EVERGREEN BONDS : AN INTRODUCTION TO POST-ISSUANCE GREEN BOND REPORTING IN EUROPE

In June 2019 the technical expert group on sustainable finance (the "**TEG**") published its final report on the EU Green Bond Standard (the "**EU GBS**"), a common standard designed to enhance the effectiveness, transparency, comparability and credibility of the green bond market and to encourage market participants to issue and invest in green bonds in the European Union. The creation of a uniform green bond standard within the EU has been high on the European agenda since establishing such a standard was one of the recommendations in the final report of the Commission's High-Level Expert Group on sustainable finance in January 2018.[1]

Having identified labour intensive reporting procedures as one of the barriers to the further development of the green bond market in Europe, the TEG recommended in its final report that, as one of four core components,[2] the EU GBS should include clear and mandatory requirements for periodic reporting on use of proceeds and environmental impacts, where possible, supported by quantitative metrics. By creating common standards of practice and facilitating the issuer's periodic use of proceeds reporting through ready-made templates, the TEG's hope is that green bond reporting can become less burdensome for issuers.

Nineteen months later, in February 2021, the European Commission is due to take a decision on whether a legislative approach for the EU GBS will be pursued, and in what form. The EU GBS, which reflects current standards of best market practice, will not lead to a revolution in green bond reporting if it is implemented in anything close to the form proposed by the TEG.[3] However, it should nevertheless constitute a very important step towards standardising reporting procedures, lowering reporting costs for green bond

Key issues

- The European Commission is due to take a decision on whether a legislative approach for the EU Green Bond Standard will be pursued, and in what form.
- Although the EU Green Bond Standard will be a voluntary standard, co-existing with others, it promises to provide green bond issuers with clear and standardised requirements for periodic reporting on use of proceeds and environmental impacts.
- This article looks at current green bond reporting regime, as well as what green bond issuers can expect in relation to reporting under the EU Green Bond Standard.

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1 Indeed, the recommendation was first made in the Commission's High-Level Expert Group's interim report which came out in July 2017.

2 The others being (i) alignment of Green Projects with the EU Taxonomy, (ii) the development of a Green Bond Framework (whilst many issuers already have frameworks, the aim of the TEG is to create a unified practice by encouraging issuers to stick to their model Green Bond Framework) and (iii) requiring verification by accredited verifiers.

3 As discussed further below, note that although the EU GBS may be passed into law, it is likely to remain a voluntary standard.

issuers and thus, in conjunction with the other measures in the EU GBS,[4] helping to stimulate the further growth of the green bond market in Europe.

This article examines the current reporting regime that green bond issuers are subject to in Europe and looks at what green bond issuers can expect in the future, according to the current proposal for the EU GBS.

THE PROSPECTUS REGULATION

The prospectus is the key legal and marketing document sent to investors in the context of a bond issuance. However, the regulation governing the content of prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a European Union Member State[5] (the "**Prospectus Regulation**"), despite requiring issuers to disclose the use and estimated net amount of the proceeds of the issue [6] and the necessary information which is material to an investor for making an informed assessment of the reasons for the issuance and its impact on the issuer,[7] does not explicitly impose any reporting obligations on issuers of green bonds, nor does it require green bond issuers to disclose anything in the prospectus with regards to whether they intend to do any post-issuance reporting.

The lack of information in green bond prospectuses with regards to reporting has been noted by the *Autorité des marchés financiers* ("**AMF**") and *Autoriteit Financiële Markten* ("**AFM**"), the French and Dutch national competent authorities, who in April 2019 published a position paper lamenting the 'information gap' between the information provided to investors outside the green bond prospectus (e.g. during the marketing phase) and that provided inside the green bond prospectus.[8] The AMF/AFM's proposed solution was to include in the Prospectus Regulation a list of mandatory disclosure requirements (a 'building block') for green bond prospectuses,[9] in order to provide greater transparency and facilitate investors' comparison between green bond issuances. They included in their proposed building block a requirement to indicate in the prospectus whether or not the issuer intends to provide post-issuance information on the use of proceeds and, where the issuer intends to do so, an indication of (i) what information would be reported, (ii) where such information could be obtained, and (iii) the frequency with which such information would be reported. Whilst the proposed building block has not yet been included in the Prospectus Regulation and thus the requirements set out therein are not currently mandatory for green bond issuers, we have seen in the French market the AMF strongly encourage issuers to follow it.

4 See footnote 3 above for the other key measures of the EU GBS.

5 Specifically Regulation (EU) 2017/1129, as completed by Commission Delegated Regulation (EU) 2019/980 ("**CDR2019/980**").

6 Annex 15, item 3.2 (in relation to issuances of 'wholesale' securities, i.e. those with a minimum denomination of equal to or greater than €100,000 in nominal amount (or its equivalent in other currencies)) and Annex 14, item 3.2 (in relation to issuances of 'retail' securities, i.e. those with a minimum denomination of less than €100,000 in nominal amount (or its equivalent in other currencies)).

7 Article 6(1) of the Prospectus Regulation.

8 See section 19 (France) of Clifford Chance's publication 'Growing the Green Economy: Addressing the Sustainability Challenges and Opportunities'.

9 See pages 4-5.

Whilst it is important for issuers of green bonds to bear in mind the desire of certain national competent authorities to see green bond prospectuses contain clearer sign-posting as to use of proceeds reporting intentions in order to protect the integrity of the green bond market,[10] one has to look beyond the green bond prospectus and the Prospectus Regulation in order to understand what determines how green bond issuers should approach their green bond reporting.

ICMA GREEN BOND PRINCIPLES

Since 2014, the International Capital Markets Association ("**ICMA**") has published its Green Bond Principles (the "**ICMA GBP**"), a set of voluntary process guidelines that recommend transparency, disclosure and reporting in relation to green bonds. Although the ICMA GBP are voluntary standards, they have greatly contributed to the drive towards creating common standards of best practice for issuers in the green bond markets in Europe.

Reporting is one of the four core components of the ICMA GBP.[11] Below are ICMA's key reporting recommendations:

- issuers should make, and keep, readily available up to date information on the use of proceeds to be renewed annually until full allocation, and on a timely basis in the case of material developments;
- the annual report of the issuer should include a list of the projects to which the green bond proceeds have been allocated, as well as a brief description of the projects and the amounts allocations, and their expected impact;
- where confidentiality agreements, competitive considerations, or a large number of underlying projects limit the amount of detail that can be made available, information should be presented in generic terms or on an aggregated portfolio basis (e.g. percentage allocated to certain project categories);
- issuers should use qualitative performance indicators and, where feasible, quantitative performance measures (e.g. energy capacity, electricity generation, greenhouse gas emissions reduced/ avoided, number of people provided with access to clean power, decrease in water use, reduction in the number of cars required, etc.) and disclose the key underlying methodology and/ or assumptions used in the quantitative determination;[12] and
- issuers, to the extent possible, should monitor achieved impacts and include them in their regular reporting.

10 The AMF/AFM identified the risk of 'greenwashing' by issuers and the risk that investors would be discouraged from investing in green bonds for concern that their green investments might be less green than they hoped, without any kind of direct recourse against the issuer.

11 The others being (i) use of proceeds, (ii) process for project evaluation and selection and (iii) management of proceeds.

12 Note that the performance indicators can also be used by issuers in their sustainability linked bond issuances, where special performance targets ("**SPTs**") are established for key performance indicators and the respect or non-respect of the SPTs can have a direct impact on the coupon.

Whilst the above recommendations are a useful starting point for green bond issuers, they are only 'principles' and the reporting recommendations lack detail, particularly with regards to how to report the environmental impact of the green bonds ("**Impact Reporting**"), in relation to which the ICMA GBP calls for the disclosure of quantitative and qualitative performance measures. Market participants, including ICMA, have sought to build on the reporting recommendations through the development of harmonised frameworks for Impact Reporting.

HARMONISED FRAMEWORKS FOR IMPACT REPORTING

In December 2020, further to work that started in 2015,[13] ICMA published the latest version of its Handbook on Harmonized Framework for Impact Reporting (the "**ICMA Impact Reporting Handbook**"). The ICMA Impact Reporting Handbook unites various sector-specific Impact Reporting harmonised frameworks into a single document and provides issuers with the following guidance:

a) core principles and recommendations for reporting, common to issuers in all sectors;

b) impact reporting metrics (including core indicators and benchmarks) and sector-specific guidance for different green projects, specifically (i) renewable energy, (ii) energy efficiency, (iii) sustainable water and wastewater management, (iv) waste management and resource efficiency, (v) clean transportation, (vi) green buildings, (vii) biodiversity and (viii) climate change adaptation;[14] and

c) sector-specific reporting templates.

The sector-specific approach recognises that the reporting metrics need to be adapted according to the ultimate destination of the proceeds of the green bonds (i.e. the green 'project'), the industry of the green bond issuer and the data that is available.

Other harmonised frameworks and recommendations have also been put forward. The Climate Bonds Initiative included ten best practice reporting recommendations in its 2019 study on Post-issuance Reporting in the Green Bond Market and the Nordic Public Sector Issuers' Position Paper on Green Bonds Impact Reporting, published in February 2020 (the "**Nordic Public Sector Paper**"), included a harmonised framework for impact reporting. These should not be seen as rivals to the ICMA GBP and the ICMA Impact Reporting Handbook and in certain respects they can be seen as

[13] In March 2015, the *Agence Française de Développement*, the European Investment Bank, the International Finance Corporation and the World Bank published the first Harmonized Framework for Impact Reporting and, in December 2015, eleven international financial institutions revised and republished it. Subsequently, sector-specific harmonized frameworks have been developed by the GBP Impact Reporting Working Group and the Impact Reporting Working Group in relation to Sustainable Water and Wastewater Management Projects (June 2017), Sustainable Waste Management and Resource-Efficiency Projects (February 2018), Clean Transportation Projects (June 2018) and Green Building Projects (February 2019).

[14] This does not cover all of the categories mentioned in the ICMA GBP, although the authors of the ICMA Impact Reporting Handbook have recognised the importance of harmonised metrics being developed in the future.

complimentary. The Climate Bonds Initiative's recommendations are very high-level, whilst the Nordic Public Sector Paper is tailored to the Nordic public sector green bond market, where mitigation projects are prevalent, necessitating a greater focus on appropriate metrics and methodologies for such projects. Guidance on impact metrics also exists in the form of IRIS+, published by the Global Impact Investors Network and looking at the subject from an investors' perspective.

Whilst issuers of green bonds in Europe are under no obligation to follow such recommendations and guidance, they do provide issuers of green bonds with clear and thorough guidance on how market participants expect them to report on the use of their green bond proceeds. The Climate Bond Initiative study, mentioned above, stated that 91% of issuers who responded to their consultation found the existing harmonised frameworks useful.[15]

THE WIDER CONTEXT

When it comes to green bond use of proceeds reporting, an issuer should not consult the voluntary standards and harmonised frameworks in isolation. One would expect the issuer's adopted approach to reporting to be consistent with its overarching environmental, social and corporate governance ("**ESG**") strategy and in particular its approach to ESG disclosure.

Periodic, public disclosure of ESG information has become the norm in Europe since the Non-Financial Reporting Directive (the "**NFRD**")[16] required listed companies, banks and insurance companies with more than 500 employees to report ESG information on an annual basis, starting from 2018.[17] There has also been a gradual, global recognition of the materiality of ESG disclosure for investors (not just investors in sustainable finance), demonstrated by the International Organization of Securities Commission ("**IOSC**") emphasising in 2019 how ESG matters, notwithstanding their 'non-financial' characterisation, may have a 'material short-term and long-term impact on the business operations of issuers as well as the risks and returns for investors and their investment and voting decisions'. The IOSC advised issuers to adapt their disclosure accordingly.[18]

In some jurisdictions, this trend dates back further. For example, in France Executive Order 2017-1180 of 19 July 2017 not only transposed the NFRD into French law, but it also marked an important milestone in the French non-reporting landscape insofar as it is based reporting on the concepts of "materiality" and "relevance of information" for stakeholders and the companies themselves, whereas the previous French reporting obligations

[15] The report was referring to the ICMA Impact Reporting Handbook and the Nordic Public Sector Paper.

[16] Note that the NFRD is currently under review.

[17] The NFRD should be read in conjunction with two sets of non-binding guidelines: (i) the Non-Binding Guidelines on Non-Financial Reporting in July 2017 which contained 6 key principles for good non-financial reporting and (ii) the Guidelines on Reporting Climate-Related Information in June 2019 which were part of the Action Plan, and incorporated climate-related financial disclosure recommendations from the Task Force on Climate-related Financial Disclosures, as well as recommendations from the Technical Expert Group on Sustainable Finance, appointed by the European Commission in June 2018.

[18] IOSCO, Statement of disclosure of ESG matters by issuers, 18 January 2019.

(known as Grenelle 2) placed the emphasis on the completeness of information.[19]

Any green bond reporting needs to sit alongside the issuer's other ESG disclosure and would ideally be consistent and coherent in terms of the level of detail and transparency provided to investors. Similarly, green bond issuers who have made an effort to align with 'other' ESG disclosure voluntary standards, [20] are likely to be more comfortable adhering to the ICMA GBP, the ICMA Impact Reporting Handbook and/or any other voluntary standards.

THE EU GREEN BOND STANDARD

As mentioned in the above introduction, it is not yet clear what legislative form the EU GBS will take and indeed the contents of the EU GBS, as proposed by the TEG in its final report, may be modified in light of stakeholder feedback provided during (i) the public consultation on the renewed sustainable finance strategy and (ii) the targeted consultation on the establishment of an EU Green Bond Standard, both of which were launched by the European Commission and both of which have now come to a conclusion.

The TEG has recommended that the EU GBS should remain a voluntary standard, 'aimed at preserving the constant development and adoption of the best practices, on a voluntary basis, by the growing green bond market' and proposed that the European Commission adopt a non-binding EU act, such as a Recommendation or a Communication.[21] If the EU GBS is indeed passed into law as a 'voluntary' standard, for any new transaction, green bond issuers will have the option to align with the EU GBS or to follow other practices. The EU GBS would therefore continue to exist alongside other voluntary standards, such as the ICMA GBP.

One of the aims of the EU GBS is to expand and standardise green bond reporting. It is proposed to include in the prescribed green bond framework, which issuers would be required to prepare should they wish to obtain the EU GBS certification, a section dedicated to reporting.[22] Issuers would be required to report on the impact of their green bonds issuance as well as clarify up front their impact reporting methodology (e.g. envisaged frequency, content and metrics).

The EU GBS takes into account current market practice on reporting, in particular in two key respects: (1) the distinction between reporting on the allocation of the use of proceeds ("**Allocation Reporting**") and Impact Reporting (as defined above) and (2) reporting on a project-by-project basis

19 It is worth noting that the AMF has been attentive to ESG disclosure for a long time, publishing its first report on corporate social, societal and environmental responsibility back in 2010. Subsequent reports have been published in 2013, 2016 and 2019.

20 For example through the Carbon Disclosure Project, the Global Reporting Initiative and Integrated Reporting and the recent consultation in relation to the NFRD.

21 See page 31 of the TEG's final report.

22 Many issuers use green bond frameworks, though at present there is no unified practice.

or on a portfolio basis[23]. In both respects, it is proposed to encourage such market practices by hard-wiring them into the EU GBS.

The EU GBS goes into particular detail on the subject of Allocation Reporting and Impact Reporting and among its key proposals in this respect are to:

- include in the Allocation Reporting (i) a statement of alignment with the EU-GBS, (ii) a breakdown of allocated amounts to Green Projects,[24] at least on a sector level and (iii) the regional distribution of Green Projects, recommended on a country level;
- include in the Impact Reporting (i) a description of the Green Projects,[25] (ii) the Environmental Objective[26] pursued with the Green Projects, (iii) a breakdown of Green Projects by the nature of what is being financed (assets, capital, expenditures, operating expenditures etc), (iv) the share of financing, (v) information and, when possible, metrics about the projects' environmental impacts,[27] which needs to be in line with the commitment and methodology described in the issuer's green bond framework and (vi) if it is not already detailed in the green bond framework, information on the methodology and assumptions used to evaluate the Green Projects impacts;
- require verification of Allocation Reporting (either on an annual basis or uniquely on the final allocation report[28]) by an external accredited verifier and encourage the verification of Impact Reporting;
- provide templates for both Allocation Reporting and Impact Reporting, while leaving issuers the flexibility to adapt them as may be necessary;[29] and
- require public disclosure of all Allocation Reporting and Impact Reporting, for example on the issuer's website, until the maturity of the green bonds.

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23 The EU GBS clarifies that portfolio level reporting is appropriate where confidentiality agreements, competitive considerations, or a large number of underlying projects limit the amount of details that can be made available.

24 Note that a more detailed reporting would be 'encouraged' under the EU GBS.

25 Under the EU GBS, proceeds for the green bonds, or an amount equal to such proceeds, shall be allocated only to finance or refinance 'Green Projects', defined as contributing substantially to at least one of the Environmental Objectives as defined in the EU Taxonomy Regulation.

26 As defined in the EU Taxonomy Regulation.

27 Note that the EU GBS refers issuers to the ICMA Impact Reporting Handbook and the Nordic Public Sector Paper for examples of impact metrics.

28 In line with current market practice, it is proposed that Allocation Reporting should take place on an annual basis until full allocation is achieved, at which time the 'final' allocation report is published. Issuers would also have the option to produce annual allocation reports until the maturity of the relevant green bond.

29 The Impact Reporting templates provided in the EU GBS are different to those in the ICMA Impact Reporting Handbook and the Nordic Public Sector Paper, as they are not sector specific. However, the footnotes to the EU GBS Impact Reporting templates do refer to the ICMA Impact Reporting Handbook and the Nordic Public Sector Paper for the selection of appropriate impact metrics.

The evolution, not revolution, which the EU GBS promises to provide on green bond reporting is a welcome development. The consolidation of best market practices and the potential integration of feedback from a range of stakeholders,[30] should provide green bond issuers with a voluntary standard for reporting that is clear, complete and up-to-date, whilst allowing them flexibility to adapt certain aspects of their reporting to the nature of their green bonds and their overall approach to ESG disclosure.

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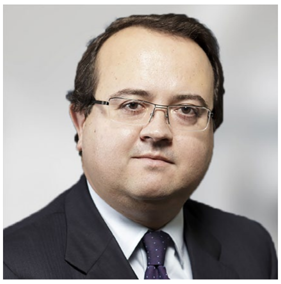

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30 To name but three examples, ICMA, the AMF and the European Securities Market Association have all provided feedback in the EU GBP consultation phase.