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## Publication by ESMA of a statement relating to sustainability disclosures in prospectuses

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### **Scope:**

The ESMA statement that is the subject of this communication is addressed to supervisory authorities but ESMA invites issuers and their advisors to take them into consideration when drawing up prospectuses, especially as regards information relating to sustainability.

### **Summary/Objectives:**

The FSMA wishes to draw the attention of issuers and their advisors to ESMA's public statement on sustainability disclosures in prospectuses.

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The FSMA wishes to draw the attention of issuers and their advisors to ESMA's public statement [on sustainability disclosures in prospectuses](#).

The statement is intended to provide clarity about the disclosure requirements that issuers must fulfil with respect to sustainability-related matters in both equity and non-equity prospectuses that have an "ESG" component (environmental, social and governance criteria, typically in 'green' bonds), based on the Prospectus Regulation<sup>1</sup> and its delegated regulations<sup>2</sup>. Final terms are also addressed.

Although the statement is addressed to supervisory authorities, ESMA invites issuers and their advisors to take them into consideration when drawing up prospectuses, especially as regards information relating to sustainability.

The ESMA statement serves as an additional tool for the FSMA in its efforts to prevent "greenwashing". The statement thus specifies that *"While an issuer might 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, ESMA considers that sustainability-related disclaimers should not be used to excuse non-performance of factors over which the issuer exercises control. For example, a disclaimer stating that the proceeds of the offering may be invested contrary to the criteria for project selection set out in a prospectus"*

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<sup>1</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

<sup>2</sup> In particular, Delegated Regulation (EU) 2019/980 of the Commission of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Regulation (EC) No 809/2004.

***concerns a factor over which an issuer exercises control and should not be included as a disclaimer.***  
(p. 3, our emphasis)

The FSMA will henceforth apply this statement when exercising its supervisory powers and when issuing prior approvals of prospectuses, in order to ensure that the information disclosed by issuers (and under their responsibility) meets the standards laid down in the Prospectus Regulation as regards completeness, comprehensibility and consistency. For example, the FSMA will check that prospectuses for the issue of ESG securities contain information about the use and management of the proceeds and about the eligibility criteria and selection and assessment procedures for the projects to be financed by those proceeds.

However, when examining prospectuses with a view to approval, the FSMA is not responsible for checking the truthfulness or accuracy of the information or whether the issuer has complied with its obligations as to the use of the proceeds of the securities.

The FSMA will be particularly attentive to the risks of greenwashing in advertisements for all offers made in Belgium, including those for which the prospectus is approved by the supervisory authority of another country (and that are “passport” in Belgium). The latter must not contain statements relating to sustainability that are not consistent with the prospectus (see the ESMA statement, pp. 4 and 5 as well as Articles 22(3) and (4) of the Prospectus Regulation).

The FSMA wishes also to draw the attention of investors to a legislative initiative at European level as regards environmentally sustainable bonds: the “EU Green Bonds Standard” (or EuGB) Regulation. The Regulation stipulates, in particular, that issuers may not use the designation “European Green Bond” unless the securities issued are accompanied by a prospectus (other than for a few exceptions) and meet certain requirements for the allocation of the yield generated by the offer, the communication of standardised information (before and after the issue) and the external review of such information.

The Regulation is thus intended to standardise the requirements in this regard and to enable investors to evaluate, compare and be able to trust the sustainability of their investments, thereby reducing the risk of greenwashing.

The FSMA will be responsible, under the terms of the “EU Green Bond Standard”, for assessing the prospectuses required when issuing such products. Once the Regulation has been published, it will be available on the [“Issues of securities”](#) page of our website.

- Appendix: [ESMA Public Statement – Sustainability disclosure in prospectuses](#)