# ESMA: Consultation Paper on Draft Technical Advice Concerning the Prospectus Regulation and on Updating the CDR Metadata.

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| Executive Summary  **The below is the Institutional Investors Group on Climate Change's (IIGCC) formal response to ESMA’s** [**Consultation Paper on Draft Technical Advice Concerning the Prospectus Regulation and on Updating the CDR Metadata[[1]](#footnote-2).**](https://www.esma.europa.eu/sites/default/files/2024-10/ESMA32-117195963-1276_CP_Listing_Act_Advice_-_Prospectus.pdf)  **IIGCC has provided detailed responses to the proposals outlined in section 5, Draft Technical Advice on the Disclosure Requirements for Non-Equity Securities Advertised as Taking into Account ESG Factors or Pursuing ESG Objectives. Specifically, IIGCC addresses questions 8 – 17.**  **The responses are supportive of ESMA’s proposals, while identifying areas for improvement. Throughout, IIGCC stresses the importance of harmonising reporting expectations while integrating sustainability-related disclosures into prospectus requirements for GSS+ bonds. This is critical to creating accountability and transparency, and growing the credibility of the GSS+ debt market.** |

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

**Yes -**IIGCC supports ESMA’s approach but have identified a number of areas that could be improved.

*Context*

* Non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives, henceforth ‘GSS+ debt’, will play an important role in providing the capital and accountability needed to support the net zero transition. GSS+ debt is a valuable tool for investors seeking to mitigate the financial risks of climate change and decarbonise their portfolios through real economy emission reductions. For issuers, labelled debt can help finance transition plans, signal credibility and open new pools of capital.
* We note that current disclosure expectations are crystalising, based on voluntary best practice standards such as those provided by the International Capital Market Association (ICMA) and the Climate Bonds Initiative (CBI), as well as ESMA’s 2023 [public statement](https://www.esma.europa.eu/sites/default/files/2023-07/ESMA32-1399193447-441_Statement_on_sustainability_disclosure_in_prospectuses.pdf). More than 90% of issuers reference ICMA principles when issuing sustainable bonds[[2]](#footnote-3), although outside the prospectus. Further regulatory evolution including mandatory requirements are needed to address concerns[[3]](#footnote-4) about the longevity, efficacy and credibility of the GSS+ debt market.
* Nonetheless, sustainability-related disclosure practices, especially those provided in the bond documentation, such as the prospectus, remain a major challenge for bond investors seeking to appropriately integrate climate into their investment decision-making process[[4]](#footnote-5).

*Support*

* The proposals are broadly in line with existing standards, such as ICMA, and the FCA’s recent proposals. Regarding the latter, there remain opportunities to further harmonise requirements.
* We strongly support the mandatory nature of the disclosures required in the prospectus, as argued in IIGCC’s FCA consultation response.
* We also welcome the clear links throughout Annex 21 to the issuer’s overall green/sustainability strategy, and the contribution of activities financed by use of proceeds to that strategy, or consistency of KPIs with that strategy. It is critical that issuers demonstrate how issuances are aligned with broader transition plans/corporate strategy.
* Finally*,* we welcome the evolution since the Statement, namely requiring post-issuance reporting and greater clarity on “partial” alignment (for more, see our response to Q13)

*Areas for Improvement*

* The proposals could be improved by addressing the following.
* **Bond Frameworks:** The revised Annex 21 makes limited reference to the issuer’s bond framework. Inconsistencies between prospectus and bond frameworks has been correctly identified as a challenge by the FCA. For instance, the FCA’s proposals in the UK include a requirement to set out “the process and standards through which the issuer has satisfied itself that the projects to be financed fit within the categories of eligible projects described in the bond framework. At present, Annex 21 only requires “a summary of the material provisions of the applicable framework”.
* **Use of Proceeds:** Item 3.1.3, concerning the use of proceeds and relevant activities, could be improved by expanding the description to include details on the issuer’s approach to refinancing and lookback periods. The FCA proposals, for instance, call on issuers to consider “whether the proceeds can be used for refinancing existing commitments”, including details on the maximum proportion of proceeds that could be used for refinancing and the look-back period. This in line with ICMA’s Green Bond Principles. ESMA may also want to consider including a “rationale for approach” to Item 3.1.4, in line with the FCA’s proposals.
* **Sustainability-Linked Bonds:** The efficacy of SLBs relies on a) material targets and b) material incentives. Item 4.1.2 requires an explanation as to the materiality of the former through consistency with “relevant sector-specific science-based targets…and the issuer’s sustainability strategy”. The latter, however, is not considered. While issuer’s are required to provide a description of financial features linked to ESG objectives, no explanation of why the financial consequences are deemed an adequate incentive is required. ICMA recommends that these be “commensurate and meaningful to the issuer’s original bond financial characteristics”. IIGCC would welcome an approach aligned with the FCA’s proposal for an explanation.

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?

**No –** IIGCC encourages ESMA to adopt definitions more in line with existing regulatory requirements.

* IIGCC strongly supports ESMA’s goal to “help ensure legal certainty”.
* Wherever possible, and in order to uphold consistency with other regulations, the language used for definitions of non-equity securities should align to the wording set out in the European Green Bond regulation.
* Accordingly:
  + For UOPs, proceeds should be “allocated to” activities rather than “applied to”, resulting in the following definition: “Non-equity whose proceeds are allocated to finance or re-finance green and/or social projects or activities”. This reflects the language of the EU GBS and entails a more restrictive application of funds to certain activities.
  + For SLBs, the definition provided in the EU GBS should be used. We recognise that deviation from this definition is needed to cover broader sustainability objectives beyond climate. Accordingly, the definition should be: “non-equity securities whose financial or structural characteristics vary depending on the achievement by the issuer of predefined ESG objectives”.

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

**Yes –** IIGCC supports the proposed approach.

* IIGCC welcomes ESMA’s desire to “promote the use of EuGB label and the voluntary disclosure templates by trying to minimise the additional regulatory burden associated with publishing a prospectus” by avoiding overlap.
* This is especially important in the context of EuGBs, so as not to hamper the label’s adoption by issuers.
* We also support the proposal to update the list of documents that can be incorporated by reference under Article 19(1) PR to include the voluntary pre-issuance disclosures.

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

**Undecided –** IIGCC would welcome further clarification from ESMA on the proposals**.**

* IIGCC supports efforts to streamline reporting and ease the adoption of the EuGBs.
* IIGCC would welcome further clarity from ESMA on how Annex 21 would be disapplied in relation to EuGB prospectuses. ESMA itself notes that the EuGB factsheet does not appear to include any disclosure on risk factors that would satisfy that prospectus requirement. It would therefore require an item-by-item approach, rather than a wholesale disapplication.
* ESMA should provide further mapping of the EuGB factsheets and voluntary disclosures onto Annex 21, item-by-item, and identify specific items that would be disapplied in the case of EuGBs. Otherwise, the regulations risk a situation in which non-EuGBs incorporate more detail into their prospectus than their ‘gold standard’ counterpart.

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.

***Yes –***IIGCC believes the proposed disclosure requirements are proportionate*.*

* GSS+ debt will play an important role in providing the capital and accountability needed to support the net zero transition.
* The proposed prospectus requirements provide transparency, help streamline data collection by investors and play an important role in bringing sustainability-related information into legally binding prospectuses, facilitating more effective stewardship, comparison and capital allocation decisions.
* The proposed requirements are in line with the Statement, existing standards such as ICMA principles, and the proposals recently put forward by the FCA.
* As explored in our response to Q8, there are a number of areas where the requirements could be extended to better reflect good practice.

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.

* IIGCC strongly supportive of the additional disclosure requirements relating to post-issuance reporting.
* It is important that investors know whether, when and where ESG-related information, critical to the bond, will be available. Post-issuance disclosure “provides transparency, ensures accountability and underpins the credibility of green bonds”[[5]](#footnote-6) . Post-issuance reviews and disclosure are equally critical for SLBs, especially given concerns of greenwashing and unambitious targets. ICMA’s SLB Principles calls on issuers to publish regularly (at least annually), “up-to-date information on the performance of the selected KPI(s)” and “any information enabling investors to monitor the level of ambition of the SPTs”[[6]](#footnote-7). We therefore welcome the application of this to all GSS+ bonds.
* We also welcome the expectations around third party review on post-issuance reporting.

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?

***Yes*** *–* IIGCC supports the proposal.

* IIGCC supports the requirement for clarity on the nature of alignment with relevant standards, regulations and taxonomies.
* We agree that additional disclosures setting out how the criteria or standard constitute a significant feature of the security (rather than simply confirming that the standard/criteria is adhered to) could enhance the credibility and integrity of the ESG features of the security.
* However, more clarity is needed on what is meant by 'significant' in this context. For example, this could be evidenced by minimum thresholds or binding criteria that are embedded in the security.
* To ensure greater clarity in instances of partial alignment, Item 2.1 of Annex 21 should explicitly request which elements of a standard, regulation or taxonomy is and, crucially, is *not* met.

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

**No response.**

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.

**Yes**

IIGCC agrees that it would not be sensible to align disclosures under the two regulations until the revisions to SFDR have been adopted (timelines remain unclear but likely to be some point next year).

However, ESMA could be stronger on the need to avoid inconsistencies between requirements under the Prospectus Regulation and the revised requirements under SFDR.

We suggest that efforts should be made to assess and align disclosure requirements between the two regimes once the SFDR review is complete.

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

**Yes** - IIGCC supports the proposal to integrate EuGB factsheets into the prospectus in a proportionate manner, in line with calls for increased harmonisation.

1. ESMA32-117195963-1276 [↑](#footnote-ref-2)
2. https://www.icmagroup.org/sustainable-finance/#:~:text=ICMA%20Paper,-Transition%20Finance%20in&text=ICMA%20provides%20the%20Secretariat%20for,Sustainable%20Finance%20website%20section%20are: [↑](#footnote-ref-3)
3. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=4350209 [↑](#footnote-ref-4)
4. https://www.iigcc.org/resources/net-zero-bondholder-stewardship-guidance [↑](#footnote-ref-5)
5. https://www.climatebonds.net/files/reports/cbi\_post-issuance-reporting\_032019\_web.pdf [↑](#footnote-ref-6)
6. https://www.icmagroup.org/assets/documents/Sustainable-finance/2024-updates/Sustainability-Linked-Bond-Principles-June-2024.pdf [↑](#footnote-ref-7)