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**THE EU'S GOLD STANDARD – THE FINAL EU GREEN BOND STANDARD HAS LANDED BUT WHAT DOES IT MEAN FOR THE GREEN BOND MARKET?**

## THE EU'S GOLD STANDARD – THE FINAL EU GREEN BOND STANDARD HAS LANDED BUT WHAT DOES IT MEAN FOR THE GREEN BOND MARKET?

The eagerly anticipated agreed EU Green Bond Standard Regulation (the “**Regulation**”) has finally been published, 5 years after the standard for environmentally sustainable bonds in Europe was first envisaged by the European Commission in its 2018 Sustainable Finance Action Plan. The Regulation looks much more like the original EU Commission proposal from 2021 than the more radical proposal put forward by the European Parliament in 2022.

### In summary:

- The Regulation is a voluntary standard that can be used by issuers of green use of proceeds bonds where the proceeds are fully allocated in accordance with the EU Taxonomy Regulation<sup>1</sup> (the “**Taxonomy Regulation**”).
- Bonds issued in accordance with the Regulation can use the label “**European Green Bonds**” or “**EuGB**”.
- Issuers of European Green Bonds must prepare pre-issuance and post-issuance reports which are subject to a review by an external reviewer. Issuers may also obtain an external review of post-allocation impact reports.
- A new supervisory regime administered by the European Securities and Markets Authority (“**ESMA**”) is established for those external reviewers who issue reports in relation to European Green Bonds.
- National competent authorities are granted supervisory powers to sanction and issue penalties to issuers of European Green Bonds for non-compliance with the Regulation.
- The Regulation includes specific provisions for green bonds issued by sovereigns, regional / local authorities and EEA supnationals and introduces a separate regime for securitisation (which is outside the scope of this briefing).
- It includes an option for issuers of green use of proceeds bonds that are not aligned with the Taxonomy Regulation and sustainability-linked bonds to voluntarily opt-in to a number of the Regulation’s disclosure requirements.
- The agreed version is expected to be adopted in the autumn and will apply 12 months after publication in the Official Journal.

“With the European Green Bond standard we are creating a new goal standard available to those companies that want to be at the forefront of the sustainability transition”

- Mairead McGuinness,  
Commissioner for  
Financial Services,  
Financial Stability and  
Capital Markets Union

<sup>1</sup> Regulation (EU) 2020/852

## Key focus areas of the new regime

The key differences between the new EuGB standard and existing standards that have been widely adopted in the market, such as the ICMA Green Bond Principles, primarily relate to (a) use of proceeds; (b) disclosure requirements; (c) the role of external reviewers; and (d) regulatory oversight/ sanctions. We look in detail at some of these requirements below in addition to how they apply differently to sovereigns, regional/ local authority issuers and EEA supnationals and also the new European Green Bonds “lite” regime for those issuers who cannot or do not want to comply with the full EuGB regime.

## Use of proceeds

The Regulation provides that issuance proceeds must be applied in accordance with the Taxonomy Regulation in one of five ways, to finance: (1) fixed assets, (2) certain capital expenditures, (3) operating expenditures, (4) financial assets and (5) assets and expenditures of households. There are detailed provisions relating to CapEx plans and applying proceeds to “financial assets” that will need careful consideration in practice. In addition, issuers may allocate proceeds from a portfolio of one or more outstanding European Green Bonds to a portfolio of fixed assets or financial assets, provided that they demonstrate in allocation reports that the total value of fixed assets or financial assets in their portfolio exceeds the total value of their portfolio of outstanding bonds.

For many issuers used to existing market-based standards it will not be easy to apply issuance proceeds in compliance with the Taxonomy Regulation. This reflects the intention in the EU to make the EuGB label the “gold standard” for green bonds. A reminder of the Taxonomy Regulation requirements is set out in the text box.

The issuer is required to make detailed disclosures of its intended use of proceeds in the green bond factsheet (discussed below) and this includes any allocation to transitional or enabling activities and/or funding of taxonomy-aligned nuclear energy or fossil gas related activities.

### CapEx plans

To be in scope of the Regulation, capital expenditure must be part of an issuer's CapEx plan. The CapEx plan, defined by reference to the Article 8 Disclosures Regulation, aims to expand an entity's ‘Taxonomy-aligned’ economic activities or to upgrade the issuer's ‘Taxonomy-eligible’ activities to ensure they are Taxonomy-aligned within a five year period. To be in scope, operating expenditure must be part of an issuer's CapEx plan or be related to either assets or processes associated with Taxonomy-aligned activities or the purchase of output from Taxonomy-aligned activities, and must be incurred not more than three years prior to the issue of the bond.

**‘Taxonomy-aligned’ economic activities** means those activities which comply with the environmental objectives of the Taxonomy Regulation and the applicable TSC

**‘Taxonomy-eligible’ economic activities** means those activities which fall within the Taxonomy Regulation's environmental objectives but do not comply with the applicable TSC

### Taxonomy Regulation compliance requires that the activity (to which the proceeds are applied) must:

- contribute substantially to one or more of the six environmental objectives – climate change mitigation, climate change adaptation, protection of water and marine resources, transition to a circular economy, pollution prevention and control, and the protection of biodiversity and ecosystems;
- comply with the detailed technical screening criteria (“**TSC**”) applicable to it (although some flexibility is allowed for activities where there are currently no specified TSC (such as agriculture) and an issuer is permitted to allocate up to 15% of the proceeds to such an activity;
- do no significant harm (“**DNSH**”) to any of the other environmental objectives; and
- be carried out in accordance with minimum safeguards that ensure alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights.

Where the issuer applies the EuGB proceeds to capital or operating expenditure in accordance with its CapEx plan it must specify when those expenditures will become Taxonomy-aligned, such deadline being prior to the maturity date of the bond. In addition, the issuer is required to obtain an external reviewer report on the taxonomy alignment of the capital and operation expenditures funded by the EuGB and include a summary of its CapEx plan in the prospectus. The issuer must publish its CapEx plan on its website until at least 12 months after the maturity of the relevant bond(s).

### **Financial assets**

There are specific rules for bonds where the proceeds are applied to “financial assets”. Financial assets are defined as “debt or equity” (or a combination) so for issuers that on-lend issuance proceeds these rules will be relevant. Financial assets must be created within five years of the issuance of the bond and must ultimately be allocated to one of the specified uses set out in the Regulation. While financial assets can be allocated to subsequent financial assets this is subject to a maximum limit of three financial assets in a row. The Regulation refers to an issuer “guaranteeing the possibility” of an external review on the final allocation of proceeds, however, it is unclear if this wording is an absolute or “best efforts” test. In any event, such external review is likely to be challenging in practice.

### **Grandfathering**

The grandfathering provisions in relation to the TSC look broadly helpful. For bonds where the proceeds are allocated on issuance the TSC that apply on the issue date will continue to apply for the life of the bond. For bonds where proceeds are not yet allocated an issuer will have seven years running from the date that the amended TSC become effective to adjust alignment of proceeds to the amended TSC. Where an issuer applies bond proceeds to a portfolio of assets there is an alternative grandfathering period which looks back seven year from the date of allocation report. There are more detailed rules on amended TSC that apply where proceeds are applied in accordance with the issuer's CapEx plan and those expenditures have not yet met the requirements of the Taxonomy Regulation.

## **Disclosure**

### **Template pre-and post-issuance information and external reviews**

An EuGB issuer must prepare a pre-issuance green bond factsheet, post-issuance allocation and impact report and obtain certain pre-issuance and post-issuance external reviews (the detailed requirements are set out in the Annex to this Briefing). The factsheet, post-issuance reports and related external reviews must be published on the issuer's website for a period of 12 months following the maturity of the related European Green Bond(s). It will be interesting to see how the factsheet interacts with existing green bond frameworks and whether going forward the latter will be less important.

The Regulation Annexes set out templates for the reports and external reviews. Use of prescribed forms is a key to the broader EU sustainable finance disclosure objective to have consistent, comparable and decision useful information available to investors to assist in efficient flows of sustainable capital. This should be of particular assistance to investors that report according to the Sustainability Related Disclosures Regulation (“**SFDR**”) and alleviate some of the administrative difficulties and uncertainty they face in reporting Taxonomy Regulation alignment information.



### **Prospectus disclosure and the Prospectus Regulation**

An EuGB issuer will need to prepare an EU Prospectus Regulation compliant prospectus which is approved by a national competent authority and published prior to issuance. The prospectus must clearly state that the bond is a European Green Bond and include a statement in the use of proceeds section that the bond is issued in compliance with the Regulation. Otherwise, there are no specific prospectus disclosure requirements set out in the Regulation, save for the requirement for an issuer to include the summary of its CapEx plan if the proceeds are applied to capex or opex (see above).

The green bond factsheet does not need to be included or incorporated by reference into the prospectus, but issuers may wish to do so, and both the European Central Bank and the ECON committee of the European Parliament have previously expressed their belief that it should be incorporated by reference. It may be that certain parts of the factsheet are recycled (without being incorporated reference) in the Use of Proceeds section of EuGB prospectuses, as is often the case in current market practice where disclosure relating to allocation, management of proceeds and reporting is copied across from green bond frameworks.

The green bond factsheet is specified as being “regulated information” under the Prospectus Regulation which can be, but is not required to be, incorporated by reference into a prospectus under the current rules. However, the ongoing EU Listing Act proposals are likely to make changes as to when regulated information must be mandatorily incorporated by reference into a prospectus and these developments could be highly relevant. The other moving piece in relation to prospectus disclosure is the anticipated change to the Prospectus Regulation to introduce specific green bond and SLB disclosure annexes and how this will interplay with the EuGB standard and the optional EuGB “lite” regime.

The requirement to prepare a Prospectus Regulation-compliant prospectus to use the EuGB label will have implications for issuers that currently have their securities admitted to trading on an exchange-regulated market. Such issuers may be reluctant to submit to the Prospectus Regulation disclosure requirements which are typically less flexible than those of exchange regulated markets thus potentially hindering the adoption of the EuGB standard. From a regulator’s perspective, the requirement for a Prospectus Regulation compliant prospectus is convenient, not least as it allows the Regulation to “piggy-back” off the existing Prospectus Regulation liability regime - there is no separate liability regime for European Green Bonds – and ensures that the national competent authorities have the necessary supervisory remit (discussed below).

### **Sovereigns, regional/local authorities and supranational issuers**

There are several requirements under the Regulation that differ in respect of issues by sovereigns, regional/ local authorities and EEA supranational issuers or those guaranteed by EEA members states and local authorities. First, sovereigns and regional or municipal entities (including non-EEA states and entities) are allowed to apply the proceeds of an EuGB to a much wider range of uses, provided the proceeds are allocated in accordance with the Taxonomy Regulation. These extended uses include

tax reliefs, subsidies, transfers within general government and international cooperation. Second, EEA member states, local authorities, the ECB and member state central banks and issuers of securities guaranteed by member states and local authorities are exempt from the requirement to prepare a Prospectus Regulation compliant prospectus for the purposes of any EuGB issuance, dovetailing with the existing Prospectus Regulation exemption. Consequently, those issuers will not be subject to supervision and imposition of sanctions by a national competent authority.

### **The EuGB “lite” / optional disclosures regime**

A key provision that appears in the Regulation, which was not in the European Commission's original proposal and represents a concession made to the European Parliament, is the provision of an optional disclosure regime for use of proceeds bonds that are not aligned with the Taxonomy Regulation (“**UoP bonds**”) and sustainability linked bonds (“**SLBs**”). The term used in the Regulation for non-Taxonomy aligned UoP bonds is “bonds marketed as environmentally sustainable” which is defined as “bonds whose issuer provides investors with a commitment or any form of pre-contractual claim that the bond proceeds are allocated to economic activities that contributed to an environmental objective”. This definition clearly encompasses those green bonds issued in accordance with the ICMA Green Bond Principles. Similarly to the full EuGB standard, the optional regime provides for both specified pre-issuance and post-issuance disclosures.

The details of what the pre-issuance disclosure templates should include are not yet available and will be developed by the European Commission. However, the Regulation specifies that the templates should at a minimum include disclosure on transition plans and Taxonomy Regulation Article 8 disclosures (where these are applicable) for both UoP bonds and SLBs and additionally (i) for UoP bonds, the minimum proportion of bonds proceeds to be applied to Taxonomy Regulation environmentally sustainable activities and (ii) for SLBs, the rationale, level of ambition and materiality on the relevant KPIs and a description of the bond structure. These minimum requirements will apply from the date of the publication of the Regulation and the European Commission developed guidelines will be published 12 months after the Regulation enters into force.

Issuers of non-Taxonomy aligned UoP bonds and SLBs also have the option to provide post issuance reports in accordance with “common templates”. However, if an issuer does so it will be subject to supervision by the relevant national competent authority in relation to its obligations under the Regulation. The detailed content and presentation of the common templates will be developed by the European Commission but will include the minimum disclosure elements set out in the pre-issuance templates. In considering the common templates the European Commission is required to take into account any Prospectus Regulation requirements, to avoid overlapping disclosures, and the requirements of financial market participants under SFDR.

### **External reviewers and the new supervisory regime**

The introduction of a supervised external reviewer regime marks a significant departure from the existing market position where the number of sustainability consultants has proliferated in recent years without being subject to any regulatory oversight.

The new regime requires EEA external reviewers to register with the regulator, ESMA, before they are able to provide reports to issuers of EuGB. There are detailed requirements that an external reviewer must comply with to achieve registration. Non-EEA external reviewers are similarly required to be registered or recognised by ESMA (where recognition is achieved by having a responsible legal representative in the EEA) or to have their reports endorsed by an EEA registered external reviewer.

There is an 18-month transitional period whereby both EEA and third country external reviewers can provide services to issuers of EuGBs without needing to be registered, recognised or have their reports endorsed, as applicable, provided that they have notified ESMA of their intention to provide such services.

This supervisory regime, while only covering external reviewers of EuGBs, is likely to improve the robustness of the external reviewer market as a whole. The new regime introduces more rigour as regards use of data and requires explanations of methodologies and key assumptions used when preparing reports. This, coupled with increased entity level disclosure, should help to address the concerns around the lack of transparency and consistency that have plagued sustainability data, reporting and assessments to date and greatly assist investors in their efforts to compare issuers of green bonds.

### **Regulatory oversight**

The national competent authority that reviews the EuGB prospectus will be responsible for supervising the issuer's compliance with the Regulation's disclosure and reporting requirements. The Regulation grants competent authorities a number of powers, including to:

- require publication of the various pre and post-issuance reports;
- suspend offers or admission to trading of an EuGB for 10 working days if the issuer is suspected of not complying with its obligations under the Regulation;
- prohibit offers or admission to trading of an EuGB where an issuer continues to fail to comply with its obligations under the Regulation; and this can be extended to a period of one year for an issuer that repeatedly and severely infringes the Regulation;
- make various public "name and shame" announcements that an issuer is failing to comply with its obligations and potentially that the issuer's EuGBs no longer comply with the Regulation; and
- impose monetary sanctions, the maximum for an issuer being at least Euro 500,000 or 0.5% of such issuer's turnover.

Member states have the option of granting additional powers to competent authorities to impose other administrative sanctions, to increase the level of monetary sanctions and also to introduce criminal sanctions. When considering the application of sanctions competent authorities are required to take into account the seriousness and length of

the infringement, the impact on retail investors, any previous infringements and actions taken to avoid the repetition of any infringement. Competent authorities must publish on their websites, and keep public for five years, details of any administrative measures and sanctions imposed.

While these new powers and sanctions aim to give the EuGB standard and the optional disclosures regime “bite”, it is likely that reputational damage and potential litigation risk will also continue to remain effective deterrents to non-compliance in the green bond market.

### **Conclusions and considerations**

The EuGB label is ambitious. It is deliberately prescriptive and by virtue of being a regulation, rather than a directive, aims to increase market efficiency by reducing discrepancies that could result from the national transposition of a directive in individual member states and reduce the costs for investors of assessing compliant green bonds. It aims to ensure the provision of consistent and comparable disclosures in line with other EU sustainable finance legislation, primarily the Taxonomy Regulation, but also the key legislation relating to disclosures, namely the Corporate Sustainability Reporting Directive (“**CSRD**”), SFDR and Article 8 of the Taxonomy.

Given the existence of widely used market-based green bond principles, there is an obvious question about the likely breadth of adoption of the EuGB label by issuers, particularly given the stringency of its requirements compared with current market-based standards. In the recitals to the Regulation, EU institutions are “encouraged” to use it and the European Investment Bank is named as being committed to gradually aligning its green bond programme with the EuGB label. For other issuers it will clearly depend on their ability to identify Taxonomy-aligned activities and address the disclosure aspects. However, as the Regulation is unlikely to be effective until late 2024 / early 2025, which aligns roughly with the first year of CSRD reporting, it may be that, by then, many issuers are already up the disclosure curve.

A similar question hangs over the adoption of the optional EuGB “lite” regime. Which issuers will want to, or perhaps more pertinently be able to, voluntarily adhere to these stricter disclosure rules to demonstrate their commitment to robust environmental credentials? Although, notably Paul Tang, the European Parliament rapporteur on the Regulation, with reference to this optional regime commented, “with a clear system for disclosures, any green bonds not using this system, will likely be looked at with increasing suspicion”.

**“With a clear system for disclosures, any green bonds not using this system, will likely be looked at with increasing suspicion.”**

**- Paul Tang**



Will we begin to see a tiered green bond market with some issuers issuing European Green Bonds, some EuGB “lite” bonds and others continuing to align with the ICMA Green Bond Principles?

Of course, as well as the technical requirements, the adoption of the ‘standard’ by issuers will be driven by factors such as investor demand, commercial and pricing advantages and reputational considerations. There may indeed be ‘first mover’ advantages for early adopters of the EuGB label.

Going forward, the European Commission will conduct a regular review of the Regulation, after the first five years initially and then every three years thereafter, and report on the take up and effectiveness of the new standard. The indication is that this initial report will include a legislative proposal to bring those bonds under the optional EuGB “lite” regime within scope of the Regulation. Similarly, the European Commission is tasked with producing a report assessing the need to regulate sustainability-linked bonds three years after the entry into force of the Regulation. The inclusion of these ongoing review provisions, with the promise of an ever more encompassing scope, represents a compromise between the European Commission and the European Parliament during the legislative debate. However, the direction of travel is clear and recognises the importance the European Commission places on the bond market in supporting its broader sustainable finance and net zero transition objectives.

## **ANNEX**

### **Pre-issuance information**

#### **A. A summary of the Green Bond Factsheet information (template in Annex 1 of the Regulation)**

1. **General Information:** including the name of issuer, the date of factsheet, the issuer website, the ISIN, the details of external reviewer and the national competent authority that approved the prospectus.
2. **Important Information:** confirmation that the bond is an EuGB in accordance with the Regulation, and details of any non-alignment with the TSC in accordance with flexibility provisions.
3. **Environmental strategy and rationale:** including details of how the bond is expected to contribute to the broader environmental strategy of the issuer and applicable Taxonomy Regulation environmental objective; if the issuer is subject to Article 8 of the Taxonomy Regulation; details of how the bond proceeds will contribute to the issuer's taxonomy-aligned assets, turnover, capex and opex; and if the issuer is required to publish a transition plan under the Corporate Sustainability Reporting Directive (“**CSRD**”) requirements, how the bond proceeds contribute to the plan. The issuer should include a statement if an external review is sought on the information in this section in the impact report review.
4. **Intended allocation of proceeds:** including the intended allocation to Taxonomy-aligned activities, plus any use of the flexibility provisions where activities are not aligned with the TSC; details of the amount of proceeds to be used for financing and refinancing; details of proceeds allocated to transitional or enabling activities (as defined under the Taxonomy Regulation) and to Taxonomy-aligned nuclear energy and fossil gas related activities; the estimated time frame for full allocation of the bond proceeds and a description of the process of how the issuer will determine projects align with the requirements of the Taxonomy Regulation.
5. **Environmental impact of the bond proceeds:** where available, an estimation of the anticipated environmental impact of the bond.
6. **Information on reporting:** details of the issuer's website, link to any relevant reports e.g. the issuer's sustainability report (and this will include any report required under the CSRD proposals); date which the first reporting period starts and indication of what information will be included in the allocation reports.
7. **CapEx plan:** a detailed description of the issuer's CapEx plan, if relevant.

#### **B. Pre-issuance external review**

A pre-issuance external review on the factsheet is required. The reviewer must undertake a detailed assessment of, and give a positive opinion on (i) the Taxonomy-alignment of the use of proceeds of the bond and (ii) the requirements of the Regulation having been, or expecting to be, met. The review must include information on the sources used, an assessment of methodology and key assumptions used and a statement as to whether the reviewer found the information provided sufficient to perform the review and whether it has verified any of the information so provided.

### Post-issuance reporting

**Issuer allocation report (required):** this must be prepared every 12 months until full allocation of the proceeds and, where the issuer has published a CapEx Plan, until the completion of such plan. This should set out the actual, rather than the intended, allocation of proceeds together with details of the amounts and proportion of proceeds allocated to which types of activities and projects.

**External review on allocation report (required):** the external reviewer should provide an assessment and opinion on whether the issue proceeds have been allocated in accordance with the Regulation and with the pre-issuance green bond factsheet; additional assessments are required in relation to CapEx plans and bonds which do not comply with the TSC, i.e., that use the flexibility arrangements. The review must include information on the sources used, an assessment of methodology and key assumptions used and a statement as to whether the reviewer found the information provided sufficient to perform the review.

**Issuer impact report (required):** this is required after the full allocation of the issue proceeds and at least once during the life of the bond. This should detail the positive and adverse environmental impacts of the activities and projects funded by the bond, including related metrics and details of the methodology and assumptions used to evaluate the impacts.

**External review on impact report (optional):** the external reviewer should provide an assessment and opinion on whether the bond issuance aligns with the issuer's broader environmental strategy and an assessment of the indicated impact of the bond proceeds. The review must include information on the sources used, an assessment of methodology and key assumptions used and a statement as to whether the reviewer found the information provided sufficient to perform the review.

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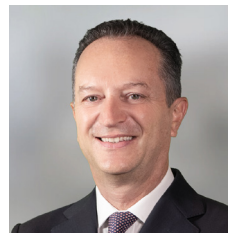
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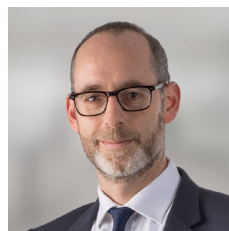
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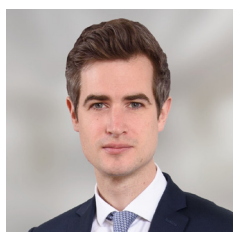
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