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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Sustainable Finance) Financial Services Attachés
N° Cion doc.:	ST 10027/21 - COM(2021) 391 final
Subject:	CWP 6 October 2022 (European Green Bonds) Presidency non-paper: Outcomes of technical meetings and additional aspects



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CWP 6 October 2022 (European Green Bonds)

Outcomes of technical meetings and additional aspects

The fourth technical meeting on Draft Regulation on European green bonds of 30 September 2022 concluded that certain lines in 4CT that were initially treated as technical should be discussed at a political level. The Presidency also expects the second political trilogue might cover additional aspects beyond the elements covered in the four Commission Services non-papers and issues identified in the technical meetings.

The purpose of this note is to seek the positions of the Member States. The Member States are invited to indicate their red lines and indicate room for flexibility.

1. Lack of compliance with CapEx plans

The EP in line 94a requires issuers to include in allocation reports information on the progress made in the implementation of the CapEx plan. Where on two consecutive occasions the intermediate steps are not achieved, the issuer must announce that and would also lose the right to use the EuGB label.

Question 1: Could MSs accept EP's line 94a? If not, would MSs be willing to show some flexibility?

2. Allocation of proceeds of financial assets

The EP with lines 88 and 89 intends to avoid a circular system of reallocating the same financial assets in one or more subsequent financial assets; the EP reads line 89 as allowing only one such additional reallocation.

Question 2: Could MSs accept the EP's approach in lines 88 and 89? If not, would MSs be willing to show some flexibility?

3. Scope of NCAs supervision

Under the EP line 361, NCAs designated in accordance with the Prospectus Regulation supervise the compliance of all issuers with the EuGB, while the Council reduces the population of issuers subject to NCA supervision to those that must publish a prospectus.



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Question 3: Could MSs accept EP's line 361? If not, would MSs be willing to show some flexibility?

The Council line 64d defines 'home Member State' by referring to the analogical term in the Prospectus Regulation. The EP lines 64k to 64n include under the definition of the 'home Member State' the Council line 64d and also Member States of issuers that do not publish prospectuses and, a fallback option, a Member State where an EuGB is offered or admitted to trading for the first time.

Question 4: The definition of 'home Member State' is related to the approach in line 361 (NCA supervision). Could MSs accept the EP's lines 64k to 64n? If not, would MSs be willing to show some flexibility?

4. Publications on the website of trading venues

The EP in line 131 requires the trading venues, although they are not subject to the EuGB Regulation, to publish on EuGB dedicated sections of their websites all the information, reviews and reports that are published by issuers. On top of that the EP in line 280 obliges external reviewers to publish their reviews on websites of trading venues.

Question 5: Could MSs accept the EP's lines 131 and 280? If not, would MSs be willing to show some flexibility?

5. External reviewers

5.1 Quantity and optional review of Impact Reports

The EP and the Council allow issuers to obtain a review of the impact report. On top of that, the EP in lines 124b to 124e sets out the elements of the review should the issuer opt to use it.

Question 6: Could MSs accept the EP's lines 124b to 124e? If not, would MSs be willing to show some flexibility?

5.2 Outsourcing

The EP in line 242 mandates ESMA to approve or reject any planned outsourcing arrangement of an external reviewer.



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Question 7: Could MSs accept the EP's line 242? If not, would MSs be willing to show some flexibility?

5.3 Reviews for sovereign issuers

The EP in line 126 requires state auditors and other public entities mandated by third countries to receive an approval from ESMA.

Question 8: Could MSs accept the EP's line 126? If not, would MSs be willing to show some flexibility?

5.4 Treatment of third-country sovereigns

The Council in line 56 aligns the definitions of a 'sovereign' in the EuGB and the Prospectus Regulations. The Council subsumes under 'sovereign' all of the following: Member State, a Member State's regional or local authorities, public international bodies of which one or more Member States are members, the European Central Bank or the central banks of the Member States and issuers of securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities.

The EP in lines 57 to 62 includes Euratom, Union and their agencies, any State, its department, agency or special purpose vehicle (SPV), members of federal States, regional and municipal entities, undertakings and SPVs of several States and companies of private law owned by any of the above-mentioned entities.

The EP maintains the approach of the initial Commission proposal, based on the MiFID II. Therefore, contrary to the Council, the EP allows non-EU Member States as issuers, as well as companies of private law owned by public entities. Another main difference is that the Council includes issuers of securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities.

Question 9: Do MSs insist to maintain in the definition of a 'sovereign' issuers of EuGBs unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities? Could MSs accept the inclusion of third countries in the definition, as well as companies of private law owned by public entities? If not, would MSs be willing to show some flexibility?



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5.5 Statutory auditors

The EP in line 275a prohibits statutory auditors to perform activities of external reviewers under the EuGB Regulation.

Question 10: Could MSs accept the EP' s line 275a, although it would have been more appropriate to place such provision in the Statutory Audit Regulation? If not, would MSs be willing to show some flexibility?