

Annex 21

Please note that cross-references within the Annexes will need to be reviewed and possibly updated

Non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives, ~~including European Green Bonds~~ [Note: the amendment has been made as it is our suggestion that Annex 21 does not apply to EUGBs – please see our answers to Questions 8, 10 and 11 of the Consultation]

SECTION 1	RISK FACTORS	
Item 1.1	<p><u>A description of the material risks that are specific to the ESG factors or objectives taken into account or pursued by</u> Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the risks associated with the ESG profile of these securities and the <u>related</u> market risk, in the section headed ‘Risk Factors’. The risk factors should disclose the possible impact of the materialisation of the risks <u>disclosed on the ESG profile of the securities and the likely financial effect.</u></p> <p><u>[Note: amendments have been included to clarify and align the language to Level 1 legislation and Article 21a; “likely financial effect” has been deleted since it seems to go above what is normally required to be disclosed in terms of risk factors]</u></p>	Category A
SECTION 2	INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ADMITTED TO TRADING	
Item 2	Information concerning the securities.	
Item 2.1	<p><u>(a)</u> -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 Regulation (EU) 2020/852 of the European Parliament and of the Council ¹, or a third country Taxonomy;<u>;</u></p> <p><u>unequivocally</u></p>	Category A

¹ 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 (OJ L 198, 22.6.2020, p. 13).

(i) state that the EU Taxonomy applies or identify the third country taxonomy;

(+)(ii) state how the criteria in Article 3 of the Taxonomy Regulation or third country taxonomy are met and, where relevant, identify any criteria that are not met and that they are significant in relation to the ESG features or objective of the non-equity securities and, where relevant, identify the third country taxonomy.

(b) 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 ESG market standard or label, unequivocally:

(i) identify the relevant ESG market standard or label; and

(ii) state how the criteria in that standard or label are met and that they are significant in relation to the ESG features or objective of the non-equity securities and identify that market standard or the label relating to the ESG features of the securities, where relevant, identify any criteria that are not met.

[Note: amendments have been included to clarify the language; “state that they are significant in relation to the ESG features or objective of the non-equity securities” has been removed as the requirements for non-EUGBS should in any case not go beyond what is required by the EUGB standard]

(c) Where neither limbs (a) or (b) are applicable, 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.

[Note: we suggest integrating here Item 2.2 to avoid overlap of information, as we understand from paragraph 48 of the Consultation Paper that this item is intended to cover bonds that are not in full compliance with EU Taxonomy or market standards or labels. This would already be covered by the requirement “identify any criteria that are not met” that has been included, Item 2.2 could be retained as a fallback requirement in residual cases]

Item 2.2	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. <i>[Note: we suggest to move this to Item 2.1 above]</i>	Category A
Item 2.3	The basis for any statements concerning the sustainability profile of the securities being offered and/or admitted to trading, including any material underlying data or material assumptions. <i>[Note: this Item has been removed as the requirements for non-EUGBS should in any case not go beyond what is required by the EUGB standard]</i>	Category A
Item 2.4	Material information about any specific market standard, label or third country taxonomy relating to the ESG features of the securities. <i>[Note: Item has been removed as this would be a repetition of Item 2.1 and the requirements for non-EUGBS should in any case not go beyond what is required by the EUGB standard]</i>	Category A
SECTION 3	USE OF PROCEEDS BONDS	
Item 3.1	In relation to use of proceeds bonds:	
Item 3.1.1	Disclosure of the material risks regarding <u>A description of the material risks that are specific to the allocation, management of proceeds as well as risks concerning and the viability and achievement of the sustainable ESG project(s) or activities in terms of likelihood and obstacles of achievement of the ESG goal, in the section headed 'Risk Factors'.</u> <i>[Note: amendments have been included to clarify the language]</i>	Category A
Item 3.1.2	A summary of the material provisions of the applicable framework <u>and</u> or an electronic link to the applicable framework, 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. <i>[Note: both a summary and a link to the framework should be provided for a full overview as is done in the current market practice]</i>	Category A

	This item does not apply in relation to European Green Bonds. [Note: removed as no longer applicable in light of the suggested change in the scope of application of Annex 21 as not applying to EUGBs]	
Item 3.1.3	<p>In relation to ‘use of proceeds’ bonds, a description of the goal and characteristics of the relevant sustainable-ESG projects or activities and how the sustainable-ESG goal is expected to be achieved as well as conditions for any permissible terms and conditions for deviations to from the minimum use of proceeds and; the sustainable-ESG projects and or activities. If the sustainable-ESG 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 ESG projects or activities.</p> <p>This disclosure should clarify whether theinclude a description of how the ‘use of proceeds’ bonds are part of financing the entirety ofare expected to contribute to the issuer’s overall 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.</p> <p><i>[Note: amendments have been included to clarify the language; “the financing of activities eligible and/or aligned with the EU Taxonomy or a third country taxonomy” this has been removed as it overlaps with limb (a) of Item 2.1]</i></p>	Category B
Item 3.1.4	Information on the management of the proceeds by the issuer. Whether the proceeds of the bond are ringfenced to sustainable projects or assets. [Note: we suggest rewording the Item for general application to use of proceeds bonds]	Category C
Item 3.1.5	If the proceeds of ‘use of proceeds’ bonds are used or expected to be used to purchase underlying loans or other 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. [Note: it is suggested to delete this Item as it seems to be unclear and should in any case be covered by Item 3.1.2]	Category C
SECTION 4	SUSTAINABILITY-LINKED BONDS	
Item 4.1	In relation to sustainability-linked bonds:	

Item 4.1.1	<p><u>A description of the material risks that are specific to the</u> Disclosure of the material risks regarding key performance indicators (KPIs) and associated sustainability performance targets (SPTs) <u>, in the section headed ‘Risk Factors’.</u> The risk factors should; <u>including include,</u> but not be limited to, risks concerning potential conflicts of interest when such KPIs are selected and monitored. Furthermore, owing to the nature of ‘sustainability-linked’ <u>linked</u> bonds, the impact of the issuer’s overall firm-level sustainability performance on the security should be clear <u>clearly disclosed</u> in the risk factors.</p> <p><i>[Note: amendments have been included to clarify the language]</i></p>	Category A
Item 4.1.2	<p>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 sustainability or ESG objectives, including the means by which interest payments or redemption amounts are calculated.</p> <p>This disclosure shall include explanations and the calculation <u>or re-calculation</u> methodology of the selected KPIs, <u>and</u> SPTs and information enabling investors to assess the consistency of the KPIs and their associated SPTs with the relevant sector-specific science-based targets (if any) and the issuer’s sustainability strategy. <i>[Note: clarification included in relation to recalculation policies adopted by issuers in line with the current market practice.]</i></p>	Category B
Item 4.1.3	<p>If advanced amortisation may occur <u>is contemplated</u>, disclosure about any a description of the impact <u>(if any)</u> which this may have on the sustainability performance of an investment.</p> <p><i>[Note: amendments have been included to clarify the language]</i></p>	Category A
SECTION 5	INFORMATION ON THE UNDERLYING	
Item 5.1	In relation to non-equity securities <u>offered to the public or admitted to trading on a regulated market</u> advertised as taking into account ESG factors or pursuing ESG objectives linked to an underlying other than shares referred to in Article 20(1) and (2) of this Delegated Regulation:	
Item 5.1.1.	A description of the underlying and of the ESG features of <u>factors taken into account or ESG objectives pursued by</u> the underlying.	Category C

	<p>An explanation of how the use of an underlying is compatible with the <u>ESG factors taken into account or ESG objectives pursued by sustainability characteristics that the non-equity securities offered to the public or admitted to trading on a regulated market promote or with the objective of sustainable investment.</u></p> <p><i>[Note: amendments have been included to clarify the language]</i></p>	
Item 5.3.2	<p>Where the underlying of the <u>non-equity</u> 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 Council², or a benchmark complying with an ESG-related label, state that fact, identify the benchmark administrator and, where applicable, identify the ESG-related label.</p>	Category C
Item 5.3.3	<p>A statement as to whether the <u>ESG factors taken into account or ESG objectives pursued by sustainability features the underlying of the non-equity securities offered to the public or admitted to trading</u> are material for the assessment of the <u>non-equity</u> securities <u>and, if applicable, an explanation of how these features contribute to the evaluation of the whole security sustainable profile.</u></p> <p><i>[Note: amendments have been included to clarify the language. However we would suggest amending this Item to also include an explanation as to how the ESG factors / objectives contribute to the sustainability profile of the securities]</i></p>	Category B
Item 5.3.4	<p>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. If the structured product does not have a specific use of proceeds, a statement that the proceeds of the structured product are not directly applied to finance or re-finance green and/or social projects or activities, including sustainable and/or transition projects or activities.</p> <p><i>[Note: we would suggest to amend the language as it may otherwise be misleading in implying that structured products cannot qualify as sustainable investments. We also suggest to substitute the term “warning” with “statement” to avoid unnecessary negative connotations. The term “if</i></p>	Category A

² Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

	<i><u>applicable” should also be clarified to avoid leaving too much discretion to NCAs to assess whether such statement is required]</u></i>	
SECTION 6	ADDITIONAL INFORMATION	
Item 6.1	<p><u>In relation to non-equity securities offered to the public or admitted to trading on a regulated market advertised as taking into account or pursuing an ESG rating assigned to the issuer, indicate the relevant ESG ratings. ESG ratings assigned to the issuer or the securities at the request or the cooperation of the issuer in the rating process.</u> A brief explanation of the meaning of the ratings, if it has previously been published by the rating provider.</p> <p><i><u>[Note: amendments have been included to clarify the language.]</u></i></p>	Category C
Item 6.2	<p>If any review, advice or assurances have been provided by advisors or third parties about the<u>in relation to the</u> ESG profile of<u>factors taken into account or ESG objectives pursued by</u> the <u>non-equity securities offered to the public or admitted to trading on a regulated market</u>security, the prospectus shall contain disclosure concerning the scope of the review, advice or assurance and by whom they were provided.</p> <p>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.</p> <p><i><u>[Note: amendments have been included to clarify the language.]</u></i></p>	Category B
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	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 those assurances and by whom they are expected to be provided.	Category B