ESMA_QA_2254

Submission Date
21/08/2024

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
The interaction between the EU Green Bond Regulation (EuGBR) and the Prospectus Regulation

Question
Article 14 of Regulation (EU) 2023/2631 on European green bonds ('EuGB Regulation') requires certain issuers to publish a prospectus approved under Regulation (EU) 2017/1129 (the 'Prospectus Regulation') in order to use the designation of 'European Green Bond' or 'EuGB'. Article 10 of the EuGB Regulation sets out the requirements relating to the

completion of an EuGB factsheet, while Article 15 sets out requirements relating to the publication of the EuGB factsheet.

In this regard, is it possible to publish the EuGB factsheet prior to the publication of a prospectus approved under the Prospectus Regulation? Moreover, is it possible to advertise a European Green Bond prior to the approval and publication of the prospectus? Please clarify the meaning ‘use of the designation’ in this context.

ESMA Answer

06-06-2025

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Article 15(1)(a) – (c) of the EuGB Regulation provides that issuers of European Green Bonds shall, before the bond is issued, publish: the completed factsheet; the pre-issuance review (external review) of that factsheet; and a hyperlink to the website where the prospectus can be consulted (in cases where a prospectus is published pursuant to the Prospectus Regulation). The provision does not prevent issuers from publishing those individual documents at different times before issuance. Therefore, the EuGB factsheet may be published before the prospectus is approved and/or published, provided that the information contained therein is not misleading. It is the responsibility of the issuer to ensure that the information in the EuGB factsheet is clear and accurate regarding the status of the bond and the documentation required for issuance.

Given that issuers of European Green Bonds are required to publish a prospectus according to the Prospectus Regulation (in cases where a prospectus is required), it is also possible for them to publish advertisements under the conditions set out in that Regulation, as well as in Commission Delegated Regulation (EU) 2019/979, notably Chapter IV thereof. In this respect, Article 22 of the Prospectus Regulation indicates that advertisements relating to an

offer of securities to the public or an admission to trading on a regulated market prior to the approval of the prospectus are permitted, provided that the principles contained in paragraphs 2 to 5 of that Article are complied with. In particular, advertisements must state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it, and they must be clearly recognisable as such.

Under Article 3 of the EuGB Regulation, the designation of “European Green Bond” and “EuGB” is to be used only for bonds that comply with the requirements set out in Title II of the EuGB Regulation. Therefore, the designation begins when the European Green Bond is issued. In line with standard market practice, issuance takes place at settlement.

Documents published before the issuance of the bonds shall not mislead investors on the possible outcome of the external review and the examination of the draft prospectus by competent authorities. Furthermore, the publication of an EuGB factsheet and/or an advertisement before the issuance of a European Green Bond is not to be regarded as a use of the designation of “European Green Bond” and “EuGB”.

It is the responsibility of the issuer to determine when the elements referred to in Article 15(1)(a) – (c) of the EuGB Regulation are published, so long as they are published before issuance of the European Green Bond. It is the responsibility of the issuer to ensure that investors are in a position to make their investment decision based on the information in the EuGB factsheet, the pre-issuance review and the prospectus.

Where an EuGB factsheet relates to more than one European Green Bond issuance, in accordance with Article 10(2) of the EuGB Regulation, at the time of publication it may not necessarily include information related to later issuances.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.