UPDATE

European Commission Proposed Green Bond Standard

On 6 July 2021, the European Commission proposed a new Regulation on a voluntary European Green Bond Standard[1] ("EU GBS"). The proposed Regulation aims to make the EU's financial system more sustainable by creating a 'gold standard' for green bonds that can be compared to, and potentially aligned with, other market standards.

The EU GBS will be open to all issuers of green bonds, including both private, public and sovereign issuers, and includes issuers located outside of the EU. The proposed framework will create a high-quality voluntary standard for how companies and public authorities can use green bonds to raise funds on capital markets to finance investments.

Green Bonds at European Level

In recent years the markets have already demonstrated that there is a strong investor demand for green bonds, which are used to finance climate-mitigating investments in sectors such as energy production and distribution, resource-efficient housing, and low-carbon transport infrastructure.

It is hoped that because the EU has established itself as a global leader in the area (with 51% of global issuance of green bonds in 2020 from EU companies and public bodies) that the introduction of the EU GBS will generate further momentum in sustainable finance for the EU financial sector from across international markets. Despite the recent steady growth in the market, current green bond issuance in the EU still only represents 2.6% of total EU bond issuance, so there remains a significant opportunity for growth.

Key Features of the EU GBS

- **Inclusive:** It will be open to all EU and non-EU issuers, including corporates, sovereigns, financial institutions, and issuers of covered bonds and asset-backed securities. Specifically, limited flexibility will be provided for sovereign issuers.

- **Voluntary:** It will be a voluntary standard setting out uniform requirements for any bond issuers that wish to call their bond a 'European green bond' or "EuGB".

- **Aligned with the EU Taxonomy**: The standard requires that issuers must allocate 100% of the issue proceeds to economic activities that meet the EU Taxonomy Regulation EU/2020/852[2] ("Taxonomy Regulation") requirements by the time the bond matures. It sets out environmental objectives, screening criteria and performance thresholds for economic activities[3]. An activity will be considered compliant if: (a) it contributes substantially to one or more of the environmental objectives; (b) does no significant harm to other environmental objectives; and (c) complies with social and governance safeguards.

[1] https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3405
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R0852
[3] It sets out six environmental objectives and sets performance thresholds (technical screening data) for economic activities. An activity will be considered compliant with the EU taxonomy if it contributes substantially to one or more of the environmental objectives or enables other activities to make a substantial contribution to one or more of them; does no significant harm to other environmental objectives ("DNSH"); and complies with social and governance safeguards.

- **Supporting issuers in transition:** European green bonds can be used to fund long-term projects (of up to 10 years) that are engaged in an economic activity aligned with the Taxonomy Regulation's environmental objectives.

- **External review:** European green bonds will be subject to external review to ensure that the bonds are compliant with the proposed EU GBS requirements, in particular the taxonomy-alignment of the funded projects. External reviewers will be registered with the European Securities and Markets Authority and will need to meet the conditions for registration on an ongoing basis.

- **Grandfathering:** In the event of a change in the EU Taxonomy Technical Screening Criteria (TSC) under the Taxonomy Regulation after a bond issuance, issuers can continue to qualify under pre-existing criteria for a further five years.

Transparency Requirements

In order to enhance investor confidence and protections, and to reduce greenwashing risks, the EU GBS subjects issuers to significant reporting standards. In particular, private issuers will be subject to the following requirements:

- Before issuing the bond, issuers will be required to publish a 'green bond factsheet' setting out the definitive funding goals and environmental objectives of the bond. This factsheet will be subject to a 'pre-issuance review' by a registered external reviewer to ensure that the bond meets the EU GBS requirements.

- Once the bond has been issued, issuers will be required to publish annual reports showing how the issue proceeds of the bond have been allocated to EU taxonomy-aligned projects.

- Once all of the bond proceeds have been allocated (which must happen prior to the final maturity of the bond), the issuer will be required to obtain a 'post-issuance review'. For certain issuers (such as some financial institutions), this will be an annual requirement.

- There will also be a requirement to publish at least one report on the overall environmental impact of the bond.

Transitioning to Sustainability

European green bonds are well suited for supporting any kind of issuer in their transition towards greater alignment of their economic activities with the Taxonomy Regulation.

This proposal is part of the broader EU agenda on sustainable finance. The focus of the standard is making sure that the funds raised by the bond are allocated to environmentally sustainable investments. There are three main ways in which European green bonds can be used by companies to support their sustainability transition:

1. **Funding long-term projects:** Issuers may use European green bonds to fund multi-year taxonomy-alignment projects, such as converting a production facility to reduce its emissions and meet the taxonomy thresholds. The condition is that the transformation results in an EU taxonomy-aligned project.

2. **Transition towards taxonomy-alignment:** A company could issue a European green bond to acquire or construct an EU taxonomy-aligned asset, such as a new energy efficient building. In this way, the company is gradually increasing its share of taxonomy-aligned assets.

3. **Transition activities:** The EU Taxonomy sets out criteria for 'transition activities', such as cement and steel manufacturing.

Holistic Approach

European green bonds are designed to be compatible with existing market standards for green bonds. However, the EU GBS goes further by requiring full alignment of funded projects with the Taxonomy Regulation and by establishing a regime for the registration and supervision of external reviewers.

The EU GBS is aligned with the EU's broader policy objectives and runs in parallel with other initiatives such as the EU's Strategy for Financing the Transition to a Sustainable Economy (also known as the EU Sustainable Finance Strategy) and, as already noted, the Taxonomy Regulation.

This proposal's taxonomy-related disclosures requirement will create an entire ecosystem of sustainable finance by maintaining standards which are necessary to channel capital towards the investments needed to reach the EU's sustainability goals.

Overall, the EU GBS will protect the integrity of the green bond market by fighting greenwashing and clearly recognising those bonds which truly represent a sustainable investment.

Next Steps

Following its adoption, the proposed EU GBS will be submitted to the European Parliament and Council as part of the co-legislative procedure. The estimated adoption date is slated for 2022, due to the need for co-legislators to reach an agreement.

Further Information

Further information on our Irish Financial Services Regulatory group and the services we provide is available on our website[4] and in our brochure[5]. Details of our securitisation and loan portfolio transaction specialists and services can be found on our Structured Finance page[6].

If you would like further information, please liaise with your usual Maples Group contact or:

Dublin

Stephen McLoughlin
+353 1 619 2736
stephen.mcloughlin@maples.com

Callaghan Kennedy
+353 1 619 2716
callaghan.kennedy@maples.com

Stephen Carty
+353 1 619 2023
stephen.carty@maples.com

Peter Stapleton
+353 1 619 2024
peter.stapleton@maples.com

Cayman Islands

Scott Macdonald
+1 345 814 5317
scott.macdonald@maples.com

July 2021

[4] https://maples.com/en/services/specialty-services/irish-financial-services-regulatory

[5] https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf

[6] https://maples.com/en/services/legal-services/finance/structured--finance