

# European prospectus disclosure for green, social and sustainability bonds



By **Charlotte Bellamy**

## Introduction

1 This article discusses current European market practice for prospectus disclosure in new green, social and sustainability (GSS) bonds (also known as “use of proceeds” bonds) issued in accordance with Regulation S, as well as related considerations and practices. The European market for GSS bonds is predominantly a wholesale market involving institutional (as opposed to retail) investors.

2 This article focuses on prospectus disclosure related to the sustainable element of the instrument (ie the intended use of proceeds), rather than disclosure related to the sustainability of the issuer. ICMA previously summarised considerations for disclosure relating to the sustainability of the issuer in new bond issue prospectuses in an [article](#) in the Q3 2021 ICMA Quarterly Report.

3 For sustainability-linked bonds (SLBs), the sustainability element of the instrument is embedded in the terms and conditions. Whilst some of the background and considerations in this article may be relevant for SLBs, they are not the focus of this article.

## Overview of the current regime

4 The sustainable bond market (including GSS bonds and SLBs) has grown rapidly in recent years and now stands at around €2.4 trillion. In 2021, around 98% of sustainable bond issuance aligned with the [Green Bond Principles](#), [Social Bond Principles](#), [Sustainability Bond Guidelines](#) and [Sustainability-Linked Bond Principles](#) administered by ICMA (the “Principles”)<sup>1</sup>. The Principles are market-based standards and guidance. They have been, and continue to be,

developed over time with the input of a wide range of market participants and stakeholders.

5 The well-developed European regulatory regime for new bond issue disclosure (primarily the EU Prospectus Regulation and UK Prospectus Regime) applies to sustainable bonds in the same way as other types of bonds. There are currently no specific legal requirements relating to prospectus disclosure for sustainable bonds in Europe<sup>2</sup>.

6 In the EU, the AFM and AMF published a [position paper](#) on green, social and sustainability bonds in 2019, which included a draft annex to the EU Prospectus Regulation detailing specific disclosure requirements for such bonds. The AFM and AMF’s proposals have not been incorporated into the EU Prospectus Regulation, although Recital 7 of Regulation (EU) 2021/337 calls on the European Commission to assess whether it is appropriate to integrate sustainability-related information in the EU Prospectus Regulation. In addition, attention has turned to the [EU Green Bond Standard](#), which is currently being debated by the EU co-legislators. It is anticipated that the EU Green Bond Standard will be a voluntary label applicable to green bonds where the net proceeds are applied to EU Taxonomy-aligned projects, and that some issuers will continue to align their green bonds with the Green Bond Principles only.

7 In the UK, the FCA indicated in [Feedback Statement FS 22/4](#) in June 2022 that it would *not* be developing a UK green bond standard in the immediate future but that it would monitor developments and potentially reconsider, subject to the UK Government’s policy, the case to develop a UK standard for GSS bonds in the wider context of the revision of the UK Prospectus Regulation. Alongside the Feedback Statement,

1. ICMA analysis based on Environmental Finance Bond Data. See [Principles Infographic, 2021](#).

2. ICMA is also not aware of any such legislation outside of Europe.

the FCA published [Primary Market Bulletin 41](#) in which it encouraged issuers of GSS bonds to consider voluntarily applying or adopting relevant industry standards such as the Principles.

## The Principles

8 The Green Bond Principles state:

“The cornerstone of a Green Bond is the utilisation of the proceeds<sup>3</sup> of the bond for eligible Green Projects, which should be appropriately described in the legal documentation of the security.”

“Issuers should explain the alignment of their Green Bond or Green Bond programme with the four core components of the GBP (ie Use of Proceeds, Process for Project Evaluation and Selection, Management of Proceeds and Reporting) in a Green Bond Framework or in their legal documentation. Such Green Bond Framework and/or legal documentation should be available in a readily accessible format to investors.”

9 Similar provisions apply to social bonds and sustainability bonds pursuant to the Social Bond Principles and Sustainability-Bond Guidelines.

## Current market practice for GSS bond disclosure in Europe

10 *Frameworks:* As envisaged by the Principles, many issuers have developed documents known as “Frameworks”. The precise content of Frameworks varies, but typically they will explain how the issuer intends to align its green, social or sustainability bond issuance with the Principles. Frameworks might also contain information related to the issuer’s sustainability strategy. Some Frameworks have been developed to apply across a range of sustainable financial instruments (including for example GSS loans and sustainability-linked bonds and loans), and so will contain information related to those various financial instruments and not just GSS bonds. As discussed below, Frameworks are typically not incorporated by reference into prospectuses<sup>4</sup> for GSS bonds.

11 *Use of proceeds statement and hyperlinks:* In prospectuses for GSS bonds, many issuers will state that they intend to allocate an amount equivalent to the net proceeds from the issuance to finance and/or refinance, in whole or in part, eligible projects in accordance with their Framework. The prospectus will often include a hyperlink to the

webpage where their Framework and related materials (eg the Second Party Opinion (SPO)) can be found, or direct hyperlinks to the Framework and SPO. For prospectuses prepared in accordance with the EU Prospectus Regulation or UK Prospectus Regime, it is a requirement that where a prospectus contains hyperlinks to information that is not incorporated by reference into the prospectus it shall include a statement to the effect that such information does not form part of the prospectus<sup>5</sup> and has not been scrutinised or approved by the competent authority<sup>6</sup>.

12 *Framework and SPO do not form part of the prospectus:* There is typically an express statement that the Framework does not form part of the prospectus (and, as mentioned above, this is required in respect of prospectuses prepared in accordance with the EU Prospectus Regulation or UK Prospectus Regime). This approach reflects the more informal nature of the Framework compared with the prospectus as the legal offering document. The same approach is typically taken in relation to the SPO, which is prepared by an SPO provider and also does not form part of the prospectus.

13 *Summary relating to eligible projects:* Some issuers choose to add to the prospectus disclosure described above by including a summary of the eligible projects set out in the Framework, or a summary of the categories or themes of eligible projects<sup>7</sup> set out in the Framework.

14 In the context of debt issuance programmes, these summaries would be included in the base prospectus. In addition, the form of final terms/pricing supplement might envisage that more specific information on the eligible projects relevant to individual issuances will be provided at the time of a drawdown. This is permissible under the EU Prospectus Regulation and UK Prospectus Regime because use of proceeds information is classified as “Category C” information (meaning it can be disclosed in final terms at the time of a drawdown rather than needing to be included in the base prospectus).

15 Summary information relating to eligible projects in prospectuses and base prospectuses may also be accompanied by statements that it is indicative and may change from time to time; or that the summary reflects the Framework as at the date of the prospectus and the Framework and SPO can be amended, supplemented or replaced from time to time.

16 *“Four pillar” disclosure:* Some issuers also choose to disclose a concise summary of how they intend to comply with all four pillars of the Principles, namely:

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3. The Green Bond Definition contained in the Green Bond Principles refers to “the proceeds or an equivalent amount...” (emphasis added).

4. References to prospectuses also include base prospectuses and final terms/pricing supplements.

5. This statement is usually included in the “Use of Proceeds” section of the prospectus where the Framework is referenced.

6. This statement is usually included at the front of the prospectus with other important information.

7. The Green Bond Principles give examples of eligible Green Project categories such as renewable energy. Similarly, the Social Bond Principles give examples of eligible Social Project categories such as providing and/or promoting affordable basic infrastructure.

- *Use of proceeds*: a brief, factual description of the eligible projects or categories or themes of eligible projects.
- *Project selection*: a brief, factual description of how the issuer will determine which eligible projects should receive allocations
- *Management of proceeds*: a brief, factual description of how the issuer will manage the proceeds.
- *Reporting*: a brief, factual description of how the issuer expects to report to the market.

17 Currently, issuers that include four pillar disclosure in their prospectuses will typically also still include hyperlinks to access the Framework and SPO on the basis that these documents provide additional context in relation to the issuer’s sustainability strategy. As described above, the prospectus will typically state that the Framework and SPO do not form part of the prospectus (and, as mentioned in paragraph 11 above, this is required in respect of prospectuses prepared in accordance with the EU Prospectus Regulation or UK Prospectus regime). The caveats described in paragraph 15 above may also be given.

18 *Risk factors*: Prospectuses for GSS bonds will typically include one or more risk factors relating to GSS bonds, explaining that GSS bonds may not meet investor expectations or requirements and the risks associated with that. Specifically, risk factors may relate to there being: (a) no formal definition of what constitutes a “green” or “social” security; (b) no assurance that eligible projects will be completed or meet their objectives; (c) no assurance of the suitability or reliability of any second party opinion; (d) no assurance that the GSS bonds will be admitted to trading on any dedicated sustainable (or similar) segment of any stock exchange or market, or that any admission obtained will be maintained; (e) no events of default related to failure of the issuer to apply an amount equivalent to the net proceeds to finance and/or refinance any eligible projects; and, in some cases, (f) that the Framework and/or SPO may be amended, supplemented or replaced from time to time (as mentioned in paragraph 15 above).

19 *Dealer/underwriter/trustee role disclosure*: Prospectuses may also include disclosure relating to the role of the dealers/underwriters/trustee (where applicable), explaining that they are not responsible for any sustainability assessment, the application of the net proceeds (or equivalent amount) or the impact, or monitoring of, such use of net proceeds (or equivalent amount), among other things. This disclosure is usually included towards the beginning of the prospectus with other important notices and information.

## Considerations related to GSS bond disclosure in prospectuses

20 As with other prospectus disclosure, all use of proceeds-related disclosure must be accurate, not misleading and meet relevant regulatory requirements.

21 Some market participants have historically preferred to limit detailed use of proceeds-related disclosure in prospectuses on the basis that it is forward-looking and may be difficult to verify. Because many issuers will issue GSS bonds under a debt issuance programme, there has also been a concern that disclosure of detailed use of proceeds information included in a base prospectus would lead to a need to supplement the base prospectus if the information changes, which could potentially delay a new bond issue. This concern is heightened in more volatile market conditions. Another related concern is that detailed disclosure of eligible projects could give rise to a misperception that the information will be valid for the life of the bond, when in fact eligible projects may change as a result of shifts in the issuer’s business or climate science, for example.

22 However, some market participants consider that carefully calibrated four pillar disclosure (as described above) is a sensible approach that reflects investors’ interest in how the issuer intends to use the proceeds for green and/or social projects and otherwise align with the Principles. They consider that such disclosure should not give rise to undue liability concerns for issuers or underwriters provided that the disclosure is factual and can be verified. In addition, they note that the risk of potential delays to new issues as a result of needing to supplement the prospectus can be reduced by careful drafting and setting the four pillar disclosure at a relatively high level. Similarly, careful drafting and keeping the disclosure at a high level, including appropriate caveats and continuing to reference and include a hyperlink to access the issuer’s Framework can help to avoid misperceptions that the disclosure regarding eligible projects will remain valid for the life of the bond.

23 Another consideration is that any information included in the prospectus will be subject to a representation and warranty regarding the accuracy of the prospectus that issuers typically provide to dealers/managers in contractual agreements.

## Deal announcements and other marketing materials

24 As outlined in ICMA’s previous [article](#), it is possible for sustainability (and indeed other) information to be included in marketing materials but not in the prospectus where such information is not required under the general prospectus disclosure test in the EU or UK Prospectus Regulation. This means that the issuer and underwriters might conclude that it is appropriate to include in marketing materials certain additional information that is not necessary for an investment decision (and so is not included in the prospectus) but provides more background, context or detail on the information contained in the prospectus. However, as is the case with any review of marketing materials against prospectus disclosure, a judgment call will need to be made in relation to the overall “consistency” of the marketing materials with the prospectus.

25 Related to this, a key concern for market participants is the need to minimise the risk of greenwashing that could arise if the information conveyed in marketing materials is more extensive than the disclosure that is included in the prospectus and is not checked to the standard required for prospectus disclosure. In order to minimise this risk, it is considered advisable to avoid including in marketing materials considerable additional ESG-related disclosure that is not included in the prospectus because it is not necessary for an investment decision, in particular where the information is difficult to verify to the standard required for prospectus disclosure.

26 For GSS bonds, different approaches have been seen in relation to the inclusion of hyperlinks to Frameworks and SPOs in marketing materials and deal announcements. Some deal announcements have included hyperlinks to access the Framework or SPO with a disclaimer stating that those documents do not constitute or form part of the offer except to the extent that they are expressly included or incorporated by reference in the prospectus. For many market participants, it is preferable to include only a hyperlink to the prospectus in deal announcements and not the Framework and SPO. This means that investors are directed to the official offer document in which they can find the information that is necessary for their investment decision. Investors are then also able to consider additional publicly available information that is relevant to their individual preferences, as desired, but such additional information does not form part of the official offering documentation and prospectus liability does not attach to it.

27 In relation to Frameworks specifically, the UK FCA noted in June 2022 in its [Primary Market Bulletin 41](#) that where a Framework forms part of a communication that relates to an offer or admission of securities, it is likely to be an advertisement for the purposes of the prospectus regime, and so must comply with the UK Prospectus Regulation and the UK Prospectus RTS Regulation. Such compliance would include ensuring that the information contained in the advertisement is accurate, not misleading and consistent with the prospectus; and complying with certain other requirements such as making advertisements clearly recognisable as such and including a hyperlink to access the prospectus.

## Underwriter due diligence

28 As outlined in the ICMA Primary Market Handbook, the appropriate level of due diligence to be performed by underwriters in the context of each issue should be considered carefully<sup>8</sup>. It is impossible to prescribe whether or what due diligence procedures would be appropriate in the circumstances of each issue, and procedures will vary greatly from issue to issue (depending, for example, on the type of securities being issued, the rights attached to those securities and the nature of the issuer and its business)<sup>9</sup>. An underwriter's institutional knowledge of the issuer obtained through its off-deal, ongoing interactions with the issuer will also be relevant.

29 This principle applies in the context of GSS bond issues in the same way as other types of bond issue. Due diligence is a fundamental risk management tool for underwriters and, in the context of sustainable bond issuance (including GSS bond issues), considered by many to be the most effective means of reducing greenwashing risks.

30 Bank underwriters are therefore considering carefully the appropriate sustainability-related due diligence questions to ask (in relation to both the issuer and the bonds to be issued) at the time of programme establishments and updates, new issues of sustainable bonds and other types of new bond issues. Practices in this area are evolving. Such evolution is expected to continue as understanding of, and attitudes to, sustainability issues develop over time (for example as climate science develops) and as the legislative and regulatory backdrop evolves (for instance under the forthcoming [EU Corporate Sustainability Due Diligence Directive](#), the European Supervisory Authorities' work on greenwashing<sup>10</sup> and the UK FCA's proposed general "anti-greenwashing" rule<sup>11</sup>).

## Conclusion

31 Market practice and views on prospectus disclosure for GSS bonds and related matters is evolving. For now, there is no specific regulation on these matters in the EU or UK, but this may change. ICMA members will continue to discuss market practice as well as monitoring and engaging with policy makers and regulators on relevant regulatory developments.

***Charlotte Bellamy worked for ICMA from May 2013 to December 2022. She is now a member of Bank of America's EMEA Legal Banking & Markets Regulatory Reform Team.***

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8. ICMA Primary Market Handbook, Recommendation 3.3.

9. ICMA Primary Market Handbook, Item 3.4.

10. See the European Commission [Request for Input](#), May 2022, and the European Supervisory Authorities' [Call for Evidence](#), November 2022.

11. See Chapter 6 of [CP22/20 on Sustainability Disclosure Requirements \(SDR\) and investment labels](#).