

Is Ireland the future hub for EU Green Bonds and Securitisation?

Following our recent update¹ on the European Green Bond Regulation (the "Green Bond Standard" or "GBS") the consolidated text of the political agreement of the Green Bond Standard was published on 10 May 2023². The final step is the vote of the European Parliament, expected in Q3, and the text is subject to any final amendments and general tidy-up.

As a brief reminder, the GBS will establish a voluntary EU standard for issuers seeking to sell green bonds, whether the issuer is based in the EU or not. The GBS text is largely as expected or is unchanged from prior texts; for example, as regards the EU Taxonomy alignment requirement and initial and ongoing transparency requirements.

In this update, we pick out some key points relevant to debt capital and securitisation markets participants, and particularly to the role we expect Ireland will play in the development of this market as the GBS is adopted.

Prospectus Requirement

The GBS will be available to EU and third-country issuers' alike, save for issuers located

in the EU list of non-cooperative jurisdictions for tax purposes or in high-risk countries³.

However, the text clarifies that the GBS will only be available where the issuer has published a prospectus in accordance with the EU Prospectus Regulation⁴ (subject to limited exemptions for certain state issuers). In the EU, Ireland and Luxembourg are the dominant regulated markets for Prospectus Regulation purposes, whether for corporate debt or securitisation, and together approve about 50% of all debt prospectuses.

In recent years, there has been a move by issuers in various markets to list their debt securities in venues outside the scope of the Prospectus Regulation, whether due to changing investor appetite and requirements, regulatory burden and / or cost and speed to market efficiency.

Should the GBS gain traction, the regulated markets and use of prospectuses will rebound and both Ireland and Luxembourg should see a surge in traffic. This should include non-EU issuers, who in practice may be required to opt in to the EU standard given both the size of the market and also the fact that EU institutional

¹<https://maples.com/en/knowledge-centre/2023/5/green-bonds>.

² <https://data.consilium.europa.eu/doc/document/ST-9074-2023-INIT/en/pdf>.

³ Listed in the Delegated Act adopted pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of

the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

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. 12).

investors will likely place a premium on GBS issuances over competing standards, due among other things to natural alignment with other EU regulatory regimes.

Who is your GBS regulator?

Under the consolidated text, the competent authority of the home member state will supervise issuers of GBS bonds. The home member state is determined by reference to the Prospectus Regulation and, with respect to Ireland, the Central Bank of Ireland (the "CBI") will be the competent authority.

Therefore, the CBI will approve the GBS prospectus and be the ongoing GBS supervisor for:

- a) Irish registered office GBS issuers, including issuers of green securitisations and off-balance sheet corporate bond issuers using Ireland's popular Section 110 regime;
- b) non-EU GBS issuers who choose to have their prospectus approved in Ireland by the CBI for admission to Ireland's regulated market; and
- c) any EU issuers who elect Ireland as their home state when seeking prospectus approval in Ireland for debt securities with a minimum denomination of €100,000 (which election is commonly exercised currently).

In terms of oversight, pursuant to the GBS the CBI will:

- a) be notified by GBS issuers of the publication of GBS disclosures including the green bond factsheet, pre-issuance review, allocation reports, post-issuance reviews and a green impact report. The CBI will not be required to verify the truthfulness or accuracy of information provided to it under the GBS;
- b) supervise GBS issuers to ensure that all elements contained in the disclosure

templates are correctly published. The CBI may request various documents from GBS issuers and carry out on-site inspections. In cases where issuers fail to comply with GBS obligations, the CBI can make this public;

- c) where there is reason to believe that an issuer is in breach of the GBS, have powers to: suspend a listing for 10 consecutive working days, prohibit an issuer from issuing GBS bonds for a period of one year, prohibit an offer or admission to listing and prohibit advertisements; and
- d) provide for and impose administrative and criminal sanctions. Decisions of this type made by the CBI should be published on its website.

Irish Regulatory Environment and Alignment

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.

Given Ireland is a leading global fund jurisdiction as well as a recognised international hub for sustainable finance, 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.

This will lead, we hope, to regulatory alignment and certainty on both the sell-side and important elements of the buy-side.

Ireland is already a popular European jurisdiction for issuing debt securities into both the bond and securitisation markets and occupies a unique bridge position between US,

EU and UK markets which is perfect for a global emerging product such as the GBS.

Further Connectivity and Green Securitisation

The most significant development in the GBS text is the facilitation of green securitisation within the voluntary label. This is achieved through allowing the use of proceeds approach and also by recognising that most securitisations involve both the underlying originator / sponsor and an SPV bond issuer.

The text provides that references to the 'issuer' in the GBS are to be construed as references to the originator, except where it would necessarily refer to the SPV, and save for several instances where the GBS obligations are imposed on both entities or on whichever of them is most applicable. On the whole, these interpretative provisions are welcome and reflect the actual burdens and responsibilities of each entity in a securitisation.

Some other points to note on GBS securitisation:

- a) multiple originator structures are recognised, including pro-rata use of proceeds with joint transparency obligations;
- b) synthetic securitisation is excluded from the label for now;
- c) the securitised exposures shall not include exposures financing the exploration, mining, extraction, production, processing, storage, refining or distribution (including transportation) and trade of fossil fuels; and
- d) additional disclosure may apply.

The consolidated text also sets out that the GBS proceeds may be allocated to financial assets meeting Taxonomy requirements, so long as the financial assets are created within five years of issuance. That is, the financial asset created from the proceeds of the GBS

bond must be used for Taxonomy-compliant purposes. A derogation to those principles provides that the proceeds of the initial financial assets may be allocated to subsequent financial assets subject to strict requirements (including a x3 proceeds turnover or re-origination limit). It is unclear how this may work in a green securitisation context and it certainly adds to the structuring and transparency complexity of a green securitisation aspiring to meet the standard.

As noted above, the popularity of Ireland's Section 110 SPV regime across a variety of securitisation, structured and asset finance strategies and products should mean that the Irish SPV will inevitably become a GBS securitisation issuer of choice, which will further increase the popularity and advantages of using Ireland to issue GBS.

Looking Forward

The consolidated text has provided much welcome clarity on the form the new GBS will take. The text will likely be reviewed and amended, as the current draft is subject to linguistic checks and must also be voted on by the European Parliament.

The current timetable indicates that adoption of the text will occur in the autumn and that the GBS will apply 12 months after publication in the Official Journal of the EU. A transitional regime will apply for the first 18 months following entry into effect of the GBS.

Further Assistance

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

Our Global ESG Advisory Group⁵ webpage has information on various related topics.

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June 2023

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⁵ <https://maples.com/en/esg>