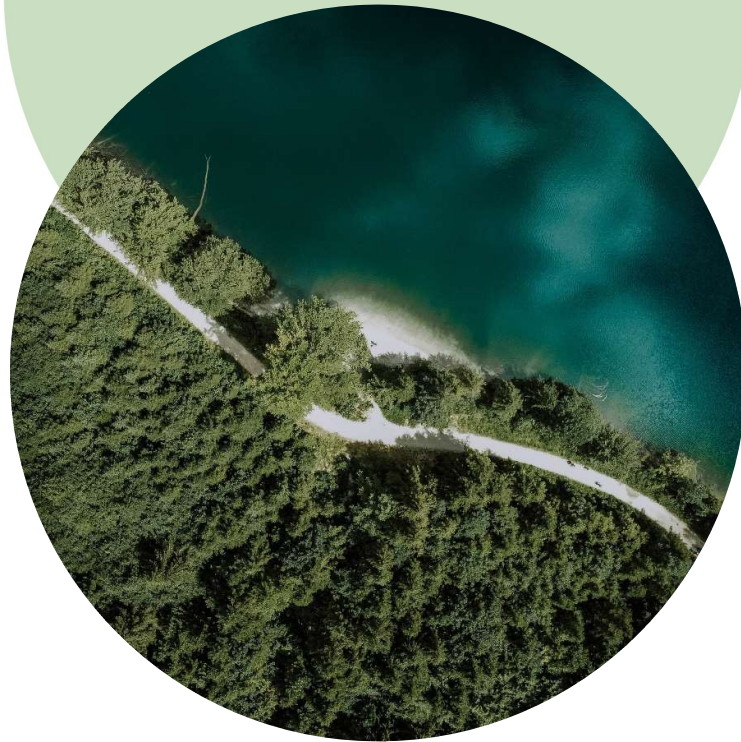


# New rules on European Green Bonds have entered into force

[abreuadvogados.com](http://abreuadvogados.com)



On 30 November 2023 was published in the Official Journal of the European Union the [Regulation \(EU\) 2023/2631](#) of the European Parliament and of the Council of 22 November 2023 on **European Green Bonds** and optional disclosures for (i) bonds marketed as environmentally sustainable and for (ii) sustainability-linked bonds ("**Regulation**").

The Regulation comes in the context of the publication of the [Action Plan: "Financing Sustainable Growth"](#) and is part of the package of policy initiatives of the [European Green Deal](#), which set the objective of implementing a standard for environmentally sustainable bonds in order to further increase investment opportunities and make it easier to identify environmentally sustainable investments through labelling.

At the same time, EU standards and labels for sustainable financial products aim to ensure the reliability of information and enhance the confidence of investors regarding these products on the financial markets.

#### **Key aspects:**

With the aim of improving transparency, facilitate comparison and address greenwashing, the Regulation establishes:

1. A uniform set of requirements for issuers of bond who wish to use the designation "**European Green Bond**" or "**EuGB**";
2. A system to register and supervise external reviewers of European Green Bonds; and
3. Optional sustainability disclosure templates for (i) bonds marketed as environmentally sustainable and (ii) sustainability-linked bonds.

#### **What are European Green Bonds?**

Green bonds, being debt securities, have the particularity that their proceeds are allocated to economic activities that contribute to an environmental objective.

Provided it fulfils the requirements set out in Title II of the Regulation, a green bond may be designated as "**EuGB**" or "**European Green Bond**" if the issuers use the proceeds of these bonds to finance environmentally sustainable activities that are aligned with the environmental objectives set out in the [Taxonomy Regulation](#) or, on the other hand, contribute to the transformation of activities so that they can fulfil the criteria in order to become environmentally sustainable.

## **Is it possible to issue bonds labelled as ESG or sustainable without applying the Regulation?**

Yes, as long as they are not traded as European Green Bonds or EuGBs.

However, the Regulation provides optional sustainability disclosure templates for bonds marketed as environmentally sustainable bonds and sustainability-linked bonds.

## **Which entities can issue European Green Bonds?**

European Green Bonds can be issued by financial undertakings and non-financial undertakings, as well as non-corporate entities such as sovereigns, can issue such bonds, such as sovereign or municipal entities, from the European Economic Area or third countries.

However, issuers established in non-cooperative jurisdictions for tax purposes or high-risk countries are not authorised to use the designation European Green Bond or EuGB.

Furthermore, if the issuer is a sovereign entity, specific rules will apply.

## **Requirements for using the European Green Bond or EuGB designation**

### **1. Use of proceeds:**

The (net) proceeds from the issue of the bonds must be exclusively and in full allocated before the maturity of the bonds, in accordance with the criteria set out in Article 3 of the Taxonomy Regulation, to finance one or a combination of the following economic activities:

- (i)** Fixed assets that are not financial assets, with the exception, under certain conditions, of portfolios of fixed assets or financial assets in accordance with the taxonomy requirements;
- (ii)** Certain capital expenditure;
- (iii)** Certain operating expenditure;
- (iv)** Financial assets that were created no more than five years after the issue, which may be debt and/or equity; and
- (v)** Assets and expenditure of households.

It is worth mentioning that issuers can allocate up to 15 % of that proceeds to economic activities that, while meeting the taxonomy requirements, do not meet the technical screening criteria, provided that **(i)** no technical screening criteria have entered into force by the date of issuance, or **(ii)** they are activities in the context of international support communicated in accordance with the guidelines, criteria and reporting cycles

decided at international level.

There are also specific rules on the use of the proceeds if they are allocated to **(i)** financial assets or **(ii)** capital expenditure and operating expenditure, in which case issuers shall publish a CapEx plan.

## **2. Transparency and External Review Requirements**

Issuers are subject to specific and harmonised disclosure requirements set out in the Regulation's disclosure templates, which improve transparency regarding the use of proceeds, while at the same time providing investors with all the information they need to assess the use of proceeds from European Green Bonds and compare these bonds with each other.

To this end, issuers of European Green Bonds are obliged to complete and publish:

- (i)** A factsheet about the obligation;
- (ii)** An annual allocation report; and
- (iii)** An environmental impact report.

The factsheet and the post-issuance allocation report are subject to review by external reviewers before and after the EuGB is issued.

External reviewers are subject to registration and supervision by ESMA, including third-country external reviewers, although the latter are subject to a special regime. For its part, ESMA will keep a register of information on external reviewers and third-country external reviewees, which will be accessible to the public on its *website*.

Disclosure	Disclosure Deadline	External review	Disclosure model
<b>Factsheet</b>	Pre-issuance: Before issue;	Mandatory review, with an assessment and a positive opinion on the alignment of receipts with the requirements of the Taxonomy and the Regulation;	Annex I
<b>Allocation Report</b>	For every 12-month period until the date of full allocation and in the event of any correction;  If applicable, until the CapEx plan is finalised;	Mandatory post-issuance review of the allocation report on the full allocation of proceeds, and in the event of corrections to the use of proceeds.  Assessment of whether the use of proceeds has been carried out in accordance with the requirements of the Taxonomy and the Regulation, as well as the issuer's factsheet.	Annex II
<b>Impact Report</b>	Post-issuance: After the proceeds have been fully allocated and at least once during the term of the bonds;	Optional review of the environmental impact of the use of the proceeds;  The external review should determine whether the issuance of the bonds is in line with the issuer's broader environmental strategy and assess the impact of the proceeds on the environment;	Annex III

These documents may relate to more than one issuance of European Green Bonds.

In order to increase transparency towards investors, these elements and the respective external reviews must be published on the issuer's *website*, including any changes or corrections, as well as, where applicable, the CapEx plan and/or the review of the impact report.

In what concerns to the prospectus, issuers will have to draw up and publish a prospectus under the [Prospectus Regulation](#) designating the bonds as European Green

Bonds or EuGB, except in the case of bonds issued under Article 1(2)(b) and (d) of the Prospectus Regulation.

External reviewers should also publish and make available on their websites their reviews, as well as the methodologies and key assumptions used in their external review activity, in sufficient detail.

### **Bonds marketed as environmentally sustainable and sustainability-linked bonds**

The Regulation provides optional disclosure templates for:

- (i) Bonds marketed as environmentally sustainable, i.e. bonds whose issuer provides investors with a commitment or any form of pre-contractual claim that the proceeds of the bond are allocated to economic activities that contribute to an environmental objective; and
- (ii) Sustainability-linked bonds, which are, for the purposes of the Regulation, bonds whose financial or structural characteristics vary depending on whether the environmental sustainability objectives predefined by the issuer are achieved.

National Competent Authorities will have some supervisory and investigatory powers over issuers that trade in environmentally sustainable bonds and sustainability-linked bonds, being primarily responsible for ensuring that the elements disclosed in these (optional) templates are published correctly.

### **Issuer supervision**

The Regulation gives supervisory and investigative powers to the competent national authorities, which in Portugal will be the CMVM. In effect, the CMVM will be responsible for supervising compliance with the obligations arising from the Regulation with regard to the issue of European Green Bonds, and will also have supervisory powers over issuers using the models contained in the Regulation, as mentioned above.

### **Conclusions**

European Green Bonds, bonds marketed as environmentally sustainable and sustainability-linked bonds may help companies finance their transition to sustainability.

The Regulation aims to ensure the disclosure of accurate and comparable information,

in accordance with European Union sustainable finance legislation, mainly with regard to the Taxonomy Regulation, but also in line with the regulatory framework for the disclosure of information on sustainability, namely the [SFDR Regulation](#) and the [CSRD Directive](#).

The Regulation, and in particular the requirements needed to obtain the European Green Bond designation, are ambitious and challenging. However, it is an important step towards increasing market efficiency by reducing discrepancies, guaranteeing the reliability of the information that is made available and increasing investor confidence in these products while reducing the costs that investors would incur in reviewing compliance with these obligations. At the same time, the Regulation facilitates comparisons between products and combats greenwashing, especially with regard to bonds marketed as environmentally sustainable and bonds linked to sustainability, by providing optional sustainability disclosure templates.

### **Next steps**

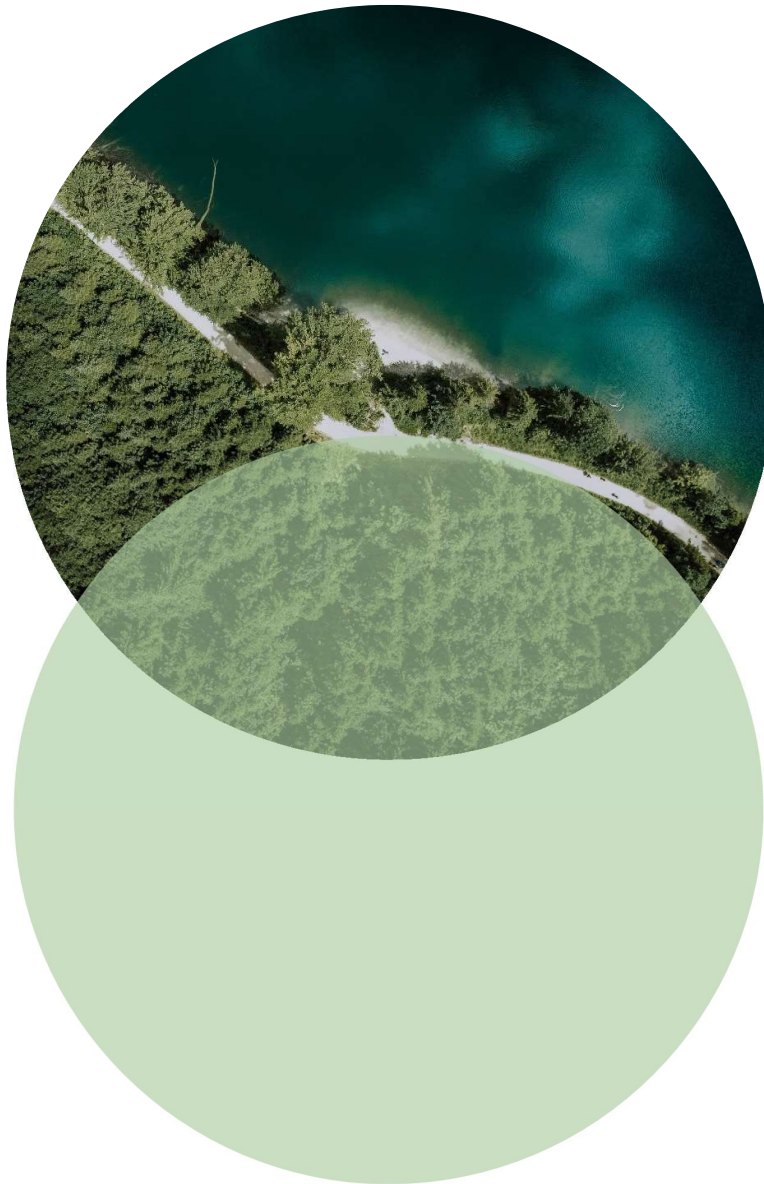
The regulation comes into force on 20 December and will apply from 21 December 2024.

Until then, it will be up to the Commission to adopt the delegated acts to complete the Regulation, as well as a delegated act specifying the content, methodologies and presentation of the information to be disclosed by issuers of bonds marketed as environmentally sustainable and bonds linked to sustainability, as well as publishing guidelines for the voluntary disclosure of information for issuers of such bonds.

No later than 21 December 2024, ESMA shall prepare and submit draft regulatory technical standards to the Commission.

### **How can we help?**

Sustainability is one of Abreu Advogados' foundational values. Abreu Advogados' Banking and Finance team has knowledge and experience in bond issuances and matters related to sustainability and ESG and is especially qualified to assist entities in issuing European Green Bonds (and bonds marketed as sustainable and sustainability-linked bonds) and in licensing entities as external reviewers for the purposes of the Regulation.



**Thinking about tomorrow? Let's talk today.**

**Rodrigo Formigal** – Partner  
[rodrigo.formigal@abreuvadogados.com](mailto:rodrigo.formigal@abreuvadogados.com)

**Mafalda Santos Cordeiro** – Trainee Lawyer  
[mafalda.cordeiro@abreuvadogados.com](mailto:mafalda.cordeiro@abreuvadogados.com)

**Alexandra Rebordão de Sousa** – Trainee Lawyer  
[alexandra.r.sousa@abreuvadogados.com](mailto:alexandra.r.sousa@abreuvadogados.com)