

# Recommendations for the trilogue on the EU Green Bond Standard regulation

This briefing raises the following issues for the trilogue on the EU Green Bond Standard regulation:

1. Disclosures for all bonds marketed as green or sustainable (Art 7c)
2. 100% EU taxonomy alignment (Article 6)
3. Verified corporate transition plans (Art 7b)
4. Large scope of supervision (Art 36)
5. Disclosures of principal adverse impacts and due diligence (Art 7c)
6. Specific disclosure on gas and/or nuclear activities (Annexes I, II, III European Green Bond factsheet)
7. Other issues

## Background

This briefing focuses on the European Commission's legislative proposal for a [regulation on European Green Bonds](#) ('EUGBs'), published on 6 July 2021<sup>1</sup>, which lays the foundation for a common framework of rules regarding the use of the designation "European Green Bond" or 'EuGB' for bonds that pursue environmentally sustainable objectives with the meaning of the Regulation EU/2020/852 (Taxonomy regulation).

The proposed regulation builds on technical recommendations for a European Green Bond Standard, which were developed by the Commission's Technical Expert Group on sustainable finance (TEG) in 2019-2020, of which WWF was a member, and which issued a [final report on the green bond standard](#) in June 2019 and [further usability guidance and an updated recommendation in its March 2020 report](#). The Commission's legislative proposal includes most key features of the TEG recommendation, which is positive.

This briefing follows the one published by WWF in November 2021 to provide recommendations to the Council and Parliament to shape their positions on the EuGB standard. We focus hereafter on six important issues, and provide a last section on other ones.

<sup>1</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European green bonds, COM/2021/391 final, 6 July 2021.

# 1. Disclosures for all bonds marketed as green or sustainable (Art 7c)

**This is the main WWF priority in this regulation.** The Parliament's proposal seeks to better regulate the disclosures of bonds marketed as environmentally sustainable and of sustainability-linked bonds that are marketed in the Union – rather than only establishing the European Green Bond label.

We focus in this section on the parts of Article 7(c) which improve the disclosures on 'positive' environmental issues:

- Paragraph 3 (b), (c), (d);
- Paragraphs 4, 5, 6.

(The other parts of Article 7(c) are addressed in the section 3 below).

**The three disclosure elements of Art 7(c) paragraph 3 (b), (c), (d) are extremely relevant:**

- *“(b) information on how the environment characteristics of the bond are met, including the information outlined in Annex 1.3;*
- *(c) information about the intended allocation of bond proceeds, including the information outlined in Annex 1.4;*
- *(d) information about the percentage of expected taxonomy-alignment of the use of proceeds of the bond”.*

**WWF has been recommending for years to require minimum sustainability disclosures to green bond issuers in particular, and even to all bond issuers more generally.**

**There are five arguments about why the Council and the Commission should follow the Parliament's position:**

## 1. Comparability of data on EU taxonomy alignment

Except for EuGBs, there is no obligation for any debt instrument such as bonds labelled as 'green' or 'sustainable'<sup>2</sup> to disclose data on the EU taxonomy alignment of the use-of-proceeds (or the link of the KPIs with the EU taxonomy in the case of KPI-linked debt instruments). Only entity-level disclosures on EU taxonomy alignment of revenues, CapEx and Opex are required under CSRD. This makes it impossible for bond investors to compare different types of green/sustainable bonds with the same metrics, which is quite problematic. The only way to fix this flaw is to require that some sustainability disclosures are required for all use-of-proceeds green/sustainable bonds, and to require issuers of sustainability-linked bonds to explain how and to which extent the KPIs linked in the instrument relate to the EU taxonomy (i.e., to which extent the investments made increases EU taxonomy alignment of the issuing entity within the target period).

## 2. Insufficient bond sustainability disclosures in the EU regulatory framework pose challenges to investors and prevent further investments

There is a major lack of disclosure on bond instruments in the current EU sustainable finance framework, as disclosure regulations like SFDR focus only on disclosures at entity-level and financial product level (funds) but omit financial instruments (bonds); and CSRD focuses only on the entity-level. **There is no duplication of Article 7(c) paragraph 3 with SFDR or CSRD which do NOT apply at bond level.**

Practically, this means that an investor having a portfolio of green bonds will face difficulties to accurately assess the aggregated EU taxonomy alignment of its portfolio because the information on alignment of use-of-proceeds is not necessarily disclosed for each green bond. For example, a manufacturer of fixed-income fund product such as a 'green bond fund' (i.e. a fund that exclusively invests in bonds labelled as 'green' or 'sustainable') will face difficulties to obtain relevant information on

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<sup>2</sup> Green, social or sustainable bonds, or sustainability-linked bonds (SLBs).

the taxonomy-alignment of the underlying component of the fund (i.e. EU taxonomy alignment of the use-of-proceeds of each green bond in which the fund is invested)<sup>3</sup>. In the absence of reliable EU taxonomy information, the fund manager is likely to adopt a 'look-through' approach based on the EU taxonomy of the entity (rather than the use-of-proceeds of the instrument). **This is counter-intuitive, inconsistent, and undermines the fundamental concept of the green bond market, which is to provide additional information on the use-of-proceeds beyond entity-level disclosures.**

Moreover, it would introduce ambiguities and unnecessary complexities, because there is no clear guidance about which of the three entity-level KPIs should be used (e.g. EU taxonomy of revenues, of Capex, or Opex) in the aggregate reporting requirement of manufacturers of green bond funds under CSRD. In addition, at this stage it is impossible for sovereign issuers of green bonds to disclose EU taxonomy alignment at entity level, and certain supra-sovereign issuers are outside of the CSRD scope (e.g. multilateral development banks like the European Investment Bank, which are some of the world's largest issuers of green bonds).

Last but not least, **the Platform on Sustainable Finance has recently recommended the European Commission to require issuers of green bonds and similar use-of-proceeds financial instruments to report against the EU taxonomy and get their allocation and impact reports verified by a third party** (and for the verifier to be registered and supervised by the ESMA, or an official authority for non-EU issuances)<sup>4</sup>.

### 3. Disincentive for EuGBs and greenwashing risks

If additional disclosures are only required for EuGBs not all green/sustainable bonds, this risks being a disincentive for EuGBs and goes counter to the objective of this regulation to promote superior market practices through the EuGBs and prevent greenwashing. A case in point is the fact that bond issuers could continue to market their bonds as 'green' or 'sustainable' in Europe even if none of the earmarked investments is fully aligned with the EU taxonomy. **As a result, additional disclosures would support the legislator's intention to prevent the risk of greenwashing and raise standards above current market practice.** The Commission's view that additional disclosures could be "*undermining the attractiveness of the EU market for green bond issuances and threaten the EU's leading position in this global market*"<sup>5</sup> is unevidenced and counterproductive.

### 4. Additional disclosure costs of EU taxonomy alignment of use-of-proceeds are limited

As explained in the Commission's own impact assessment<sup>6</sup>, additional cost of issuer assessing their assets' alignment against the EU taxonomy will be limited: indeed, green bond issuers subject to CSRD will have to conduct this type of assessment at entity-level and hence for all their assets in order to meet the requirement to report (aggregated) entity-level data on taxonomy-aligned revenues, Capex and Opex.

### 5. Markets for sustainability-linked bond (SLBs) are maturing fast and represent a growing significant greenwashing risk

The Commission's analysis<sup>7</sup> of the SLB market fails to capture the most recent market trends, with raising concerns about greenwashing<sup>8</sup>. Indeed, the European sustainability-linked and transition bond market is maturing extremely quickly, reaching € 80 billion in outstanding bonds at end of the second quarter of 2022, or a market share of 2.3% of annual bonds issuances in European markets<sup>9</sup>. **This is more than the market share of green bonds in the year 2017/2018 when the Commission**

<sup>3</sup> A recent review of almost 60 green bond fund managers finds that three-quarters of investors say current impact reporting practices are 'inadequate'. More than half of the investors say that poor impact data reporting were deterring them from making further investments. *Green Bond Funds Impact Reporting Practices 2021*, Environmental Finance, 2022.

<sup>4</sup> See Platform on Sustainable Finance (October 2022), *Platform Recommendations on Data and Usability*, item 35, page 18, and section 4.1.3 A, page 122.

<sup>5</sup> Non-paper of the Commission on the proposal for an EuGB Regulation: Interplay with other SF legislation related to disclosure, September 2022.

<sup>6</sup> See page 79, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0181&from=EN>.

<sup>7</sup> Non-paper of the Commission on the proposal for an EuGB Regulation: Interplay with other SF legislation related to disclosure, September 2022.

<sup>8</sup> *Empty ESG Pledges Ensure Bonds Benefit Companies, Not the Planet*, Bloomberg, 4 October 2022.

<sup>9</sup> *Q2 2022 ESG Finance Report European Sustainable Finance*, AFME, August 2022.

**mandated its Technical Expert Group on sustainable finance to develop a draft standard for the green bond market.** If the EuGB standard regulation fails to include SLBs in the scope, this could even further increase the relative attractiveness of SLBs compared to EuGBs, providing an unintended perverse incentive to adopting weaker rather than stronger bond standards. **It is possible to solve the Commission's concerns about potential legal issues and the availability of assurance services (as a result of the lack of registrations), by giving issuers of SLBs the additional option of having their entity-level KPIs reviewed by their statutory auditors<sup>10</sup>.**

## 2. 100% EU taxonomy alignment (Article 6)

The EuGB standard proposal is at risk of being substantially weakened by the Council proposal to require only 80% not 100% taxonomy alignment. **This should be firmly rejected in the trilogue, as the Council brings no robust justification, and this is inconsistent with the legal requirement under article 4 of the EU Taxonomy Regulation 852/2020<sup>11</sup>:** Indeed, Article 4 states that the EU shall apply the criteria of the Taxonomy Regulation to determine whether a bond is environmentally sustainable for the purposes of establishing such a standard. Hence deciding that 20% of an EuGB does not need to be taxonomy-aligned is inconsistent.

Moreover, current green bond market practice requires that any green bond is 100% focused on green projects. The EuGB standard is centrally building on EU taxonomy alignment: as a gold standard, it must not require taxonomy alignment below 100%; otherwise, its gold standard claim would fall. In that case, the EuGB standard would have no added value compared to existing market labels such as the one provided by Climate Bond Initiative.

Even worse, the Council does not provide granular specifications or provisions for the 20% remaining activities which are not taxonomy-aligned. In an hypothetical case, the net GHG emissions from the 20% of remaining activities could be higher than the avoided emissions from the 80% of taxonomy-aligned activities, resulting in a negative net impact on overall GHG emissions of the bond (because negative effects outweigh the positive effects). This is an open door to greenwashing which would tarnish the reputation of the EuGB standard and must therefore be avoided.

**The 20% flexibility pocket could even act as a disincentive to developing taxonomy criteria for new activities:** in the case there are no taxonomy criteria for a given activity, issuers have some room for integrating it in an EuGB. As soon as taxonomy criteria are introduced for this activity, issuers have to meet them – which may be more demanding than what the current green bond market practice requires. The flexibility pocket may therefore incentivise several industries to ask for *not* being covered by the EU taxonomy, which is fully counterproductive.

**The issue of sectors not yet covered by taxonomy criteria is a real issue. But to address it, the only relevant way forward is to accelerate the development of technical screening criteria for such activities, not to weaken the EuGB standard.** Importantly, the EU Platform is finalising in October 2022 its technical recommendations for around a hundred activities to be covered under the four non-climate environmental objectives: the Commission will very soon have the opportunity to adopt a Delegated Act on that basis, which can enter into application in 2023.

<sup>10</sup> See Platform on Sustainable Finance (October 2022), *Platform Recommendations on Data and Usability*, item 35, page 18, and section 4.1.3 A, page 122.

<sup>11</sup> Article 4 of the EU Taxonomy Regulation requires that the EU shall apply the criteria of the Taxonomy Regulation to determine whether a bond is environmentally sustainable for the purposes of establishing such a standard. The criteria themselves are set out in Article 3.

### 3. Verified corporate transition plans (Art 7b)

To avoid companies with environmentally harmful activities using the EuGB label to pretend to be greener than they really are, the amendments of the Parliament require that issuers of EuGBs have verified transition plans.

**This requirement is fully consistent with the CSRD, and brings three important benefits:**

- **Fix the ‘comply or explain’ flaw** of the CSRD by requiring implicitly that the corporate transition plan is published (in the EuGB the issuer must comply not merely explain);
- **Bring a higher guaranty of quality and robustness of the corporate transition plan of the issuer**, with a positive opinion by an auditor.
- **Promote policy consistency with the approach chosen by the European Central Bank (ECB) to tilt its bond portfolio**, hence enabling the EuGB standard to become the best practice benchmark in ECB’s forward-looking scoring and increase the EuGB attractiveness.

This is an increasingly important issue: greenwashing is skyrocketing at least as quickly as sustainability commitments of companies, if not more. It is becoming too limited to focus on a green bond only while ignoring the green credentials (or not) of the issuer: a more integrated and consistent approach is necessary to connect the dots. Sadly, analysis shows that sustainability transition plans (and targets) of companies have very uneven quality: some are nothing more than window dressing while others are robust.

**Practically, it is possible for an issuer to issue green bonds while becoming simultaneously *more* exposed to environmentally harmful activities (i.e. more harmful at overall corporate level).** It is the case when an issuer issues green bonds, but decides in parallel to invest in *more* environmentally-harmful activities than before through plain vanilla bonds (typically fossil fuels). As a result the ratio between environmentally sustainable and environmentally harmful activities for that company can worsen. **Green bond investors should be made aware of this inconsistency at the corporate level of the green bond issuer: this is why the verification of the transition plan of the issuer is so important.**

Moreover, this requirement would also be consistent with the European Central Bank’s approach to tilting its bond portfolio, which is based on corporate transition plans, using forward-looking objectives set by issuers of bonds to reduce their greenhouse gas emissions in the future<sup>12</sup>. Including these requirements explicitly in the EuGB standard would enable uptake by the ECB, which could significantly increase the attractiveness of the EuGB standard for issuers (i.e. the ECB could set the EuGB standard’ requirements as the benchmark in its scoring system).

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<sup>12</sup> A forward-looking target sub-score developed by the ECB is intended to “reflects the issuer’s expected future changes in GHG emissions. Issuers that are on an ambitious decarbonisation path towards Paris Agreement targets are given a higher score, particularly if the target is science based and has been validated by a third party. If issuers have no self-reported emissions data, such that emissions reduction targets cannot be verified, they will be assigned the lowest sub-score. Similarly, if issuers do not have concrete short-term decarbonisation targets, they will be assigned the lowest value for this forward-looking sub-score. This approach incentivises all eligible issuers to plan and set up their forward-looking decarbonisation targets”; see: [ECB provides details on how it aims to decarbonise its corporate bond holdings](#), European Central Bank, 19 September 2022.

## 4. Large scope of supervision (Art 36)

The Council wants to limit the scope of supervision to issuances that fall under the prospectus regulation (Article 36 (1)). This would exclude all supervision of issuances by SMEs and by sovereign entities.

Such a substantial change introduced by the Council is quite problematic for WWF: there is no justification to why the scope of supervision by competent authorities should be narrowed in such a way. **Supervision is critical to ensure the credibility of the EuGB, and all the issuers of EuGBs should be supervised, to ensure that the EuGB standard is properly applied in a systematic way.**

WWF therefore recommends to oppose the Council's change.

## 5. Disclosures of principal adverse impacts and due diligence (Art 7c)

We focus in this section on the parts of Article 7(c) which address the disclosures on 'do no harm' issues:

- Paragraph 3 (a);
- Paragraph 1, 2.

**The two disclosure elements of Art 7(c) paragraph 3 (a) and paragraph 1 are extremely relevant:**

- *"3(a) a clear and reasoned explanation of how the bond takes account of principal adverse impacts on sustainability factors;*
- *1 (...) a statement on due diligence policies with respect to principal adverse impacts of investment decisions on sustainability factors, taking due account of their size and the nature and scale of their activities."*

**The European Green Deal explicitly integrates the 'do no harm' green oath at its core<sup>13</sup>.** Similarly, the Do No Significant Harm principle is a central feature of the EU taxonomy, which is itself the cornerstone of the EuGB standard. It is therefore critical to ensure that a do no harm approach is integrated as well in the EU gold standard for green bonds.

The first three arguments developed in section 1 on other Article 7(c) disclosures are relevant as well for the principal adverse impacts and due diligence issues:

- **Comparability;**
- **Lack of bond sustainability disclosures in the EU regulatory framework.** On the paragraph 3(a) requirement to disclose how the bond takes account of principal adverse impacts on sustainability factors, it must be noted again that SFDR and CSRD disclosure regulations do not apply at bond level, so there is **no duplication of Article 7(c) paragraph 3 with SFDR or CSRD;**
- **Disincentive for EuGBs.**

**Finally, on Article 7(c) paragraph (1) on due diligence specifically: It is technically very possible to ensure consistency and avoid duplication with the CSRD disclosure requirements:**

- If the issuer is already covered by CSRD, the EuGB standard should simply require that the publication of the statement on due diligence policies of the issuer refers to the CSRD. But there is an important

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<sup>13</sup> See for example [The European Green Deal](#), December 2019.

benefit to include it in the EuGB standard, which is to fix the ‘comply or explain’ flaw of the CSRD (in the EuGB standard the issuer must comply not merely explain);

- If the issuer is NOT covered by CSRD, the EuGB standard has a real added value as it requires the company to publish its statement on due diligence policies. There is no duplication with CSRD.

## 6. Specific disclosure on gas and/or nuclear activities (Annexes I, II, III European Green Bond factsheet)

The Parliament proposes that when a green bond issuer intends to allocate proceeds to fossil gas or nuclear power activities, a statement must appear prominently on the first page of the EuGB Factsheet.

**This specific disclosure in the EuGB standard is similar to the specific disclosure on taxonomy-aligned gas and/or nuclear power activities in the climate taxonomy Complementary Delegated Act, that became law in July 2022.** It is therefore logic to include such disclosure in the EuGB which is the gold standard label for green bonds. Bond investors need to be well aware of this issue, as they face potential reputational risks due to the highly controversial inclusion of fossil gas or nuclear power activities in the EU taxonomy, that WWF considers as greenwashing worryingly undermining the credibility of the whole EU taxonomy framework.

In addition, the climate taxonomy Complementary Delegated Act is legally challenged in the European Court of Justice by two Member States (Austria and Luxembourg) and by several civil society organisations (including WWF, Client Earth, Greenpeace and more)<sup>14</sup>, all arguing that this Act is inconsistent with the Taxonomy Regulation. **These legal challenges could lead the Court to annul the Act as soon as early 2024, potentially creating serious issues for bond issuers and buyers on the legality of an EuGB including gas and/or nuclear power activities.** It makes it even more important that bond investors are well aware of the potential inclusion of gas and/or nuclear activities in an EuGB, by adding this specific disclosure in the EuGB standard.

## 7. Other issues

### Setting up of a capex plan (Art 6)

Capex plans in the EuGB standard should clarify, where relevant, which economic activities will meet the taxonomy requirements within a defined period of time. The normal regime is five years maximum. An exception up to ten years is included if it is justified by the specific features of the economic activities as documented in the CapEx plan. The Parliament proposes to empower the Commission to adopt a Delegated Act listing the economic activities that qualify for the application of the extended period of up to ten years. It adds that for transitional economic activities within the meaning of the Taxonomy Regulation, the period of time should not exceed two years.

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<sup>14</sup> <https://www.wwf.eu/?7581466/EU-Taxonomy-Environmental-groups-start-legal-action-against-sustainable-gas-classification>.

The Parliament's position refers to the Article 8 Taxonomy Delegated Act<sup>15</sup> to define the capex plan, which is consistent with this regulation. WWF supports this approach.

## **Civil liability (Art 12a)**

The Council and the Parliament's positions are not very far away on this double issue, and WWF welcomes the efforts done by both the Council and the Parliament to find a meaningful compromise on this issue.

The Parliament's article 12(a) states:

- responsibility for the taxonomy-aligned allocation of proceeds for the issuer or its administrative, management or supervisory bodies;
- civil liability to those persons responsible for any damages incurred by investors due to an infringement of Articles 4 to 7 of this Regulation.

The civil liability regime already in place for the prospectus regulation works well: this is the option that should be favoured.

## **Use of the European green bond standard by Union institutions and bodies (Art 7d)**

The Parliament proposes that Union institutions and bodies use the European green bond standard to any issuance of use of proceeds bond that has environmental sustainability as its objective.

**Such an exemplarity clause is just logic to ensure consistency.** It would be inexplicable that Union institutions and bodies from their own label. This could even threaten the credibility of the EuGB standard. This echoes also the position of the German Court of Auditors, which has also urged the Commission to avoid greenwashing in its NextGenEU green bond programme<sup>16</sup>.

## **Exclusion of non-cooperative jurisdictions for tax purposes from issuing EuGBs (Article 7a)**

The Parliament proposes that:

- Sovereign issuers listed in Annex I or II to the EU list of non-cooperative jurisdictions for tax purposes cannot use the designation 'EuGB';
- Non-sovereign issuers located in such jurisdictions can use it only if they demonstrate real economic activity in the given jurisdiction.

This is a relevant provision: as mentioned above, the EUGB standard is taking place in the European Green Deal context, which sets an explicit do no harm oath, and the Taxonomy Regulation - at the core of the EUGB standard - includes minimum social safeguards. An overall sustainability approach is therefore necessary, not focusing exclusively on environmental issues; and in the governance aspects of an overall sustainability approach, corruption is a major issue.

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<sup>15</sup> "Capex plan as defined in the second subparagraph of point 1.1.2.2 of Annex I to Delegated Regulation (EU) 2021/2178".

<sup>16</sup> Greenwashing bei grünen EU-Anleihen verhindern, Bundesrechnungshof, June 2022.



## Revision of the Article 8 in the Taxonomy Regulation (Art 63b)

The Parliament's proposal is to include exposures to central governments, central banks and supranational issuers by financial undertakings in an amendment to Article 8 of Regulation (EU) 2020/852.

This is a relevant provision, as central governments, central banks and supranational issuers are increasingly important green bond issuers, and certain supra-sovereign issuers (e.g. multilateral development banks like the European Investment Bank) are among the world's largest green bonds issuers. In addition, to date 16 Member States out of 27 issue green bonds: it is relevant to include these green finance efforts from Member States in the Article 8 taxonomy disclosure.

**Omitting central governments, central banks and supranational issuers in the Article 8 taxonomy disclosure artificially reduces the taxonomy alignment disclosure of investors buying green bonds from such entities compared to their real taxonomy alignment, which is counterproductive.**

## Review clause assessing whether the EuGB standard should become mandatory and when (Art 63a)

The Commission has opted for a voluntary standard for green bonds. However, as already outlined in our previous briefing, it is important to note that while the initial proposal by the TEG in June 2019 recommended a voluntary standard, the TEG also recommended that "[...] *the European Commission should then consider further appropriate measures including, if relevant, the possible recourse to legislation in support of the implementation of the EU-GBS [...] after an estimated interim period of up to 3 years*". One of the options considered by the TEG at the time was to monitor financial flows and make the standard mandatory after 3 years, if the market uptake and impact on financial flows was not satisfactory: this is an approach supported by WWF.

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