



Brussels, 22 November 2021

## EACB position on the European Commission's proposal for a Regulation on European Green Bonds

### Background

The EACB believes that retail investors are the target market which will benefit the most from eco-labels within the EU capital markets union (CMU). The standardisation and harmonisation afforded by such labels combines the defragmentation sought after by the objectives of the CMU, with the improved access and accelerated transition to green investments in the European Union as highlighted in the EU Sustainable Finance Strategy. Labels and standards also help demystify the complexity and overload of disclosures of financial products, especially for retail investors.

With the above in mind, members of the EACB fully welcome the European Commission's proposal for a Regulation on European Green Bonds (EU GBS). In particular, the EACB supports that:-

- ✓ the **EU GBS is a voluntary standard**, but if used as a 'label' then the issuer must be 100% aligned with the requirements of the proposal, including the **requirement for 100% of the use of proceeds of the EU green bond to be aligned with the EU Taxonomy Regulation**;
- ✓ the **EU GBS is very closely aligned with current market practices** (ICMA & Climate Bonds Initiative) as well as the recommendations of the Commission's Technical Expert Group (TEG) on sustainable finance, regarding the verification process and the alignment with the Taxonomy. There is also some alignment in the reporting requirements; and
- ✓ in some cases the **EU GBS goes beyond market practices** by (i) requiring the EU green bond to be aligned with the issuer's sustainability strategy; and (ii) making the 3-years look-back period now mandatory for green operational expenditure (Opex).

However, our members are concerned with the **risk of loss of trust by investors** in the case that bonds are issued using the EU green bond (EuGB) label, but then the bond loses its status because of future publication of delegated acts under the Taxonomy, or due to future reviews of the Taxonomy's technical screening criteria (TSC). This situation also creates significant problems for asset managers as legal certainty is not ensured for already issued green bonds. However, asset managers may still use green bonds in investment products to provide, for example, sustainable products under Article 9 of the Sustainable Finance Disclosures Regulation (SFDR) or for a UCITS fund making use of the upcoming EU Ecolabel for Financial Products.

We note that in the Commission's proposal, **grandfathering** is allowed to cover the above concerns but only on a temporary basis according to Article 7 of the proposal. Under Article 7, issuers of EuGBs must apply the amended TSC within five years of the amendment's date of application. The idea behind the proposed five-year transition period might seem to encourage bond issuers to constantly seek more environmentally friendly assets and projects to finance. In practice however, changing the loan portfolio at such pace is not always possible especially in the case of long-term infrastructure loans or residential real estate loans. There are no guarantees that enough new Taxonomy-aligned assets would be available, nor can the issuer trust that it would find a buyer for the old loans that are no longer Taxonomy-aligned. In the case of project

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finance, for example, it would be unrealistic to expect the EuGB issuer to change its investment programme 5-10 years along the project cycle (as suggested in the Commission's proposal) due to the amendment of the TSC. Such project financing would usually have a pre-determined timeframe for completion. Also, the proposed grandfathering might affect the ability to grant loans with a maturity extending five years in systems where there is a match in terms and conditions between the bonds and the underlying loans.

As co-operative banks operating under the values of proximity and inclusivity, we also are concerned that **the temporary grandfathering treats borrowers and issuers unequally depending on their size and business model.**

It is harder for smaller financial market participants to find new Taxonomy-aligned loans or for a smaller company to change its EuGB financed project every so often, as compared to big multi-operational companies. One should also keep in mind that accessibility to green finance opportunities for all company types, is one of the goals of the EU's sustainable finance strategy.

Furthermore, there are already existing green bonds which will have not matured until the EU GBS becomes applicable ("outstanding" or "legacy" EuGBs). These outstanding EuGBs may risk allegations of greenwashing and misleading information if they will not comply with the new EU GBS (Article 3 of the proposal). This is contradictory to the green bond guide of March 2020 (page 34) issued by the Commission's TEG where they had strongly advocated that "*subsequent changes to the Taxonomy will not apply to outstanding EU Green Bonds (grandfathering)*".

### **Position**

To secure the steady growth of the European green bond markets, and to truly make the EuGB a leading market standard that retail investors can fully trust, we ask for the co-legislators to:-

- ✓ ensure that **(at the very least) all the Taxonomy's delegated regulation in relation to the TSC is published in the OJEU, before the EU GBS is finally adopted** by the co-legislators;
- ✓ amend the EU GBS to allow for a **full grandfathering**, where the TSC applicable at the time of issuance would continue to apply to allocated use of proceeds, while the new TSC will apply to all future use of proceeds; and
- ✓ where legal certainty is provided that **legacy green bonds are considered EuGBS and will not lose their status at any point until maturity.**

Regarding the amendment to the grandfathering provision, we also offer an alternative solution with respect to the concerns which EU co-legislators will have regarding Taxonomy-alignment. Instead of linking the amendment for grandfathering until maturity to the date when the EuGB was issued, the **full grandfathering provision could apply with respect to the date when the financial asset was created** (e.g. an underlying real estate loan). By way of example, the underlying loan would be required to comply with the 100% Taxonomy-alignment rule. When the TSC change, then banks could communicate to the market that for instance X% of their green portfolio is based on the previous TSC and the X% is based on the new TSC.

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