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A Legal Analysis of Terms and Conditions for Green Bonds

Av Kristina Forsbacka, Gregor Vulturius

A LEGAL ANALYSIS OF TERMS AND CONDITIONS FOR GREEN BONDS*

Focus on the Financial Markets in the Nordics

Kristina Forsbacka** & Gregor Vulturius***

ABSTRACT

The global financial system needs to be aligned with the energy transition to a low-carbon future. Green bonds, i.e. bonds specifically earmarked to be used for climate and environmental projects, issued by public and private issuers are important for funding climate and sustainable projects. However, although the green bond market has shown exponential growth in recent years, it still does not account for more than around 2% of global bond issuances in the last two years.[1] The purpose of this paper is to analyse and discuss if the Swedish, Finnish and Danish green bond markets (here the Nordic green bond market[2]) could be made more effective by strengthening the legal contracts and if, and to what extent, legal regulation is required and desirable. Effectiveness is here defined

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** Ph.D. Law Student, Lulea University of Technology. Swedish lawyer with more than ten years' experience of climate policy and climate finance from *inter alia* advising the Swedish Energy Agency on contractual issues related to climate finance, such as CDM projects and investments in World Bank climate funds, as well as advising on climate policy issues.

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*** Research Fellow, Stockholm Environment Institute, Stockholm Sustainable Finance Centre. Climate change expert with close to ten years of experience in research and policy advice on climate risk, renewable energy, science communication and green finance. Part of the Expert Network on Second Opinions on green bonds since 2017 and member of the Stockholm Sustainable Finance Centre since October 2018.

1 EU Technical Expert Group on Sustainable Finance, Report on Proposal for an EU Green Bond Standard, June 2019 (TEG EU GBS Report), p. 17 https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190618-sustainable-finance-teg-report-green-bond-standard_en.pdf.

2 It should be noted that this definition of "the Nordic market" differs from how the Nordic market usually is defined.

as facilitating for an increased issue of green bonds, without compromising the integrity of the bonds ("greenwashing"). The paper includes a review and analysis of the contract documentation of the issuers on the Nordic green bond market, a study that has not been made before. The issuers' impact reporting of green bonds is also analysed, as impact reporting is central for the transparency of green bonds. Ongoing EU regulatory and related initiatives that may affect the green bond market are discussed. The research indicates that the introduction of "green" undertakings in the contracts would not make the green bond market more effective. Regulation should support unification and transparency, but needs to be flexible and non-exclusive, or it could hinder growth and innovation of the market, and increase the risk for greenwashing.

Key words: Green bonds, climate change, legal contracts, green bond frameworks, impact reporting.

SUMMARY OF THE CONCLUSIONS

Presently, green bonds are no different from conventional bonds from a legal and financial perspective, and there is not a significant price difference between green bonds and conventional bonds. Considering this, and taking into account that the financial markets are highly efficient markets where the investors generally invest to get the highest return, as well as the bond contract structure, the Nordic green bond issuers have not been willing to undertake additional risk and include "green" undertakings in the Contracts, and there has not been investor demand for such undertakings.

Introducing green undertakings in the contract documents would involve an additional risk for the issuer, including a risk for cross-default, which would come at a cost, if the issuer would be at all willing to take such a risk. A more significant price difference in relation to conventional bonds would be a disincentive for investors to invest in green bonds. Including undertakings that would increase transaction costs would therefore risk to hinder the expansion of the green bond market, and make it less effective. The possibility to include provisions on a differentiation of the coupon, related to the issuer reaching certain environmental or climate targets in the Contracts, or options, is discussed.

The main feature of the green bond is transparency. The proposed regulations by EU on environmental, social and governance (ESG) disclosures for corporations, including improved and unified impact reporting, and on fiduciary duties for investors, would provide for better investor due diligence, more informed investment decisions, and a balanced risk allocation between the parties. The reputational risk for the issuer, which also includes long-term negative financial implications, would provide assurance against greenwashing.

Regulatory measures creating unified definitions and a common language, such as the proposed EU Taxonomy and the EU Green Bond Standard (EU GBS)[3], would increase transparency and harmonization, and could facilitate contractual and legal regulation, and provide a basis for policy measures and incentives that could increase the number of green projects and the demand for green bonds. However, the regulatory framework should be flexible and non-exclusive, support a transition from brown to green and provide for the introduction of new innovative products, or it will risk to hinder the growth of the green bond market and sustainable finance. Complex and potentially costly external review and reporting procedures could also prevent new issuers from entering the green bond market.

A regulation on unified presentation of green bonds in the Prospectus could increase transparency and harmonization, and could include verification and reporting requirements. Currently, the prospectus only needs to contain information that enables the investor to make an informed assessment of the securities offered, and there are no regulatory requirements on issuers of green bonds as regards the "greenness". However, a common practice is to include information on the green bond in the use of proceeds provision in the Prospectus and/or in the Final Terms, and information on the risks related to green bonds in the Prospectus for information purposes. Any regulation should be broad enough to provide for the ever-evolving green bond products and not involve increased risk or costs for the issuer. Furthermore, it should be noted that these requirements would be limited to issuances under the Prospectus Regulation, and not apply on states, local authorities and supranational institutions, or private placements, and could therefore risk to create a more unlevel playing field.

The Commission discusses incentives to enhance the demand for green bonds. There is a risk that some political measures to increase certain investors' demand for EU Green Bonds which are being discussed (such as capital relief for banks) would distort the market, with unwanted consequences, and increase the risk for greenwashing. Presently, the main hindrance for growth of the Nordic green bond market is lack of supply of green projects, not lack of demand. Policy measures and incentives in the real economy are therefore essential.

INTRODUCTION

A bond is a fixed income instrument that represents a loan made by an investor to a borrower. In its simplest form, a bond issuer will raise a fixed amount of capital, repaying the capital (principal) and accrued interest (coupon) over a set

3 It should be noted that these are only proposals.

period of time.[4] Green bonds are labelled "green" because the issuer undertakes to use the proceeds of the bonds for sustainable purposes. The main features of green bonds are *transparency* of the *use of proceeds for green purposes* and *reporting*.

The paper includes a legal analysis of the green bond contracts between issuers and investors on the Nordic green bond market, though it can be noted that the Swedish market is by far the largest and most developed. The analysis takes into consideration the ongoing regulatory work under the EU Commission's Action Plan to Finance Sustainable Growth (the Action Plan), as well as the voluntary recommendations by the Task Force for Climate-related Disclosures (TCFD or Task Force) established by the Financial Stability Board. It also includes an analysis of the issuers' green bond reporting. The paper is focused on the following specific questions: (i) to analyse if the legal contracts include provisions that guarantee that the funds allocated to "green" will be used for green projects and (ii), if not, whether the green bond documentation could be amended to include such provisions, including an analysis and discussion on whether such contractual amendments would be beneficial for market effectiveness, (iii) to analyse the issuers' green bond reporting routines, including a discussion on how they could be improved, and (iv) to discuss if, and to what extent, legal regulation is required and/or desirable to increase market effectiveness. The purpose of the paper is to propose an order which is balanced between the parties and thereby furthers market effectiveness.

The paper includes (i) a review and analysis of the green bond documentation between the issuers and the investors, including legal contracts, prospectuses (or information memoranda or listing documents), final terms (or pricing supplements), green bond frameworks, second party opinions and green bond impact reports (the Reviewed Documents), (ii) a review and analysis of the voluntary regulation of the green bond market, especially the Green Bond Principles and similar voluntary regulations such as the Green Loan Principles and the Sustainability Linked Loan Principles, as well as national legislation concerning green finance such as that French Energy Transition for Green Growth Act, (iii) a review and analysis of the impact of the proposed/planned EU regulation on green bonds, including a review and analysis of the reports and other publications of the Commission and of other EU bodies, including *inter alia* the Technical Expert Group on Sustainable Finance appointed by the Commission, and of the TCFD Reports and Recommendations, and (iv) a review and analysis of academic articles on the pricing of green bonds and the development of the green bond market, and the investigation by the Swedish government committee on the promotion of green bonds, as well as articles and commentaries from market actors on the green bond market and on the proposed EU regulation,

[4] http://www.sdfinance.undp.org/content/sdfinance/en/home/solutions/green-bonds.html (UNDP)

including *inter alia* from external review providers, European, national and private financial institutions, financial market supervisory authorities, representatives for market places, market associations, and law firms. The focus of the review and analysis is the contractual regulation and the potential need for legal regulation, as well as the impact of proposed regulation on the contract documentation, considering the overall purpose of the research: to facilitate for an increased issue of green bonds, without compromising the integrity of the bond. The research is limited to the contract documentation between the issuers and the investors, and does not include contracts with underwriters, dealers or agents.

The legal analysis includes an analysis of the green bond documentation applied by banks[5] (including supranational banks), corporates (including associations), government-backed entities and local governments in Sweden, Finland and Denmark (jointly the Nordic countries). It can be noted, though, that the majority of the issuers are Swedish.

The issuers have been identified from the Bond Database of the Environmental Finance business journal's website over labelled bonds.[6] The Reviewed Documents have been identified from this database, issuers' websites and other public sources.[7] The green bond contract documentation of 53, out of a total of 57, identified issuers, to the extent these documents have been available, and the reports to investors of 40 issuers have been reviewed and analysed.[8]

This paper is organized as follows. After the Background (section 1), follows an analysis of the green bond from a legal and financial perspective, (section 2 Green Bonds), an Analysis of the Contracts (section 3), an analysis of EU regulations proposed to enhance the green bond market and make it more effective (section 4 EU Regulations) and existing Impact Reporting (section 5), followed by Discussion and Proposals (section 6), and finally Concluding Remarks (section 7). Sections 5 and 6.3 on Impact Reporting have been drafted by Gregor Vulturius.

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5 Banks act both as issuers of green bonds and as underwriters and advisors to bond issuers. The review and analysis are limited to the role of the banks as issuers of green bonds. The contracts between issuers and underwriters/dealers/agents are not included in the research and have not been reviewed.

6 https://www.bonddata.org/ as per 15 March 2019.

7 Some of the Reviewed Documents that have not been publicly available have been provided by the issuers.

8 A total of 57 issuers have been identified from the Bond Database of Environmental Finance journal's website. Out of these the contract documentation of 51 issuers has been reviewed, as not all contract documentation has been publicly available. All impact reports have been publicly available.

1. BACKGROUND

1.1 The Nordic green bond market

Finance is a key way to shift economies towards low carbon resilient economies, and one aim in the 2015 Paris Agreement is "*making finance flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development*". [9] The World Bank was early engaged in climate finance, as were other multilateral institutions such as the Nordic Investment Bank (NIB) and the European Investment Bank (EIB). The concept was developed by SEB, a pioneer in the green bond market, and the World Bank as a response to investor demand for engagement in climate-related opportunities.[10] China started issuing green bonds later but has now become one of the largest issuing countries for green bonds. Some other countries that have issued green bonds are France, Belgium and Poland and Ireland. The Netherlands is planning to issue its first green bond in 2019, and the Swedish government has announced that it will issue a sovereign green bond no later than 2020.[11] Sweden and the other Nordic countries are at the forefront in climate change issues with ambitious climate mitigation goals, and Sweden is leading at green finance, with green bonds amounting to 18 % of all bonds issued in SEK during the first quarter of 2019.[12] The City of Gothenburg was the first municipality to issue a green bond, and the Swedish real estate company Vasakronan was the first non-financial corporate**.** Financial institutions in the Nordic countries issue green bonds, and in addition they actively support issuers in coming to the market.[13] [14] [15]

The global green bond market's growth slowed down in 2018 compared to the big increase in 2017. In part, this reflects decreased issuance in some bond

9 Article 2.1 (c) in the Paris Agreement from 2015.

10 See *inter alia* http://treasury.worldbank.org/en/about/unit/treasury/ibrd/ibrd-green-bonds.

11 The Swedish Government Offices Press release, 18 July 2019 https://www.regeringen.se/pressmeddelanden/2019/07/staten-ska-ge-ut-grona-obligationer-senast-2020/.

12 According to Danske Bank, see https://nextconomy.se/blomstrande-start-pa-aret-for-gron-finansering/.

13 Climate Bonds Initiative, The Green Bond Market in Europe, 2018, p. 1, 5 (CBI Europe 2018) https://www.climatebonds.net/files/reports/the_green_bond_market_in_europe.pdf.

14 Climate Bonds Initiative, Nordic and Baltic Public Sector Green Bonds, 2018, (CBI Nordic 2018) p. 17 f., https://www.climatebonds.net/files/files/CBI-Nordic-Baltic_PublicSector_19022018.pdf.

15 Sweden was the sixth largest source of global green bond issuance after the USA, China, France, Germany and the Netherlands, and Denmark and Finland were in the top 20. The City of Gothenburg and Stockholms Läns Landsting are among the largest repeat issuers. Swedish property companies have been especially active. In Finland, local government funding agency Municipality Finance was the first issuer, and was the largest with three bonds, and Fingrid was the first Finnish corporate to issue a green bond. Vestas issued the first Danish green bond in March 2015, and local government funding agency KommuneKredit joined the market in 2017, followed by Örsted (clean energy), (CBI Europe, p. 12 and CBI Nordic 2018, p. 6, 17 ff.))

markets, particularly from US municipality issuers and a general slow-down on the bond market.[16] On the other hand, green bond issuance has had its strongest start to a year ever in terms of issuance in 2019.[17] By 15 March 2019, the total market value of outstanding green bonds issued globally was 566 billion USD. More than 200 billion USD of new green bonds have been issued in 2018 globally, up from less than 20 billion USD five years earlier. In the same period, the development of green bonds has been faster in Sweden with annual issuance growing from 225 million USD to 5.9 billion last year. In total, green bonds worth more than 24 billion USD have been issued by Swedish, Danish and Finnish companies since 2013. However, the development of the green bond market in Finland and Denmark has been more erratic with no new issues in Denmark in 2016 and a notable dip in issuance in Finland in 2018. Below a graph over the size of the annual green bond market in Sweden, Finland and Denmark.

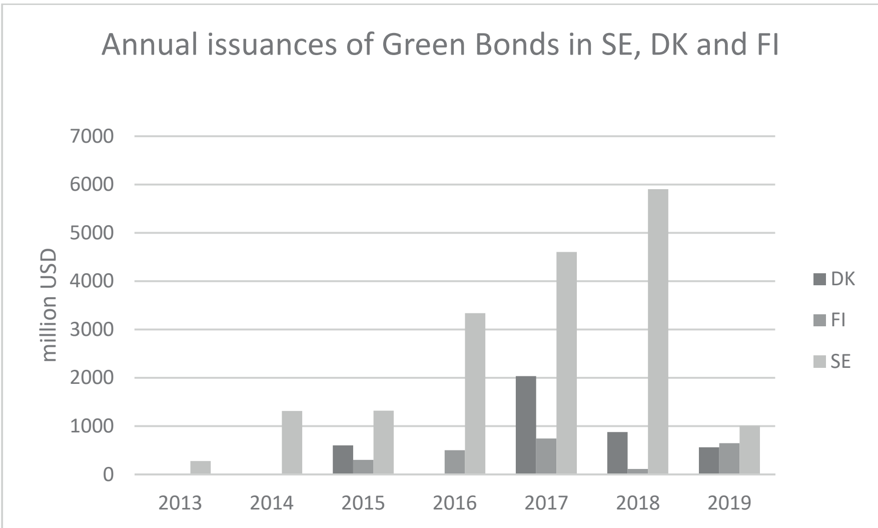

Figure 1: Size of the annual green bond market in Sweden, Denmark in Finland until 15 March 2019 (Data from Environmental Finance Bond Database)

16 CBI, 2018 Green Bond market Summary, January 2019 (CBI 2019), p. 2 file:///C:/Users/ThinkPad/Downloads/2018_green_bond_market_highlights%20(2).pdf, see also CBI, Green bonds; The state of the market 2018 (CBI State of the Market 2019) file:///C:/Users/ThinkPad/Downloads/cbi_gbm_final_032019_web%20(2).pdf.

17 ABN-Amro Green Bond Monthly, March 2019, http://abnamro.eu.bdvision.ipreo.com/NSightWeb_v2.00/Downloads/Files/05f73d86-6898-40c3-bf9c–7dd9f5e33a8b.pdf?tics=636906765805873612.

Following the establishment of green bonds, other sustainable products have also increased, and in 2018 there was a dramatic rise in the issuance of sustainability bonds linked to the United Nations sustainable development goals (SDGs)[18] and social bonds[19], underscoring increasing label diversification.[20] If the transition to a low-carbon and climate resilient society is to be achieved, there is a need for the green bond market to continue to expand. Furthermore, in order to effectively carry out the transition to a low-carbon and climate resilient society, there is a need to support the transition from "brown" to "green". However, as the market for green bonds may expand to include market participants less experienced in, and familiar with, green bonds and sustainability, it is important to avoid the risk for greenwashing. Default situations would have a negative impact on the growing green bond market. Furthermore, although similar in many respects, the issuers' green bond reporting routines show variations, which can make it difficult for investors to make relevant comparisons. Unification of what is considered green and of the reporting routines would facilitate for the parties and further market efficiency. On the other hand, excessive legal regulation could constrain innovation and the expansion and development of the market and should be avoided.

Bond issuers generally use their existing debt programs, their medium-term note (MTN)[21] programs, and build optionality into existing program documentation to enable them to issue green bonds,[22] and some issuers have published specific "green" MTN programs.[23] The MTN program is a fixed income security issued from a standing program arranged by an underwriter. Once the program is registered, issuance can take place at will. The bond documentation consists of the base prospectus (the Prospectus) and the final terms (or pricing supplement) which are applicable to a specific issue of a bond (the Final Terms). The Prospectus (or information memorandum or listing document used by issuers which are not regulated under the prospectus regulations) includes a terms and conditions section (the Terms and Conditions). These Terms and Conditions, together with the Final Terms, constitute the legal contract between the parties (the Contract).[24]

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18 The Sustainable Development goals decided by the United Nations https://www.un.org/sustainabledevelopment/sustainable-development-goals/.

19 Social Bonds are use of proceeds bonds that raise funds for new and existing projects with positive social outcomes, see the Social Bond Principles, https://www.icmagroup.org/green-social-and-sustainability-bonds/social-bond-principles-sbp/.

20 See *inter alia* CBI, 2019 p. 4 and CBI State of the Market 2019, p. 2.

21 A medium-term note is a note that can have different maturities, ranging from nine months to 30 years, though they often mature in five to ten years.

22 Or international Euro medium-term note or Global medium-term note (EMTN or GMTN) programs.

23 Fabege announced its green MTN program in 2016, other corporations have followed.

24 It can be noted that the green bond market has spread and now reflects the overall debt market, including also *inter alia* private placements.

1.2 EU and TCFD initiatives

After the private sector has paved the way for sustainable finance, regulatory bodies are now getting increasingly involved. To achieve EU's. 2030 targets agreed in Paris, [25] an investment gap estimated at 180 billion EUR per year has to be filled.[26] Closing this investment gap means significantly redirecting private capital flows towards more sustainable investments, and requires rethinking the European financial framework. The EU Commission has launched its Action Plan and proposes legal regulations with the purpose to standardize and enhance the market for green bonds and sustainable finance.

The EU Action Plan was launched by the Commission in March 2018 as part of the Capital Markets Union. The Action Plan includes five proposed specific actions to reorient capital flows towards a more sustainable economy: 1) establishing a clear and detailed EU classification system for sustainable activities (EU Taxonomy), 2) establishing EU labels for green financial products (EU Green Bond Standard or EU GBS), 3) introducing measures to clarify asset managers' and institutional investors' duties regarding sustainability, 4) strengthening the transparency of companies on their environmental, social and governance (ESG) policies to make sure that issuers provide the right information to investors, and 5) introducing a "green supporting factor" in the EU prudential rules for banks and insurance companies.[27]

In May 2018, the Commission adopted a package of measures implementing several key actions announced in the Action Plan. The package includes: (i) a proposal for a regulation on the establishment of a framework to facilitate sustainable investment (the Taxonomy Regulation), (ii) a proposal for a regulation on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU)2016/2341, and (iii) a proposal for a regulation amending the benchmark regulation.[28] The Commission established a Technical Expert Group on Sustainable Finance (TEG) to assist it in the development of the EU Taxonomy, the EU Green Bond Standard, methodologies for low-carbon indices, and metrics for climate related disclosure.[29] EU has moved with

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[25] This includes a 40 per cent cut in greenhouse gas emissions, see file:///C:/Users/ThinkPad/Downloads/IP-18-1404_EN%20(1).pdf https://ec.europa.eu/clima/policies/international/negotiations/paris_en.

[26] European Commission Sustainable Finance 24 May 2018 http://europa.eu/rapid/press-release_IP-18-3729_en.htm?locale=en.

[27] EU Commission Sustainable finance: Commission's Action Plan for a greener and cleaner economy, 8 March 2018, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0097&from=EN, http://europa.eu/rapid/press-release_IP-18-1404_en.htm?locale=en.

[28] file:///C:/Users/ThinkPad/Downloads/PART-2018-298106V1%20(13).pdf file:///C:/Users/ThinkPad/Downloads/PART-2018-298085V1%20(2).pdf file:///C:/Users/ThinkPad/Downloads/PART-2018-298119V1.pdf.

[29] The 35 members of the TEG from civil society, academia, business and the finance sector, as well as additional members and observers from EU and international public bodies work both

speed to strengthen and unify the green bond market through proposed regulation for an EU Taxonomy and an EU Green Bond Standard, and to increase the demand for green bonds inter alia through prudential requirements for investors and amendments to the non-binding guidelines to the Non-Financial Reporting Directive (NFRD).[30] In June 2019 the Commission published new guidelines on corporate climate-related information reporting[31], and the TEG presented reports on criteria for the climate-related environmental objectives in the EU Taxonomy Regulation, on a voluntary non-legislative Green Bond Standard (EU GBS) (including a discussion on possible incentives to enhance the growth of the green bond market), and a report relating to the Commission's proposal on low-carbon benchmarks, which has recently been agreed by the co-legislators in June 2019.[32] [33] [34]

An important international initiative is the work of the Task Force established by the Financial Stability Board (FSB). The G20 Finance Ministers and Central Bank governors asked the FSB to convene public- and private-sector participants and review how the financial sector can take account of climate-related issues. The FSB identified the need for better information to support informed investment, lending, and insurance underwriting decisions, and improve understanding and analysis of climate-related risks and opportunities. To help identify the information needed to appropriately assess and price climate-related risks and opportunities, the FSB established an industry-led task force: the Task Force on Climate-related Financial Disclosures (TCFD or the Task Force), which has developed voluntary, consistent climate-related financial disclosure recommendations useful to investors, lenders, and insurers and

through formal plenaries and sub group meetings for each work stream. To ensure transparency, the Commission will organise targeted and open consultation in 2018 and 2019. The TEG's mandate has been extended until the end of 2019.

30 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.

31 http://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf.

32 http://europa.eu/rapid/press-release_IP-19-3034_en.htm https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190618-sustainable-finance-teg-report-taxonomy_en.pdf and https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190618-sustainable-finance-teg-report-green-bond-standard_en.pdf https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190618-sustainable-finance-teg-report-using-the-taxonomy_en.pdf.

33 https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190618-sustainable-finance-teg-report-climate-benchmarks-and-disclosures_en.pdf.

34 It can also be mentioned that the International Organization for Standardization (ISO) is currently developing a Green Bond Standard (ISO 14030) https://www.iso.org/news/ref2287.html https://www.mainstreamingclimate.org/iso/.

other stakeholders in understanding material risks intended for wide adoption presented in June 2017.[35]

2. GREEN BONDS

2.1 Definition

As described above, a green bond is a fixed income debt instrument that finances environmental or climate-related projects. Importantly, there is no legal or regulatory definition of a green bond. Green bonds are labelled “green” because the issuer undertakes to use the proceeds of the bonds for sustainable purposes in accordance with generally accepted standards.[36] According to the Green Bond Principles (GBP) issued by the International Capital Market Association (ICMA), which have been accepted as the market standard and are the basis for actors on the green bond market,[37] green bonds are any type of bond instrument where the proceeds will be exclusively applied to finance or re-finance, in part or in full, new and/or existing “eligible green projects” defined in the GBP, and which are aligned with the four core components of the GBP: (i) use of proceeds, (ii) process for evaluation and selection of eligible projects, (iii) management of proceeds, and (iv) reporting.

Labelled green bonds are bonds that earmark proceeds for climate or environmental matters, and are generally subject to external review.[38] This paper focuses on labelled standard green use of proceeds bonds, a standard recourse-to-the-issuer debt obligation.[39]

35 The 31-member Task Force was global, and its members were selected by the FSB from various organizations, including large banks, insurance companies, asset managers, pension funds, large non-financial companies, accounting and consulting firms, and credit rating agencies. The TCFD submitted its Final Report and Recommendations 15 June 2017. https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf.

36 See *inter alia* International Bank for Reconstruction and Development, The World Bank Treasury, What are Green Bonds, 2015, p. 23 f. http://documents.worldbank.org/curated/en/400251468187810398/pdf/99662-REVISED-WB-Green-Bond-Box393208B-PUBLIC.pdf and Andreas Karpf and Antoine Mandel, Paris School of Economics, Université Paris 1 Panthéon-Sorbonne, The changing value of the “green” label on the US municipal bond market, March 23, 2018 (Karpf and Mandel, 2018), p. 1].

37 https://www.icmagroup.org/green-social-and-sustainability-bonds/green-bond-principles-gbp/, https://www.climatebonds.net/.

38 https://www.climatebonds.net/.

39 GBP describe the four current types of Green Bonds: (i) standard green use of proceeds bond, (ii) green revenue bond, (iii) green project bond, and (iv) green securitised bond. More recent innovations include green *Sukuk*, which comply with Islamic Finance standards. Additional types may emerge as the market develops and will be incorporated in annual GBP updates.

2.2 The GBP and the Green Bond Frameworks

The GBP include voluntary guidelines for issuing green bonds.[40] The GBP recognise several non-exclusive broad categories of eligibility for green projects which contribute to environmental objectives, including *inter alia* renewable energy, energy efficiency, pollution prevention and control, climate change adaptation, green buildings, and sustainable water and wastewater management.

Importantly, the GBP do *not* include *a definition* of a "green bond" *nor a taxonomy* (a classification system) for green (eligible) projects. Instead, the principles provide a structured process for defining eligible projects based on the issuer's green bond framework (GBF) and provide for *transparency* in relation to investors through the GBF and the reports provided by the issuer.

The cornerstone of a green bond is the *use of the proceeds* of the bond for green projects. All designated green projects (*eligible projects*) should provide clear environmental benefits, assessed and, where feasible, quantified by the issuer.[41]

The *process for project evaluation and selection* should be clearly communicated to investors and include: (i) the environmental sustainability objectives, (ii) the process by which the issuer determines the eligible projects, and (iii) the related eligibility criteria, including, if applicable, exclusion criteria or any other process applied to identify and manage potentially material environmental and social risks associated with the projects. The GBP encourage a high level of transparency and recommend that the process for project evaluation and selection be supplemented by an external review.

The net proceeds of the green bond should be *tracked* by the issuer in a formal internal process linked to the issuer's lending and/or investment operations for green projects and be periodically adjusted to match allocations. The GBP recommend that issuer's management of proceeds be supplemented by the use of an auditor, or other third party, to verify the internal tracking method and the allocation of funds from the green bond proceeds.

GBP recommend that issuers appoint an *external review provider* to confirm the alignment of their green bond or green bond program with the four core components of the GBP. There are different types of external reviewers: (i) Second Party Opinion,[42] (ii) Verification against a designated set of criteria, (iii):

[40] The GBP are collaborative and consultative in nature based on the contributions of members and observers of the GBP and Social Bond Principles and of the wider community of stakeholders.

[41] The GBP does not take a position on which green technologies, standards, claims and declarations are optimal for environmentally sustainable benefits. The GBP note that definitions of green and green projects may also vary depending on sector and geography.

[42] The review can include an assessment of the issuer's overarching objectives, strategy, policy and/or processes relating to environmental sustainability, and an evaluation of the environmental features of the type of projects intended for the Use of Proceeds.

Certification-based initiatives against a recognised external green standard or label, or (iv) Green Bond Scoring/Rating. There is currently *no coordinated or harmonized process* used by the Second Party Opinion providers.

One example of a Certification-based initiative is the CBI climate bond certification. The CBI certification includes a taxonomy, and provides a process for achieving certification based on this taxonomy. The CBI certification is more regulated and complex than acquiring a Second Party Opinion.

All Nordic issuers' green bond frameworks (GBF) have been reviewed and approved by a Second Party Opinion provider, most frequently CICERO Shades of Green (CICERO),[43] and some issuers have also used a scoring/rating of their green bonds.[44] CICERO applies a "shades of green and brown" methodology, whereby green bonds are graded "dark, medium or light" green or brown, depending on how well the issuers' green bond framework supports the transition to a low-carbon and climate-resilient society.[45] None of the Nordic green bonds reviewed have been certified by CBI. A number of Nordic green bonds have been admitted to trading on the list for sustainable bonds on a regulated market, such as Nasdaq, London Stock Exchange or Luxemburg Stock Exchange.

The analysis of the Reviewed Documents shows that there is great variation in detail and complexity in the issuers' GBF and the reporting methods. Some issuers are very specific when defining "eligible projects" and the impact of the projects, while other issuers include a very generic definition, and refer to the general categories listed by GBP. Some issuers have retained the optionality to decide on which projects are to be considered as eligible, and some issuers include the right to invest proceeds under the green bond that are not invested in eligible projects in e.g. green bonds issued by other issuers. The issuers' reporting is analysed in more detail in section 5.

2.3 Legal and financial implications on green bonds

It is important to note that although green bonds may be considered an asset class of its own on the market, green bonds are no different from conventional bonds from a legal or financial perspective. The only unique characteristic of green bonds is the specification that the proceeds shall be invested in projects that generate environmental benefits. There is, however, no legal framework specifically regulating green bonds, and no legal enforcement mechanism exists. Green bonds are also identical to conventional bonds as far as their financial

[43] CICERO, Norway's foremost institute for interdisciplinary climate research, is a leading global provider of Second Opinions on green bonds and the second-party reviewer of green bonds most commonly used by Nordic green bond issuers, https://www.cicero.green/.

[44] Other Second party Opinion providers used are e.g. Sustainalytics and DNV GL.

[45] https://www.cicero.oslo.no/en/climate-finance-main.

structure is concerned. While the proceeds are to be used for specific environmental purposes, they are not strictly speaking "ring-fenced".[46] Even though the bond issuance is associated with a certain objective, this objective is not legally enforceable, nor from an accounting perspective technically constrained. The bond exposes the investor to the risks of the entire balance sheet of the issuer. Any benefits with regard to costs of capital thus accrue to the company as a whole.

Correspondingly, the financial risk for a green bond is no different from the risk for a conventional bond issued by the same issuer, as the financial and legal risk is on the issuers whole balance sheet, not on the green projects.

The main risk related to a green bond is the reputational risk, i.e. that bonds labelled as green are found not to be green, "greenwashing". Greenwashing can affect the credibility of the issuer, and also the green bond market as a whole. The reputational risk for the issuer is high, as it has an impact on investors' trust, and the financial markets are to a large extent built on trust.[47] So far, there have been few default situations related to "greenness". Furthermore, if a bond marketed as "green" would not fulfil the criteria, the issuer may not be able to issue future green bonds, which may also have an effect of its issuance of conventional bonds. Thus, in addition to the reputational risk, there are long-term economic implications for the issuer, should it fail to live up to the criteria of a green bond.

2.4 Pricing of a green bond

Price is an important factor for demand of green bonds, and therefore important for the effectiveness of the green bond market. A higher price (lower coupon for the issuer) would mean that the issuer of a green bond would benefit from lower cost of capital, but could be a disincentive for investors to invest in green bonds. A premium (lower cost of capital) on green bonds could also increase the risk for greenwashing.

When the inaugural green bonds were issued, the concept was that the price would not differ from the price of conventional bonds, and green bonds have generally not obtained a significant pricing advantage in relation to conven-

46 See *inter alia* 2 degrees Investing Initiative, Jakob Thomä, Michael Hayne, and Vitaliy Komar, The elephant in the room, Aligning global bond markets with climate goals, Discussion Paper June, 2018, p. 10, https://2degrees-investing.org/wp-content/uploads/2018/06/2ii_WWF_Bonds.pdf.

47 See *inter alia* Joywin Mathew, Butterworths Journal of International Banking and Financial Law, Shades of green in financing: a discussion on green bonds and green loans, May 2018, (Mathew 2018) https://blogs.lexisnexis.co.uk/docs/default-source/loan-ranger-documents/JIBFL_2018_Vol33_Issue5_May_pp311-313.pdf.

tional bonds. This seems logical as the financial and legal risk related to a green bond is no different from those risks related to conventional bonds.

However, market dynamics, such as supply and demand, have an impact on pricing, and there are an increasing number of investors with requirements to invest in sustainable projects. Green bond issues are usually significantly oversubscribed, and there are recent international studies that indicate a slight positive return and positive benefits for green bonds.[48] Presently, the lack of green projects is a main barrier for the growth of the green bond market.[49] Investor demand for green and sustainable investment products continues to grow and outpace the supply of such bonds, and heightened commitment to addressing climate change will continue to drive growth.[50]

Although there is not unanimity on the subject, most research suggest that companies with high environmental performance benefit from a slightly lower cost of capital. There is some research that suggests that the yield of a euro or USD green bond is around 2 basis points lower than that of a conventional bond.[51] A recent study by the EU Commission Joint Research Centre shows that green bonds issued by supranational institutions and non-financial corporates benefit from a premium compared to conventional bonds. Furthermore, repeat issuers benefit from an additional premium compared to one-time green borrowers, which can be seen as evidence of a reputation effect on the green bond market. This study does, however, not find evidence that financial institutions would benefit from a pricing advantage with respect to their conventional bond instruments, which might be due to difficulties of linking directly the issuance of a bond with specific green projects.[52]

The premium for green bond issuers does not – at this stage – represent a notable disincentive for investors, and, although low, it shows that investors have an appetite for green bonds and that green bonds are an opportunity to broaden issuers' investor base.[53] [54] Interestingly, however, the impact of pro-en-

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48 Though, it should be noted that conventional bonds also are oversubscribed in the present market.

49 See *inter alia* European Bank Federation, EU Breen Bond Standard, EBF response 8 April 2019, https://www.ebf.eu/green-finance/eu-green-bond-standard-ebf-response/ and TEG EU GBS Report, p. 21.

50 See *inter alia* Moody's investor service, Research announcement: Moody's: Green bond market poised to hit USD 200 billion in 2019 https://www.moodys.com/research/Moodys-Green-bond-market-poised-to-hit-200-billion-in--PBC_1159526.

51 Olivier David Zerbib, The effect of pro-environmental preferences on bond prices: Evidence from green bonds, Journal of Banking and Finance 98 (2019), p. 39–40, 50 (Zerbib 2019)

52 Serena Fatica, Roberto Panzica and Michaela Rancan, "The pricing of green bonds", European Commission – Joint Research Centre, Working Paper in Economics and Finance, 2019/7 http://publications.jrc.ec.europa.eu/repository/bitstream/JRC116157/jrc116157_faticapanzicarancan_gbpricing_jrc_report_01.pdf.

53 Zerbib 2019, p. 39–41, 50.

54 Malcolm Baker, Harvard Business School and NBER, Daniel Bergstresser, Brandeis International Business School, George Serafeim, Harvard Business School and Jeffrey Wurgler,

vironmental motives on bond prices seems to be limited. The lower cost of debt for companies with good environmental performances seems still to be more related to financial reality, a lower level of financial risk through intangible asset creation, as well as better risk management and mitigation, than to non-pecuniary motives.[55] There is also a study of green corporate bonds that has showed both increased financial and environmental performance, which is inconsistent with a "greenwashing" motive.[56]

It should be noted that corporates also mention additional notable benefits related to the issuance of green bonds. The TEG finds that the process associated with green issuance represents a strong in-house knowledge-sharing and awareness building exercise that connects the treasury, business, sustainability, investor relations and reporting functions with the corporate organisation in a way that is seen as an important and unforeseen benefit.[57] The Swedish government committee investigating the facilitating of green bonds, noted that the Swedish issuers have found green bonds successful for a number of different reasons: the issues have been oversubscribed and the issuers have expanded and diversified their investor base, the price has been favourable and, in some cases, there has been a smaller discount in form of lower yield.[58] According to issuers, the "soft" benefits mentioned were assessed as equally important. A report by CBI supports that green bond issuers receive advantages, including a broader and more diverse investor base, increased engagement with stakeholders, and reinforced commitment to responsible company management.[59]

3. ANALYSIS OF THE CONTRACTS

3.1 The contract documentation

The Nordic debt capital markets are strongly influenced by English law and the debt contracts on the Nordic market are often governed by English law.[60] The

NYU Stern School of Business and NBER, preliminary draft April 27, 2018 "Financing the Response to Climate Change: The Pricing and Ownership of U.S. Green Bonds", p. 23 f.

55 Zerbib 2019, p. 39–40 and 50.

56 Caroline Flammer, "Corporate green bonds", Questrom School of Business, Boston University, Global Development Policy Center, GEGI Working paper 023 11/2018 (Flemmer 2018), p. 16 f. and 19.

57 TEG EU GBS Report, p. 20.

58 The Swedish governmental Committee's investigation "To promote green bonds" SOU 2017:115 (*Att främja gröna obligationer*), December 2017, p. 91 ff.

59 CBI and the International Finance Corporation, Green Bond Pricing in the primary market January – June 2018, p. 14 https://www.climatebonds.net/files/reports/cbi_pricing_h1_2018_01l.pdf.

60 Some reviewed Contracts, especially where the issuer is a bank or at international issues, are governed by English law. Most corporate and local governments Contracts reviewed are governed by Swedish, Norwegian or Danish law.

Contracts are usually highly standardized documents that apply to a great number of transactions. Generally, the issuers' loan contracts include a cross-default provision. A cross-default provision puts the borrower in default if the borrower defaults on another obligation in another loan agreement (such as the bond contract), and is included to protect the interest of lenders, who want to ensure equal rights to a borrower's assets in case of default on one of the loan contracts. Issuers of green bonds are reluctant to include "green" undertakings in the Contract as a breach may result in cross-defaults of other loan agreements.[61]

The green bond contract documentation at the green bond issuance generally consists of the Prospectus, which includes the Terms and Conditions and the Final Terms, and the issuer's GBF.

The Terms and Conditions together with the Final Terms, constitute the Contract which is binding between the parties. The Prospectus is not part of the Contract, but shall contain the information to be provided when securities are offered to the public, or admitted to trading on a stock exchange or other regulated market, and is regulated under EU prospectus regulation[62] and national prospectus legislation.[63] The main objective of the prospectus is to protect investors. The prospectus shall contain the necessary information which is material to an investor for making an informed assessment of the corporation and its economic position, as well as the security and its characteristics.[64] The primary purpose of including risk factors in a prospectus, is to ensure that investors make an informed assessment of such risks and thus take investment decisions in full knowledge of the facts.[65]

The Final Terms should only contain information relating to the securities note, which is specific to the individual issue, and shall not be used to supplement the base prospectus, and should not be used to include a type of securities not already described in the base prospectus.[66]

It should be noted that the prospectus regulations do not apply to bonds issued by states, local governments, or government-backed entities or supranational institutions.[67] [68]

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61 See *inter alia* White & Case Alert, Karsten Woeckener, Green bonds – building optionality for issuers into programme documentation, 9 January 2018 (White & Case 2018)

62 The 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 (Prospectus Regulation)

63 This presentation refers to the regulations in the Prospectus Regulation and does not include national legislation.

64 See Article 6.1 in the Prospectus Regulation.

65 See Article 16.1 in the Prospectus Regulation.

66 See Article 8.4 in the Prospectus Regulation.

67 See Article 1 in the Prospectus Regulation.

68 Furthermore, it should also be noted that the Prospectus Regulation does not apply to private placements.

As described above, the GBP are non-binding recommendations on a procedure to determining eligible projects and reporting these. They do not include a definition of a green bond or a taxonomy. The review conducted also shows that the issuers' GBFs show great variation.

3.2 Typical green bond structure

The typical green bond structure is as follows. The Prospectus may include a short description of the green bond and a reference to the issuer's GBF. The "Use of Proceeds" section in the Prospectus provides the possibility to issue bonds where the proceeds are to be used for sustainable projects, which then is agreed in the Final Terms for the specific green bond. The provision on "Risk Factors" describes the risks involved with green bonds, with primary purpose to ensure that investors make an informed assessment of the risks involved with the bond, and can take informed investment decisions.[69]

Regarding Use of Proceeds

Until green bonds were introduced, "General Corporate Purposes" (GCP), was the norm in the public bonds market when describing the use of proceeds in the Prospectus. However, a common model for green bonds is to specify the use of proceeds provision in the Prospectus and Final Terms as follows

- an explanation under the Use of Proceeds section in the Prospectus that the proceeds will be used for other purposes than GCP, or will be used for green purposes, generally referencing to the Final Terms (sometimes a more elaborate description of the issuer's GBF), and
- a reference in the Final Terms to green bonds or the issuers' GBF or a description the issuer's GBF.

As these provisions in the Prospectus are not part of the binding Contract between the issuer and the investor, the fact that the proceeds are not used for a green purpose would generally not constitute an event of default under the

[69] See White & Case 2018.

Contract.[70] Such use of proceeds against the GBF could, however, under certain circumstances, constitute an incorrect disclosure in the Prospectus. [71] [72]

Risk Factors

In addition, many issuers include a provision on the risks related to green bonds under the Risk Factors provision in the Prospectus. As explained above, the GBP do *not* include a *definition of a green bond*, *nor* a *taxonomy*. Furthermore, there is *no coordinated or harmonized process* used by *the Second Party Opinion providers*. This is reflected in the provision on Risk Factors in the Prospectus, which often includes the following provisions:

– a specific provision presenting the risks with green bonds, including that if the green projects would not turn out to be green, this shall not give the investor a right to terminate the Contract and/or repayment, alternatively, that such an event does not constitute an Event of Default

The provision under Risk Factors often includes variations of all or some of the following[73]

– investors must determine for themselves the relevance of information for the purpose of any investment in the green bonds, in particular that the use of proceeds for any green projects will satisfy any investor expectations or requirements as regards any investment criteria or guidelines
– there is currently no clearly defined definition (legal, regulatory or otherwise) of, nor market consensus as to what constitutes a "green" or "sustainable" or

[70] It should be noted that this research is limited to the contract between the issuer and the investor. The dealer and/or subscription agreement between the issuer and the underwriter may include an undertaking regarding the use of proceeds (See White & Case 2018).

[71] "Typically, terms and conditions of green bonds do not provide for specific covenants relating to the use of proceeds or events of default which are triggered if the issuer uses the proceeds not in line with its eligible green projects and framework. However, typically the relevant offering document, such as the prospectus, provides for detailed disclosure on the use of proceeds, the framework as well as the eligible projects. Furthermore, such document provides for detailed risk disclosure in connection with investing in the green instrument. Any misstatement within the offering document may trigger prospectus liability vis-à-vis investors. Last but not least, the underwriting agreement entered into between the issuer and the underwriters of the instrument provides for provisions relating to the use of proceeds. Again, in case of a miss-use of the proceeds, this may trigger indemnity under the underwriting agreement." (Karsten Woeckener, Partner, White & Case, Frankfurt, confirmed in writing on 8 April, 2019)

[72] This interpretation seems to be somewhat different from what Sara Göthlin states in The Green Promise – Contract Law and Sustainable Purpose Bonds, JT 3 2019, p. 567.

[73] See *inter alia* the Prospectuses of Danske Bank, Nordea, Swedbank, Fabege, Humlegården, Stora Enso and Vasakronan.

an equally-labelled project or as to what precise attributes are required for a particular project to be defined as "green" or "sustainable"
- no assurance is given that any projects or uses the subject of, or related to any Green Projects will meet investor expectations regarding such "green", "sustainable" or other equivalently-labelled performance objectives
- no assurance or representation is given as to the suitability or reliability of any opinion or certification of any third party
- in the event a green bond is listed or admitted to trading on any dedicated "green", "environmental", "sustainable" or other equivalently-labelled segment of any stock exchange or securities market, no representation or assurance is given by the issuer that such listing satisfies any investor expectations or requirements, nor that any such listing will be obtained or, if obtained, be maintained
- while it is the intention of the issuer to apply the proceeds of any green bonds as described in the Base Prospectus and/or applicable Final Terms, there can be no assurance that the relevant projects or uses the subject of, or related to, any green projects will be capable of being implemented in or substantially in such manner and/or in accordance with any timing schedule and accordingly such proceeds will be used for the specified green projects

The wording varies between issuers, and may be more summary or more elaborate.

The Final Terms generally include a reference to "green bonds" or the issuer's GBF or a description of the issuer's GBF in Part B ("Other information").

3.3 The review and analysis

The Reviewed Documents include Contracts and contract documentation of 53 out of 57 identified issuers in Sweden, Finland and Denmark: nine banks (including one supranational bank), 24 corporations (or associations), four government-backed entities and 13 local governments.[74]

The review shows that Nordic issuers do generally not include "green" undertakings in the Contracts. Although the issuers' contract documentation has many common and typical features, the documentation shows variations, and also varies between different types of issuers, and the documentation could benefit from unification and standardization. Below is an overview of some general variations between different types of issuers.

[74] See the Introduction for details.

Banks

The Use of Proceeds provision in the Prospectus (or information memorandum) provides for the use of proceeds for other than GCP (or explicitly states use for green bond purposes), with reference to the Final Terms (or pricing supplement), with variations in the wording.[75]

The Prospectus (or information memorandum[76]), with the exception for the Prospectus of one bank, includes lengthy and extensive information about risks related to green bonds in the provision on Risk Factors, as well as clarifications (i) that no assurance is provided that green bonds are green, and (ii) that a failure to apply the proceeds for green projects does not constitute an event of default or, alternatively, does not provide a right for the note holder to terminate the agreement or to repayment of the loan.

The Final Terms (or pricing supplement[77]) (Part B "Other Information") refer to the issuer's GBF or include the GBF. Some banks include an explicit disclaimer in the Final Terms that non-compliance with the GBF does not constitute an event of default. One bank includes "SSA green bonds" as "eligible assets" under their GBF.

The Events of Default clause in the Contract may be drafted to include only specific events, which may not include a breach against the use of proceeds provision. As explained above, the provisions in the Contract are legally binding, whereas the disclosure in the Prospectus (on Use of Proceeds and Risk Factors) is for information purposes under the Prospectus Regulation.

Corporations

Some, but not all, corporations include a Use of Proceeds clause in their Prospectus, similar to the provision used by banks.

Almost all corporations include information about risks related to green bonds in the Risk Factors provision in the Prospectus, including a statement (i) that no assurance is given that green bonds are green, and (ii) that a failure to apply the proceeds for green projects does not constitute an event of default nor, alternatively, does provide a right for the note holder to terminate the agreement or to repayment of the loan. However, the Risk Factor provision is less homogenous than for banks, and varies in length and complexity, and is sometimes quite simple.

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75 NIB is a supranational bank jointly owned by Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway and Sweden. As the contract documents of NIB are similar to those of the banks', they are included in the analysis of the contracts of the banks above, even though the Prospectus Regulation does not apply as supranational institutions do not have an obligation to draw up a prospectus.

76 In the case e.g. of supranational institutions not covered by the Prospectus Regulation.

77 In the case e.g. of supranational institutions not covered by the Prospectus Regulation.

The Final Terms are similar to those of the banks, and generally refer to issuer's GBF. Some corporations include an explicit disclaimer in the Final Terms that non-compliance with the GBF does not constitute an event of default. At least one corporation includes green bonds held by sovereigns or municipalities as "eligible assets" in its GBF.

Notably, many corporate issuers explicitly exclude breach against the GBF as an event of default in the Contract. As explained above, the provisions in the Contract are (as opposed to the provisions in the Prospectus) legally binding.

Government-backed entities

The costs involved with a bond issuance, including fixed costs for underwriting by an intermediary (and the additional costs for putting up the GBF), make it impractical to make small offerings, and bonds therefore include substantial amounts. One solution for smaller issuers is pooling.

A specific feature of the Nordic countries is the existence of well-established, financial institutions, set up with a specific mandate to finance local governments and municipality owned corporations and state-owned entities, Kommuninvest in Sweden, KommuneKredit in Denmark and Municipality Finance in Finland (local and regional governments and government-backed entities or GBEs). NIB, a Nordic-Baltic supranational bank, has funded private and public sector entities in the Nordics.[78] The pooled funding model for the public sector is common, which helps entities with funding requirements that may not be big enough to justify standalone bond issuance, or who lack the bond expertise or in-house resources.[79] GBEs, and other entities that pool projects (such as banks), in their turn have back-to-back green loan agreements, and often grant a discount to the borrower on the yield on their green loans (irrespective of any possible discount on the yield of the green bond), and often hold a pool of projects that exceeds the projects under the green bonds issued. GBEs have made a big contribution to the Nordic green bond market. This is due to the fact that the Nordic model is based on local governments providing many services to the citizens and having a high level of fiscal autonomy, including taxation powers and the ability to raise debt.[80]

78 NIB is a supranational bank jointly owned by Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway and Sweden. As the contract documents of NIB are similar to those of the banks', they are included in the analysis of the contracts of the banks above, even though the Prospectus Regulation does not apply as supranational institutions do not have an obligation to draw up a prospectus.

79 CBI Nordic 2018, p. 10 ff.

80 CBI Nordic 2018, p. 9 ff.

As clarified above, local governments and GBEs do not have an obligation to draw up a prospectus. [81] Kommuninvest is the only local government-owned GBE which uses a prospectus, however, clarifying that this prospectus is not a prospectus for the purpose of EU legislation.[82] Thus, the legal requirements in the Prospectus Regulation are not applicable.

Kommuninvest states in the Use of Proceeds provision that, if there in respect of any particular issue there is a particular identified use of proceeds, this will be stated in the applicable Final Terms. Municipality Finance refers under the Use of Proceeds provision to the Municipal Guarantee Board Act, and Kommunekredit refers to GCP.

No local government-owned GBE has included information about green bonds in the Risk Factor provision.

The Final Terms for two GBEs refer to green bonds or the issuer's GBF (Part B "Other Information"), while the Final Terms for one GBE refer to its GBF (or describe the GBF) under "Other Conditions". One GBE includes the right to hold any excessive amounts in green bonds, municipality and/or government risk, with a certain minimum average rating.

Local governments

As local governments are exempt from the Prospectus Regulation, the legal requirements on the provision of information in a prospectus are not applicable. The local governments have generally used their existing MTN-programs to issue green bonds.

The contract documents (listing documents or information memoranda) of local governments are (with a few exceptions which are similar to the contract documents of the banks) less elaborate than for banks and corporates, and provisions on green bonds have, with a few exceptions, not been included in these documents. Most local government issuers (with some exceptions) have not made amendments to their MTN-programs to incorporate the use of proceeds for green bonds, and do not include information regarding the use of proceeds for "green" purposes or on risk factors. Instead, the local governments have generally included a provision in the Final Terms (Other Information) that the proceeds will be used in accordance with their GBF.

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[81] See *inter alia* Article 1.2 b in the Prospectus Regulation and Chapter 2 §§ 3 and 8 in The Act (1991:980) on trading in financial instruments (*Sw. Lagen (1991:980) om handel med finansiella instrument*). As described above, the exemption from the requirement to draw up a prospectus applies also to supranational banks.

[82] Kommunivest has drawn up the prospectus under national Swedish legislation, see Chapter 2 §§ 3 and 8 in The Act (1991:980) on trading in financial instruments (*Sw. Lagen (1991:980) om handel med finansiella instrument*).

One issuer has added explicit provisions on green bonds in their MTN-program, including a provision on Risk Factors and a provision in the Final Terms specifying whether the proceeds shall be used under the GBF, and that a breach against the provision on use of proceeds for green purposes does not constitute ground for termination. Another issuer has included an Annex to the Final Terms with the same contents. There are other variations, where issuers have included information on green bonds in the Final Terms (under General Provisions applicable to the notes) that the wording in the Final Terms replaces the use of proceeds provision in the offering circular.

The GBF referred to by the local governments are in many cases quite unspecified as regards eligible projects (referring mainly to general project categories), providing the issuer with optionality, and sometimes stating that the eligible projects are to be selected at the discretion of the issuer.

A general observation is that the Contracts of local governments are less elaborate and less clear than those of banks and corporations as regards the provisions regulating green bonds, and could benefit from clarification. However, as described above, it seems to be the general view on the market that the use of proceeds provisions is not binding.

To conclude, though a market practice seems to have developed among issuers, the Prospectuses and Final Terms still show some variation, and unification of the provision on Use of Proceeds in the Prospectuses and the Final Terms of the issuers would improve transparency on the market. The EU has announced that it will specify the content of the prospectus to provide issuers with additional information on green bonds.

4. PROPOSED EU REGULATIONS

The EU has gone forward with a number of proposals with the purpose to enhance the green bond market. These proposals will be analysed below.

4.1 The proposed EU Taxonomy and the EU Green Bond Standard

While the EU Commission's proposal for a regulation on the *EU Taxonomy* on what can be considered an environmentally sustainable activity (the Taxonomy Regulation) is awaiting approval by the co-legislators, the TEG has presented its Technical Report on the development of an EU classification system (the TEG EU Taxonomy Report) in June 2019.[83] The EU Taxonomy is intended

[83] EU Technical Expert Group on EU Taxonomy (TEG EU Taxonomy Report), https://

to be the basis for a unified *EU Green Bond*.[84] The taxonomy will be rolled out progressively over time and finalised step-by-step, starting with a taxonomy on climate change mitigation and adaptation activities, and some environmental activities.[85] The Taxonomy Regulation incorporates high-level "fundamental principles", which state that projects must (i) "substantially contribute" to one or more of the EU Taxonomy's environmental objectives, while (ii) not significantly harming any of the other objectives, and (iii) complying with the minimum safeguards represented by the principles and rights set out in the eight conventions identified in the International Labour Organisation's Declaration on Fundamental Rights and Principles at Work. The regulation also includes "Technical Screening Criteria" including overarching principles, metrics and related thresholds on sectors that are deemed environmentally sustainable. These fundamentals of the EU Taxonomy are intended to be used by issuers and external verifiers to verify the alignment of Green Projects during the transition period until the EU Taxonomy and Technical Screening Criteria are fully available. Furthermore, these fundamentals shall be applicable in "specific cases", when Technical Screening Criteria are considered "not directly applicable" by the issuer because of the "innovative nature, the complexity, and/or the location" of the specific Green Projects. Thus, the TEG recognises that any classification system may not be able to reflect the pace of technical innovation, as well as anticipate the full complexity of economic and corporate activities or all the specificities of national or regional circumstances. However, the flexibility provided in "specific cases" is intended to be interpreted narrowly.[86] There is a call for feedback on the EU Taxonomy until September 2019.[87]

The proposed *EU GBS*, as put forward by the TEG in its Report on the Green Bond Standard in June 2019, shall be voluntary and non-legislative and build on market best practices and, as currently presented, comprise four core components: i) alignment of Green Projects with the EU Taxonomy, (ii) a GBF, (iii) reporting and (iv) verification by *accredited verifiers*.[88] Notably, the scope of *eligible expenditures* is more clearly defined and expanded. More specifically, green assets can include physical assets and financial assets such as loans, green expenditures can include any capital expenditure and selected operat-

ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190618-sustainable-finance-teg-report-taxonomy_en.pdf.

https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5524115_en#pe-2018-3333 file:///C:/Users/ThinkPad/Downloads/PART-2018-298106V1%20(14).pdf.

84 EU Commission press release 12 March 2019, and http://europa.eu/rapid/press-release_MEX-19-1653_en.htm.

85 TEG EU GBS Report, p. 27 http://europa.eu/rapid/press-release_IP-19-3034_en.htm.

86 TEG EU GBS Report, p. 27 f. https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190618-sustainable-finance-teg-report-green-bond-standard_en.pdf.

87 https://ec.europa.eu/info/publications/sustainable-finance-teg-taxonomy_en.

88 TEG EU GBS Report, p. 32 f., and draft EU GBS in Annex 1.

ing expenditures such as maintenance costs related to green assets, that either increase the lifetime or the value of assets, as well as research and development costs. Green expenditures for sovereigns and sub-sovereigns can also include relevant public investments and public subsidies.[89] The TEG proposes that what needs to be included in the GBF shall be expanded and formalised, reflecting the evolution of market practice.[90] Prepared drafts to an EU GBS and a GBF are presented.[91]

The TEG recognises that post-issuance third-party verification can be perceived as costly and of variable quality, but stresses that it can strengthen the credibility of information published by the issuer, protect the integrity of the market and reduce the risk of greenwashing. Thus, the TEG proposes clarification and standardization of *external review* procedures, with reviews taking place both before and after issuance. Verification becomes mandatory, and will only be provided by external verifiers that have been *formally accredited* through a centralised accreditation scheme.[92] [93] A centralised approach to such accreditation to be further developed over the coming months, and a voluntary interim registration process for an transition period is proposed.[94] Both pre-issuance verification focused on the GBF and post-issuance verification covering the alignment of actual use of proceeds with the GBF, the taxonomy and the use of funds is required. Based on existing market practice, two types of reporting are required under the EU GBS: allocation reporting and impact reporting. Allocation reporting and impact reporting can be either on a project-by-project level or on a portfolio level, where confidentiality agreements, competitive considerations, or a large number of underlying projects limit the amount of details that can be made available. Verification of estimated impact reports is not mandatory. Allocation reporting and impact reporting shall be published on the issuer's website or any other communication channel.[95] The TEG also presents a Reporting Template.[96]

Implementation of the EU GBS is proposed to take place through a non-binding EU act, such as a Recommendation or a Communication. However, the TEG further recommends that the Commission monitor the rate of adoption in the market and impact of the EU GBS, and evaluate if the standard

89 TEG EU GBS Report, p. 27 f.

90 TEG EU GBS Report, p. 28 f. and Annex 2.

91 TEG EU GBS Report, Annex 1 and 2.

92 TEG EU GBS Report, p. 2 and 31 f.

93 The TEG refers to the requirements for "approved verifiers" developed by CBI and the rules being elaborated by ISO (expected to be based on ISO 17029) on relation to its work on the Green Bond Standard as relevant, see the TEG GBS Report, p. 37.

94 TEG EU GBS Report, p. 25 and 40 f.

95 TEG EU GBS Report, p. 29 f.

96 TEG EU GBS Report, Annex 3.

has met its goals, and then consider further supporting action including possible legislation after an estimated period of up to three years.[97]

As the TEG also recognises, the European and international green bond market does not suffer from any significant market dysfunction, and it benefits from structured and reactive best market practice by the GBP.[98] One of the main hindrances of the enhancement of the green bond market is the lack of green projects and green assets.[99] Though the TEG recognises that its mandate is limited and focused on the financial sector, it stresses that that policy measures to enhance real economy investments in green assets and infrastructure are essential for achieving the targets. Thus, the development of green finance should be facilitated, and complemented by other types of direct policy measures and incentives in the real economy. A unified EU Taxonomy and an EU GBS could provide a robust market standard that could lay the basis for policy-makers to design policies and instruments to incentivise green bond issuance and support market growth.[100] However, as the green bond markets are continuously meeting investor demands by developing new financial products such as green loans, there is a need for flexibility and non-exclusivity in order to ensure that the green bond market is not hindered, and to provide for the introduction of new innovative products and support the transition from brown to green.[101]

TEG recommends that the standardised verification programme to ensure alignment with the EU GBS could provide a robust model for the broader enabling "ecosystem" of verification for green finance in Europe, and that the procedure could also be relevant for other financial instruments beyond green bonds, such as green loans and private placements.[102]

As described above, there is a call for feedback on the EU Taxonomy, and the proposed EU Taxonomy and EU GBS standard are subject to debate. CICERO, the dominant external review provider to Nordic issuers, stresses that the market is characterized by lack of supply of green bonds to meet investor demand, and expresses concerns that the design of the proposed EU GBS may make it difficult to follow up in practice for many market participants, and that aligning green bonds with the EU GBS would increase the cost of external

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97 This monitoring could be done e.g. through the for example through the EU Platform on Sustainable Finance d Verification of estimated impact reports is not mandatory. escribed in Article 15 in the Taxonomy Regulation. See TEG EU GBS Report, p. 31 f. and 56.

98 TEG EU GBS Report, p. 23.

99 TEG EU GBS Report, p. 21.

100 TEG EU GBS Report, p. 9 and 25.

101 TEG EU GBS Report, p. 17.

102 TEG EU GBS Report, p. 34 f.

reviews.[103] [104] Natixis, a French bank offering corporate and investment banking services, also comments *inter alia* on the stringency of the proposed thresholds of the EU Taxonomy and comments that the transitioning activities approach introduced is narrow.[105]

4.2 The Prospectus Regulation

The EU Commission has also announced that it would, within the framework of the Prospectus Regulation, specify the content of the prospectus for green bond issuances to provide potential investors with additional information.[106] However, the current draft documents seem not to specifically provide details on disclosure of use of proceeds for green bonds.

The TEG suggests that a Use of Proceeds provision be required in the legal documentation, for instance in the Base Prospectus or in the Final Terms.[107]

In a Position paper to the EU Commission, the Dutch and French financial market supervisory authorities have advocated a regulation in the Prospectus Regulation providing greater transparency towards investors to allow the development of the green bond market: if an issuer chooses to qualify its bond as "green", the prospectus should include additional information regarding the use of proceeds, the selection of funded projects and the management of proceeds. The supervisory authorities propose that the issuer should also specify *inter alia* whether it intends to (i) comply with a green bond standard, (ii) to publish a reporting on the use of green bond proceeds, and (iii) to mandate third party verification.[108] [109]

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103 Environmental Finance, "Green Bond market should get a boost from proposed standards, say insiders", 18 June 2019, https://www.environmental-finance.com/account/my-account.html#.XQkb71bLLko.twitter.

104 See also CICERO, Feedback on Green Bond Standard, 2 April 2019, https://static1.squarespace.com/static/5bc5b31a7788975c96763ea7/t/5cab09bda4222f438a0dadef/1554713022280/CICERO+GREEN+feedback+on+Green+Bond+Standard+02042019.pdf.

105 Cédric Merle, Orith Azoulay, The European taxonomy on environmentally sustainable economic activities, 2019, https://gsh.cib.natixis.com/api_website_feature/files/download/7819/eu_taxonomy_vade_mecum_to_digest_the_report_from_the_teg__natixis_green___sustainable_hub.pdf.

106 EU Action plan, Appendix II, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0097&from=EN.

107 TEG EU GBS Report, p. 13.

108 https://www.afm.nl/en/nieuws/2019/apr/transparantie-prospectus-groene-obligaties file:///C:/Users/ThinkPad/Downloads/Green%20bond%20Prospectus%20-%20Position%20Paper%20-%20AMF%20and%20AFM%20-%20April%202019.pdf.

109 ICMA has welcomed the inclusion of use of proceeds as a standalone section in addition to the strictly prescribed information proposed to be set out in a Final Terms document under the consultation Regulation. (Capital Markets Green Bonds, A flourishing market, September 2018), http://www.elexica.com/en/legal-topics/capital-markets/051118-green-bonds-a-flourishing-market.

The Federation of European Securities Exchanges (FESE)[110] agrees that market standards could benefit from further strengthening by recommendations or some level of regulation, but points out that the Prospectus Regulation only applies to bonds listed on regulated markets, that bond issuances in the EU are currently conducted also through private placements, and that many green bond issuances are issued by states or their local authorities, which are exempt from the Prospectus Regulation. These issues are already subject to lower legally binding requirements compared to listed instruments, and introducing further prospectus requirements for listed bonds would risk creating an even more unlevel playing field. Also, as the product type is constantly evolving, requirements within the Prospectus Regulation could risk excluding future developments within the green bond sphere. A Green Bond Prospectus would in the absence of a taxonomy be open to interpretation, and could according to FESE lead to inequitable application and also the potential for litigation in the event of default. This could lead to issuers minimising the risk, and perhaps valuing the impact of the green bond at a lower level. If green bonds would provide lower yield and perhaps also have less ambitious objectives, green investments could be less attractive to investors. If the Prospectus Regulation would be modified to impose additional requirements on green bond issuance, FESE argues that consideration should be given to ways of incentivising green bond issuance, for instance by making the prudential regulation for green bonds more attractive. The Prospectus Regulation should be broad enough to cater to the ever-evolving green bond sphere. Tracking and reporting of use of proceeds is very important and should be compulsory, but must also be flexible to allow for new projects in new industries where no green bonds have yet been issued.[111]

As I have described above, the Nordic issuers' regulation on green bonds in the Prospectus varies, and a unified approach in line with the existing market practice, and specifying reporting requirements would increase transparency and facilitate for market actors. However, it should be taken into account that as the product type is constantly evolving, any regulation of the green bond should be flexible and provide for the development of new and innovative products in new industries, in order not to hinder the growth of the market. The risk for different interpretations and litigation should be considered, as any additional risk would come at a price for the issuer and add to the transaction costs. It can also be noted that many green bonds on the Nordic market are issued by GBEs and local governments and other entities that are exempt from the Prospectus Regulation, thus potentially creating a more unlevel playing field for green bond issuers.

110 https://fese.eu/about-fese/.

111 See FESE Position Paper on Green Bond Prospectus, 29 April 2019, https://fese.eu/app/uploads/2019/05/190429-FESE-Position-Paper-on-Green-Bond-Prospectus.pdf.

4.3 Fiduciary duties on investors and climate-related disclosures

The Commission is moving rapidly to introduce regulations on fiduciary duties for investors and regulations on climate-related non-disclosure for entities. In March 2019 the EU Parliament and EU member states agreed on new rules on disclosure requirements related to sustainable investments and sustainable risks. Financial market participants and financial advisors must integrate ESG risks and opportunities in their processes as part of their duty to act in the best interest of clients, and the regulation also sets out uniform rules on how those financial market participants should inform investors about their compliance with the integration of ESG risks and opportunities. The regulation will cover five financial services sectors, including investment funds, private and occupational pensions, and individual portfolio management.[112] [113] [114] [115]

Since 2018, the NFRD requires large public interest entities to disclose material information on key ESG aspects and how risks stemming from them are managed. Climate-related information is a critical contributor to efficiently directing capital to investments that drive solutions for climate change mitigation and adaptation. The EU Commission has published a supplement on reporting climate-related information to the guidelines of the NFRD that integrates the TCFD recommendations and provides guidance to companies that is consistent with the NFRD and the recommendations of the TCFD.[116]

The TCFD are centred on four widely adoptable voluntary recommendations on climate-related financial disclosures that are applicable to both non-financial and financial companies across sectors: (i) governance, (ii) strategy, (iii) risk management, and (iv) metrics and targets. The four overarching recommendations are supported by recommended disclosures that build out the framework with information that will help investors and others understand how reporting

[112] Amendments to Directive (EU)2016/2341 and supplement the provisions of Directives 2009/65/EU, 2009/138/EC, 2011/61/EC (EU) 2016/2341 and Regulations (EU) No 345/2013 and (EU) No 346/2013; http://www.europarl.europa.eu/doceo/document/A-8-2019-0175_EN.html.

[113] The regulation is built around three pillars: (i) elimination of greenwashing and an increase of market awareness on sustainability matters, (ii) regulatory neutrality, rules to introduce a disclosure toolbox to be applied in the same manner by different market operators, and (iii) a level playing field.

[114] European Commission Press release 7 March 2019, http://europa.eu/rapid/press-release_IP-19-1571_en.htm, https://data.consilium.europa.eu/doc/document/ST-7571-2019-ADD-1/en/pdf.

[115] https://www.ipe.com/news/esg/eu-sets-out-plan-for-investor-sustainability-disclosure-rules/10029957.article.

[116] Communication from the Commission Guidelines on non-financial reporting: Supplement on reporting climate-related information, 19 June 2019, http://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf.

companies assess climate-related risks and opportunities.[117] [118] Key features of the recommendations are that they are designed to solicit decision-useful, forward-looking information on financial impacts and bring the "future" nature of issues into the present through scenario analysis, with is strong focus on risks and opportunities related to the transition to a lower-carbon economy.[119] The TCFD has considered the existing voluntary and mandatory climate-related reporting frameworks in developing its recommendations, including those developed by the CPD, Climate Disclosure Standards Board, the Global Reporting Initiative, the International Integrated Reporting Council and the Sustainability Accounting Standards Board. The intention is that the TCFD recommendations shall provide a common set of principles that should help existing disclosure regimes come in closer alignment.[120]

4.4 Incentives discussed

The TEG discusses potential incentives that could be implemented and that could contribute to establishing a "level playing-field" between green bond issuers and issues of conventional bonds, as well as economic and non-economic incentives that could be attached to the Green Bond Standard to further scale up the market. Such incentives schemes would be *aimed exclusively* to bonds that comply with the requirements of *the EU GBS*. These could include, short term, (i) encourage investors to increase their holdings in green bonds, (ii) disclosure of EU GBS compliant green bond holdings by European institutional investors, (iii) encourage Central Banks and Supervisors to lead by example to scale up green finance, (iv) encourage banks to find ways of enhance pricing of green assets (apply positive factors on a voluntary basis), (v) provide financial incentives such as credit enhancement for non-investment grade green bond issuers (public credit guarantee) or subsidising green bond issuers in obtaining verification, (vi) encourage EU public and private sector bond issuers to adopt the EU GBS, and (vii) use the requirements of the EU GBS as technical criteria for the future EU ecolabel for financial products.[121] [122]

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117 The Financial sector industries include banks, insurance companies, asset managers and asset owners, and the Non-financial groups include Energy, Transportation, Materials and Building, and Agriculture, Food, and Forest products.

118 TCFD Final Report 2017 (TCFD 2017), p. v, https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf, The TCFD Overview of 2018 Status Report, 17 September 2018 (TCFD 2018 Status Report), p. 2 f. https://www.fsb-tcfd.org/wp-content/uploads/2018/08/FINAL-2018-TCFD-Status-Report-092518.pdf.

119 TCFD, p. 41.

120 TCFD, p. 33.

121 TEG EU GBS Report, p. 44 f.

122 Incentives referred to in the report that are more complex and require further analysis: tax incentives, financial sector regulation and prudential rules. Assessing the differences in risk

The TEG welcomes the recent political compromise on the sustainability-related disclosures regulation regulating how financial companies shall integrate environmental, social and governance factors in their investment decisions[123] and recommends that the EU Commission adopts an ambitious disclosure regime on EU Green Bonds and other green bond holdings by institutional investors such as asset managers, pension funds and insurance undertakings, and for underwriters to disclose the portion of green bonds underwritten.[124]

Reference can be made to experience in France with mandatory climate-related disclosures by institutional investors under Article 173 (vi) of the French Energy Transition for Green Growth Act adopted 2017, which has demonstrated how increasing transparency can trigger demand and lead to growth in the green bond markets. Investors are required to comply with these new requirements or explain why they do not apply them (approach called "comply or explain"). Such regulation could provide additional credibility to the EU green bond market that could have a major impact on demand.[125]

A Nordic example of a national initiative to enhance responsible investments that can be mentioned are the recent amendments to the Swedish Act on general AP Funds, stating that the Swedish AP Pension Funds shall manage the funds in an exemplary manner through responsible investments and responsible ownership, at which special attention shall be given to promoting sustainable development, however, without compromising on the overall target for the investment, which is to provide the best possible benefit for the pension insurance.[126]

The TEG also mentions incentives that could be more complex to implement which could work to enhance green investments at large and are not necessarily limited to green bonds, such as tax incentives and financial sector regulation and prudential rules assessing the differences in risk profile of green and non-green financing, starting with mortgages. The TEG notes that some banks have started to price mortgages against energy-efficient properties at lower rates,

profile of green and non-green financing, starting with mortgages.

123 Sustainable finance: Presidency and Parliament reach political agreement on transparency rules, updated March 2019: https://www.consilium.europa.eu/en/press/press-releases/2019/03/07/sustainable-finance-presidency-and-parliament-reach-political-agreement-on-transparency-rules/ https://data.consilium.europa.eu/doc/document/ST-7571-2019-ADD-1/en/pdf.

124 TEG EU GBS Report, p. 44 f.

125 TEG EU GBS Report, p. 49 f., and Article 173(vi) of the French Energy Transition for Green Growth Act https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=96FE72333C6BC7A3D19F5A943F2B5DF5.tpdila15v_2?idArticle=JORFARTI000031045547&cidTexte=JORFTEXT000031044385&dateTexte=29990101&categorieLien=id https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031800648&categorieLien=cid.

126 New section 1a to Chapter § 4 in the Act (2000:192) on general AP Funds entered into force on 1 January 2019. It can be noted, though, that although the Swedish AP funds shall take ESG factors into account, they shall not compromise as regards return on the investment.

implying a lower risk premium.[127] The mandate given to the EBA in the recent amendment of the Capital Requirements Directive to assess whether a dedicated prudential treatment of assets exposed to activities associated substantially with environmental and/or social objectives, in the form of different capital charges, a "green supporting factor", would be justified from a prudential perspective is mentioned.[128] According to Vice-President Valdis Dombrovski, any dedicated treatment of green assets would have to be fully consistent with the upcoming EU Taxonomy and any reduction of capital requirements would need to be risk-based.[129]

It can be noted, though, that voices have been raised that caution should be exercised at providing capital relief for banks. Mark Carney, Bank of England governor, is against lowering capital requirements for banks if they invest in a green project per se, and argues that banks should only get favourable treatment if the risk of the investment is demonstrably lower.[130] Many central banks oppose calls to support sustainable finance by lowering capital requirements for green lending and penalising "brown" assets, and argue that unless there is clear evidence that green finance involves a lower risk, such a policy "could compromise the key objective of maintaining capital buffers, which is to safeguard the system of sound and solvent banks". Instead, it is argued, the focus of the banks is on better disclosure of risks.[131] [132] It is also stressed that the problem of the green bond market is the lack of projects, not lack of demand. If central banks would target green assets this could be contra-productive. Paul Fisher, former Bank of England policymaker has stated that "We are short of green assets, not of money to invest in them – if central markets go in, they could undercut the market."[133]

If incentives are connected to bonds that fulfil the EU GBS, this could in my opinion mean the creation of a new "green bond product" which, as opposed to the present green bond, would have conditions that differ from those of a plain vanilla bond, e.g. when it comes to pricing. It cannot be excluded that

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127 TEG GBS Report 2019, p. 49 f.

128 TEG GBS Report 2019, p. 50 f.

129 Vice-President Valdis Dombrovski, EU Commission, Speech Responsible Banking: VP's speech at the European Banking Federation and UN Environment Programme Workshop, 5 February 2019, https://ec.europa.eu/commission/commissioners/2014-2019/dombrovskis/announcements/responsible-banking-vps-speech-european-banking-federation-and-un-environment-programme-workshop_en.

130 Mark Carney, Financail Times, Carney plans to test UK banks' resilience to climate change, 17 December, 2018, https://www.ft.com/content/0ba2390a–ffd4-11e8-ac00-57a2a826423e.

131 Financial Times: Central banks test water on climate risks, 5 December 2018, https://www.ft.com/content/6af35cee-d3a7-11e8-9a3c–5d5eac8f1ab4.

132 See also EU observer, Opinion Adriana Neligan and Markus Demary, The risks behind the "green bond" boom, 21 June 2018, https://euobserver.com/opinion/142149.

133 Paul Fisher, former Bank of England policymaker who is a fellow at Cambridge University's Institute for Sustainability Leadership in Financial Times: Central banks test water on climate risks, 5 December 2018.

such a price difference could be a disincentive for certain investors, who cannot take advantage of the incentives, to invest in green bonds. A more significant difference in pricing could also increase the risk for greenwashing.

5. IMPACT REPORTING

5.1 About impact reporting

In the absence of a legal definition of what constitutes a green bond, impact reporting is expected to provide transparency to the green bond market and to ensure investors and issuers that green bond proceeds are invested into the development of sustainable, low-carbon and climate resilient societies. However, impact reporting frequency, format and methodology varies greatly between green bond issuers.[134] This makes comparing the impact of different issuers and bonds complicated, raising the transaction costs for existing market actors and increasing the threshold for new actors to enter the green bond market.[135] Lack of common impact reporting standards also increases the risk of greenwashing. Thus, efforts to harmonize impact reporting are expected to increase the effectiveness of the green bond market by lowering transaction costs for market participants and increasing transparency and benchmarking opportunities.

To harmonize reporting, the following generally accepted, voluntary guidelines have been developed: (i) ICMA/Green Bond Principles – Sectoral guidelines for reporting,[136] (ii) IFC – Harmonized Framework, (iii) Nordic – Position Paper on green bonds impact reporting,[137] (iv) Luxembourg Green Exchange – Mandatory reporting framework and (v) the Climate Bonds Standard.[138] Sectoral guidelines developed by ICMA include energy efficiency, renewable energy, water and wastewater projects, and waste management projects, and guidelines for additional sectors are under development. The ICMA and the EU encourage the establishment of additional references for impact reporting that others can adapt and/or adapt to their needs.

In the Nordic green bond market, the GBP and the Nordic Position Paper are the most commonly used reporting standards. Both frameworks recommend issuers of green bonds to publish annual investor reports separately from

[134] Climate Bonds Initiative 2019: Pos-Issuance Reporting in the Green Bond Market. https://www.climatebonds.net/files/reports/cbi_post-issuance-reporting_032019_web.pdf.

[135] Jane Wilkinson, Head of Sustainable Finance at LuxSE, Environmental Finance 5 January 2018 "Reporting impact: identifying best practice"

[136] https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/development+impact/resources/201809-mdbs-additionality-framework.

[137] https://kommuninvest.se/wp-content/uploads/2019/02/NPSI_Position_paper_2019.pdf.

[138] In addition, there are the following country specific guidelines: People's Bank of China Green Bond Guidelines and Endorsed Project Catalogue, Securities Exchange Board of India (SEBI) guidelines for Green Debt Securities, Ministry of Japan Green Bond Guidelines.

their conventional financial and sustainability reports. The GBP recommends that issuers should report on the amounts allocated to projects, while the Nordic Position Paper suggests using disbursed amounts. While impact reporting is voluntary under the GBP, it is mandatory under the Nordic Position Paper. Both frameworks call for issuers to disclose the methodology of impact assessment.

5.2 The analysis

The analysis of 40 green bond issuers from Sweden, Denmark and Finland which have outstanding green bonds maturing in 2019 or later reveals a relatively high level of consistencies of financial reporting.[139] All these issuers publish an annual report to investors which includes information about the amount of green bond proceeds disbursed to individual projects or assets, with the exception of one bank which reports on a portfolio level citing confidentiality issues. Most issuers also include a list of eligible projects and details on the selection process and allocation of outstanding proceeds. However, only eleven issuers also report the aggregate amount of proceeds disbursed to the categories defined as eligible according to their individual GBF, and only one issuer with multiple bonds provides reporting for each individual bond.

The analysis shows even greater inconsistency in how issuers report on the impact of their green bonds. Most commonly, issuers report impacts in terms of amount of CO2 avoided or reduced, installed capacity of renewable energy, renewable energy produced, or the amount of energy saved. Reporting on issues not directly related to climate mitigation or energy, such as biodiversity protection or adaptation, are largely absent from issuers' impact reports. Furthermore, while all issuers provide impact reporting, only 10 provide a detailed description of the methodology of how they measure impact. However, the number of issuers that base their impact reporting on a specific methodology is higher when considering that real estate companies and banks use building certification standards in their reporting.

The data analysis also shows that only six issuers use the recommendation of the Nordic Position Paper of Public Issuers in their impact reporting, and only three follow the recommendations of the IFC – Harmonized Framework. Most impact reporting also lacked emission baselines or science-based targets of emission reduction[140] which could help set achieved emission reduction in con-

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139 The analysis is limited to green bonds issued before 2018 and with a maturity date in 2019 or later. Most of the analysis is based on ex-post reporting date for 2017 and, where available, reporting for 2018 published until 15 March 2019.

140 This refers to emission reduction target in line with the level of decarbonization required to keep global temperature increase below 2 degrees Celsius compared to pre- industrial temperatures as described in the Fifth Assessment Report of the Intergovernmental Panel on Cli-

text.[141] Furthermore, no reference to ICMA's sectoral impact reporting guidelines were found in any of the reviewed ex-post impact reporting documents. Even if issuers follow established impact reporting guidelines, they can adjust impact metrices to their local circumstances. Such as is the case of several Swedish issuers that, instead of using the European grid emission factors proposed in the Nordic Position Paper, use the more relevant local grid emission factor to calculate how much carbon emission they have avoided or reduced.

It should be noted that the choice of emission factor has considerable influence on the calculated amount of abated carbon emissions as the share of power from renewables and other low-carbon sources is much higher in the Nordic region compared to the European average.

At the same time, the analysis also shows that impact reporting is increasing in both quantity and quality. Particularly Swedish issuers have started to update their GBF to include commitments to more detailed impact reporting. Based on the available reporting for 2018, it can also be expected that many public issuers will align their impact reporting to the recommendations of the Nordic Position Paper in the coming years. Further changes to reporting practices can be expected if and when the EU GBS has been introduced into the market.

Impact reporting practices of green bond issuers in the three countries may further change in the future in response to the EU Green Bond Standard (GBS) which is being developed as part of the EU Action Plan for Sustainable Finance. According to the final report of the TEG[142] impact reporting under the GBS should be on a project-by-project level or on a portfolio level. Issuers should also include in their impact reporting information and, when possible, metrics about the projects' environmental impacts, which needs to be in line with the commitment and methodology described in the issuer's GBF. The TEG suggests the newly published Harmonized Framework for Impact Reporting by the IFI and ICMA/GBP and the Nordic Position Paper as acceptable impact reporting methodologies but leaves it up to issuers to decide which methodology they want to use. Unlike in the case of allocation reporting, the TEG does not require external verification of impact reporting.

mate Change (IPCC AR5). https://sciencebasedtargets.org/wp-content/uploads/2018/10/SBTi-call-to-action-1.4.pdf.

141 CICERO has made the comment that assessing baseline-setting methodology and emission reduction methodology could increase the costs of external reviews of green bonds https://static1.squarespace.com/static/5bc5b31a7788975c96763ea7/t/5cab09bda4222f438a0dadef/1554713022280/CICERO+GREEN+feedback+on+Green+Bond+Standard+02042019.pdf.

142 https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190618-sustainable-finance-teg-report-green-bond-standard_en.pdf.

6. DISCUSSION AND PROPOSALS

Two key issues to be discussed in order to further the green bond market and make it more effective are enhancing the green bond market, while ensuring that the proceeds are used for green projects (avoiding greenwashing), without adding risk or costs, and the need for more standardized, comparable and easily accessible format for impact reporting.

6.1 No undertakings provide that proceeds are used for green purposes

The first research question is whether the Contract include guarantees that "green" bonds actually are green.

The analysis of the Reviewed Documents shows that the Nordic issuers do generally not include provisions in the Contracts that guarantee that the proceeds are used for green projects.

6.2 Proposed amendments to the green bond documentation

The second research question is if the green bond contracts documentation could be amended to include guarantees or undertakings.

Legal definitions and unified prospectus regulations

As explained, the bond is a highly standardized instrument. Green bonds are no different from conventional bonds from a legal or financial perspective, and there is no significant price difference between green bonds and conventional bonds. Considering this, and considering the cross-default provisions generally included in the issuers' loan contracts, green bond issuers have not been willing to undertake additional risk.

Other reasons referred to by the issuers for not including guarantees are *inter alia*: (i) that there is no clearly regulated (legal or otherwise) definition of a green bond, (ii) that investors have different expectations and requirements as regards investment criteria or guidelines, and (iii) that there is no approved third-party certification to guarantee the greenness.

A unified EU Taxonomy and EU Green Bond Standard, including an accreditation of third-party reviewers, would provide unification and standardization that could provide a basis for policy measures and facilitate contractual and legal regulation.

Presently, the prospectus needs only contain information that enables the investor to make an informed assessment of the securities offered, and there are no regulatory requirements on issuers of green bonds as regards the "greenness".

A regulation on unified presentation of green bonds in the prospectus could increase transparency and harmonization. However, it should be noted that these requirements would only apply to issuances under the Prospectus Regulation, and not apply on states and local authorities or private placements and thus risk creating an unlevel playing field. Furthermore, if the regulation would involve increased risk for default, this could lead to issuers minimising the risk and setting less ambitious goals. The standards would have to be flexible enough to allow for new projects in evolving industries or the development of the market might be hindered. It should also be noted that these regulations would be limited to issues under the Prospectus Regulation and not apply on GBEs, local authorities, supranational institutions or other entities that are exempt from the Prospect Regulation.

Undertakings

Definitions could facilitate for including "green" undertakings in the Contracts. On the other hand, the introduction of guarantees or undertakings in the Contract, would involve additional risk for the issuer, and come at a cost. A more significant price difference between green bonds and conventional bond would be a disincentive for investors to invest in green bonds, and hinder the growth of the green bond market.

A serious consideration when weighing in the potential benefit of additional contractual assurance is the risk that an inadvertent failure by an issuer of green bonds to apply some of the proceeds as stipulated may then lead to cross-default clauses in other financing of that issuer being triggered, with a resulting domino effect on virtually all of the issuer's debt financing (which may become repayable early and all at the same time). The risk would depend upon the drafting of a particular issuer's cross-default provisions and would be different for the various suggestions itemised; the highest risk typically being when the green bonds conditions include a put option (for the investor). Since cross-defaults would be triggered by provisions in the issuer's other financing they also cannot be managed fully by drafting in the green bond conditions.

It can be noted that there does not currently appear to be demand from investors to require "green" undertakings, though this could change.[143] I will below discuss some alternatives to undertakings that could be considered in order to provide some assurance to investors.

1. A price regulation mechanism related to performance

There is a need for a greater transition of brown projects to green. A price regulation mechanism with a lower yield provided that the bond fulfils certain

[143] See White & Case 2018.

environmental or sustainability criteria, could be suitable for projects which are under such transformation, and where there are uncertainties connected to the performance of the projects.

A comparison can be made to loans where the interest rate has a direct link to the company's sustainability performance, with a reduction of the cost of capital if the borrower reduces its impact on the environment, such as the following examples: Philips signed an agreement where the interest rate has a direct link to the company's year-on-year sustainability performance improvement. The deal was led by bank ING. Finnish company Stora Enso has signed a revolving credit facility where part of the pricing is based on the firm's ability to reduce greenhouse gas emissions. The French food producer Danone signed a credit facility led by BNP Paribas which includes a credit line adjustment mechanism based on ESG criteria, meaning that if the firm outperforms, its coupon will be discounted and if it underperforms, it will pay a premium.[144] These loans are sometimes called sustainability improvement loans whose remuneration and/or covenants are linked to the borrower's achievement of pre-determined environmental benchmarks. In contrast to asset based green bond and loans, sustainability improvement loans look to performance across the whole borrower, not just part of its business. LMA, APLMA and LSTA released with the support of ICMA in March 2019 the Sustainability Linked Loan Principles (SLLP).[145]

It can be noted that AXA Investment Managers has called for a new type of bond to help carbon-intensive companies to finance their gradual shift away from fossil fuels, "transition bonds". The transition bonds would be used solely to finance certain projects, such as carbon capture and storage, co-generation plants or transport infrastructure. Such bonds could help to overcome the challenge of providing capital only to companies that are already green, but to those which have ambitions to become green. The asset class would be used by companies solely to finance transition projects, with a high level of transparency to give investors' confidence about how their capital is used. Thus, the green bond market could further the transition from brown to green which is necessary if the ambitious targets under the Paris Agreement are to be achieved. The green bond market could then remain a market which prioritises ambition, quality and integrity. The creation of a transition bond market would help maintain the level of quality of the green bond market while offering a source of financing for other activities necessary for the transition to a low carbon world and economy.[146]

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[144] Anna Hirtenstein, Bloomberg, Going green can get you cheaper loans at this Dutch bank, 4 June 2018 https://www.bloomberg.com/news/articles/2018-06-04/going-greener-can-get-you-cheaper-loans-at-this-dutch-bank.

[145] https://www.lma.eu.com/application/files/8015/5307/4231/LMA_Sustainability_Linked_Loan_Principles.pdf.

[146] https://www.axa-im.se/content/-/asset_publisher/5LDAyYOC9Jb1/content/axa- https://www.investmenteurope.net/news/4002601/axa-im-calls-transition-bonds-help-compa-

As the green bond market expands to corporations with less experience from sustainability, a price-regulation could expand the green bond market to for issuers with less experience from sustainability, such as "brown" operations that want to make the transition to "green". The current price difference may not be significant enough to motivate differentiated pricing, depending on the "greenness" of the bond, and a discount could be a disincentive for investors. On the other hand, there is research suggesting that an investment involving a transition of a brown operations to green could add to corporate value and perhaps motivates a price difference.[147]

At the development of new products, the high standardization of the bond market, with investors avoiding detailed provisions and preferring "plain vanilla" regulation with a fixed income, should be taken into account. With green loans, and particularly innovations such as sustainability-rating linked loans, it is possible to get more bespoke financial terms".[148] Green bond with a pricing mechanism could perhaps constitute a new instrument (product).

2. A step-up price regulation mechanism

Another alternative would be to have a step-up of the interest if the bond does turn out not to be green. This would involve an additional risk for the issuer, and come at a cost. A prerequisite would therefore be that a price difference would be accepted by the investors and not seen as a disincentive, see the reasoning above.

3. A Call Option for the issuer

A call option for the issuer (perhaps in combination with a price regulation mechanism under 2 above) would mean an additional uncertainty for the investor. The issuer would probably get a negative premium, which would not facilitate for the expansion of the green bond market. However, this alternative could be an option for projects where there is uncertainty related e.g. to political decisions which can be altered meaning leading to the cancellation of the project in question. One example is the Mexican government's decision to scrap the build of the Texcoco airport.[149] Another situation may be where there is uncertainty as to whether a project will perform as intended, due to factors outside the control of the issuer. In many cases such failure of one project can be resolved

nies-green investment-managers-calls-for-new-transition-bonds-to-help-companies-go-green/23818 https://www.ipe.com/news/asset-managers/axa-im-calls-for-transition-bonds-to-help-companies-go-green/www.ipe.com/news/asset-managers/axa-im-calls-for-transition-bonds-to-help-companies-go-green/10031632.fullarticle.

147 Flemmer 2018, p. 1 and 34, Zerbib 2019, p. 40 and 50 f.

148 Helen Avery, The growth of green credit, Euromoney, April 9 2018 https://www.euromoney.com/article/b17ppgs1d2pd8b/the-growth-of-green-credit.

149 The series of green bonds issued to help finance a low-carbon terminal at the new airport were downrated by Moody's after the decision to scrap the project.

by replacing the project in question by another green project, but this may not be possible if the project is the main project financed by the green bond, or if there is a lack of eligible projects. However, it has to be ascertained that a call option could risk that the issuer would not put the issuer in a default-situation which could result in cross-default. This would depend on the drafting of the particular issuer's cross-fault provisions, see above.

4. A Put Option for the investor

A put option for the investor would mean additional uncertainty for the issuer as it would have an impact on the issuer's balance sheet, and add to the issuer's financial risk. Furthermore, there is a significant risk that a put option for the investor could risk that the issuer would be in a default-situation, resulting in cross-default, depending on how the issuer's other loan contracts are drafted.

5. Purchase of other green bonds

Finally, it should be noted that the issuer could include the option that proceeds that are not invested eligible projects can be held in certain other specified green bonds in its GBF (see section 4.3 above). This would provide the issuers with some flexibility.

A common mechanism for deciding whether the criteria are fulfilled, would be to refer to Expert Determination, at which (accredited) external reviewers could act as Experts.

The above provisions would provide a regulated and structured process for the event a bond would turn out to no longer be "green". Provided that the issuer can avoid a default-situation (that could trigger cross-default, see above), the parties would avoid the uncertainty that a court trial would bring about. Generally, participants in the financial markets prefer certainty to a potential uncertain conclusion by the courts, and this is particularly true as regards the highly standardized debt market.

6.3 Standardizing and harmonizing impact reporting

The third research question of this study is the standardization and harmonization of impact reporting practices. Actions to establish universal practices of impact reporting are necessary to enhance the transparency of the green bonds market, reduce the risk of greenwashing, give investors, issuers and regulators the opportunity to meaningfully compare the economic performance and environmental impact of different green bonds and issuers, and lower monetary and transaction costs for existing and new market actors.[150]

[150] Environmental Finance, Jane Wilkinson, Head of Sustainable Finance at LuxSE, "Reporting

The analysis of outstanding green bonds presented in this study has shown that impact reporting of Swedish, Danish and Finnish green bond issuers is highly inconsistent. This finding reflects the lack of a commonly agreed practices of impact reporting in terms of frequency, format and methodology found in the global green bond market. The analysis also showed that only a minority of issuers disclose the methodology behind their impact reporting. This is even true in the case of carbon emission reduction where there exist established impact metrices. Taken together, findings strongly suggest that the international green bond market needs standardized and harmonized impact reporting.

To start with, what is required is a generally accepted methodological approach to impact reporting that includes a common taxonomy of what constitute eligible projects, a set of methods and indicators to assess impacts and recognized benchmarks. Importantly, this methodology needs to be context specific, considering already developed sector-specific impact assessment guidelines, such as ICMA's sectoral guidelines. At the same time, the methodology should include indicators and metrices that are comparable irrespective of context. This is particularly relevant for carbon emission accounting, where different methods and parameters can lead to very different outcomes[151] and a lack of comparability and transparency.

In addition, it would help market stakeholders to compare green bonds if issuers would adopt the same impact reporting format. This would make the impact reports easier to prepare and facilitate the investors' interpretation of the reports and easier for investors to aggregate the information from various reports prepared by different issuers. The impact report format could consist of a summary and a more detailed report.

The summary could consist of information at the portfolio level e.g. amount of proceeds disbursed to eligible categories (e.g. those defined by the GBP or the EU Environmental Objectives).[152] It would also be recommendable if the summary would include quantitative and qualitative assessment of the project portfolio alignment with the Paris Climate Agreement and the Sustainable Development Goals. The summary could also include impact reporting in relating to investments where such impact is quantifiable, relevant and comparable. Reporting carbon emission reduction per monetary unit (e.g. CO2 per EUR) would make a common standard of calculating carbon emission abatement

impact: identifying best practice", 5 January 2018, https://www.environmental-finance.com/content/the-green-bond-hub/reporting-impact-identifying-best-practice.html.

151 For example, many existing methods of carbon emission assessment are limited due to the lack of integration of scope 3 GHG emissions and the failure to link this to economic activity. (2o p. 17, Hoepner 2016)

152 Alternatively, one could report on the amount of green bond proceeds allocated per project category or sector (as suggested in the draft version of the GBS). The difference is that disbursed entails that issuers have spent the proceeds, whereas allocated can entail that this money is partly or wholly reserved.

even more important. The summary impact report should also include detailed description what key impact indicators have been calculated and underlying methodologies used.

The detailed impact report would include information on a project or asset level, or where that is not possible due to confidentially issues, on a portfolio level. The detailed impact report would also make detailed description about what impact methodology has been used. Finally, the impact report should be easily accessible to investors and other stakeholders.

6.4 The need for legal regulation

The fourth research question is if, and to what extent, legal regulation could make the green bond market more effective.

Firstly, it should be noted that the green bond market, and especially the Nordic green bond market, has grown, and continues to grow, significantly. In Sweden green bonds in Sweden amounted to 18 per cent of all bonds issued in SEK during the first quarter of 2019.[153] One of the main hindrances of the enhancement of the green bond market is the lack of green projects and green assets, not lack of demand.[154] As the TEG also recognises, the European and international green bond market does not suffer from any significant market dysfunction, and it benefits from structured and reactive best market practice by the GBP.[155] The GBP best market practice based on transparency, and on the combination of guidance on green project categories, proceeds management, reporting and independent advice from external reviewers ensure the quality of the green projects.[156] The review and analyses of the contract documents and impact reports in this paper show that these principles are generally applied by the Nordic issuers and expected by investors.

The introduction of an EU Taxonomy and an EU Green Bond Standard, including harmonized reporting, would provide unified and common definitions and standards, increase transparency and facilitate contractual and legal regulation. As there is a need for the green bond market to expand, to increase the number of green projects and to include the transition from brown to green, and the green finance market is constantly evolving, it is essential that the EU Taxonomy and the EU Green Bond Standard are non-exclusive and provide for sufficient flexibility for this transition by allowing for new innovative products to evolve. If these standards would involve additional risk for the green bond issuer, and include external review and reporting procedures that are complex

[153] See Section 1.1 above.
[154] TEG EU GBS Report, p. 21.
[155] TEG EU GBS Report, p. 23.
[156] TEG EU GBS Report, p. 23.

and costly, or labour-intensive internal procedures, this could involve increased transaction costs for the issuer, that could prevent new issuers from entering the green bond market.[157] The green bond issuer would have to be compensated for such increased transaction costs, which could reflect on the yield. It should be noted that the financial markets are highly efficient, and the investor's mandate is still to invest to get the highest return. Increased transaction costs would make green bonds less attractive to investors should be avoided.

As regards the amendments to the Prospectus Regulation contemplated by EU, unified information on green bonds in the prospectus would increase transparency and facilitate for issuers and investors though it should be noted this would only apply on issues under the Prospectus Regulation. In combination with regulations on fiduciary duty for investors, and regulations on climate-related non-disclosure for entities, this would increase transparency and provide for informed investments, which could enhance the green bond market. The Prospectus Regulation should be broad enough to cater to the ever-evolving green bond sphere.

The proposed regulations on fiduciary duties for investors and disclosures for corporations would increase transparency and provide for more informed investments, and a better risk allocation between the parties.

Requirements on disclosure of green bond holdings by institutional investors would also enhance transparency and consciousness among investors and other market actors. However, when it comes to some other incentives on the demand-side discussed by the EU, there is a risk that this could distort the market and be contra-productive. A green supporting factor in bank equity capital regulation contemplated by EU, could be political decision that could be a disincentive for certain other investors, and distort the market with consequences that could be difficult to foresee. Such regulations could also increase the risk for greenwashing, if green bonds would become more attractive and be issued at a higher premium. If the proposal goes forward, there should be a factual causal link between emissions performance and the quality of the loan. If the incentives considered would only be related to EU GBS, it is important that the EU GBS definition is not too narrow, but allows for the further development of the market. It should be taken into consideration that it is lack of supply, not lack of demand, which hinders the growth of the market.

Finally, as the lack of green projects is one barrier for increasing the green bond market, this cannot be solved solely by measures in the financial sector, but policy measures in the real economy are required.

[157] See *inter alia* TEG EU GBS Report, p. 23.

7. CONCLUDING REMARKS

Until green bonds were introduced, use of proceeds for general corporate purposes was the norm on the bond market. Through green bonds and green bond frameworks, a transparent procedure, including reporting, is established, which the issuer undertakes to comply with to ascertain that the proceeds are used for sustainable purposes. This transparency makes it possible for investors who want to invest in green, to assess whether the projects are green and meets the specific requirements they may have.

The focus on transparency in the green bond market has caused a shift towards a greater disclosure of the proceeds generally, as is evident from social bonds issued in Finland, which include a social impact bond scheme, and from SDG-linked bonds, Transition Bonds and other themed bonds. Following the introduction of green and sustainable bonds, there have been notable developments on the green loan market. The Loan Market Association (LMA) and the Asia Pacific Loan Market Association (APLMA) have issued the Green Loan Principles as a benchmark for the wholesale green loan market, and LMA, APLMA and Loan Syndicated and Trading Association (LSTA) have with the support of ICMA released the Sustainability Linked Loan Principles (SLLP).[158] We also see new products like green commercial papers (green certificates) on the rise, in which Vasakronan shows the way.[159]

The bank loan market is still the largest source of financing for the corporate sector in Europe. Bank loans will probably remain the key funding for many actors in Europe, and they should be able to get loans as well as bonds in green format. It is the intention for the TEG that the EU GBS could become a useful reference also in the broader loan market.[160]

Increased transparency for all issuers combined with fiduciary duties for investors could, in the long term, lead to issuers who are not willing to provide information on the use of proceeds, finding it more difficult to get financing, and having to pay a negative premium. Green bonds have facilitated further green debt financing by creating frameworks, processes and criteria that can for the relevant part be applied to green loans to corporates, SMEs and households. These loans are refinanced on capital markets with green bonds issued by the commercial and development banks in line with the banks role of intermediating capital and thus widening the scope of green financing to a wider group of borrowers and products. A robust green bond procedure would also be relevant

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158 https://www.lma.eu.com/application/files/8015/5307/4231/LMA_Sustainability_Linked_Loan_Principles.pdf.

159 See *inter alia* https://sebgroup.com/press/news/vasakronan-pioneered-green-certificates.

160 TEG GBS Report 2019.

for other financial instruments beyond green bonds, such as green loans and other financial products that are evolving, as well as for private placements.[161]

However, legal regulation should be applied carefully, in order to allow for the market to develop organically, and avoid unwanted consequences such as an unlevel playing field.

[161] See also *inter alia* TEG EU GBS Report, p. 21 and 34 f.