UPDATE

Green Bond Standard

On 28 February 2023, the Council of the European Union ("EU") and the European Parliament announced that a provisional agreement had been reached on the European Green Bond Regulation (the "Green Bond Standard" or "GBS"), signalling the end of EU Trilogue negotiations on this important pillar of the EU's ESG and climate transition agenda[1]. While the final text is not yet available, it is expected in the summer and will have a 12 month lead-in time (and will be available to issuers sometime in 2024). We anticipate that Ireland will become a leading hub of green bond activity once the markets start to issue under the GBS.

Background

The GBS will establish an EU voluntary 'gold standard' for bonds that finance climate- and environmentally-friendly investments. The European Commission ("Commission") published its legislative proposal on 6 July 2021 (the "Original Commission Proposal")[2]. This was broadly welcomed by stakeholders, but as with all ESG initiatives, also caused some debate, including: (i) whether it should be voluntary; (ii) whether securitisations would be able to qualify; and (iii) the accessibility of the proposed standard to issuers looking to finance their transition.

The Provisional Agreement

While we await publication of the final provisional text, some elements are clear. The Council of the European Union has confirmed that the provisional agreement includes the following:

- the GBS will be a voluntary standard available to EU and non-EU issuers alike;
- 'use of proceeds' will be permitted, an important recognition of the reality of green transition given the current lack of green assets;
  - securitisation structures are to be expressly facilitated, both through the use of proceeds approach and the recognition of the SSPE (Securitisation Special Purpose Entities) and sponsor / originator traditional set-ups and roles in such transactions;
- it is anticipated that issuers will have to provide a fact sheet as framework prior to issuance, which may be incorporated by reference into a prospectus, as well as annual allocation reports and impact reports;
- a requirement that proceeds be invested in economic activities aligned with the EU's Taxonomy Regulation[3]. For those sectors not yet covered by the taxonomy and for certain very specific activities, there will be a flexibility pocket of 15%;
- a regime for the registration and supervision of third party external reviewers by ESMA. The external reviewers will assess green bonds in detail and provide confirmation to investors in respect of the bonds' compliance with the GBS. Such third-party certification should

[1] https://www.consilium.europa.eu/en/press/press-releases/2023/02/28/sustainable-finance-provisional-agreement-reached-on-european-green-bonds/ and https://www.europarl.europa.eu/news/en/press-room/20230227IPR76596/legislators-strike-deal-on-new-standard-to-fight-greenwashing-in-bond-markets

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0391&from=EN

[3] 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

bridge the subjectivity, trust and labelling gaps problematic in ESG investing currently;
- to prevent greenwashing in the green bonds market in general, the Commission will also publish voluntary templates for other EU bonds with environmental objectives, even if they do not make use of the GBS; and
- the designated national competent authorities of the home member state (in line with the Prospectus Regulation[4]) shall supervise issuers' compliance with their obligations under the new standard.

Ireland

As mentioned, we expect that Ireland will likely become a leading jurisdiction in the GBS space once the standard is established, based on the following:

- Regulatory environment: The Central Bank of Ireland (the "CBI") will be designated as competent authority in Ireland under the GBS. The CBI is a highly sophisticated regulator with a wealth of experience in regulating ESG-focused EU regulation, such as the Sustainable Finance Disclosure Regulation (SFDR) which has applied to investment funds since March 2021.
- Regulatory alignment: Given Ireland is a leading global fund jurisdiction, as well as a recognised international hub for sustainable finance, locating one's GBS regulatory perimeter in Ireland (whether via seeking prospectus approval in Ireland or through use of an Irish SPV issuer where appropriate) will lead to centralisation of ESG regulatory sell-side and buy-side oversight in one jurisdiction.
- Jurisdictional advantage: Ireland is already a popular European jurisdiction for issuing debt securities, whether into the bond or securitisation markets (including through the use of Irish SPV issuers). Ireland's unique bridge position between US, EU and UK markets is perfect for a global emerging product such as the GBS.
- Market environment and infrastructure: Ireland is also a leading jurisdiction for prospectus approvals for the purpose of listing on the regulated market of Euronext Dublin. Euronext Dublin is a highly regarded listing destination within Europe and is committed to ESG practices through initiatives such as the Euronext ESG Bonds segment. ESG bonds can be displayed on this segment once listed on one of Euronext's markets.

How do we expect the GBS to be implemented in Ireland?

The Irish legislature generally enacts a statutory instrument under which a competent authority is designated, its powers in Irish law detailed and sanctions for breaches outlined. This normally results in an integration of the EU standard into the existing Irish regulatory framework and operating environment without local Irish gold-plating.

Will a specific prospectus be required?

The Original Commission Proposal stated that where a prospectus was to be published pursuant to the Prospectus Regulation, that prospectus would clearly state that the bonds were issued in accordance with the GBS. The implication was that an EU prospectus would not automatically be required and that issuance of GBS on non-regulated markets was to be permitted. The announcement on the provisional text of the GBS noted the GBS regulator will be the prospectus approval competent authority, which raises the questions whether: (i) a prospectus will be required for a GBS issuance; and (ii) if not, how the regulatory framework will apply for cross-border issuance activity both within and into the EU.

[4] 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. 1).

We await publication of the final text of the GBS in order to assess in detail its implications for Ireland and the ESG markets generally.

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

The Global ESG Advisory Group[5] page on our website has information on various related topics.

Dublin

Stephen McLoughlin
+353 1 619 2736
stephen.mcloughlin@maples.com

Callaghan Kennedy
+353 1 619 2716
callaghan.kennedy@maples.com

Ian Conlon
+353 1 619 2714
ian.conlon@maples.com

Joe O'Neill
+353 1 619 2169
joe.oneill@maples.com

Una McLaughlin
+353 1 619 2798
una.mclaughlin@maples.com

May 2023

[5] https://maples.com/en/esg