

**Minister Bruno Le Maire
President, Economic and Financial
Affairs Council
Council of the European Union
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B-1048 Brussels, Belgium**

**Irene Tinagli, MEP
Chair of the Committee on Economic
and Monetary Affairs
European Parliament**

Ref: Proposal for a Regulation of European Green Bonds (EU GB Regulation)

Dear Mr Le Maire, Dear Ms Tinagli

I am writing to you to share ESMA's principal observations on the legislative proposal for a Regulation of European Green Bonds (EU GB Regulation). As the EU's Securities and Markets Regulator, ESMA has a mandate to ensure investor protection, promote financial stability and the orderly functioning of financial markets. As part of this mandate, we contribute to the development of a sound sustainable finance rulebook and support the co-legislators with advice on new legislative proposals where ESMA has relevant expertise.

We very much welcome the Commission's legislative proposal as we consider that harmonised standards on green bonds will be a key element of the sustainable finance agenda and contribute to channelling investment flows towards more sustainable activities. Establishing a clear and transparent standard on green bonds, that will be subject to supervision, will provide an ambitious framework and prevent greenwashing. In this context, we welcome the role foreseen in the Commission's proposal for ESMA in terms of supervising external reviewers.

We would like to take the opportunity to share with you as co-legislators some observations on possible challenges ESMA foresees with this part of the proposal, and which you may want to reflect on in the legislative process. Given the role that is foreseen for ESMA under the legislative proposal, these observations are primarily focused on the supervisory framework for external reviewers. In particular: (i) the timing of implementing measures (so called 'level 2 deliverables'), (ii) the functioning of the third country regimes; as well as (iii) the appropriateness of the resourcing and funding model provided for ESMA's supervision. In the same context, we would also like to share some insights that we have gained from our supervision of credit rating agencies that may also be relevant for these entities.

First, regarding the level 2 deliverables, ESMA welcomes that a large number of technical requirements are expected to be specified via regulatory technical standards. This will allow the possibility for the regulatory framework to evolve over time, to reflect changes in market practice and leverage on accumulated supervisory experience. It will also enable ESMA to ensure these elements of the regulatory framework are subject to market feedback prior to implementation. However, as currently foreseen, ESMA would need to deliver the majority of these technical standards, prior to the start of its supervisory mandate and within 12 months after entry into force. ESMA believes this poses important challenges in terms of timing. Based on past experience, we see merit in developing some standards after a period of bedding in for a new regulatory framework.

As an alternative, we would propose an approach whereby only those technical standards that are necessary at the start of the supervisory regime should be delivered within 12 months after entry into force. Those which are more novel in subject matter or would benefit from a period of observation of market practice should be subject to a more gradual or extended timeline for delivery. This would also allow ESMA to manage resources in the most efficient manner.

Second, ESMA recognises the importance of providing mechanisms for third country external reviewers to offer their services in the European Union. This will help establish the EU GB Regulation as a global standard. As a result, ESMA is pleased that the envisioned equivalence and endorsement regimes are largely based on what has been in operation, and has been working satisfactorily, for credit rating agencies under the CRA Regulation. For equivalence, there will be the assurance provided by a legal and supervisory framework in the third country where the external verifier is based. For endorsement, there will be the assurance of a direct supervisory relationship between ESMA and the EU legal entity that is endorsing services from a third country entity.

However, we would caution that the approach taken regarding the recognition regime, only requires a third country external reviewer to have a legal representative in the EU. As it is currently envisioned, ESMA will have limited visibility over these activities, which will be further aggravated by the lack of a supervisory counterpart in the third country. We, therefore, consider that it may be better to delay the implementation of this regime until ESMA has had the opportunity to register EU external reviewers and build up the supervisory regime for these entities, including the endorsement and equivalence regimes. The supervisory regime could then, as the next step, be opened up to include recognised external reviewers. To ensure that each of these regimes can be adapted to respond to developments, both in the EU and globally, we also consider that the addition of a review clause on their functioning would be beneficial.

Third, there is a question of how ESMA can most effectively use its supervisory resources under the foreseen regime. ESMA considers that it would be prudent to foresee for a review of the funding model for the supervision of external verifiers. This would enable the co-legislators to take into account any changes in the expected makeup of the market of external verifiers and ensure the funding model remains appropriate for the supervised entities, as well as for ESMA's ability to create an effective and risk-based supervisory approach.



Finally, I would like to share with you some additional insights that we have gained from the supervision of credit rating agencies that may also be relevant for the purposes of external reviewers of green bonds. From the perspective of outsourcing, we recognise that there may be legitimate reasons why an external reviewer may need to outsource part of their assessment activities. However, we consider that it will be important to ensure that external reviewers maintain at least a minimum level of substance to their assessment activities. Here, it could be prudent to ensure that assessment activities can only be outsourced where there are legitimate and objective reasons for doing so. In addition, we would also like to highlight the importance of ensuring that any provisions designed to mitigate conflicts of interest in the business models of external reviewers, are also extended to conflicts of interest that may arise in relation to shareholders. This will ensure that ESMA has the full spectrum of powers necessary to ensure the assessment activities of external reviewers are not subject to undue influence, be it external or internal.

I hope that these considerations are useful for your consideration of this highly relevant legislative proposal. We would be happy to provide further detail on these topics, as needed. Please feel free to contact either myself or Iliana Lani, Head of Department Ratings, Indices and Securitisation.

Yours sincerely,

signed

Verena Ross

CC:

Paul Tang, MEP, ECON Rapporteur

Claudia Lindemann, Head of ECON Secretariat

Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union

John Berrigan, Director-General, DG Financial Stability, Financial Services and Capital Markets Union, European Commission