

Reply form

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

Responding to this paper

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

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

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

Instructions

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA_QUESTION _EUGB_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA_EUGB_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_EUGB_ABCD_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open Consultations" -> Consultation Paper on technical standards on the European Green Bonds Regulation").

Publication of responses

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

Data protection

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

Who should read this paper

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

General information about respondent

Name of the company / organisation	Deloitte
Activity	Audit/Legal/Individual
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	International

Questions

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

<ESMA_QUESTION_EUGB_1>

ESMA states that the purpose of its request for information regarding senior management and members of the board is to assess the good reputation of those charged with governance. Deloitte believes the role of board members and senior management of an external reviewer is to ensure those taking part in the assessment activities are appropriately trained and accredited. There is in our view a disparity between the information requested by ESMA for those in senior management and board members and the role these individuals will play with regards to assessment activities.

Under the existing EU regulatory frameworks, such as Audit Directive 2006/43/EC Chapter II "Approval, continuing education and mutual recognition", Chapter III "Registration" and Chapter IV "Professional ethics, independence, objectivity, confidentiality and professional secrecy" applicable to audit firms, the suitability, reputation, skill, professional qualifications and experience of senior management and members of the board are taken into consideration. We note in this regard that the EU Audit Directive specifically provides that auditor oversight bodies and relevant European Supervisory Authorities shall cooperate with each other whenever necessary for the purpose of carrying out their respective responsibilities and tasks (Article 36). Therefore, Deloitte proposes that ESMA leverage existing accreditations and implement an appropriate mechanism to recognize where the external reviewer applicant is a member of a regulated profession such as an auditor, subject to independent oversight. Similarly, there may be other professional services providers that should also be recognized for similar reasons.

Section 9.1.1(3) states that "As part of its application, an external reviewer should provide the curriculum vitae of all members of senior management and the board, with up-to-date information on education, training and employment history...". Would this be a case of registering each individual firm or also the members of senior management? This request for up-to-date information on education, training and employment of all senior management and the board seems burdensome and unnecessary – would information (or professional qualifications/existing registration with a relevant oversight authority) on the persons providing the external review services and their direct senior management not be sufficient? Furthermore, there is an ask for "Criminal record files, CVs, a self-declaration of fitness and propriety", where the provision of some information may not be legally permitted.

Finally, in the RTS, ESMA have also requested the “most recent meeting minutes of governing bodies”. We question the appropriateness, purpose and proportionality of receiving these minutes as it is unclear how this will assist ESMA in its assessments.

<ESMA_QUESTION_EUGB_1>

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

<ESMA_QUESTION_EUGB_2>

ESMA states that the information requested is to assess the sufficiency of the number of analysts directly involved in assessment activities. Detailed information on education, professional training, and employment history has been requested. It is unclear whether this information should be provided to ESMA annually as those involved in assessment activities will change continuously.

Under the existing EU regulatory framework namely EU Audit Directive 2006/43/EC Chapter II “Approval, continuing education and mutual recognition”, Chapter III “Registration” and Chapter IV “Professional ethics, independence, objectivity, confidentiality and professional secrecy”, audit firms are required to establish appropriate policies and procedures to ensure that their employees or natural persons involved in the statutory audit activity (and in assurance of sustainability reporting where applicable) have appropriate knowledge and experience for the duties assigned. It is also required that they establish an internal quality control system to ensure the quality of the statutory audit, in particular with regards to the aforementioned policies and procedures. These rules apply “mutatis mutanda” to assurance on sustainability reporting (Article 25b of the EU Audit Directive).

Deloitte is subject to existing auditing standard requirements in the International Standard on Quality Management 1 issued by the IAASB [International Standard on Quality Management 1 - Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements](#)) which focuses on a firm’s system of quality management including the sufficiency of personnel and their level of knowledge, experience, and training. Therefore, Deloitte proposes that ESMA leverage existing regulations and frameworks and implement an appropriate mechanism to recognize equivalence for external reviewers that already fulfil equivalent requirements.

Furthermore, when considering firms authorized to provide external audits of financial statements, there is no requirement to provide upfront such information about individual employees and analysts. It is more typical to describe the competence of teams in terms of general statements at a

departmental level regarding experience, qualifications and ongoing professional learning and development. Such information may be requested by the independent audit oversight body when carrying quality assurance reviews of audit firms (“inspections”). The EU Audit Regulation (Article 26 7b) notably provides that such inspections should cover the internal quality control policies and procedures related to the “quantity and quality of resources used.”

Finally, we question whether we would be permitted to provide such information on analysts under EU and member state privacy laws.

<ESMA_QUESTION_ EUGB_2>

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

<ESMA_QUESTION_ EUGB_3>

In this section, ESMA is requesting information from an external reviewer regarding “the composition and functioning of its governing bodies” where the term “governing bodies” has not been defined. It would be helpful if ESMA would provide a definition.

While reviewing recent examples of criteria for sound and prudent management established by ESMA such as the recommendations for DRSP Management Bodies, Deloitte has noticed that many, or even most of them, are covered by provisions from the EU Audit regulatory framework:

- Good repute;
- Honesty and integrity;
- Sufficient time commitment;
- Knowledge, skills and experience;
- Independence;
- Induction and training;
- Diversity; and
- Record-keeping

While Deloitte does not challenge the relevance of such criteria, it believes that a lot of information is being requested from the external reviewer without justification for why the information is required and how it will be utilized, whereas this information is de facto already part of the policies, procedures and documentation requested by the independent audit oversight authorities when

carrying their inspections. It is also important to note that there are common audit inspection methodologies in place, including a comprehensive mapping issued by the CEAOB covering components of standards, such as ISQM1 (International Standard on Quality Management).

The information requested by ESMA is similar to EU banking law requirements for financial institution or banks which seems disproportionate and unnecessary. ESMA should in our view instead seek the specific information they require to assess their criteria.

With regards to the self-assessment of an external reviewer's internal control mechanism and demonstration of how they have implemented appropriate business continuity, information systems, record keeping, administrative and accounting procedures. - "administrative and accounting", it is not clear from ESMA what is in scope or the overall intention and also what evidence could be provided in this case. Deloitte proposes that ESMA utilize existing regulatory and/or professional provisions such as the self-assessment included in the audit firms' publicly available transparency report, as required by article 13 of the Audit Regulation ("a description of the internal quality control system of the statutory auditor or of the audit firm and a statement by the administrative or management body on the effectiveness of its functioning") or ISQM1 where the self-assessment completed covers these elements. Note that the CEAOB common audit inspection methodology risk assessment process maps components of standards, including ISQM1¹.

<ESMA_QUESTION_ EUGB_3>

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

<ESMA_QUESTION_ EUGB_4>

When considering conflict of interest, it is unclear how ESMA propose to utilize the conflict of interest policies and the *"inventory of existing and potential conflicts of interest"* from external reviewers. It is unclear how ESMA will utilize this information and how the external reviewer should provide this inventory as potential conflicts of interest arise on an engagement-by-engagement basis.

Deloitte proposes that ESMA prescribe minimum requirements from all external reviewers to show their ongoing compliance when conflicts of interest may arise and evidence of compliance with those requirements should be submitted. An example of minimum standards already in place in the IESBA code and this could be leveraged².

¹ See [CEAOB Common Audit Inspection Methodology \(CAIM\) ISQM](#).

² See this [IFAC factsheet on Installment 6](#): Conflicts of Interest referring to conflict of interest situations for professional accountants in business and in public practice, to the conceptual framework to deal with conflicts of interest and the relevant sections of the IESBA Code

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<ESMA_QUESTION_ EUGB_4>

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

<ESMA_QUESTION_ EUGB_5>

When performing services such as the external review of EU green bonds, it is likely that not everyone on the engagement team will have the full required knowledge and experience as a key aspect of working on engagement teams is to develop and learn. Instead, there is a focus on the collective knowledge and experience rather than individuals. Therefore, to specify the criteria by which an external reviewer must assess its analysts/employees directly involved in assessment activities may not be applicable.

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<ESMA_QUESTION_ EUGB_5>

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

<ESMA_QUESTION_ EUGB_6>

A definition as to what constitutes a third-party service provider would be helpful (e.g. would a separate legal entity from the external reviewer such as a delivery centers within the Deloitte network qualify?)

There is a requirement for an annual assessment of these third-party service providers, but it is unclear how this would work in practice as the use of third-party service providers is subject to change.

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<ESMA_QUESTION_ EUGB_6>

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

<ESMA_QUESTION_ EUGB_7>

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<ESMA_QUESTION_ EUGB_7>

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

<ESMA_QUESTION_ EUGB_8>

|There are no issues with the practicality and efficiency of ESMA's proposal to specify standard forms and templates. However, when it comes to separate standard forms for each individual analyst or employee, how does ESMA ensure consistency in the information provided? Furthermore, how frequently are providers expected to update the list of individuals? See also comments above in respect of assessing in general departmental/team terms rather than on an individual basis.

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<ESMA_QUESTION_ EUGB_8>

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

<ESMA_QUESTION_ EUGB_9>

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<ESMA_QUESTION_ EUGB_9>

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

<ESMA_QUESTION_ EUGB_10>

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<ESMA_QUESTION_ EUGB_10>

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

<ESMA_QUESTION_ EUGB_11>

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<ESMA_QUESTION_ EUGB_11>