

# EU Lawmakers Approve European Green Bond Regulation

October 24, 2023

On Thursday, October 5, 2023, the European Parliament officially adopted the [European Green Bond Regulation](#) (**EuGB Regulation**), which will become law following formal approval by the European Council and subsequent publication in the EU Journal. The EuGB Regulation will start to apply one year after its entry into force (20 days following publication) and have direct effect on EU Member States.

Under the EuGB Regulation, issuers (financial or non-financial undertakings, as well as sovereigns and quasi-sovereigns) that choose to use the “European green bond” or “EuGB” designation when marketing a bond offering in the EU will need to comply with various requirements.<sup>1</sup> Notably:

- The **EuGB designation** may only be used by issuers that publish a prospectus, with the exception of bonds that do not require a prospectus under the EU Prospectus Regulation.
- At least 85% of the net proceeds of a green bond marketed in the EU (**EuGB**) must be allocated to environmentally sustainable economic activities as set out in the EU Taxonomy Regulation (**Taxonomy Regulation**), or to economic activities that contribute to the transformation of activities to become environmentally sustainable within a short time period from issuance (though 15% of proceeds may be allocated to activities that are not yet Taxonomy-eligible provided they satisfy safeguards set forth in the Taxonomy Regulation, *i.e.* the “**flexibility pocket**”).
- Issuers will need to comply with prescriptive, pre- and post-issuance **disclosure requirements** about the EuGBs they issue using standardized templates included in annexes to the EuGB Regulation.

<sup>1</sup> The EuGB Regulation will not apply to bonds marketed in the U.K. However, the U.K. Financial Conduct Authority has separately been seeking comment on the current U.K. prospectus regime, including in respect of green bond requirements. See Non-equity securities – Engagement Paper 4, available [here](#).

- **External validation** of certain disclosures by independent EU/third-country external reviewers registered with, supervised by and accountable to the European Securities Market Authority (**ESMA**) will be required.

The stated goals of the EuGB Regulation are to: (i) improve the transparency, comparability and integrity of the European green bond market, minimizing greenwashing and helping investors assess and direct capital towards sustainable businesses and technologies; and (ii) give issuers greater certainty that the bonds they issue will be suitable to investors. In so doing, the EuGB Regulation is expected to help scale<sup>2</sup> and elevate the environmental ambitions of the European sustainable finance market and support the EU’s goal of climate neutrality.

Issuers and investors familiar with the ICMA 2021 Green Bond Principles (**GBP**)<sup>3</sup>—a voluntary framework that has achieved the status of nearly universally accepted principles—will notice significant convergence between the two standards. However, the EuGB Regulation sets out certain prescriptive requirements that differentiate it from market-based green bond instruments. While the GBP will remain available, over time market forces may encourage issuers to leverage the EuGB Regulation requirements, even if not required.

## 1. Use of Proceeds

The EuGB Regulation will require that net proceeds from an EuGB offering be used chiefly for projects aligned to the Taxonomy Regulation, the EU framework and classification system that seeks to define obligations in reference to various EU sustainability disclosure regulations and directives by classifying “environmentally sustainable” economic activities (*i.e.*, what can be called “green”). As set out in the Annex below, these are activities that: (i) substantially contribute to at least one of six environmental objectives as set out in the Taxonomy Regulation; (ii) do no significant harm to any environmental objective; (iii) meet certain minimum safeguards relating to human, labor and consumer rights, corruption, taxation and fair competition; and (iv) comply with detailed technical screening criteria (**TSC**).

A “flexibility pocket” will allow up to 15% of proceeds from a EuGB offering to be invested in economic activities that comply with the Taxonomy Regulation

requirements, with the exception of the TSC, provided that: (i) no TSC are available by the date of issuance; or (ii) they involve activities in the context of international support, which are reported in accordance with internationally agreed guidelines, criteria and reporting cycles (for example, financial support committed to and provided to developing countries by EU Member States intended to mitigate or adapt to the effects of climate change, which must be reported under EU law and in accordance with reporting requirements under the UN Framework Convention on Climate Change and Paris Agreement). In that case, issuers would need to provide additional disclosure about those activities.

If amendments to the relevant TSC occur during the term of the bond and before all proceeds are allocated, the issuer must ensure that subsequent proceeds are allocated in alignment with the revision in respect of unallocated proceeds (subject to a seven-year grace period).

---

<sup>2</sup> The EU already issues the largest number of green bonds globally and is expected to continue leading the market, owing in part to higher uptake of ESG investing principles driven by both regulation and voluntary initiatives. *See, e.g.*, “Global green bond issuance may accelerate on new EU rules, stable interest rates,” S&P Global Market Intelligence (Sept. 3, 2023), available [here](#).

<sup>3</sup> *See* ICMA Green Bond Principles (June 2021), available [here](#). We note, but do not discuss here region-specific standards/benchmarks within the sustainable finance hierarchy that may be relevant to certain issuers of green bonds.

## 2. Reporting

An EuGB issuer will be required to provide detailed reporting through prescribed forms posted to its public website on timelines specified by the EuGB Regulation. Specifically, an issuer will be required to publish:

- A pre-issuance **factsheet** containing detailed disclosures on the intended use of proceeds, describing: (i) how the bond proceeds are expected to contribute to an issuer's broader environmental strategy, including environmental objectives under the Taxonomy Regulation; (ii) how and to what extent bond proceeds are expected to contribute to Taxonomy-aligned assets, turnover, capital expenditure and operating expenditure key performance indicators (as applicable); (iii) for certain issuers, how bond proceeds are intended to contribute to an issuer's transition plan (indicating how an issuer will reach climate neutrality by 2050 at the latest), with a link to the plan (as applicable); (iv) the intended allocation to Taxonomy-aligned economic activities and to activities under the 15% flexibility pocket; (v) the process and timeline for allocation; (vi) the environmental impact of bond proceeds on financed projects (if available and, if not, a justification as to why); and (vii) information about reporting. Factsheets must be validated by an independent EU/third-country external reviewer (a company

registered with and supervised by ESMA that meets the conditions for registration addressing *e.g.*, professional qualifications and avoiding conflicts of interest on an ongoing basis).

- **Allocation Reports** annually and until full allocation (to be distinguished from application) of proceeds, including external review by an ESMA-accredited reviewer to ensure compliance with the EuGB Regulation and alignment of funded projects with the Taxonomy Regulation, and where applicable, until the completion of the CapEx plan.
- **Impact Reports** at least once during the lifetime of the bond and after full allocation, reporting on the environmental impact of the proceeds. Reports should clearly specify the metrics, methodologies and assumptions applied in the assessment of the environmental impact. External review by an ESMA-accredited reviewer is encouraged but not required.

The EuGB Regulation will also provide optional disclosure templates for bonds marketed as environmentally sustainable, and for sustainability-linked bonds in the EU that do not qualify as EU Green Bonds (because they do not meet the criteria established by the EuGB in respect of Taxonomy-aligned use of proceeds in respect of environmental projects).<sup>4</sup>

## 3. Prospectus

Issuers required to publish a prospectus pursuant to Regulation (EU) 2017/1129 (the **EU Prospectus Regulation**) will be eligible to use the designation "European Green Bond" or "EuGB,"<sup>5</sup> so long as they comply with the requirements of the EU Prospectus Regulation and the EuGB Regulation.

The prospectus must state: (i) throughout, that a bond is designated as a "European Green Bond" or "EuGB," and (ii) in the use of proceeds section, that the European Green Bond is issued in accordance with the EuGB Regulation. Issuers required to publish a Capex Plan must include a summary in the prospectus.

---

<sup>4</sup> The EuGB Regulation contemplates the development of templates for voluntary pre-issuance and post-issuance disclosures by the European Commission for such bonds at a future stage.

<sup>5</sup> In accordance with EU securities rules, a prospectus is required where an issuer offers investment securities to the public and/or seeks admission to trading on a regulated market.

## 4. External Reviews and Supervisory Regime

The EuGB Regulation will require external validation by an ESMA-accredited reviewer of (i) the pre-issuance EuGB factsheets, and (ii) certain allocation reports.<sup>6</sup> Issuers will be encouraged (but not required) to seek external review of impact reports. Issuers submitting CapEX plans will also be required to obtain external reviews. The EuGB Regulation will also establish a system to register and supervise external reviewers, to be supervised by ESMA.

## 5. Penalties and Enforcement

EuGB issuers may be subject to investigation or penalties for noncompliance with the EuGB Regulation. The EuGB Regulation arms competent authorities of EU member states with the necessary supervisory and investigatory powers to ensure compliance. However, the regulation makes clear that authorities will not be required to verify the truthfulness or accuracy of the information that issuers are required to provide pursuant to the EuGB Regulation, or whether issuers have complied with obligations regarding the allocation of proceeds.

Please see Annex A for a chart comparing the ICMA Green Bond Principles and the EuGB Regulation.

---

## Conclusion

The EuGB Regulation aims to address issues associated with current green bond standards and market practices, including lack of standardization and clear standards (applied to both issuers and external reviewers), inconsistent disclosure and verification practices, and the perception of greenwashing associated with green bonds and other sustainable finance products. Issuers preparing to comply with the EuGB Regulation should familiarize themselves with the standard and its mandatory components, which, while not entirely novel, will likely require additional work to ensure compliance. Adoption of the EuGB label outside of the EU remains to be seen, as does the impact of forthcoming EU sustainability disclosure and due diligence regimes, as well as the requirements they will apply to elevate environmental and social sustainability measures to a business imperative. Over time, a greater number of companies may consider themselves “equipped” to issue, or at least consider issuing, an EuGB bond and take advantage of the benefits attached to demonstrating a robust environmental commitment tied to the forthcoming benchmark.

---

<sup>6</sup> Where issuers allocate proceeds of one or more EuGB offerings to a portfolio of assets, post-issuance review of allocation reports will not be required where, during the period covered by the allocation report, no change in allocation was made to the portfolio of assets, and no asset in the portfolio was changed or was subject to a change in allocation, compared to the period covered by the previous allocation report.

## Annex A—Comparison of ICMA Green Bond Principles and EuGB Regulation

|                         | ICMA Green Bond Principles (GBP)   | EU Green Bond (EuGB) Regulation  |
|-------------------------|--|--|
| Nature                  | Voluntary principles   | Mandatory requirements for issuers wanting to use EuGB label   |
| Prospectus requirements | <p>Consistent with traditional bond offering, plus additional disclosure on use of proceeds, management of proceeds and reporting</p> <p>Disclosure should align with an issuer’s Green Bond (or Sustainable Finance) Framework</p> <p>No review of green bond elements of bond prospectus (shelf registration statement approved by SEC on file)</p>  | <p>Prospectus reviewed and approved by appropriate authority</p> <p>Requirement to clearly state bond is an EuGB and include statement in the use of proceeds section that bond is issued in compliance with the EuGB</p> <p>Disclosure on use of proceeds, management of proceeds and reporting as in GBP context</p>   |
| Use of Proceeds         | Exclusively dedicated to projects with environmental benefits; projects should generally conform to list of eligible green projects categories   | Must fully align with EU Taxonomy Regulation (subject to 15% flexibility pocket)   |
| Reporting               | <p>Recommended to publish:</p> <p>(i) Green Bond (or Sustainable Finance) Framework to explain the alignment of green bond or green bond program with core components of the GBP</p> <p>(ii) Allocation reports: annually until full allocation (and more frequently in the event of material developments)</p> <p>(iii) Impact reports: addressing qualitative and quantitative impacts</p> <p>ICMA provides templates and guidance for this purpose</p>  | <p>Required to publish on website:</p> <p>(i) Pre-issuance factsheet</p> <p>(ii) Allocation Reports: annually until full allocation</p> <p>(iii) Impact Reports: at least once during bond lifetime and after full allocation</p> <p>(iv) External reviews (factsheet and allocation reports; impact report where applicable)</p> <p>(v) CapEx plan (where applicable)</p> <p>(vi) Link to prospectus</p> <p>Detailed standardized templates included in EuGB Regulation</p> <p>Optional forms for bonds marketed as environmentally sustainable and sustainability-linked bonds</p> |
| External review         | <p>Recommended and becoming market standard</p> <p>Generally consists of a pre-issuance Second Party Opinion (SPO) assessment of alignment of issuer’s Green Bond (Sustainable Finance) Framework or program with the GBP (as opposed to a particular offering)</p> <p>Review may also cover environmental features of type of projects intended for use of proceeds; environmental benefits/impact targeted by eligible projects financed by a green bond; and potentially material environmental risks associated with projects</p> <p>Post-issuance, an issuer is encouraged to update its SPO to review and comment on its progress against baselines, benchmarks and/or international targets and if any benchmarking factors have changed after the adoption of the issuer’s Green Bond (Sustainable Finance) Framework or program</p> | Mandatory verification of factsheet and Allocation Reports by providers approved by ESMA; recommended review of Impact Reports   |

|                                | ICMA Green Bond Principles (GBP)  | EU Green Bond (EuGB) Regulation  |
|--------------------------------|---|--|
| Regulatory oversight/sanctions | None; key risk for issuers reputational (credibility loss associated with alleged deliberate mis-selling by issuers—though future regulatory scrutiny and/or investor/stakeholder litigation is possible) | EU Member State competent authorities afforded supervisory and investigatory powers, including (i) the right to suspend or prohibit an offer or admission to trading on a regulated market of EuGB offerings; (ii) the right to suspend or prohibit advertisements; (iii) the right to prohibit an issuer from issuing EuGB offerings for one year; or (iv) the right to make public an issuer's non-compliance, if issuer fails to comply with specified obligations. |

---

## Annex B—Overview of EU Taxonomy Requirements

Under the EU Taxonomy, an economic activity is “environmentally sustainable” if:

| It makes a substantial contribution to one of the following environmental objectives: | It meets the “do no significant harm” standard with respect to any other environmental objective.<br>Examples of significant harm include:   | It meets minimum safeguards by aligning with:   |
|---|--|---|
| Climate change mitigation   | An activity that leads to significant greenhouse gas emissions   | <ul style="list-style-type: none"> <li>OECD Guidelines for Multinational Enterprises on Responsible Business Conduct<sup>7</sup></li> </ul>   |
| Climate change adaption   | An activity that leads to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets  | <ul style="list-style-type: none"> <li>UN Guiding Principles on Business and Human Rights<sup>8</sup></li> </ul>  |
| The sustainable use and protection of water and marine resources                      | An activity that is detrimental:<br>(i) to the good status or ecological potential of bodies of water; or<br>(ii) to the good environmental status of marine waters  | <ul style="list-style-type: none"> <li>Eight fundamental conventions identified in the Declaration of the International Labor Organization on Fundamental Principles and Rights at Work and the International Bill of Human Rights</li> </ul> |
| The transition to a circular economy  | An activity that leads to:<br>(i) significant inefficiencies in the use of materials or in the direct or indirect use of natural resources at one or more stages of the lifecycle of products;<br>(ii) significant increase in the generation, incineration or disposal of waste, except non-recyclable hazardous waste; or<br>(iii) long-term disposal of waste that causes significant and long-term harm to the environment |   |
| Pollution prevention and control  | An activity that leads to a significant increase in the emissions of pollutants into air, water or land, as compared with the situation before the activity started  |   |
| The protection and restoration of biodiversity and ecosystems                         | An Activity that is:<br>(i) significantly detrimental to the good condition and resilience of ecosystems; or<br>(ii) detrimental to the conservation status of habitats and species  |   |
| <b>And it complies with applicable technical screening criteria</b>                   |  |   |

<sup>7</sup> The OECD Guidelines are recommendations jointly addressed by governments to multinational enterprises to enhance the business contribution to sustainable development and address adverse impacts of business on people, planet, and society, and were recently updated to include far-reaching reforms with respect to the role of enterprises in addressing adverse environmental impacts and contributing to climate change mitigation and adaptation.

<sup>8</sup> The UN Guiding Principles outline steps for states to ensure and foster business respect for human rights, provide a blueprint for companies to respect human rights, and offer a set of benchmarks for stakeholders to assess business respect for human rights.

For further information regarding this Alert, please contact one of the following authors:

**United States**

**Leah Malone**

+1-212-455-3560

[leah.malone@stblaw.com](mailto:leah.malone@stblaw.com)

**Lesley Peng**

+1-212-455-2202

[lpeng@stblaw.com](mailto:lpeng@stblaw.com)

**Emily B. Holland**

+1-202-636-5987

[emily.holland@stblaw.com](mailto:emily.holland@stblaw.com)

**Courtney Kobren**

+1-212-455-7026

[courtney.kobren@stblaw.com](mailto:courtney.kobren@stblaw.com)

**United Kingdom**

**Carol Daniel**

+44-(0)20-7275-6546

[cdaniel@stblaw.com](mailto:cdaniel@stblaw.com)

**Iakovos Anagnostopoulos**

+44-(0)20-7275-6252

[iakovos.anagnostopoulos@stblaw.com](mailto:iakovos.anagnostopoulos@stblaw.com)



The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as our recent memoranda, can be obtained from our website, [www.simpsonthacher.com](http://www.simpsonthacher.com).