'EU Policymakers should uphold a voluntary regime in the European Green Bonds Regulation'

Introduction

1. EuropeanIssuers, FESE and ICMA are concerned about the direction of discussions around the EU Green Bond Standard (EUGBS) compromise text.

2. We understand that the current proposal to be discussed in trilogues includes a mandatory reporting regime for all issuances of bonds labelled as 'green'. It is our view that introducing a mandatory regime at this stage could have a negative impact on the growth of the green and sustainable bond market in Europe.

3. EuropeanIssuers, FESE and ICMA call on policymakers to consider maintaining the initial market-driven policy objective of the proposal, based on a voluntary standard.

Upholding a market-led initiative

4. The current compromise text does not reflect the initial purpose behind this regulatory initiative. The request for the creation of a EUGBS resulted from a market-led initiative put forward by the High-level Expert Group (HLEG) on Sustainable Finance and subsequently developed by the Technical Expert Group (TEG) on Sustainable Finance in their final reports[1].

5. As their Recommendation #1, the TEG suggested the European Commission to "*[c]reate a voluntary EU Green Bond Standard (…) to enhance the effectiveness, transparency, accountability, comparability and credibility of the green bond market without disrupting the market*". This initiative would embed the provisions of the EU Taxonomy Regulation, and be complementary to ICMA's Green Bond principles.

6. The current compromise text would move substantially away from a voluntary approach, introducing a mandatory regime for all issuances of bonds, labelled as 'green', by:

    a. establishing additional disclosure requirements for 'green use-of-proceeds bonds' and 'sustainability-linked bonds', entailing additional liabilities from several sustainable finance legal frameworks (e.g., SFDR, CSRD and CSDDD); and
    b. subjecting all potential issuers of green bonds aligned with the EUGBS to the Prospectus Regulation, thereby making it mandatory for all EUGBS issuers to publish a prospectus.

[1] Available here and here, respectively.

7. Respondents to the targeted consultation on the creation of a EUGBS suggested a voluntary framework, with only 3 out of 167 respondents calling for a mandatory standard. This approach was adopted by the European Commission, as the impact assessment concluded that the creation of a compulsory framework would introduce "*a strong risk of issuance and trading moving to markets in third countries*".

8. We share the above-mentioned views of the TEG and the European Commission, and strongly believe that the current compromise text would negatively impact the attractiveness of EU capital markets for the issuance of green and sustainable bonds. Therefore, we strongly encourage that any reference to a mandatory regime is removed. Consequently, this would:

    a. allow the EUGBS to be used by issuers on a voluntary basis, thereby leading to the creation of a well-functioning EUGBS market; and
    b. maintain the EU's attractiveness for the issuance of green and sustainable bonds.

<u>Maintaining a voluntary framework</u>

➢ <u>For the success of the EU green and sustainable bonds market</u>

9. To attract issuances of green and sustainable bonds in the EU, we would remove the proposals for additional disclosure requirements for 'green use-of-proceeds bonds' and 'sustainability-linked bonds'.

10. Based on the latest possible compromise text, we struggle to see how issuers could disclose the EU Taxonomy alignment of their proceeds, as they cannot be certain at the time of issuance (and even more so at the time of drafting the term sheet) of which projects will be funded.

11. At the time of issuance, issuers only identify the types of project categories that they will fund with the proceeds and explain how the specific projects will be selected. Issuers can state that all, or some categories, could align with the EU Taxonomy (which is already difficult). Furthermore, Taxonomy reporting currently raises considerable usability challenges that remain unresolved as underlined in the extensive report of the EU Platform on Sustainable Finance.

12. In addition, the compromise text would request additional information from issuers in 'pre-issuance documentation'. It is not clear what this refers to. If this refers to legal documentation (i.e. prospectus or final terms), it would subject issuers to additional liabilities that they may be unwilling to accept.

13. The complexity of this compromise text would likely close the door to smaller green issuers, those expected to benefit most from green and sustainable bonds, that do not have the resources to comply with these additional disclosure rules.

14. Furthermore, if the compromise text is agreed upon, this would negatively affect the attractiveness of the EU green and sustainable bonds market, leading issuers to issue green and sustainable bonds in other jurisdictions to benefit from a more flexible regime.

- On the EU Green Bond Standard

15. It is important to note that, from the current compromise text, it is expected that issuers of EUGBS-aligned green bonds will be required to publish a prospectus and therefore will be subject to the Prospectus Regulation's full liability regime. This contributes to the divergence from the initial market-led initiative which envisaged a voluntary approach.

16. In addition, it is worth emphasising that private placement bond issuers, or Multilateral Trading Facility (MTF) bond issuers, would not be able to benefit from the EUGBS as this would only apply to companies issuing bonds on Regulated Markets (using a prospectus).

17. Therefore, we would recommend co-legislators consider allowing the possibility for companies that issue bonds on private placements, and on MTFs, to also benefit from the EUGBS. This would allow all bonds to have the possibility to apply to the EUGBS, regardless of their funding venue.

Way Forward

18. Whilst we encourage policymakers to take into consideration the above-mentioned points, as in our view the introduction of mandatory requirements would deter future issuances of green and sustainable bonds on the EU's capital markets, we understand that there may be a need for compromise.

19. Whilst we believe that the European Commission's initial proposal aims to address greenwashing risks[2], we consider that the best possible approach to tackle any outstanding concerns is to further strengthen the role and legitimacy of external reviewers.

20. It should be noted that already today, issuers undergo strong examination procedures from investors on their sustainable bonds' quality and overall sustainability profile. We would emphasise that almost all issuers in the EU markets voluntarily publish their green bonds' documentation on their website in a transparent way.

21. Requiring mandatory reporting for voluntary green and sustainability-linked bonds could significantly deter issuers and impact the functioning and development of the EU sustainable bonds market. As indicated above, we would underline that Taxonomy reporting still raises considerable usability issues that need to be addressed.

22. As a compromise, we encourage the European Commission, the European Parliament and the Council to rather consult on and consider how to strengthen the role and legitimacy of external reviewers for these non-EUGBS sustainable bonds, for both pre-issuance and post-issuance reporting stages.

23. With these recommendations implemented in the compromise text, we believe that the EUGBS framework would be attractive for issuers and simultaneously promote market integrity.

[2] Chapter II sets out the transparency and external review requirements for EU Green Bonds, which require pre- and post-issuance reviews of green bonds, and Title III of the proposed regulation sets out the conditions for external reviewers' activities for European green bonds and defines NCAs and ESMA's supervisory powers.

ABOUT US

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The **International Capital Market Association (ICMA)** is the trade association for the international capital market with over 600 member firms from more than 65 countries, including banks, issuers, asset managers, infrastructure providers and law firms. It performs a crucial central role in the market by providing industry-driven standards and recommendations for issuance, trading and settlement in international fixed income and related instruments. ICMA liaises closely with regulatory and governmental authorities, both at the national and supranational level, to help to ensure that financial regulation promotes the efficiency and cost effectiveness of the capital market. www.icmagroup.org