

Comments

Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on Metadata ESMA32-117195963-1276

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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.

As already conveyed during the prior consultation on the Listing Act draft proposals, we believe that the disadvantages of the proposed new binding standardized format and sequencing clearly outweigh any potential advantages. The existing format has achieved a degree of harmonization and transparency while adequately accommodating issuers' liability concerns. In contrast, the new rigid format and sequence prospectus regime comes with a substantial compliance burden for issuers and could disrupt market alignment with international practices, while barely offering any added value to investors.

We understand, however, that the Level I requirements now embedded in the PR, as amended by the Amending Regulation (EU) 2024/2809 of 23 October 2024 (the "**Amending Regulation**"), must be respected. Therefore, all efforts should be taken on Level II to come to a reasonable application of the PR going forward, accommodating practical needs and preserving transparency and readability of prospectuses and thus fostering investor protection.

In its consultation paper, ESMA encouraged respondents to state how they read the PR, as amended by the Amending Regulation, as regards the Amending Regulation's requirements on formatting and the sequencing of information. In that regard, we fully agree with ESMA's view that nothing in the Amending Regulation prevents the Commission from tailoring the implementing regulations in the proposed Commission Delegated Regulation (EU) 2019/980 (the "**CDR**") so as to support practical needs and maintain the completeness, readability and transparency of prospectuses.

In our view, Section 6(2) PR only requires that there is some standardisation of format and sequencing, but fully leaves it up to the CDR to determine the relevant standards. Article 13(1) and (1a) PR only set out basic principles relating to the content of the prospectus which must be taken into account when drawing up the CDR. Article 13(3) requires the CDR to comply with Annexes I, II and III to the PR. However, our reading is that compliance with Annexes I, II and III to the PR only requires the CDR to include all the information elements mentioned in the Annexes.

Contrary to that, as it cannot possibly have been the co-legislators' intention to question and undermine the overarching principle prescribed in Article 6(1) PR according to which a prospectus must contain all relevant information which is material to an investor for making an informed assessment, Article 13(3) in combination with Annexes I, II and III in no way can be construed as prohibiting the inclusion of information not mentioned in Annexes I, II and III. Put simply, Annexes I, II and III are not exhaustive. This notion is supported by the fact that the heading of Article 13 PR continues to speak of "*minimum information*" and empowers the Commission to define the specific information to be included in a prospectus.

Furthermore, compliance with Annexes I, II and III should not be interpreted so as to require that the information must be presented in the order in which is arranged in those Annexes. Clearly, the numbering in the Annexes only constitutes an outline numbering to structure the headings and contents of the Annexes. There is no indication that the PR, as amended, that the sequence of information adopted in the Annexes should be considered binding for the order of presentation. On the contrary, the determination of the sequence is explicitly referred to the CDR to be adopted by the Commission (Articles 6(2) and 13(1), (1a) and (2) PR).

That the order of Annexes I, II and III cannot be binding is further supported by the consideration that, as argued above, the Annexes do not contain an exhaustive list of information which may be required under Article 6(1) PR. Any such additional information would not fit neatly into the structure of the Annexes. Accordingly, this would necessitate breaking through the sequencing deliberated by the Annexes to include such information. Consequently, the order set forth in Annexes I, II and III cannot be the last word.

Moreover, quite obviously the sequencing adopted in Annexes I, II and III is not at all thoroughly elaborated, but rather appears deliberately to be a brainstorming-like collection of information bits randomly put together in the Annexes. By way of example: Annex I starts with general information (sections I and II), then turns to some, but not all information relating to the registration document (sections III, IV and V) before it mentions the risk factors, which according to long-standing, established and unquestioned market practise constitute highly important information which should be placed at the beginning of the prospectus. After that, it turns to the securities (sections VII, VIII and IX), requiring information on the terms and conditions of the securities, the offer and ESG-related information, but forgetting to detail any information requirements regarding admission to trading (although mentioning admission to trading in the heading). It now goes back to the registration document (sections X to XIII), thus tearing apart financial information (section XI) from the related management reports required in case of equity securities (section IV), before setting forth a mixed bag of information relating to credit risk (section XIV), the securities (section XV) and miscellaneous other items (sections XVI and XVII). If there is a way to present information in a hard to analyse and incomprehensible form, confuse the reader of a prospectus and thus undermine investor protection, then it would certainly be to arrange it in the order in which it is set forth in Annexes I, II and III. This, of course, contradicts the transparency requirement stipulated in Article 6(2) PR, and accordingly the Commission is not bound to the random order adopted in Annexes I, II and III of the PR.

Finally, even though the wording "The purpose of this section is to ..." used in the Annexes might so suggest, one cannot even argue that compliance with Annexes I, II and III requires the CDR to provide for the mandatory use of the sections headings set forth in the Annexes and to stipulate that the information detailed under such section headings in the Annexes be allocated to the respective section in the prospectus. Again, this is a consequence of the brainstorming-like, random arrangement of information bits in Annexes I, II and III. By way of illustration, the information detailed in section VIII of Annex I (Prospectus – Details of the offer/admission to trading) prescribes extensive information on the terms and conditions of the offer but misses out any information relating to admission to trading. Opposed to that, section V of Annex III (Securities note – Details of the offer/admission to trading) requires information relating to the admission to trading, but only briefly touches the terms and conditions of the offer. Instead, it reiterates information elements regarding the reasons for the offer, the use of proceeds and the expenses of the offer, all which are already to be provided under section I of Annex III.

After all, Annexes I, II and III of the PR are poorly drafted and cannot be possibly taken as a blueprint for the arrangement of information in prospectuses. They should be regarded binding with respect to minimum information to be included in prospectuses, but not as authoritative, or even reasonable, as regards the sequencing and arrangement of information. Accordingly, ESMA and the Commission are free, and explicitly prompted, to elaborate a reasonable standardised structure for prospectuses and the arrangement of information elements in the CDR. We are convinced that this was the co-legislators' intention when empowering the Commission to adopt the delegated acts under Article 13 PR.

Based on that analysis, we fully support ESMA's approach to restrict the requirements regarding the order of information to the "standard" annexes for equity and non-equity securities while excluding base prospectuses covering multiple non-equity securities. It cannot be overstated that a strict sequence based on Annexes I, II, and III to the PR (as amended by the Amending Regulation) would be particularly unsuitable for base prospectuses, which often cater to a wide variety of financial instruments, each with their unique characteristics, structures, and target markets.

Obviously, we would however suggest not to link the standardised sequence of information to the order in which has been scattered among Annexes I, II and III (as contemplated in subparagraph 2 of Articles 22(1) and Article 23(1) of the draft CDR, though), but rather to independently provide for a meaningful and transparent, mandatory sequence of sections in the Annexes to the CDR. Such sequence should consequently separate information relating to the registration document from information belonging to the securities note. Furthermore, the risk factors should retain a prominent position in prospectuses. The information elements mentioned in Annex I, section VIII and Annex III, section V need to be reconciled, provided that in that regard we suggest providing for one section dealing with the details of the offer and another, separate section dealing with admission to trading (in this regard, please also refer to our response to Question 5). Furthermore, we think there should be an express clarification stating that the information elements detailed in the Annexes to the CDR constitute minimum information and that further information may be included if considered necessary by issuers to comply with Article 6(1) PR. In that context, also clarification is needed that such further information may be placed wherever considered appropriate by the issuer to logically integrate it within the relevant sections of the prospectus.

We would also like to highlight, that issuers should retain the flexibility to provide the required information listed in the Annexes I, II, III PR in a logical and meaningful order. To that end it is necessary to draw a line between the information to be provided under "Sections" and the information to be provided under "Items": Adherence to the rigid regime with the pre-defined sequence, depriving issuers of any "wiggle room", should be only applicable to the information under the Sections and not to those under Items.

This approach strikes an appropriate balance between regulatory clarity and the flexibility needed by issuers. It is also backed up by Articles 22(5) and 23(6) Delegated Regulation (EU) 2019/980 ("CDR"), which continue to foresee that, in cases of deviations from the prescribed sequence, issuers may be required by NCAs to provide a cross-reference list. However, a clarification in Articles 22 and 23 CDR, clearly stating that standardised sequence only applies to the Sections of the Annexes – and not the Items – would represent a significant first step towards reducing some of the uncertainty that has arisen.

Further steps will be necessary, though, to ensure that the prospectus maintains a cohesive structure enabling investors to understand it. This could be particularly troubling when for example in the case of debt securities supplementary information must be derived from annexes other than Annex 13. If these supplementary sections, such as sections on derivatives (Annex 17), guarantees (Annex 19) and ESG-related issues (Annex 21) were simply appended to the existing structure without integration, it would disrupt the logical flow and overall coherence of the prospectus. For example, placing ESG-related risk factors at the end of the document would not align with the intended structure and could compromise clarity for investors.

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 reduction in reporting periods could lower the administrative burden while maintaining investor protection and market efficiency.

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

(no answer)

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?

We have serious reservations about the inclusion of the option of explicit electronic links in the prospectus, as this approach creates unnecessary complications and potential legal ambiguities. To illustrate this by just naming one aspect we urge the ESMA to consider, for example, that the inclusion of links to documents might – especially in the case of ESG documentation - trigger specific retaining obligations (e.g., 10 years), even if those documents, such as frameworks, are not inherently part of the prospectus. This would result in significant implementation challenges for issuers.

Rather than introducing specific rules for hyperlinks or sustainability-related information, it would be more practical to rely on the existing framework within the PR, which allows for information to be referenced in the available documents or incorporated by reference where necessary. Such references should of course only be required when absolutely necessary to ensure investor understanding.

To ensure that issuers are not unduly exposed to legal risks arising from factors beyond their own control, a disclaimer stating that a linked content is not part of the prospectus would be essential but not sufficient. This safeguard could only be implemented by amending Article 11 PR to explicitly exclude issuer liability for any linked information. Barring such an amendment, the significant liability risks involved, sometimes caused by factors lying entirely outside of the issuers' control (if for example the content of the linked information is later found to be inaccurate or incomplete or was changed afterwards), could discourage issuers from using electronic links altogether, thereby undermining the underlying alleviating purpose/nature of this provision. It would also be unclear whether this would trigger an archiving obligation.

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

We generally welcome initiatives aimed at simplifying disclosure frameworks. While it seems rather reasonable to assume that the proposed unification of the "wholesale" and "retail" annexes into a single standard for non-equity securities could enhance overview and clarity, a deeper examination of the specifics reveals several concerns that warrant careful consideration.

First and foremost, the range of the proposed amendments to the disclosure annexes, even though they do not always necessarily correspond to material changes, will require issuers to adapt their proven processes and inevitably increase costs and administrative burdens.

What is more, the differentiation between wholesale and retail issuance reflects the differing needs and expectations of professional investors vs. retail investors and aligns with international practices, fostering predictability for issuers and investors alike. Breaking away from such established practices could place European markets at a competitive disadvantage.

This is particularly evident in Annex 13, as proposed by ESMA, which introduces substantial additional complexity and broadens the scope of information required for non-equity securities compared to the existing framework. In the following we detail our key concerns with Annex 13, which merges Annexes 14 and 15 under the ESMA proposals:

- The proposed Annex 13 would create unnecessary burdens for wholesale issuances. To illustrate this, information set out under Section 4 of Annex 13 ("*Details of the offer/admission to trading*"), currently required only for retail issuances under Section 5 of Annex 14, would also have to be provided in the case of wholesale issuances. This is inconsistent with the overall aim of the Listing Act to facilitate the preparation of prospectuses and reduce administrative burden and cost.
- Similarly, Section 4a of Annex 13, as proposed by ESMA, significantly expands the information to be provided for securities to be admitted to trading compared to the corresponding Section 6 of Annex 14 and Sections 5 and 6 of Annex 15 currently in place. Surprisingly, this expansion is achieved by introducing extensive duplication of information already required under Section 3 of the proposed new Annex 13.

To begin with, it remains unclear whether that section is intended to apply in any case or only in case of an offer to the public. The second, narrow interpretation is supported by the heading of Item 3.1, which reads "*Information concerning the securities to be offered*". The first, broader interpretation is supported by the argument that a full disclosure of the terms and conditions of the securities is necessary in any case, i.e. also where the prospectus is written for obtaining admission to trading only without a parallel offer to the public.

Depending on how the scope of Section 3 is interpreted, Section 4a may either always or sometimes lead to unnecessary repetition of information already disclosed under Section 3. This duplication detracts from the readability and comprehensibility of prospectuses and final terms, making them more cumbersome for issuers and less user-friendly for investors.

This effect could be avoided by including a provision stating that information already disclosed under Section 3 does not need to be repeated under Section 4a. However, such a provision would add unnecessary complexity. A more efficient and transparent solution would be (i) to clarify that Section 3 applies in any case of an offer to the public or admission to trading and (ii) to reduce the information required under Section 4a for admission to trading to the elements currently required under Section 6 of Annex 14 and 15, thereby removing redundancies.

- Additionally, the heading of Section 4 ("*Details of the offer/admission to trading*") seems to suggest that the information elements set out thereunder are also required where the securities are to be admitted to trading only without also being offered to the public. However, Section 4 deals with the terms and conditions of the offer only. To avoid confusion, this should be explicitly reflected in the heading.

Given the high stakes involved, meticulous and well calibrated analysis should precede any major amendments to a well-functioning framework. Currently, we lack a clear and compelling study to justify the far-reaching proposed amendments.

Despite the proposed merge into a single non-equity disclosure framework, specific sections and/or items are still applicable only to retail issuances (see f.e. new item 3.1.7. point h, in Annex 13). For the sake of clarity, we suggest including an overview table at the end of the relevant Annex to indicate which items apply specifically to retail or wholesale issuances and which might be omitted for the other – rather than relying solely on parentheses.

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

We strongly recommend maintaining current requirements with only minimal changes to avoid unnecessary burdens. As a rule of thumb, no information not already included in the published financial information should be required at this stage. Otherwise, duplication and uncertainty loom.

To name a few of our concerns regarding the proposed disclosure items:

- Given that no definition is provided for the newly included Key performance indicators (KPIs) under item 5.4. seq. of the Annex 6 (Registration document for non-equity securities) it remains unclear what shall constitute a KPI or why a KPI was not part of the annual financial information at the first place. This ambiguity undermines the information efficiency of prospectuses and imposes unnecessary reporting obligations on issuers. To preserve clarity and consistency, we suggest deleting the KPI section entirely.
- Capital flow statement (Item 5.1.5 of the Annex 6): The obligation to disclose should only arise if there is also an obligation to publish a cash flow statement under national law. It should be noted that not every issuer is required to publish a cash flow statement under national law.

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

The proposals are highly likely to lead to increased costs, imposing additional financial burdens on issuers. Such expenses could discourage issuers from accessing capital markets, thereby undermining the objectives of the Listing Act to enhance market attractiveness and accessibility.

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.

We consider the proposed additional obligatory ESG disclosure requirements to be overly burdensome. The additional burden resulting from detailed ESG-related disclosures, external reviews, and impact reporting is expected to significantly increase issuance costs, particularly for smaller entities or first-time issuers. These costs may discourage participation in green finance markets and drive issuers toward private placements or non-EU markets, potentially shifting capital flows away from the EU. We urge for a more balanced, well-calibrated and phased approach is essential to achieve the Listing Act objectives and to avoid irrevocably disrupting existing issuance programs.

To name a few examples:

- According to Section 2.1, issuers must provide a detailed explanation of ESG-related risk factors, including specific impacts on the issuer's financial position and operations. This requires significant analysis and tools that may not be standardized across sectors, increasing preparation costs. Smaller

issuers or those new to ESG reporting could struggle to provide these detailed assessments the most.

- Issuers must provide a breakdown of how proceeds will be allocated to eligible green projects, including descriptions, expected environmental impacts, and alignment with the EU taxonomy (Section 2.2 and 2.3). This level of granularity demands robust internal tracking systems and potentially additional external validation, particularly for issuers managing multiple projects.
- The meaning of the term “advertised” remains unclear, particularly with regard to the distinction from the term “public offer”. The PR is otherwise linked to the public offering or an admission to trading on a regulated market. Legal clarity is needed. At last, it should be made clear that the advertising must originate from the issuer. Advertising statements made by third parties may not be attributed to the issuer. Otherwise, any misrepresentation by a third party (possibly even retrospectively) would give rise to a duty of disclosure on the part of the issuer. This would lead to massive uncertainties and could trigger liability claims.
- The meaning of the term “securities taking into account ESG factors or pursuing ESG objectives” remains unclear. There are insufficient references in this respect. Legal clarity is needed. In any case, it must be made clear that the disclosure obligation in Art. 21a CDR should depend solely on the characteristics of the non-equity securities in question. This clarification, which was made in the ESMA statement (ESMA32-1399193447-441), should be adopted in order to avoid ambiguity.

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?

Proposing new definitions for “use of proceeds bonds” (UoPBs) and “sustainability-linked non-equity securities” (SLBs) that directly contradict the ones provided in the EUGBR could cause greater uncertainty, confuse investors and undermine any potential benefits associated with a broader wording/ terminology. This is, also, not an issue to be regulated in the PR; standards are set by the market or under the relevant regulatory framework (f.e. the EUGBR).

But even beyond this fundamental objection, the proposed definitions appear to be at odds with the goals assumed to justify their introduction. They do not provide the level of clarity needed to ensure future-proofing or to encourage innovation and to avoid further fragmentation.

We believe that the provided definition for UoPBs is too narrow and does not sufficiently accommodate the evolving needs of the green bond market. To ensure flexibility and foster innovation, the definition should allow for emerging financial instruments and structures that meet sustainability objectives but may not fit the traditional criteria. However, it remains unclear whether ESMA intends the scope of application to focus solely on bonds where the issue proceeds are excluded from the issuer's general business operations. For example, in ‘use of proceeds bonds’ adhering to the ICMA GBP, issuers retain full discretion to utilize proceeds in general business operations, while referencing ESG-related assets already financed or refinanced. Should the definition remain unchanged, we suggest introducing an explicit opt-in mechanism for securities that wish to fall under the scope of the framework. This would allow issuers who voluntarily adhere to the required standards to participate while ensuring the integrity and transparency of the system.

Furthermore, it remains unclear how broadly or narrowly terms like “finance or refinance” in the definition of UoPBs should be interpreted especially when issuers apply the more dynamic portfolio approach. This approach allows funds to be allocated to a pool or portfolio of eligible and already existing

(financed or refinanced) projects or assets – instead of being tied to a single project and by doing so it enables issuers to adjust the composition of the portfolio while maintaining compliance with green bond frameworks. With new eligible projects being added and completed projects being removed, the composition of the portfolio changes over time.

We assume that this “re-arrangement” on both sides of the balance sheet – as a key feature of the portfolio approach (recognised and established by the EUGBR, too) - would not qualify as “financing or refinancing”. Should our assumption prove correct, a significant portion of UoPBs would be left out of the scope of the EU sustainability frameworks, a circumstance that would directly contradict the declared objectives of the Listing Act package. Further clarity in this regard is urgently needed, should ESMA not refrain from the proposed definitions.

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 European Green Bond Regulation? Please explain your answer and provide any additional proposals to alleviate the regulatory burden.

According to 14(1) EUGBR, EU Green Bonds (EU GBs) can only be issued only after a corresponding prospectus has been prepared, approved and published in advance.

Unlike the “premium quality” EU GBs, no such mandatory prospectus requirement applies to the two types of UoP-Bonds - environmental sustainable bonds (ESBs) and sustainability linked bonds (SLBs) under the opt-in regime (or “EU GB lite”) voluntarily adhering to the disclosure requirements of the EUGBR by using the common templates expected to be published by the EU Commission very soon. In other words, issuers of ESBs or SLBs, that opt in to the facultative provisions of Art. 20-21 EUGBR, are exempted from the prospectus requirement, unless of course such an obligation arises from the PR itself (for example in the case of public offering, as defined in Art. 2(d) PR).

The above differences must be taken into careful consideration while aligning prospectuses for EuGBs and factsheets for the opt-in-bonds. A clear reconciliation of templates with Annex 21 requirements is necessary to avoid duplication and contradictions.

But more importantly, and beyond any overlapping areas between the EUGBR and the PR, prospectus requirements must be designed to allow flexibility for issuers to adapt to diverse circumstances, while maintaining product- and innovation-neutrality. The EUGBR may set additional requirements, but these must remain independent of the fundamental principles governing prospectus disclosures.

Question 11: 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.

To avoid unnecessary duplication and possible inconsistencies with the factsheet required under the EUGBR (see Annex I to EUGBR) it should be clarified, that Annex 21 does not apply to EU GBs. We warn against any additional pre-issuance duties for issuers of EU GBs rather than drafting and publishing the factsheet. The factsheet contains all information of material importance to investors. Repeating this information in Annex 21 would lead to information overload and risks contradictory representations. This could also result in liability issues, as it may be unclear which content prevails—the content in the prospectus (per Annex 21) or the content of the published factsheet.

Annex 21 should not be applicable to ESBies/ SLBs of the opt-in regime, either, provided that the issuer opts for voluntary disclosure and incorporates the information by reference into the prospectus. Repeating this information in Annex 21 would also lead to information overload, contradictory representations, and potential liability issues, as described above.

ESMA seems to be aware of the problem of information duplication (see Recital 41). To tackle this ESMA proposes that the “required information” be taken from the factsheet. What constitutes relevant information remains unclear. We are very sceptical of the idea, that legal certainty can be provided by introducing a new abstract and undefined term. We urge for further clarity regarding the pre-issuance disclosure obligations under the two unavoidably overlapping frameworks – EUGBR and PR – by keeping in mind the respective overarching objectives. The European green bond market needs clear-cut and straightforward criteria.

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.

A consolidated presentation of risk factors in accordance with Article 16 PR, including ESG risks, would improve coherence and readability, reducing redundancy and issuer liability. Therefore, the risk factors should be removed from Annex 21.

Annex 21 provides for the presentation of the label used and its prerequisites. To avoid duplication within the prospectus, care should be taken to streamline this information effectively.

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.

The requirement for post-issuance reporting lacks clear value and imposes unnecessary burdens. Voluntary reporting should remain the standard to allow issuers to decide based on market needs. Points 6.3 and 6.4 of Annex 21 should therefore be deleted.

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?

YES/NO

Item 2.1 of the Annex 21 should not apply on EU GBs, as such disclosures are already addressed under the EUGBR.

2.1. (b) is likely to have a broader scope of application. As long as an established market standard is applied that can be taken from generally publicly accessible sources, there is no reason why its application would have to be justified. This seems unnecessary and also not necessary from an investor's point of view, especially since there should be no assessment of the standards (good/high, etc.) by the issuer.

Question 15: 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.

Three aspects that require further consideration:

- First, the information that only becomes apparent in the context of structuring a specific issue should, in principle, be Category C. In addition, references to issue-specific frameworks that are not applicable to a large number of issues should be possible in order not to overload the prospectus information.
- Second, it is important to ensure that post-issuance information requirements reflect the practical realities of GB Frameworks and other emerging products. While some issuers might create a single overarching framework for all their green bond issuances (portfolio approach), others might develop frameworks on an issuance-specific basis (gradual approach). Given this variability, assigning rigid categories like A or B to such information may not accommodate these differences adequately. Specifically for frameworks under the portfolio approach as well as under any gradual approach, though, we suggest that they remain within Category C, which allows for greater flexibility.
- Third, we recommend clarifying how frameworks and post-issuance requirements should be co-ordinated best. Clear guidance should indicate where specific post-issuance items (like use-of-proceeds tracking or impact reports) would fall, ensuring they are appropriately categorized.

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.

There should be no departure from the current regime as regards the short description of the underlying. A detailed description of the underlying would also expose the issuer to liability, as it can generally only be derived from secondary sources.

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.

Incorporation by reference in final terms is a cost-effective approach that simplifies administrative processes while ensuring compliance. In many cases, incorporating the factsheet or templates for voluntary pre-issuance disclosure by reference into the final terms will be the only practical way of including them into a base prospectus; the alternative route of publishing a supplement to the base prospectus) would be time-consuming and thus constitute an impediment for using favourable market conditions effectively. We support ESMA's proposals, as long as it is up to the issuer to decide if the incorporating the information from the factsheet into the base prospectus via final terms is the most suitable approach.

Question 18: 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 prospectuses via final terms will impose any significant costs or burden on issuers? Please explain your answer.

Given that the information in question often pertains to issuance-specific details they are more appropriately addressed through the final terms rather than through post-issuance supplements. This should also be more flexible in terms of time, as there is no need to wait for approval. The ESMA-

approach is likely to reduce costs compared to requiring prospectus supplements, providing a streamlined process for issuers.

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

YES/NO

(no answer)

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 deletion could potentially simplify processes. The introduction of Article 21b seems reasonable.

Question 21: 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.

Even if additional costs could be anticipated in the short term, streamlining the regulatory framework shall improve efficiency in the long term.

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.

Yes, we agree with ESMA's general assessment that NCAs should not require additional information in a prospectus beyond what is stipulated in Articles 6, 13, 14a, and 15a PR. Imposing any requirement for additional information that doesn't qualify as material information - necessary for an investor to make an informed assessment of the issuer and the securities - would create unnecessary burdens on issuers and undermine the efficiency and clarity of the prospectus.

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? In your answer, please indicate what changes could be made to improve ESMA's advice in this area.

Yes, the proposed simplification of deadlines is a step in the right direction.

A total period for scrutiny and approval of prospectuses to 120 working days from filing of initial application for approval appears reasonable, provided that the individual deadlines already laid down by law in the (amended) Prospectus Regulation are cumulatively covered.

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.

Seems like a rather fair assumption that costs will decrease.

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.

We acknowledge that metadata requirements should be updated to reflect new prospectus types to enhance clarity and functionality. However, we strongly urge that the process remains as straightforward as possible to minimize administrative burdens and ensure efficient implementation for issuers.

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.

Yes, but this must be implemented without undue administrative burden. A streamlined tagging process is essential.

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)? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

Centralizing the process of submitting information to the ESAP via the Prospectus Register/ through the NCAs could indeed enhance efficiency and transparency. However, while the streamlined submission process reduces administrative complexity for NCAs, it may inadvertently place an unreasonable burden on issuers. This would be the case if issuers need to implement new systems or processes to meet specific metadata formatting or submission requirements, leading to increased compliance costs. To mitigate risks, we strongly recommend refraining from introducing any new submission procedures.

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.

Not always. Simultaneous admissions on multiple venues may complicate this, necessitating a flexible interpretation.

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.

(no answer)