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## The new European Green Bond standard

On 30 November 2023, [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](#) (the “**EuGB Regulation**”) was published in the Official Journal of the European Union. It will enter into force on 20 December 2023 and will be applicable from 21 December 2024, subject to certain exceptions.

The EuGB Regulation represents the next step in the European strategy for financing sustainable growth and the transition to a climate-neutral and resource-efficient economy. The EuGB Regulation seeks to increase transparency in the green bond market, allowing issuers to demonstrate that they are financing projects aligned with the European taxonomy. For their part, investors will benefit from greater consistency and comparability between bonds, through a new framework that aims to combat “greenwashing” (i.e. the misleading promotion that a financial product meets sustainable objectives) and encourage the allocation of funds to environmentally sustainable projects.

Adherence to the European Green Bond standard of the EuGB Regulation will be voluntary and, therefore, the EuGB Regulation reserves the use of the designation “European Green Bond” or “EuGB” for those bonds that meet the requirements set out in the EuGB Regulation. Therefore, European Green Bonds will coexist with other green bond “labels” promoted mainly by international associations such as ICMA (whose “Green Bond Principles” have inspired the creation of the EuGB Regulation).

### 1. Requirements for recognition as a European Green Bond

The requirements for recognition as a European Green Bond are as follows:

#### A. The proceeds of the issuance must be used entirely to finance environmentally sustainable economic activities aligned with the European taxonomy

The proceeds of the bonds<sup>1</sup> must be used to finance economic activities that (i) are either environmentally sustainable and meet the requirements of the Taxonomy Regulation<sup>2</sup>; or (ii) contribute to the transformation of activities so that they can meet those requirements within a reasonably short timeframe.

The EuGB Regulation allows European Green Bonds to be used to finance such activities either (i) directly, by financing assets and expenditures relating to economic activities that meet the criteria set out in the Taxonomy Regulation (e.g. new production technology with lower emissions); or (ii) indirectly, under certain conditions, through financial assets that in turn finance economic activities that meet those criteria (e.g. “green mortgages”)<sup>3</sup>.

<sup>1</sup> The requirement to allocate the proceeds of European Green Bonds to environmentally sustainable economic activities applies only to the net proceeds of such bonds (i.e. the difference between the total proceeds of the bonds and the issuance costs that are directly related to the issuance of the bonds, including the costs of financial intermediaries managing the issuance, advisory costs, legal costs, rating costs and costs related to external verification). However, issuers may decide to use the gross proceeds, without deducting costs, for environmentally sustainable economic activities.

<sup>2</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

<sup>3</sup> Sovereign issuers may allocate the proceeds of the European Green Bonds they have issued to tax relief, subsidies, intermediate consumption, current transfers within a general government, current international cooperation or other types of public expenditure, provided that the proceeds are allocated in accordance with the taxonomy requirements.

Issuers may allocate the proceeds of one or more outstanding European Green Bonds to a portfolio of fixed assets or financial assets (“portfolio approach”), provided that the total value of the fixed assets or financial assets in their portfolio exceeds the total value of their portfolio of outstanding European Green Bonds.

The EuGB Regulation provides some flexibility in the use of European Green Bond funds by allowing up to 15% of the funds to be allocated to activities that comply with the taxonomy but for which there are no technical screening criteria in place yet, or to certain international support activities such as climate change financing. In any case, the issuer must demonstrate that the economic activities contribute substantially to one or more environmental objectives, that they do not significantly harm any such environmental objectives, and that they are carried out in accordance with certain minimum safeguards.

## **B. Issuers must comply with certain transparency and external verification requirements**

In order to use the European Green Bond or EuGB designations, issuers must publish a prospectus<sup>4</sup> that complies with the Prospectus Regulation<sup>5</sup> and which meets the following conditions: (a) the bonds must be designated as European Green Bonds or EuGB throughout the prospectus; and (b) the use of proceeds section must state that the European Green Bond is issued in accordance with the EuGB Regulation. Where applicable, such prospectus shall include a summary of the issuer’s CapEx plan.

In addition, issuers shall be required to publish:

- i) A factsheet**, which must contain information on how the bond is expected to contribute to the issuer’s overall environmental strategy and the intended allocation of the proceeds from the bonds.

The factsheet must be subject to a pre-issuance review with a positive opinion by an external reviewer<sup>6</sup>;

- ii) Allocation reports**: published every twelve months until the date of the full allocation of the proceeds of the European Green Bond, it must contain information on the allocation of the proceeds of the bonds.

The allocation report prepared after the full allocation of the proceeds of the European Green Bond shall be subject to a post-issuance review by an external reviewer (in the case of issuers allocating the proceeds of one or more European Green Bonds to a portfolio of assets, any allocation report shall be subject to a post-issuance review by an external reviewer, unless there has been no change in the asset portfolio allocation);

- iii) An impact report**: published after the full allocation of the proceeds of the European Green Bond and at least once during the life of the European Green Bond, it must contain an estimate of the positive and negative environmental impacts of the projects financed with the proceeds of the bonds.

Issuers may seek a review of the impact report by an external reviewer.

Both the factsheet and the other reports must be completed using the relevant templates. These templates are intended to facilitate the comparability of European Green Bonds and the identification of relevant information. Where a prospectus exists, the factsheet and reports must be provided in the language(s) of the prospectus.

The documentation must be made available free of charge on the issuer’s website. Where applicable, the issuer must also notify the competent authorities of the publication of each document without undue delay

<sup>4</sup> This requirement means that where a prospectus is not required for the issuance or offer of the bonds (such as in the case of bonds with a nominal value of EUR 100,000 or for qualified investors), the bonds must be listed on a regulated market. However, sovereign bonds (or bonds guaranteed by a Member State or a regional or local authority of a Member State), which are exempt from the prospectus requirement, may use the European Green Bond or EuGB designations.

<sup>5</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>6</sup> The EuGB Regulation establishes a system for registering and supervising external reviewers of European Green Bonds.

after each publication and must notify the European Securities and Markets Authority within 30 days of publication.

The authority in charge of prospectus approval under the Prospectus Regulation will be responsible for supervising the compliance of issuers with their obligations.

## 2. Special rules concerning securitisation bonds

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It is worth noting that, although no specific regulation was provided in the initial proposal of the European Commission, the EuGB Regulation has included a specific regime for securitisation bonds, in line with sector requests.

Specifically, the EuGB Regulation establishes that, in relation to securitisation bonds, references to the issuer must be understood as references to the originator, while references to the funds must be understood as references to the funds obtained by the originator from the sale of the securitised exposures to the relevant securitisation vehicle. The Recitals of the EuGB Regulation provide that this must be the case at least during a transitional phase (due to the current lack of sufficient “green” assets which can be securitised).

While the EuGB Regulation imposes the use of funds requirements on the originator, the EuGB Regulation prohibits securitised exposures from including certain particularly harmful assets.

It should be noted that bonds issued in connection with synthetic securitisation transactions may not use the European Green Bond or EuGB designations (although the EuGB Regulation provides for the possibility of this changing in the future).

## 3. Bonds marketed as environmentally sustainable and sustainability-linked bonds

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The EuGB Regulation provides for two other types of bonds for which, while not setting out an exhaustive regime, it does provide for the possibility for the issuers concerned to voluntarily apply the transparency regime provided for in the Regulation. These two types of bonds are as follows:

- i) “*bonds marketed as environmentally sustainable*”: these are bonds where the issuer provides investors with a commitment or any form of pre-contractual claim that the bond proceeds are allocated to economic activities that contribute to an environmental objective; and
- ii) “*sustainability-linked bonds*”: these are bonds whose financial or structural characteristics vary depending on the achievement by the issuer of predefined environmental sustainability objectives.

The EuGB Regulation obliges the Commission to develop voluntary disclosure templates for issuances of such bonds. By 21 December 2024 at the latest, the Commission must develop templates for pre-issuance disclosure and post-issuance disclosure.

## 4. Final thoughts

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Issuing a European Green Bond under the new standard will be more complex than issuing a green bond under the current standards. To mention some of the challenges issuers will face, the activities to be financed must be aligned with the taxonomy and issuers must be able to demonstrate such alignment. Moreover, the costs of external reviewers may increase due to the registration regime to which such reviewers will be subject. In addition, the liability for issuers will be higher as competent authorities will be supervising compliance with the obligations under the EuGB Regulation, which increases their reputational risk as well as the risk of legal claims by investors.

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