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II

*(Information)*

# INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

# EUROPEAN COMMISSION

## Non-opposition to a notified concentration

## (Case M.10552 – BROOKFIELD / ACEK / BENJUMEA FAMILY / POWEN)

**(Text with EEA relevance)**

(2022/C 27/01)

On 13 January 2022, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 [1]. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the 'Competition policy' website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/homepage.html?locale=en) under document number 32022M10552. EUR-Lex is the online point of access to European Union law.

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[1] OJ L 24, 29.1.2004, p. 1.

**Non-opposition to a notified concentration**

**(Case M.9546 – Gategroup/LSG European Business)**

**(Text with EEA relevance)**

(2022/C 27/02)

On 3 April 2020, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No. 139/2004 ([1]). The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/homepage.html?locale=en) under document number 32020M9546. EUR-Lex is the online access to European law.

([1]) OJ L 24, 29.1.2004, p. 1.

**Non-opposition to a notified concentration**

**(Case M.10314 – VINCI / ENERGIA Y SERVICIOS DINSA II)**

**(Text with EEA relevance)**

(2022/C 27/03)

On 25 October 2021, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 [1]. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the 'Competition policy' website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/homepage.html?locale=en) under document number 32021M10314. EUR-Lex is the online point of access to European Union law.

[1] OJ L 24, 29.1.2004, p. 1.

III

*(Preparatory acts)*

# EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK
## of 5 November 2021
## on a proposal for a regulation on European green bonds
## (CON/2021/30)

(2022/C 27/04)

### Introduction and legal basis

On 14 October 2021 the European Central Bank (ECB) received a request from the European Parliament for an opinion on a proposal for a regulation of the European Parliament and of the Council on European green bonds ([1]) (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, since the proposed regulation contains provisions falling within the ECB's fields of competence, including, in particular, the implementation of monetary policy pursuant to the first indent of Article 127(2) and Article 282(1) of the Treaty, the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty and the contribution to the smooth conduct of policies pursued by competent authorities relating to the stability of the financial system pursuant to Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

### 1. General observations

1.1 The ECB welcomes the proposed regulation. The attainment of the objectives laid out in the European Green Deal and in the Paris Agreement and enshrined in Regulation (EU) 2021/1119 of the European Parliament and of the Council ('European Climate Law') ([2]) require significant investment, a substantial part of which will need to come from the private sector ([3]). Sustainable finance can play an important role in this respect by enabling investors to identify environmentally sustainable investments and adjust their portfolios according to their own sustainability preferences. Among sustainable finance products, green bonds represent a rapidly growing and highly visible segment: further growth in the market for high-transparency green bonds has significant potential to help fill the sustainable investment gap and to meet the growing demand of environmental, social, and governance (ESG) investors. For this purpose, a clear and reliable public framework for green bonds is welcomed.

1.2 In the overall context of the Union's environmental objectives, in the event that public policies are adopted at Union or Member State level that favour green bonds and other sustainability-based debt over other kinds of debt issuance, these would also require a European green bond standard (EuGB) to which they can refer.

([1]) COM(2021) 391 final.

([2]) Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

([3]) See also the explanatory memorandum to the proposed regulation.

1.3 The existence of an EuGB standard will incentivise the creation of underlying sustainable assets and projects consistent with Union environmental objectives, in particular climate change mitigation and climate change adaptation, as laid down in Regulation (EU) 2020/852 of the European Parliament and of the Council ([4]) (hereinafter the 'Taxonomy Regulation') ([5]). From this perspective, linking the EuGB to the Taxonomy Regulation is an important step in ensuring that environmentally sustainable activities gain the necessary access to financing via debt instruments. Favouring the financing of activities that make a substantial contribution to the environmental objectives defined in the Taxonomy Regulation can support the evolution of the Union economy towards achieving Union environmental objectives.

1.4 The ECB supports the proposed regulation's aim of establishing a harmonised framework for EuGBs, as this would increase assurance that such green bonds genuinely help to support the transition to a greener economy, enhance data availability and transparency, and improve the comparability, reliability and, in turn, efficient pricing of green bonds. The green bond market currently suffers from several shortcomings. In particular, existing industry standards for green bond labels rely on definitions of underlying green projects that are not sufficiently standardised, rigorous or comprehensive ([6]). This lack of reliable, comparable and verified sustainability information undermines the credibility of the green bond market and potentially its capacity to foster the transition to a greener economy, and thus dampens demand due to greenwashing concerns and possible reputational risks for issuers and investors ([7]). Furthermore, the absence of a common reference framework and reporting templates increases the transaction costs of green bond issuance, reducing the economic attractiveness of these instruments in relation to conventional financing tools ([8]). All of these structural constraints contribute to limiting the size and, in turn, the liquidity of this market segment.

1.5 The existence of objectively verifiable and transparent requirements for qualification as an EuGB would help to strengthen the credibility of this asset class, reduce reputational risks for issuers and investors as well as informational asymmetries, and limit greenwashing ([9]). As observed in the markets, investors reward green bonds whose issuers have a better reputation and are subject to third-party verifications with tighter spreads ([10]). Issuing EuGBs with a high level of transparency could lead to better insights into the importance of environmental objectives for market participants and issuers, thus improving the ability of all financial actors, including the ECB, to reliably identify and evaluate environmentally sustainable bonds ([11]). This is expected to support the further growth of this market segment and provide greater confidence that green bonds' help to achieve the Union's environmental objectives by supporting the transition to a low-carbon economy. Finally, by strengthening the green credentials and reliability of EuGBs, the proposed regulation would provide stronger safeguards against sudden revaluations of green bonds following individual cases of greenwashing. This would foster orderly market functioning and financial stability.

1.6 The proposed regulation is an important step in the development of an integrated, deep and liquid Union green capital market that transcends national borders, which contribute to advancing the Capital Markets Union ([12]). Around 60 % of all green senior unsecured bonds issued globally in 2020 originated in the Union ([13]). Developing

([4]) Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

([5]) See Article 2(4) of the proposed regulation.

([6]) See the explanatory memorandum to the proposed regulation. See also 'Green Bond Funds – Impact Reporting Practices 2020', available on Environmental Finance's website at www.environmental-finance.com.

([7]) See Received contributions: Establishment of an EU Green Bond Standard, available on the Commission's website at www.ec.europa.eu.

([8]) See Commission Staff Working Document Impact Assessment Report accompanying the document Proposal for a Regulation of the European Parliament and of the Council on European green bonds, SWD/2021/181 final.

([9]) See page 12 of the Eurosystem reply to the European Commission's public consultations on the Renewed Sustainable Finance Strategy and the revision of the Non-Financial Reporting Directive (hereinafter the 'Eurosystem reply'), available on the ECB's website at www.ecb.europa.eu.

([10]) See, e.g., Bachelet, M.J., Becchetti, L. and Manfredonia, S., 'The Green Bond Premium Puzzle: The Role of Issuer Characteristics and Third-Party Verification', *Sustainability* 2019, Vol. 11, No 4, 1098; Kapraun, J. et al., '(In)-Credibly Green: Which Bonds Trade at a Green Bond Premium?', Proceedings of Paris December 2019 Finance Meeting EUROFIDAI – ESSEC.

([11]) See recital 4 of the proposed regulation.

([12]) See 'Towards a green capital markets union for Europe', speech by Christine Lagarde, President of the ECB, at the Commission's high-level conference on the proposal for a Corporate Sustainability Reporting Directive, Frankfurt am Main, 6 May 2021, available on the ECB's website at www.ecb.europa.eu.

([13]) ibid.

the green bond market further could deepen Union financial integration ([14]), and a green Capital Markets Union would further reinforce the Union's role in global green capital markets. Building mature and integrated Union green capital markets will also require more wide-ranging efforts to strengthen capital markets, including greater harmonisation of supervision, insolvency rules, and investor protection. In this regard, the ECB welcomes that the European Securities and Markets Authority (ESMA) will be tasked with supervising external reviewers of EuGBs at Union level ([15]). The consolidation of the Union's role as a global hub for green finance as well as the further integration and development of Union capital markets would help bolster the euro's international role ([16]).

1.7 The EuGB standard should provide a benchmark for upward convergence at international level, aiming to enhance the contribution of green bonds to support the transition to a low-carbon economy, while simultaneously fostering the Union's leadership in green finance. It should aim for broad market acceptance, including by non-Union residents, due to the stringency of its safeguards and its credibility in relation to greenwashing, in order to become a global benchmark which may be emulated in other jurisdictions. The attractiveness of the EuGB standard in comparison with market standards and/or statutory green bond labels of other jurisdictions should be carefully assessed and monitored over time. While requirements that are more stringent than alternative standards are justified by the enhanced transparency and credibility thereby achieved, it is important that the establishment of EuGBs avoids diverting issuers towards jurisdictions that maintain less rigorous requirements, thereby creating opportunities for international regulatory arbitrage ([17]). In the absence of global coordination, this could eventually lower the environmental standards of sustainable finance products at global level. Effective international cooperation, notably in the context of the G20 Sustainable Finance Working Group and the International Platform on Sustainable Finance, will be essential to ensuring the international coherence of standards for green bonds and avoiding the risk of competitive races to the bottom, which could exacerbate the risk of greenwashing and globally undermine the positive environmental impact of green bonds.

1.8 As part of the NextGenerationEU (NGEU) bond issuance, the European Commission will issue up to EUR 250 billion in green bonds, which will amount to up to 30 % of total issuance. Given that the proposed regulation is not yet in force, the ECB notes that these green bonds will be issued under a green bond framework based on an existing market standard ([18]). The ECB welcomes that the NGEU green bond framework has nonetheless been aligned, to the extent feasible, with the proposed EuGB standard, while noting that the legal and institutional peculiarities of NGEUs imply that the issuer's ability to provide granular reporting of the underlying investments will ultimately depend on the accuracy, completeness and granularity of the data transmitted by Member States. To safeguard the credibility of NGEU green bond issuance, the ECB encourages Member States to report accurate and detailed information on the progress and impact of the investment projects contributing to environmental objectives and urges them to ensure that the 'do no significant harm' principle ([19]) is respected throughout the implementation phase of their recovery and resilience plans ([20]). Moreover, the ECB encourages the Commission to closely monitor and ensure that the proceeds from NGEU green bond issuance are effectively used to finance eligible expenditures and to produce a detailed and accurate impact report.

## 2. **Relevance of the proposed regulation for the objectives and tasks of the ECB and the Eurosystem**

2.1 The proposed regulation may impact the manner in which central banks discharge their mandates, as set out below.

([14]) See chapter 5.3 of the ECB Financial Stability Review of November 2020, available on the ECB's website at www.ecb.europa.eu.
([15]) See page 12 of the Eurosystem reply.
([16]) See 'The role of the euro in global green bond markets', *The international role of the euro*, ECB, June 2020, available on the ECB's website at www.ecb.europa.eu.
([17]) See page 12 of the Eurosystem reply.
([18]) See Commission press release of 7 September 2021, 'NextGenerationEU: European Commission gearing up for issuing €250 billion of NextGenerationEU green bonds', available on the Commission's website at www.ec.europa.eu.
([19]) See Article 17 of the Taxonomy Regulation.
([20]) See Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

2.2 In relation to its monetary policy, the Eurosystem has already purchased green bonds under the corporate sector purchase programme (CSPP), the asset-backed securities purchase programme (ABSPP), and the public sector purchase programme (PSPP) ([21]). Moreover, the ECB accepts green bonds as collateral in credit operations. A harmonised definition of green bonds would improve transparency and foster the supply of green debt instruments.

2.3 Regarding financial stability, the current absence of a common definition and standardised framework for green bonds has hampered the analysis of their financial performance and long-term sustainability impact. This, in turn, prevents assessment of their potential to address climate-related risks to the stability of the financial system ([22]). More generally, only functional markets can help effectively fund the transition and reduce climate-related risks to financial stability. In this context, the proliferation of different industry standards may lead to a cliff effect in the market entailing significant repricing of green bonds when investors perceive that certain green bonds are of unsatisfactory quality. This repricing cascade may affect genuine green bonds if investor confidence is undermined. The EuGB standard has the potential to allow the market to operate more effectively, to improve the pricing of financial risks and sustainable assets, and to enhance investor confidence in this asset class.

2.4 Credit institutions are major actors on the green bond market, both as issuers and investors. The EuGB standard is therefore relevant from the perspective of prudential supervision, as it can affect credit institutions' business models, their disclosure practices and market risk, as well as the operational and reputational risks of credit institutions. From a business model perspective, a uniform standard may facilitate the issuance of green bonds by credit institutions which could support banks in steering their lending towards environmentally sustainable activities and have a positive impact on the proportion of green assets in their portfolios. Furthermore, against the background of increasingly stringent transparency and disclosure requirements, including the upcoming disclosures of a green asset ratio ([23]) and requirements for credit institutions to disclose the alignment of their loan portfolio with the Paris Agreement ([24]), EuGBs constitute an important tool to support credit institutions in meeting those new requirements. Moreover, as noted in paragraph 2.3 above, broad adoption of the EuGBs has the potential to mitigate possible market risks that could emerge from a sudden reassessment of the quality of existing green bonds. Finally, a credit institution's potential exposure to a sanction by the national competent authority ([25]) for failure to comply with the requirements of the proposed regulation when issuing an EuGB poses an additional operational and reputational risk, which needs to be considered as part of the supervisory activities affecting credit institutions.

2.5 Lastly, the ECB uses part of its own funds portfolio to invest in green bonds and plans to increase the share of green bonds in this portfolio over the coming years ([26]).

## 3. **Specific observations**

### 3.1 *Voluntary nature and scope of the proposed regulation*

([21]) See 'Purchases of green bonds under the Eurosystem's asset purchase programme', *ECB Economic Bulletin*, Issue 7, ECB, 2018, available on the ECB's website at www.ecb.europa.eu.

([22]) See page 38 of 'Climate-related risk and financial stability', ECB/ESRB Project Team on climate risk modelling, July 2021, available on the ECB's website at www.ecb.europa.eu.

([23]) Article 8 of the Taxonomy Regulation requires large undertakings to disclose information on how and to what extent their activities are associated with environmentally sustainable economic activities. A delegated act specifies that credit institutions must disclose a green asset ratio, with staggered application starting on 1 January 2022. See Commission Delegated Regulation supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation, C(2021) 4987 final (hereinafter the 'Article 8 delegated act'), to be read in conjunction with the annexes thereto.

([24]) In its proposal for a Corporate Sustainability Reporting Directive (CSRD), the Commission proposes that non-financial and financial companies disclose a description of the targets related to sustainability matters set by the undertaking and of the progress the undertaking has made towards achieving those targets. See Proposal for a Directive of the European Parliament and of the Council of 21 April 2021 amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM(2021) 189 final.

([25]) See Article 41 of the proposed regulation.

([26]) See the ECB press release of 25 January 2021, 'ECB to invest in Bank for International Settlements' green bond fund', available on the ECB's website at www.ecb.europa.eu.

3.1.1 Under the proposed regulation, the use of the EuGB standard would be voluntary ([27]), which would give issuers the possibility to continue to use existing industry standards for green bonds. The ECB considers this a balanced approach in the short term, as an immediate shift to a strictly mandatory standard might lead to divestment from non-taxonomy-aligned green bonds and a sudden drop in Union-based green bond issuance ([28]).

3.1.2 At the same time, in order to have a Union green bond market that is consistent with the Union's taxonomy, and to mitigate greenwashing concerns, the ECB considers it important that the EuGB becomes the prime green bond standard within the Union. Therefore, a clear commitment to making the standard mandatory for newly issued green bonds within a reasonable time period, while outstanding green bonds would maintain their designation as green bonds for a longer time period, is considered necessary ([29]). Making the standard mandatory would create certainty for markets and could also incentivise issuers to apply the EuGB standard before it becomes mandatory. A well-calibrated expansion of the taxonomy to transition financing would facilitate the progression to a mandatory standard by reducing the risk of negative effects on green investments that make a positive environmental contribution but which fall short of the substantial contribution thresholds of the taxonomy.

3.1.3 The ECB acknowledges nevertheless that setting a concrete time period for the standard to become mandatory is not necessarily straightforward. The risk of any divestment of existing green bonds and the potentially resulting market disruptions and volatility need to be balanced against the need to take swift action to support the green transition, including through the bond market. For this reason, to avoid unintended consequences for the flows of Union green investments and to avoid the risk of diverting green bond issuers to jurisdictions with less stringent requirements, the design of a mandatory standard should be subject to an impact assessment, and appropriate fine-tuning of the framework should be carried out. The Union legislator should invite the Commission to review the EuGB standard with a view to assessing this matter by 31 December 2023. In particular, the Commission should report to the European Parliament and the Council on a feasible time period for making the EuGB standard mandatory and the practicalities of such an approach, for instance, the exact types of sustainable bonds that would fall under this standard. Moreover, in order to avoid sell-offs, it could be useful to clarify how investors should treat green bonds issued under market-based voluntary standards after the introduction of the mandatory standard. The Commission should conduct its review after consulting the relevant stakeholders, in particular organisations currently issuing market-based standards for sustainable bonds ([30]). Ultimately, the EuGB standard should become mandatory for newly issued green bonds within a reasonable time period, e.g. in three to five years, the exact transition period to be informed by the outcome of the above-mentioned impact assessment.

3.1.4 In the meantime, the voluntary adoption of the EuGB standard should be encouraged at Union and national level by public policies potentially favouring bonds complying with EuGB requirements. Indeed, only the EuGB, because of its link to the Taxonomy Regulation, guarantees that activities financed through the proceeds of the bond contribute towards Union environmental objectives. The ECB is of the view that all EuGBs should be considered as fully taxonomy-aligned and therefore be included in both the numerator and the denominator of the taxonomy disclosures ([31]). The contribution of EuGB holdings towards the taxonomy disclosures could provide a significant

([27]) See recital 7 of the proposed regulation.

([28]) Less than 5 % of turnover, capital expenditure and operational expenses of non-financial undertakings that fall under the scope of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1) is estimated to be taxonomy-aligned. See page 174 of ESMA's 'Final Report: Advice on Article 8 of the Taxonomy Regulation' of 26 February 2021, available on ESMA's website at www.esma.europa.eu. It should be noted, however, that these estimates refer to entire industries rather than green bonds. The share of outstanding green bonds already aligned with the taxonomy can be assumed to be considerably higher. Several existing green bonds have been certified by external reviewers as being already fully taxonomy-aligned.

([29]) Under a mandatory approach all green bonds issued in the Union or by a Union-based issuer would have to make use of the EuGB. See the explanatory memorandum to the proposed regulation.

([30]) Two market-based sustainable bond standards are the Green Bond Principles (GBP) adopted by the International Capital Market Association (ICMA) and the Climate Bond Standard (CBS) of the Climate Bonds Initiative. See ICMA's website at www.icmagrop.org and the CBS at www.climatebonds.net.

([31]) In the taxonomy disclosures, the denominator of the key performance indicators captures the overall financial magnitude of the undertaking's activities relevant to the taxonomy disclosures. The numerator specifically captures the magnitude of those activities that are aligned with the taxonomy criteria. The resulting ratio provides information on the proportion of the relevant undertaking's economic activities that are aligned with the taxonomy. In the Article 8 delegated act, the Commission proposed that 'due to the current lack of an appropriate calculation methodology, exposures to central governments, central banks and supranational issuers should be excluded from the calculation of the numerator and denominator of key performance indicators'.

incentive for issuers as well as investors to prefer EuGBs over existing standards, as it would automatically guarantee taxonomy alignment without the need to carry out an in-depth assessment of the alignment of the underlying investments, as would be the case for other standards. The contribution of EuGB holdings towards the taxonomy disclosures should be irrespective of the public or private nature of the issuer, i.e. it should also apply to public sector EuGBs, which, under the Article 8 delegated act, are currently excluded from both the numerator and denominator of the taxonomy disclosures.

3.1.5 The ECB welcomes the scope of the proposed regulation, which would cover issuers that are financial undertakings and non-financial undertakings, sovereign issuers, and issuers of covered bonds and of securitisations, the securities of which are issued by a special purpose vehicle ([32]). It further welcomes that the requirements would be applicable to all issuers that wish to use the designation 'EuGB' for their environmentally sustainable bonds made available to investors in the Union. However, the term 'made available to investors in the Union' is not defined in the proposed regulation and would benefit from clarification to ensure that issuers of EuGBs that market them outside the Union can still avail themselves of the EuGB designation. This option is particularly important in order to promote international adoption of the EuGB and, relatedly, to incentivise global adoption of the advanced Union sustainable finance standards, including the international use of the Union taxonomy criteria. In addition, the reference to 'legal entities' as issuers of EuGBs ([33]) appears to suggest that an issuer of an EuGB needs to have legal personality, which is not true of all issuers of bonds across the Union, for example, securitisation issuers under certain Member States' national laws. A simple reference to 'entities' would seem equally effective. Finally, it would be necessary to clarify with respect to securitisations how the proposed regulation would be applied so that green transition securitisations could also use the EuGB standard where the underlying assets are not aligned with the taxonomy but the purpose of the financing concerns green transition technologies ([34]). For green transitional securitisations, obligations related to future taxonomy compliance are relevant for the originator, not for the issuer special purpose vehicle. Accordingly, it may be necessary to take account of this where obligations are otherwise placed on the issuer, for example in Article 7 of the proposed regulation.

3.2 *Alignment with the Taxonomy Regulation*

3.2.1 The proposed regulation envisages that the use of proceeds of EuGBs are to relate to economic activities that meet the taxonomy requirements, or that will meet the taxonomy requirements within a defined period of time (five years or ten years from the issuance date of the bond if justified by the specific features of the economic activities concerned) as set out in a taxonomy-alignment plan ([35]). 'Taxonomy requirements' are defined as the requirements set out in Article 3 of the Taxonomy Regulation. Hence, environmentally sustainable activities need to (a) contribute substantially to one or more of the environmental objectives set out in Article 9 of the Taxonomy Regulation; (b) not significantly harm any of these environmental objectives; (c) be carried out in compliance with minimum social safeguards; and (d) comply with the technical screening criteria established by the Commission.

3.2.2 The ECB welcomes this alignment with the Taxonomy Regulation as it underlines the centrality of the Taxonomy Regulation in the Union's sustainable finance strategy and provides a credible basis for assessing the sustainability of the use of proceeds of issuances of EuGBs ([36]). However, the fact that it is sufficient that taxonomy alignment is achieved within five or, in specific circumstances, ten years, raises concerns. While issuers should not be penalised for allocating bond proceeds to economic activities that do not yet meet the taxonomy requirements, but will do so within this defined period ([37]), there is a certain risk that the sanctions established in the proposed regulation will not be sufficient where the issuer does not comply with the taxonomy-alignment plan. Annex II of the proposed regulation requires issuers to report on progress in the implementation of the taxonomy alignment plan as part of their yearly allocation reports ([38]). National competent authorities can require issuers to publish these reports and to include the required information ([39]). However, they do not seem to have sanctioning or supervisory powers over the

([32]) See Article 1 of and the explanatory memorandum to the proposed regulation.
([33]) See Article 2(1) of the proposed regulation.
([34]) See page 8 of the Eurosystem contribution to the European Commission's targeted consultation on the functioning of the EU securitisation framework, available on the ECB's website at www.ecb.europa.eu.
([35]) See Article 6 of the proposed regulation.
([36]) See page 12 of the Eurosystem reply.
([37]) See recital 15 of the proposed regulation.
([38]) See point 3.A of Annex II of the proposed regulation.
([39]) See Title IV of the proposed regulation.

alignment of economic activities with taxonomy requirements as such. In particular, the proposed regulation does not lay down a procedure for withdrawing the EuGB 'label', other than the possibility to include a statement in the post-issuance review that the bond does not meet the requirements of the proposed regulation and that the designation 'EuGB' cannot be applied to it ([40]). Although application of the transparency requirements makes it likely that non-compliance with the standard would be reflected in the price of the bond, this may have only a limited and indirect impact on the issuer of the EuGB if it is subsequently traded on the market. Pending the possible conferral of further tasks on national competent authorities following the Commission's planned review of the powers, mandates and enforcement tools of Union and national competent authorities to fight greenwashing ([41]), there is a risk that no consequences will be faced by issuers whose economic activities that are financed by the proceeds of the EuGB turn out not to be taxonomy aligned.

3.3 *Later amendment of the delegated acts*

3.3.1 The proposed regulation provides that issuers are to allocate bond proceeds by applying the delegated acts (technical screening criteria) adopted by the Commission pursuant to certain provisions of the Taxonomy Regulation ([42]) applicable at the point in time when the bond was issued, or, when allocating bond proceeds to debt, at the point in time at which the debt was created ([43]). The proposed regulation further provides that if the delegated acts are amended following the issuance of the bond (or, where bond proceeds are allocated to debt, after the creation of debt), the issuer shall allocate bond proceeds by applying the amended delegated acts within five years after their entry into application ([44]). While fully acknowledging that the technical standards may evolve over time due to the dynamic, science-based nature of the Union taxonomy, which ultimately serves the Union's environmental objectives, changing the underlying metrics for EuGBs that have already been issued and requiring that existing bonds comply, within a five-year deadline, with the new requirements might have disruptive impacts on the market. Investors might, for example, be incentivised to sell green bonds in anticipation of a potential loss of the EuGB designation, which in turn could lead to a disruption of the prices of the affected bonds. Moreover, the provision might lead to consequences regarding the cyclicality of markets, as bond issuers might be inclined to postpone the issuance of EuGBs if changes to the delegated acts are expected. The provision might also have unintended consequences for the duration of EuGBs and the time horizon of the underlying investments, by potentially creating a structural preference for EuGBs with shorter maturities in order to avoid the negative consequences of an expected change in the delegated acts. For these reasons, from a pure financial stability perspective and with a view to facilitating the functioning of the EuGB market, it may be preferable that issuers are allowed to allocate bond proceeds by applying the respective delegated acts applicable at the point in time when the bond was issued for the entire lifetime of the bond. As indicated, the ECB acknowledges that adapting the delegated acts may be required and welcomed due to considerations related to the Union's environmental objectives, in particular climate change. Since a well-functioning EuGB market also helps to achieve the Union's environmental objectives, applying the delegated act applicable at the time of bond issuance for the entire lifetime of the bond seems to be the preferred option. Moreover, the Commission would then be free to amend the delegated acts in any way it sees fit. In particular, it would not have to consider the potential financial stability implications of such amendments at a later point in time. Of course, the delegated acts applicable at the time of issuance (or creation of debt) would apply to any new bonds that are issued. This overall solution would further improve legal certainty, which is also recognised as a goal in the proposed regulation ([45]).

3.4 *Use of proceeds*

3.4.1 The proposed regulation establishes that the proceeds of EuGBs can, inter alia, be allocated to financial assets. Financial assets are defined in the proposed regulation to include, debt, equity, or a combination thereof. The ECB understands that the purpose of this provision is to cover, for example, situations in which banks issue EuGBs to

([40]) See point 3(b) of Annex IV of the proposed regulation.

([41]) See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 6 July 2021: Strategy for Financing the Transition to a Sustainable Economy, COM(2021) 390 final.

([42]) See Articles 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) of the Taxonomy Regulation.

([43]) See Article 7 of the proposed regulation.

([44]) See Article 7 of the proposed regulation. The consequences of these provisions may need to be clarified. For example, the text of the proposed regulation does not clarify whether this means that the issuer would need to reallocate the proceeds and/or whether it can also adapt existing projects if the delegated acts are amended.

([45]) See recital 11 of the proposed regulation.

finance green loans to their customers. However, debt is not an asset in accounting terms. In order to align the definition with the International Financial Reporting Standards ([46]), the term 'debt' could be replaced with a reference to a 'financial claim'.

3.5 *Alignment with other Union legislation*

3.5.1 The proposed regulation focuses on the establishment of requirements for EuGBs from the perspective of the bond issuer. It also states that an EuGB may be refinanced by issuing a new EuGB ([47]). Under the Article 8 delegated act, financial and non-financial companies need to disclose the extent to which their economic activities are aligned with the Taxonomy Regulation. In particular, credit institutions need to disclose a green asset ratio, which shows the proportion of exposures related to taxonomy-aligned activities as compared to the total assets of those credit institutions ([48]). If Bank A issues an EuGB and uses the proceeds to grant loans for taxonomy-aligned activities and Bank B purchases this bond as an investor, both banks may count the underlying loans (Bank A) and the EuGB (Bank B) towards their respective green asset ratios. This implies that if an asset-backed security linked to green loans or a covered green bond is issued by a bank and subsequently held by another credit institution, as in the example above, both the issuer and the holder of the security would be able to count the underlying assets and the corresponding security towards their respective taxonomy disclosures. Against this background, it would be useful to clarify that if a financial institution issues an EuGB and partially or fully retains the bond or holds it in a separate undertaking under the same consolidated reporting entity, only the issuer's net exposure to the underlying green asset would count towards its taxonomy-aligned assets in the green asset ratio, not the cumulative value of the loans and the EuGB.

3.5.2 Moreover, the proposed regulation seems to enable issuers to use the proceeds of a newly issued EuGB to buy another EuGB. According to the proposed regulation, the proceeds of the financial asset may be allocated to other financial assets provided that the proceeds from those financial assets are allocated to taxonomy-aligned fixed assets, capital expenditure and operational expenditure ([49]). This seems to imply that such a transaction may only occur once. This interpretation is indeed mandated to avoid creating a chain of issuances of EuGBs that are used to buy other EuGBs which again are backed by EuGBs themselves, which would inflate the amount of notional green assets that are backed by the same real economic activity. Furthermore, such a chain might lead to an artificial bolstering of the issuing credit institution's green asset ratio via double counting if that institution purchases an EuGB which is directly or indirectly backed by its own EuGB.

3.5.3 The explanatory memorandum to the proposed regulation states that the use of the designation 'EuGB' is without prejudice to the requirements of Regulation (EU) No 575/2013 of the European Parliament and of the Council ([50]) (Capital Requirements Regulation, hereinafter the 'CRR'). The ECB understands that the designation as an 'EuGB' has no impact on own funds and liquidity requirements for credit institutions regarding bonds that are addressed under the CRR. However, it would be worthwhile explicitly clarifying that the EuGB standard cannot be interpreted as preventing credit institutions from fully applying CRR requirements.

3.6 *Transparency requirements*

3.6.1 The ECB welcomes the transparency requirements for issuers of EuGBs, i.e. the requirements to complete an EuGB factsheet, annual allocation reports and an impact report, and to use templates for the disclosure of such information ([51]). Moreover, the ECB welcomes that the factsheet will be subject to pre-issuance review and the

([46]) See Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320 29.11.2008, p. 1).
([47]) Article 4(3) of the proposed regulation.
([48]) See recital 5 of the Article 8 delegated act.
([49]) Article 5(3) of the proposed regulation. Refinancing through a new EuGB is explicitly allowed pursuant to Article 4(3) of the proposed regulation.
([50]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
([51]) See Chapter II of Title II of the proposed regulation.

allocation reports will be subject to post-issuance review by an external reviewer supervised by ESMA ([52]). Following the same transparency objective, all EuGBs should have an international securities identification number (ISIN) and their issuers should be identified by a legal entity identifier (LEI).

3.6.2 The proposed regulation provides that issuers should publish the factsheet, the pre-issuance review, the annual allocation reports, the post-issuance reviews and the impact report on their Internet: ([53]). Issuers are also required to notify the national competent authority and ESMA of the publication of these documents ([54]). However, it appears from the text of the proposed regulation that data on EuGBs will not be collected in a centralised form. The ECB suggests that the disclosed information could be included in the forthcoming European Single Access Point (ESAP) in a machine-readable format. The inclusion of information on green bonds in the ESAP would be a 'one-stop shop' for all critical information about a company, including about EuGBs it has issued, and would therefore improve transparency and facilitate investment decisions. The reports suggested in the Annexes to the proposed regulation could also include information on fees and expenses borne by issuers of EuGBs (for example, costs passed on from external reviewers) to strengthen market transparency and efficiency. In the interest of precision and to facilitate data processing, the proposed regulation should also make it clearer that factsheets, annual allocation reports and impact reports should be produced for each individual bond, independently of the possibility of publishing several factsheets and reports together and having an overview section on the combined value of all EuGBs issued by an entity.

3.6.3 The proposed regulation suggests that, where a prospectus is to be published pursuant to Regulation (EU) 2017/1129 of the European Parliament and of the Council ([55]) (hereinafter the 'Prospectus Regulation'), that prospectus shall clearly state, where required to provide information on the use of proceeds, that the EuGB is issued in accordance with the proposed regulation ([56]). The proposed regulation further envisages that incorporation by reference is possible in relation to the information contained in the EuGB factsheet ([57]). The key attributes of the EuGB, namely the information contained in the factsheet, should be fully integrated into the prospectus by using the standardised template provided in Annex I of the proposed regulation. This would improve the consistency and comparability of information on green bonds and would mean that financial data providers would only need to refer to the prospectus documents to gather all the necessary information for these instruments ([58]).

3.6.4 From the perspective of credit institutions issuing EuGBs to finance green loans, the transparency requirements could be further enhanced by imposing an obligation on banks to monitor the alignment of the proceeds of green loans with taxonomy requirements.

3.7 *Registration system and supervisory framework*

3.7.1 The ECB welcomes that the proposed regulation establishes a registration system and a supervisory framework for external reviewers ([59]). It also welcomes that ESMA will be tasked with the supervision of external reviewers.

3.7.2 Article 36 of the proposed regulation provides that competent authorities are to ensure that the transparency and external review requirements are applied by issuers. Article 36 refers to the provision of the Prospectus Regulation that establishes that each Member State shall designate a single competent administrative authority responsible for carrying out the duties under the Prospectus Regulation ([60]). The competent administrative authority designated in this manner would thus also be the competent authority under the proposed regulation. However, there are a

([52]) See Chapter 2 of Title IV of the proposed regulation.
([53]) See Article 13 of the proposed regulation.
([54]) See Article 13(4) and (5) of the proposed regulation.
([55]) Regulation (EU) 2017/1129 of the European Parliament and of the Council 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, and repealing Directive 2003/71/EC (OJ L 168 30.6.2017, p. 12).
([56]) Article 12(1) of the proposed regulation.
([57]) Article 12(2) of the proposed regulation.
([58]) See page 12 of the Eurosystem reply.
([59]) See page 12 of the Eurosystem reply.
([60]) See Article 31 of the Prospectus Regulation.

number of exemptions from the obligation to issue a prospectus under the Prospectus Regulation ([61]). The ECB therefore suggests clarifying that the home Member State should designate a national competent authority for all remaining issuers of EuGBs for whom the Prospectus Regulation would not automatically designate a competent supervisory authority, with the exception of sovereign bodies. The proposed regulation expressly establishes that state auditors and other public entities mandated by sovereign issuers to assess compliance with the proposed regulation shall not be subject to the rules for external reviewers and supervision by ESMA and national competent authorities ([62]). The legislator is invited to reflect on whether sovereign issuers should be subject to supervision by national competent authorities. For the sake of clarity and transparency, if the legislator intends to exempt such issuers from supervision, in addition to exempting from supervision state auditors and other public entities acting as external reviewers, then this could also be expressly stated in a recital of the proposed regulation.

3.7.3 The proposed regulation contains specific rules for the provision of services by third-country external reviewers which allows for their supervision by ESMA ([63]). By contrast, direct supervision of issuers by the national competent authorities seems to be limited to issuers located within the Union ([64]) while it is not clear that there would be a national competent authority assigned for issuers of EuGBs located outside the Union. This means that issuers located outside the Union would be able to issue EuGBs by making them available to investors in the Union but would not be subject to the sanctioning regime, including on-site inspections and administrative fines, provided for in the proposed regulation ([65]). This would leave issuers located within the Union at a distinct disadvantage as compared to those located outside it that nonetheless use the EuGB designation, as it may be that the latter would not be subject to sanctioning even if they do not meet all requirements of the proposed regulation. Ultimately, the credibility of the EuGB standard could be undermined if not all issuers of EuGBs are subject to the same supervisory regime. Functioning systems for ensuring all relevant issuers have a national competent authority for supervision already exist under other regulations, for example, under the Prospectus Regulation, where each third-country issuer chooses a home Member State. The ECB suggests that a similar regime should be considered under the proposed regulation, in particular, to designate a competent authority for third-country issuers.

3.7.4 The ECB further notes that the concepts of 'home' and 'host' Member State ([66]) contained in the proposed regulation are neither linked to other provisions nor defined in the proposed regulation. This requires clarification.

Where the ECB recommends that the proposed regulation is amended, a specific drafting proposal is set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 5 November 2021.

*The President of the ECB*
Christine LAGARDE

([61]) See Article 1(2), (3), (4) and (5) of the Prospectus Regulation.
([62]) Article 14(3) of the proposed regulation.
([63]) See Chapter IV of Title III and Article 59 of the proposed regulation.
([64]) See Chapter 1 of Title IV of the proposed regulation.
([65]) See Chapter 1 of Title IV of the proposed regulation.
([66]) See Article 40 of the proposed regulation.

IV

*(Notices)*

# NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

# COUNCIL

## COUNCIL DECISION

## of 20 December 2021

## appointing the President of the Community Plant Variety Office

(2022/C 27/05)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights ([1]), and in particular Article 43(1) thereof,

Whereas:

(1) By Decision of 16 June 2016 ([2]), the Council renewed the term of office of Mr Martin EKVAD as President of the Community Plant Variety Office (the 'Office').

(2) The renewed term of office of Mr Martin EKVAD expired on 31 August 2021.

(3) On 22 September 2021, after obtaining the opinion of the Administrative Council of the Office, the Commission proposed to the Council a list of candidates for the President of the Office,

HAS ADOPTED THIS DECISION:

*Article 1*

1. Mr Francesco MATTINA is hereby appointed as President of the Community Plant Variety Office (the 'Office') for a period of five years.

2. The term of office of Mr Francesco MATTINA shall run from the date on which he takes up his duties. That date shall be agreed between him and the Administrative Council of the Office.

*Article 2*

The Chairperson of the Administrative Council of the Office shall be empowered to provide for all the arrangements necessary to implement Article 1.

([1]) OJ L 227, 1.9.1994, p. 1.
([2]) Council Decision of 16 June 2016 renewing the term of office of the President of the Community Plant Variety Office (OJ C 223, 21.6.2016, p. 6).

*Article 3*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 20 December 2021.

*For the Council*
*The President*
A. VIZJAK

# COUNCIL DECISION

## of 20 December 2021

## appointing the alternate to the Chairperson of the Board of Appeal of the Community Plant Variety Office

(2022/C 27/06)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights ([1]), and in particular Article 47(1) thereof,

Whereas:

(1) By Decision of 16 June 2016 ([2]), the Council renewed the term of office of Ms Sari Kaarina HAUKKA as alternate to the Chairperson of the Board of Appeal of the Community Plant Variety Office (the 'Office').

(2) The renewed term of office of Ms Sari Kaarina HAUKKA expired on 14 October 2021.

(3) On 13 October 2021, after obtaining the opinion of the Administrative Council of the Office, the Commission proposed to the Council a list of candidates for the alternates to the Chairperson of the Board of Appeal of the Office,

HAS ADOPTED THIS DECISION:

*Article 1*

1. Mr Marcus NAVIN-JONES is hereby appointed as alternate to the Chairperson of the Board of Appeal of the Community Plant Variety Office (the 'Office') for a period of five years.

2. The term of office of Mr Marcus NAVIN-JONES shall run from the date on which he takes up his duties. That date shall be agreed between the President and the Administrative Council of the Office.

*Article 2*

The Chairperson of the Administrative Council of the Office shall be empowered to provide for all the arrangements necessary to implement Article 1.

*Article 3*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 20 December 2021.

*For the Council*
*The President*
A. VIZJAK

([1]) OJ L 227, 1.9.1994, p. 1.
([2]) Council Decision of 16 June 2016 renewing the term of office of the alternate to the Chairperson of the Board of Appeal of the Community Plant Variety Office (OJ C 223, 21.6.2016, p. 5).

# COURT OF AUDITORS

**Special report No 2/2022**

**Energy efficiency in enterprises: Some energy savings but weaknesses in planning and project selection**

(2022/C 27/07)

The European Court of Auditors hereby informs you that special report No 2/2022 'Energy efficiency in enterprises: Some energy savings but weaknesses in planning and project selection' has just been published.

The report can be accessed for consultation or downloading on the European Court of Auditors' Internet: http://eca.europa.eu.

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