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## ESMA statement on the expected sustainability disclosures in prospectuses

The European Securities and Markets Authority ("ESMA") has issued a public statement, addressed to national competent authorities ("NCAs"), on what sustainability information it considers should be included in prospectuses for both equity and non-equity securities under the Prospectus Regulation.

With its publication, ESMA establishes criteria for NCAs to adopt a coordinated approach to the supervision of prospectuses on Environmental, Social and Governance ("ESG") issues and, additionally, provides highly relevant guidance for issuers on the information they must include in their prospectuses on this matter, ensuring that potential investors have access to all the information on sustainability that will enable them to make informed decisions on their investments.

In this regard, we highlight the main issues identified by ESMA in the document:

### 1. Expected sustainability disclosures in prospectuses

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ESMA notes that Recital 54 of the Prospectus Regulation requires risk factors to be limited to risks that are material and specific to the issuer and its securities, meaning that issuers must include sustainability issues in prospectuses only to the extent that their effects are material, even if the disclosure requirements of Commission Delegated Regulation 2019/980 do not explicitly refer to sustainability issues. In addition, ESMA advises issuers that in their prospectuses:

- They should disclose the basis used to make any statement on their sustainability profile or that of the securities they issue.
- An issuer should not use sustainability-related disclaimers to excuse non-performance of factors over which the issuer exercises control (notwithstanding that an issuer may state in a risk factor that its sustainability expectations may differ from those of an investor or that the notion of sustainability may change according to scientific progress, relevant legislation and/or investor preferences).
- The comprehensibility of ESG information must be ensured by complying with the requirements set out in Article 37(1) of Delegated Regulation 2019/980, which establishes the criteria for the assessment of the comprehensibility of the information included in the prospectus. In particular, the prospectus should clearly define any technical terminology related to sustainability.

### 2. Sustainability-related disclosures in prospectuses for equity securities and consistency with non-financial reporting

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In prospectuses for equity securities, issuers must include sustainability information published in their non-financial reporting under Directive 2014/95/EU on non-financial reporting (NFRD) or, in the near future, under Directive (EU) 2022/2464 on corporate sustainability reporting (CSRD), if this is considered material. Furthermore, issuers must take into account the recommendations of the Common European Implementation Priorities documents for 2021 and 2022 on issuers' annual financial reports when including information from their non-financial reports in a prospectus.

### 3. Prospectuses relating to non-equity securities with a specific ESG component or objective

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ESMA expects prospectuses and final terms relating to non-equity securities with a specific ESG component or objective, such as issuances of bonds whose proceeds will be used to finance or refinance green and/or sustainable projects or activities ("*use of proceeds bonds*") and bonds whose financial and/or structural features vary depending on whether the issuer achieves certain pre-determined ESG objectives ("*sustainability-linked bonds*"), to also include the ESG information necessary for investors to make an informed assessment of their investment.

To assist both issuers and NCAs in determining what should be included in the prospectus, the ESMA document includes an annex setting out the ESG disclosures expected for each type of security, in particular:

	<i>Use of proceeds bonds</i>	<i>Sustainability-linked bonds</i>
<b>Risk factors:</b>	Issuers should include risks relating to the allocation and management of funds, as well as risks relating to the viability and achievement of the sustainable project.	Issuers must disclose risks relating to the relevant key performance indicators (" <i>Key Performance Indicators</i> " or " <b>KPIs</b> ") and associated sustainability objectives (" <i>Sustainability Performance Targets</i> " or " <b>SPTs</b> ") (including information on potential conflicts of interest in selecting and monitoring KPIs).
<b>Rationale for the offer and use of proceeds:</b>	<p>Issuers should describe the objective and characteristics of the sustainable project and how the sustainable objective is expected to be achieved<sup>1</sup>.</p> <p>If the sustainable objective has not been identified at the time of approval of the prospectus, issuers should describe the criteria for determining how the proceeds from the issuance will be allocated.</p>	Issuers should disclose in the prospectus the rationale for issuing such bonds as well as their impact on the issuer.

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<sup>1</sup> For example, prospectuses could include a summary of the sustainable development goals framework ("*Sustainable Development Goals Framework*") on the basis of which the ESG issuance will be carried out.

	<i>Use of proceeds bonds</i>	<i>Sustainability-linked bonds</i>
<b>Information relating to securities to be offered to the public/ admitted to trading:</b>	If there are any cases of early redemptions, issuers should report the impact that early redemption may have on the sustainability performance of an investment.	<p>If interest payments are influenced by compliance or non-compliance with SPTs, this should be disclosed in the prospectus, including information on the selected KPIs, the associated SPTs and how the corresponding calculations will be carried out<sup>2</sup>.</p> <p>If there are any cases of early redemptions, issuers should report the impact that early redemption may have on the sustainability performance of an investment.</p>
<b>Additional information:</b>	If advisers or third parties have provided advice or assurances on the sustainability features of the security, the prospectus shall contain information on the extent of such assurances and by whom they have been provided.	If advisers or third parties have provided advice or assurances on the sustainability features of the selected KPIs, the prospectus shall contain information on the extent of such assurances and by whom they have been provided.
<b>Underlying assets:</b>	If the proceeds of the issuance are used to purchase underlying loans or other assets that are considered sustainable, the prospectus shall disclose the criteria used to determine their sustainability.	—
<b>Post-issuance reporting:</b>	Issuers should disclose what information they intend to publish on sustainability post-issuance, stating what information will be disclosed and where it will be available.	Issuers should disclose what information they intend to publish post-issuance, stating what information will be disclosed and where it will be available.

<sup>2</sup> The prospectus should include information on the selected KPIs, SPTs and information to enable investors to assess the consistency of the KPIs and associated SPTs and the issuer's sustainability strategy.

## 4. Consistency of sustainability-related disclosures in prospectuses and advertisements

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ESMA notes that where issuers include sustainability-related information in their advertisements that could be considered material but that is not included in their prospectus, this information must be included in the prospectus, including through a supplement to the prospectus.

## 5. Typical content of prospectuses relating to ESG bond issuances in Spain

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The most common ESG bond issuances in Spain are the so-called "Use of proceeds bonds" and the following information is normally included in the prospectus (already largely complying with the criteria established by ESMA):

- **Risk factors:** it is usual to find at least one risk factor warning that the bonds may not meet investors' expectations or requirements. Specifically, risk factors usually refer to: (a) the absence of an "official" definition of what constitutes a "green", "social" or "sustainable" security; (b) the absence of assurances that eligible projects exist or that such projects will be completed or meet their objectives; (c) the absence of assurances regarding the adequacy or reliability of third-party opinions (including "*Second Party Opinion*" or "**SPO**"); (d) the absence of assurances as to the admission of the bonds to trading on a sustainable (or similar) market (or market segment), or the maintenance of the admission to trading once obtained; (e) the absence of default events relating to the failure of the issuer to allocate an amount equal to the net proceeds of the issuance to finance and/or refinance eligible projects; and, in some cases, (f) that the Framework and/or the SPO may be amended, supplemented or replaced during the life of the bonds.
- **Reasons for the offer and use of proceeds:** issuers usually include a statement that they intend to allocate an amount equivalent to the net proceeds of the issuance to finance and/or refinance eligible projects in accordance with the Framework, and hyperlinks to the Framework and SPO are usually included (with a statement that such information (or, where applicable, information contained on relevant websites) is not part of the prospectus and has not been reviewed or approved by the competent authority).

It is customary to include in the prospectus certain information on the Framework, in particular, on compliance with the four pillars of the Green Bond Principles, the Social Bond Principles and/or the ICMA Sustainable Bond Guide (i.e., (i) use of proceeds; (ii) process for project evaluation and selection ; (iii) management of proceeds and (iv) reporting), as well as the sustainability information issuers intend to publish post-issuance and where it will be available.

- **Terms and conditions:** it is customary to expressly provide that the issuer's failure to deploy an amount equivalent to the net proceeds of the issuance to finance and/or refinance eligible projects does not constitute a default event and, therefore, investors do not have the right to request the early redemption of their bonds.

In view of the information currently already included in prospectuses, issuers of "*Use of proceeds bonds*" must assess what additional information may need to be included to meet the expectations of ESMA and the relevant NCA, although in many cases this will depend on the NCA's assessment of the information already included.

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