

European Green Bonds Regulation adopted

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The long-awaited Regulation (EU) 2023/2632 on European Green Bonds (“ Regulation”) was adopted on 22 November 2023. It sets out the requirements that bond issuers must meet if they want to label their environmentally sustainable bonds as “European Green Bonds” or “EuGBs”. Through promoting consistency and comparability in the green bond market, the Regulation benefits both issuers and investors in green bonds. It shall apply from 21 December 2024.

Use of proceeds

To qualify as a EuGB, the proceeds of the bond must be used to finance economic activities having a lasting positive impact on the environment in accordance with the Taxonomy Regulation.

Two approaches are possible. The gradual approach implies that issuers must ensure that 85% of the net proceeds (i.e. after deduction of issuance costs) of the bond are allocated to taxonomy-aligned activities before bond maturity. In essence, the proceeds of the EuGB can be allocated to fixed assets, capital and operation expenditures or financial assets that relate to economic activities that meet taxonomy requirements or to assets and expenditures of households. Under the portfolio approach, issuers can also allocate EuGB proceeds to a portfolio of fixed assets or financial assets in accordance with taxonomy requirements.

Procedural requirements and transparency

Issuers will need to issue a prospectus compliant with the EU Prospectus Regulation or be exempt EU sovereign issuers. The prospectus has to be approved by a national competent authority (“**NCA**” - the CSSF in Luxembourg) before issuance, state that the bond is a EuGB and clarify how proceeds are used.

In addition, issuers are subject to specific disclosure requirements, notably via their websites, based on templates annexed to the Regulation (European Green Bond Factsheet, Annual Allocation Report, Impact Report) with a view to ensuring full transparency on the allocation of proceeds and the environmental impact of the EuGB for potential investors. A pre-issuance review of the factsheet

and of the allocation report by an external reviewer is required.

External reviewers of EuGBs

The Regulation establishes a registration system and supervisory framework for external reviewers of EuGBs. They have to comply with specific good repute, organisational and governance requirements and register with ESMA. A specific regime applies to third-country external reviewers.

NCA and ESMA's supervisory and sanction powers

NCAs will be responsible for supervising the compliance with the EuGB standard, notably by ensuring that issuers make correct disclosures and obtain external review. They are empowered to conduct on-site inspections in this respect. In case of non-compliance, NCAs may suspend approval of the prospectus, withdraw the EuGB designation, prohibit an issuer from issuing EuGBs for up to a year, and/or impose fines.

ESMA is granted extensive supervisory and sanction powers with respect to external reviewers.

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter

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