

PROPOSAL FOR A REGULATION ON EUROPEAN GREEN BONDS

AFEP POSITION PAPER

- AFEP member companies insist on the fact that **the challenge is to make the economy greener and to finance transition**. In this regard, green bonds will play a key role. Many AFEP members are issuers of green bonds and already apply best practices in this area.
- Companies consider that the Commission's proposal for a regulation on European green bonds (the « EuGB Regulation ») **strikes the right balance and could contribute to establishing a safe framework** for the issuance of green bonds and robust supervision of external reviewers.
- However, companies consider that **some amendments should be made to improve the EuGB Regulation** and ensure that it is « fit for purpose » and will not impose an undue burden on issuers (see proposals for amendments in Annex).
- Furthermore, **companies do not support the draft amendments put forward in the draft reports of the ECON and ENVI committees of the European Parliament** which would substantially extend the scope of the EuGB Regulation, exclude nuclear and gas and add significant constraints on issuers.

As regards the Commission's proposal:

- Article 4 of the EuGB Regulation should **allow a look-back period for the allocation of the use of proceeds to CapEx as foreseen for OpEx** (3 years prior to the issuance of the EuGB).
- For the sake of clarity and consistency, the EuGB Regulation **should not introduce new terms and concepts and should not add disclosure requirements** as regards the alignment with the EU Taxonomy. Therefore, companies consider that a **direct reference should be made to the investment plan or CapEx plan** defined in Annex I of the Delegated Act adopted under Article 8 of the Taxonomy Regulation¹. **No additional disclosure requirement regarding these plans should be required** (Article 6).
- Where the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of the Taxonomy Regulation are amended following the issuance of the EuGB, **the issuer should not have to reallocate bond proceeds** (Article 7). A EuGB designation should be secured independently of the evolution of the corresponding technical screening criteria (TSC) so not to lose certainty and predictability for all parties. Moreover, the refinancing process might result in additional costs and burden.
- **The timing to deliver the allocation report** to the external reviewer following year-end **should be extended to 120 days** instead of 30 days (Article 9) which is too short and too ambitious.
- In order to alleviate administrative burden, **issuers of EuGB should have to notify the publication of the Factsheet and reports only to the National Competent Authority and not to ESMA** (Article 13).
- Companies should be allowed to **incorporate information by reference in their Factsheets and reports**: many disclosures required regarding the investment plan and the overall strategy of issuers would already be found in the non-financial statement (Articles 8 and 9).
- As regards the annexes of the EuGB Regulation:
 - Companies consider that **the reference to the NACE classification will raise the same practical issues** as for the implementation of Taxonomy-related reporting: a project or an activity does not necessarily correspond to a NACE code. **More flexibility should be given to companies to report on the allocation.**
 - **Requiring companies to disclose the date at which the use of proceeds will be allocated seems overly prescriptive**: the period within which the proceeds are expected to be allocated should suffice.

As regards the draft amendments from the ECON and ENVI committees of the EU Parliament:

- Companies support ECON proposed amendment to allow grandfathering of the allocation of bond proceeds **without time limitation** since it will grant predictability to investors, also for longer-term investments (over 5 years).
- On the contrary, **companies do not support the exclusion of fossil gas-fired power generation and nuclear power generation from EuGB financing put forward by both Committees**. This would be contrary to the objective of the

¹ Regulation (EU) 2020/852 of 18 June 2020

EU Taxonomy to set the benchmark of green investments that can be financed by EuGB and to the principle of technology neutrality.

– **Companies also disagree with:**

- **the proposal of ECON to extend the scope of the EuGB Regulation to social and other sustainability considerations.** The EuGB Regulation should remain the framework for environmentally sustainable investments. Extending the scope risks restraining innovation in financial markets and deter companies from using financial instruments which could play a role in the financing of the transition.
- **ENVI's proposal to request for more frequent and granular reporting** with an impact report every 5 years instead of once during the lifetime or, in case an EuGB is used for an activity subject to a taxonomy-alignment plan, with an allocation report to be drawn up every 6 months until the full allocation of the proceeds. The costly and burdensome reporting process has previously already been identified as a key barrier to the uptake of EU green bonds. Additional and more frequent data gathering is complex, time-consuming and brings little value-added. As regards the granular details requested under the EuGB Factsheet, including on environmental strategy, prescriptive conditions on corporates' environmental strategy shall not be imposed in the EuGB Regulation. Adding additional layers of complexity will deter companies from using the EuGB framework.
- **ENVI's proposal to reduce the alignment period for economic activities that are subject to a Taxonomy alignment plan** to 5 years, without the flexibility to extend to 10 years as currently foreseen in the EuGB Regulation. The limitation to 5 years is in contradiction with the Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021.

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About AFEP

Since 1982, AFEP brings together large companies operating in France. The Association, based in Paris and Brussels, aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is AFEP's core priority. AFEP has around 111 members. More than 8 million people are employed by Afep companies and their annual combined turnover amounts to €2,600 billion.

AFEP is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

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ANNEX - AFEP PROPOSALS FOR AMENDMENTS

The French Association of Large Companies (AFEP) considers that **the future Regulation should:**

- Allow a look-back period for the allocation of the use of proceeds to CapEx
- Ensure consistency with the Taxonomy Regulation
- Not impose reallocating bond proceeds when delegated acts adopted pursuant to the Taxonomy Regulation are amended
- Extend the timing to deliver the Allocation report
- Allow incorporation by reference in the EuGB Factsheet and Allocation and Impact reports
- Ensure that the EuGB Factsheet and Allocation report deliver meaningful information



Amendment 1 - Allow a look-back period for the allocation of the use of proceeds to CapEx

Proposal for a Regulation

Use of the proceeds of European green bonds

Article 4 (1)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
1. Before maturity of the bond, the proceeds of European green bonds shall be exclusively and fully allocated, without deducting costs, to the following, or a combination thereof: (a) fixed assets, including those of households, that are not financial assets; (b) capital expenditures, including those of households; (c) operating expenditures that were incurred more recently than three years prior to the issuance of the European green bond; (d) financial assets as referred to in Article 5.	1. Before maturity of the bond, the proceeds of European green bonds shall be exclusively and fully allocated, without deducting costs, to the following, or a combination thereof: (a) fixed assets, including those of households, that are not financial assets; (b) capital expenditures, including those of households, <i>that were incurred more recently than three years prior to the issuance of the European green bond;</i> (c) operating expenditures that were incurred more recently than three years prior to the issuance of the European green bond; (d) financial assets as referred to in Article 5.

Article 4 of the EuGB Regulation should **allow a look-back period for the allocation of the use of proceeds to CapEx as foreseen for OpEx** (3 years prior to the issuance of the EuGB). This would be in line with ICMA’s standards.

Amendment 2 – Ensure consistency with the Taxonomy Regulation

Proposal for a regulation

Taxonomy-alignment of use of proceeds

Article 6 (1)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>1. The use of proceeds referred to in Article 4 shall relate to economic activities that meet the taxonomy requirements, or that will meet the taxonomy requirements within a defined period of time as set out in a taxonomy-alignment plan.</p> <p><i>The taxonomy-alignment plan referred to in the first subparagraph shall describe the actions and expenditures that are necessary for an economic activity to meet the taxonomy requirements within the specified period of time.</i></p> <p>The period referred to in the first and second subparagraph shall not exceed five years from bond issuance, unless a longer period of up to ten years is justified by the specific features of the economic activities concerned as documented in a taxonomy-alignment plan.</p>	<p>1. The use of proceeds referred to in Article 4 shall relate to economic activities that meet the taxonomy requirements, or that will meet the taxonomy requirements within a defined period of time as set out in a taxonomy-alignment plan as defined in paragraph 1.1.2.2 of annex I of Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021.</p> <p>The period referred to in the first and second subparagraph shall not exceed five years from bond issuance, unless a longer period of up to ten years is justified by the specific features of the economic activities concerned as documented in a taxonomy-alignment plan.</p>

For the sake of clarity and consistency, the proposal for a regulation on EU green bonds **should not introduce new terms and concepts and should not add disclosure requirements** as regards the alignment with the EU Taxonomy. It is therefore suggested to **directly refer to the investment plan or CapEx plan** defined in Annex I of the Delegated Act adopted under Article 8 of the Taxonomy Regulation (Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021).

Amendment 3 - Issuers should not have to reallocate bond proceeds

Proposal for a regulation

Application of the taxonomy requirements

Article 7 (2)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>2. When allocating bond proceeds to the debt referred to in Article 5(1), point (a), issuers shall apply the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 applicable at the point in time when the debt was created.</p> <p>Where, at the time of the creation of the debt referred to in the first subparagraph, no delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 were in force, issuers shall apply the first delegated acts that were adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852.</p> <p>Where the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 are amended following the creation of the debt referred to in the first subparagraph, the issuer shall allocate bond proceeds to the debt referred to in the first subparagraph by applying the amended delegated acts within five years after their entry into application.</p>	<p>2. When allocating bond proceeds to the debt referred to in Article 5(1), point (a), issuers shall apply the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 applicable at the point in time when the debt was created.</p> <p>Where, at the time of the creation of the debt referred to in the first subparagraph, no delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 were in force, issuers shall apply the first delegated acts that were adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852.</p> <p>Where the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of Regulation (EU) 2020/852 are amended following the creation of the debt referred to in the first subparagraph, the issuer shall not reallocate bond proceeds.</p>

Where the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of the Taxonomy Regulation are amended following the issuance of the EuGB, **the issuer should not have to reallocate bond proceeds.**

Amendment 4 – Extend the timing to deliver the allocation report

Proposal for a regulation

Allocation reports and post-issuance review of allocation reports

Article 9 (6)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>6. Issuers of European green bonds shall provide the allocation reports referred to in paragraph 3, 4, and 5 to an external reviewer within 30 days following the end of the year to which the allocation reports refer. The post-issuance review must be made public within 90 days following the receipt of the allocation report.</p>	<p>6. Issuers of European green bonds shall provide the allocation reports referred to in paragraph 3, 4, and 5 to an external reviewer within 120 days following the end of the year to which the allocation reports refer. The post-issuance review must be made public within 180 days following the receipt of the allocation report.</p>

The timing to deliver the allocation report to the external reviewer following year-end (30 days) **is too short and raises practical issues.** Such a tight deadline doesn't seem justified and **should be extended to 120 days.** External reviewers would still have 60 days to issue their report.

Amendment 5 – Issuers should only notify their National Competent Authority

Proposal for a regulation

Publication on the issuer’s website and notification to ESMA and national competent authorities

Article 13 (5)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
5. Issuers of European green bonds shall notify ESMA of the publication of all the documents referred to in paragraph 1 within 30 days .	5. Competent Authorities, as referred to in Article 36 of this Regulation, shall notify ESMA of the publication of the documents referred to in paragraph 1 without undue delay.

To alleviate administrative burden, **issuers of EuGB should only have to notify their Competent Authority** of the publication of the factsheet, the allocation reports, the impact report and the external reviews. This obligation to notify the Competent Authority is already laid down in Article 13 (4). **Said Competent Authority could, in turn, notify ESMA.**

Amendment 6 – Allowing incorporation by reference in the EuGB Factsheet

Proposal for a regulation

European green bond factsheet and pre-issuance review of the European green bond factsheet

Article 8 (2)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
2. A European green bond factsheet may relate to one or several European green bond issuances.	2. A European green bond factsheet may relate to one or several European green bond issuances. Information may be incorporated by reference in the factsheet where it has been previously or simultaneously published and where it is contained in one of the documents referred to in Article 19 (1) of Regulation (EU) 2017/1129 of 14 June 2017.

To alleviate administrative burden and ensure clarity and comprehensibility, **issuers should be allowed to incorporate information in the factsheet where said information** (regarding for instance the issuer’s sustainable/alignment strategy) **is public and is included in one of the documents listed in Article 19 (1) of the Prospectus Regulation** (Regulation (EU) 2017/1129 of 14 June 2017) and in particular in prospectuses approved by a Competent Authority, regulated information, annual and interim financial statements and management reports (including the non-financial statement).

Amendment 7 – Allowing incorporation by reference in the Allocation report

Proposal for a regulation

Allocation reports and post-issuance review of allocation reports

Article 9 (2)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
2. A European green bond allocation report may relate to one or several issuances of European green bonds.	2. A European green bond allocation report may relate to one or several issuances of European green bonds. <i>Information may be incorporated by reference in the allocation report where it has been previously or simultaneously published and where it is contained in one of the documents referred to in Article 19 (1) of Regulation (EU) 2017/1129 of 14 June 2017.</i>

To alleviate administrative burden and ensure clarity and comprehensibility, **issuers should be allowed to incorporate information in the allocation report where said information** (regarding for instance the issuer’s sustainable/alignment strategy) **is public and is included in one of the documents listed in Article 19 (1) of the Prospectus Regulation** (Regulation (EU) 2017/1129 of 14 June 2017) and in particular in prospectuses approved by a Competent Authority, regulated information, annual and interim financial statements and management reports (including the non-financial statement).

Amendment 8 – Allowing incorporation by reference in the Impact report

Proposal for a regulation

European green bond impact report

Article 10 (2)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
2. A single impact report may cover several issuances of European green bonds.	2. A single impact report may cover several issuances of European green bonds. <i>Information may be incorporated by reference in the impact report where it has been previously or simultaneously published and where it is contained in one of the documents referred to in Article 19 (1) of Regulation (EU) 2017/1129 of 14 June 2017.</i>

To alleviate administrative burden and ensure clarity and comprehensibility, **issuers should be allowed to incorporate information in the impact report where said information** (regarding for instance the issuer’s sustainable/alignment strategy) **is public and is included in one of the documents listed in Article 19 (1) of the Prospectus Regulation** (Regulation (EU) 2017/1129 of 14 June 2017) and in particular in prospectuses approved by a Competent Authority, regulated information, annual and interim financial statements and management reports (including the non-financial statement).

Amendment 9 – Ensuring that the EuGB Factsheet delivers meaningful information

Proposal for a regulation

ANNEX I

European Green Bond Factsheet

Section 4.1 - Estimated Time until full allocation of proceeds

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<ul style="list-style-type: none"> - [The period within which the proceeds are expected to be allocated] - [The date by which proceeds are expected to be fully allocated] - [If the date above is more than five years after the date of the issuance of the bond: a justification for the longer period, based on the specific features of the economic activities concerned, accompanied by relevant documentation in an annex] 	<ul style="list-style-type: none"> - [The period within which the proceeds are expected to be allocated] - [If the period above is more than five years after the date of the issuance of the bond: a justification for the longer period, based on the specific features of the economic activities concerned, accompanied by relevant documentation in an annex]

It doesn't seem realistic nor relevant to require a precise date for the full allocation of the proceeds. Disclosure of the expected period of allocation should suffice.

Amendment 10 – Ensuring that the EuGB Factsheet delivers meaningful information

Proposal for a regulation

ANNEX I

European Green Bond Factsheet

Section 4.3 – Intended qualifying green projects

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>For intended qualifying projects:</p> <ul style="list-style-type: none"> - Their environmental objectives referred to in Article 9 of Regulation 2020/852 - Their types, sectors, and the respective NACE codes in accordance with the statistical classification of economic activities established by Regulation (EC) No 1893/2006 	<p>For intended qualifying projects:</p> <ul style="list-style-type: none"> - Their environmental objectives referred to in Article 9 of Regulation 2020/852 - Their types and sectors

Amendment 11 – Ensuring that the Allocation report delivers meaningful information
 Proposal for a regulation
 ANNEX II
 European Green Bond Annual Allocation report
 Section 3 - Allocation of bond proceeds

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>A. For issuers except those referred to in point B below: [The following information shall be provided at project level, unless confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects limit the amount of detail that can be made available, in which case the information shall be provided at least at aggregate level, with an explanation of why project-level information is not given:</p> <ul style="list-style-type: none"> - The environmental objectives referred to in Article 9 of Regulation 2020/852 - The types and sectors of projects, and the respective NACE codes in accordance with the statistical classification of economic activities established by Regulation (EC) No 1893/2006 	<p>A. For issuers except those referred to in point B below: [The following information shall be provided at project level, unless confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects limit the amount of detail that can be made available, in which case the information shall be provided at least at aggregate level, with an explanation of why project-level information is not given:</p> <ul style="list-style-type: none"> - The environmental objectives referred to in Article 9 of Regulation 2020/852 - The types and sectors of projects

Detailed information regarding the alignment of the company’s activities with the EU Taxonomy would be provided in the non-financial statement including segment reporting by NACE codes. **Application of NACE codes however raises many difficulties** since companies’ organisation, and reporting does not necessarily match this classification. **In order to allow issuers to provide relevant information to investors, it is therefore suggested to avoid any reference to NACE codes.** Where relevant or possible, issuers could still reconcile the projects with the segment reporting disclosed in the non-financial statement.