

Position Paper on Green / Social / Sustainable Bonds

This position paper aims to contribute to the European Commission's overarching objective to reorient capital flows towards a more sustainable economy and, in particular, to fuel the current debate at EU level on green bonds. Green bonds allow entities (companies, banks, governmental organisations, etc.) to borrow money from investors in order to finance or re-finance 'green' projects, assets or business activities¹. In its Action Plan on sustainable finance published in March 2018, the Commission considered two specific actions to foster the green bond market. On the one hand, the Commission indicated that the Commission's Technical Expert Group (TEG) on sustainable finance would be responsible for preparing a report on an EU green bond standard, building on existing best practices (Q2 2019). On the other hand, the Commission announced that it would specify the content of the prospectus for green bond issuances to provide potential investors with additional information (by Q2 2019).

As a national competent authority, the *Autorité des marchés financiers* (AMF) and the *Autoriteit Financiële Markten* (AFM) are very keen to contribute to the debate on the opportunity to create a prospectus for green bond issuances. While the AMF and AFM consider that it would be unnecessary for investors and excessively burdensome for issuers to create a full prospectus Annex for green bonds (through the level 2 of the Prospectus Regulation), the AMF and AFM also reckon that the absence of mandatory regulation at EU level on green bonds can hinder the further expansion of the market. Therefore, the AMF and AFM support a middle-ground solution whereby (i) the issuer would be solely responsible for qualifying its bond issuance as green, social or sustainable; and (ii) should it decide to qualify its issuance as such, the issuer would be required to provide additional information in the 'use of proceeds' section of the prospectus, notably whether it *intends*:

- (i) to comply with green bond voluntary standards (such as the ICMA's Green Bond Principles or the Climate Bond Initiative's Climate Bond Standards);
- (ii) to publish a reporting on the use of the green bond proceeds; and
- (iii) to mandate a third party verification.

Such additional information, which also includes indication on the publication of the issuer framework (if any), the selection of projects and the management of proceeds, could feature in a new prospectus *building block* for green bonds in the level 2 of the Prospectus Regulation. We believe this approach would be manageable for issuers, while reinforcing transparency and investor confidence in the green bond markets.

1. Current problems for the further expansion of the green bond market

When an issuer considers a green bond issuance, neither the current Commission Regulation (EC) No 809/2004, nor its forthcoming successor under the new Prospectus Regulation requires the issuer to provide any specific information in the prospectus on the extent to which the issuance serves any "green" purpose. Instead, the "use of proceeds" section is the same compared to 'traditional' bonds. This situation raises both regulatory and supervisory issues.

¹ Commission Action Plan on sustainable finance, March 2018.

As regards regulatory issues, it should be noted that the prospectus must contain the information that enables investors to make an informed assessment of the securities offered by an issuer. While information on the ‘use of proceeds’ by green bond issuers is material (especially for ESG investors), there is currently an information gap between the information provided by issuers to investors outside the prospectus and what is actually included in the prospectus. For instance, before placing their green issuances with investors, issuers run roadshows and market their bond as ‘green’ actively, whilst in some instances, issuers do not put forward any reason within the prospectus to explain why such bonds can be labelled as ‘green’. Furthermore, when issuers voluntarily subscribe to one of the international green bond standards (such as the ICMA’s Green Bond Principles, or the Climate Bond Initiative’s Climate Bond Standards), such information is usually provided outside the prospectus. As a consequence, there is no commitment that issuers will continue complying with such standards until the maturity of the bonds. Nothing would prevent them from stopping the periodic reporting or the verification by a third party at any time in the lifecycle of the bond. The absence of mandatory information in the prospectus increases the risks of greenwashing. It also means that investors (and especially ESG investors) may be deprived of any recourse to keep issuers in check. This situation can cause uncertainties for investors, discourage them from investing in green bonds and slow down the future growth of the market.

The lack of information on green bonds in the prospectus can also raise supervisory issues. When issuing green bonds, issuers can be reluctant to include additional information on the use of proceeds. In such a case, NCAs do not have a clear-cut legal basis under the Prospectus Regulation to force issuers to communicate additional information before approving the prospectus. In some instances, issuers may self-label their bonds as green but indicate, in the risk factor section, that they may not invest in environmentally friendly projects. Our experience shows that information on the ‘green’ use of proceeds by green bond issuers is typically laid out outside the prospectus, which makes it more difficult for NCAs to properly monitor and supervise that information. With such a practice, green investors may easily be misled about the purported environmental benefits of a particular issuance, thus undermining the integrity of the green bond market as a whole. Virtuous issuers that voluntarily comply with stringent international standards can also be discouraged from issuing green bonds if other firms can equally tap the green bond market, by greenwashing their issuances.

2. The creation of a building-block on green bonds under the prospectus regulation

The AMF and AFM consider that a ‘full’ prospectus on green bonds would not be the most appropriate policy response, as this would be burdensome for issuers and could endanger the nascent green bond market, by making those issuances too costly compared to ‘traditional bonds’.

However, investors should at least get access to sufficient and reliable information on the “use of proceeds” by an issuer raising capital through green bonds. An adequate solution would therefore consist in bringing targeted amendments to level 2 of the Prospectus Regulation to require additional minimum information in the ‘use of proceeds’ section of a prospectus in case the bond issuance holds itself out as “green” (a prospectus ‘building block’). Under that solution, the issuer will still be free to qualify its bond as ‘green’, ‘social’ or ‘sustainable’². However, once a bond has been qualified as such, the issuer would be required to provide additional information, by indicating **how the proceeds are used to finance or re-finance, in part or in full, new and/or existing green/social/sustainable assets or projects**. Where the issuer published a framework on green, social or sustainable non-equity securities, that information will be found on the webpage where the issuer’s framework is published. The link to such a webpage will be included in the prospectus. This option would provide flexibility to issuers when their investment projects originally planned cannot be carried out or when not all investment projects have yet been identified.

² The Prospectus Regulation should refrain from providing a strict definition of ‘green bonds’, as long as the EU taxonomy is not in place.

Under this prospectus building block, the issuer would also be required to indicate **whether it intends to comply with voluntary green bond standards, to use an external reviewer and to periodically report to investors until the bond matures.**

Finally, for issuers that decide to offer green bonds using a base prospectus, most information on the ‘use of proceeds’ should be featured in the base prospectus (as ‘category B’ information) rather than in the final terms (as ‘category C’, as is currently the case) to ensure minimum scrutiny by the NCAs when approving the prospectus.

The proposed solution presents many advantages:

- First, the ‘building block’ would foster transparency in the green bond market, by centralising the information on such issuances within the prospectus rather than outside. Investors (especially those who are committed to investing in ESG assets) would access crucial information for their investment decision-making process in a single binding document, rather than through multiple sources. This would also reinforce the comparability of green bond issuances on a like-for-like basis, by allowing investors to quickly identify the level of transparency that each issuer is committed to offering;
- Second, this solution is not burdensome for issuers, as many of them already provide the market with information on the ‘greenness’ of their bonds outside the prospectus. The ‘building block’ does not mandate an independent verification system or periodic disclosures on how the proceeds are spent (which can be costly). It only requires issuers to inform investors in the prospectus whether those mechanisms will be in place through the bond lifecycle;
- Third, the Commission recently published a proposal aimed at improving disclosure requirements on how institutional investors integrate ESG factors in their risk processes and in their investment decisions. While reinforcing investors’ sustainable duties in the legislation, it is justified to require minimum information on green bonds in the prospectus. This would enable investors to ascertain the use of proceeds of the bonds and help them fulfil their future obligations under EU legislation. In turn, clear and transparent disclosure by investors and by issuers would facilitate the matching of offer and demand of green bonds and help channel capital flows towards green and sustainable investments.
- Fourth, the ‘building block’ would also enable NCAs to perform their supervisory duties on green bond issuances, thus increasing transparency and investor confidence in the market. By requiring additional information in the ‘use of proceeds’ section, the ‘building block’ also allows NCAs to scrutinise the consistency of the different parts of a prospectus, thus lowering the risk of greenwashing by issuers. Minimum information on the ‘use of proceeds’ under the Prospectus Regulation will also facilitate supervisory convergence between NCAs when reviewing the prospectus, thus contributing to the take-up of a genuinely integrated, pan-EU green bond market.

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Amendment

Commission Delegated Regulation (EU) .../... of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004

Section 3

Additional information to be included in the prospectus

Article 23(bis) (new)

<i>Commission Delegated Regulation published on 14 March 2019</i>	<i>Amendment</i>
	<p>Article 23(bis) (new)</p> <p>For non-equity securities, where the proceeds from the issuance will be used to finance or re-finance, in part or in full, new and/or existing eligible green, social or sustainable assets or projects as determined by the issuer or the person responsible for drawing up a prospectus, the securities note shall also contain additional information referred to in Annex 22(bis).</p>

Annex 22(bis) (new)

GREEN / SOCIAL / SUSTAINABLE NON-EQUITY SECURITIES		
		For base prospectus
SECTION 1	GENERAL USE OF PROCEEDS	
Item 1.1	Statement that the proceeds from the issuance will be used to finance and/or re-finance, in part or in full, new and/or existing eligible green, social and/or sustainable projects or assets.	Category B
SECTION 2	COMPLIANCE WITH VOLUNTARY STANDARD	
Item 2.1	<p>Where the issuance and/or non-equity security of the issuer complies with one or more voluntary standard(s) on green, social or sustainable non-equity security, identify the standard.</p> <p>Where the issuer has chosen not to refer to a voluntary standard, it shall provide a negative statement to that effect.</p>	Category B

Item 2.2	When the issuer has chosen to subscribe to one or more voluntary standards, state whether a use of proceeds other than in eligible green, social and/or sustainable projects or assets is considered a failure to comply with that/those standard(s) and the potential impact on the issuer and the securities.	Category B
SECTION 3	ISSUER FRAMEWORK ON GREEN / SOCIAL / SUSTAINABLE NON-EQUITY SECURITIES	
Item 3.1	Where the issuer published on a webpage its framework on green, social or sustainable non-equity securities (including the description of allocation of proceeds and the projects and/or assets), it shall be stated. A reference to the webpage where the issuer framework is published shall be included in the securities note. Where the issuer has chosen not to publish on a webpage a framework, it shall provide a negative statement to that effect.	Category B
Item 3.2	Where the issuer does not publish on a webpage a framework on green, social or sustainable non-equity securities, a description of the allocation of the proceeds of the non-equity securities, together with a description of each financed or refinanced project and/or asset.	Category B
SECTION 4	SELECTION OF PROJECTS/ASSETS TO BE FINANCED OR REFINANCED	
Item 4.1	A description of the selection process and the eligibility criteria used to select or exclude the projects or assets together with an explanation how these projects/assets fit the social, sustainable, green objectives or strategy of the issuer.	Category B
SECTION 5	MANAGEMENT OF PROCEEDS AND REPORTING	
Item 5.1	To the extent not already disclosed in the issuer framework, the internal method put in place by the issuer to manage the proceeds.	Category B
Item 5.2	Indication in the securities note whether or not the issuer intends to provide post issuance information on the use of proceeds. Where the issuer has indicated that it intends to report such information, specify in the securities note what information will be reported, where such information can be obtained, and the frequency with which such information will be reported.	Category B
SECTION 6	EXTERNAL REVIEWS	
Item 6.1	Where the issuer has solicited one or more external reviews of the individual issuance and/or non-equity security and/or of the issuer framework such as second party opinion, certifications, labels or specific ratings, such information shall be disclosed in the securities note and the external reviewers identified, provide the name, address, qualifications and any material interest in the issuer.	Category B

Item 6.2	The potential use of an external auditor or another third party to check the internal tracking method and the management of proceeds shall be indicated and the external auditor or third party identified.	Category B
Item 6.3	Where these external reviews are accessible on the issuer's website, a reference may be made to the webpage containing these external reviews.	Category C