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## Keen to issue a European green bond or a sustainability-linked bond? Here's what you need to know

On 30 November 2023, Regulation (EU) 2023/2631 of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (EuGBs Regulation) was published in the Official Journal of the EU.

**Reading time: 5 minutes and 25 seconds**

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The EuGBs Regulation will apply from 21 December 2024, but the market is expected to take it into account sooner. Notably, the recitals highlight that the European Investment Bank will gradually align its green bond programme with the European Green Bond standard.

### Understanding the EuGBs Regulation

#### A lasting positive impact on the environment: the distinctive feature of European Green Bonds

The way the issuance proceeds will be used is the most important feature of a European Green Bond issuance.

Accordingly, any issuer considering issuing a European Green Bond and any investor wishing to subscribe to one should first and foremost enquire about the purpose of the issuance and understand how the proceeds from issuance will be used to attain the sustainable objective.

As per the terms of the EuGBs Regulation, the proceeds of European Green Bonds should be used to finance economic activities that have a lasting positive impact on the environment.

This lasting positive impact can be attained in several ways and the EuGBs Regulation distinguishes between a gradual and a portfolio approach.

## Gradual approach

The gradual approach refers to four different methods for assessing the lasting positive impact:

- The principal method is the financing of fixed tangible or fixed intangible assets that are not financial assets, provided the fixed assets relate to economic activities meeting the taxonomy requirements set out in Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (Taxonomy Regulation). An example could be the issuance of a European Green Bond to finance the building and functioning of a solar farm meeting the taxonomy requirements.
- Secondly, in a desire to expand to other financial channels, the EuGBs Regulation provides that proceeds of European Green Bonds may also be used to finance financial assets, provided the proceeds of those financial assets are, directly or indirectly through subsequent financial assets, allocated to economic activities that meet the taxonomy requirements.
- Thirdly, proceeds of European Green Bonds may finance the assets and expenditure of households.
- Finally, the proceeds can also finance capital or operating expenditure relating to economic activities that meet the taxonomy requirements or will meet the requirements within a reasonably short period from the issuance of the bond concerned.

## Portfolio approach

In addition to the gradual approach, the EuGBs Regulation introduces a portfolio approach enabling issuers to allocate proceeds from one or more outstanding European Green Bonds to a portfolio of fixed assets or financial assets.

The table below summarises the five options for assessing lasting positive impact.



## Issuers within scope of the EuGBs Regulation

The EU's intention is to grant the ability to issue European Green Bonds to a wide spectrum of issuers. Accordingly, European Green Bonds can be issued by financial and non-financial undertakings, as well as non-corporate entities such as sovereigns.

## Key aspects of the EuGBs Regulation

Once an issuer has decided to issue a bond subject to the EuGBs Regulation, they must comply with several conditions. The main ones relate to: (i) the role of the external reviewer, (ii) interaction with the Prospectus Regulation, and (iii) publication of information.

### External reviewer

Issuers of European Green Bonds should appoint an independent external reviewer who will be responsible for delivering a pre-issuance review of the European Green Bond factsheet and a post-

issuance review of the European Green Bond annual allocation reports. The external reviewer should give an independent opinion on the alignment with the taxonomy requirements and thus provide investors with trustworthy information. Ultimately, this should help tackle or at least diminish the greenwashing risks.

## Prospectus Regulation

Unlike the initial drafts, the final version of the EuGBs Regulation specifies that, to use the designation “European Green Bond” or “EuGB”, the issuer must publish a prospectus pursuant to Regulation (EU) 2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (Prospectus Regulation). In Luxembourg, the competent authority to approve a prospectus is the *Commission de Surveillance du Secteur Financier*. Any potential issuer contemplating listing and trading their securities will also need to liaise with the Luxembourg Stock Exchange, which is an experienced trading venue in this area. As of October 2023, more than 50 per cent of green bonds worldwide were listed on the Luxembourg Stock Exchange.

## Information disclosure

Standardised disclosure is a key focus of the EuGBs Regulation. Adopting the approach taken under other sustainability-linked regulations, the EU authorities are convinced that laying down templates for the disclosure of information will strengthen comparability and make it easier to locate information. Issuers should be able to opt to use public disclosure templates developed by the EU Commission for disclosing relevant information on the allocation of bond proceeds to taxonomy-aligned activity.

## Sustainability-linked bonds

Finally, it is worth mentioning that the EuGBs Regulation also covers sustainability-linked bonds. These are defined as bonds whose financial or structural characteristics vary depending on the achievement by the issuer of predefined environmental sustainability objectives.

## Arendt's track record

### Proud pioneers

As mentioned in the recitals to the EuGBs Regulation, the European Investment Bank is a worldwide leading issuer of green bonds. Having been involved as legal adviser in the first issue of green bonds by the European Investment Bank, back in 2012, Arendt had the opportunity to assist with one of the earliest ever issues of green bonds.

### Capital markets leaders

Issuing a European Green Bond involves the preparation of a prospectus within the meaning of the Prospectus Regulation, as stated above.

At Arendt, we have an experienced team of capital markets lawyers who are highly skilled at drafting prospectuses in line with the requirements of the Prospectus Regulation and its numerous annexes and in submitting the documentation to the *Commission de Surveillance du Secteur Financier*. To the extent applicable, our lawyers can also assist with respect to the application of the market abuse and/or transparency rules and regulations.

### Reference banking lawyers

As a result of the adoption of the EuGBs Regulation, bankers offering investment advice or discretionary portfolio management solutions may, depending on the sustainability preferences of their clients, consider including green bonds in portfolios. **Our Banking and Financial Services team\_** has built **strong technical knowledge and practical know-how about the Luxembourg regulator's expectations when it comes to complying with European and national sustainability regulations.**

### Securitisation experts

The EuGBs Regulation links the European Green Bond to green securitisation within the meaning of Regulation (EU) 2017/2402 of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (EU SecReg). Under the EU SecReg, securitisation means a transaction or scheme whereby the credit risk associated with an exposure or a pool of exposures is tranching, where (a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures, and (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme.

Our securitisation specialists work with the EU SecReg on a daily basis and can assist you with the interaction of the securitisation regime with the EuGBs Regulation.

## Taxonomy specialists

Last but not least, [Arendt Regulatory & Consulting](#) has an established team of +10 ESG specialists focusing solely on the regulatory framework. They can enable you to join the dots and comply with the need for the proceeds of the issuance of European Green Bonds to finance assets relating to economic activities that meet the taxonomy requirements selected and disclosed by the issuer.

## your key contacts

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