

13 December 2022

ICMA statement with the Executive Committee of the Principles on the EU GBS

ICMA is a membership association, headquartered in Switzerland, committed to serving the needs of its wide range of members. These include private and public sector issuers, financial intermediaries, asset managers and other investors, capital market infrastructure providers, central banks, law firms and others worldwide. ICMA currently has over 620 members located in 66 jurisdictions. See: www.icmagroup.org.

ICMA hosts the [Principles](#) that underpin sustainable bond issuances globally. In 2021, [over 98% of the global sustainable bond issuance volume](#) aligned with the Green, Social, Sustainability, and Sustainability-linked Bond Principles (the Principles). Several EU Member States and public bodies (e.g., EIB), as well as the European Commission issued sustainable bonds aligned with the Principles (see EC's SURE social bonds and NGEU Green Bonds). Europe has so far been the clear leader in sustainable bond market activity with around 40% of the outstanding total coming from European issuers.

As globally accepted market standards, the Principles are the fruit of extensive work and input from over 420 organisations including issuers, investors, and various other stakeholders. Members of the Principles also participate in the drafting and elaboration of standards mainly via working groups and to the election of the [Executive Committee](#) (consisting of 8 issuers, 8 investors, and 8 underwriters) each year with their votes. The Executive Committee is currently chaired by EBRD, and in the past, by EIB, IFC, and NIB.

This feedback is a result of a consensus that emerged from ICMA's constituencies and especially the Executive Committee of the Principles¹.

¹ ICMA previously published three papers on the Regulation on European green bonds ("EuGB Regulation" or "EU GBS"): (i) a [paper](#) providing an updated analysis on the dialogue negotiating positions of the European Parliament (EP) and the Council in June 2022; (ii) a [commentary](#) on the EP Rapporteur's proposed amendments in January 2022; and (iii) a [paper](#) providing an analysis on the European Commission's original proposal in July 2021.

I. General comments

We are concerned about the proposed extension of scope of the EuGB Regulation to all green use-of-proceeds (UoPs) and environmental sustainability-linked bonds (SLBs). The extension of the Regulation beyond the EU GBS label is a departure from the original intention of the Commission to create a voluntary gold standard. Its potential effects to sustainable bond market activity and Europe's clear leadership position thereof have not been properly scrutinised in the process. Listing of sustainable bonds in the EU may be particularly impacted.

II. Comments on the mandatory bond-level Taxonomy disclosures

We recommend not to make the Taxonomy-disclosures mandatory for all green UoPs bonds.

Making the bond-level Taxonomy disclosure mandatory could come with unintended consequences such as issuer deterrence and increased costs, especially given the current usability challenges of the Taxonomy. As explained in the [extensive report](#) of the EU Platform on Sustainable Finance as well as ICMA's [earlier paper](#), these challenges could add significant complexity to and contract sustainable bond issuance in the EU and/or make issuance in other jurisdictions more attractive.

We note that the benefits of sustainable bond issuance to date rest primarily on investor reach and diversification for issuers, with reputation being the main incentive to fulfil the UoPs and transparency commitments. The economic gain known as the "greenium" phenomenon has not been uniform and conclusive across the market. Increased costs and complexities could alter the economics and perceived benefits of sustainable bond issuances for issuers. At a systemic level, this would prevent sustainable bonds from further mainstreaming and scaling up, thereby depriving the market of the unprecedented transparency that they already provide.

Therefore, the provision of Taxonomy information should remain incentive-based as driven by investor demand. In this respect, we underline that the [Green Bond Principles](#) have encouraged issuers to disclose Taxonomy alignment of their green projects since June 2021

Any mandatory disclosure requirement should be subject to the resolution of the Taxonomy's usability with a grace period. Most typically, such usability challenges relate primarily to the assessment of the Do No Significant Harm (DNSH) and Minimum Safeguards (MS) requirements including (i) widespread data unavailability; (ii) lack of a common methodology that would allow the use of estimates/proxies to fill the data gaps where they exist; (iii) interpretable/subjective nature of some technical screening criteria (TSC) which may lead to reputational risk for those claiming alignment; and, (iv) heavy reliance on EU legislation and criteria which hinders the assessment of non-EU located projects (see our [paper](#) for further explanation).

Therefore, a minimum grace period of 2 years would be needed following the resolution of usability issues by EU policymakers. This would also allow market participants to gear up and prepare for the new requirement. In addition, after this period, to support the market understanding and adoption of the Taxonomy, including data sharing to help overcome these usability issues, issuers that remain unable to disclose the taxonomy alignment (whether partly or fully) could be required to explain why they are not providing this disclosure.

To resolve the EU Taxonomy’s usability issues, we recommend EU legislators consider, as a priority, providing flexibility on the DNSH and MS assessment. More specifically, our [paper](#) recommends among other things that the application of the DNSH and MS requirements is supported with guidance on flexibility that (i) allows as proxies ESG risk processes and mechanisms as well as issuer-level controversy analysis, (ii) allows alignment with the DNSH and MS at a principle and outcome level per related environmental objective rather than with granularity; and, (iii) integrates proportionality to avoid excessive assessment and implementation challenges.

In this regard, we note that issuers subject to the CSRD will already be under extensive obligations to report on their policies, processes, targets, and actions on environmental and social risk management. Given the breadth of the upcoming CSRD/ESRS disclosures and the double materiality approach thereunder, all the environmental and social areas/objectives covered by the DNSH and MS will already be covered from a risk perspective and beyond, albeit at an entity-level rather than activity-level. The upcoming CSDD Directive will also have compliance obligations and requirements going beyond disclosure.

Moreover, such an approach would also be consistent with the Green Bond Principles, which require issuers to disclose complementary information on processes by which the issuer identifies and manages perceived social and environmental risks associated with the relevant project(s).

Green UoPs bonds from non-EU issuers, as well as those from EU issuers that are financing projects outside the EU, should be excluded from scope. Many TSC would not be assessable for projects located outside the EU due to the reliance on EU legislation and criteria, as mentioned above. Unless there is an exclusion/exception for them, non-EU issuers could generally be deterred from listing in the EU and prefer other jurisdictions due to the impracticality as well as additional complexities, costs, and uncertainties.

The requirement to disclose the intended contribution of a green UoPs bond or an environmental SLB to future entity-level Taxonomy aligned turnover, CapEx, OpEx is methodologically problematic and could deter issuance. We note that future turnover is generally subject to commercial and market uncertainty and as such, is only partially under an entity’s control. Disclosure on such a basis can therefore prove to be speculative and create reputational risks in case of failure to deliver. Moreover, since SLBs typically do not finance specific projects, they would not directly impact the future Taxonomy aligned turnover, CapEx, and OpEx.

III. Comment on grandfathering

Regarding the grandfathering issue that mainly concerns the EU GBS, we recommend full grandfathering until the maturity of the bond against the changes in the TSC. In any case, it should be clearly stated that allocated proceeds do not have to be re-allocated following any TSC change both in the case of debt and other UoPs types when allocated under the gradual approach.

Grandfathering is a complex matter, and there would be further interactions between the EuGB Regulation’s grandfathering regime and those under the Article 8 Delegated Regulation (for GAR/GIR reporting) and SFDR. We would like to caution against the risk of over-complexification of the mechanics that can later confuse the market participants and make the overall Taxonomy reporting a challenging exercise.

It could also be clarified that the grandfathering issue arises in cases where quantitative thresholds of the TSC change, but not in any change made to the TSC that could rather relate to qualitative and process-aspect which may be less core to determine the Substantial Contribution of an activity.

IV. Comment on EuGB issuer liability

Because the benefits of sustainable bond issuance to issuers largely relate to investor reach and diversification and issuers put their reputations on the line where UoPs are deemed insufficiently robust and/or the existing stretching commitments are not met, there will be a very strong commercial incentive for issuers of EuGBs to comply with the label. **Introducing additional legal liability is therefore unnecessary and would disincentivise use of the EuGB label.**

IV. Comment on the external review assessment

The wording used to describe the role of external reviewers needs to be adapted. Otherwise, SPO providers may not be able to support the deployment and take-up of EuGBs. In line with current market practice and as proposed by the Council, external reviewers should be asked to provide an “assessment” of whether the EU green bond is issued “in accordance with” the criteria of the Taxonomy and the EuGB Regulation instead of assessing “compliance”.