12 June 2025
ESMA32-117195963-1417

Final Report

Technical advice concerning the Prospectus Regulation and the RTS updating the CDR on metadata

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1 Executive Summary

Reasons for publication

The Listing Act published in the Official Journal of the European Union on 14 November 2024 entered into force 20 days later, with the bulk of the provisions entering into application on 5 June 2026. The objective of the Amending Act is to simplify the listing requirements by promoting better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden on companies that seek a listing or want to remain listed on a trading venue. The package comprised a regulation amending the PR, MAR, MiFIR and a directive amending MiFID II and repealing the Listing Directive. Furthermore, it introduced a new directive on multiple share vote structures.

Several of the provisions included in the Listing Act require the adoption of Level 2 measures. These will consist of technical standards drafted by ESMA and delegated acts adopted by the Commission in accordance with Article 290 of the TFEU.

On 6 June 2024, ESMA received a request for technical advice from the Commission on a range of topics, and in relation to the Prospectus Regulation, on the following points:

i) the content and format of the full prospectus, including a building block of additional information to be included in prospectuses for non-equity securities offered to the public or admitted to trading on a regulated market that are advertised as taking into account ESG factors or pursuing ESG objectives; and

ii) the criteria for the scrutiny and the procedures for the approval of the prospectus, including proposed amendments to Commission Delegated Regulation 2019/980 or 'CDR on scrutiny and disclosure'.

ESMA published a consultation paper[1] on 28 October 2024, which included ESMA's draft technical advice to the Commission. Additionally, the consultation paper consulted on proposed changes to Commission Delegated Regulation 2019/979 or 'CDR on metadata' concerning the update of the data for the classification of prospectuses. These changes are necessary for the proper implementation of the PR as amended by the Amending Regulation due to the introduction of new prospectus types. The update will also make other improvements to data collection, to reflect the coming into force of the EuGB Regulation and to streamline the submission of information in the scope of the Prospectus Regulation to ESAP. The consultation closed on 31 December 2024.

Contents

This Final report provides ESMA's final technical advice to the Commission as well as the final version of ESMA's amendments to the CDR on metadata. This report includes summaries of the responses to the consultation, ESMA's feedback on the responses and discusses the changes made to ESMA's technical advice.

[1] Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata, ESMA32-117195963-1276, 28 October 2024.

Section 3 addresses the background and mandate for ESMA's work. This section provides a brief overview of the mandate, including the principles that the European Commission has asked ESMA to take into account when developing the technical advice.

Section 4 contains ESMA's feedback statement and is divided into the following subsections:

- 4.1.1 Technical advice on the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms;
- 4.1.2 Technical advice on the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives;
- 4.1.3 Technical advice on the content of the URD;
- 4.1.4 Technical advice on the criteria for the scrutiny of the completeness, comprehensibility and consistency of the information contained in prospectuses;
- 4.1.5 Technical advice on the procedures for the approval of prospectuses; and
- 4.1.6 Updated of the CDR on metadata.

Section 5 contains the various annexes to this Final report, including the list of questions from the CP, the mandate provided by the Commission and the advice from ESMA's Securities and Markets Stakeholder Group (SMSG).

Additionally, this Final report contains references to the 'Final Annex' and 'Final Annex (clean)'. The former is a marked-up version of the CDR on scrutiny and disclosure which sets out the differences between ESMA's proposal in the CP and in this Final report, while the latter is a clean version of the CP Annex to facilitate readability. Both are published separately to this Final report to prevent significantly increasing the size of this document.

ESMA strongly supports the objectives of the Listing Act which include burden reduction and promoting issuers' access to the public markets. In implementing its mandate, ESMA has, at times, found it difficult to reconcile the views and needs of different stakeholders. Where possible, ESMA has focused on burden reduction and harmonisation with a view to fostering a more efficient and integrated EU market, while seeking to ensure appropriate investor protection.

Next Steps

This Final report was submitted to the Commission and published on ESMA's website. From the date of submission, the European Commission shall take a decision on whether to adopt the RTS updating Commission Delegated Regulation 2019/979 within three months. The Commission may extend that period by one month.

2 References, definitions, acronyms

Accounting Directive	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
Amending Regulation	Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises. “Amending Regulation” in this Final Report focuses on the amendments to the PR or Regulation 2017/1129.
CDR on scrutiny and disclosure	Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004
CDR on metadata	Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301
Commission	The European Commission
CP	Consultation Paper

Corporate Sustainability Reporting Directive or CSRD	Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting
ESAP	The European Single Access Point
ESG	Environmental, social and governance
ESMA	European Securities and Markets Authority
ESMA's prospectus register	The register compiled on the basis of notifications from national competent authorities in accordance with Article 25 PR
EU Follow-on prospectus	The prospectus referred to in Article 14a of the Amending Regulation
EuGB(s)	European Green Bond(s)
EU Growth issuance prospectus	The prospectus referred to in Article 15a of the Amending Regulation
EU Growth prospectus or EU Growth prospectus annexes	The prospectus referred to in Article 15 of the PR and related disclosure annexes in CDR on scrutiny and disclosure
European Green Bond Regulation	Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds
Final Annex	The Annex to this CP containing a marked-up version of the CDR on scrutiny and disclosure
Final Annex (clean)	A clean version of the Final Annex available via the following electronic link
IFRS	International Financial Reporting Standards
IPO	Initial public offer

ISIN	International Securities Identification Numbers
KPI	Key performance indicator
LEI	Legal Entity Identifier
Listing Act	Legislative proposal to simplify the listing requirements to promote better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden on companies that seek a listing or want to remain listed on a trading venue. The package comprised a regulation amending the PR, MAR, MiFIR and a directive amending MiFID II and repealing the Listing Directive. Furthermore, it introduced a new directive on multiple vote share structures.
Listing Directive	Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities
Market Abuse Regulation or MAR	Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
Markets in Crypto-Assets Regulation	Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937
Markets in Financial Instruments Directive II or MiFID II	Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
Markets in Financial Instruments Regulation or MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
MTF	Multilateral trading facility

NCAs	National competent authorities
Peer Review Report	ESMA's Peer review report dated 21 July 2022 (ESMA42-111-7170) – Peer review of the scrutiny and approval procedures of prospectuses by competent authorities
OFR	Operating and financial review
Omnibus Regulation	Regulation (EU) 2023/2869 of the European Parliament and of the Council of 13 December 2023 amending certain Regulations as regards the establishment and functioning of the European single access point
Prospectus Regulation or PR	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
Prospectus Working Group or PWG	ESMA's Prospectus Working Group (as referred to in the Issuer Standing Committee's terms of reference (ref ESMA32-65-391))
RD	Registration Document
SPT	Sustainability performance target
Sustainable Finance Disclosure Regulation or SFDR	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
Taxonomy Regulation	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
TFEU	Treaty on the Functioning of the European Union
The Statement on sustainability disclosure in prospectuses or the 'Statement'	ESMA's Public Statement on Sustainability disclosure in prospectuses dated 11 July 2023 (ESMA32-1399193447-441)
Transparency Directive	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of

	transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC
URD	Universal Registration Document

3 Overview of the Final Report

3.1 Background

1. The Commission adopted a legislative proposal to simplify the listing requirements to promote better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden on companies that seek a listing or want to remain listed on a trading venue. The package comprised a regulation amending the PR, MAR, MiFIR and a directive amending MiFID II and repealing the Listing Directive. Furthermore, it introduced a new directive on multiple share vote structures.

2. The Listing Act was published in the Official Journal of the European Union on 14 November 2024 entered into force 20 days later, with the bulk of the provisions entering into application on 5 June 2026. The objective of the Listing Act is to simplify the listing requirements by promoting better access to public capital markets for EU companies, in particular SMEs, by reducing the administrative burden on companies that seek a listing or want to remain listed on a trading venue. The package comprised a regulation amending the PR, MAR, MiFIR and a directive amending MiFID II and repealing the Listing Directive. Furthermore, it introduced a new directive on multiple share vote structures.

3. Several of the provisions included in the Listing Act will require the adoption of Level 2 measures. These will consist of technical standards drafted by ESMA and delegated acts adopted by the Commission in accordance with Article 290 of the TFEU.

3.2 Consultation

4. The CP was published in response to a request for technical advice from the Commission[2] covering a range of topics relating to the Listing Act:

a. Proposing necessary amendments to CDR on scrutiny and disclosure, to determine the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents. This advice should reflect the amendments to Article 6 and 13 PR, as well as those to the format and content of prospectuses introduced in Annex I to III of the PR.

b. The introduction of a building block containing disclosure requirements for non-equity securities offered to the public or admitted to trading on a regulated market that are advertised as taking into account ESG factors or pursuing ESG objectives. This advice is intended to assist the Commission in reflecting Article 13(1)(g) PR in the annexes included in CDR on scrutiny and disclosure.

c. The content of URDs in order to support the Commission with its mandate in Article 13(2) PR, including any necessary amendments to CDR on scrutiny and disclosure.

d. The circumstances in which a competent authority can apply additional criteria during the scrutiny of a prospectus or require additional information to be included in a prospectus (Article 20(11)(a) and (b) PR) and the circumstances under which an NCA is allowed, where deemed necessary for investor protection, to require information in addition to that which is required for drawing up a prospectus, an EU Follow-on prospectus or an EU Growth issuance prospectus, including the type of additional information disclosed under the additional criteria.

e. The maximum overall timeframe within which the scrutiny of the prospectus is to be finalised and a decision reached by the competent authority on whether that prospectus is approved, or the approval is refused and the review process terminated, and the conditions for possible derogations from that timeframe (considering possible additional scrutiny criteria, the timeline for NCAs to respond to issuers and the average number of iterations between issuers and NCAs on the same application for approval of a prospectus).

[2] Please see Annex II, which contains the Request to ESMA for technical advice on the implementation of the amendments to the Prospectus Regulation, Market Abuse Regulation and Markets in Financial Instruments Directive II in the context of the Listing Act.

5. The Commission asked ESMA to take the following principles into account when developing its technical advice:

a. **Internal market:** the need to ensure the proper functioning of the internal market, in particular with regards to financial markets, and to ensure a high level of investor protection.

b. **Proportionality:** the technical advice should not go beyond what is necessary to achieve the objectives of the Amending Regulation and of the amending Directive. A competitive regulatory framework is not about deregulation, but about better regulation, taking into account the need to be mindful of rationalisation and avoid undue regulatory burden on companies.

c. **Comprehensibility:** ESMA should provide comprehensive advice on all subject matters covered by the mandate in an easily understandable language.

d. **Coherence:** the advice should be coherent with the wider regulatory framework of the Union.

e. **Consultation:** ESMA is invited to consult market participants (e.g., sell-side, buy-side, intermediaries, exchanges) openly and transparently and provide a feedback statement justifying its choices vis-à-vis the main arguments raised. ESMA's advice should consider the different opinions expressed by market participants.

f. **Evidence:** ESMA should justify its advice by identifying, where relevant, a range of technical options and undertaking an evidenced assessment of the costs and benefits of each. The results of this assessment should be submitted with the advice to the Commission.

6. Additionally, the CP consulted on proposed changes to the CDR on metadata concerning the update of the data for the classification of prospectuses. This update is necessary for the proper implementation of the PR, as amended by the Amending Regulation, due to the introduction of new prospectus types. The update will also make other improvements to data collection, to reflect the entry into force of the EuGB Regulation and to streamline submission of information in scope of the PR to ESAP.

7. The consultation period relating to both ESMA's draft technical advice to the Commission and the proposed amendments to the CDR on metadata closed on 31 December 2024.

3.3 Final report

8. This Final report presents ESMA's Final technical advice to the Commission. Overall, it summarises the responses to the consultation, provides ESMA's feedback on the major points in the responses and describes the material changes to the technical advice and the amendments to the CDR on metadata. The full text of ESMA's technical advice is available via hyperlink in Annex V. The amendments to the CDR on metadata are included in this Final Report in Annex VI.

9. While the parts of this Final report focusing on the technical advice do not contain a cost-benefit analysis, they do respond to the questions 7, 12, 18, 21 and 24 from the CP relating to the costs and benefits of ESMA's proposed technical advice, which serve a similar function. The responses to these questions are summarised in this report and ESMA has also provided its feedback, including explanations of the changes made. A cost-benefit analysis is, however, included in relation to the CDR on metadata in Annex VII.

4 Feedback statement

4.1 Stakeholder feedback by consultation paper section and ESMA responses

10. When reading this feedback statement, it is important to note that the number and nature of stakeholder responses varied per question. ESMA has summarised some of the main themes or points which were identified and provides responses accordingly. To reflect the type of feedback provided, some summaries use several headings (e.g., Q1 and 6) whereas others focus on more specific themes (e.g., Q2 and 19).

11. Additionally, the following sections of this feedback statement follow the order of the questions presented in the CP:

a. Section 4.1.1: the draft technical advice on the standardised format and standardised sequence of the prospectus, the base prospectus and final terms (Q1 – 7);

b. Section 4.1.2: the draft technical advice on the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives

c. Section 4.1.3: the draft technical advice on the content of the URD (Q19);

d. Section 4.1.4: the draft technical advice on the criteria for the scrutiny of the completeness, comprehensibility and consistency of the information contained in prospectuses (Q20 – 22);

e. Section 4.1.5: the draft technical procedures on the procedures for the approval of prospectuses (Q23 – 24); and

f. Section 4.1.6: the update of the CDR on metadata (Q25 – 29).

12. However, Section 4.1.2 relating to the draft technical advice on the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives (Q8 – 18) takes a different approach to provide readers with a narrative that is more logical and easier to follow due to the interconnectedness between the items in the Annex. The topics in this section follow the order in the draft Annex 21, which sets out the disclosure requirements for such non-equity securities. The questions corresponding to each topic are included in italics under the headings of each topic and the summaries of the responses to the individual questions have been included as Annex IV to this document.

4.1.1 Draft technical advice on the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms

Q1: What are your views in relation to format and sequencing? Do you agree with ESMA's approach to limit changes to the "standard" equity and non-equity annexes? And do you have any concerns relating to a potential tension between Annexes II and III in the Amending Regulation and Articles 24 and 2545 CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.

13. There were 18 responses to Q1. Blue headings are used to highlight the main points identified.

Limit format and sequence changes to "standard" equity and non-equity annexes

14. Most respondents (14) agreed with ESMA that new strict format and sequence requirements should be limited to situations in which the "standard" equity and non-equity disclosure annexes are used. This is to avoid difficulties in preparing complex documents, such as base prospectuses. In general, several respondents stated that extensive format and sequence changes will require issuers to alter established practices to prepare prospectuses. To minimise related administrative burden and

costs, they strongly emphasised limiting the number of departures from the existing Prospectus Regulation framework.

15. Overall, however, it appeared there is uncertainty about how the new format and sequence requirements should be interpreted. Three respondents argued that Articles [22] and [23] of the CDR on scrutiny and disclosure continue to generally dictate format and sequence and that the Annexes to the Amending Regulation dictate minimum content only. Six respondents supported the flexibility which Articles [22] and [23] of the CDR on scrutiny and disclosure provide, stating they already create standardisation across prospectuses. However, three respondents stated increased standardisation is needed, especially for equity prospectuses, while three others suggested there is a tension between the Annexes to the Amending Regulation and Articles [22] and [23] of the CDR on scrutiny and disclosure, in particular with respect to the location of risk factor disclosure.

16. A discernible takeaway from the relatively large volume of feedback on format and sequence is that context was a determinant. Respondents were more or less likely to view increased standardisation favourably depending on whether their focus was on equity or non-equity transactions or on inherently complex documentation, such as base prospectuses.

Cover note

17. Several respondents (11) were concerned about the proposed cover note. They questioned the legal basis for the proposal and what disclosure is expected in it. Some questioned why there is a need to set a legislative requirement for a cover note when in practice issuers typically produce a “cover page” towards the beginning of prospectuses.

Minimum disclosure only

18. Two respondents requested clarification that the reduced disclosure requirements in the Annexes to the CDR on scrutiny and disclosure constitute minimum information and that issuers have the flexibility to include additional information, as needed. In particular, for international offerings and/or to satisfy the necessary information test in Article 6 of the PR.

Miscellaneous

19. Additional points noted in the feedback were:

- One respondent disagreed with reduced disclosure and format changes inspired by the EU Growth prospectus framework. They argued the EU Growth prospectus was sparingly used and potentially of inappropriate information value, especially for retail investors.

- One respondent stated that using the EU Growth prospectus framework as a benchmark for more comprehensible prospectuses is the wrong approach. They argued more emphasis should be placed on guidance concerning use of plain language, as opposed to format changes and reduced disclosure.

- One respondent observed that the format and sequence proposals in the CP concerned registration document and securities note annexes but no "single document prospectus annex" was proposed. They argued this could create uncertainty about the format and sequence requirements which should apply to single document prospectuses but recognised that Annex I to the Amending Regulation was an indicator.

Input from the SMSG

20. The SMSG made similar points about format and sequence. Namely, that a strict order based on the Annexes to the Amending Regulation may be problematic, supporting ESMA's observation that it may not work for base prospectuses. The SMSG extended its concern about strict format requirements to their impact on the preparation of summaries. Moreover, the SMSG suggested that guidance on plain language may enable more comprehensible prospectuses. Like several respondents, the SMSG were also quite concerned about the proposed cover note – see also Q6.

ESMA's response:

Limit format and sequence changes to "standard" equity and non-equity annexes

21. Respondents appear to share the concern raised in the CP, which is that strict format and sequence based on the Annexes to the Amending Regulation may be problematic and burdensome if applied to all prospectuses[3]. In light of that, it seems there is a trade-off to consider between increased standardisation and burden reduction, which both appear to be goals under the Amending Regulation, but a challenge is how to make them smoothly interact. The final answer depends on how the new wording in Recital 17 of the Amending Regulation and Articles 6 and 13 of the PR, as amended, should be understood. But for the purpose of the CP, and this Final Report, ESMA understands the new wording in the Amending Regulation to require greater standardisation for all types of prospectuses, which is why difficulties arise.

[3] See para 20 of the CP which states: "Notably, Annexes I, II and III of the Amending Regulation seem inspired by the EU Growth Prospectus format. That format is arguably more suited to transactions such as IPOs or 'plain vanilla' non-equity issues. In those cases, a strict sequence based on Annexes I, II and III of the Amending Regulation may work well, but it is not clear if such literal sequencing is feasible for (i) a base prospectus that caters for multiple nonequity securities with building blocks or (ii) a prospectus prepared using the third country sovereign[11] registration document. This is why ESMA's proposals are limited to the 'standard' equity and non-equity annexes".

22. In particular, ESMA understands that all prospectuses should be “more comparable” in future, and this is to be achieved by requiring identical ordering of information sections in all of them. The blueprints for these identical prospectuses are understood to be the Annexes to the Amending Regulation because they have more granular information sections than Articles [22] and [23] of the CDR on scrutiny and disclosure. If this interpretation is correct, ESMA has feasibility concerns, which seem shared by several respondents. The main issue is that prospectuses can be structured in several ways and can cover a range of transactions, which makes it difficult to use the Annexes to the Amending Regulation as universal blueprints. While they may be suitable for IPO and “plain vanilla” debt issuance prospectuses that concern a single issuer, it is difficult to literally apply their order to base prospectuses concerning multiple issuers or products or to prospectuses such as for depository receipts, closed-end funds, and URDs that are linked to the “standard” equity registration document.

23. Considering the above, ESMA’s advice is that a strict format and sequence based on the Annexes to the Amending Regulation should only apply to IPO or “plain vanilla” debt prospectuses prepared by a single issuer. For other cases, such as base prospectuses or those involving “linked” disclosure annexes, the incumbent requirements which are now in Articles [22] or [23] of the CDR on scrutiny and disclosure are preferable. With this advice, ESMA is trying to support both increased standardisation and burden reduction while considering the heterogeneity inherent to the Prospectus Regulation and stakeholder feedback.

24. Finally, while ESMA’s general advice is that base prospectuses should not follow strict format and sequence based on the Annexes to the Amending Regulation, Article [23(2)] of the CDR on scrutiny and disclosure is now amended to state that registration documents prepared by a single issuer should follow the order in Annex II to the Amending Regulation if they are to be used in a tripartite base prospectus. This is to avoid different format requirements applying to a registration document which is re-used in both a tripartite standalone and base prospectus. The reference to “single issuer” is deliberate because it is unclear if a multi-issuer registration document can easily apply the order in Annex II to the Amending Regulation in a comprehensible way.

Cover note

25. Due to concerns about the disclosure which the proposed cover note should contain, and the fact that issuers already produce “cover pages”, the cover note proposal is dropped from both Articles [22] and [23] of the CDR on scrutiny and disclosure. ESMA’s advice is that it should be dropped to avoid unnecessary burden

for issuers but also to pre-empt the risk of diverging practices emerging with respect to cover notes.

Minimum disclosure only

26. ESMA understands that the reduced disclosure requirements in the proposed Annexes to the CDR on scrutiny and disclosure constitute minimum requirements only. Issuers have discretion to include additional information to the extent they believe it is necessary, whether for international transactions or to satisfy Article 6 of the Prospectus Regulation.

Miscellaneous

27. Regarding the additional points raised, ESMA's responses are as follows:

- Use of the EU Growth prospectus as a model going forward: The use of the EU Growth prospectus as a model is based on the Amending Regulation and mandate. It is understood it should facilitate market participants because it is a short-form framework, but issuers have discretion to provide additional information in their prospectus.

- Plain language: ESMA may explore work relating to the use of plain language at a future date but notes there are inherent challenges such as the fact that what constitutes "plain language" may have a different meaning depending on the relevant EU language. This may significantly impact work in this area.

- Single document prospectus: Annex I to the Amending Regulation is understood to be the "single document prospectus" template, because it combines elements of Annexes II and III. Moreover, the point raised appears more generally linked to how Recital 17 of the Amending Regulation and Articles 6 and 13 of the PR, as amended, should be interpreted, as per the discussion above on format and sequence.

Proposals relating to Articles [22] and [23]

Article [22]

Format of a prospectus

1. Where a prospectus is drawn up as a single document, it shall be composed of the following elements set out in the following order:

~~(a) A short cover note regarding the subject matter of the prospectus;~~

(a~~b~~) a table of contents;

(b~~c~~) a summary, where required by Article 7 of Regulation (EU) 2017/1129;

(cd) the risk factors referred to in Article 16 of Regulation (EU) 2017/1129;

(de) any other information referred to in the Annexes to this Regulation that is to be included in that prospectus.

If the prospectus is prepared using only Annexes [1 and 10] or [6 and 13] to this Regulation, the order of information sections in the prospectus shall be determined by Annex I of Regulation (EU) 2017/1129). This is wWithout prejudice to these format requirements and [Article 6(6) of Regulation (EU) 2017/1129], the standardised sequence prescribed by [Annex I of Regulation (EU) 2017/1129] shall apply to equity or non-equity prospectuses prepared according to [Annexes 1, 6, 10 and 13] to this Regulation.

2. Where a prospectus is drawn up as separate documents, the registration document and the securities note shall be composed of the following elements set out in the following order:

(a) A short cover note regarding the subject matter of the registration document or prospectus;

(ab) a table of contents;

(bc) the risk factors referred to in Article 16 of Regulation (EU) 2017/1129;

(cd) any other information referred to in the Annexes to this Regulation that is to be included in that registration document or that securities note.

If the prospectus is prepared using only Annexes [1 and 10] or [6 and 13] to this Regulation, the order of information sections in the prospectus shall be determined by Annexes II and III of Regulation (EU) 2017/1129). This is Wwithout prejudice to these format requirements and [Article 6(6) of Regulation (EU) 2017/1129], the standardised sequence prescribed by [Annexes II and III of Regulation (EU) 2017/1129] shall apply to equity or non-equity prospectuses prepared according to [Annexes 1, 6, 10 and 13] to this Regulation.

3. Where the registration document is drawn up in the form of a universal registration document, the issuer may include the risks factors referred to in point [(eb) of paragraph 2 amongst the information referred to in point (dc)] of that paragraph provided that those risk factors remain identifiable as a single section.

▼M1

4. Where a universal registration document is used for the purposes of Article 9(12) of Regulation (EU) 2017/1129, the information referred to in that Article shall be presented in accordance with Commission Delegated Regulation (EU) 2019/815 ([2]).

5. Where the order of the information referred to in point [(de) of paragraph 1 and in point (cd) of paragraph 2] is different from the order in which that information is presented in the Annexes to this Regulation, competent authorities may request to provide a list of cross references indicating the items of those Annexes to which that information corresponds.

[…]

Article [23]

Format of a base prospectus

1. A base prospectus drawn up as a single document shall be composed of the following elements set out in the following order:

(ab) a table of contents;

(bc) a general description of the offering programme;

(cd) the risk factors referred to in Article 16 of Regulation (EU) 2017/1129;

(de) any other information referred to in the Annexes to this Regulation that is to be included in the base prospectus.

~~Without prejudice to these format requirements and [Article 6(6) of Regulation (EU) 2017/1129], the standardised sequence prescribed by [Annex I of the Regulation (EU) 2017/1129] shall apply to base prospectuses prepared according to [Annexes 6 and 13] to this Regulation.~~

2. Where a base prospectus is drawn up as separate documents, the registration document and the securities note shall be composed of the following elements set out in the following order:

~~(a) A short cover note regarding the subject matter of the registration document or base prospectus;~~

(ab) a table of contents;

(bc) in the securities note, a general description of the offering programme;

(cd) the risk factors referred to in Article 16 of Regulation (EU) 2017/1129;

(de) any other information referred to in the Annexes to this Regulation that is to be included in the registration document and the securities note.

If a registration document is prepared as a separate document using [Annex 6] to this Regulation and concerns only a single issuer the order of its information sections shall be determined by Annex II of Regulation (EU) 2017/1129. ~~Without prejudice to these format requirements and [Article 6(6) of Regulation (EU) 2017/1129], the standardised sequence prescribed by [Annexes II and III of Regulation (EU) 2017/1129] shall apply to base prospectuses prepared according to [Annexes 6 and 13] to this Regulation.~~

3. An issuer, offeror or person asking for admission to trading on a regulated market may compile in one single document two or more base prospectuses.

4. Where the registration document is drawn up in the form of a universal registration document, the issuer may include the risk factors referred to in point [(cd) of paragraph 2 amongst the information referred to in point (de)] of that paragraph provided that those risk factors remain identifiable as a single section.

▼M1

5. Where a universal registration document is used for the purposes of Article 9(12) of Regulation (EU) 2017/1129, the information referred to in that Article shall be presented in accordance with Commission Delegated Regulation (EU) 2019/815.

▼B

6. Where the order of the information referred to in point [(ed) of paragraphs 1 and 2] is different from the order in which that information is presented in the Annexes to this Regulation, competent authorities may request to provide a list of cross references indicating the items of those Annexes to which that information corresponds.

[…]

Q2: Do you have specific comments about the reduced time periods which financial information should cover which need to be considered as part of this work?

28. There were 15 responses to Q2. The following paragraphs focus on the main points identified.

29. Most respondents (13) supported the reduced time periods for financial information. They viewed this as a way to lower administrative burden while also maintaining investor protection. However, some concerns and comments arose regarding the potential impact of these changes. Three respondents were concerned about the adequacy of a one-year period for non-equity securities, questioning how appropriate comparative information can be provided if only a single period of financial information is covered. Five respondents warned that the reduced time periods should not be considered a hard requirement to allow issuers to provide additional disclosure where necessary. In the context of equity securities, they outlined the importance of aligning with international standards and market practices, which may require three years of financial information. Similarly, the flexibility to provide additional disclosure was considered important so that issuers can appropriately communicate their "equity story". Such flexibility was also considered important for equity issuers operating in volatile industry sectors or for issuers who are less well known to the market.

30. Otherwise, two respondents stated that the reduced time periods may have limited impact on equity markets, but could be beneficial in specific situations, such as complex carveouts. They also noted that non-equity markets may more readily accept the reduced time period. Moreover, two respondents agreed with ESMA's analysis that the reference to "last financial year" in the case of non-equity transactions should not be understood as a "calendar year". They requested examples of how "last financial year" should be understood to avoid misunderstandings.

Input from the SMSG

31. The SMSG's comments were similar to those raised by other respondents. They generally welcomed the reduced time periods for situations in which additional disclosure is not relevant but noted it is important to be able to provide additional

disclosure, where necessary, such as to depict an issuer's "equity story" or due to cross-border requirements or for liability purposes.

ESMA's response:

32. Most respondents appear to support the reduced time periods for financial information under the Amending Regulation. As such, no further changes were introduced relative to what was in the CP. ESMA nonetheless acknowledges that the reduced time periods may at times be too short but notes that issuers have discretion to include additional information, where necessary. Regarding the request to clarify the meaning of "last financial year", this was not widely requested, and the wording has been in use in the Prospectus Regulation for several years. As such, no specific clarification was added in the disclosure items where this wording appears. However, if it becomes apparent that the meaning of "last financial year" presents issues a Q&A may be considered.

Q3: Do you agree with ESMA's sustainability-related assessment in relation to the 'standard' equity registration document? If not, please explain why?

33. There were 16 responses to Q3. The following paragraphs focus on the main points identified.

34. Most respondents (12) agreed with ESMA's assessment that it is sufficient for the text[4] in Part III of Annex II to the Amending Regulation to be used in item 3.1 of Annex 1 of the CDR on scrutiny and disclosure as the disclosure requirement concerning the management report and (where applicable) related sustainability disclosure. In particular, the text[5] was considered clear in terms of what is required and its alignment with CSRD was supported. One respondent, however, explicitly disagreed with ESMA's proposal. They argued the suggested approach is a missed opportunity to require additional sustainability disclosure, such as on taxonomy-aligned activities, use-of-proceeds information, and sustainability KPIs, as well as warnings about when key ESG information is incomplete or absent.

35. Aside from those comments, two respondents stated that it is important to harmonise sustainability disclosures across European law, noting that the CSRD regime is in the process of being introduced and its implementation needs to be monitored, especially its impact on smaller companies. One respondent stated

[4] For the consultation, item 3.1 of Annex 1 stated: "The purpose of this section is to either incorporate by reference or include the information set out in the management reports and consolidated management reports as referred to in Article 4 of Directive 2004/109/EC, where applicable, and in Chapters 5 and 6 of Directive 2013/34/EU, for the periods covered by the historical financial information including, where applicable, the sustainability reporting."
[5] Idem.

issues relating to auditor practices and the inclusion of the CSRD report in prospectuses could arise in international offerings, noting there are different auditing practices across the EU. They further stated that, in the past, auditors were reluctant to include certain EU-required audit reports in US offering memoranda for fear of extending potential liability related to such reports to the US market. One respondent stated there is an inconsistency between sustainability reporting according to national accounting principles relative to IFRS. They recommended requiring the restatement of sustainability reporting to align with IFRS as well as the reissuance of assurance opinions on the restated sustainability reports.

Input from the SMSG

36. The SMSG generally supported ESMA's assessment with respect to Q3.

ESMA's response:

37. Since most respondents agreed with ESMA that the text[6] in Part III of Annex II to the Amending Regulation can be used in item 3.1 of Annex 1 of the CDR on scrutiny and disclosure as the sustainability-related disclosure requirement, no significant changes were made. The only change was to clarify that an assurance opinion in accordance with the Accounting Directive, as amended, is required when sustainability information is included in the prospectus - see related comment in Q6 (point 7). Although one respondent considered the proposal a missed opportunity to request additional sustainability-related disclosure, the mandate appeared to limit making additional requirements[7].

38. ESMA takes note of the other points raised and will consider them as part of ESMA's general market monitoring activity and only to the extent that related action falls under ESMA's remit.

Proposal in Annex [1]	
SECTION 3	MANAGEMENT REPORT, INCLUDING SUSTAINABILITY REPORTING
Item 3.1	The purpose of this section is to either incorporate by reference or include the information set out in the management reports and consolidated management reports as referred to in Article 4 of Directive 2004/109/EC,

[6] Idem.
[7] ESMA is referring to the following from the mandate: […] "avoid overlaps or inconsistencies with the requirements laid down in other EU sustainable finance-related legislation, such as the European Green Bond Regulation, Taxonomy Regulation, the Sustainable Finance Disclosure Regulation and the Corporate Sustainability Reporting Directive. Furthermore, the technical advice should not deviate from the overarching burden reduction objective of the Listing Act and avoid merely replicating disclosure requirements set out in sustainable finance-related legislation that go beyond what is strictly necessary for a prospectus to allow taking an informed investment decision;" […].

	where applicable, and in Chapters 5 and 6 of Directive 2013/34/EU, for the periods covered by the historical financial information including, where applicable, the sustainability reporting and related assurance opinion in accordance with Directive 2013/34/EU – as amended by Directive (EU) 2022/2464.

Q4: With respect to sustainability aspects, do respondents have concerns about the proposal which offers non-equity issuers who fall under the Accounting Directive or Transparency Directive an option to provide an electronic link to their relevant sustainability information?

39. There were 18 responses to Q4. The following paragraphs focus on the main points identified.

40. Most respondents (13) did not object to giving non-equity issuers the option to include an electronic link to their sustainability information, as per the proposed item 5.1.1a in Annex 6. However, this was on the condition that it remained an option, and that information made available using the electronic link would not be considered part of the prospectus.

41. Three respondents questioned the need for the proposal. Neither the mandate nor the Amending Regulation suggested it is required, and they argued that issuers have discretion to include such information. One respondent expressed serious concern about the proposal suggesting it could create complications and legal ambiguities. For example, the inclusion of links to documents could trigger retention obligations, e.g., for 10 years., even if those documents, such as frameworks, are not inherently part of the prospectus. They argued this would result in significant implementation challenges for issuers and suggested relying on the existing framework in the PR, which allows for information to be referenced in available documents or incorporated by reference. They also argued that a disclaimer to state the linked content is not part of the prospectus would be essential but not sufficient. In their view, Article 11 of the PR would need to explicitly exclude issuer liability for linked information. One respondent disagreed with the proposal from a different perspective, stating that use of an electronic link would fragment access to critical sustainability information and would undermine accessibility and comprehensiveness of information in the prospectus. They added that such linked sustainability information would not be subject to the same liability as information directly included or incorporated in the prospectus and believed it should be.

42. Three respondents, who otherwise did not object to the proposal, expressed concern about it being treated as a requirement in practice. Two stated that significant liability risks could arise if such information is incorporated by reference or directly included in the prospectus, especially if it is of a forward-looking nature.

Input from the SMSG

43. The SMSG's comments generally reflected those described above. They noted the Commission's mandate does not specifically address this subject and it was not clear to them what problem was being solved. Assuming the proposal is maintained, the SMSG emphasised considering liability implications in relation to forward-looking information if such linked information were deemed to be incorporated by reference.

ESMA's response:

44. Based on the responses to Q4, item 5.1.1a of Annex [6] of the CDR on scrutiny and disclosure was deleted. This is because issuers have discretion to provide such information and because of the risk of such information being treated as part of the prospectus. ESMA's advice therefore is that the proposal should be dropped.

45. While one respondent would likely advocate maintaining and/or enhancing the proposed item, the Amending Regulation and mandate did not require entity-level sustainability disclosure for non-equity issuers like for equity issuers. Moreover, where applicable, the newly proposed Annex [21] will require robust sustainability-related disclosure for non-equity security issuances.

Proposal in Annex [6]	
~~Item 5.1.1a~~	~~If the issuer of non-equity securities is required to provide sustainability reporting, together with the related assurance opinion in accordance with the Accounting Directive – as amended by the Corporate Sustainability Reporting Directive (CSRD) – and the Transparency Directive, to the extent available,~~ **~~the issuer may include an electronic link to the relevant information, with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus~~**~~.~~

Q5: What are your views in relation to potential implications of the proposed single non-equity disclosure framework?

46. There were 17 responses to Q5. The following paragraphs focus on the main points identified.

47. Most respondents (13) were not categorically against the idea of a streamlined single non-equity disclosure framework, provided it clearly distinguishes between wholesale and retail requirements, especially in the securities note. Sixteen stressed the importance of the current distinction between wholesale and retail disclosure and the risk of inadvertently increasing disclosure requirements for wholesale issuers if the proposed template is maintained.

48. If the single non-equity registration document and securities note was kept the following suggestions were provided to make better distinctions:

- going line-by-line through the disclosure items and more clearly flagging which applied to wholesale as opposed to retail;

- creating a separate building block for retail, essentially regarding the offer and admission to trading disclosures, but using wholesale disclosure as the general benchmark.

49. Otherwise, in the absence of such improvements, the implication was to maintain separate disclosure annexes for wholesale and retail transactions, with four respondents categorically stating that. Separately, one respondent stated there should be no distinction between retail and wholesale transactions as wholesale disclosure is sufficient for both cases.

Input from the SMSG

50. The SMSG's comments were generally aligned with those of most respondents. Namely, that there is a need to better distinguish between both retail and wholesale requirements considering the risk of inadvertently increasing burden for wholesale transactions.

ESMA's response:

51. Based on the feedback to Q5, the single non-equity registration document and securities note were revised – see complete set of changes to Annexes [6] and [13]

of the CDR on scrutiny and disclosure using this link which is also available in Annex V to this Final report.

52. Both Annexes [6] and [13] now better distinguish between retail and wholesale disclosure using targeted and clearer headings. The securities note was also further streamlined by deleting duplicate offer-related disclosures which appear in the existing retail and wholesale annexes. ESMA's advice is to adopt these revised annexes since they align with the instructions and ambitions of the mandate and the Amending Regulation, such as to:

- use today's wholesale disclosure as the benchmark;
- identify retail disclosure where appropriate;
- streamline the prospectus disclosure framework by deleting duplicate items.

The order of information sections in the revised annexes is also aligned with the sequence in Annexes II and III of the Amending Regulation, which is important considering the format and sequence discussion in Q1.

53. Another option for the co-legislators is to maintain the current retail and wholesale non-equity disclosure split, with separate registration documents and securities notes. However, if that option is taken, the format and sequence discussion in Q1 must be considered to understand how their order of information sections interact with those in Annexes II and III to the Amending Regulation. The same applies to ideas such as a separate building block. Contrary to the comment that wholesale disclosure is sufficient for both retail and wholesale transactions, the mandate explicitly referred to sections that are relevant for retail[8].

[8] The fifth bullet point in Section 3.1 of the mandate stated: "align the content of the prospectus for retail non-equity securities to a level of disclosures that is equivalent to the lighter schedules of the prospectus for wholesale non-equity securities, except for the summary and the section on the offer that only apply to retail non-equity securities".

Q6: Do you have any other concerns about the disclosure items as proposed? If so, please explain.

54. There were 13 responses to Q6. Blue headings are used to highlight the main points identified.

1) Cash flow statements

55. Five respondents reacted to the proposal to require a cash flow statement[9] for both equity and non-equity transactions when audited financial information is prepared under national accounting standards. Three respondents, who focused on equity transactions, stated the cash flow statement provides valuable information in such cases and supported maintaining it. One of whom argued that it provides good information for both equity and non-equity transactions. However, two argued it should not be mandatory for non-equity, adding that it can be significantly disincentivising for retail non-equity transactions and that it does not necessarily provide material information to understand an issuer's financial position.

2) KPIs in non-equity registration document – item 5.4 of Annex [6]

56. Six respondents commented on item 5.4 of Annex [6], which required disclosure about KPIs[10]. All questioned why it was included, noting that it would greatly increase administrative burden and did not apply in the present "standard" non-equity registration document. One respondent observed that the likely issue was that the requirement was carried over from the EU Growth prospectus disclosure framework, which required such disclosure for issuers who previously meet the

[9] Stakeholder feedback was prompted by paragraph 32 of the CP which stated: "Moreover, respondents will note that both in the proposed equity and non-equity registration documents a cash flow statement requirement is included for situations in which audited financial information is prepared according to national accounting standards. This again goes beyond what was expected in equivalent EU Growth prospectus items, but because cash flow statements may provide useful information for prospective investors about how an issuer manages cash, these items were included for the purpose of the consultation. Feedback on this point is greatly encouraged".

[10] For the consultation, item 5.4 of Annex [6] stated: "Key Performance Indicators ('KPIs') Retail (Only in relation to non-equity securities the denomination of which is less than EUR 100,000 or not admitted to trading on a segment of a regulated market accessible only to qualified investors.) To the extent not disclosed elsewhere in the registration document and where an issuer has published KPIs, financial and/or operational, or chooses to include such in the registration document a description of the issuer's key performance indicators for each financial year for the period covered by the historical financial information shall be included in the registration document. KPIs must be calculated on a comparable basis. Where the KPIs have been audited by the auditors, that fact must be stated."

criteria in Article 15(1) PR[11]. If the requirement is kept, they suggested to apply it to issuers who meet similar criteria in Article 15a(1) of the PR as amended[12].

3) Change of control in non-equity registration document – item 6.1.2 of Annex [6]

57. Three respondents noted that item 6.1.2 of Annex [6][13] required disclosure on how an issuer might "prevent" a change of control, in addition to disclosure about operations which may result in a change of control. Like for item 5.4 of Annex [6], it was noted that disclosure on "preventing" change in control came from the EU Growth registration document. If the requirement was kept, it was suggested to only apply it to issuers who meet the criteria in Article 15a(1) of the PR as amended[14].

4) Superfluous cross-referencing in annexes

58. Three respondents stated the cross references in sections 5-8 of Annex [13] of the CP were superfluous and redundant. They proposed to delete them.

5) Capitalisation and indebtedness table

59. One respondent argued the capitalisation and indebtedness table requirement should be retained. They stated that, although item 2.1.1 of Annex [1][15] requires issuers to provide information on material changes to their borrowing and funding structure, the capitalisation and indebtedness table provided valuable additional

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[11] Article 15(1) PR stated the following: "EU Growth prospectus 1. The following persons may choose to draw up an EU Growth prospectus under the proportionate disclosure regime set out in this Article in the case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market: (a) SMEs; (b) issuers, other than SMEs, whose securities are traded or are to be traded on an SME growth market, provided that those issuers had an average market capitalisation of less than EUR 500 000 000 on the basis of end-year quotes for the previous three calendar years; (c) issuers, other than those referred to in points (a) and (b), where the offer of securities to the public is of a total consideration in the Union that does not exceed EUR 20 000 000 calculated over a period of 12 months, and provided that such issuers have no securities traded on an MTF and have an average number of employees during the previous financial year of up to 499;▼M1 (ca) issuers, other than SMEs, offering shares to the public at the same time as seeking admission of those shares to trading on an SME growth market, provided that such issuers have no shares already admitted to trading on an SME growth market and the combined value of the following two items is less than EUR 200 000 000: (i) the final offer price, or the maximum price in the case referred to in point (b)(i) of Article 17(1); (ii) the total number of shares outstanding immediately after the share offer to the public, calculated either on the basis of the amount of shares offered to the public or, in the case referred to in point (b)(i) of Article 17(1), on the basis of the maximum amount of shares offered to the public;▼B (d) offerors of securities issued by issuers referred to in points (a) and (b) […]".

[12] Articles 15a(1) states: "EU Growth issuance prospectus 1. Without prejudice to Article 1(4), Article 3(2) and (2a), the following persons may draw up an EU Growth issuance prospectus in the case of an offer of securities to the public, provided that they have no securities admitted to trading on a regulated market: (a) SMEs; (b) issuers, other than SMEs, whose securities are, or are to be, admitted to trading on an SME growth market; (c) issuers, other than those referred to in points (a) and (b), where the total aggregated consideration in the Union for the securities offered to the public is less than EUR 50 000 000 calculated over a period of 12 months, and provided that such issuers have no securities traded on an MTF and have an average number of employees during the previous financial year of up to 499; (d)offerors of securities that have been issued by issuers as referred to in points (a) and (b). […]."

[13] For the consultation, item 6.1.2 of Annex [6] stated: "A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in or prevent a change in control of the issuer."

[14] See footnote 12 for text of Article 15a(1).

[15] For the consultation, item 2.1.1 of Annex [1] stated: "Information on the material changes in the issuer's borrowing and funding structure since the end of the last financial period for which information has been provided in the registration document. Where the registration document contains interim financial information, this information may be provided since the end of the last interim period for which financial information has been included in the registration document."

information for investors, especially regarding highly leveraged companies and companies with complex funding structures. They argued this is evidenced by the voluntarily production of such tables by non-equity issuers even when no formal requirement applies. To the extent the table is kept, they stated the requirement for it to be dated less than 90 days prior to the prospectus should be changed. The time period in their view should be linked to the latest (interim) financial information in the prospectus to ensure consistency with other financial information.

6) OFR section in equity RD

60. One respondent argued the OFR section should not be removed because management reports may not be a suitable substitute. This is because issuers typically provide information in advertising materials[16] about business drivers and financial developments which might not be incorporated by reference in the management report. In their view, management reports may not be prepared from the perspective of public markets and may solely be prepared to fulfil reporting obligations, thus there may be limitations to their information content. One respondent[17] recognised the OFR section was removed due to the Amending Regulation but submitted that in international offerings it will likely be included, particularly in international offers to qualified institutional buyers.

61. Two respondents welcomed the removal of the OFR requirement. One respondent[18] stated its removal is welcome because it is a burdensome section for advisors and issuers to prepare. Another respondent[19] stated it is a good alleviation which will have a positive knock-on effect on the preparation of URDs.

7) item 3.1 of Annex [1][20] and item 5.1.1a of Annex [6][21]

62. One respondent noted that the requirement in item 3.1 of Annex [1] to incorporate sustainability reporting by reference (where applicable) was directly transferred from Part III of Annex II to the Amending Regulation, but that a similar item, item 5.1.1a of Annex [6] used different wording. In their view, the difference in wording

[16] For example, roadshow presentations, etc.
[17] The respondent commented under Q1, but the point is summarised here.
[18] The respondent commented under Q6, but the point is summarised here.
[19] The respondent commented under Q19, but the point is summarised here.
[20] For the consultation, item 3.1 of the Annex [1] stated: "The purpose of this section is to either incorporate by reference or include the information set out in the management reports and consolidated management reports as referred to in Article 4 of Directive 2004/109/EC, where applicable, and in Chapters 5 and 6 of Directive 2013/34/EU, for the periods covered by the historical financial information including, where applicable, the sustainability reporting."
[21] For the consultation, item 5.1.1a of Annex [6] stated: "If the issuer of non-equity securities is required to provide sustainability reporting, together with the related assurance opinion in accordance with the Accounting Directive – as amended by the Corporate Sustainability Reporting Directive (CSRD) – and the Transparency Directive, to the extent available, the issuer may include an electronic link to the relevant information, with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus."

may create the impression that assurance opinion expectations were not the same. They recommended aligning the wording regarding the assurance opinion.

8) Page limit

63. One respondent argued that direct placement of historical financial information, audit or management reports in a prospectus should not count against the page limit in Article 6(5) of the PR as amended[22]. In their view, investors may want all this information in a single document, so issuers should not be pushed to use incorporation by reference to overcome the page count. They argued the 300-page limit for share prospectuses will de facto lead to mandatory incorporation by reference.

9) Tax disclosure

64. Two respondents commenting on the proposed single non-equity disclosure framework were concerned that the current retail non-equity tax disclosure requirement[23] may inadvertently apply to wholesale transactions. They argued this should not be the case adding that the requirement can be particularly complex and disincentivising for retail offerings.

10) Remuneration disclosure

65. One respondent argued that the current remuneration disclosure requirements only refer to payments over the last full financial year. However, in the context of an IPO, they stated director and management compensation packages may be amended significantly upon completion of the transaction. As such, the remuneration information in the prospectus may be of limited value for investors to determine the future compensation packages of management and directors. To provide more relevant information for investors, they suggested amending the disclosure requirement to cover the current or future remuneration package of management and directors and only cover the remuneration over the last full financial year in case the current or future package is not yet available. This would also align more closely with ongoing annual disclosure requirements for an issuer that will generally apply after listing.

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[22] ESMA understands that the respondent was referring to the following wording: […] "5. The summary, the information incorporated by reference in accordance with Article 19, the additional information to be provided where the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18 of Commission Delegated Regulation (EU) 2019/980 (*3), or the information to be provided in the case of a significant gross change, as defined in Article 1, point (e), of that Delegated Regulation, shall not be taken into account for the maximum length referred to in paragraph 4 of this Article." […].

[23] For the consultation, item 3.1.14 of Annex [13] stated: "A warning that the tax legislation of the investor's Member State and of the issuer's country of incorporation may have an impact on the income received from the securities. Information on the taxation treatment of the securities where the proposed investment attracts a tax regime specific to that type of investment."

Input from the SMSG

66. In response to Q6, the SMSG noted it is an industry practice to include "cover pages" in prospectuses and raised concerns about trying to formally regulate them. They therefore questioned the explicit references to "cover notes" in Articles [22] and [23] of the CDR on scrutiny and disclosure – see related discussion in Q1.

ESMA's response:

1) Cash flow statements

67. While the proposal to require cash flow statements where audited financial information is prepared according to national accounting standards was a relatively large deviation from what is required in EU Growth prospectuses, very few respondents reacted to it. However, the few who reacted seemed to support the proposal for equity transactions whereas it was mixed for non-equity.

68. ESMA's advice is that the proposed requirement should be kept in each case even if it does deviate from what is currently required in the EU Growth prospectus. This is because such cash flow statements may generally provide relevant information for equity transactions and could be quite relevant to determine matters such as the liquidity profile of non-equity securities. Moreover, today's "standard" equity and retail non-equity registration documents have this requirement and since there were complaints about information deficit due to use of the EU Growth prospectus as a disclosure template – see responses to Q1 – this is an area where disclosure may be worth keeping.

Proposal in Annexes [1] and [6]	
Item 6.1.5 (Annex [1])	Where the audited financial information is prepared according to national accounting standards, they must include at least the following: (a) the balance sheet; (b) the income statement; (c) the cash flow statement (d) the accounting policies and explanatory notes.
Item 5.1.5 (Annex [6])	Where the audited financial information is prepared according to national accounting standards, it must include at least the following: (a) the balance sheet; (b) the income statement; (c) cash flow statement **((relevant to r~~R~~etail ~~–~~only[2])** ~~in relation to non-equity securities the denomination of which is less than EUR 100,000 or~~

	~~not admitted to trading on a segment of a regulated market accessible only to qualified investors.)~~ (d) the accounting policies and explanatory notes.

2) KPIs in non-equity registration document – item 5.4 of Annex [6]

69. Considering the feedback, ESMA's advice is that item 5.4 of Annex [6] can be deleted noting that a similar item is not present in the incumbent "standard" non-equity registration document. It is likely more relevant for issuers who met the criteria under Article 15(1) of the PR, thus issuers referred to in Article 15a of the PR, as amended – see related discussed under Q19.

Proposal in Annex [6]	
~~Item 5.4~~	~~Key Performance Indicators ('KPIs')~~
~~Item 5.4.1~~	~~**Retail** (Only in relation to non-equity securities the denomination of which is less than EUR 100,000 or not admitted to trading on a segment of a regulated market accessible only to qualified investors.)~~ ~~To the extent not disclosed elsewhere in the registration document and where an issuer has published KPIs, financial and/or operational, or chooses to include such in the registration document a description of the issuer's key performance indicators for each financial year for the period covered by the historical financial information shall be included in the registration document.~~ ~~KPIs must be calculated on a comparable basis. Where the KPIs have been audited by the auditors, that fact must be stated.~~

3) Change of control in non-equity registration document – item 6.1.2 of Annex [6]

70. Considering the feedback, ESMA's advice is that the words "prevent a change" of control can be deleted from item 6.1.2 of Annex [6]. Similar disclosure is not required in the incumbent "standard" non-equity registration document and is likely more relevant for "growth issuers" who met the criteria under Article 15(1) of the PR or similar criteria in Article 15a of the PR, as amended.

Proposal in Annex [6]	
Item 6.1.2	A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in ~~or prevent~~ a change in control of the issuer.

4) Superfluous cross-referencing in annexes

71. The cross-references to building blocks in Annex [13] are now deleted in the revised single non-equity securities note, which ESMA advises the co-legislators to adopt in Q5. Similarly, the references to Sections 6 and 7 in Annex [10] are deleted. While ESMA agrees they were superfluous, they were included in the CP due to a literal reading of Annex III of the Amending Regulation - see format and sequence discussion in Q1.

5) Capitalisation and indebtedness table

72. ESMA notes that one respondent believes the capitalisation and indebtedness table requirement should not be deleted. However, the Amending Regulation and Annexes thereto appear to suggest that should be the case. Hopefully comfort may be drawn from the fact that item 2.1.1 of Annex [1] requires issuers to provide information on material changes to their borrowing and funding structure and that voluntary inclusion of a capitalisation and indebtedness table is not prohibited, to the extent an issuer considers that necessary.

6) OFR section in equity RD

73. ESMA again notes that one respondent believes the OFR section should not be deleted from the equity registration document. However, its removal appears consistent with what is expected under the Amending Regulation and Annexes thereto. Moreover, issuers are not prohibited from providing additional disclosure about business drivers and financial developments if they consider that material or to the extent necessary for international transactions. There was also support among the few who responded for its deletion as a formal requirement.

7) item 3.1 of Annex [1][24] and item 5.1.1a of Annex [6][25]

74. The assurance opinion in proposed items 3.1 of Annex [1][26] and 5.1.1a of Annex [6][27] was the same. The wording in item 3.1 now makes this clearer. ESMA recalls,

[24] For the consultation, item 3.1 of the Annex [1] stated: "The purpose of this section is to either incorporate by reference or include the information set out in the management reports and consolidated management reports as referred to in Article 4 of Directive 2004/109/EC, where applicable, and in Chapters 5 and 6 of Directive 2013/34/EU, for the periods covered by the historical financial information including, where applicable, the sustainability reporting."
[25] For the consultation, item 5.1.1a of Annex [6] stated: "If the issuer of non-equity securities is required to provide sustainability reporting, together with the related assurance opinion in accordance with the Accounting Directive – as amended by the Corporate Sustainability Reporting Directive (CSRD) – and the Transparency Directive, to the extent available, the issuer may include an electronic link to the relevant information, with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus."
[26] See footnote 24 for text of item 3.1 of Annex [1] of the CP.
[27] See footnote 25 for text of item 5.1.1a of Annex [6] of the CP.

however, that item 5.1.1a of Annex [6] is now deleted – see related discussions under Qs 3 and 4.

8) Page limit

75. The comment about excluding historical financial information, audit and management reports from the page count, if all placed in a single document, is acknowledged. However, while Article 6(5) of the PR, as amended, identifies situations in which the page count can be disapplied, a carve out like the one requested does not appear permissible. Moreover, while it was argued that the 300-page limit "will de facto lead to mandatory incorporation by reference", that analysis appears to overlook an apparent goal of the Amending Regulation. Namely, shorter documentation within which all information is in one place. While it is likely the 300-page limit will lead to incorporation by reference, there is also the possibility that issuers strive to produce shorter but complete prospectuses over the long-term.

9) Tax disclosure

76. ESMA recognises the concern about retail non-equity tax disclosure applying to wholesale transactions. However, that was not the intention and will not be the case. The revised single non-equity securities note which ESMA advises the co-legislators to adopt in Q5 is now clearer in that respect.

77. Regarding the challenges the item can present for retail non-equity transactions, ESMA's advice is that the item's second paragraph can be deleted to provide an alleviation under the Amending Regulation, as part of burden reduction. A similar deletion can also be made in both Annexes [10] and [12] relating to shares and depository receipts. However, retail investors should at least continue to receive a warning that the tax legislation of their Member State, and the issuer's country of incorporation, may impact the income they receive, which is why ESMA believes that part of the item should be maintained.

Proposal in Annexes [10], [12] and [13]	
Item 4.1.9 (Annex [10])	A warning that the tax legislation of the investor's Member State and of the issuer's country of incorporation may have an impact on the income received from the securities. ~~Information on the taxation treatment of the securities where the proposed investment attracts a tax regime specific to that type of investment.~~

Item 1.12 (Annex [12])	A warning that the tax legislation of the investor's Member State and of the issuer's country of incorporation may have an impact on the income received from the securities. ~~Information on the taxation treatment of the securities where the proposed investment attracts a tax regime specific to that type of investment.~~
Item 3.1.14 (Annex [13])	**Item 3.1.14 is relevant to retail only[2]** A warning that the tax legislation of the investor's Member State and of the issuer's country of incorporation may have an impact on the income received from the securities. ~~Information on the taxation treatment of the securities where the proposed investment attracts a tax regime specific to that type of investment.~~

10) Remuneration disclosure

78. ESMA acknowledges the comment about remuneration disclosure and that information of a forward-looking nature may be more valuable. However, noting that post transaction disclosure may likely reveal such information, and because of burden reduction under the Amending Regulation, this addition has not been made. This of course does not exclude the fact that issuers may want to include such information based on their own materiality assessment.

Q7: In your view, will these proposals add or reduce costs? Please explain your answer.

79. There were 16 responses to Q7. The following paragraphs focus on the main points identified.

80. Ten respondents argued the proposals will likely increase costs for issuers, at least in the short term. This is due to the need to adapt established practices to prepare prospectuses, which will require assistance from advisors, thus resulting in additional delays and fees. One stated they may discourage market activity, while another questioned the value of essentially re-ordering information in prospectuses due to new format and sequence requirements. Three respondents stated that the new requirements will likely impact how NCAs engage with issuers in the short-term, thus also increasing administrative burden. One respondent argued the new exemptions[28] under the Amending Regulation could reduce costs in theory but

[28] It is understood the reference here is to Articles 1(4)(da), (db) and 1(5)(ba) of the Amending Regulation.

caveated that due diligence fees will arise to fulfil the related disclosures in Annex IX to the Amending Regulation[29].

81. Four respondents stated the proposals may reduce costs in the long term. They generally saw a value in streamlining disclosure and standardising prospectuses. However, one cautioned that additional disclosure required for international offerings may undermine the goal of reducing disclosure and standardisation. Two other respondents argued the changes will be cost-neutral.

Input from the SMSG

82. The SMSG stated that changes which do not reduce disclosure, but which require market participants to adapt their approaches to preparing prospectuses, will likely result in additional costs. They supported maintaining stability in the prospectus area and to avoid changes that do not reduce disclosure.

ESMA's response:

83. ESMA notes that most respondents believe there will be a short-term increase in costs. However, the feedback mostly appears linked to the changes which are driven by the Amending Regulation, such as in relation to format and sequence. As ESMA's advice in Q1 relating to format and sequence suggests limiting those changes to a specific set of transactions and prospectuses, that should hopefully limit costs. It is however unclear if the position expressed by ESMA in Q1 will be deemed consistent with Recital 17 of the Amending Regulation and Articles 6 and 13 of the PR, as amended.

84. Moreover, ESMA also notes that some respondents believe that increased standardisation across prospectuses may ultimately reduce costs in the long-term, especially for IPO or "plain vanilla debt" prospectuses. ESMA's advice in Q1 supports increased standardisation for that subset of transactions.

4.1.2 Draft technical advice on the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives

Introductory comments

Article 8 of the CP

85. The responses to Questions 8 - 18 from the CP concern the changes to the CDR on scrutiny and disclosure that are necessary to introduce disclosure requirements

[29] Annex IX to the Amending Regulation concerns information to be included in the document referred to in article 1(4), first subparagraph, points (da) and (db), and in article 1(5), first subparagraph, point (ba) of the PR.

for non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives. However, the responses were often quite broad, and responses to specific questions sometimes to respond to multiple questions in the CP. This makes it challenging to present an organised discussion of the responses to the CP.

86. To address this issue, ESMA divided the next section into topics which start with the definitions of 'use of proceeds bond' and 'sustainability-linked non-equity securities' and then deal with each section of the proposed Annex 21, which sets out the disclosure requirements for prospectuses relating to non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives. This approach should make it easier for readers to follow the discussion of the changes between ESMA's proposed Annex 21 in the CP and the Annex 21 in ESMA's final advice.

87. Additionally, ESMA has included references to the questions from the CP in italics under the subject headings so that readers can refer back to the questions from the CP and the summary of responses for these questions, which has been included in Annex IV. However, it is important to note that the responses to Questions 8 and 12 are addressed throughout this section of the feedback statement.

88. However, before moving on to the specific Items in Annex 21, ESMA would like to deal with several overarching issues mentioned in the responses to the CP.

Products covered by Annex 21

Question 8 from the CP

89. Three respondents suggested that the disclosure requirements in Annex 21 should be limited to existing non-equity securities that take into account an ESG component or pursue an ESG objective. This would mean limiting the disclosure requirements in Annex 21 to use of proceeds bonds and sustainability-linked non-equity securities. These respondents pointed out that it is easier to provide detailed disclosure requirements for existing products. Furthermore, these respondents argued that the proposed disclosure requirements for other non-equity securities taking into account an ESG component or pursuing and ESG objective could negatively impact product innovation, because some products may not be able to comply with the disclosure requirements.

ESMA's response:

90. In response to these concerns, ESMA would like to point out that Article 13(1)(g) PR requires the various prospectus schedules in the CDR on scrutiny and disclosure to take into account whether non-equity securities offered to the public

or admitted to trading on a regulated market are advertised as taking into account ESG factors or pursuing ESG objectives. This is also reflected in the mandate for this technical advice that ESMA received from the Commission. As such, ESMA does not consider it an option to provide disclosure requirements in relation to these product types. In that regard, ESMA welcomes the SMSG's support for covering all types of securities with an ESG component or objective in Annex 21.

91. ESMA also does not agree with respondents' concerns that the disclosure requirements could impact product innovation. The proposed disclosure requirements in Annex 21 are sufficiently broad to cover innovative non-equity securities with an ESG component or objective. ESMA also notes that the proposed Article 21b CDR on scrutiny and disclosure provides NCAs with the flexibility to adapt the disclosure requirements for new products. Furthermore, ESMA questions whether it is possible to provide the necessary information to investors under Article 6(1) PR if a product cannot comply with these disclosure requirements.

Alignment with other regulations and market standards

92. Two respondents suggested aligning Annex 21, the definitions with the EuGB Regulation, the Taxonomy Regulation, the SFDR and MiFID II. As already noted in Sections 5.5 and 5.6 of the CP[30], ESMA does not consider it appropriate to align the disclosure requirements in the PR with the SFDR due to the current plans to revise the SFDR. In relation to the consistency and usability of the disclosure information for distributors and the definition of sustainability preferences under MiFID II, ESMA is currently carrying out a common supervisory action (CSA) together with NCAs on MiFID II sustainability topics, which will be used to collect evidence on how firms manage/categorise investment products with ESG features that are outside the scope of SFDR. ESMA will use this evidence when developing any future advice to the Commission in this area so that it is too early to provide advice on the consistency / alignment of ESG disclosures for non-equity securities and sustainability preferences.

93. Another two respondents requested further guidance as to what is meant by the term 'advertised' when referring to 'non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives'. ESMA considers that 'advertised' is typically considered broadly under the Prospectus Regulation and includes both written and oral communications. For example, a roadshow would be considered a type of advertisement. However, ESMA does not believe it is appropriate to issue formal guidance at this stage because it would probably be better suited to a Q&A, which ESMA may contemplate in the future.

[30] P. 28.

94. ESMA notes that the SMSG also had concerns about the word ‘advertised’. The SMSG was concerned that the definition would also capture the publication of an issuer’s corporate/entity-level disclosures (e.g. reference to an issuer’s transition plan, ISSB/ESRS sustainability disclosures and ‘pure play green business’). ESMA understands that ‘advertised’ refers to advertisements published in relation to the securities and would therefore not expect the publication of such corporate/entity-level disclosures to trigger the application of Annex 21, since they concern the issuer itself.

95. Finally, three respondents emphasised the importance of aligning disclosures with existing standards and frameworks and ensuring that key ESG information is accessible to investors. As noted on p. 23 of the CP, ESMA has taken the Statement on sustainability disclosure in prospectuses as the starting point for Annex 21[31]. Additionally, ESMA has also taken note of market standards and the disclosure requirements in other European legislation. However, it is difficult to align with all of the relevant market standards and legislation at the same time. In that regard, ESMA notes that alignment with existing standards and frameworks is discussed specifically in relation to the definitions of ‘sustainability-linked non-equity security’ and ‘use of proceeds bond’.

Regulatory burden

96. While ten respondents agreed with ESMA’s approach in the CP, six respondents expressed the need for a precise framework for ESG note issuances, which they see as impractical for corporate groups seeking simplicity and agility. They also highlighted the difficulty in reconciling the characteristics of project-related data available at the time of issuance with the expectation that pre-issuance information be comprehensive, detailed and specific. Three respondents are concerned that the additional ESG disclosure requirements may be overly burdensome, especially for smaller entities or first-time issuers, and are concerned about increased issuance costs and potential discouragement from participating in green finance markets.

97. In response, ESMA notes that it used the Statement on sustainability disclosure in prospectuses as the basis for Annex 21. ESMA understands that these requirements generally reflect market practice so that they should not be overly burdensome for issuers. Additionally, ESMA has gone through respondents’ feedback on Annex 21 and made several amendments to address respondents' concerns. These changes are discussed in detail below.

[31] ESMA also notes that the SMSG stated that the disclosure requirements in Annex 21 should not go beyond those included in ESMA’s Statement on sustainability disclosure in prospectuses.

The definitions of “use of proceeds” bond and “sustainability-linked non-equity security”

Question 9 from the CP

98. While the definitions of 'use of proceeds' bond and 'sustainability-linked non-equity securities' are not technically part of Annex 21, these definitions have been added to the CDR on scrutiny and disclosure to ensure that Annex 21 works properly. Accordingly, it is appropriate to discuss these definitions with the Annex.

99. Two respondents and the SMSG stated the definitions of 'use of proceeds bond' and 'sustainability-linked bond' as examples of definitions that could be further harmonised with either the EuGB Regulation and existing market standards. This reflects the broader comments from respondents suggesting that ESMA further align the definitions in Annex 21 with existing European legislation.

100. ESMA has assessed whether it would be appropriate to further align these definitions with the EuGB Regulation. The conclusion is that it is problematic to completely align either definition. Firstly, 'use of proceeds bonds' are not defined in the EuGB Regulation, which instead refers to a 'bond marketed as environmentally sustainable'. This definition does not work because bonds with a 'social' or 'governance' component will fall outside of its scope. Furthermore, ESMA prefers to use the definition that aligns more closely with market practices to provide market participants with more legal certainty.

101. However, ESMA has made several changes to the definition of 'use of proceeds bonds' based on respondents' and the SMSG’s input. The definition has been amended to refer to an 'equivalent amount' of the proceeds to take into account the fungibility of money, issuers' cash management practices and the timing of allocation. Additionally, the words, "[…] applied to finance or re-finance" has been replaced with "allocated to" in order to cover transactions in which existing assets are to be utilised or captured and to better reflect the wording in the EuGB Regulation[32]. Finally, reference to "green" in the definition has been changed to "environmental" to clarify that use of proceeds bonds can direct capital to a broad range of environmentally-related activities, such as ocean conservation and water management.

102. The definition of 'sustainability-linked non-equity securities' in ESMA's draft advice is already harmonised with the EuGB Regulation to the extent possible. Fully using the definition in the EuGB Regulation would restrict the scope of the definition to

[32] The suggestion to include the wording, “over a given financial year, some or all of relevant” in relation to the projects or activities was also not incorporated into the definition of ‘sustainability-linked linked non-equity securities’ in order to align more closely with the definitions of ‘sustainability-linked bond’ in the ICMA principles and the EuGB Regulation.

sustainability-linked bonds whose financial or structural characteristics vary depending on the achievement by the issuer of predefined environmental sustainability objectives.

103. Additionally, the definition of sustainability-linked non-equity securities has been amended in accordance with respondents' technical suggestions. The revised definition is included below.

104. Taking the previous paragraphs into consideration, ESMA is continuing with the approach taken in the CP, which is to use the definition of 'use of proceeds' from the Statement and the definition of 'sustainability-linked bonds' from the EuGB Regulation, both with some additional modifications to bring them in line with the definitions used in the ICMA principles[33]. Of course, ESMA should not promote a specific market standard. However, the ICMA principles are currently the most widely used in relation to sustainable non-equity securities and are very similar to the definitions from the Statement.

Proposal to adjust the definitions of 'sustainability-linked bond' and 'use of proceeds bond'

Article 1 CDR on scrutiny and disclosure

(f) 'sustainability-linked non-equity securities' means non-equity securities for which the financial and/or structural characteristics can vary depending ~~are conditional~~ on whether the issuer achieves ~~over a given financial year, some or all of the relevant~~ predefined ESG objectives~~, including bonds defined in point (6) of Article 2 of Regulation (EU) 2023/2631~~;

(g) 'use of proceeds bond' means non-equity securities whose proceeds or an equivalent amount are allocated to~~applied or to be applied to finance or re-finance~~ environmental~~green~~ and/or social projects or activities.

Risk factors

105. Respondents' comments on the risk factors section contained two suggestions. The first was the suggestion from two respondents to delete Item 1.1 from Annex 21 because there is already a general requirement to cover ESG matters in the risk factors. The second recommendation also came from two respondents and

[33] For the avoidance of doubt, ESMA is not advocating a particular market standard. However, the ICMA principles are currently the most widely used market standard in relation to sustainable non-equity securities and are very similar to the definitions from the Statement.

involves incorporating Items 3.1.1 and 4.1.1 of Annex 21 into Item 1.1 to have the disclosure requirements concerning risk factors in a single item.

106. After reviewing stakeholders' responses, ESMA has decided to delete Section 1 concerning risk factors from its proposed Annex 21. ESMA considers that it is not necessary to include a specific item for the risk factors relating to non-equity securities advertised as taking into account ESG factors or pursuing an ESG objective, since risk factors relating to the securities are already covered by the general risk factor requirements include in item 2.1 of Annex 13. In that regard, ESMA emphasises that recital 54 of the Prospectus Regulation states, "Among others, environmental, social and governance circumstances can also constitute specific and material risks for the issuer and its securities and, in that case, should be disclosed.". ESMA also notes that ESG-related risk factors must meet the requirements for risk factors set out in Article 16 PR.

107. This deletion also contributes to the current political goal of reducing the complexity of the disclosure annexes by avoiding duplication.

General disclosure requirements

Items 2.1 and 2.2 of Annex 21 from the CP

Question 14 from the CP[34]

108. Stakeholders' comments on section 2 of Annex 21 were primarily concerned with reducing the complexity of the disclosure requirements and avoiding duplication of disclosure. ESMA is addressing these concerns by making several revisions to Section 2. The first revision is to combine items 2.1 and 2.2 from the draft Annex 21 in the CP. This is meant to better reflect the relationship between the statements required in item 2.1 and the explanation required in item 2.2 of the draft Annex in the CP. The revised item 1.1[35] now requires '[a] clear explanation to help investors understand the ESG factors taken into account by the securities and/or ESG objectives pursued by the securities. This explanation should be unambiguous, fact-based. . .'.

109. This change is intended to address ESMA and NCAs' greenwashing concerns in relation to statements which an issuer purports to be in 'partial' compliance with a standard. In such cases, there is an increased risk of greenwashing since it may not be clear to an investor what 'partial' compliance entails, and disclosure of this nature may give the impression that the non-equity securities in question have a greener profile than is the case. The revised disclosure requirements address this

[34] Several of the responses to questions 8 and 12 from the CP also make specific comments relating to these items.
[35] The numbering has been adjusted due to the deletion of Section 1 (Risk factors).

by requiring that the explanation is neutral and fact-based, which means that the level of compliance should be unambiguous for the reader of the prospectus.

110. The statements included in item 2.1 in the CP have now been moved to be subcomponents of the explanation. The major change to these statements is that they are no longer required to be 'unequivocal'. However, the disclosure under these items is now required to be 'unambiguous'. This change is intended to address respondents' and the SMSG's concerns that providing an 'unequivocal' statement would be burdensome and that NCAs could take different approaches to 'unequivocal' statements in their supervision, while at the same time still addressing NCAs' concerns about 'partial' statement. ESMA expects that this change will also better accommodate issuers that are in the process of 'aligning' with the EU Taxonomy.

111. The disclosure requirements in Item 1.1.1 and 1.1.2 have also been amended to require the identification of any elements of the EU Taxonomy, third country taxonomy, market standard or label that are not met. This change is intended to provide investors with more specific disclosure in this area and is based on suggestions from respondents to the CP that issuers should explicitly disclose any elements of a criteria or standard that are met. ESMA considers that this requirement should also help to ensure that the disclosure about the securities compliance with a taxonomy, label or standard or unambiguously presented.

112. ESMA had considered only requiring the statement in Item 1.1.1 concerning the EU Taxonomy in relation to use of proceeds bonds to further streamline these disclosure requirements. However, ESMA decided against making this change, because new products could be introduced that would comply with the EU Taxonomy and including this disclosure requirement exclusively in the section concerning use of proceeds bonds could give the impression that these disclosure requirements would not have to be complied with.

113. In relation to respondents' suggestions that compliance with Item 2.1 from the CP should be subject to independent verification, ESMA notes that introducing such a requirement would significantly increase the burden on issuers and (partially) eliminate the distinction with EuGBs. The introduction of such a requirement also raises questions concerning the possible supervision of the independent verifiers that fall outside the scope of this advice. For example, one could ask whether the verification should be conducted by external reviewers under the EuGB Regulation.

114. As to the comments that the issue of partial compliance with a market standard or label should be addressed by the standard or label itself and not the Prospectus Regulation, ESMA stresses that these disclosure requirements do not prohibit partial compliance. Instead, the disclosure requirements aim to ensure that the

disclosure in prospectuses (and any accompanying advertisements) is clear and does not mislead investors, which is a legitimate aim of the Prospectus Regulation.

115. Finally, ESMA and NCAs emphasise that issuers are expected to ensure that any advertisements published in relation to the non-equity securities do not reflect a different ESG-profile than in the prospectus, especially in relation to the clear and comprehensive explanation required under Item 1.1. Otherwise, there is a risk that investors could be presented with unclear disclosure concerning the securities' partial compliance with a taxonomy, standard or label.

Item 1	Information concerning the securities.	
Item 1.1	A clear and comprehensive explanation to help investors understand the ESG factors taken into account by the securities and/or ESG objectives pursued by the securities. This explanation should be unambiguous, fact-based and include:	Category A
Item 1.1.1	If the non-equity securities offered to the public or admitted to trading on a regulated market are advertised as complying with, aligned with, eligible under or otherwise adhering to the EU Taxonomy, in accordance with Regulation (EU) 2020/852 of the European Parliament and of the Council, or a third country Taxonomy: a) clearly state that the EU Taxonomy Regulation or third country taxonomy applies to the securities and, if applicable, identify the third country taxonomy; b) state how the criteria in Article 3 of the EU Taxonomy or any equivalent criteria in the third country taxonomy are met, and where relevant, identify any elements that are not met.	Category A
Item 1.1.2	If the non-equity securities offered to the public or admitted to trading on a regulated market are advertised as complying with, aligned with, eligible under or otherwise adhering to a specific market standard or label relating to the ESG factors taken into account or the ESG objectives pursued by the securities: a) identify the market standard or label; and	Category A

	b) state how the criteria in that standard or label are met and, where relevant, identify any elements that are not met.	

Item 2.3 of Annex 21 from the CP

116. ESMA included Item 2.3 in the CP to ensure that the basis for any ESG-related disclosure that was not caught under Items 2.1 and 2.2 would still be included in prospectuses. Item 2.3 can therefore be seen as a 'fallback' provision. However, this was apparently not clear to many stakeholders who considered it duplicative with items 2.1 and 2.2 in the CP. To address this issue, ESMA has revised Item 1.2 to clarify this. The Item now states, "To the extent not already provided under Item 1.1, the basis for any statements concerning the sustainability profile of the securities being offered and/or admitted to trading, including any material assumptions."

117. Additionally, the requirement to provide any material underlying data has also been deleted from the revised 1.2 to reduce the burden relating to complying with this item and to eliminate the impression that NCAs could request exhaustive underlying data. However, the disclosure under this item is still expected to be of sufficient quality to allow investors to assess the ESG-related disclosure themselves to prevent possible greenwashing.

118. ESMA had also contemplated deleting Item 2.3 to address stakeholders' concerns about the duplication of disclosure required by Items 2.1, 2.2 and 2.3. However, ESMA believes that this would not be appropriate due to the greenwashing risk. It is vital that there is a fallback provision to ensure that any ESG-related claims in a prospectus are justified, especially considering that any advertisements published in relation to the securities will need to be consistent with the information in the prospectus.

Item 1.2	To the extent not already provided under Item 1.1, the basis for any statements concerning the sustainability profile of the securities being offered and/or admitted to trading, including any material assumptions.

Item 2.4 of Annex 21 from the CP

119. Item 2.4 from the CP required material information about any specific market standard, label or third country taxonomy relating to the ESG features of the securities. However, stakeholders considered this disclosure to be duplicative with

the disclosure in Items 2.1 and 2.2 of the CP. After considering respondents' and the SMSG's arguments, ESMA agrees that the disclosure of material information about any specific market standard, label or third country taxonomy would already be covered under Items 1.1 and 1.2 of the CP and would therefore already be included in the prospectus.

120. Instead, ESMA proposes to allow issuers to voluntarily include an electronic link to the applicable framework, market standard, label or third country taxonomy, with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus[36]. This alternative disclosure was suggested by several stakeholders and ESMA believes that such a link may be useful to investors who want to know more about the applicable framework, market standard, label or third country taxonomy.

Item 1.3	The issuer may also choose to include an electronic link to the applicable framework, market standard, label, or third country taxonomy, with a disclaimer that the information on the website does not form part of the prospectus unless it is incorporated by reference into the prospectus in accordance with Article 19 of Regulation (EU) 2017/1129.	Category A

Use of proceeds bonds

Item 3.1.1 from the CP

121. After deciding to delete Section 1 of Annex 21 concerning risk factors, ESMA believes that it is also appropriate to delete the other items in Annex 21 relating to risk factors such as Item 3.1.1 due to the same reasoning set out in paragraph [2]. This deletion is intended to help alleviate any duplication of disclosure requirements in Annex 21. However, ESMA notes that it would still expect that the material risks relating to the securities are included in the prospectus in accordance with Article 16 PR, including any risks concerning allocation, management of proceeds as well as the viability and achievement of the sustainable project(s) in prospectuses relating to use of proceeds bonds.

[36] This disclaimer has been included in the item to ensure that there is no discussion about whether the applicable framework, market standard, label or third country taxonomy forms part of the prospectus for the sake of legal certainty. For the avoidance of doubt, although the item includes a disclaimer that the applicable framework, market standard, label or third country taxonomy does not form part of the prospectus unless it is incorporated by reference, ESMA notes that it will not be possible to incorporate such information by reference unless it is in compliance with Article 19 PR.

Item 3.1.2 from the CP

122. In response to stakeholders' concerns that requiring a summary of the material provisions of an issuer's framework could be unduly burdensome, ESMA has decided not to carry item 3.1.2 forward into its final technical advice to the Commission. The material information concerning the framework will have already been disclosed under items 1.1, 1.1.1 and 1.1.2 of Annex 21. Additionally, ESMA does not consider that an issuer's entire framework necessarily qualifies as material information for an investor for the purposes of Article 6(1) PR. The deletion of this item should help prevent unnecessary summaries of an issuer's framework and reduce the burden on issuers. However, it is important to note that issuers may choose to include a link to their framework in the prospectus I accordance with Item 1.3 as this information may be interesting for investors.

Item 3.1.3 from the CP

123. Item 3.1.3 is being carried forward into ESMA's final technical advice to the Commission in Item 2.1.1 without any changes. Although some respondents suggested that the disclosure in Item 3.1.3 may be duplicative with the disclosure required under items 1.1 and 1.2, the disclosure in this item is more detailed than the general disclosure included those items. Furthermore, ESMA considers that a prospectus relating to use of proceeds bonds would not satisfy the 'necessary information test' in Article 6(1) PR if this disclosure was missing. As such, it is appropriate to include this disclosure without any changes.

Item 2.1.1	A description of the goal and characteristics of the relevant sustainable projects or activities and how the sustainable goal is expected to be achieved as well as any permissible terms and conditions for deviations to the minimum use of proceeds, the sustainable projects and activities. If the sustainable projects or activities are not identified at the time of the prospectus approval, issuers shall disclose the criteria which will be used to identify the relevant projects. This disclosure should clarify whether the use of proceeds bonds are part of financing the entirety of the issuer's green/sustainability strategy and explain the use of proceeds bonds contribution to that strategy, including, where relevant, the financing of activities eligible and/or aligned with the EU Taxonomy or a third country taxonomy.	Category B

Item 3.1.4 from the CP

124. Similarly, Item 3.1.4 is being carried over as Item 2.1.2 in ESMA's final technical advice to the Commission. Although this disclosure is arguably caught in Item 2.1.1, ESMA considers that this disclosure must be included in a prospectus relating to use of proceeds bonds to satisfy Article 6(1) PR so that it is appropriate to explicitly include in Annex 21.

Item 2.1.2	Whether the proceeds of the bond are ringfenced to sustainable projects or assets.	Category C

Item 3.1.5 from the CP

125. Item 3.1.5 from the CP is also being carried over as Item 2.1.3 with a single change. This change is to further clarify which situations this disclosure requirement is intended to deal with. More specifically, this item has been amended to refer to use of proceeds bonds where the proceeds are expected to be used to purchase underlying loans or financial assets, which will often be structured as securitisations or covered bonds.

Item 2.1.3	If the proceeds of 'use of proceeds' bonds are used or expected to be used to purchase underlying loans or other financial assets which are considered sustainable, disclosure on the criteria used to determine their sustainability, including whether these loans or assets are eligible and/or aligned with the EU Taxonomy or a third country taxonomy.	Category C

Sustainability-linked non-equity securities

Item 4.1.1 from the CP

126. ESMA has deleted Item 4.1.1 because the general requirement to include risk factors in Item 2.1 of Annex 13 will already cover any material risks associated with KPIs and SPTs in accordance with Article 16 PR. In that regard, ESMA notes that Article 16(1) PR specifically requires disclosure on the how specific risk factors affect the issuer and the securities offered to the public or admitted to trading. Therefore, where appropriate, ESMA expects that this disclosure will reflect the impact on the issuer's overall firm-level sustainability performance.

127. The deletion of this item is intended to simplify this disclosure annex and avoid the duplication of disclosure requirements.

Item 4.1.2 from the CP

128. Two minor changes have been made to Item 4.1.2 from the CP, which has been renumbered as Item 3.1.1 in this report. This reflects the fact that this disclosure appears to be uncontroversial. The first change is intended to address stakeholders' concerns that some KPIs cannot align with sector-specific science-based targets and was to clarify that the disclosure should enable investors to understand whether the KPIs and the associated SPTs are consistent with relevant sector-specific science-based targets. Despite this change, ESMA would encourage issuers to use KPIs that align with sector-specific science-based targets where possible.

129. The second change is to delete the word 'sustainability' in the first paragraph so that the revised Item 3.1.1 now only requires "A description of any financial features of the securities such as interest or premium payments which are influenced by the fulfilment or failure to fulfil ESG objectives". This change is to bring the language in this item closer to the level 1 text of the Prospectus Regulation, which refers to "ESG factors" and "ESG objectives"[37] .

Item 3.1.1	A description of any financial features of the securities such as interest or premium payments which are influenced by the fulfilment or failure to fulfil ESG objectives, including the means by which interest payments or redemption amounts are calculated. This disclosure shall include explanations and the calculation methodology of the selected key performance indicators (KPIs), sustainability performance targets (SPTs) and information enabling investors to understand: a) Whether the KPIs and their associated SPTs <u>are consistent</u> with the relevant sector-specific science-based targets (if any); and b) the consistency of the KPIs and their associated SPTs with the issuer's sustainability strategy.	Category B

Item 4.1.3 from the CP

130. No changes have been made to Item 4.1.3 based on stakeholders' responses to the CP. While ESMA notes that one stakeholder suggested amending this item to

[37] Article 13(1)(g) PR.

require disclosure about the early redemption amount if the securities may be redeemed prior to their scheduled maturity, ESMA has decided not to make this amendment because it does not address the underlying reasons for requiring this disclosure, which is to identify situations in which early amortisation would have a negative impact on the sustainability performance of the investment.

Item 3.1.2	If advanced amortisation may occur, disclosure about any impact which this may have on the sustainability performance of an investment.	Category A

Non-equity securities with an ESG component or objectives and a material underlying

Question 16 from the CP

131. Before specifically addressing the individual items in Section 5, ESMA would first like to address respondents' overarching comments concerning the alignment of disclosure requirements for non-equity securities with an ESG component or objective and a material underlying across different legislation, such as SFDR and MiFID II.

Alignment with SFDR and MiFID II

132. ESMA agrees that the disclosure requirements concerning MiFID II financial instruments should be subject to standardised minimum sustainability disclosures. This is reflected in ESMA's Opinion on the functioning of the Sustainable Finance Framework[38] and paragraphs 49 - 51 of the ESA's Opinion on the review of the Sustainable Finance Disclosure Regulation[39]. When drawing up the CP, ESMA also explored the possibility to align the definitions and disclosure requirements[40]. Unfortunately, the upcoming review of the SFDR and the work relating to sustainability preferences in MiFIR make it impossible to currently make such alignment or to provide a definition of 'structured products' that would work across all relevant legislation.

The sustainability of structured products

133. There have also been requests to specify when structured products cannot be sustainable. This is a broader discussion going beyond the PR and into other

[38] ESMA Opinion on sustainable investments: Facilitating the investor journey – A holistic vision for the long term, ESMA36-1079078717-2587, 24, July 2024, paragraph 27.
[39] Joint ESAs Opinion on the assessment of the SFDR, JC 2024 06, 18 June 2024.
[40] Consultation paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata, ESMA32-11719596-1276, 28 October 2024, paragraphs 50 – 51.

legislation such as MiFID II. Considering the implications of this discussion and the fact that there was no direct consultation on this topic, ESMA considers that it would be inappropriate to reach any conclusions on this topic in this technical advice. ESMA also notes that the Prospectus Regulation concerns disclosure as opposed to the regulation of the products themselves. Nevertheless, ESMA considers it appropriate to require disclosure about the sustainability of the securities in Items 5.1.3 and 5.1.4. ESMA does not consider that these statements amount to product supervision and believes that they simply provide important information to investors about the nature of the sustainable investment. Please see paragraphs 139 – 142 below for the discussion in relation to these statements.

Quantification and analysis of funding and exposure components

134. Respondents and the SMSG have suggested that the disclosure requirements include a clear quantification and analysis of the funding and exposure components of non-equity securities with an ESG component or objectives and a material underlying. ESMA acknowledges the importance of such disclosure but notes that it is difficult to create specific disclosure requirements for all non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives linked to a material underlying. Furthermore, ESMA would expect this type of disclosure under Item 1.1 of the Annex in the clear and comprehensive explanation to help investors understand the ESG factors taken into account by the securities and/or ESG objectives pursued by the securities.

Item 5.1 from the CP

135. Item 5.1 has been amended to clarify that the disclosure requirements in this section of Annex 21 apply to non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives linked to an underlying where that underlying is material for the assessment of those ESG factors or ESG objectives. This change is intended to address respondents' comments that some non-equity securities with an ESG component or objective have an underlying that is not material from an ESG perspective. In such cases, ESMA agrees that the disclosure items in this section of Annex 21 should not trigger.

Item 5.1.1 from the CP

136. Item 5.1.1[41] has been slightly amended to require disclosure concerning the ESG factors taken into account or ESG features pursued by the underlying. This change better reflects the norm established in Article 13(1)(g) PR and helps to ensure the consistency with Level 1.

[41] Item 4.1.1 in this Final report.

137. ESMA would like to take this opportunity to note that advertisements referencing the qualities of an underlying are a strong indication of its materiality. For example, an underlying could be material if it is advertised as being consistent with the ESG objectives of the securities. In such cases, investors attach importance to this aspect of the underlying, and it may influence their decision to purchase the securities.

Item 4.1.1	A description of the underlying and of the ESG features taken into account or the ESG objectives pursued by the underlying. An explanation of how the use of an underlying is compatible with the sustainability characteristics that the non-equity securities promote or with the objective of the sustainable investment.	Category C

Item 5.3.2 from the CP

138. No changes were considered necessary in relation to this item, especially considering that respondents did not make any comments on this disclosure requirement.

Item 4.1.2	Where the underlying of the securities offered to the public or admitted to trading on a regulated market is an EU Paris-aligned Benchmark or EU Climate Transition Benchmark in accordance with Regulation (EU) 2016/2011 of the European Parliament and of the Council, or a benchmark complying with an ESG-related label, state that fact, identify the benchmark administrator and, where applicable, identify the ESG-related label.	Category C

Item 5.3.3 from the CP

139. Although a couple of respondents have either suggested deleting this disclosure requirement or that the disclosure requirements are already covered by Item 5.1.1, ESMA has decided to keep this item in its technical advice. ESMA has intentionally included this item to prevent issuers from publishing any advertisement concerning the sustainability features of non-equity securities linked to an underlying whose qualities are not material for the assessment of the ESG factors taken into account by the securities and/or the ESG objectives pursued by the securities. In this sense,

the statement should help to simplify supervision by NCAs and to prevent greenwashing. If an issuer cannot provide this statement, the securities should not be offered based on these ESG factors or objectives.

140. However, two changes have been made to this item. The first change is that the item no longer refers to a 'statement' but instead refers to a 'confirmation'. The second change is that the item now refers to the ESG factors taken into account by the securities and/or the ESG objectives pursued by the securities, which is more consistent with the wording in Article 13(1)(g) PR.

Item 4.1.3	A confirmation that the sustainability features are material for the assessment of the ESG factors taken into account by the securities and/or the ESG objectives pursued by the securities.	Category B

Item 5.3.4 from the CP

141. ESMA has made three changes to Item 5.3.4 based on respondents' and the SMSG's input. Firstly, the item no longer refers to a 'warning', which ESMA understands that some respondents found too negative. Instead, the item simply refers to a 'statement'. Secondly, the statement is no longer required for use of proceeds bonds since these securities will represent an investment in economic activities and this acknowledges that some use of proceeds bonds may include an underlying. Finally, ESMA has amended the reference to 'structured products', which is not a defined term. Instead, the item simply refers to the 'non-equity securities'.

142. One respondent suggested deleting Item 5.1.4 because they considered that the disclosure would not be meaningful to investors. However, ESMA notes that another respondent argued that this is important information for investors, who need to understand the nature of their sustainable investment. ESMA strongly agrees that it is important that investors understand that securities do not involve a direct investment in a sustainable project or economic activities and has therefore maintained this disclosure requirement. ESMA also notes that it does not consider this disclosure to be any form of product supervision since it only concerns disclosure about the nature of the investment.

Item 4.1.4	If the non-equity securities do not qualify as use of proceeds bonds, a statement that the securities do not represent a direct investment in a sustainable project or economic	Category A

	activities, including projects or economic activities in transition finance.	

Interaction with the European Green Bond Regulation

Questions 10, 11 and 18 from the CP

European Green Bonds

143. Questions 10 and 11 from the CP concern ESMA's proposals for dealing with prospectuses relating to EuGBs and prospectuses from issuers that have opted to use the templates for voluntary pre-issuance disclosures, and the possibility to disapply Annex 21 in relation to these prospectuses. Most respondents, including the SMSG, who responded to these questions were in favour of disapplying Annex 21 to reduce complexity and costs[42].

144. Based on this feedback, ESMA further analysed the disclosure requirements for use of proceeds bonds in Annex 21 and the disclosure requirements for EuGB factsheets in Annex 1 of the EuGB Regulation. The outcome of this analysis is that the disclosure in EuGB factsheets should satisfy the disclosure requirements in Annex 21, but that the ESG-related risk factors relating to the EuGBs would need to be disclosed in the risk factors section of the prospectus.

145. Taking this into account as well as the fact that the issuer will have to incorporate by reference the relevant information from the EuGB factsheet into the prospectus in accordance with Article 13(1a)(a) Prospectus Regulation [43], ESMA has determined that it would be appropriate to exempt issuers from having to apply the disclosure requirements in Annex 21 if:

a. all information from the EuGB factsheet is incorporated by reference into the prospectus (Item 5.1.2); and

b. if the EuGB factsheet cannot be incorporated by reference at the time the prospectus is approved, the prospectus contains a statement that the EuGB factsheet will be incorporated by reference via the final terms (Item 5.1.2).

146. Item 5.1.1 also clarifies that all disclosure in the Annex will be considered "Category C" information for the purposes of Article 24 CDR on scrutiny and disclosure, apart

[42] See the paragraph [ ] of this report.
[43] As introduced by Article 1(10) of the Amending Regulation.

from the statements required by Item 5.1.3. This removes any impediments presented by Article 24 to the incorporation by reference of the factsheet.

147. ESMA had also considered disapplying Annex 21 in its entirety to prospectuses relating to EuGBs. However, ESMA considers it cleanest to continue to have these prospectuses relating to these instruments under Annex 21, even if these prospectuses are exempted from most of the disclosure requirements. The logic behind this approach is that the Annex 21 should apply to all non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives, which includes EuGBs. Furthermore, ESMA regards the statement that the EuGB factsheet will be incorporated by reference via the final terms to be a prerequisite for the use of base prospectuses for the issuance of EuGBs via base prospectuses.

148. Regardless of the approach taken in relation to exempting prospectuses relating to EuGBs from the disclosure requirements in Annex 21, it is important to emphasise that the 'necessary information test' in Article 6(1) PR[44] should apply to such prospectuses and that NCAs will also need to be able to ascertain if the prospectus meets the standards of completeness, comprehensibility and consistency necessary for approval[45].

149. Ultimately, ESMA is confident that this approach is balanced and significantly reduces the burden on issuers of EuGBs by eliminating the repetition of the disclosure in EuGB factsheets.

5.1.1	If the securities qualify as European Green Bonds, the issuer shall be considered to comply with the disclosure requirements in this Annex with the exception of Item 5.1.2 if all information from the European Green Bond factsheet is incorporated by reference including via the final terms. If all information from a European Green Bond factsheet is incorporated by reference into the prospectus, including via the final terms, all disclosure in this Annex shall be considered “Category C”, apart from Item 5.1.2.	Category A
5.1.2	In case of a base prospectus, if all information from the European Green Bond factsheet cannot be incorporated by reference, a	Category A

[44] As well as the equivalent articles in the PR, i.e. [ ].
[45] As referred to in Article 20(4) PR and in the definition of ‘approval’ in Article 2(r) PR.

	statement that the issuer will incorporate by reference all information from the factsheet into the relevant final terms.	

Voluntary pre-issuance disclosures

Question 11 from the CP

150. The respondents to the CP also support disapplying the disclosure requirements in Annex 21 to prospectuses from issuers who have opted to use the templates for voluntary pre-issuance disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds[46]. However, respondents focussed less on the voluntary pre-issuance disclosures and three respondents to question 10 in the CP commented that the request for input on voluntary pre-issuance disclosures is premature since they have not yet been published.

151. After considering respondents' input, ESMA has considered several factors relating to the voluntary pre-issuance disclosures, including:

a. Article 13(1a)(b) of Regulation (EU) 2017/1129[47] states that prospectuses relating to bonds marketed as environmentally sustainable or a sustainability-linked, as referred to in Article 1(c) EuGB Regulation, shall include the relevant optional disclosures set out therein, provided that the issuer has opted in to use those optional disclosures;

b. while templates are voluntary, issuers must comply with the templates once they opt to use them;

c. unlike the post issuance templates referred to in Article 21 EuGB Regulation, there is no supervision of the pre-issuance disclosures in Article 20 EuGB Regulation;

d. the external review of the templates is optional[48];

e. the disclosure in the templates will be linked with the EU Taxonomy based on Article 20(3) and (4) EuGB Regulation; and

f. with the exception of the additional disclosures set out in Article 20(3) and (4) EuGB Regulation, there are no difference between bonds marketed as environmentally

[46] Both as defined in Article 2 (5) and (6) EuGB Regulation.
[47] As introduced by Article 1(10) of the Amending Regulation.
[48] Article 20(2) EuGB Regulation.

sustainable and sustainability-linked bonds issued using the voluntary templates and those issued without the voluntary templates.

152. Additionally, based on discussions with the Commission, ESMA understands that the disclosure in the optional pre-issuance templates for bonds marketed as environmentally sustainable will be similar to the disclosure requirements for EuGB factsheets in Annex I of the EuGB Regulation.

153. Based on the considerations set out in the previous paragraphs, it is difficult to draw a firm conclusion about whether Annex 21 should be disapplied if an issuer opts to use the voluntary disclosure templates. However, ESMA notes that bonds marketed as environmentally sustainable and sustainability-linked bonds are not regulated products like EuGBs. Additionally, it appears that there will be no supervision of the pre-issuance disclosure until mid-2026 if it is not incorporated by reference into a prospectus.

154. In this case, ESMA is lacking information about the content of the Guidelines relating to the voluntary pre-issuance disclosures to provide straight-forward advice to the Commission on the application of Annex 21. This information is critical considering the differences in the supervision of EuGBs versus the bonds marketed as environmentally sustainable and sustainability-bonds set out in prospectuses drawn up using the optional pre-issuance disclosures. Therefore, it would not be prudent to advise the Commission that the disclosure requirements in Annex 21 would not apply to prospectuses drawn up by issuers that have opted to use the voluntary pre-issuance disclosure referred to in Article 20 EuGB Regulation.

155. ESMA may reassess this position once it has reviewed the guidelines on the voluntary pre-issuance disclosures and the Commission may want to make its own assessment taking into account the technical advice in this report. In any event, ESMA still plans to publish an RTS in accordance with Article 19(4) PR to add the optional pre-issuance disclosure to the list of documents that can be incorporated by reference into prospectuses in accordance with Article 19(1) PR. This will allow issuers to use the information from the template to at least leverage these pre-issuance disclosures when drawing up their prospectus. If the Commission makes the determination that it would be appropriate to provide some alleviation from the disclosure requirements in Annex 21 for issuers that use the optional pre-issuance disclosures, ESMA recommends that this is enacted via the same mechanism as EuGB factsheets. ESMA has provided draft items that can be incorporated into Annex 21 below.

156. However, if the Commission determines that issuers opting to use the voluntary pre-issuance disclosures will be considered to comply with the disclosure requirements in Annex 21, ESMA emphasises that this must be paired with appropriate safeguards. As already stated, this would necessitate that there is

adequate supervision of the optional pre-issuance disclosure. Accordingly, it would be necessary for NCAs to comment on the disclosure in the optional pre-issuance disclosure to ensure that the prospectus satisfies the 'necessary information test' in Article 6(1) PR and meets the standards of completeness, comprehensibility and consistency necessary for approval.

157. Finally, there would need to be an additional safeguard to ensure that NCAs could find the final terms filed that incorporate the optional pre-issuance disclosure by reference, should they want or need to supervise the voluntary pre-issuance disclosure.

X.1.1	A statement that the issuer intends to use or is using the optional pre-issuance disclosure set out in Article 20 EuGB Regulation.	Category A
X.1.2	If an issuer chooses to use the optional pre-issuance disclosure set out in Article 20 EuGB Regulation, the issuer shall be considered to comply with the disclosure requirements in this Annex with the exception of Items X.1.1 and X.1.3 if all information from the optional pre-issuance disclosure is incorporated by reference including via the final terms. If all information from the optional pre-issuance disclosure is incorporated by reference into the prospectus, including via the final terms, all disclosure in this Annex shall be considered “Category C”, apart from items X.1.1 and X.1.3.	Category A
X.1.3	In case of a base prospectus, if all information from the optional pre-issuance disclosure cannot be incorporated by reference, a statement that the issuer will incorporate by reference all information from the optional pre-issuance disclosure into the relevant final terms.	Category A

Additional information

Question 13

Item 6.1 from the CP

158. Respondents and the SMSG have recommended amending Item 6.1 to only require disclosure on the ESG ratings assigned to the issuer or the securities either when (i) the ratings were assigned at the request of the issuer or with the cooperation of

the issuer, or (ii) the issuer chooses to use the ratings when advertising the securities. These changes were requested to reflect the fact that many ESG ratings are not assigned with the cooperation of the issuer and ESG ratings are often not intended for public consumption. After considering these concerns, ESMA has amended this item to only require the disclosure when the issuer uses it when advertising those securities. ESMA believes that this approach best reflects the norm established in Article 13(1)(g) PR where the disclosure is triggered by the advertisements published in relation to the securities.

Item 6.1	If the issuer chooses to use ESG ratings assigned to the securities when advertising the non-equity securities, include those ratings. A brief explanation of the meaning of the ratings, if it has previously been published by the rating provider.	Category C

Item 6.2 from the CP

159. Similarly to Item 6.1, ESMA has amended Item 6.2 to only require the disclosure when an issuer uses the review, advice or assurances when advertising the securities.

Item 6.2	If, when advertising the securities, the issuer has chosen to use any review, advice or assurances provided by advisors or third parties about the ESG factors taken into account by the securities or the ESG objectives pursued by the securities, the prospectus shall contain disclosure concerning the scope of the review, advice or assurance and by whom they were provided. An electronic link to the website where investors will be able to access the reports, if any, shall be included in the prospectus, together with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus in accordance with Article 19 of Regulation (EU) 2017/1129.	Category B

Item 6.3 from the CP

160. Item 6.3 has been left unchanged from the CP due to the general support for requiring disclosure about the post-issuance information that will be provided in relation to the securities. ESMA emphasises that post-issuance disclosure is out of

scope of the PR, so it has not required its publication. However, ESMA urges issuers to provide post-issuance information in relation to their non-equity securities which take into account ESG factors or pursue ESG objectives, thereby enabling investors to better assess the impact of their investment.

161. Due to the importance of the post-issuance disclosure, ESMA has also not acted upon the SMSG's request to drop the requirement to provide an indication of what information will be reported (if any). Furthermore, ESMA notes that this item only requires an indication so that issuers will not be required to provide an exhaustive list of the post-issuance disclosure.

Item 6.3	Whether post-issuance information will be provided. This disclosure should include an indication of what information will be reported (if any) and where it can be obtained.	Category B

Item 6.4 from the CP

162. ESMA has also declined to make any changes to Item 6.4 since this item was also generally supported and ESMA considers it important that investors know what sort of review, advice or assurances will be provided in relation to any post-issuance information. ESMA believes that this information is relevant to an investor's decision to purchase the securities and therefore should be sufficiently specific. However, ESMA also notes that it does not expect issuers to name the specific advisor providing the review, advice or assurance but only to state that (for example) the assurance will be provided by, for example, a registered accountant or an ESG ratings agency.

Item 6.4	If any review, advice or assurances will be provided by advisors or third parties in relation to the post-issuance information, disclosure concerning the scope of such review, advice or assurances and what type of assurance provider is expected to be provide such assurance.	Category B

Incorporation by reference of EuGB factsheets and voluntary pre-issuance disclosures

163. Almost all respondents, including the SMSG, supported ESMA's proposals in relation to the incorporation by reference of EuGB factsheets and voluntary pre-issuance disclosures into final terms. ESMA will therefore develop an RTS in accordance with Article 19(4) PR to make this possible.

Categorisation of the information in Annex 21

Question 15 from the CP

164. The responses to the CP can be divided into two groups. The first group of six respondents agreed with ESMA's proposed 'Category A', 'Category B' and 'Category C' classification of the items in Annex 21 due to the importance of preventing greenwashing. The second group of ten respondents and the SMSG expressed concerns about ESMA's proposed categorisation of items 2.1, 2.2 and 2.3 from the CP as 'Category A' information. These respondents expressed concerns that the 'Category A' classification would not provide the necessary flexibility for issuers.

165. After considering these responses, ESMA has concluded that the classification of the items in Annex 21 should remain unchanged to ensure the robustness of the supervision of the disclosure in this annex and to prevent greenwashing. In particular, it is important that the information in Items 1.1, 1.1.1 and 1.1.2 are scrutinised by NCAs before the prospectus is approved, because NCAs are not in a position to review every final term due to the large volume of these documents. This is especially the case in view of the flexibility that has now been introduced to these disclosure requirements and particularly the removal of the requirement to provide an unequivocal statement. Furthermore, the classification provides issuers with more flexibility in relation to Items 2.1.1, 2.1.2, 2.1.3, 3.1.1, 4.1.1, 4.1.2 and 4.1.3 so that ESMA considers that its classification will provide issuers with sufficient flexibility when using their base prospectuses.

Administrative burden relating to Annex 21

Question 12 and 18

166. In Question 12 to the CP, ESMA asked if the disclosure requirements in Annex 21 were proportionate, while in Question 18, ESMA asked if the incorporation by reference of the relevant information from EuGB factsheets and the voluntary pre-issuance disclosures referred to in Article 20 EuGB Regulation would impose any significant costs or burdens on issuers.

167. While 5 out of 21 respondents' answers to Question 12 indicated that they consider the disclosure requirements in Annex 21 to be proportionate, most respondents did not indicate whether they consider the disclosure requirements proportionate or not. Respondents also did not provide sufficient indication of the costs of compliance which ESMA could use to assess the costs imposed by the disclosure requirements in Annex 21.

168. Instead, these respondents and the SMSG provided suggestions to improve Annex 21. ESMA assumes that these suggestions were made by respondents to make Annex 21 more proportionate. These topics repeat comments made in relation to other sections of Annex 21. As such, they are not addressed again in this section of the technical advice. However, ESMA would refer to the i) Annex IV, which contains the summaries of the responses to questions 8 - 18 from the CP, and ii) ESMA's reaction to respondents' comments in Section 4.1.2.

169. In particular, ESMA notes that it has further streamlined and clarified the disclosure requirements in Annex 21 to remove any additional burden from issuers. Moreover, ESMA believes that any additional burden should be limited since the disclosure requirements in Annex 21 generally represent current market practices, with some carefully calibrated additional requirements to improve disclosure.

170. In relation to Question 18 from the CP concerning the incorporation by reference of information from EuGB factsheets and voluntary pre-issuance disclosure into final terms, ESMA notes that respondents, including the SMSG, almost unanimously considered that ESMA's proposals in relation to the incorporation by reference of EuGB factsheets and voluntary pre-issuance disclosures into final terms would not impose additional costs or burdens on issuers. In fact, respondents highlighted that this approach provides flexibility in a streamlined process. Accordingly, ESMA is maintaining the proposal to allow incorporation by reference of these documents into final terms and, as already stated, will be developing an RTS under Article 19(4) PR to allow the incorporation by reference of optional pre-issuance disclosures. ESMA considers that this approach contributes to the Commission's current goal of burden reduction.

4.1.3 Draft technical advice on the content of the URD

Q19: Do you agree with ESMA’s assessment regarding changes to the URD annex?

171. There were 11 responses to Q19. The following paragraphs focus on the main points identified.

172. Eight respondents agreed with ESMA that very limited changes are necessary because the URD is already sufficiently streamlined due to changes to the “standard” equity registration document. Three also emphasised that URDs must remain flexible and thus not subject to strict format and sequence requirements like those which may apply to other prospectuses under the Amending Regulation.

173. Two respondents, who generally supported ESMA's assessment, welcomed the fact that the OFR section will no longer be required for URDs. However, they suggested going further in reducing disclosure, such as to no longer require extensive disclosure on whether members of management were previously declared bankrupt. They considered that requiring information on members of the administrative, management and/or supervisory bodies for five previous years is not necessary and that two years suffices. They also argued that items 2.1.2[49] and 6.4.1[50] (formally item 2.1.2 and 5.4 in the EU Growth registration document annex) went further than existing requirements and could be pared down.

174. Another respondent, who also generally supported ESMA's assessment, questioned if the URD format will continue to remain attractive. They noted that a current practice of some listed companies is to draft their annual reports in the form of a URD, which can then be easily adapted to form a prospectus with URD specific disclosure. However, because of lighter prospectuses under the Amending Regulation, they questioned if the resources needed to produce a URD will continue to justify their value. They asked ESMA to consider assessing if the benefits of URDs will remain compelling in the new regulatory context and if further adjustments could make URDs more appealing for issuers.

175. Finally, one respondent sought a clarification because of ESMA's choice of wording in paragraph 60 of the CP[51], which suggested URDs are only for equity transactions. They argued, based on recital 39 of the PR[52], that URDs are a multipurpose document that can be used for either equity or non-equity transactions and pointed out that URD disclosure is based on the equity standard which is higher than non-equity.

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[49] For the consultation, item 2.1.2 of Annex [1] stated: "A description of the expected financing of the issuer's activities."
[50] For the consultation, item 6.4.1 of Annex [1] stated: "To the extent not disclosed elsewhere in the registration document and where an issuer has published KPIs, financial and/or operational, or chooses to include such in the registration document, a description of the issuer's KPIs for each financial year for the period covered by the historical financial information shall be included in the registration document. KPIs must be calculated on a comparable basis. Where the KPIs have been audited by the auditors, that fact must be stated."
[51] Paragraph 60 of the CP states: "Furthermore, while it is acknowledged that the URD is described in the request for advice as a multiple-purpose document that could be extended for use in non-equity transactions, recital 39 of the PR appears to suggest the URD is solely for equity transactions. Accordingly, ESMA does not make any non-equity related proposals for URDs."
[52] Recital 39 of the PR states: "Frequent issuers should be incentivised to draw up their prospectus as separate documents, since that can reduce their cost of compliance with this Regulation and enable them to swiftly react to market windows. Thus, issuers whose securities are admitted to trading on regulated markets or MTFs should have the option, but not the obligation, to draw up and publish every financial year a universal registration document containing legal, business, financial, accounting and shareholding information and providing a description of the issuer for that financial year. On the condition that an issuer fulfils the criteria set out in this Regulation, the issuer should be deemed to be a frequent issuer as from the moment when the issuer submits the universal registration document for approval to the competent authority. Drawing up a universal registration document should enable the issuer to keep the information up-to-date and to draw up a prospectus when market conditions become favourable for an offer of securities to the public or an admission to trading on a regulated market by adding a securities note and a summary. The universal registration document should be multi-purpose insofar as its content should be the same irrespective of whether the issuer subsequently uses it for an offer of securities to the public or an admission to trading on a regulated market of equity or non-equity securities. Therefore, the disclosure standards for the universal registration document should be based on those for equity securities. The universal registration document should act as a source of reference on the issuer, supplying investors and analysts with the minimum information needed to make an informed judgement on the company's business, financial position, earnings and prospects, governance and shareholding."

Input from the SMSG

176. The SMSG generally supported ESMA's assessment in relation to URDs.

ESMA's response:

177. As most respondents agreed that no further changes are needed, no additional changes were made to the URD annex as part of ESMA's advice. Regarding strict format and sequence, it is understood that URDs themselves are not subject to strict format and sequence requirements. This is based on Article 6(2) of the PR, as amended[53].

178. The requests to reduce certain disclosures are acknowledged. However, no changes are made with respect to item 2.1.2 of Annex [1] or disclosure about management bankruptcies. These were not widely requested changes and ESMA considers it to be important for investors to understand an issuer's expectations in terms of how it will finance its activities as well as to have a good understanding of the profile of persons responsible for the management of an issuer. However, regarding item 6.4.1, ESMA has deleted it from Annex [1] of the CDR on scrutiny and disclosure because it exceeds what is required in the incumbent "standard" equity registration document. A similar deletion is made in Annex [6] of the CDR on scrutiny and disclosure – see related discussion in Q6.

179. As for whether URDs will remain an attractive option due to new short-form prospectuses, that it is difficult to assess at this stage. Future iterations of ESMA's Market Report containing statistics on the use of URDs may ultimately serve to better determine that. Finally, regarding whether URDs can be used for non-equity transactions, nothing appears to prohibit that. URDs are indeed mostly used for equity transactions, but nothing prevents their use for non-equity transactions.

4.1.4 Draft technical advice on the criteria for the scrutiny of the completeness, comprehensibility and consistency of the information contained in prospectuses

Q20: Do you agree with ESMA's proposal to delete Article 40 CDR on scrutiny and disclosure and introduce Article 21b into CDR on scrutiny and disclosure? Please explain your answer and present any alternative proposals.

[53] ESMA is referring to the following text in the Amending Regulation which is to be consolidated in the PR: "Article 6 is amended as follows: […] '2. The prospectus shall be a document of a standardised format and the information disclosed in a prospectus shall be presented in a standardised sequence, in accordance with the delegated acts referred to in Article 13(1). The information in a prospectus shall be written and presented in an easily analysable, concise and comprehensible form, taking into account the factors set out in paragraph 1, second subparagraph, of this Article. By way of derogation from the first subparagraph, from paragraphs 4 and 5 and from the requirements set out in the implementing technical standards adopted pursuant to paragraph 8 of this Article, information included in a universal registration document may be included without regard to the standardised format, the standardised sequence, the maximum length, the template and the layout including the font size and style requirements.' […]".

180. There were 16 responses to Q20. The following paragraphs focus on the main points identified.

181. Thirteen respondents agreed with ESMA's proposal to delete Article 40 CDR and introduce Article 21b CDR, recognising it as a step towards regulatory flexibility, clearer guidelines, and investor protection. However, five respondents expressed concerns about potential contradictions and the broad scope of Article 21b, which might lead to divergences in interpretation and practice among NCAs. Three respondents were also concerned that there is a risk of regulatory fragmentation due to differing interpretations and applications of Article 21b by NCAs.

182. To address these concerns, five respondents emphasised the need for a consistent approach to the application of Article 21b CDR. Specific suggestions included:

- adding a paragraph to Article 21b to explicitly state that NCAs should not require additional information except in specified circumstances (two respondents),
- implementing measures such as supervisory coordination, publication of best practices, and establishing a feedback loop for supervisory cases at the ESMA level (two respondents), and
- carefully monitoring the application of Article 21b with a requirement for NCAs to notify ESMA when they require additional information, including the rationale for doing so (three respondents).

Additionally, one respondent requested guidance on the notion of "comparable but not identical" securities.

183. Overall, while there was broad support for the proposal, respondents emphasised the importance of harmonisation, clear guidelines, and supervisory convergence to prevent regulatory fragmentation and ensure consistent application across NCAs.

Input from the SMSG

184. The SMSG supported the objective of the Amending Regulation, which is to strictly define the circumstances where NCAs can apply additional criteria when scrutinising prospectuses, including the circumstances in which an NCA requires additional information to be included in a prospectus.

185. However, the SMSG was confused by the text in the CP stating that the deletion of Article 40 PR does not affect the powers of NCAs to require additional information if that is necessary to satisfy the 'necessary information' test in Article 6(1), 14a(2) and 15a(2) PR . The SMSG considered this inconsistent with the statement in

paragraph 76 of the CP that "Without prejudice to the specific situations foreseen by the delegated acts, ESMA considers that there are no circumstances in which an NCA should require additional information in a prospectus over and above that which is required under Articles 6, 13, 14a and 15a PR within the context of the scrutiny and approval of a prospectus". However, the SMSG noted that this appears to be a contradiction that should have been resolved at Level 1.

186. The SMSG went further to say that it supports ESMA's view but also considers that ESMA should go further by addressing all points in which an NCA can ask for additional information. The SMSG suggested that ESMA revise Article 21b to include a new paragraph stating: *"Except in the circumstances described in paragraphs 1 and 2, the competent authority shall not require additional information"*.

ESMA's response:

187. ESMA welcomes respondents' and the SMSG's support for its proposal to delete Article 40 CDR on scrutiny and disclosure and to introduce Article 21b into the CDR on scrutiny and disclosure. Based on this support, ESMA is not making any changes to these proposals and carrying them over into the Final report. However, ESMA acknowledges respondents' concerns about possible convergence issues that may arise. To address these concerns, ESMA will monitor NCAs' application of Article 21b and ask NCAs to present supervisory cases in relation to their application of Article 21b to ESMA's Prospectus Working Group.

188. Regarding respondents' and the SMSG's concerns that the scope of the powers in Article 21b are too broad, ESMA emphasises that it is necessary to give NCAs relatively broad powers to allow issuers to apply information items from another registration document, securities note annex or additional information annex, because it is not possible to identify all situations where there may be an issue. The requirement for the NCA to consult with the issuer, the offeror or person asking for admission to trading on a regulated market is intended to balance these broad powers by ensuring that NCAs take their views into consideration.

Q21: Do you expect the deletion of Article 40 CDR on scrutiny and disclosure and/or the inclusion of Article 21b in CDR on scrutiny and disclosure to lead to additional administrative burden or costs for stakeholders? If so, please quantify the costs as much as possible.

189. There were 11 responses to Q21. The following paragraphs focus on the main points identified.

190. Seven respondents considered that the deletion of Article 40 CDR on scrutiny and disclosure and the inclusion of Article 21b in CDR on scrutiny and disclosure will not lead to significant additional administrative burdens or costs. They argued that these changes will formalise existing practices and provide clarity, potentially reducing compliance costs. One of these respondents acknowledged potential short-term cost increases but believed that streamlining the regulatory framework will improve efficiency in the long term.

191. However, there were concerns raised by three respondents about the inconsistent implementation across NCAs, which could increase costs for stakeholders operating in multiple jurisdictions. They suggested that clearer ESMA guidelines or efforts toward supervisory convergence could mitigate these potential inefficiencies. Additionally, while noting to be unable to comment on the potential cost differences due to a lack of information, one respondent assumed that discussions with NCAs about additional disclosure items could result in higher burdens and costs.

192. Suggestions to address possible convergence issues included:

- clearer ESMA guidelines or efforts toward supervisory convergence to reduce uncertainty and encourage cross-border capital market activity (one respondent), and

- the need for clear and well-defined criteria to avoid continuous supplementary disclosures, and iii) extensions of the scrutiny period (one respondent).

193. Overall, the majority of respondents do not expect significant additional administrative burdens or costs due to the proposed changes, but there are concerns about inconsistent implementation across NCAs.

Input from the SMSG

194. The SMSG referred to their response to Question 20, and stated that the deletion of Article 40 CDR on scrutiny and disclosure and the inclusion of the new Article 21b contribute to the clarification of the disclosure framework under the PR. The SMSG considered that it does not expect these changes to result in a significant additional of administrative burdens or costs, but that the SMSG did not know to what extent NCAs have previously used their powers under Article 40 CDR on scrutiny and disclosure.

ESMA's response:

195. Seven of the eleven respondents to this question and the SMSG stated that the introduction of Article 21b will not lead to significant additional administrative costs or burdens. In response to the concerns raised by three respondents, ESMA notes

that it will be undertaking convergence work within the purview of its prospectus working group in relation to the application of Article 21b. However, it is too early to make any decisions about whether it will be necessary to take additional steps. ESMA also notes that the scope of Article 21b is narrower than Article 40 so that this hopefully will reduce the scope for discussion with NCAs about the appropriateness of requests from NCAs to include additional disclosure in prospectuses.

Article 21b

Circumstances leading to the disclosure of additional information

1. By way of derogation from Articles 2 to 21a, where a prospectus, registration document or securities note concerns securities that share features of securities that are comparable to, but not the same as securities covered in the annexes to this delegated regulation, the competent authority shall decide, in consultation with the issuer, the offeror or the person asking for admission to trading on a regulated market, what information items from another registration document, securities note annex or additional information annex shall be included in the prospectus to comply with Article 6(1), 14a(2) or 15a(2) of the Prospectus Regulation.

2. By way of derogation from Articles 2 to 21a, where a prospectus concerns a type of securities, transaction or issuer that is not covered by the annexes to this delegated regulation, the competent authority shall decide, in consultation with the issuer, the offeror or the person asking for admission to trading on a regulated market, what information shall be included in the prospectus to comply with Article 6(1), 14a(2) or 15a(2) of the Prospectus Regulation.

Q22: Do you agree with ESMA's assessment that there are no circumstances in which an NCA should require additional information in a prospectus over and above that which is required under Articles 6, 13, 14a and 15a PR within the context of the scrutiny and approval of a prospectus? Please explain your answer.

196. There were 20 responses to Q22. The following paragraphs focus on the main points identified.

197. Eighteen respondents and the SMSG agreed with ESMA's assessment that NCAs should not require additional information beyond what is stipulated in Articles 6, 13, 14a, and 15a of the PR. These respondents emphasised i) the importance of a predictable and stable regulatory environment for issuers, ii) the necessity of a

harmonised approach across jurisdictions to ensure fair and equal treatment, and iii) the reduction of unnecessary burdens on issuers to enhance the efficiency and clarity of the prospectus.

198. However, four respondents, including two who broadly agree with ESMA, expressed concerns and had the following suggestions:

- One respondent highlighted the need for flexibility in cases involving new or unconventional financial products, suggesting that NCAs should retain the ability to request additional disclosures under certain conditions to protect investors.

- Similarly, another respondent stressed the importance of flexibility to include other necessary information to provide a complete picture to investors.

- Additionally, one respondent sought clarity on the interaction with the general provision of Article 32 of the Prospectus Regulation, which allows NCAs to ask for supplementary information.

- Finally, one stakeholder pointed out the common practice of NCAs requiring additional information and recommends that ESMA propose a predetermined list of documents and information that NCAs may request to ensure standardisation and harmonisation.

199. Overall, while the majority of respondents agreed with ESMA's assessment, there are calls for maintaining some flexibility to address specific situations and ensuring a harmonised approach across jurisdictions.

Input from the SMSG

200. The SMSG agreed with ESMA's assessment and underlines the importance of avoiding gold-plating, while noting that the streamlining of the disclosure requirements should result in a reduction of related costs.

ESMA's response:

201. ESMA appreciates that 18 of the 20 respondents and the SMSG agreed with ESMA's assessment that NCAs should not require additional information beyond what is stipulated in Articles 6, 13, 14a and 15a PR. However, ESMA also notes that two respondents suggested that NCAs need flexibility to provide a complete picture to investors. In that regard, ESMA notes that it does not consider this to be an issue considering that such information should be material under the 'necessary information test' in Articles 6, 13, 14a and 15a PR.

202. In response to the respondent requesting clarity on the interaction between Article 32 PR, which allows NCAs to ask for supplementary information, ESMA notes that

the powers in Article 32 are necessarily broad for the purposes of investor protection. However, ESMA notes that the use of the powers should support the goals of the Prospectus Regulation, including ensuring that prospectuses satisfy the 'necessary information test'. As such, ESMA would not expect such requests for supplementary information to go beyond what is stipulated in Articles 6, 13, 14a and 15a PR. Of course, there could be exceptional circumstances. For example, where an NCA is concerned about fraud or has received signals that key information in the prospectus is misleading.

203. In relation to the suggestion from a respondent to develop a list of predetermined information and documents that NCAs can request to ensure standardisation and harmonisation, ESMA notes that such an approach would likely be too restrictive for supervision. There is a risk that NCAs will be confronted with novel situations, which may not be caught under the list of predetermined information and documents. Additionally, there may be legal discussions about whether the information or document type actually is included in the list, which would only complicate the review process.

4.1.5 Draft technical advice on the procedures for the approval of prospectuses

Q23: Do you agree with ESMA's approach to further harmonising the deadlines in NCAs' approval processes, i.e. trying to keep the deadlines as simple as possible and avoiding complicated administrative procedures? In your answer, please indicate what changes could be made to improve ESMA's advice in this area.

204. There were 21 responses to Q23. The following paragraphs focus on the main points identified.

205. Twelve respondents agreed with ESMA's approach to harmonising the deadlines in NCAs' approval processes, supporting the goal of making them more consistent and predictable across EU Member States.

206. However, there were concerns about the proposed deadlines. Fourteen respondents considered that the 120 working days deadline is too long and may not align with market realities, potentially increasing costs and complicating market access. Specific concerns included the impracticality of the "pens-down" period (two respondents), the potential for disproportionate costs due to filing fees if deadlines are not met (one respondent), and the risk of market disruptions (four respondents).

207. To address these concerns, several suggestions were made. Six respondents proposed reducing the overall deadline, with three suggesting a 60 working days

deadline with possible extensions of 15-30 working days or a maximum of 90 working days (one respondent). Two other respondents recommended allowing issuers to submit updates or supplementary information during the pens-down period under clearly defined conditions. Additionally, one respondent called for greater NCA consistency in review times and two respondents call for the adoption of digital systems to streamline the process (two respondents).

208. In conclusion, while there was support for harmonising and simplifying the approval process deadlines, the main concerns revolved around the length and flexibility of the proposed deadlines. Respondents advocated for shorter, more practical deadlines to better align with market practices, reduce costs, and ensure timely approvals.

Input from the SMSG

209. The SMSG considered the deadlines proposed by ESMA to be too long and that they may harm the predictability of the scrutiny and approval process. The SMSG noted that, while deadlines may seem like an administrative issue, they can have practical consequences such as the loss of a market window.

210. Furthermore, the SMSG noted that many NCAs already have efficient approval mechanisms in place, which results in a smooth process where issuers are not subject to lengthy deadlines. Taking this into account, the SMSG believed that ESMA should work together with NCAs to streamline approval processes across the Union.

211. Finally, the SMSG recommended that the deadlines should be set at 90 working days, with the possibility to extend the deadline by 10 working days.

ESMA's response:

212. ESMA has taken note of respondents' general support for its approach to Article 36 CDR scrutiny and disclosure and, in particular, for ESMA's reluctance to create new administrative procedures. However, respondents indicated that there are two areas for improvement. The first is to reduce the maximum deadline. Several respondents suggested 60 working days with possibility to extend by another 15 - 30 working days, while the SMSG suggested 90 working days with a possible extension of 10 working days. The second is that the "pens-down" period may be too inflexible for issuers needing to access market windows.

The deadlines concerning the maximum of the process of scrutiny and approval

213. In response to respondents' and the SMSG's request for shorter review periods, ESMA proposes to keep the initial deadline of 120 working days and but to limit the extension to 30 working days. ESMA does not believe that it would be wise to

reduce the deadlines any further, because there is a danger that relatively inexperienced issuers may have trouble getting their prospectuses approved within the relevant deadlines. This was also the original reason that ESMA initially proposed a maximum deadline of 210 working days after extension.

214. Further, in relation to respondents mentioning that relatively long maximum deadlines could potentially increase costs and complicate market access because NCAs would make use of the entire review period, ESMA emphasises that these maximum review periods are emphatically not meant to be the target length of the review period. Moreover, ESMA expects that most prospectuses will be approved within shorter timeframes. As already indicated, the purpose of the relatively long period is to accommodate relatively inexperienced issuers and advisors who sometimes need more time to draft a prospectus that satisfies the legal requirements of the Prospectus Regulation due to their unfamiliarity with not only the legal requirements but also with dealing with supervisory authorities. This long period may also be helpful for issuers of non-equity securities to aim for the appropriate market window.

215. ESMA expects NCAs to continue to accommodate issuers' ability to access market windows and to strive for an efficient scrutiny and approval process. These expectations are based on the outcome of the 2022 Prospectus peer review[54], where several NCAs agree to timelines in advance with issuers, NCAs often have policies requiring them to respond to issuers with comments faster than the legal deadlines in the Prospectus Regulation and many NCAs regularly provide their comments faster than within the legal deadlines.

216. In order to make this obligation more concrete, ESMA recommends including a recital in the CDR on scrutiny and approval, which states:

"*The maximum deadline for the approval of prospectuses included in Article 36 has been introduced to increase the efficiency of the scrutiny and approval process. It is expected to prevent situations in which competent authorities are confronted with long processes without any clear path to approval. However, it should be emphasised that these deadlines represent the maximum period for the scrutiny and approval process and are not intended to represent the target dates for approval. In that regard, competent authorities should be available for discussions with issuers concerning their envisaged timelines for approval and, where possible, take their preferences into account.*

[54] See Section 6.3.5 of the Peer review of the scrutiny and approval procedures of prospectuses by competent authorities, ESMA42-111-7170, 21 July 2022.

The length of the maximum deadline is being set at 120 days with a possible extension of 30 days in order to ensure the flexibility of the scrutiny and approval process by allowing issuers to delay the approval of their prospectus to access market windows.

Finally, the maximum deadlines ensure convergent approaches and prevent competent authorities and Member States from adopting deadlines that are too short and could adversely affect issuers' ability to access market windows."

The 'pens down' period

217. To address respondents' concerns about the inflexibility of the "pens down" period, ESMA has amended its technical advice to allow issuers to make changes to the prospectus in agreement with the competent authority in question. When applying this provision, ESMA expects NCAs to accommodate reasonable requests from issuers to make minor changes to the prospectus, such as completing information about the price and volume of the securities or amending the date of the prospectus. NCAs may accept other changes based on the circumstances at the time the request is made. An NCA will not be likely to deal with revisions to the historical financial information included in a prospectus during this short period but is likely to be able to accommodate the finalisation of the audit report if it is a clean report and the NCA has already seen a draft. In that case, the changes will be of a confirmatory nature.

218. ESMA notes that NCAs are more likely to be able to accommodate reasonable requests to make changes during the "pens down" period if they are announced beforehand. For example, the issuer may want to agree to a planning with the NCA and indicate any information that may not be final at that time.

219. ESMA has chosen not to include an exhaustive list of situations in its technical advice, because it would be impossible to identify all situations in which it would be appropriate to make an exception. This approach also reflects the fact that the extent to which NCAs may be able to accommodate issuers may depend on the circumstances.

220. Finally, ESMA will informally monitor NCAs approaches to the "pens down" period to ensure that it works as intended, which is to avoid NCAs being put under pressure to approve prospectuses subject to significant revisions with limited time before the deadline for approval. Should ESMA become aware of material differences in NCAs' application of the "pens down" period, will consider issuing guidance to both the market and NCAs.

Article 36

Deadlines for issuers

1. After a competent authority informs an issuer, offeror or person asking for admission to trading on a regulated market that a draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval or where changes or supplementary information are needed, if the competent authority imposes a deadline for the submission of an updated draft prospectus, it shall provide at least 10 working days for such submission. After the deadline has passed, the competent authority may refuse approval of the prospectus. Competent authorities are not required to set any deadlines for the submission of an updated draft prospectus.

2. Any deadlines relating to the scrutiny and approval of prospectuses included in national law by Member States or included in competent authorities' procedures shall not conflict with the first paragraph.

3. A decision to approve or refuse approval of the prospectus must be taken within 120 working days of the receipt of the initial application for approval of a draft prospectus. If the scrutiny of a prospectus exceeds this time period, competent authorities shall cease reviewing the prospectus and refuse approval of the prospectus.

4. The deadline set out in the third paragraph can be extended once upon the written notification by the issuer for a period of 390 working days.

5. Unless agreed with the competent authority, aAn issuer, offeror or person asking for admission to trading on a regulated market shall not submit any changes or supplementary information to the draft prospectus preceding the last ten working days of the deadlines mentioned in paragraphs 3 and 4.

6. Where a prospectus consists of separate documents, the period referred to in paragraph 3 shall begin upon receipt of the initial application for approval of the draft securities note.

7. This article shall not apply to a universal registration document that is drawn up in accordance with Article 9 of Regulation (EU) 2017/1129.

Q24: Do you believe ESMA's proposal will impose additional costs and/or burdens for issuers? Please explain your answer and provide an indication of the related costs.

221. There were 16 responses to Q24. The following paragraphs focus on the main points identified.

222. Six respondents did not expect significant additional costs or burdens from ESMA's, with some noting that it could even reduce time and related costs by streamlining the process, while six other respondents thought that the proposal could increase costs. Two respondents provided more general comments on the process of scrutiny and approval. One of whom stated that more could be done to harmonise NCA procedures and scrutiny practices. Another respondent remarked that its members do not have any issues with deadlines and therefore declined to make a substantive comment.

223. Several respondents expressed specific concerns:

- One respondent was worried about potential higher burdens if NCAs use the full 120-working day deadline, although they expect this to be rare.
- One respondent believed the proposal could impose additional burdens in different Member States because the deadlines are too long.
- Another respondent suggested allowing NCAs discretion to extend the maximum timeframe beyond 210 working days to avoid disproportionate costs due to filing fees.
- One respondent is concerned about increased costs and burdens depending on additional information requests from NCAs.
- Another respondent believed long deadlines may prolong processes and impose additional costs, risking issuers missing their market window.

Overall, while a significant number of respondents agreed with ESMA's proposal, there are common concerns about the length of deadlines.

Input from the SMSG

224. The SMSG referred to its response to Question 23 and notes that any measure or guidelines towards NCAs that may help reduce undue delays or unpredictability in the scrutiny and approval of prospectuses and related information is welcome.

225. The SMSG also noted that longer processes are more costly and that measures taken to shorten application periods will likely have a positive impact on costs and burdens for issuers.

ESMA's response

226. While six of the sixteen respondents stated that they did not expect any significant additional costs or burdens, with some even noting that ESMA's proposal could help to reduce time and related costs by streamlining the process, another six respondents and the SMSG believed that it could increase costs due NCAs making use of the relatively long maximum review periods.

227. ESMA has considered respondents concerns and does not believe that the long maximum review period will be an additional burden in practice since NCAs should not intentionally be making use of the entire period. Moreover, this is a maximum review period and is intended to accommodate relatively inexperienced issuers who may need longer to submit a prospectus that can be approved. ESMA also notes that it has suggested recitals to the Commission concerning this deadline to help clarify best practices in relation to review timelines.

228. Furthermore, ESMA considers that the approach of implementing a maximum total review period is the most cost effective and proportional manner of responding to the mandate introduced in Article 20(11) PR concerning "the maximum overall timeframe within which the scrutiny of the prospectus is to be finalised and a decision reached by the competent authority on whether that prospectus is approved or the approval is refused and the review process terminated, and the conditions for possible derogations from that timeframe". Other solutions explored by ESMA would end up creating new administrative procedures, which could require mechanisms to appeal NCA decisions. ESMA emphasises that such procedures should be avoided to maintain a streamlined process of scrutiny and approval.

4.1.6 Update of the CDR on metadata

Q.25 Do you agree with ESMA's proposal to amend CDR on metadata to account for the new types of prospectuses stemming from the Amending Regulation? Please explain your answer and present any alternative proposals.

229. There were 5 responses to this question. All respondents agreed with ESMA's proposal.

Input from the SMSG

230. The SMSG was in favour of increasing the use of metadata and supported the role of ESAP as a central access point for information. The SMSG encouraged ESMA and the Commission to keep in mind proportionality and subsidiarity when considering developments in this area.

ESMA's response:

231. The proposal put forward in the Consultation will be retained.

Q.26 Do you agree that ESMA requires metadata to identify which securities qualify as EuGB (field 39 of draft Annex to CDR on metadata)? If not, why not? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

232. There were 3 responses to this question. All respondents agreed with ESMA's proposal.

Input from the SMSG

233. The SMSG agreed with ESMA's proposal, whilst highlighting the need for proportionality and subsidiarity.

ESMA's response:

234. The proposal put forward in the Consultation will be retained.

Q.27 Do you agree with ESMA's proposal to streamline the process of submitting information that will need to be submitted by NCAs to ESAP via the Prospectus Register (Article 11a of the draft RTS amending CDR on metadata)? Please explain why.

235. There were 4 responses to this question. All respondents agreed with ESMA's proposal.

Input from the SMSG

236. The SMSG agreed with ESMA's proposal.

ESMA's response:

237. The proposal put forward in the Consultation will be retained.

Q.28 With regards to field 5, is it always possible to determine a single venue 'of first admission' in case of simultaneous admission on two or more venues? Please explain why.

238. There were 3 responses to this question. Of these, one respondent had no substantive comments, one considered it possible for the issuer to determine the venue "of first admission" in case of simultaneous admission on two or more venues, one deemed it inappropriate to ask issuers to report this data at the time of seeking approval of a prospectus since it is not certain that admission to trading may be obtained at that time

Input from the SMSG

239. The SMSG believed that it should be possible for issuers to determine the venue of first admission to trading in case of simultaneous admission on two or more venues, but noted that the definition of "most relevant market in terms of liquidity" should be clarified and that, at the time when admission to trading is sought, it may not be certain that such admission will be obtained. It should thus not be a requirement to provide this information when seeking approval of a prospectus. The SMSG suggested that the issuer may report this information at a later stage, or it could be reported by the trading venue.

ESMA's response:

240. In light of the mixed feedback and the limited number of evidence confirming that this field could be reported with limited effort by issuers at the time of approval of the prospectus, the proposal to require this field when submitting a prospectus was dismissed.

Q.29 Do you agree with the other changes proposed on the list of metadata which are proposed in Table 1 of Annex I of the draft CDR on metadata? Do you think these changes will create an unreasonable additional burden on issuers? Please explain why.

241. There were 3 responses to this question. Two agreed with ESMA's proposal, whilst one did not have comments on this specific proposal.

Input from the SMSG

242. The SMSG did not have a position on this question.

ESMA's response:

243. The proposal put forward in the Consultation will be retained.

5 Annexes

5.1 Annex I (Summary of questions)

Q1: **What are your views in relation to format and sequencing? Do you agree with ESMA's approach to limit changes to the 'standard' equity and non-equity annexes? And do you have any concerns relating to a potential tension between Annexes II and III in the Amending Regulation and Articles 24 and 25[55] CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.**

Q2: **Do you have specific comments about the reduced time periods which financial information should cover which need to be considered as part of this work?**

Q3: **Do you agree with ESMA's sustainability-related assessment in relation to the 'standard' equity registration document? If not, please explain why?**

Q4: **With respect to sustainability aspects, do respondents have concerns about the proposal which offers non-equity issuers who fall under the Accounting Directive or Transparency Directive an option to provide an electronic link to their relevant sustainability information?**

Q5: **What are you views in relation potential implications of the proposed single non-equity disclosure framework?**

Q6: **Do you have any other concerns about the disclosure items as proposed? If so, please explain.**

Q7: **In your view, will these proposals add or reduce costs? Please explain your answer.**

Q8: **Do you agree with ESMA's approach to the disclosure requirements for non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives? Please explain your answer and provide any suggestions for amendments.**

Q9: **Do you agree with the definitions proposed for 'use of proceeds bonds' and 'sustainability-linked non-equity securities'? If not, what changes to the definition would you suggest?**

[55] Articles 22 and 23 in the CP Annex (clean) and CP Annex.

Q10: Do you agree with ESMA's approach to dealing with (i) prospectuses relating to EuGBs and ii) prospectuses from issuers who have opted to use the templates for voluntary pre-issuance disclosures, as referred to in European Green Bond Regulation? Please explain your answer and provide any additional proposals to alleviate the regulatory burden.

Q11: Should Annex 21 be disapplied in relation to prospectuses relating to European Green Bonds and/or prospectuses drawn up using the templates for voluntary pre-issuance disclosures? Please explain your answer.

Q12: Are the proposed disclosure requirements in Annex 21 proportionate? If not, please (i) identify disclosure requirements that could be alleviated and (ii) provide a (quantitative) description of the costs of compliance.

Q13: Do you agree with the proposal to require disclosure about whether post-issuance shall be provided and the scope of this disclosure in items 6.3 and 6.4 of Annex 21? If not, what changes would you propose? Please explain your answer.

Q14: Do you agree with ESMA's proposal in item 2.1 of Annex 21 concerning unequivocal statements about how the criteria or standard are met and that they are significant in relation to the ESG features or objectives of the security?

Q15: Do you agree with the 'Category A', 'Category B' and 'Category C'[56] classification of the items included in Annex 21, in particular in relation to items 2.1, 2.2 and 2.3? Please provide any suggestions for alternative categorisations and explain your answer.

Q16: Do you agree with ESMA's approach to disclosure for structured products with a sustainability component? Please explain your answer and include any suggestions to improve the approach.

Q17: Do you support ESMA's proposal to amend Article 26 CDR on scrutiny and disclosure to facilitate the incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms? Please explain your answer and provide any alternative proposals.

Q18: Do you think that allowing incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures

[56] Category A', 'Category B' and 'Category C' information are referred to in the current Article 26 CDR on scrutiny and disclosure.

into base prospectuses via final terms will impose any significant costs or burden on issuers? Please explain your answer.

Q19: Do you agree with ESMA's assessment regarding changes to the URD annex?

Q20: Do you agree with ESMA's proposal to delete Article 40 CDR on scrutiny and disclosure and introduce Article 21b into CDR on scrutiny and disclosure? Please explain your answer and present any alternative proposals.

Q21: Do you expect the deletion of Article 40 CDR on scrutiny and disclosure and/or the inclusion of Article 21b in CDR on scrutiny and disclosure to lead to additional administrative burden or costs for stakeholders? If so, please quantify the costs as much as possible.

Q22: Do you agree with ESMA's assessment that there are no circumstances in which an NCA should require additional information in a prospectus over and above that which is required under Articles 6, 13, 14a and 15a PR within the context of the scrutiny and approval of a prospectus? Please explain your answer.

Q23: Do you agree with ESMA's approach to further harmonising the deadlines in NCAs' approval processes, i.e. trying to keep the deadlines as simple as possible and avoiding complicated administrative procedures? In your answer, please indicate what changes could be made to improve ESMA's advice in this area.

Q24: Do you believe ESMA's proposal will impose additional costs and/or burdens for issuers? Please explain your answer and provide an indication of the related costs.

Q25: Do you agree with ESMA's proposal to amend CDR on metadata to account for the new types of prospectuses stemming from the Amending Regulation? Please explain your answer and present any alternative proposals.

Q26: Do you agree that ESMA requires metadata to identify which securities qualify as EuGB (field 39 of draft Annex to CDR on metadata)? If not, why not? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

Q27: Do you agree with ESMA's proposal to streamline the process of submitting information that will need to be submitted by NCAs to ESAP via the Prospectus Register (Article 11a of the draft RTS amending CDR on metadata)? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

Q28: **With regards to field 5, is it always possible to determine a single venue 'of first admission' in case of simultaneous admission on two or more venues? Please explain why.**

Q29: **Do you agree with the other changes proposed on the list of metadata which are proposed in Table 1 of Annex I of the draft CDR on metadata? Do you think these changes will create an unreasonable additional burden on issuers? Please explain why.**

5.2 Annex II (Mandate)

Annex II only refers to the Prospectus Regulation components of the mandate. Namely, items 3.1 – 3.6 of the mandate.

5.2.1 Content and format of the full prospectus

The reform of the PR amends the rules on the full prospectus for an offer of securities to the public or an admission to trading on a regulated market, to make the prospectus cheaper and less burdensome for issuers and more suitable for investors to take an informed investment decision.

The amendments set out in Articles 6 and 13, as well as in Annexes I to III of PR are twofold: (i) they aim to streamline the full prospectus by aligning its content to the lighter EU Growth prospectus; (ii) they aim to make prospectuses more comparable for investors across the EU by introducing a standardised format and sequence (together with a page limit of 300 pages for share prospectuses). The above-mentioned points are further clarified in recitals 17[57], 24[58], and 25[59] of the Amending Regulation.

Furthermore, in order to prevent greenwashing and provide investors with the necessary material environmental, social and governance (ESG) information, where relevant, the amendments to Article 13 requires the Commission to consider, in the development of a delegated act:

- whether the issuer of equity securities is required to provide sustainability reporting, together with the related assurance opinion in accordance with the Accounting Directive – as amended by the Corporate Sustainability Reporting Directive (CSRD) – and the Transparency Directive; and

- whether non-equity securities offered to the public or admitted to trading on a regulated market are advertised as taking into account ESG factors or pursuing ESG objectives.

[57] Recital (17) highlights that the standardised format and the standardised sequence of the information to be disclosed in a prospectus should be set out irrespective of whether a prospectus, or a base prospectus, is drawn up as a single document or is composed of separate documents (with a carve-out for the information included in a universal registration document, which is exempted from that requirement). Such standardised sequence of the prospectus is set out in the revised Annexes I, II and III to PR, which are the basis for the Commission to amend any delegated acts.

[58] Recital (24) explains that, to facilitate IPOs of private companies on EU public markets and, in general, to reduce unnecessary costs and burdens for companies that offer securities to the public or seek admission to trading on a regulated market, the prospectus for both equity and non-equity securities should be significantly streamlined, while maintaining high level of investor protection.

[59] Recital (25) clarifies that while being too prescriptive for SMEs, the level of disclosure in the EU Growth Prospectus would be fit for purpose for companies seeking admission to trading on a regulated market. In that regard, the revised Annexes I, II and III to PR were aligned to the level of disclosure of the EU Growth prospectus, by taking as reference the related Annexes laid down in CDR on scrutiny and disclosure.

The above-mentioned point is further clarified in recital 26[60] of the Amending Regulation.

In light of the above, the Commission invites ESMA to provide technical advice, by proposing the necessary amendments to CDR on scrutiny and disclosure, in order to determine the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents.

ESMA should take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Articles 6, 13(1) and Annexes I, II and III, all relevant recitals of the Amending Regulation and all relevant provisions and Annexes of CDR on scrutiny and disclosure. In particular, ESMA should:

- streamline the content of the prospectus taking as reference the level of disclosures of the current EU Growth prospectus (i.e., the level of disclosure of the prospectus should be equivalent to, or at least not higher than, the level of disclosure of the EU Growth prospectus). ESMA should take into account the different scope, considering that the full prospectus can also be used for an admission to trading on a regulated market;

- ensure that the disclosures set out in a prospectus for shares allow issuers to comply with the page size limit of 300 pages in accordance with Articles 6(4) and 6(5) PR as amended by the Amending Regulation;

- align the content of the prospectus for retail non-equity securities to a level of disclosures that is equivalent to the lighter schedules of the prospectus for wholesale non-equity securities, except for the summary and the section on the offer that only apply to retail non-equity securities;

- define the standardised format and standardised sequence of the prospectus, in line with the provisions and recitals of the Amending Regulation, ensuring the right balance between harmonisation and flexibility (especially for prospectuses drawn up as separate documents, including base prospectuses);

[60] Recital (26) highlights the growing importance of sustainability considerations in investment decisions and the necessity, to prevent greenwashing, to establish the ESG-related information to be provided, where relevant, in the prospectus for equity or non-equity securities. The recital also stresses the importance to avoid overlaps with the requirement laid down in other EU sustainable finance-related legislation. In that regard, companies that offer to the public or seek the admission to trading of equity securities on a regulated market should incorporate by reference in the prospectus, for the periods covered by the historical financial information, the management and consolidated management reports, which include the sustainability reporting, as required by the Accounting Directive. Moreover, the Commission should be empowered to set out schedules specifying the ESG-related information to be included in prospectuses for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives.

- set out a building block of additional information to be included in the prospectus for nonequity securities offered to the public or admitted to trading on a regulated market that are advertised as taking into account ESG factors or pursuing ESG objectives.

  ESMA should in particular:

  - ensure the right balance between the need to prevent greenwashing and avoid creating a burdensome schedule (i.e., disclosures should be light touch and proportionate to the sustainability-related claim made);

  - avoid overlaps or inconsistencies with the requirements laid down in other EU sustainable finance-related legislation, such as the European Green Bond Regulation, Taxonomy Regulation, the Sustainable Finance Disclosure Regulation and the Corporate Sustainability Reporting Directive. Furthermore, the technical advice should not deviate from the overarching burden reduction objective of the Listing Act and avoid merely replicating disclosure requirements set out in sustainable finance-related legislation that go beyond what is strictly necessary for a prospectus to allow taking an informed investment decision;

  - ensure the consistency and usability of the required information for other market players themselves subject to sustainable finance-related requirements, notably distributors (i.e., consistency with the sustainability preferences parameters under MiFID II);

  - ensure that the new schedule does not implicitly make standards, templates or disclosures that are voluntary under other sustainable finance-related legislation (e.g., disclosures under the European Green Bond Regulation) mandatory in the prospectus and take into account standards or principles developed by the industry and widely used;

  - ensure that green bonds issued in accordance with the European Green Bond Regulation can be offered to the public or admitted to trading on a regulated market also via a base prospectus, by making the appropriate amendments to CDR on scrutiny and disclosure;

  - cater for all types of non-equity securities subject to the PR and making ESG-related claims, without focussing only on green or ESG-related bonds.

- Assess whether any annexes of CDR on scrutiny and disclosure need to be deleted or reviewed, and whether new annexes need to be added, taking into account all types of issuers and securities.

5.2.2 Content of the universal registration document

The reform of the PR amends the rules on the URD, by granting an issuer who has had a URD approved for one financial year – instead of two consecutive financial years as under the current PR regime – the status of frequent issuer and be able to file all subsequent URDs, and any amendments thereto, without prior approval. As explained in recital 23, such alleviation does not affect investor protection, as a URD and any amendments thereto cannot be used as the constituent part of a prospectus without being approved by the relevant NCA. Furthermore, an NCA is allowed to review a URD which has been filed with it on an ex-post basis whenever considered necessary and, where appropriate, request amendments. As the URD is a document which can serve multiple purposes, including to disclose the financial information required under the Transparency Directive, a prospectus including a URD is exempted from the requirements of the standardised format and sequence, the page size limit of 300 pages for shares as well as the template and the layout including the font size and style requirements.

In light of the above, and in accordance with Article 13(2) of the PR, the Commission invites ESMA to provide its technical advice in order to determine the content of the URD, by proposing the necessary amendments to CDR on scrutiny and disclosure, taking into account that:

- the URD is a multipurpose document, which can be used for an offer or admission to trading of either equity or non-equity securities;

- the URD can only be used, in accordance with Article 9(1) of the PR, by an issuer whose securities are admitted to trading on a regulated market or an MTF. Therefore, a URD is used in the context of secondary issuances, and it should be considered whether it could benefit from alleviations compared to the registration document for equity securities of the full prospectus; however, possible alleviations to the URD should be balanced, taking into account the multipurpose nature of the URD and the scope of the document as clarified in recital 39 of the PR, whereby the URD should act as a source of reference on the issuer, supplying investors and analysts with the minimum information needed to make an informed judgement on the company's business, financial position, earnings and prospects, governance and shareholding.

5.2.3 EU Follow-on prospectus and EU Growth issuance prospectus

The reform of the PR introduces two new short-form prospectuses:

- the EU Follow-on prospectus, for secondary issuances by companies listed on a regulated market or an SME growth market, takes as model the expired regime of the EU Recovery prospectus, is subject to a standardised format and sequence and a 50 page-size limit for shares.

- The EU Growth issuance prospectus, for SMEs, companies listed or to be listed on SME growth markets and for small unlisted public offers of securities up to € 50 million, takes as model admission documents of SME growth markets and the EU Recovery prospectus, is subject to a standardised format and sequence and a 75 page-size limit for shares.

The standardised format and content of those new prospectus were originally included in the annexes of the Commission proposal. While in the interinstitutional negotiations, the co-legislators retained the main features of the Commission proposal, they required the Commission to further specify in delegated acts (rather than directly in annexes of the Prospectus Regulation as in the Commission proposal) the content and the standardised format and sequence of the EU Follow-on prospectus and of the EU Growth issuance prospectus. While not asking for a technical advice on these standards, reflecting established practice from previous prospectus reforms, FISMA, before launching the consultation on the Better Regulation portal for stakeholders' feedback, intends to share the draft delegated acts with ESMA to gather an ex-post advice.

5.2.4 Scrutiny and approval of the prospectus

The reform of the prospectus regime aims to promote supervisory convergence through the harmonisation of the rules for the scrutiny and approval of the prospectus by competent authorities across the Union. Article 20(11) of the PR empowers the Commission to adopt delegated acts to supplement the PR by specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and on the procedures for the approval of the prospectus. ESMA is invited to provide its technical advice on the criteria for the scrutiny and the procedures for the approval of the prospectus, by proposing the necessary amendments to CDR on scrutiny and disclosure, taking into account all of the following:

- the circumstances under which a competent authority is allowed to use additional criteria for the scrutiny of the prospectus, where necessary for investor protection;

- the circumstances under which an NCA is allowed, where deemed necessary for investor protection, to require information in addition to that which is required for drawing up a prospectus, an EU Follow-on prospectus or an EU Growth issuance prospectus, including the type of any additional information disclosed under the additional criteria referred to in the previous point;

- the maximum overall timeframe within which the scrutiny of the prospectus is to be finalised and a decision reached by the competent authority on whether that prospectus is approved, or the approval is refused and the review process terminated, and the conditions for possible derogations from that timeframe (considering possible additional scrutiny criteria, the timeline for NCAs to respond to issuers and the average number of iterations between issuers and NCAs on the same application for approval).

The above-mentioned points are further clarified in recitals 44[61], 45[62], 46[63] and 47[64] of the Amending Regulation.

ESMA should take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Article 20 of PR and all relevant recitals of the Amending Regulation and all relevant provisions and Annexes of CDR on scrutiny and disclosure. Furthermore, ESMA should consider the outcome of ESMA's peer review of the scrutiny and approval procedures of prospectuses by competent authorities as set out in the Peer Review Report, to be updated where relevant, and take into account all of the following:

- national specificities of the scrutiny process and the time taken by each NCA for notifying the issuer, the offeror or the person asking for admission to trading on a regulated market of its decision regarding the approval or rejection of the prospectus. This should also include the cases where the rejection is due because the prospectus does not meet the standards of completeness, consistency and comprehensibility and changes or supplementary information, and the deadlines that NCAs give to the issuer, the offeror or the person asking for admission to trading on a regulated market to provide additional information or documents in such cases;

- for each NCA, the average number of iterations between the issuer, offeror or person asking for admission to trading and the NCA within the same application of approval, taking into account the type of securities, the type of issuances (e.g., IPO or secondary issuances) and of prospectus (e.g., full prospectus or alleviated prospectus types);

- circumstances and timelines under which NCAs refuse the approval of a prospectus and terminate the review. In cases where an NCA has not made a decision on the prospectus within the specified timelines, ESMA should also provide the number of cases and the reasons for the failure to take a decision;

- additional scrutiny criteria that NCAs apply for investor protection reasons and the type of additional information that they may require.

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[61] Recital (44) states that allowing competent authorities to apply additional criteria for the scrutiny and approval of prospectuses where necessary for investor protection has material differences in the way competent authorities apply those additional scrutiny criteria.
[62] Recital (45) clarifies that in order to foster convergence and harmonisation of prospectus supervisory activity by competent authorities, it is appropriate to specify the circumstances under which a competent authority may use additional criteria and the type of additional information that competent authorities may require to be disclosed in addition to the information that is required for drawing up a prospectus.
[63] Recital (46) states that competent authorities have to respect a clear deadline for their scrutiny in order to ensure that issuers are timely informed of the result of the scrutiny of their prospectus. Competent authorities should also notify to the issuer the reason for a failure to take a decision on the prospectus within the set time limits.
[64] Recital (47) requires a set maximum timeframe for finalising the scrutiny procedure and for the competent authority's decision on the prospectus. As the duration of the scrutiny procedure is also depending on factors outside the control of the competent authority, the timeframe should be the maximum duration of the procedure overall, covering activities from both the person applying for approval of a prospectus and the competent authority. The specification of the conditions for possible derogations for the set timeframe is also necessary.

5.2.5 Cooperation arrangements with 3rd country

The Amending Regulation empowers the Commission (Article 30(4) PR) to adopt delegated acts to determine the minimum content of the cooperation arrangements between NCAs (or ESMA upon the request of at least one NCA) and supervisory authorities of third countries concerning all of the following:

- the exchange of information with supervisory authorities in third countries and the enforcement of obligations arising under the PR;
- the template document to be used for such cooperation arrangements.

The Commission invites ESMA to provide its technical advice on the minimum content of the above-mentioned cooperation arrangements. ESMA should take into account all relevant provisions of the PR as amended by the Amending Regulation, in particular Articles 28, 29 and 30 of PR and all relevant recitals of the Amending Regulation

5.2.6 Commission reports to the European Parliament and to the Council on civil liability of the prospectus

Pursuant to the amended Article 48(2a) of the PR, the Commission is required to submit a report by 31 December 2025[65] analysing the issue of civil liability for the information given in a prospectus, assessing whether further harmonisation of the prospectus civil liability in the Union could be warranted and, if relevant, proposing amendments to the liability provisions set out in Article 11 of PR.

In light of the above, the Commission invites ESMA to provide technical advice on the civil liability of the prospectus, which should include an assessment and recommendations on whether further harmonisation should be considered. ESMA should take into account all relevant provisions of the PR, in particular Articles 11 and 48(2a), all relevant recitals of the Amending Regulation, the report on civil liability of the prospectus that ESMA published in 2013 (ESMA/2013/619[66]). Finally, ESMA should compare the civil liability provisions set out in Article 11 of the PR with the civil liability set out in the Markets in Crypto-Assets Regulation[67] and the need for possible alignment with or departure from those provisions and provisions for prospectus civil liability.

[65] Recital 60 of the Amending Regulation clarifies that the requirement for the Commission to perform such assessment within the above-mentioned timeline is linked to the need of ensuring that the CMU gathers momentum and reflects market realities as soon as possible after they occur.
[66] https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-_619_report_liability_regimes_under_the_prospectus_directive_published_on_website.pdf
[67] Regulation (EU) 2023/1114 of the European Parliament and of the Council.

5.3 Annex III (Advice of the Securities and Markets Stakeholder Group)

16 January 2025
ESMA24-229244789-5237

Securities and Markets Stakeholder Group

Advice to ESMA

SMSG advice to ESMA on its consultation paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata

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1 Executive Summary

The SMSG welcomes the opportunity to comment on ESMA's Consultation Paper (CP) on draft technical advice concerning the Prospectus Regulation (PR) and on updating the CDR on metadata.

In our response we answer most of the CP's questions, providing detailed arguments. Given the length of our responses, this executive summary merely offers high-level remarks.

The SMSG recalls that the Listing Act aimed to simplify listing and post-listing requirements, making public markets more appealing to EU companies, especially SMEs. While we support simplifying the disclosure framework, we caution that excessive standardisation in format, sequence, layout etc. may prove to be counterproductive and not yield the expected benefits.

In several responses we note the importance of not changing or adding requirements unless necessary (i.e., for a level 1 provision or another valid reason to do so). We would generally prefer to maintain a "stable platform" even if the proposal is merely meant to provide an option or to reflect market practice. In such cases it may be better to leave this "option" to be developed by market participants.

We highlight the risk that guidelines, options, and other "voluntary" rules de facto become binding at national level, potentially increasing the costs and regulatory burden of market participants. We therefore call on ESMA to monitor that new exemptions really alleviate the burden for market participants and issuers, and are not outweighed by, e.g., national rules or practices imposed by National Competent Authorities.

We fully support the objective to limit "gold-plating" by strictly defining under which circumstances NCAs can add criteria for the scrutiny of prospectuses or request information in addition to what is required for drawing up a prospectus. Against this background, we also propose setting deadlines at 90 working days plus 10 days, to reflect what could be considered "best practice" amongst NCAs.

We also discuss the risk of overlaps and duplications when the same or similar rules are set out in several pieces of legislation, such as the Benchmark Regulation, the SFDR, and rules specifically dedicated to EU Green Bonds.

While in favour of increasing the use of metadata to facilitate the investor access to complete and accurate information, and while supporting the future role of ESAP as a centralised clearing house of information, the SMSG also urges ESMA and the Commission to continue to apply the principles of proportionality and subsidiarity to future developments in this area.

Finally, in our response we provide numerous examples which are instrumental to allow ESMA to gather views from a practical perspective.

2 Introductory remarks

The SMSG welcomes the opportunity to comment on ESMA's Consultation Paper (CP) on draft technical advice concerning the Prospectus Regulation (PR) and on updating the CDR on metadata.

We agree with ESMA that the adoption of level-2 measures that comply with the Listing Act implies finding a balance between "alleviation and investor protection as well as the feasibility and smooth functioning of the prospectus regulatory sphere".

We concur with ESMA that such an implementation exercise requires "a holistic assessment of prospectus content and format requirements". We also admit that, in some cases such as non-equity issuances, "very literal interpretations [of the level-1 Amending Regulation stemming from the Listing Act] might become a source of tension when preparing prospectuses".

As the proposed measures potentially involve significant changes to the current offering and disclosure practices, it is crucial to keep in mind the Listing Act objectives and notably those stated in the related Amending Regulation (EU) 2024/2809 of 23 October 2024. Those were, on the one side to simplify both listing and ongoing-post-listing requirement, but also, on the other side, to make public markets more attractive to EU companies and especially SMEs.

As concerns prospectuses more specifically, one of the key stated objectives, as stated in the recitals of regulations that were adopted in the Listing Act package, was to "improve [their] readability, reduce the costs for issuers related to the drafting of prospectuses, create convergence across the Union, and make it easier for investors to analyse and navigate through prospectuses.

With these objectives in mind, while we approve the general trend towards a simplification of the disclosure framework, we note – as ESMA also does – that an excessive standardisation might prove counterproductive and fail to generate any of the Listing Act expected benefits. While there may be benefits in providing guidelines in certain areas, we would at the same time point at the risk that such guidelines or other "voluntary" rules become de facto binding, increasing the costs and regulatory burden.

On that note, as regards cost alleviation, which was another objective of the Listing Act, our perception is rather reserved. We hope that the prospectus exemptions introduced by the Listing Act will ultimately lead to some cost-savings but note that the adaptation efforts may in the short term outweigh the possible cost-reduction gains.

Against this background, it is important that ESMA monitor that the new exemptions really alleviate the burden for market participants and issuers, so that they are not outweighed e.g. by national rules or practices imposed by National Competent Authorities (NCAs).

3 Responses to questions

3.1 Section 4 – ESMA's advice to the Commission on the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms

Question 1: What are your views in relation to format and sequencing? Do you agree with ESMA's approach to limit changes to the 'standard' equity and non-equity annexes? And do you have any concerns relating to a potential tension between Annexes II and III in the Amending Regulation and Articles 24 and 25 CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.

The SMSG generally supports ESMA's approach to streamline disclosure documents and limit changes to the standard equity and non-equity annexes. We do however also note that any unnecessary changes to these annexes would impact current practices which in turn could result in additional costs and burden for issuers to adapt.

We note that Annexes I, II and III of the Amending Regulation including the sequencing set out therein may be suited to transactions such as IPOs or 'plain vanilla' non-equity issues, but it is not clear if such literal sequencing is feasible for a base prospectus that caters for multiple non-equity securities with building blocks.

In this regard, we note that ESMA has proposed to align the order of sections in annexes 1, 6, 10 and 13 of the CDR with the order of presentation stipulated in the annexes of Amending Regulation. Therefore, it seems unnecessary to make a cross-reference to the annexes of the Amending Regulation in the amended Articles 22 and 23 of the CDR. Instead, Articles 22 and 23 could simply stipulate that in case of application of annexes 1, 6, 10 and 13, the order of sections stipulated in those annexes is to be followed.

Moreover, to avoid overlaps, duplications, and possible misinterpretations, we propose that ESMA should delete the reference to risks factors in the list of elements defined in Article 22 and 23 of the CDR. Where annexes 1, 6, 10 and 13 are applied, the order of sections of those annexes is already aligned with the Annexes of the Amending Regulation. When a summary is required, investors would furthermore find the most material risk factors in the summary. Notwithstanding the above, it should be made clear that in relation to each disclosure requirement the issuer is allowed to present additional information if it so wishes.

Use of plain language

The SMSG, while slightly outside the scope of the consultation, considers that a good way to help ensure streamlined prospectuses and to make them more useful and easily comprehended by investors would be to encourage supervisory convergence of NCAs' approaches to the current "plain language" rules in the EU. The Prospectus Regulation requires that "[T]he information in a prospectus shall be written and presented in an easily analysable, concise and comprehensible form", considering certain information that is deemed necessary for investors to make an investment decision.

Further progress towards a consistent approach to supervising, monitoring, and addressing derogations from the existing plain language and comprehensibility requirements would make EU prospectuses more accessible to, and useful for, investors.

Order of disclosure

A mandatory order of disclosure may be unhelpful, as it restricts issuers' flexibility to present the relevant information in the order that is most beneficial for the offering, the issuer, and potential investors. The overall intelligibility of the disclosure documents should thus prevail over the standardisation of format, content, and sequencing.

We therefore support ESMA's view and would avoid extending the standardisation to non-equities base prospectuses that allow programme issuances with a "building-block" modular disclosure that cover multiple issuances. It may however be beneficial with some guidance as concerns the combination of the sequencing of Annexes I to III of the amended Prospectus Regulation with the one of Articles 22 and 23 CDR.

This is however not to exclude that there may be benefits in certain situations to have an order of presentation that follows EU's international peers (especially USA and UK), as it would alleviate the administrative burden in international offerings. This can however be achieved through market practice, also making it possible to change such market practice if practices elsewhere change.

Prospectus summary

With regards to the prospectus summary, we have a concern that prescriptive and restrictive formatting requirements, including template, layout, font size and style requirements, could be problematic when combined with the need to ensure full and clear disclosure for detailed and prudent investor analysis and decision-making.

Taken into consideration alongside the page limit, there is also a risk of situations occurring where it is impossible to meet both the content requirements of the summary (including that the summary shall be accurate, fair and not misleading) and the format requirements (including that the summary shall be presented and laid out in a way that is easy to read using characters of a readable size).

Ranking of the most material risk factors

We would support the deletion of the requirement to rank the most material risk factors, agreeing that it should ease the burden for issuing parties and agree with the approach to list, in each category, the most material risk factors in a manner which is consistent with the assessment undertaken by the issuer, instead.

Question 2: Do you have specific comments about the reduced time periods which financial information should cover which need to be considered as part of this work?

The SMSG supports the reduction of time periods covered by historical financial information in accordance with the annexes of the Amending Regulation, meaning that parties are not obliged to disclose additional historical financial information and other financial information where it is not relevant to the issuance. Any unnecessary information may detract attention away from the more important substantive disclosure.

At the same time, we would argue that parties should have the flexibility to show progression of the business through more than two years of financial information if they believe it necessary to substantiate the equity story, aid in marketing, support valuation or meet requirements of other jurisdictions. As noted elsewhere in this response, this is also important to ascertain for liability and other reasons that all information considered relevant can be put forward.

Question 3: Do you agree with ESMA's sustainability-related assessment in relation to the 'standard' equity registration document? If not, please explain why?

The SMSG agrees with ESMA.

Question 4: With respect to sustainability aspects, do respondents have concerns about the proposal which offers non-equity issuers who fall under the Accounting Directive or Transparency Directive an option to provide an electronic link to their relevant sustainability information?

The SMSG notes that while ESMA's proposal provides "merely" an option to issuers required to publish sustainability information, we nevertheless wonder why an issue not included in the mandate given by the Commission is included in the proposal. In general, we would support maintaining a stable platform and not amending annexes of the Delegated Regulation for the sake of amending. Therefore, if there is no explicit requirement to amend or no significant loophole identified in terms of investor protection, we would support keeping the current annexes.

If the option is included in the final text, we would like to emphasise the importance of such information not being deemed formally incorporated into the prospectus. If such information were to be deemed incorporated, it would raise difficulties, notably considering the liability regime applicable to forward-looking statements.

Question 5: What are your views in relation to potential implications of the proposed single non-equity disclosure framework?

The SMSG notes that the proposed single non-equity disclosure framework directly derives from the level-one mandate but would nevertheless want to point out that the two types of issuances – respectively retail and wholesale – remain distinct. One concern is here that the proposed changes (deleting the retail framework and amending the wholesale framework) could eventually result in the opposite effect, i.e. that the wholesale disclosure regime is aligned with the more detailed retail regime. We would in this context also want to note that the nominal value is not a determining factor in relation to an investment, meaning that there is no reason to have stricter rules merely because of this.

We also understand that the Commission's mandate asks ESMA to align the content of the prospectus for retail non-equity securities with the lighter content of the prospectus for wholesale non-equity securities. The mandate does however not require ESMA to delete the annex for retail non-equity securities. We would therefor propose that Annexes 6 and 13 of the CDR, while applying a single framework, be organised in such a manner that it allows optionality in the presentation of specific items depending on whether they apply for retail only, or, on the contrary for wholesale only. An alternative, likely simpler, approach would be to use Annex 13 for the provision of wholesale disclosure with a specific addendum in case of a retail offering.

Question 6: Do you have any other concerns about the disclosure items as proposed? If so, please explain.

The SMSG notes that while it is industry practice to include a cover page, we are unsure about the need for mentions of "cover notes" in the articles 22 and 23 of the CDR. We note that previous attempts to regulate such notes in the past have been unconclusive. We therefore fail to identify reasons or issues that would warrant introducing a mandatory requirement for such notes and would argue against further (unnecessary) developments to regulate their content or length.

Question 7: In your view, will these proposals add or reduce costs? Please explain your answer.

The SMSG supports the objective set by the Commission to streamline the content of prospectuses and the level of disclosures. This said, changes to the annexes of the Delegated Regulation not aimed at reducing the volume of disclosures will in practice have an impact on established practices and can thus result in additional costs and burden for issuers who must adapt. Additional costs are also imposed on frequent issuers whenever they must review their base prospectuses.

Against this background, keeping in mind that cost reduction was part of the Listing Act objectives, we support maintaining a “stable platform” when changes are not explicitly required in Level 1 and do not reduce disclosures.

3.2 Section 5 – ESMA’s advice to the Commission on the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives

Question 8: Do you agree with ESMA’s approach to the disclosure requirements for non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives? Please explain your answer and provide any suggestions for amendments.

The SMSG supports the introduction of a standardised annex (annex 21 of the CDR) for the full spectrum of debt instruments including structured products.

This said, we would like to point out the risk for overlaps and duplications between these rules and the rules specifically dedicated to EU Green Bonds. The same challenge exists between the Amended Prospectus Regulation disclosure regime and the SFDR regulation which is currently under review. We would here caution against introducing yet another typology that may confuse investors.

In this respect, we would caution that the introduction of a dichotomy among non-equity instruments, that are divided between ESG factors or pursuing ESG objectives, should not run against such consistency among the disclosure regimes and should also not lead to requirements extending further than the ESMA’s Public Statement of 11 July 2023 on how issuers should fulfil the specific disclosure requirements under the Prospectus Regulation in relation to sustainability-related matters.

While we are aware that the proposed ESG factors and ESG objectives derive from the revised Benchmark Regulation (BMR), we note that these terms are precisely defined, as opposed, for example, to the SFDR distinction between products promoting environmental or social characteristics and those pursuing sustainable investment objectives.

We note that some proposed disclosures under Annex 21 may lead to overlapping, duplicative, and boiler plate statements. As an example, the scope of application and trigger point of Annex 21 currently contains language such as “advertised as ESG” which seems to go beyond labelled use-of-proceeds and sustainability-linked instruments. A broad and undefined scope of application may create uncertainty. At a minimum, corporate/entity-level disclosures on the side of issuer (e.g. reference to an issuer’s transition plan, ISSB/ESRS sustainability disclosures, pure play green business) should not trigger the Annex 21.

Against this background, being aware that the reference to ESG factors and ESG objectives are drawn from the Listing Act Amending Regulation, we would nevertheless like to invite ESMA and the Commission to consult, as part of the work to streamline rules in the field of sustainable finance, to identify ways to avoid introducing a confusing terminology.

Question 9: Do you agree with the definitions proposed for 'use of proceeds bonds' and 'sustainability-linked non-equity securities? If not, what changes to the definition would you suggest?

The SMSG supports the introduction of a definition of "sustainability-linked non-equity security" but would like to propose inserting the words "over a given financial year, some or all" into the definition.

As regards the definition of "use of proceeds bonds" we also propose that this be amended to align it more closely with the current EuGB definition for bonds marketed as sustainable which refers to "a bond whose issuer provides investors with a commitment or any form of pre-contractual claim that the bond proceeds are allocated to economic activities that contribute to an environmental objective".

The EuGB definition uses the verb "allocate" instead of "apply" which allows to cover situations of, both, new financing and refinancing of assets. To ensure that scenarios in which existing assets are to be utilised are captured, and in practice many green bond issues refer to a portfolio of existing and future financings, we would propose introducing following "proceeds" the words "or an equivalent amount of proceeds" and replacing the words "applied to finance or re-finance" with "allocated to". We would also propose that the text is amended so that it refers to "proceeds [that] are or are to be applied to finance or re-finance green and/or social projects or activities".

As a final suggestion, while terms/words such as "ESG" and "green" are and have over time often been used in the field of sustainable finance, we would recommend that it be considered to replace, in the definition of use of proceeds bonds, the reference to "green" projects/activities with "environmental" projects/activities, to include growing uses e.g. in the "blue" field.

Question 10: Do you agree with ESMA's approach to dealing with i) prospectuses relating to EuGBs and ii) prospectuses from issuers who have opted to use the templates for voluntary pre-issuance disclosures, as referred to in the European Green Bond Regulation? Please explain your answer and provide any additional proposals to alleviate regulatory burden.

The SMSG appreciate the harmonisation objective that guides ESMA's approach and generally agrees that incorporation by reference can significantly alleviate the burden for issuers. Nevertheless, as EU Green Bonds now benefit from a dedicated regulation, we would advocate to keep them within their own framework and exempt them from the annex 21 of CDR.

Should however annex 21 be applicable for EuGBs, we would like to point out that there is a terminology mismatch between Annex 21 and the EuGB factsheet (and perhaps the pending voluntary disclosure provisions that remain subject to consultation) that makes it difficult to identify which 'relevant' factsheet information items could be used to address the Annex 21 requirements. This in turn may lead to a friction for EuGB issuance. It would also be crucial to ensure that information requirements should be "Category C" (i.e. may be filed as Final Terms).

Against the above background, we welcome the upcoming Commission guidance for the interaction between the EuGB Regulation and the Amended Prospectus Regulation.

Question 11: Should Annex 21 be disapplied in relation to prospectuses relating to EuGBs24 and/or prospectuses drawn up using the templates for voluntary pre-issuance disclosures? Please explain your answer.

As noted above, the SMSG is of the opinion that as all relevant information for an investment decision is already supposed to be included in the EuGB factsheet, it would avoid duplication be preferable if Annex 21 does either not apply (other than in respect of the risk factors) or would not require any additional disclosure requirements for EuGBs beyond the required information in the EuGB factsheet.

Question 12: Are the proposed disclosure requirements in Annex 21 proportionate? If not, please (i) identify disclosure requirements that could be alleviated and (ii) provide a (quantitative) description of the costs of compliance.

The SMSG generally considers that Annex 21 recommended disclosures contain duplicative and inconsistent elements which on a cumulative basis may create deterrence against issuer choices to use non-equity instruments with ESG features. Many proposed disclosures under Annex 21 may be perceived as going beyond the current market practice.

Please find below some examples of such proposed disclosures and our comments thereto:

Disclosure item 2.1 could be simplified to avoid confusion and complexity. We understand that the wordings "complying with", "aligned with", "eligible under" and "adhering to" aims at capturing all securities that would refer to a taxonomy. However, this wording can be confusing. Focusing on the EU Taxonomy, economic activities are either eligible or not eligible and, if eligible, they are either aligned or not aligned. Only aligned activities can meet the criteria of Article 3 of the Taxonomy Regulation (the DNSH criteria, the technical screening criteria, and the minimum social safeguards of Article 18). Therefore, in accordance with ESMA's proposal, only issuers with aligned activities can "state how the criteria in Article 3 of the Taxonomy Regulation (…) are met". We would here recommend that such statement be "clearly" made rather than "unequivocally" as proposed. Indeed, many statements of alignment with the EU Taxonomy will likely include a degree of qualification as a result notably of the complexity of DNSH, as well as qualitative requirements under some of the Taxonomy's technical standards.

Disclosure item 2.3 includes a reference to “any material underlying data” which is a very broad ask from an issuer and needs to be further specified. The ask also goes beyond the “gold standard” that will be set by the EuGB fact sheet, and we recommend that it should be taken out.

Disclosure item 2.4 provides that issuers would be required to disclose “material information about any specific market standard, label or third country taxonomy relating to the ESG features of the securities”. This new disclosure requirement seems to be somehow redundant with the requirements of items 2.1 and 2.2. The reference to “material information” is also not clear. If ESG features of securities are based, for instance, on a third country taxonomy, the issuer would have to disclose under item 2.1 how the criteria of such taxonomy are met and therefore to describe the main features of the taxonomy. Therefore, we suggest deleting items 2.2 and 2.4 and adding in item 2.1 a requirement to include a link to the relevant third country taxonomy, label or standard along with an explanation of the ESG factors considered.

Disclosure item 6.1 relates to ESG ratings. We are here of the view that it would be inappropriate to require ESG ratings disclosure as this may compel an issuer to incur additional fees for use of a rating which it has not solicited or for a purpose it does not intend. ESG ratings work differently compared to credit ratings. Issuers usually do not solicit ESG ratings but rather cooperate with a rating provider and may then choose to use the rating for a fee. An ESG rating normally also only relate to the issuer, rather than to specific securities. This means that if an issuer chooses to use ESG ratings in an advertisement for non-equity securities considering ESG factors or pursuing ESG objectives, such information should be disclosed in the prospectus. Against this background, we would propose that this item is amended so that the disclosure applies “If the issuer chooses to use ESG ratings assigned to it when advertising” its bonds. Issuers should thus only be required to include in their prospectuses ESG ratings and review, advice, or assurances when these information or reports are public.

We finally understand that ESMA may be concerned with the fact that some issuers may only partially comply with a market standard or label. We consider that this is an issue that should be addressed by said standard and label (through the requirement of a statement of alignment or compliance for instance) and not by the Prospectus Regulation.

Question 13: Do you agree with the proposal to require disclosure about whether post-issuance shall be provided and the scope of this disclosure in items 6.3 and 6.4 of Annex 21? If not, what changes would you propose? Please explain your answer.

While we generally agree with this proposal, we believe that issuers should only be required to indicate where information is available rather than having to provide additional substantive disclosure about the post-issuance information. The details on the scope of such post-issuance information and by whom any post-issuance review, advice or assurances will be provided might not be available on the date of approval or the date of the final terms or might change over time.

Moreover, we believe that it should be information that should rather be incorporated in final terms (Category C instead of Category B).

Question 14: Do you agree with ESMA's proposal in item 2.1 of Annex 21 concerning unequivocal statements about how the criteria or standard are met and that they are significant in relation to the ESG features or objectives of the security?

We disagree. Many statements of alignment with the EU Taxonomy cannot be "unequivocal" and may need to include a degree of qualification as a result notably of the complexity of DNSH, as well as qualitative requirements under some of the Taxonomy's technical standards, please also see our response to question 12. The disclosure of partial alignment should also be allowed for similar reasons.

It should also be possible for an issuer to claim that its green use-of-proceeds bond partially aligns with the EU Taxonomy or another taxonomy, as a % of the total green allocations. This is legitimate and recognised by sustainable finance regulations, e.g. the EuGB standard allows partial alignment with its maximum 15% flexibility pocket.

Finally, as mentioned above, some issuers may only partially comply with a market standard or label, but we consider that this issue should be addressed by said standard and label (through the requirement of a statement of alignment or compliance for instance) and not by the Prospectus Regulation.

Question 15: Do you agree with the 'Category A', 'Category B' and 'Category C' 26 classification of the items included in Annex 21, in particular in relation to items 2.1, 2.2 and 2.3? Please provide any suggestions for alternative categorisations and explain your answer.

The SMSG notes that issuers may use base prospectuses to issue non-equity securities considering ESG factors or pursuing ESG objectives. As a base prospectus is valid for 12 months, categorizing items 2.1 and 2.2 under category A will hamper the use of base prospectuses. For instance, at the time of the approval of the base prospectus the issuer may not meet the criteria of the taxonomy to which the ESG features of the securities relate. Against this background we suggest changing the categorisation to category B.

Question 16: Do you agree with ESMA's approach to disclosure for structured products with a sustainability component? Please explain your answer and include any suggestions to improve the approach.

The SMSG is of the general view that structured products should be included in section 5 in Annex 21 addressing ESG disclosures of the underlying component of the structured products ("SP"). ESG structured products are now part of the ecosystem of ESG solutions, and it is therefore important that their issuers could provide full transparency on their two key

components being their funding part, on the one side, and their (derivative) exposure to underlying instruments or indices, on the other side.

When applicable, this approach will allow investors and market participants to retrieve information on the "Use of Proceeds" (UoP) of structured products (section 2 of Annex 21). It will also help promote methodologies that permit the assessment of the underlying part, notably through a delta measurement.

We would however call for a redrafting of item 5.3.4 of Section 5 (information on the underlying) of the Annex 21 which directly concerns structured products. The current wording reads: “If applicable, a warning that the structured product does not represent an investment in a sustainable product or economic activities, including products or economic activities in transition finance”. This wording may confuse the two close but yet distinct concepts of “investment” and “financing”.

While structured products, as for most transactions initiated by UCITS managers, do not directly finance issuers on the primary markets (i.e. do not directly provide fresh financing to corporate issuers) their indirect impact on the valuation of these underlying instruments – through secondary market transactions – is nevertheless very real. Therefore, due to their positive contribution on the valuation of underlying companies (notably in the case of best-in-class strategies implemented with equity indices), these ESG structured products should not be prevented from being identified as “sustainable products”.

However, informing investors of the indirect nature of their impact on listed companies or economic activities is justified. We would against this background proposed a new wording that reads “If applicable, a warning that the investment in the structured product does not represent a direct financing of companies or economic activities, including in transition finance”.

Question 17: Do you support ESMA’s proposal to amend Article 26 CDR on scrutiny and disclosure to facilitate the incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms? Please explain your answer and provide any alternative proposals.

The SMSG supports the proposal which adds flexibility and reactivity to the EuGB issuance programmes.

Question 18: Do you think that allowing the incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms will impose any significant costs or burden on issuers? Please explain your answer.

The SMSG considers that the incorporation by reference of fact sheet and voluntary pre-issuance disclosures permits more reactivity and is, by nature, a less costly process than an inclusion in the base prospectus or a supplement, subject to a NCA preapproval. In practical terms, this means that issuers will be able to communicate this information by internet in the section relating to the specific issuance.

3.3 Section 6 – ESMA's advice on the content of the URD

Question 19: Do you agree with ESMA's assessment regarding changes to the URD annex?

The SMSG agrees with ESMA's assessment regarding the URD annex. As pointed out by ESMA the content of the URD will be mainly impacted by the changes to the equity registration document.

We support the objective to streamline and alleviate the disclosure requirements and ESMA's proposals to reduce for certain items the period of disclosure to the timeframe between the last financial period and the date of the registration document and to remove the OFR section and replace it by a reference to the management report.

Further, while further simplification can possibly be made, we welcome that ESMA has adapted the content of the equity registration document to the content of the EU Growth registration document for equity securities in accordance with the mandate given by the Commission.

3.4 Section 7 – ESMA's advice on the criteria for the scrutiny of the completeness, comprehensibility and consistency of the information contained in prospectuses

Question 20: Do you agree with ESMA's proposal to delete Article 40 CDR on scrutiny and disclosure and introduce Article 21b into CDR on scrutiny and disclosure? Please explain your answer and present any alternative proposals.

The SMSG supports the objective of the Amending Regulation, reflected in the Commission's mandate, to strictly define the circumstances where NCAs can use additional criteria for the scrutiny of prospectuses or require information in addition to what is required for drawing up a prospectus.

In this regard, we are confused by the CP which reminds us that the deletion of Article 40 of the Prospectus Regulation does not change the powers of NCAs as regards the "necessary information" test. This seems to indicate that NCAs would still be able to require additional

information where necessary in order to allow investors to make an informed decision. At the same time, ESMA notes in the CP that "without prejudice to the specific situations foreseen by the delegated acts (…) there are no circumstances in which an NCA should require additional information". As we read the text, there seems to be a contradiction that is in such case not in the remit of ESMA but should have been resolved at Level 1.

This said, we support ESMA's view but note that while Article 21b (new) clarifies what information items that can be used from another registration document, securities note annex or additional information annex that are comparable but not identical to the securities to be offered or admitted to trading, the question is if it really addresses all points. Article 21b seems to provide that when securities, transactions or issuers are not covered by the existing annexes, NCAs can ask for other information. Article 21b does not say that for securities, transactions or issuers covered by the annexes, NCAs should not ask for additional information. With this reading, the words "By way of derogation" do not seem sufficiently restrictive in this regard, and we suggest adding at the end of Article 21b a new paragraph that would read: "Except in the circumstances described in paragraphs 1 and 2, the competent authority shall not require additional information."

Question 21: Do you agree with ESMA that the deletion of Article 40 CDR on scrutiny and disclosure and the inclusion of Article 21b in CDR on scrutiny and disclosure should not lead to additional administrative burden or costs for stakeholders? If not, please quantify the costs as much as possible.

As stated in our reply to question 20, we believe that the deletion of article 40 CDR and related inclusion of the new article 21b contribute to a clarification of the applicable disclosure framework. While we do not know exactly to which extent NCAs may have used the power which the previous article 40 CDR gave them, we do not anticipate them to result in a significant addition of administrative burdens or costs.

Question 22: Do you agree with ESMA's assessment that there are no circumstances in which an NCA should require additional information in a prospectus over and above that which is required under Articles 6, 13, 14a and 15a PR within the context of the scrutiny and approval of a prospectus? Please explain your answer.

The SMSG generally agrees with this assessment, underlines the importance of avoiding gold-plating, and believes that a streamlining of required relevant information, and generally tighter disclosure ought to result in a reduction of related costs.

3.5 Section 8 – ESMA's advice on the procedures for the approval of prospectuses

Question 23: Do you agree with ESMA's approach to further harmonising the deadlines in NCAs' approval processes, i.e., trying to keep the deadlines as simple as possible and avoiding complicated administrative procedures? If not, please indicate what changes could be made to improve ESMA's advice in this area.

The SMSG considers that the deadlines proposed in art. 36 (120 working days for the NCA to approve or refuse the approval and the possible extension of 90 working days) are too long and may hamper the predictability of the process. It would seem like these long terms have been fixed considering the worst scenario while we think that the approach should be reversed.

While deadlines may seem to be an administrative issue, in practice they often have significant practical consequences, as delays can for example lead to a loss of a market window. Delays can also have an impact on the periodic financial information which should be updated continuously during the approval process.

We would also like to point to the fact that deadlines are already now used differently in the MS. Where NCAs have efficient approval mechanisms in place, this already translates into a smooth and expedite process where issuers are not subject to lengthy deadlines. It is therefore important, regardless of the formal deadlines, which should only be resorted to in exceptional cases, that ESMA work together with NCAs to streamline approval processes across the EU.

Against this background, we would propose that the deadlines would be set at 90 working days plus 10 days.

Question 24: Do you believe ESMA's proposal will impose additional costs and/or burdens for issuers? Please explain your answer and provide an indication of the related costs.

As indicated in our reply to question 23, the SMSG is unsure about the usefulness of the introduction of a 120-working day deadline and would rather shorten this period to 90 working days plus 10 days. We believe however that any measure or guidelines towards NCAs that may help reduce undue delays or unpredictability in the scrutiny and approval of prospectuses and related information is welcome.

As longer processes may often be more costly, depending on whether the time is used in a reasonable way and not just to delay the process, we think that measures taken to shorten application periods will likely have a positive impact on costs and burdens for issuers.

3.6 Section 9 – Update of the reporting requirements in the CDR on metadata

Question 25: Do you agree with ESMA's proposal to amend CDR on metadata to account for the new types of prospectuses stemming from the Amending Regulation? Please explain your answer and present any alternative proposals.

The SMSG is in favour of increasing the use of metadata to facilitate the investor access to complete and accurate information and support the future role of ESAP as a centralised clearing house of information. We would however invite ESMA and the Commission to continue to apply a spirit of proportionality and subsidiarity to future developments in this area.

Proportionality should be applied to ensure that technical developments and their related costs – notably concerning the reformatting of information flows that may be asked from issuers and the financial industry more generally – should always be justified by clearly identified benefits for investors or the issuers themselves.

Subsidiarity, in the full meaning of the term, should also be considered, notably when the introduction of new technical standards regarding data collection and its subsequent dissemination, because of new regulation, may conflict with existing well-functioning industry solutions that already provide the same functionalities at a reasonable cost or at no-cost for investors and market participants.

We therefore invite the ESMA and the Commission to closely monitor the implementation of initiatives involving metadata collection and dissemination, both at their level and at the one of NCAs.

Question 26: Do you agree that ESMA requires metadata to identify which securities qualify as EuGB (field 39 of draft Annex to CDR on metadata)? If not, why not? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

The SMSG considers that if the rules are there it is reasonable to also collect metadata, with reference however to what is stated under Question 25 about proportionality and subsidiarity.

Question 27: Do you agree with ESMA's proposal to streamline the process of submitting information that will need to be submitted by NCAs to ESAP via the Prospectus Register (Article 11a of the draft RTS amending CDR on metadata)? Please explain why.

The SMSG agrees with ESMA.

Question 28: With regards to field 5, is it always possible to determine a single venue 'of first admission' in case of simultaneous admission on two or more venues? Please explain why.

The SMSG believes that this should be possible but note the importance of clarifying the definition of “most relevant market in terms of liquidity” and to consider that at the time when admission to trading is sought it may not be certain that such admission will be obtained. It should thus not be a requirement to provide information in field 5 on this when seeking approval of a prospectus. In such case the issuer may report this information at a later stage, or it could be reported by the trading venue.

Question 29: Do you agree with the other changes proposed on the list of metadata which are proposed in Table 1 of Annex I of the draft CDR on metadata? Do you think these changes will create an unreasonable additional burden on issuers? Please explain why.

The SMSG does not have a position on this question.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA’s website.

Adopted on 10 January 2025

[signed] [signed]

Giovanni Petrella

Chair

Urban Funered

Rapporteur

Securities and Markets Stakeholder Group

5.4 Annex IV (Summaries of responses to questions 8 to 18)

1. This Annex contains the summaries of respondents' and the SMSG's responses to questions 8 – 18 of the CP. These summaries have been included in a separate section to improve the readability of Section 4.1.2 concerning ESMA's draft technical advice on the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives.

Q8: Do you agree with ESMA's approach to the disclosure requirements for non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives? Please explain your answer and provide any suggestions for amendments.

2. There were 19 responses to Q8. The following paragraphs focus on the main points identified.

3. Ten respondents agreed with ESMA's approach to the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives. However, there were also significant concerns about the practicality, clarity, and potential burden of the proposed requirements. Six respondents expressed doubts about the need for a precise framework for ESG note issuances, which they saw as impractical for corporate groups seeking simplicity and agility. They also highlighted the difficulty in reconciling the characteristics of project-related data available at the time of issuance with the expectation that pre-issuance information be comprehensive, detailed and specific. Three respondents were concerned that the additional ESG disclosure requirements may be overly burdensome, especially for smaller entities or first-time issuers, and are concerned about increased issuance costs and potential discouragement from participating in green finance markets. Furthermore, four respondents noted there is also a lack of clarity in terms such as "advertised" and "securities taking into account ESG factors".

4. Specific suggestions to improve ESMA's proposal included:

    a. Incorporating items 3.1.1 and 4.1.1 of Annex 21 into the section for risk factors in Annex 21 (two respondents),

    b. adopting a more balanced, well-calibrated, and phased approach to ESG disclosure requirements (one respondent),

    c. involving industry experts in issuing technical standards (one respondent).

5. Other suggestions focused on providing clear definitions, aligning terms with existing regulations, and ensuring that disclosure requirements are proportionate and do not lead to additional regulatory burdens (two respondents). Suggestions included aligning the definitions with the EuGB Regulation, the Taxonomy Regulation, the SFDR and MiFID[68]. Two respondents requested further guidance as to what is meant by the term 'advertised'. Finally, three respondents emphasised the importance of aligning disclosures with existing standards and frameworks and ensuring that key ESG information is accessible to investors.

6. Three respondents also suggested that the disclosure requirements in Annex 21 should be limited to existing non-equity securities that take into account an ESG component or pursue an ESG objective, which would mean limiting the disclosure requirements in Annex 21 to use of proceeds bonds and sustainability-linked non-equity securities. These respondents argued that the proposed disclosure requirements for other non-equity securities taking into account an ESG component or pursuing and ESG objective could negatively impact product innovation, because some products may not be able to comply with the disclosure requirements.

7. Overall, while there was general support for ESMA's proposals, the respondents highlight several areas for improvement to enhance clarity, consistency, and usability of the disclosure requirements.

Input from the SMSG

8. The SMSG supported the introduction of a standardised annex to cover all non-equity products advertised as taking into account ESG factors or pursuing ESG objectives. However, the SMSG considered that there is a risk of overlap between the disclosure requirements proposed by ESMA in Annex 21 and the rules dedicated to EuGBs as well as the SFDR. The SMSG was concerned that the different nomenclatures in the disclosure regimes may confuse investors.

9. The SMSG went further to point out that there should not be a distinction between non-equity securities taking into account ESG factors or pursuing ESG objectives and that the disclosure requirements in Annex 21 should not go beyond ESMA's Public Statement on sustainability disclosure in prospectuses dated 11 July 2023[69].

10. In its advice, the SMSG expressed concerns that the proposed disclosure requirements in Annex 21 may lead to overlapping, duplicative and boiler plate statements. As an illustration, the advice referred to the language "advertised as ESG", which goes beyond labelled use proceeds bonds and sustainability-linked non-equity securities. The SMSG was concerned that the undefined nature of this scope creates uncertainty

[68] One respondent explicitly refers to aligning with the 'target market' definition in MiFID.
[69] ESMA32-1399193447-441.

and requests clarification that corporate disclosures, such as an issuer's transition plan, ESRS sustainability disclosures and pure play green business) would not trigger these disclosure requirements.

11. After acknowledging that the references to "advertised as taking into account ESG factors or pursuing ESG issues" is a Level 1 issue that cannot be solved by ESMA's technical advice, the SMSG invited the Commission and ESMA to consult on ways to avoid introducing confusing terminology.

Q9: Do you agree with the definitions proposed for 'use of proceeds bonds' and 'sustainability-linked non-equity securities'? If not, what changes to the definition would you suggest?

12. There were 21 responses to Q9. The following paragraphs focus on the main points identified.

13. Six respondents supported ESMA's proposal for the proposed definitions of 'use of proceeds bonds' and 'sustainability-linked non-equity securities', while three respondents disagreed with the proposals. Most respondents (ten) did not state whether they agree or disagree with the proposed definitions but instead propose improvements.

14. Eleven respondents expressed concerns about alignment with existing regulations, such as the European Green Bond Regulation, and the need for flexibility to accommodate evolving financial instruments. These respondents emphasised the importance of consistency and clarity, suggesting that the definitions should be aligned with established principles and existing regulatory frameworks to avoid confusion and ensure legal certainty. Common concerns included the potential for the new definitions to contradict existing ones from other European legislation (such as the SFDR), the practical challenges in tracing proceeds to specific projects, and the risk of greenwashing. Four respondents also highlight the need for flexibility in how proceeds are allocated.

15. Common suggestions involved aligning the definitions with the European Green Bond Regulation and ICMA principles, using clearer and more inclusive terminology, and ensuring third-party verification to enhance the credibility of ESG claims. Three respondents proposed specific amendments to the definitions to better reflect market practices and regulatory requirements, such as clarifying the financial and structural characteristics of sustainability-linked non-equity securities and accounting for the use of proceeds within a certain time period following bond issuance.

16. Overall, while there was support for ESMA's proposals, respondents have provided valuable feedback to enhance clarity, alignment, and flexibility.

Input from the SMSG

17. The SMSG supported the introduction of the definition for sustainability-linked non-equity securities, but recommended adding, "[…] over a given financial year, some or all" into the definition.

18. With regards to the definition of "use of proceeds bonds", the SMSG suggested several amendments, including aligning the definition more closely with the definition of "bond marketed as environmentally sustainable" in Article 2 under (5) of the EuGB Regulation. Additionally, the SMSG suggested including the text, "or an equivalent amount of proceeds" after the word "proceeds" as well as replacing the text "applied to finance or re-finance" with "allocated to" in order to cover a portfolio of existing and future financings.

19. Finally, the SMSG recommended replacing the reference to "green projects/activities" with a reference to "environmental projects/activities in the definition of "use of proceeds bonds" to include growing uses, such as the "blue" field.

Q10: Do you agree with ESMA's approach to dealing with (i) prospectuses relating to EuGBs and ii) prospectuses from issuers who have opted to use the templates for voluntary pre-issuance disclosures, as referred to in European Green Bond Regulation? Please explain your answer and provide any additional proposals to alleviate the regulatory burden.

20. There were 21 responses to Q10. The following paragraphs focus on the main points identified.

21. Twelve respondents agreed with ESMA's approach to dealing with prospectuses relating to EuGBs and voluntary pre-issuance disclosures. They appreciate the efforts to minimise additional regulatory burdens and maintain transparency for investors. Notwithstanding the general agreement, several respondents expressed concerns. For example, three respondents were concerned about the lack of simplification and flexibility for corporate groups. Another respondent appeared to object to the general requirement to publish a prospectus for any issuance of EuGBs due to administrative burden and liability concerns.

22. Five respondents considered that there are potential duplications and contradictions between disclosure requirements for prospectuses and the disclosure published under the EuGB Regulation in the optional pre-issuance templates and the EuGB factsheets. One respondent pointed to the newness of EuGB standards and the lack of established

precedent or clear guidance as an issue, while another considered that the request for input on voluntary pre-issuance disclosures is immature because the voluntary disclosure templates have not been published. Two respondents were concerned that these mismatches could increase complexity and costs.

23. Nine respondents supported ESMA's proposal to encourage the incorporation by reference of EuGB factsheets and the voluntary preissuance disclosure referred to in respectively Articles 10 and 20 EuGB Regulation. While another respondent objected to the use of incorporation by reference and suggests that the disclosure should be included directly in prospectuses so that it is all in one place to improve the readability of the prospectus. This respondent believed that incorporation by reference should be limited to technical details.

24. One respondent suggested aligning most prospectus requirements with Article 20 of the EUGB, focusing on taxonomy-aligned activities and detailed KPIs.

25. Overall, while there is general support for ESMA's approach, respondents highlighted the importance of addressing these concerns and suggestions to improve the regulatory framework.

Input from the SMSG

26. While acknowledging the harmonisation objective underlying ESMA approach to dealing with prospectuses relating to EuGBs and agreeing that incorporation by reference can significantly alleviate the burden on issuers, the SMSG recommended not requiring prospectuses relating to EuGBs to apply Annex 21 since EuGBs are already covered by a dedicated regulation.

27. The SMSG's advice went further to point out that, if Annex 21 applies to EuGBs, there is a terminology mismatch between ESMA's proposed Annex 21 and the EuGB factsheet, which makes it difficult to assess which information from the factsheet can be used to fulfil the requirements in Annex 21. Finally, the SMSG pointed out that the information in the factsheet should be "Category C" information so that the information from factsheet can be included in final terms.

Q11: Should Annex 21 be disapplied in relation to prospectuses relating to European Green Bonds and/or prospectuses drawn up using the templates for voluntary pre-issuance disclosures? Please explain your answer.

28. There were 19 responses to Q11. The following paragraphs focus on the main points identified.

29. Twelve respondents agreed with disapplying Annex 21 for European Green Bonds (EuGBs). Two of these respondents argued that the EuGB framework already includes comprehensive disclosure requirements, making Annex 21 redundant as well as adding unnecessary complexity and costs. Two respondents also noted that disapplying Annex 21 will avoid any duplication of disclosure requirements. However, two respondents disagreed, supporting ESMA's approach of retaining Annex 21 to ensure consistency, comprehensiveness, and alignment with investor expectations.

30. Another respondent was undecided, while five respondents (including the undecided respondent) suggested waiting to make a decision in relation to the application of Annex 21 to EuGBs to better assess the optional disclosure templates and market practices.

31. Suggestions included i) aligning the structure and content of voluntary templates with mandatory compliance templates for EuGBs to ensure comparability and reduce complexity, ii) integrating the EuGB factsheet with Annex 21 or delaying its adoption to monitor market developments and promote innovation, iii) including a distinct section in Annex 21 for EuGB issuance to avoid friction, and iv) maintaining transparency and accessibility by applying Annex 21 to all relevant prospectuses. Two respondents also suggested mapping item-by-item the relationship between EuGB factsheets / voluntary disclosures and Annex 21 to identify specific items for disapplication and deleting certain technical references to avoid confusion.

32. Three respondents suggested that the Annex 21 should not cover all non-equity securities advertised with an ESG component or objective, but that there should be different annexes covering individual products such as use of proceeds bonds and sustainability-linked non-equity securities. These respondents argued that this would be easier to comprehend.

33. Overall, while the majority of respondents supported disapplying Annex 21 for EuGB prospectuses to reduce complexity and costs, there were concerns about potential inconsistencies, duplications, and gaps in disclosures, with suggestions for further clarity and reliance on existing regulated formats to ensure comprehensive and consistent disclosures.

Input from the SMSG

34. The SMSG considered that all relevant information for an investment decision is already supposed to be included in an EuGB factsheet, so it would be better if Annex 21 does not apply to prospectuses relating to EuGBs or if such prospectuses would not be subject to any additional disclosure requirements beyond the incorporation by reference of the factsheet.

Q12: Are the proposed disclosure requirements in Annex 21 proportionate? If not, please (i) identify disclosure requirements that could be alleviated and (ii) provide a (quantitative) description of the costs of compliance.

35. There were 21 responses to Q12. The following paragraphs focus on the main points identified.

36. Five respondents agreed on the fact that the proposed disclosure requirements in Annex 21 are proportionate. One respondent welcomed the replication of the ESMA statement, while another respondent considered that the proposed disclosure requirements are in line with the statement and existing standards such as the ICMA principles and the FCA's proposals.

37. However, most respondents did not indicate whether they consider the requirements are proportionate or not. Instead, thirteen respondents requested changes to the disclosure requirements in Annex 21. Specific items such as 2.1, 2.2, 2.4, and 6.1 were frequently mentioned as needing simplification or deletion. In particular, respondents suggested that:

    - item 2.1 is too complex (two respondents);
    - issuers may have difficulty providing an unequivocal statement required by item 2.1 (one respondent); and
    - item 2.1 does not sufficiently accommodate issuers that are eligible to use the EU Taxonomy but are not yet fully aligned (two respondents).

38. Concerns were also raised about the publication and confidentiality of ESG ratings, with some respondents noting that ESG rating agencies do not allow the publication of their ratings so that item 6.1 should be limited to ESG ratings provided at the request of the issuer. Another respondent suggested only requiring the disclosure in Items 6.1 and 6.2 if an issuer chooses to include the review, advice or assurance in the prospectus.

39. Three respondents were concerned about the disclosure required by the second paragraph of Item 3.1.3, which requires a clarification of whether the 'use of proceeds' bonds are part of financing the entirety of the issuer's green/sustainability strategy and an explanation of the 'use of proceeds' bonds contribution to that strategy, including, where relevant, the financing of activities eligible and/or aligned with the EU Taxonomy or a third country taxonomy.

40. Additionally, three respondents believed that the disclosure requirements for use of proceeds bonds may be similar to the disclosures for EuGBs, while the disclosure

requirements for EuGBs is meant to be the so-called 'gold standard'. ESMA understands that these respondents believed that the disclosure standards for use of proceeds bonds may be set too high.

41. Two respondents considered that Item 1.1 concerning risk factors is redundant because there is already a general requirement to cover ESG matters in the risk factors. These respondents suggested deleting this item.

42. There were several technical drafting suggestions, but for brevity's sake, this summary does not provide an overview of each suggestion. However, the major topics are included. Of course, ESMA has reviewed these proposals and, where appropriate, made the necessary changes to Annex 21.

43. Overall, respondents highlighted the need for adjustments to the disclosure requirements in Annex 21. They emphasised the importance of aligning with existing regulations, standards and the ESMA statement as well as adjusting some disclosures to avoid imposing unnecessary burdens on issuers.

Input from the SMSG

44. The SMSG's response to this question began by emphasising that all relevant information for an investment decision should be included in a EuGB factsheet so that Annex 21 should either (i) not apply to prospectuses concerning EuGBs or (ii) there should not be any disclosure requirements in Annex 21 beyond what is required in an EuGB factsheet.

45. The advice went further to state that some of the disclosures in Annex 21 may be perceived as going beyond current market practice and provides suggestions for revisions in relation to Items 2.1, 2.3, 2.4 and 6.1 from the proposed Annex 21 in the CP.

    a. Item 2.1: The SMSG advised that this item could be simplified by requiring issuers to state how the criteria in Article 3 of the Taxonomy Regulation are met. Additionally, the SMSG advised ESMA to change the requirement to provide an "unequivocal" statement to instead require that the statement be made "clearly".

    b. Item 2.3: The SMSG suggested removing the reference to "any material data" since it is overly broad and it goes beyond the disclosure required by the EuGB factsheet, which is considered the 'gold' standard.

    c. Item 2.4: The SMSG considered that the disclosure required by this item concerning "material information about any specific market standard, label or third country taxonomy" is redundant with the information already disclosed under Items 2.1 and 2.4. Therefore, the SMSG suggested deleting these items

and requiring a link to any relevant third country taxonomy, label or standard together with an explanation of the ESG factors considered in Item 2.1.

d. Item 6.1: The SMSG's view was that it would be inappropriate to require ESG ratings disclosure because this may mean that an issuer must pay additional fees for the use of a rating that it has not solicited or intended to use in a prospectus. Instead, the SMSG proposed to amend the disclosure requirements to state, "If the issuer chooses to use ESG ratings assigned to it when advertising its bonds", so that issuers would only be required to include such information where it is public.

46. The SMSG's advice in relation to this question ended by referring to ESMA's concerns about some issuers partially complying with a market standard or label. The SMSG believed that this issue should be addressed by the standard or label itself and not via the Prospectus Regulation.

Q13: Do you agree with the proposal to require disclosure about whether post-issuance shall be provided and the scope of this disclosure in items 6.3 and 6.4 of Annex 21? If not, what changes would you propose? Please explain your answer.

47. There were 18 responses to Q13. The following paragraphs focus on the main points identified.

48. Fifteen respondents agreed with ESMA's proposal to require disclosure about whether post-issuance information shall be provided and the scope of this disclosure in items 6.3 and 6.4 of Annex 21. Two respondents rejected ESMA's proposal considering that post-issuance disclosure should be on a voluntary basis only.

49. Several respondents made suggestions to improve ESMA's proposal. One respondent suggested that issuers should only indicate where information is available rather than providing additional substantive disclosure and proposes incorporating this information in final terms (Category C instead of Category B). Another respondent supported the proposal but calls for clear guidelines to minimise discrepancies in reporting practices and ensure that the information remains relevant to investors' needs. One respondent agreed with the proposal but recommends making the reports mandatory to ensure consistent and reliable updates for investors. Two respondents suggested amending Item 6.4 to clarify that it is sufficient to refer to a category of persons doing the assurance as opposed to identifying a specific person or entity.

50. Overall, the majority of respondents agreed with ESMA's proposal.

Input from the SMSG

51. While the SMSG generally agreed with the proposal to require disclosure of whether post-issuance disclosure shall be provided, it argued that issuers should only have to disclose where such information is available, as opposed to providing additional disclosure what information will be reported. The SMSG considered that such additional information may not be available at the date of the approval of the prospectus or when the final terms are submitted to the relevant NCA. The SMSG also pointed out that details on the scope of post-issuance information may not be available at the time the prospectus is approved or may change over time.

52. The SMSG also recommended that the disclosure concerning the post-issuance information is classified as 'Category C' information instead of 'Category A' information so that it can be finalised in final terms.

Q14: Do you agree with ESMA's proposal in item 2.1 of Annex 21 concerning unequivocal statements about how the criteria or standard are met and that they are significant in relation to the ESG features or objectives of the security?

53. There were 19 responses to Q14. The following paragraphs focus on the main points identified.

54. Seven respondents agreed with ESMA's proposal in item 2.1 of Annex 21, which calls for clear and unequivocal statements about how the criteria or standards are met in relation to ESG features or objectives of securities. These respondents emphasised the importance of transparency and the need for clear disclosure to evaluate the greenness of investments and ensure credibility.

55. Ten respondents raised concerns about the proposal. There were various objections raised by respondents, including the practical implementation and potential burdens of the proposal. Two respondents highlighted the risk of divergent approaches across Member States, the abstract nature of the requirements, and the need for a level playing field and clear interpretation of "unequivocal" statements.

56. Additionally, respondents made various suggestions to improve the proposal. Five respondents suggested increasing flexibility and clarity in the disclosure requirements, such as allowing clear disclosure of non-alignment with relevant references and incorporating a Green bond framework by reference. Three respondents argued that item 2.1 should not apply to EU Green Bonds as disclosures are already addressed under the EuGB Regulation. Finally, two respondents requested additional clarifications, such as defining what is meant by "significant" in the context of alignment

with standards and limiting item 2.1 to cases where an issuer does not intend to be fully aligned with a specific market standard.

57. Overall, while there was some support for the proposal, several respondents have raised concerns about its implementation and have provided suggestions to improve clarity and flexibility.

Input from the SMSG

58. The SMSG disagreed with ESMA's proposal to require "unequivocal statements" in Item 2.1 of Annex 21, because it considers that many such statements may need to include a degree of qualification due to the complexity of the "do no significant harm" criteria and the qualitative elements of the Taxonomy's technical standards.

59. The SMSG suggested that it should be possible for an issuer to claim that a use of proceeds bond partially aligns with a taxonomy, by referring to the taxonomy as a percentage of the total green allocations.

Q15: Do you agree with the 'Category A', 'Category B' and 'Category C' classification of the items included in Annex 21, in particular in relation to items 2.1, 2.2 and 2.3? Please provide any suggestions for alternative categorisations and explain your answer.

60. There were 17 responses to Q15. The following paragraphs focus on the main points identified.

61. Six respondents agreed with ESMA's proposal for the 'Category A, 'Category B' and 'Category C' classification of the items included in Annex 21. One respondent strongly supported the inclusion of items 2.1, 2.2, and 2.3 in Category A, emphasising the importance of transparency and preventing greenwashing. They recommended ensuring that all critical ESG disclosures are included in Category A to enable informed investment decisions.

62. Ten respondents disagreed with ESMA's proposal to classify items 2.1, 2.2, and 2.3 as Category A. These respondents expressed concerns that this classification does not provide the necessary flexibility for issuers. For example, issuers may not be able to choose projects closer to the time of issuance under a Category A classification. These respondents argued that this would hamper the use of base prospectuses and does not accommodate the practical realities of different ESG frameworks. To address these concerns, eight respondents suggested reclassifying items 2.1, 2.2, and 2.3 to Category B or C.

63. Overall, the common themes among the responses included a need for flexibility in ESG frameworks, concerns about redundancy and unclear wording, and suggestions to reclassify certain items to better align with practical realities and regulatory requirements.

Input from the SMSG

64. The SMSG considered that categorising Items 2.1 and 2.2 under Category A will hamper the use of base prospectuses, because this information will need to be included in the prospectus at the time of approval. Instead, the SMSG recommended changing these items to Category B.

Q16: Do you agree with ESMA's approach to disclosure for structured products with a sustainability component? Please explain your answer and include any suggestions to improve the approach.

65. There were 13 responses to Q16. The following paragraphs focus on the main points identified.

66. Ten respondents appeared to generally support ESMA's approach to disclosure for structured products with a sustainability component, although their support was often conditional and accompanied by specific concerns and suggestions. One respondent disagreed with ESMA's proposal, arguing against any departure from the current regime due to potential liability issues for issuers. Another respondent indicated a need for more specific guidance. Five respondents mentioned the need for alignment with existing regulations such as MiFID II and SFDR, while another respondent was concerned by the potential for confusion due to the interchangeable use of terms like "ESG" and "sustainable".

67. Two respondents emphasised the importance of considering both the funding and exposure components of structured products in assessing their sustainability, advocating for a clear analysis and quantification of both components to evaluate and disclose the product's sustainable characteristics in a truthful way. They also supported aligning disclosure requirements across regulations to prevent fragmentation and ensure transparency, highlighting the need for consistency with SFDR and MiFID II.

68. Suggestions to improve ESMA's approach included i) establishing clear attribution rules and enhancing transparency in reporting to mitigate the risk of double accounting (one respondent), ii) revising specific sections to account for different issuer frameworks and methodologies (one respondent), and iii) providing practical examples and explanations to meet MiFID II requirements (one respondent). One respondent also advocated for standardized disclosures to prevent greenwashing and enhance

transparency, supporting alignment with SFDR principles. Finally, another respondent suggested including a clear definition of structured products and specifying when they cannot be considered sustainable.

69. Overall, while there was support for ESMA's proposals, respondents emphasised the importance of addressing their specific concerns and incorporating their suggestions in the disclosure requirements.

Input from the SMSG

70. The SMSG was of the general view that structured products should be covered by Annex 21, because ESG structured products are “part of the ecosystem of ESG solutions” so that it is important that issuers provide full transparency on their funding component and their derivative component. The SMSG explained that this approach would allow investors to obtain information about the use of proceeds of structured products, while also permitting the assessment of the underlying part.

71. The SMSG also recommended redrafting Item 5.3.4, because the wording of the item may confuse the concepts of “investment” and “financing” and suggested the following alternative wording: “If applicable, a warning that the investment in the structured product does not represent a direct financing of companies or economic activities, including transition finance”. However, the SMSG noted that structured products have a positive contribution to the valuation of underlying companies and should not be prevented from being identified as “sustainable products”, even if they do not directly finance issuers on the primary markets.

Q17: Do you support ESMA’s proposal to amend Article 26 CDR on scrutiny and disclosure to facilitate the incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms? Please explain your answer and provide any alternative proposals.

72. There were 20 responses to Q17. The following paragraphs focus on the main points identified.

73. Eighteen respondents supported ESMA’s proposal to amend Article 26 CDR on scrutiny and disclosure. These respondents argued that incorporating relevant information from EuGB factsheets and templates for voluntary pre-issuance disclosures into base prospectuses via final terms simplifies the process, reduces costs, and lowers administrative burdens. However, several concerns and suggestions were raised:

- Three respondents requested clarification on how National Competent Authorities will perform their review (ex post vs. ex ante) and how issuers should handle ex post comments. One respondent also emphasised the need for simplicity and flexibility for repeat corporate issuers.

- Another respondent supported the proposal as long as issuers can decide the most suitable approach.

- Two respondents supported ESMA's proposal assuming that issuers can comply with Article 14(1) EuGB Regulation by including an indication that a base prospectus can be used for the issuance of EuGBs.

- Two respondents suggested amending Article 24(4a) to clarify that the information in a EuGB factsheet and voluntary templates for pre-issuance disclosure qualifies as 'Category C' information for the purposes of Annex 21.

- Another respondent proposed including a clarification that no duplicate information is required if already included in the base prospectus.

74. There was notable opposition from one respondent, who argues that the proposal risks fragmenting important ESG information and reducing accessibility for investors. They preferred key ESG disclosures to be explicitly included in the base prospectus itself to ensure clarity and transparency.

75. Overall, the majority of respondents appreciate the proposal's potential to streamline processes and reduce costs.

Input from the SMSG

76. The SMSG supported this proposal and notes that it adds flexibility to EuGB issuance programmes.

Q18: Do you think that allowing incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base tuses via final terms will impose any significant costs or burden on issuers? Please explain your answer.

77. There were 16 responses to Q18. The following paragraphs focus on the main points identifreportifteen respondents considered that this approach will not impose significant costs or burdens on issuers. They highlighted that this method provides flexibility and a streamlined process, reducing the need for approval and minimising administrative efforts.

78. One respondent was against incorporating the relevant information from EuGB factsheets and the voluntary pre-issuance disclosure by reference into prospectuses. This respondent argued that all information should be in a single physical document as it will be more accessible for investors.

Input from the SMSG

79. The SMSG viewed the incorporation by reference of EuGB factsheets and voluntary pre-issuance positively because this results in a less costly process for issuers.

5.5 Annex V (Technical advice concerning the Prospectus Regulation – full text)

The Final Report Annex is marked up with additions and/or deletions which constitute ESMA's advice. It contains the full text of ESMA's advice, which includes the proposals already seen in this Final Report, e.g., such as in ESMA's responses to questions 1, 6, and 21.

The Final Report Annex (clean) is a clean version of ESMA's advice provided to assist readers.

5.6 Annex VI (CDR on metadata)

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) 2019/979 as regards machine-readable data for the classification of prospectuses and prospectus-related documents

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to 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,[1] and in particular Articles 21(13) and 25(7) thereof,

[1] OJ L 168, 30.6.2017, p. 12.

Whereas:

1) Regulation (EU) 2024/2809 (the Listing Act) introduces new types of prospectuses:[2] the EU Growth issuance and the EU follow-on prospectus. These prospectuses must be submitted to the European Securities and Markets Authority (ESMA) in the storage mechanism known as Prospectus Register pursuant to Article 21, paragraph 6 of Regulation (EU) 2017/1129. The list of machine-readable data that national competent authorities (NCAs) provide to ESMA needs to be updated to include these new prospectuses.

2) Article 14 of Regulation (EU) 2023/2631[3] requires issuers to publish a prospectus pursuant to Regulation (EU) 2017/1129 where issuing bonds designated in accordance with Article 14 of Regulation (EU) 2023/2631. In addition, such prospectuses must be included in the Prospectus Register. It is therefore appropriate to require NCAs to provide ESMA with machine-readable data indicating which securities qualify as EU Green Bonds (EuGB), as bonds marketed as environmentally sustainable or sustainability-linked bonds or as securitisation bonds designated as EuGB.

3) The Listing Act introduces a requirement for issuers to file the exemption documents referred to in points (da) and (db) of Article 1(4), first subparagraph, and in points (ba) of Article 1(5), first subparagraph with competent authorities. It also introduces a requirement for ESMA to include in its yearly report prepared pursuant to Article 47 of Regulation (EU) 2017/1129 an analysis and statistics in relation to the extent to which such exemptions are used throughout the Union. In order to minimise the burden on competent authorities, competent authorities may provide those documents to ESMA via the mechanism referred to in Article 21(6) including the relevant metadata in order for ESMA to be able to prepare such statistics.

4) Article 21a of Regulation (EU) 2017/1129 requires competent authorities to build to the extent possible on the mechanisms implemented for the purposes of Article 25(6) of Regulation (EU) 2017/1129 for making the information referred to in paragraph 1 of Article 21a of Regulation (EU) 2017/1129 accessible on ESAP. To minimise the compliance burden on competent authorities and issuers, the obligation to make information accessible on ESAP pursuant to Article 21a of Regulation (EU) 2017/1129 can be fulfilled by making such information available to ESMA via the notification portal referred to in Article 25(6) of Regulation (EU) 2017/1129. The notification portal should be used to submit the information referred to in Article 21(1) in accordance with the provisions of Article 21(5) and any additional information required by Article 21a that is not currently in scope of the Prospectus Register, with the relevant metadata. This is in addition to the requirements of Commission Implementing Regulation xx/xxx *[ITS on certain tasks of ESAP collection bodies*], in particular Article 5 thereof.

5) Further amendments to the submissible machine-readable data are required to fix some minor issues identified. These are: the addition of document type “translation of appendix” to field 5; the introduction of a new field for “consideration offered currency” because in certain cases the consideration offered and the nominal amount are in different currencies; and the amendment of the list of “type of offer/admission” to cater for cases not already in the system.

[2] OJ L, 2024/2809, 14.11.2024.
[3] Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (OJ L, 2023/2631, 30.11.2023.).

6) Delegated Regulation (EU) 2019/979 should therefore be amended accordingly.

7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.

8) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[4].

9) In order to minimise the burden on competent authorities and on issuers, it should be possible to have one update to Annex VII of Regulation (EU) 2017/1129, including the implementation of amendments to fix minor issues, to the procedures and structures designed and implemented in application of Article 25(6) of Regulation (EU) 2017/1129. Therefore, the date of application of this Regulation should be aligned with the date of application of the requirements under Article 21a of Regulation (EU) 2017/1129,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Commission Delegated Regulation (EU) 2019/979

Commission Delegated Regulation (EU) 2019/979 is amended as follows:

(1) In Chapter 3, the following Articles are added:

‘Article 11a

For the purposes of Article 21a of Regulation (EU) 2017/1129, competent authorities may make the information referred to in Article 21a(1) accessible on ESAP by providing ESMA via the notification portal referred to in Article 25(6) with an electronic copy in machine-readable format of the information, and the data necessary for its classification in the storage mechanism referred to in Article 21(6) of Regulation (EU) 2017/1129, in accordance with the tables set out in Annex VII to this Regulation.

Article 11b

Competent authorities may provide ESMA via the notification portal referred to in Article 25(6) with an electronic copy of the documents referred to in Article 1(4)(da) and (db) and Article 1(5)(ba) of Regulation (EU) 2017/1129 for the purpose of the analysis referred to in Article 47(3).’;

(2) Article 12 is replaced by the following:

‘Article 12

[4] OJ L 331, 15.12.2010, p. 84.

The competent authority shall provide the accompanying data referred to in Article 11, Article 11a and Article 11b in a common XML format and in accordance with the format and standards set out in the tables in Annex VII.';

(3) Annex VII is replaced by Annex I to this Regulation.

Article 2

Entry into force and application

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

It shall apply from 10 July 2026.

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

Done at Brussels,

For the Commission,

The President

ANNEX I

'**ANNEX VII**

MACHINE-READABLE DATA TO BE PROVIDED TO ESMA

Table 1

New number	Field	Content to be reported	Format and Standard to be used for reporting
1.	National identifier	Unique identifier of the uploaded record, assigned by the sending NCA	{ALPHANUM-50}
2.	Related national identifier	Unique identifier of the record to which the uploaded record relates, assigned by the sending NCA Not reported in case the related national identifier is not applicable	{ALPHANUM-50}

3.	Sending Member State	Country code of the Member State which approved the uploaded record or with which the uploaded record was filed	{COUNTRYCODE_2}
4.	Receiving Member State(s)	Country code of the Member State(s) to which uploaded record is to be notified or communicated When multiple Member States shall be communicated, field 4 shall be reported as many times as necessary	{COUNTRYCODE_2}
5.	Document type	The type of uploaded document(s)	Choice from list of predefined fields: — 'BPFT' — Base prospectus with final terms — 'BPWO' — Base prospectus without final terms — 'STDA' — Standalone prospectus — 'REGN' — Registration document — 'URGN' — Universal registration document — 'SECN' — Securities note — 'FTWS' — Final terms, including the summary of the individual issue annexed to them — 'SMRY' — Summary — 'SUPP' — Supplement — 'SUMT' — Translation of summary — 'APPT' — Translation of appendix

			— ‘COAP’ — Certificate of Approval — ‘AMND’ — Amendment — ‘EXMP’ — Exemption document under Article 1(4)(da), Article 1(4)(db), Article 1(5)(ba), Article 1(4)(f), Article 1(4)(g), Article 1(5)(e) or Article 1(5)(f) PR -FOPA – Final offer price and amount of securities under Article 17(2) PR When multiple documents shall be communicated, field [5] shall be reported as many times as necessary to describe each document composing the record
6.	Exemption category	Reason for the exemption Multiple categories may be selected	— ‘EDPR’— Exemption document under Article 1(4)(da), Article 1(4)(db) or Article 1(5)(ba) PR [fungible securities] — ‘EDMD’— Exemption document under Article 1(4)(g) or Article 1(5)(f) PR [merger or division] — ‘EDTK’— Exemption document under Article 1(4)(f) or Article 1(5)(e) PR [takeover]
7.	Structure type	The format chosen for the prospectus	Choice from list of predefined fields: — ‘SNGL’ — Single document prospectus

			— ‘SPWS’ — Prospectus consisting of separate documents with summary — ‘SPWO’ — Prospectus consisting of separate documents without summary
8.	Approval or filing date	The date on which the uploaded record was approved or filed	{DATEFORMAT}
9.	Language	The EU language in which the uploaded record is drafted	{LANGUAGE}
10.	Offeror standardised name	Name and surname of the offeror in case the offeror is a natural person When multiple offerors shall be communicated, field [9] shall be reported as many times as necessary	{ALPHANUM-280}
11.	Guarantor standardised name	Name and surname of the guarantor in case the guarantor is a natural person When multiple guarantors shall be communicated, field [10] shall be reported as many times as necessary	{ALPHANUM-280}
12.	Issuer LEI	Legal Entity Identifier of the issuer When multiple issuers shall be communicated, field [11] shall be reported as many times as necessary	{LEI}
13.	Offeror LEI	Legal Entity Identifier of the offeror When multiple offerors shall be communicated, field [12] shall be reported as many times as necessary	{LEI}

14.	Guarantor LEI	Legal Entity Identifier of the guarantor When multiple guarantors shall be communicated, field [13] shall be reported as many times as necessary	{LEI}
15.	Offeror residency	Offeror's residency in case the offeror is a natural person When multiple offerors shall be communicated, field [14] shall be reported as many times as necessary	{COUNTRYCODE_2}
16.	Guarantor residency	Guarantor's residency in case the guarantor is a natural person When multiple guarantors shall be communicated, field [15] shall be reported as many times as necessary	{COUNTRYCODE_2}
17.	FISN	Financial Instrument Short Name of the security This field should be repeated for each ISIN	{FISN}
18.	ISIN	International Securities Identification Number	{ISIN}
19.	CFI	Classification of Financial Instrument code This field should be repeated for each ISIN	{CFI_CODE}
20.	Issuance currency	Code representing the currency in which the nominal or notional value is denominated This field should be repeated for each ISIN	{CURRENCYCODE_3}
21.	Denomination per unit	Nominal value or notional value per unit in the issuance currency	{DECIMAL-18/5}

		This field should be repeated for each ISIN Field applicable to securities with defined denomination	
22.	Identifier or name of the underlying	ISIN code of the underlying security/index or name of the underlying security/index if an ISIN does not exist When basket of securities, to be identified accordingly Field applicable to securities with defined underlying. This field should be repeated for each ISIN of such securities	For unique underlying: —In case of security or index with existing ISIN: {ISIN} —In case the index has no ISIN: {INDEX} —Otherwise: {ALPHANUM-50} For multiple underlyings (more than one): 'BSKT'
23.	Maturity or expiry date	Date of maturity or expiry date of the security, when applicable This field should be repeated for each ISIN Field applicable to securities with defined maturity	{DATEFORMAT} For perpetual debt securities field 22 should be populated with the value 9999-12-31.
24.	Volume offered	Number of securities offered Field applicable only to equity This field should be repeated for each applicable ISIN	{INTEGER-18} Either as single value, range of values, maximum
25.	Price offered	Price per security offered, in monetary value. The currency of the price is the issuance currency Field applicable only to equity This field should be repeated for each applicable ISIN	{DECIMAL-18/5} Either as single value, range of values, maximum 'PNDG' in case the price offered is not available but pending 'NOAP' in case the price offered is not applicable
26.	Consideration offered	Total amount offered, in monetary value of the currency of the consideration offered.	{DECIMAL-18/5} Either as single value, range of values, maximum

		This field should be repeated for each ISIN	'PNDG' in case the consideration offered is not available but pending 'NOAP' in case the consideration offered is not applicable
27.	Consideration offered currency	Code representing the currency of the consideration offered This field should be repeated for each ISIN.	{CURRENCYCODE_3}
28.	Final offer price	Price per security offered, in monetary value. Field applicable only to equity. Field applicable only to final offers. This field should be repeated for each applicable ISIN	{DECIMAL-18/5} Single value
29.	Final offer price currency	The currency of the final offer. Field applicable only to equity.	{CURRENCYCODE_3}
30.	Final offer volume	Number of securities offered Field applicable only to final offers. This field should be repeated for each applicable ISIN	{INTEGER-18} Single value
31.	Final offer consideration	Total amount offered, in monetary value of the consideration offered currency. This field should be repeated for each ISIN	{DECIMAL-18/5} Either as single value
32.	Type of security	Classification of categories of equity and non-equity securities This field should be repeated for each ISIN	Choice from list of predefined fields: Equity

			— ‘SHRS’: Share — ‘UCEF’: Unit or share in closed end funds — ‘CVTS’: Convertible security —‘DPRS’: Depository receipt — ‘OTHR’: Other equity Debt: — ‘DWLD’: Debt with denomination per unit of at least EUR 100 000 — ‘DWHD’: Debt with denomination per unit of less than EUR 100 000 — ‘DLRM’: Debt with denomination per unit of less than EUR 100 000 traded on a regulated market to which only qualified investors have access to. ‘ABSE’: ABS ‘DERV’: Derivative security
33.	Type of offer/admission	Taxonomy according to PR and MiFID/MIFIR This field should be repeated for each ISIN	Choice from list of predefined fields: –‘IOWA’: Initial offer without admission to trading on a regulated market - ‘IORM’: Initial offer with admission to trading on a regulated market - ‘SOWA’: secondary offer without admission to trading on a regulated market

			–'IRMT': Initial admission to trading on regulated market –'IPTM': Initial admission to trading on regulated market from previously being traded on MTF –'IMTF': Initial admission to trading on MTF with offer to the public - 'SOOA': Secondary offer with admission to trading on a regulated market –'SIWO': Secondary issuance on a regulated market without an offer to the public - 'SIOP': Secondary issuance on an MTF with an offering to the public
34.	Characteristics of the trading venue where the security is initially admitted to trading	Taxonomy according to PR and MiFID/MIFIR This field should be repeated for each ISIN	Choice from list of predefined fields: — 'RMKT': RM open to all investors — 'RMQI': RM, or segment thereof, limited to qualified investors — 'MSGM': MTF which is a SME growth market — 'MLTF': MTF which is not a SME growth market
35.	Disclosure regime	The annex number in accordance with which the prospectus is drafted under the Commission Delegated Regulation (EU) [2018/980] When multiple annexes shall be communicated, field 35 shall be	{INTEGER-2} From 1 to [50]

		reported as many times as necessary	
36.	EU Growth issuance prospectus	Reason based on which an EU Growth prospectus has been used	Choice from list of predefined fields: — 'S15A': SME under PR Article 15a(1)(a) — 'I15B': Issuer other than SME under PR Article 15a(1)(b) — 'I15C': Issuer other than SME under PR Article 15a(1)(c) — 'O15D': Offeror of securities under PR Article 15a(1)(d)
37.	EU follow-on prospectus	Reason why an EU follow-on prospectus has been used	Choice from list of predefined fields: —'I14A': issuers under PR Article 14a(1)(a) —'I14B': issuers under PR Article 14a(1)(b) —'I14C': issuers under PR Article 14a(1)(c) —'O14D': offerors of securities under PR Article 14a(1)(d)
38.	EuGB Regulation	Flag indicating whether the security qualifies as EuGB, is a bond marketed as environmentally sustainable or a sustainability-linked bond. This field should be repeated for each ISIN.	—EuGB: security using the designation "European Green Bond" or"EuGB" pursuant to Article 3 of Regulation (EU) 2023/2631 —ESSL: bonds marketed as environmentally sustainable or

			sustainability-linked bonds whose issuers make voluntary disclosures under Articles 20 and 21 of Regulation (EU) 2023/2631 —SEGB: securitisation bond designated as “European Green Bond” or “EuGB” in accordance with Article 16 of Regulation (EU) 2023/2631 In case of EuGB or SEGB: {LEI} of the external reviewer

Table 2

Symbol	Data Type	Definition
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field
{CFI_CODE}	6 characters	CFI code, as defined in ISO 10962
{COUNTRYCODE_2}	2 alphanumerical characters	2 letter country code, as defined by ISO 3166-1 alfa-2 country code
{DATEFORMAT}	Dates in the following format: YYYY-MM-DD Dates shall be reported in UTC	ISO 8601 date format
{LANGUAGE}	2 letter code	ISO 639-1
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{FISN}	35 alphanumerical characters with the following structure	FISN code, as defined in ISO 18774
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DECIMAL-n/m}	Decimal number of up to n digit in total, of which up to m digits can be fraction digits	Numerical field Decimal separator is ‘.’ (full stop)

		Values are rounded and not truncated
{INTEGER-n}	Integer number of up to n digits in total	Numerical field
{INDEX}	4 alphabetic characters	~~'EONA' — EONIA~~ ~~'EONS' — EONIA SWAP~~ 'ESTR' - €STR 'EURI' — EURIBOR 'EUUS' — EURODOLLAR 'EUCH' — EuroSwiss 'GCFR' — GCF REPO 'ISDA' — ISDAFIX 'LIBI' — LIBID ~~'LIBO' — LIBOR~~ 'MAAA' — Muni AAA 'PFAN' — Pfandbriefe 'TIBO' — TIBOR 'STBO' — STIBOR 'BBSW' — BBSW 'JIBA' — JIBAR 'BUBO' — BUBOR 'CDOR' — CDOR 'CIBO' — CIBOR 'MOSP' – MOSPRIM 'NIBO' — NIBOR 'PRBO' — PRIBOR 'TLBO' — TELBOR 'WIBO' — WIBOR 'TREA' — Treasury 'SWAP' — SWAP 'FUSW' — Future SWA 'EFFR' — Effective Federal Funds Rate 'OBFR' — Overnight Bank Funding Rate

		‘CZNA’ — CZEONIA [Code to be defined] — TONA

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5.7 Annex VII. CBA (CDR on metadata)

80. According to the ESMA Regulation, ESMA shall conduct an analysis of the costs and benefits when drafting RTSs. The analysis of costs and benefits is undertaken by assessing the pros and cons of the various policy options available.

81. This section contains an assessment of impact of the main proposals in the draft RTS on metadata. Given the limited scope of the changes to the RTS, only two policy issues were analysed as part of this impact assessment.

Problem definition (1)

82. Article 21a of the Prospectus Regulation (introduced by the ESAP Omnibus Regulation) requires collection bodies (NCAs) to provide ESMA with the information specified in Article 21a paragraph 1 of the Prospectus Regulation. Similarly, the Prospectus Regulation Article 21(5) requires NCAs to provide ESMA with a copy of the prospectus and any supplement thereto, as well as the data necessary for its classification in the Prospectus Register.

Policy options

- Option 1.1. Maintain two parallel systems, one to comply with the ESAP Regulation and one to comply with Article 21(5) of the Prospectus Regulation

- Option 1.2 Build the ESAP system on the basis of the existing Prospectus Register

Option 1.1. Maintain two parallel systems, one to comply with the ESAP Regulation and one to comply with Article 21(5) of the Prospectus Regulation	
Pros	*Cons*
No need to revisit the existing Prospectus Register for ESAP purposes	It will be more expensive to maintain and update two systems rather than one in the long term both for ESMA and for NCAs

	Data to be submitted to ESMA under Article 21a and 21(5) significantly overlap therefore maintaining two parallel systems will mean requiring NCAs to submit the same information to ESMA twice
	Users of the information would not be able to link metadata under the Prospectus Register with metadata under ESAP

Option 1.2 Build the ESAP system on the basis of the existing Prospectus Register	
Pros	*Cons*
Cheaper to maintain and update one single system in the long term both for ESMA and for NCAs	Implementation of the changes to the existing Prospectus Register will entail an IT investment up-front
NCAs will only submit the same information to ESMA once	
Users of the information will be able to link metadata under the Prospectus Register with metadata under ESAP	

Conclusion on policy issue 1: option 1.2 was retained.

Problem definition (2)

83. The Amending Regulation introduced new types of prospectus documents which need to be submitted to the Prospectus Register, namely the EU Growth issuance prospectus and the EU follow-on prospectus.

Policy options

- Option 2.1 ESMA to collect the new types of prospectus documents manually together with the relevant metadata for classification of information in the Register
- Option 2.2. ESMA to update the Prospectus Register in order to collect the new types of prospectus documents in an automated fashion, akin to all other prospectus documents

Option 2.1 ESMA to collect the new types of prospectus documents manually together with the relevant metadata for classification of information in the Register	
Pros	*Cons*
No need to update the Prospectus Register	Much more expensive to maintain a manual process in the medium and long term
	Risk of data quality issues (since manual processes are more prone to human error)

Option 2.2 ESMA to update the Prospectus Register in order to collect the new types of prospectus documents in an automated fashion, akin to all other prospectus documents	
Pros	*Cons*
An automated process is much cheaper to maintain in the medium and long term than a manual process	Implementation of the changes in the existing Prospectus Register will entail an IT investment up-front

Fewer risk of data quality issues due to manual submission / data transformation

Conclusion on policy issue 2: option 2.2 was retained.