



EUROPEAN
COMMISSION

Brussels, **XXX**
[...] (2024) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

supplementing Regulation (EU) 2023/2631 of the European Parliament and of the Council by specifying the type of fees to be charged by ESMA to external reviewers of European Green Bonds, the matters in respect of which fees are due, the amount of the fees, and the manner in which those fees are to be paid

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2023/2631 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds establishes the European Green Bond Standard. The use of this standard is voluntary, and it is designed to complement existing market standards. By offering a new “gold standard”, this new tool is expected to foster ambition in the market for green bonds overall, while driving standardisation, increasing transparency and reassuring investors by tackling greenwashing.

The European Green Bond Standard relies on the detailed criteria of the EU Taxonomy to define economic green activities, requiring 85% of the bond’s proceeds to be used to finance activities that are aligned with the EU Taxonomy technical screening criteria. It ensures levels of transparency in line with market best practice and requires the supervision of companies carrying out pre- and post-issuance reviews of European Green Bonds at EU level. This latter task has been conferred on the European Securities and Markets Authority (ESMA). It is empowered to charge fees to supervised entities to cover the costs incurred in this context.

Article 66(3) of Regulation (EU) 2023/2631 empowers the Commission to adopt a Delegated Act to supplement this Regulation by specifying, in particular, the type of fees, the matters in respect of which fees are due, the amount of the fees and the manner in which they are to be paid. According to the empowerment, external reviewers whose annual turnover is below a certain amount may be exempted from the obligation to pay a fee. The Commission is empowered to specify the threshold of the annual turnover of external reviewers at group level below which no fee is to be charged, and to specify the manner in which the annual turnover is to be calculated for the purposes of applying that threshold.

This Delegated Act addresses all these points. The objective of this Delegated Act is to balance the principle of cost recovery with the political aim of creating a vibrant, competitive market for external reviewers that is open to small and new players.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Member States Expert Group on Sustainable Finance as well as the Expert Group of the European Securities Committee were consulted in September 2024. Key issues raised during this consultation included the need to keep the fee system simple and proportionate and to ensure that the turnover threshold is set in such a way as to safeguard fairness, prevent abuse and enable ESMA to cover the cost it incurs by performing the supervisory tasks regarding external reviewers.

The European Parliament was kept informed.

ESMA provided input, in particular regarding a mapping of the market of external reviewers, and was consulted, as required per Article 66(4) of Regulation (EU) 2023/2631.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 sets out the registration fees to be paid by external reviewers as well as the registration and recognition to be levied on external reviewers from third countries, as

well as fees to be paid by registered external reviewers applying for authorisation of endorsement of the services of a third-country reviewer

Article 2 stipulates how annual supervisory fees are to be calculated, while Article 3 lays down rules on how to determine the applicable turnover for the allocation of the fees.

Articles 4, 5 and 6 deal with payment modalities.

Article 7 lays down provisions linked to the reimbursement of national competent authorities.

Article 8 sets out the date of entry into force of the Delegated Regulation.

4. BUDGETARY IMPLICATIONS OF THE DELEGATED ACT

This act is not expected to have any impact on the Union's budget.

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supplementing Regulation (EU) 2023/2631 of the European Parliament and of the Council by specifying the type of fees to be charged by ESMA to external reviewers of European Green Bonds, the matters in respect of which fees are due, the amount of the fees, and the manner in which those fees are to be paid

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds¹ and in particular Article 66(3) thereof,

Whereas:

- (1) Fees that the European Securities Market Authority (ESMA) is to charge to external reviewers of European Green Bonds should fully recover all costs ESMA incurs for the registration, recognition and supervision of external reviewers, including direct and indirect cost. Indirect cost should consist of a reasonable apportionment of ESMA's fixed and variable overheads related to supervisory activities under Regulation (EU) 2023/2631.
- (2) Fees charged for ESMA's activities related to external reviewers should be set at a level such as to avoid a significant accumulation of deficit or surplus. Where there is a recurrent significant surplus or deficit, the level of fees should be revised.
- (3) Registration fees for external reviewers should be set at a level that is appropriate to reflect the cost incurred by ESMA when assessing the applications and to ensure consistency with its comparable direct supervision mandates. The fees for external reviewers that, post registration, apply for authorisation as an endorsing external reviewer of a third-country external reviewer should take into account that they have already been assessed and registered by ESMA.
- (4) Third-country external reviewers can offer services under Regulation (EU) 2023/2631 on the basis of registration based on an equivalence regime, on the basis of

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¹ Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (OJ L, 2023/2631, 30.11.2023, ELI: <http://data.europa.eu/eli/reg/2023/2631/oj>).

recognition, or on the basis of the authorisation of an endorsement by an external reviewer established in the Union that is registered with ESMA. The fees to be paid to ESMA should reflect the different extent of supervisory effort and hence cost associated with each of these options. The fees for third-country external reviewers applying for registration under an equivalence regime should thus take into account the lower supervisory effort and cost as they are already registered and thus assessed and supervised in a third country. Third-country external reviewers applying for recognition should pay the same as Union based external reviewers to reflect the fact that the supervisory effort and cost are the same.

- (5) To prevent the creation of barriers to market entry, it is necessary to introduce a turnover threshold below which no annual supervisory fees are to be due for a limited time. Pursuant to Article 66(3) of Regulation (EU) 2023/2631, the threshold should be based on the annual turnover at group level. The annual turnover should be determined on the basis of consolidated financial statements drawn up pursuant to Directive 2013/34/EU of the European Parliament and of the Council². To ensure proportionality in the long term, it is necessary to introduce a cap on fees measured as a share of applicable turnover. To ensure a degree of predictability of fee collection for ESMA, it is also necessary to set a minimum fee for all external reviewers above the threshold. This minimum fee should be set at a level that ensures consistency with ESMA's comparable direct supervision mandates.
- (6) National competent authorities incur costs when assisting ESMA in its supervisory tasks and, in particular when those national competent authorities assist ESMA pursuant to Article 55(4) and Article 56(5) of Regulation (EU) 2023/2631. The fees ESMA charges external reviewers of European Green Bonds should therefore also cover those costs. To avoid competent authorities incurring a loss or profit from carrying out delegated tasks or from assisting ESMA, ESMA should reimburse only the actual costs incurred by that national competent authority.
- (7) ESMA has been consulted on the content of this Regulation pursuant to Article 66(4) of Regulation (EU) 2023/2631,

HAS ADOPTED THIS REGULATION:

Article 1

Registration, recognition, and authorisation fees

1. Any person or entity that applies for registration as an external reviewer for European Green Bonds pursuant to Article 23 of Regulation (EU) 2023/2631 shall pay ESMA a fee of EUR 40 000.
2. A third-country external reviewer that applies for registration as an external reviewer for European Green Bonds pursuant to Article 39 of Regulation (EU) 2023/2631 shall pay ESMA a fee of EUR 10 000.

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² Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19, ELI: <http://data.europa.eu/eli/dir/2013/34/oj>).

3. A third-country external reviewer that applies for recognition pursuant to Article 42(1) of Regulation (EU) 2023/2631 shall pay ESMA a fee of EUR 40 000.
4. An external reviewer of European Green Bonds that applies – post its registration – for authorisation as an endorsing external reviewer pursuant to Article 43(1) of Regulation (EU) 2023/2631 shall pay ESMA a fee of EUR 20 000.

Article 2

Annual supervisory fees

1. An external reviewer with an annual turnover generated at group level of below EUR 2 000 000 shall be exempt from having to pay ESMA an annual supervisory fee. That exemption shall apply until the end of the second full calendar year following registration or recognition as applicable. After that date, those external reviewers shall pay an annual supervisory fee that is calculated in accordance with paragraph 2.
2. ESMA shall calculate the total annual supervisory cost and the annual supervisory fee for a given external reviewer as follows:
 - (a) the total annual supervisory cost for a given year (n) shall be the estimate of expenditures relating to the supervision of external reviewers' activities under Regulation (EU) 2023/2631 as included in ESMA's budget for that year;
 - (b) an external reviewer's annual supervisory fee for a given year (n) shall be the total annual supervisory cost determined pursuant to point (a), divided between all external reviewers except those external reviewers that are exempt pursuant to paragraph 1 in year (n), in proportion to their applicable turnover calculated in accordance with Article 4;
 - (c) the annual supervisory fee charged to an external reviewer shall not represent more than 3% of its applicable turnover. However, no external reviewer shall pay an annual supervisory fee that is lower than EUR 30 000.
3. By way of derogation from paragraphs 1 and 2, the first-year supervisory fee shall be equal to the fee referred to in Article 1(1) or, where applicable, to the fee referred to in Article 1(2) or, where applicable, the fee referred to in Article 1(3), multiplied by the number of days between registration or recognition and the end of the year and divided by the total number of days in that year.
4. An external reviewer that is registered or recognised during the month of December shall not pay the first-year supervisory fee.

Article 3

Applicable turnover

1. External reviewers shall keep audited accounts which clearly distinguish the revenues generated from external review services from their other revenues.
2. The applicable turnover of an external reviewer for a given year (n) as referred to in Article 2(2) shall be the sum of that external reviewer's revenues generated from the provision of external review services on the basis of the audited accounts of the year (n-2).

To calculate the turnover co-efficient of each external reviewer, ESMA shall divide the applicable turnover of that external reviewer in year (n-2) by the applicable turnover of all external reviewers in year (n-2) reduced by the turnovers of external reviewers that are exempted from paying an annual supervisory fee pursuant to Article 2(1). Where no audited accounts for year (n-2) are available for a given external reviewer, ESMA shall use the audited accounts of that external reviewer of year (n-1).

3. Where the external reviewer did not operate during the full year (n-2) or (n-1), ESMA shall calculate the applicable turnover of that external reviewer in accordance with paragraph 2 by extrapolating for that external reviewer the values calculated for the number of months during which that external reviewer operated in year (n-2) or (n-1) to the whole year (n-2) or (n-1).
4. External reviewers shall provide ESMA with the audited accounts referred to in paragraph 1 on an annual basis. They shall submit those accounts to ESMA by electronic means no later than 30 September each year (n-1). An external reviewer that is registered or recognised after 30 September shall provide ESMA with its audited accounts immediately upon registration or recognition, and by the end of the year of registration or recognition.
5. ESMA shall convert revenues generated from external review services that are reported in another currency than euro into euro using the average euro foreign exchange rate applicable to the period during which those revenues were recorded. For that purpose, ESMA shall use the euro foreign exchange reference rate published by the European Central Bank.

Article 4

General payment modalities

All fees shall be payable in euro. Any late payments shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council³.

Article 5

Payment of registration, recognition and authorisation fees

1. The fees for registration, recognition and authorisation shall be due at the time the external reviewer applies for registration, recognition or authorisation and shall be paid in full within 30 days from the date of issuance of ESMA's invoice.
2. ESMA shall not refund any registration, recognition or authorisation fees to external reviewers that decide to withdraw their application for registration, recognition or authorisation

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³ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>).

Article 6
Payment of annual supervisory fees

1. The annual supervisory fee referred to in Article 2 shall be due at the beginning of each calendar year and shall be paid in full to ESMA in the first 3 months of that year. ESMA shall provide each external reviewer with an invoice that specifies the supervisory fee due at the latest 30 days before the final payment date.
2. ESMA shall under no circumstances refund any annual supervisory fees paid.

Article 7
Reimbursement of national competent authorities

1. Only ESMA shall charge the fees referred to in Article 1 and 2.
2. ESMA shall reimburse national competent authorities for the actual costs incurred for carrying out tasks pursuant to Regulation (EU) 2023/2631, and in particular for any tasks carried out pursuant to Article 55(4) or Article 56(5) of that Regulation. Costs to be reimbursed shall include all fixed costs and variable costs related to the assistance provided to ESMA.

Article 8
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN