compliance and administrative burdens, to avoid extra costs for investors and to encourage supply and high-quality of external reviewers. Diverging rules on the disclosure of information, on the transparency and accountability of external reviewers of environmentally sustainable bonds would 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.

We observe that in some of the draft standards, the compliance burden for external reviewers seems unnecessarily high, with no associated additional benefit for investors. There also appears to be a possible lack of a level playing field for external reviewers across the EU. Below we have set out our comments and recommendations in more detail.

**Recognition of Existing Accreditations**

We recommend that where an external reviewer applicant is a member of an existing governing body with European regulatory recognition, ESMA should evaluate whether the applicant already complies with relevant criteria, and recognise and leverage this accreditation and oversight and, in these cases, could provide exemptions to external reviewers.

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<sup>1</sup> ESMA [position paper](#) 'Building more effective and attractive capital markets in the EU' from 22 May 2024.

We note that Article 36 of the EU Audit Directive (2006/43/EC) foresees a level of regulatory cooperation between competent authorities of Member States responsible for approval, registration, quality assurance, inspection and discipline of auditors, and the relevant European Supervisory Authorities.

### **References to and Interoperability with Existing Standards**

EU green bond pre-issuance and post-issuance reviews are assurance services. Assurance service providers should apply robust professional standards to ensure consistency, including on independence/objectivity, conflicts of interests, and assurance standards, as the application of these standards and regulations by assurance service providers are already subject to supervision by national competent authorities in the EU. There is already a lot of information in transparency reports of accountancy firms that undertake public interest entity (PIE) audits.

The draft RTS on sound and prudent management and conflicts of interest do not seem to set requirements for internal controls or policies; instead, they require external reviewers to provide ESMA with information on their existing internal measures.

To prevent duplication and inconsistencies, we recommend that ESMA considers an interoperability framework with existing standards or an equivalence mechanism. Existing standards, such as the International Standard on Quality Management (ISQM1 and ISQM2) issued by IAASB and the IESBA Code of Ethics, or local standards addressing independence and conflicts of interest, could be referenced. This would ensure consistency and streamline the compliance process for many firms.

A comprehensive mapping issued by the CEAOB covering components of standards, such as ISQM1 can be found on this [link](#).

### **Information on Suitability of Management**

In our view, the requirement for the external reviewer to provide extensive information on every member of the reporting entity's senior management and board is too broad. We suggest differentiating between those responsible for supervising the external review work and those who are not. Requiring information only on the senior managers and board members involved in supervising the review should be sufficient to determine their suitability.

Another option would be to reduce the amount of information required for all senior management and board members, such as criminal records and self-declaration of fitness and propriety, as stated in Articles 2 and 3 of the RTS.

### **Information Requested on the External Review Team**

The information requested for the external review team appears extensive and burdensome. We suggest that it would be more practical to focus on disclosing the individuals responsible for issuing the review and their qualifications. Subject to applicable legal impediments, additional staff details could be provided upon request or through a separate non-public reporting mechanism. Evidence of the training process for the external reviewer can be shown instead of disclosing for each individual.

Our responses to the specific consultation questions relating to the draft RTS are attached to this letter.

We would be happy to provide further input and support if this would be useful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Donvito', written in a cursive style.

Maurizio Donvito

ECG Chairman

The ECG is registered in the EU Transparency Register

**On the draft RTS on senior management and analytical resources:**

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

**Information on Suitability of Management**

The fact that the external reviewer needs to provide detailed and extensive information about every single member of the reporting entity's senior management and board to assess the reviewer's suitability to perform external reviews seems too broad. Instead, we would recommend differentiating between the senior manager(s) and board member(s) that are responsible for supervising the external review work and those that are not. We believe that requiring information only on the senior manager(s) and board member(s) specifically involved in the supervision of the external review work would be sufficient to determine the suitability of management.

Another option would be to lessen the scope of information to be provided for all senior management and board members, as laid out in Article 2 and Article 3 of the RTS. Some information such as criminal records or self-declaration of fitness and propriety seem overwhelming.

It would be also helpful to clarify the definition of senior management and the board.

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

The request for information on the entire engagement team, including junior analysts, raises practical challenges and potential privacy concerns. Usually we would bring in expertise as assignments come along.

**On the draft RTS on sound and prudent management and conflicts of interest:**

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

**On the establishment of requirements of conflicts of interest policies**

The draft RTS requires applicants to provide a variety of information for ESMA to review and assess the success of an application, namely policies on conflicts of interest, reporting and whistleblowing, remuneration, transactions with related parties, outside business activities, and

hospitality and gifts, along with an up-to-date inventory of existing and potential conflicts of interests and proposed mitigation measures.

This may result in external reviewers taking different positions on how to use the draft RTS based on their self-developed guidelines. Consequently, there is a risk of different levels of objectivity being applied in pre- and post-issuance reviews, without users of EU Green Bond reviews being able to assess these differences that were applied in the registration process. This could also lead to a risk of subjectivity when assessing whether the provided information is suitable or not.

This approach differs from audit firm regulations, where the regulator evaluates policies and compliance during regulatory inspections rather than during the application/registration process.

If an external reviewer updates its policies, it is likely that the external reviewer will need to resubmit the revised policy to ESMA for approval before implementation. We suggest that there should be an ongoing and dynamic process for submitting an inventory of conflicts of interest.

#### **References to and interoperability with existing standards**

To avoid duplication and risk of inconsistencies and risk of inconsistencies for external reviewers and ESMA, we suggest that ESMA considers a framework of interoperability with existing standards or consider an equivalence mechanism. Existing standards could be International Standard on Quality Management (ISQM1 and ISQM2), issued by IAASB, and the IESBA Code of Ethics, or local standards that address independence standards and conflicts of interest. Such a reference will ensure consistency and significantly streamline the compliance process that currently exists within many firms.

A comprehensive mapping issued by the CEAOB covering components of standards, such as ISQM1 can be found on this [link](#).

Recognising interoperability with the IESBA Code of Ethics relating to conflicts of interest, and in particular IESBA Code Part 4B in the RTS could simplify the understanding and compliance of requirements

Audit firms are already subject to regular inspections and quality assurance under the Article 24 and Article 29 (1) f) of the EU Audit Directive (2006/43/EC) and Article 23 of the Audit Regulation (537/2014).

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

#### **Confidentiality Concerns and Appropriate Information Requests**

The request for an inventory of conflicts of interests seems very broad and the requirement to disclose board meeting minutes raises practical and confidentiality concerns. It would be

appropriate to consider the necessity of certain information requests, such as disaster-recovery record keeping, which may be more applicable to financial institutions. It would be preferable to align the information requirements with the specific objectives of the EUGBR.

**On the draft RTS on knowledge and experience of analysts:**

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

**Information Requested on the External Review Team**

The information requested on the external review team appears to be extensive and may impose a significant burden. Furthermore, it would be helpful to clarify whether this information is required on a one-off basis or if it needs to be submitted periodically.

As already pointed out with regards to the draft RTS on senior management and analytical resources (see our response to Question 2), the request for information on the entire engagement team, including junior analysts, raises practical challenges and potential privacy concerns. Usually we would bring in expertise as assignments come along.

We suggest focusing on disclosing the individual responsible for issuing the review, along with their professional qualification(s). Such an approach would be in line with emerging practice for audit and assurance engagements. Additional details of personnel involved in the review could be provided upon request or through a separate, non-public reporting mechanism.

We also suggest that the external reviewer should show evidence of the training process, rather than disclose this for each individual.

With regards to individual competences, we would like to refer to ISQM 1, which refers to human resources, ie. par. 32 a) - e) and also to the requirement of the IESBA Code of Ethics - one of 5 fundamental principles of having professional competences in order to provide attestation services to the public (section 113).

**On the draft RTS on outsourcing of assessment activities:**

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

**Definition of Third-Party Service Provider**

We would recommend clarifying the definition of a third-party service provider. For example, if an assurance provider were to use a delivery centre within its network to outsource certain assessment activities, it would be helpful to understand whether the delivery centre would be considered internal or a third-party service provider.

# Reply form

**on the Consultation Paper on technical standards on the European Green Bonds Regulation**

## Responding to this paper

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

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

ESMA will consider all comments received by **14 June 2024**.

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION \_EUGB\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_EUGB\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_EUGB\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA's website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading "Your input – Open Consultations" -> Consultation Paper on technical standards on the European Green Bonds Regulation").

### Publication of responses

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

### Data protection



Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

**Who should read this paper**

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

### General information about respondent

Name of the company / organisation	European Contact Group, ECG
Activity	Audit/Legal/Individual
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

## Questions

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

<ESMA\_QUESTION\_EUGB\_1>

### **Information on Suitability of Management**

The fact that the external reviewer needs to provide detailed and extensive information about every single member of the reporting entity's senior management and board to assess the reviewer's suitability to perform external reviews seems too broad. Instead, we would recommend differentiating between the senior manager(s) and board member(s) that are responsible for supervising the external review work and those that are not. We believe that requiring information only on the senior manager(s) and board member(s) specifically involved in the supervision of the external review work would be sufficient to determine the suitability of management.

Another option would be to lessen the scope of information to be provided for all senior management and board members, as laid out in Article 2 and Article 3 of the RTS. Some information such as criminal records or self-declaration of fitness and propriety seem overwhelming.

It would be also helpful to clarify the definition of senior management and the board.

<ESMA\_QUESTION\_EUGB\_1>

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

<ESMA\_QUESTION\_EUGB\_2>

The request for information on the entire engagement team, including junior analysts, raises practical challenges and potential privacy concerns. Usually we would bring in expertise as assignments come along.

<ESMA\_QUESTION\_EUGB\_2>

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

<ESMA\_QUESTION\_EUGB\_3>

**On the establishment of requirements of conflicts of interest policies**

The draft RTS requires applicants to provide a variety of information for ESMA to review and assess the success of an application, namely policies on conflicts of interest, reporting and whistleblowing, remuneration, transactions with related parties, outside business activities, and hospitality and gifts, along with an up-to-date inventory of existing and potential conflicts of interests and proposed mitigation measures.

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<ESMA\_QUESTION\_EUGB\_3>

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

<ESMA\_QUESTION\_ EUGB\_4>

**Confidentiality Concerns and Appropriate Information Requests**

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<ESMA\_QUESTION\_ EUGB\_4>

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

<ESMA\_QUESTION\_ EUGB\_5>

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<ESMA\_QUESTION\_ EUGB\_5>

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

<ESMA\_QUESTION\_ EUGB\_6>

**Definition of Third-Party Service Provider**

We would recommend clarifying the definition of a third-party service provider. For example, if an assurance provider were to use a delivery centre within its network to outsource certain assessment activities, it would be helpful to understand whether the delivery centre would be considered internal or a third-party service provider.

<ESMA\_QUESTION\_ EUGB\_6>

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

<ESMA\_QUESTION\_ EUGB\_7>

|TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_ EUGB\_7>

**Q8 Do you agree with the practicality and efficiency of ESMA’s proposals to specify the standard forms, templates and procedures for the provision of the information for an application for registration as an external reviewer?**

<ESMA\_QUESTION\_ EUGB\_8>

|TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_ EUGB\_8>

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

<ESMA\_QUESTION\_ EUGB\_9>

|TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_ EUGB\_9>

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

<ESMA\_QUESTION\_ EUGB\_10>

|TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_ EUGB\_10>

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

<ESMA\_QUESTION\_ EUGB\_11>

[TYPE YOUR TEXT HERE ]

<ESMA\_QUESTION\_ EUGB\_11>