
EuGBS: Interinstitutional negotiations

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The EAPB welcomes the uptake of discussions in the ongoing interinstitutional negotiations for establishing an effective EuGB label and a well-functioning market for green bonds in the EU and wishes to highlight important outstanding issues that need to be resolved.

Voluntary nature

The EuGBS aims at creating a voluntary framework for all issuers of green bonds to adhere to, built on and tightening the requirements of existing market standards, such as the ICMA Green Bond Principles. Abandoning this voluntary approach would not promote issuances of green bonds and be detrimental to the functioning of the green bond market in the EU.

Scope

The Regulation should focus on the criteria for this new EU label. Designing a label and at the same time regulating the transparency of the entire broader market could disincentivize its use. The EuGBS should remain a product-based framework (use-of-proceeds bonds), and complex disclosure requirements at the issuer level should be avoided. In particular, the SFDR should not be taken as reference, since it has an entirely different scope, and its disclosure requirements are not yet market proven.

Use of proceeds: bond-by-bond approach vs. portfolio approach

The EuGBS proposal captured the essence of the bond-by-bond approach for issuing green bonds, where proceeds must be allocated to eligible assets by the time the bond matures. Until today, this has not been the case for the portfolio approach, where proceeds are not allocated to specific assets but to a pool of financial assets. The portfolio approach is widely used by banks and funding agencies and should be equally reflected in the EuGBS proposal. The use of proceeds can take place in various ways, and all of them can enable Taxonomy-compliant investments. As gold standard, the EuGBS should ensure that the financing of pools of financial assets or budget financing is included.

Grandfathering

For reasons of predictability and financial stability full grandfathering for both sides – liabilities/bonds and assets/loans - should be granted. Eligible bonds should maintain their designation until maturity irrespective of subsequent changes to the Taxonomy screening criteria. Financing which has been verified as Taxonomy-compliant should remain eligible for the life of the loan since anything else would lead to insurmountable legal and practical problems (e.g., changing the credit conditions during the term of a loan because of a regulatory loss of Taxonomy-compliance).

Liability

Completing forward-looking statements is legally difficult, requiring confirmation from lenders, and particularly risking discouraging transition financing. If rules on liability were to be included, this should not lead to increased prospectus liability, and incorporation by reference should be possible.

Inclusion of the factsheet in a base prospectus

The Parliament's position (on Art. 12(2)) would introduce a mandatory inclusion of the factsheet in the prospectus of a EuGB. Fulfilling this requirement, especially regarding base prospectuses, would be deemed impossible in practice since many of the figures required under Annex 1 for the EuGB factsheet would not be available at the time of approval of the base prospectus. This could decisively damage the attractiveness of the EuGBs and EAPB thus advocates against the mandatory inclusion of the factsheet in the base prospectus of a EuGB. The Council's approach appears to have acknowledged this problem and foresees the option for the issuer to include a clause in the final terms of a EuGB that the bond is issued in compliance with the EuGB-Regulation. This is the practical, feasible and therefore preferable solution. The additional requirements in Art. 12(2a) and (2b) of the Council approach, however, would be an unnecessary duplication without creating any added value for the issuer or investor.

As a basic rule, the way in which additional information is implemented or integrated in prospectuses (or parts of a prospectus including the final terms), as well as the scope of this information, should only be regulated in the Prospectus Regulation in order not to disrupt the functioning of the Prospectus Regulation and of issuance procedures. Ideally, the factsheet should remain a standalone document and not be included or referenced in the prospectus.

Use of NACE codes as reference

The proposed EuGB factsheet and annual allocation report require issuers to use NACE codes as reference. NACE codes are, however, not used by local authorities. The wording should therefore refer to 'respective NACE codes when available'.

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