

RocaJunyent Informs

Finance, Sustainability and ESG Departments

25 October 2023



European Regulation to be adopted for creating a standard for European green bonds

On 6 July 2021, the European Commission presented its proposal for a Regulation establishing "*European Green Bonds*", as part of the European Commission's broader agenda on sustainable finance. The European Council fixed its position on the proposal on 13 April 2022. Negotiations between the Commission, Parliament and the European Council concluded with a provisional agreement reached on 28 February 2023. The European Parliament approved the contents of the agreement in its position on 5 October 2023. The European Council adopted the Regulation on 23 October 2023 (for these purposes, the "**Regulation**"). It will then be published in the Official Journal of the European Union and will enter into force 20 days later, starting twelve (12) months after its entry into force.

The main objectives of the Regulation are (i) to establish the common set of rules that issuers must follow in order for a bond that pursues environmentally sustainable objectives within the meaning of Regulation (EU) 2020/852 (the Taxonomy Regulation) to qualify as a "*European green bond*" or "*EuVB*"; and (ii) to establish a system for registering and supervising companies acting as external verifiers of green bonds, coordinated by the European Securities and Markets Authority (ESMA).

The "*European Green Bond*" designation is expected to (a) make it easier for investors and companies to find environmentally sustainable investments; (b) increase private capital flows towards more environmentally sustainable investments; and (c) reduce potential reputational risks for issuers by establishing a registration and monitoring regime for external verifiers.

Importantly, the Regulation provides for the designation "*European green bond*" to be available to all issuers (including public and private sector issuers, and including financial and non-financial corporations), both inside and outside the European Union, that meet the requirements of the Regulation.

The following points of the Regulation are highlighted below:

- The establishment of a harmonised standard for a green bond at EU level will be voluntary for market participants.
- Issuers of green bonds that want to use the designation "*European green bond*" or "*EuVB*" must obtain pre- and post-issuance verification by a registered and supervised external verifier.

In addition, the bond may only be offered to the public in the European Union after publication on the issuer's website of an information sheet on European Green Bonds, which must follow Annex I of the Regulation. In cases where the issue requires the publication of a prospectus, prior to the issue the issuer must publish a link to the website where the prospectus can be consulted.

- As a general rule, proceeds from European green bonds should be used to finance economic activities that have a lasting positive impact on the environment. Such a lasting positive impact can be achieved in several ways. Because fixed assets are normally long-term assets, a first way is to use the proceeds of European Green Bonds to finance tangible or intangible fixed assets that are not financial assets, provided that such fixed assets are related to economic activities that meet the requirements of the taxonomy.

Because financial assets can also be used to finance economic activities with a lasting positive impact on the environment, a second way is to use the proceeds of European green bonds to finance financial assets, provided that the proceeds of

such financial assets are allocated directly, or indirectly through subsequent financial assets, to economic activities that meet the requirements of the taxonomy. It should be possible to allocate such financial assets to a maximum of three subsequent financial assets in succession and issuers should ensure that external verifiers can effectively verify the final allocation of proceeds.

Because household assets can also have a lasting positive impact on the environment, a third way is to use the proceeds of European green bonds to finance household assets and expenditures.

Additionally, because capital expenditures and certain operating expenses may be used to acquire, upgrade or maintain fixed assets, a fourth way is to use proceeds from European Green Bonds to finance capital and operating expenditures related to economic activities that are taxonomy compliant or will be taxonomy compliant within a reasonably short period of time after the issuance of the relevant bond, provided that the issuer has published a plan to expand economic activities that are compliant with the Taxonomy Regulation ("*taxonomy compliant*") or to enable economic activities to be taxonomy compliant in accordance with Annex I of Commission Delegated Regulation (EU) 2021/2178 ("*CapEx plan*").

Finally, issuers may allocate the proceeds of one or more outstanding European green bonds to a portfolio of fixed assets or financial assets ("portfolio approach"), provided that they demonstrate in the allocation reports that the total value of the fixed assets or financial assets in their portfolio exceeds the total value of their outstanding bonds.

- By way of derogation from the above general rule, and in order to provide flexibility for certain economic activities, issuers may allocate up to 15% of the proceeds of a European Green Bond to economic activities that meet the requirements of the taxonomy, with the exception of the technical eligibility criteria, provided that such activities are: (a) economic activities in respect of which there are no technical eligibility criteria in force at the date of issuance of the European green bond; (b) activities in the context of international support notified in accordance with internationally agreed guidelines, criteria and reporting cycles, including climate change financing reported to the Commission under the United Nations Framework Convention on Climate Change as referred to in Article 19(3) of Regulation (EU) 2018/1999 and official development assistance notified to the Development Assistance Committee of the Organisation for Economic Cooperation and Development.
- The issuer shall be required to prepare annual reports on the allocation of proceeds from the issuance of European Green Bonds in accordance with Annex II of the Regulation.

- The issuer shall prepare an impact report in accordance with Annex III of the Regulation, following the full allocation of proceeds at least once during the life of the bond.
- External verifiers of European green bonds shall register with ESMA in accordance with the conditions set out in the Regulation.