



European Green Bonds Regulation

The European Parliament and the Council have adopted the text for the Regulation on [European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and sustainability-linked bonds](#) (the “**EuGB Regulation**” or the “**Regulation**”). The Regulation lays down the foundation for a common framework that bond issuers, whether within or outside the EU, need to follow if they want to make bonds available to investors in the EU using the “**European Green Bond**” or “**EuGB**” designation.

European Union - Legal flash

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Key aspects

The key aspects of the EuGB Regulation are:

- **Voluntary standard:** to be used by issuers of “green use of proceeds” bonds made available in the EU, who wish to use the “European Green Bond” or “EuGB” label.
- **Creation of four regimes:** (i) standard regime; (ii) specific provisions for bonds issued by sovereigns, regional and local authorities, and EEA supranational organizations; (iii) separate regime for securitization; and (iv) the option for securities marketed as “environmentally sustainable” and sustainability-linked bonds to opt-into the Regulation’s disclosure requirements.
- **Supervision of External Reviewers:** the creation of a new registration and supervisory regime for External Reviewers (as defined below), administered by the European Securities and Markets Authority (“ESMA”).
- **Supervision by National Competent Authorities:** granting national competent authorities the supervisory powers to sanction non-compliant EuGB issuers.



Context

Following the EU approving the [Paris Agreement](#) in October 2015 and in line with its objective of strengthening the response to climate change by, *inter alia*, making finance flows consistent with the EU's target of achieving climate neutrality by 2050, in the [European Green Deal Investment Plan](#), the Commission envisaged the creation of a standard for green bonds to further increase investment opportunities and facilitate the identification of environmentally sustainable investments by means of a clear label. Furthermore, in December 2020 the European Council [invited](#) the European Commission to propose a green bond standard, the importance of which was emphasized by the European Parliament in its resolution on [sustainable finance](#) and in the [Sustainable Europe Investment Plan – How to Finance the Green Deal](#).

In the last years the “green bond market” has developed very rapidly and green bonds are one of the main instruments used for financing the transition to a greener economy. The current market standards (i.e., the various principles issued by the International Capital Markets Association) however, (i) do not define environmentally sustainable activities and (ii) lack harmonization in the rules and procedures applied by External Reviewers in assessing the marketed product, therefore preventing investors from easily identifying bonds the proceeds of which are aligned with the environmental objectives of the Paris Agreement.

The scope of the EuGB Regulation: labels and markets

The EuGB Regulation applies to issuers offering bonds to the public, or trading bonds, in the European Union and who wish to label their product as a European Green Bond. To this end EuGB issuers will need to comply with the EuGB Regulation's **mandatory requirements**. The Regulation also provides **optional** sustainability disclosure requirements for “bonds marketed as environmentally sustainable”¹ (“**Environmentally Sustainable Bonds**”) or as “sustainability-linked bonds”² (“**SLBs**”). ESG labelled bonds not falling within the scope of the EuGB Regulation can still be issued provided they are not marketed as European Green Bonds.

Several requirements under the EuGB Regulation differ in respect of issues by sovereign, regional/local authorities, and EEA supranational issuers, or those guaranteed by EEA members states and local authorities. In particular, they can make a broader use of the proceeds, will not require a Prospectus Regulation compliant Prospectus and will not be subject to the supervision and imposition of sanctions by national competent authorities.

Given the numerous Taxonomy aligned green projects being developed in Spain, it will be interesting to see how many issuers will be favoring the EuGB to green bonds issued under the ICMA Principles and the impact this will have on cost of financing.

¹ “Bond marketed as environmentally sustainable” means a bond whose issuer provides investors with a commitment or any form of precontractual claim that the bond proceeds are allocated to economic activities that contribute to an environmental objective.

² “Sustainability-linked bond” means a bond whose financial or structural characteristics vary depending on the achievement by the issuer of predefined environmental sustainability objectives.”



The “European Green Bond” or “EuGB” label

It is expected that the EuGB Regulation will start to apply 12 months after publication in the Official Journal.

The three key requirements under the EuGB Regulation are:

➤ Use of proceeds

The net proceeds must be allocated **before the maturity of the bond, fully** in accordance with the criteria set out in Article 3 of the [Taxonomy Regulation](#) to finance one or a combination of (i) fixed assets, (ii) certain capital expenditures, (iii) certain operating expenditures, (iv) financial assets and (v) assets and expenditures of households. The EuGB Regulation further details the use of proceeds in the context of financial assets, and CapEx plans.

Exceptions: There are several exceptions to the use of proceeds requirement, as described in detail in the EuGB Regulation, most importantly for:

- portfolios of fixed assets or financial assets;
- sovereign and similar issuers; and,
- where up to 15 per cent. of the proceeds only are allocated to (i) economic activities which comply with the taxonomy requirements, with the exception of the technical screening criteria because such criteria have not entered into force at the time of issuance or (ii) activities in the context of international support reported in accordance with internationally agreed guidelines, criteria, and reporting cycles.

➤ Prospectus

A EuGB issuer will need to prepare a Prospectus Regulation compliant prospectus approved by a national competent authority and published prior to issuance, except in the case of bonds issued pursuant to Article 1(2)(b) and (d) of the Prospectus Regulation (i.e. issued or guaranteed by a member state or by one of a member state’s regional or local authorities or issued by Eu public international bodies, the European Central Bank or by the central banks of member states).

➤ Reporting and external review

Issuers of EuGBs need to obtain an external review of their European Green Bond Framework and their reporting by an External Reviewer (as defined below) that is registered and supervised by ESMA.

Three different **reporting documents** are required (together with the relevant external review):



Report	Template	Timeframe	External Review	Other
(1) Factsheet	✓ (Annex I)	Prior to issuance	Mandatory pre-issuance review. Assessment and opinion on the taxonomy-alignment of the use of proceeds and that the bond falls within the scope of the Regulation.	May relate to one or more issuances. Information contained in the factsheet shall be “regulated information” under the <i>Prospectus Regulation</i> and can (but does not have to) therefore be incorporated by reference in the Prospectus.
(2) Allocation report	✓ (Annex II)	For every 12-month period until full allocation of proceeds.	Mandatory post-issuance review of the allocation report drawn up after the full allocation of proceeds and after any correction. Assessment and opinion on whether the issue proceeds have been allocated in accordance with the Regulation and the issuer’s factsheet.	May relate to one or more issuances.
(3) Impact report	✓ (Annex III)	After full allocation of proceeds and at least once during the lifetime of the bond	Optional post-allocation impact report review. Assessment and opinion on whether the bond issuance aligns with the issuer’s broader environmental strategy and an assessment of the impact of the bond proceeds.	May relate to one or more issuances.

Additionally, the three reports and the related external reviews must be published on the issuer’s website.

Environmentally Sustainable and Sustainability-Linked Bonds

The Regulation provides a lighter **optional** regime for environmentally sustainable bonds and SLBs.

The Regulation delegates to the Commission the role of publishing guidelines to establish voluntary templates for pre-issuance and post-issuance disclosure. Competent Authorities will supervise issuers of bonds marketed as environmentally sustainable and sustainability-linked bonds who decide to use the common templates for post-issuance periodic disclosures, to ensure that all the elements contained in those templates are correctly published. In case those issuers are failing to comply with its obligations under the Regulation, Competent Authorities have the power to make public this fact.



This regime may be particularly interesting for issuers in multilateral trading facilities (MTFs), where no Prospectus Regulation compliant prospectus is required – such as the Spanish MARF (*Mercado Alternativo de Renta Fija*) and for Issuers who are not able to meet the Taxonomy gold standard in using their proceeds. However, it should be borne in mind that once the Issuer opts into the regime and decides to publish post-issuances reports the Competent Authority has some supervision powers.

Such templates should include at a minimum:

➤ **Environmentally sustainable bonds**

Pre-issuance information:

1. **Transition plans:** disclosure on transition plans and how the proceeds intend to contribute to achieving those plans;
2. **Expected contribution:** Taxonomy Regulation article 8 disclosures (where these are applicable) on how the proceeds are expected to contribute to the issuer's taxonomy-aligned turnover, capital expenditure and operating expenditure; and
3. **Minimum proportion:** the minimum proportion of proceeds to be used on environmentally sustainable activities under Article 3 of the Taxonomy Regulation.

Post-issuance information:

4. **Contribution:** in relation to transition plans how the proceeds contribute to achieving those plans;
5. **Taxonomy contribution:** Taxonomy Regulation article 8 disclosures (where these are applicable) how the proceeds contribute to the issuer's taxonomy-aligned turnover, capital expenditure and operating expenditure; and
6. **Minimum proportion:** the minimum proportion of proceeds used on environmentally sustainable activities under Article 3 of the Taxonomy Regulation.

➤ **SLBs**

Pre-issuance information:

1. 1 and 2 as above;
2. **Assessment:** the rationale, level of ambition and the materiality of the relevant KPIs; and
3. **Structure:** a description of the bond structure.

Post-issuance information:

4. 4 and 5 as above;
5. **Assessment:** the rationale, level of ambition and the materiality of the relevant KPIs; and
6. **Structure:** a description of the bond structure.

Securitizations

The Regulation allows securitization bonds to use the EuGB designation under conditions which are in line with the general EuGB label requirements summarized above.



The main takeaways are the following:

- **Exclusion of synthetic securitizations:** Synthetic securitization transactions are out of scope and cannot adopt the EuGB designation.
- **Use of proceeds and disclosure requirements applied to originator:** The use of proceeds requirements described above apply to the proceeds obtained by the originator from selling the securitized exposures to the special purpose entity (in Spain, Securitizations Funds managed by Securitization Management Companies) and it falls to the originator to comply with the various disclosure requirements of the Regulation, which include (as described above) completing the factsheet, publishing the allocation and impact reports and obtaining the pre and post-issuance external reviews.
- **Exclusions of certain securitized exposures:** the securitized exposures shall not comprise exposures financing certain fossil fuels processes, other than exposures relating to electricity, temperature and power generation that meet the “Do No Significant Harm” criteria of the EU Taxonomy.
- **Multiple originators:** In the case of multiple originators, the requirements apply, where relevant, to each originator on a pro rata basis with reference to the use of proceeds and on a joint basis in relation to the transparency requirements.

New Supervision and Registration Regime for External Reviewers

ESMA will be the supervisory authority responsible for registering and supervising the external reviewers, who provide independent assessments of the compliance of the EuGBs with the Regulation (“**External Reviewers**”). The introduction of a new registration and supervision regime for External Reviewers (together with the linking of the use of proceeds to the Taxonomy Regulation) is one of the major innovations of the EuGB Regulation.

EEA External Reviewers are required prior to taking up their activities pursuant to the Regulation to register with ESMA. Non-EEA External Reviewers are either required to register or be recognized by ESMA, or have their reports endorsed by an EEA registered External Reviewer.

In order to be registered, the External Reviewer needs to comply with detailed requirements laid out in the Regulation. External Reviewers will have an 18-month transitional period, from the date the Regulation becomes applicable, to register. In this period External Reviewers can provide their services to EUGBs issuers provided that (i) they have notified ESMA of their intention to provide such services, and (ii) make their best efforts to comply with the EuGB Regulation requirements.

ESMA shall maintain a register of external reviewers, including those from third countries, and shall publish the information on its website.



ESMA has several supervisory and sanction powers with respect to External Reviewers. ESMA shall cooperate and exchange information with the competent authorities of the member states and of the third countries

Supervision on Issuers by Competent Authorities

National authorities designated pursuant to Article 31 of the Prospectus Regulation (the “**Competent Authorities**”), in Spain the Spanish National Securities Market Commission (*Comisión Nacional de Mercados y Valores* or CNMV) are responsible for supervising the compliance of the issuers of EuGBs with their obligations under the Regulation, in particular, with the requirements for the use of proceeds, the disclosure of information, and the reviews by external reviewers. The Competent Authorities (i.e. the CNMV in Spain) are also responsible for supervising the issuers that use the common templates for post-issuance periodic disclosures as described above.

The Competent Authorities have a range of supervisory and investigatory powers:

- requiring issuers to publish or amend the relevant documents;
- requesting information and documents from issuers, auditors, and senior management;
- suspending or prohibiting the offer or admission to trading of European Green Bonds or the related advertisements;
- making public the non-compliance of issuers; and
- prohibiting issuers from issuing European Green Bonds for a certain period.

The Competent Authorities shall cooperate and exchange information with each other and with ESMA and shall report to ESMA the administrative penalties and measures imposed or disclosed to the public.

For additional information, please contact our [Knowledge and Innovation Group](#) lawyers or your regular contact person at Cuatrecasas.

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