

European Commission consultation on the proposal for a Regulation on European green bonds

EAPB position

24.09.2021

Summary of the EAPB position

The EAPB welcomes the opportunity to comment on the Commission's legislative proposal on European green bonds (EuGB). We welcome that the Commission has proposed a voluntary EuGB label rather than a binding one. However, the draft regulation falls short in several crucial respects that, if not addressed, would cause significant problems for both investors and issuers (bond-by-bond issuers as well as issuers who apply a portfolio approach, where a pool of green bonds finance a portfolio of eligible green assets). The EAPB therefore proposes a number of changes to the draft legislative text to ensure that the EuGB becomes a success.

The EAPB recommendations to the European Commission, the European Parliament and the Council are as follows:

- Offer certainty that issued EuGBs will not lose their status at any point of their maturity due to changes of the EU Taxonomy and the technical screening criteria, as well as ensure that EuGBs can finance (refinance) a portfolio of use of proceeds that were Taxonomy aligned at the time of creation, i.e. full grandfathering of use of proceeds.
- Ensure that regional and local authorities, regional agencies, local government funding agencies and public credit institutions fall under the definition of 'sovereigns'.
- Ensure that the requirement to carry out an additional post-issuance external review of the allocation report is applicable to all issuers following the dynamic portfolio approach and not only to financial undertakings. Furthermore, the requirement as such is quite far-reaching. An additional post-issuance review should only be requested in cases where significant changes have been made to the portfolio of European green bonds.
- Ensure that green loans/leases that have been granted to finance assets or activities mentioned in Article 4(2) of the draft regulation should qualify as assets that the credit institutions could allocate to European green bonds that they issue, and it should be ensured that the level of diligence/verification required by the financial institution should be consistent with the diligence requirements the sovereign would have to fulfill as if it had chosen to issue a EuGB instead of financing the activity via a green loan, including the timing of allocation reporting/verification etc. so that it would be consistent with the issuance activities of the credit institution.
- Enable the conversion of existing green bonds and green portfolios to EuGB and portfolios.
- Clarify the use of the factsheet and impact report document for portfolio approach.
- Clarify in the regulation and its annexes that an EuGB factsheet can be used for several EuGB issuances.
- Ensure that the regulation does not require project level information or environmental impacts in the factsheet, as these are presented in allocation and impact reports post issuance.
- Define financial asset and debt more clearly to make sure it includes also financial leases in addition to loans.
- Further clarify the term 'total amortised value'.
- Ensure that the regulation refers to "net proceeds of the EuGB" instead of "proceeds of the EuGB".
- Ensure that the time limits for the publication of the reviewed allocation report and the post-issuance review be more aligned with the schedule for financial reporting, i.e. around 90 days currently.
- Align the time limits in the Regulation that guide the schedules relating to a) sending the allocation report for post-issuance review, b) the preparation of the post-issuance review and c) the publication of the previous two reports (allocation report and post-issuance review).

- Align the Regulation with best practice according to which portfolio approach issuers usually report annually at year end the outstanding amount of green bonds and the outstanding amount of use of proceeds assets taking into account amortizations.
- Ensure that the regulation refers to 'face value' of the EuGB.
- Clarify which requirements apply to issuers not subject to Prospectus Regulation.

Detailed EAPB position

The EAPB welcomes the opportunity to comment on the Commission's [legislative proposal](#) on European green bonds (EuGB). We strongly support the EuGB which is an important tool for achieving the EU's climate and environmental goals. The EAPB members across many EU countries are among the leading issuers of green and social bonds. Our members provide financing to sustainable projects that seek to mitigate climate change or adapt to it in various fields such as renewable energy, clean transportation, water and waste water management, sustainable buildings, and others.

We welcome that the Commission has proposed a voluntary EuGB label rather than a binding one. This will ensure that other market standards can also be used to issue green bonds, such as the Green Bond Principles of the International Capital Market Association (ICMA) or the Climate Bonds Standard of the Climate Bonds Initiative (CBI), and will thus spur the market growth and funding of a higher number of sustainable projects.

It is important to stress that the success of the EuGB will depend on its take-up by both issuers and investors. For that to become a reality, the EuGB must be well-designed and adapted to different business models of market participants. While the preamble to the proposal for regulation states that EuGB builds on current market best practices for green bonds, our assessment is that **the proposal falls short in several crucial respects that, if not addressed, would cause significant problems for both investors and issuers (bond-by-bond issuers as well as issuers who apply a portfolio approach, where a pool of green bonds finance a portfolio of eligible green assets).**

The EAPB therefore proposes a number of changes to the draft legislative text to ensure that the EuGB becomes a success. Our recommendations are addressed to the European Commission, the European Parliament and the Council.

1. Grandfathering of European green bonds and their use of proceeds

The proposed regulation requires issuers of EU green bonds to apply the Taxonomy Technical Screening Criteria (TSC) valid at the time of issuance of the bond. While allocating the proceeds to the stipulated uses, issuers shall assess the alignment with the relevant Taxonomy delegated acts at the point of time when the green bond was issued. In this regard, Recital 11 of the proposed regulation states that: "[...] in order to provide legal certainty to issuers and investors and prevent amendments to the technical screening criteria from having a negative impact on the price of European green bonds that have already been issued, issuers should be able to apply the technical screening criteria applicable at the moment the European green bond was issued when allocating the proceeds of such bonds to eligible fixed assets or expenditures, until maturity of the bond."

However, Art. 7(1) subpara. 2 and Art. 7(2) subpara. 3 of the proposed regulation waters down the aforementioned rule and imposes a new duty on issuers of green bonds to apply any subsequent amendments of the TSC (after bond issuance) within a grace period of five years. This means that European green bonds and the use of proceeds of green bonds are not granted grandfathering until maturity. This would cause significant problems for both investors as well as issuers, as legal certainty is not granted for already issued green bonds and the existing use of proceeds portfolio that the green bond proceeds are allocated to. **Both types of issuers – bond-by-bond issuers and those who follow a portfolio approach – will be negatively affected in the absence of full**

grandfathering clause. The market value of existing green bonds may thus be impacted if the delegated acts are amended in the future. The fact that grandfathering for bonds and use of proceeds is not granted may also affect the ability of issuers to adopt the EuGB standard.

It is also important to have a level playing field between different types of issuers e.g. bond-by-bond issuers vs. portfolio approach issuers (financial undertakings). Therefore, it is troubling that the Proposal for a Regulation's Recital 11 mentions that certain types of issuers can apply the technical screening criteria applicable when the European green bond was issued until the maturity of the bond, while others cannot. The green bond issuance date as a cut-off date for assessing technical screening criteria is not functional for portfolio approach issuers, as bonds are not linked to specific assets. Hence, full grandfathering after the creation of the asset is required.

It is very resource heavy for issuers to evaluate the impact of criteria changes under the amended delegated acts for an existing use of proceeds portfolio; there might be hundreds of assets in the portfolio. Also, finding new use of proceeds to replace old ones can be challenging in the timeframe described.

What are the consequences if a green bond issuer cannot replace the use of proceeds in the existing portfolio with new use of proceeds, if the existing use of proceeds are no longer eligible under future amended delegated acts? For portfolio approach issuers (financial undertakings), whose bonds are not linked to specific use of proceeds assets in the use of proceeds portfolio, which specific existing bonds should lose the European green bond label?

The Regulation as drafted by the Commission may lead to a shift towards shorter-dated green financing offered by credit institutions to their customers, as there is a risk that previously eligible use of proceeds can no longer be financed with green bonds if the delegated acts are amended. Shorter dated green financing can adversely affect project owners' appetite to make long-dated sustainable investments. Hence, this could lead to a slower growth in the green bond market.

The EAPB recommends that the Regulation should offer certainty that issued EuGBs will not lose their status at any point of their maturity due to changes of the EU Taxonomy and the technical screening criteria, as well as ensure that EuGBs can finance (refinance) a portfolio of use of proceeds that were Taxonomy aligned at the time of creation, i.e. for full grandfathering of use of proceeds to take place. In such case, and to mitigate risk of extremely long-dated EU green bond issuance on the market, issuers could be required to tag the assets in the use of proceeds portfolio to the taxonomy version that applied when they were created, and include such information in allocation reports post-issuance.

2. Definition of 'sovereign'

The proposed regulation defines „sovereign“ issuers in Article 2: State agencies are explicitly named (3 (a)), whereas federal state agencies are not explicitly mentioned (3 (c)). ***The EAPB would strongly favour an explicit listing of regional agencies, as well as regional and local authorities, local government funding agencies and public credit institutions to be considered as "sovereign issuer".***

In accordance to the sovereign definitions in other relevant regulations, such as Basel III and Solvency II, the EAPB recommends the following amendment in Art. 2(3)(c) of the proposed regulation: "in the case of a federal State, a member of the federation, including a government department, an agency, or a special purpose vehicle of such State;"

Alternatively, we urge the policymakers to consider the following amendment in Art. 2(3)(f) of the proposed regulation: "an entity ~~company of private law~~ fully owned by one or more of the entities referred to in points (a) to (e);".

In addition to that, there are a number of articles in the proposed regulation that have different provisions for financial undertaking and sovereigns (e.g. allocation report in Annex II). **The EAPB recommends that it be clarified with regard to all articles of the regulation which provisions apply to sovereign financial undertakings. Also, to ensure a level playing field, if some local government funding agencies or public credit institutions or public entities fall under the definition of sovereigns, then all such entities should fall under the definition and the definition should be thus amended accordingly.**

3. Post-issuance review by an external reviewer

Art. 9(5) of the proposed regulation puts an extra burden on financial undertakings employing the portfolio approach: their yearly submitted allocation report shall be subject to an additional post-issuance review by an external reviewer.

To ensure a level playing field **the EAPB recommends that the requirement to carry out an additional post-issuance external review of the allocation report is applicable to all issuers following the dynamic portfolio approach and not only to financial undertakings.** Furthermore, the requirement as such is quite far-reaching. **An additional post-issuance review should only be requested in cases where significant changes have been made to the portfolio of European green bonds.**

4. Level playing field for sovereign lenders

The proposed regulation in Article 4(2) and Article 11 sets out certain special provisions for sovereigns (which according to Article 2(3) is understood to include regional and municipal entities, fully owned companies etc.). Regional government and local authorities (RGLAs) and public sector entities (PSEs) may often prefer to finance investments with loans/leases from public banks or LGFAs instead of by issuing bonds themselves. There has been a development where the growing importance of sustainability issues has led to such loans/leases being offered and qualified as green loans, and where the assets have then been financed or refinanced by the public banks or LGFAs with green bonds. This development should be allowed to continue, and for this reason the EAPB considers it to be of great importance to ensure a level playing field between the EU green bonds that sovereigns may issue themselves and the green loans that credit institutions may grant to sovereigns.

The EAPB recommends that green loans/leases that have been granted to finance assets or activities mentioned in Article 4(2) of the draft regulation should qualify as assets that the credit institutions could allocate to European green bonds that they issue, and it should be ensured that the level of diligence/verification required by the financial institution should be consistent with the diligence requirements the sovereign would have to fulfill as if it had chosen to issue a EuGB instead of financing the activity via a green loan, including the timing of allocation reporting/verification etc. so that it would be consistent with the issuance activities of the credit institution. This is to ensure that the diligence required by the credit institution when granting a green loan/lease should not be a disincentive for the sovereign compared to the issuance of its own European green bond.

5. Conversion of existing green bonds and green portfolios to EuGB and portfolios

It is unclear whether existing green bonds and green portfolios can be converted to be aligned with the EuGB if these meet the EU Taxonomy criteria. And if this is possible, what are the requirements, as the bonds and use of proceeds portfolio already exists? The draft regulation does not give guidance on such situation, e.g. how to go about the pre-issuance factsheet, as issuance has already occurred. It could be burdensome to maintain two green bond programmes, one for the existing bonds and assets and one for EuGBs and their assets. This is especially burdensome for issuers with long dated existing bonds and assets. **The EAPB recommends enabling the conversion of existing green**

bonds and green portfolios to EuGB and portfolios, which would be beneficial in enabling speedy adoption of the EuGB.

6. Portfolio approach impact reporting

The Annex I and III relating to EuGB factsheet and impact reporting seem to address primarily bond-by-bond approach. It however remains unclear, how the impact reporting should be conducted when following portfolio approach. **The EAPB recommends clarifying the use of the factsheet and impact report document for portfolio approach.**

7. Green Bond Framework and European Green Bond Factsheet

Does the EuGB factsheet replace the existing practice of publishing one Green Bond Framework and issuing multiple green bonds under one framework that is reviewed by an external reviewer? Does an issuer need to publish a European green bond factsheet separately ahead of each new issuance or can the same factsheet be used for several bonds? This may prove to be a hindrance, as green bond issuances can happen at short notice and there may not be sufficient time to draft a factsheet for each issuance and receive an external review in time. Article 8 (2) states that "A European green bond factsheet may relate to one or several European green bond issuances.", however this is not clear in Annex I (Factsheet template), which seems to relate to only one bond issuance. **The EAPB recommends clarifying in the Regulation and its annexes that an EuGB factsheet can be used for several EuGB issuances.**

How long is a European green bond factsheet and its external review valid for after creation? Sometimes an issuer may need to wait for a suitable issuance window for even months. Therefore, **the EAPB recommends avoiding a situation where the factsheet and external review would expire, and new ones would need to be prepared/acquired.**

Annex I 4.2 mentions that the factsheet should present "Where available, an estimation of expected positive and adverse environmental impacts in aggregated form. Where this information is not available, this must be justified." Environmental impacts are presented currently in impact reports and are usually calculated around/after year end of the year the impact report refers to. Hence, the environmental impact calculations are usually not ready prior to green bond issuance.

Annex I 4.3 asks for details on a project level regarding intended qualifying green projects. The current market practice is to list the categories of qualifying use of proceeds projects in the framework rather than listing all the projects in the framework. Specific project level lists are as per current market practice only published post issuance in the allocation and impact report. **The EAPB recommends that the Regulation does not require project level information or environmental impacts in the factsheet, as these are presented in allocation and impact reports post issuance.**

8. Financial leases should be regarded as financial assets and debt

Article 4 (1), point (d) states that the proceeds of European green bonds can be allocated to financial assets as referred to in Article 5. Further, Article 5 (1) states that "Financial assets as referred to in Article 4 (1), point (d), shall mean any of the following assets, or any combination thereof: (a) debt; (b) equity."

Several EAPB members and financial institutions allocate green bond proceeds to green loans and financial leases that in turn finance green projects. Hence, **the EAPB recommends that the definition of financial asset and debt be defined more clearly to make sure it includes also financial leases in addition to loans.** For example, there could be reference to FINREP guidance, where financial leases are reported as part of financial assets. In any case debt would need to be defined more clearly in the Regulation to include financial leases as well as loans.

9. Definition of 'total amortised value'

The EAPB recommends further clarification of the term 'total amortised value' mentioned in Annex II (3) point (B), which asks issuers to report the total amortised value of its financial assets. It is currently unclear what value this is. Is this the outstanding amount of a financial asset that takes into account any amortizations?

10. Proceeds or net proceeds of EuGB?

In several places the proposal for a Regulation refers to "the proceeds" of a green bond and that "the proceeds of European green bonds shall be exclusively and fully allocated, without deducting costs". However, the ICMA Green Bond Principles (GBP) refer to "the net proceeds of the Green Bond". The TEG EU GBS draft also referred to "an amount equivalent to the net proceeds". Issuers always receive a net proceeds from an issuance that have been deducted with fees paid to joint lead manager banks. **The EAPB recommends ensuring that the Regulation refers to the same amount as is the market standard, i.e. "net proceeds of the EuGB" instead of "proceeds of the EuGB".**

11. Time limit for preparing and publishing allocation report and post-issuance review

There are time limits regarding the preparation and publication of the allocation report and post-issuance review stated in the Proposal for a Regulation in Article 9 (6) and Article 13 (1). We would like to note that a limit of 30 days following the end of the year which the report refers to is an impractical time limit to prepare and send the allocation report to the external reviewer for post-issuance review.

The relevant time limit to regulate should be the time limit for the publication of the reviewed allocation report and the post-issuance review together. **The EAPB recommends that the time limits for the publication of the reviewed allocation report and the post-issuance review be more aligned with the schedule for financial reporting, i.e. around 90 days currently.**

Currently, green bond allocation and impact reports are usually published at the same time as company annual reports and financial statements i.e. March/April. **The EAPB recommends to align the time limits in the Regulation that guide the schedules relating to a) sending the allocation report for post-issuance review, b) the preparation of the post-issuance review and c) the publication of the previous two reports (allocation report and post-issuance review).**

12. Issuers not subject to Prospectus Regulation

Bonds issued by many EAPB members, like those of many other issuers, are not subject to the prospectus requirements of the Regulation (EU) 2017/1129 (the "Prospectus Regulation"). The Proposal for a Regulation on European green bonds states in Article 13(4) that "Issuers of European green bonds shall notify the National Competent Authority referred to in Article 36 of the publication of all the documents referred to in paragraph 1 without undue delay."

Is this requirement relevant for issuers that are not subject to Prospectus Regulation? **The EAPB recommends that issuers not subject to Prospectus Regulation be relieved of this requirement, as they are not subject to prospectus requirement of the Prospectus Regulation.**

13. European green bond annual allocation report and quarter-end values for financial undertakings

Annex II (3), point (B), states "... the total outstanding value of European green bonds shall be based on the yearly average of quarter-end values of such bonds issued by that issuer, and the total amortised value of the financial assets shall be based on the yearly average of quarter-end values of such assets on the issuer's balance sheet."

We fail to see a reasonable trade-off between information value and the work effort required. Currently portfolio approach issuers (financial undertakings) usually report annually at year end the outstanding amount of green bonds and the outstanding amount of use of proceeds assets taking into account amortizations. ***The EAPB recommends aligning the Regulation with this best practice that has been accepted by investors.***

14. Taxonomy-alignment of use of proceeds

The Proposal for a Regulation mentions in Article 6(2) that “Where proceeds from a European green bond are allocated by means of financial assets either to capital expenditures as referred to in Article 4(1), point (b), or to operating expenditures as referred to in Article 4(1), point (c), the defined period of time referred to in paragraph 1, first subparagraph, shall start from the moment of the creation of the financial asset.”

We fail to understand why ‘financial assets allocated to fixed assets’, as defined in Article 4 (1) point (a), are excluded from Article 6 (2).

Hence, we suggest a rephrasing of Article 6 (2), to read: “Where proceeds from a European green bond are allocated to fixed assets as referred to in Article 4 (1), point (a), to capital expenditures as referred to in Article 4(1), point (b), or to operating expenditures as referred to in Article 4(1), point (c), the defined period of time referred to in paragraph 1, first subparagraph, shall start from the moment of the creation of the financial asset.”

The EAPB recommends that ‘fixed assets’ be added to Article 6(2), as otherwise the text is incomplete and does not define the period of time that is referred to in Article 6 (1) for financial assets allocated to fixed assets.

15. Definition of ‘value of the bond’

Annex II (3), point (B) states that issuers should report “An overview over all outstanding European green bonds, indicating their individual and combined value.” What does ‘value’ in this sentence mean? Is it the face value of the bond or the market value? It is market standard to report the face value. **The EAPB recommends the Regulation to refer to ‘face value’.**