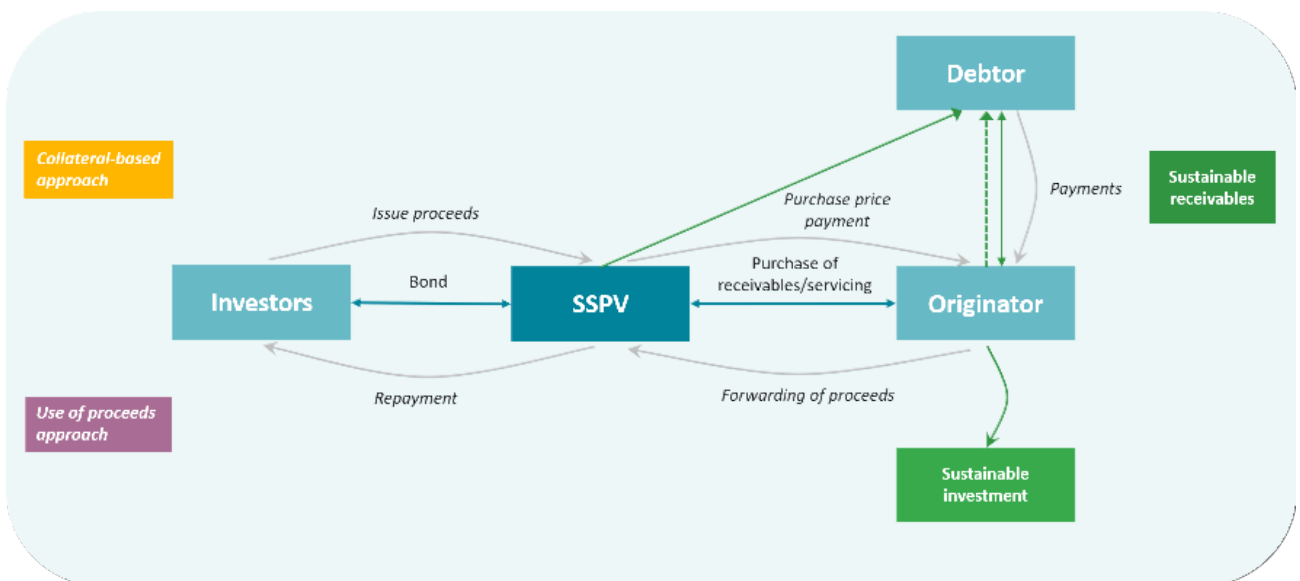


Green securitisations under the new European Green Bonds Regulation

THE NEW EUROPEAN GREEN BOND STANDARD SETS THE FIRST-EVER SPECIFIC LEGAL FRAMEWORK FOR GREEN SECURITISATIONS



Executive Summary

- Published in the Official Journal of the European Union on 30 November 2023, the Regulation on European Green Bonds (EU Green Bond Standard – EUGBS) provides the first-ever harmonised standard for “European Green Bonds” (shortened: EuGB), which issuers can choose to adhere to on a voluntary basis. The new standard applies from 21 December 2024.
- For certain forms of securitisations, the EUGBS now also contains a separate section detailing the first-ever dedicated legal framework for “green” securitisations. Specifically, the EUGBS is modified in part for green securitisation bonds to cater for the special structural features of securitisations.
- To qualify as a green securitisation bond, on the one hand, the bond’s originator must use the proceeds from the issue of the securitisation bond in an EU-taxonomy-compliant manner (“use of proceeds approach”) and, on the other hand, the securitised exposures must comply with minimum sustainability requirements.
- The inclusion of a harmonised, voluntary legal framework for green securitisations in the new EUGBS is a welcome step towards enabling the financing of sustainable projects, for example in the renewable energy and infrastructure sectors, through sustainable true sale securitisations. Nevertheless, an extension of the scope of application to at least include synthetic securitisations should also be considered in the future.



A. New uniform standard for EU Green Bonds

The European Green Bond Regulation (EU Green Bond Standard – EUGBS) was published in the Official Journal of the European Union on 30 November 2023 and came into force on 20 December 2023. However, issuers can only apply the EUGBS and issue green bonds on this basis once it has been in force for twelve months, *i.e.* on 21 December 2024. The EUGBS is a voluntary standard that will be available to issuers both inside and outside the EU.

Issuers are allowed to use the “European Green Bond” or “EuGB” label, provided their bonds are in line with the EUGBS. This requires that the proceeds from the bonds will be invested in economic activities which are compliant with the Taxonomy Regulation (EU) 2020/852, provided, however, that the sectors concerned are already covered by the EU taxonomy.

For sectors not yet covered by the EU taxonomy and for certain specific activities, there will be a flexibility range for up to 15% of the proceeds from the issue of bonds. This framework allows for activities to be financed which at least meet environmental standards and do not have a significant negative impact on the environment (“do no significant harm” principle – DNSH)¹. Issuers must provide information on compliance with the EUGBS, in particular on the allocation of proceeds, prior to the issue and during the lifetime of the bonds.²

B. Securitisation: the perfect instrument for financing the green transformation

Financing the green transformation in Europe in the coming years will require additional investments of over EUR 620 billion annually.³ In order to meet this demand, alternative forms of financing such as sustainable investment funds, green bonds and green securitisations are needed in addition to traditional credit financing such as green loans and *Schuldschein* loans. In its Sustainable Finance Strategy, the German government already highlighted the sustainable securitisation of exposures as a potential

¹ The DNSH criteria are set out in Delegated Regulation (EU) 2021/2139.

² For more details on the Regulation on European Green Bonds, see our [GSK Update on EU Green Bonds](#).

instrument to support the European Green Deal. Further, in Luxembourg, the Luxembourg Green Exchange, the world’s first and leading platform dedicated exclusively to sustainable finance, which now lists around 3,600 securities, has helped to cement Luxembourg’s position as a leading centre for green, social and sustainable bonds as well as for securitisation and structured financial instruments.

Green securitisations can, among other things, help to reduce the burden on banks’ balance sheets and thus increase the number and volume of green loans granted. Further, green securitisations can release additional liquidity, which can then be used to finance sustainable projects, for example in the field of renewable energy or infrastructure. In contrast to traditional loan and bond financing, securitisations can help to promote sustainability in two ways: The proceeds can be used not only for sustainable purposes, *e.g.*, financing solar power plants and wind farms or sustainable real estate, but also for the securitisation of green risk exposures, such as receivables from the financing or leasing of solar power plants and wind farms, the financing of energy storage systems or the financing of electric vehicles. Green securitisations should also encounter strong demand from institutional investors, who need to comply with sustainability requirements in the context of capital investments.

C. Challenges in creating a legal framework for sustainable securitisations

When creating a legal framework for green securitisations, the special structure of securitisations had to be taken into account, which differs significantly from that of traditional corporate bonds. For instance, in a typical true sale securitisation, an originator sells its receivables or exposures to be securitised to a securitisation special purpose vehicle (SSPV), which pays the originator a purchase price and usually refinances itself by issuing a bond. From a legal perspective, the issuer of the bond is therefore the SSPV and not the originator. In economic terms, however, the proceeds from the bond issue, are received by the

³ European Commission, Strategic Foresight Report 2023, July 2023, p. 14.



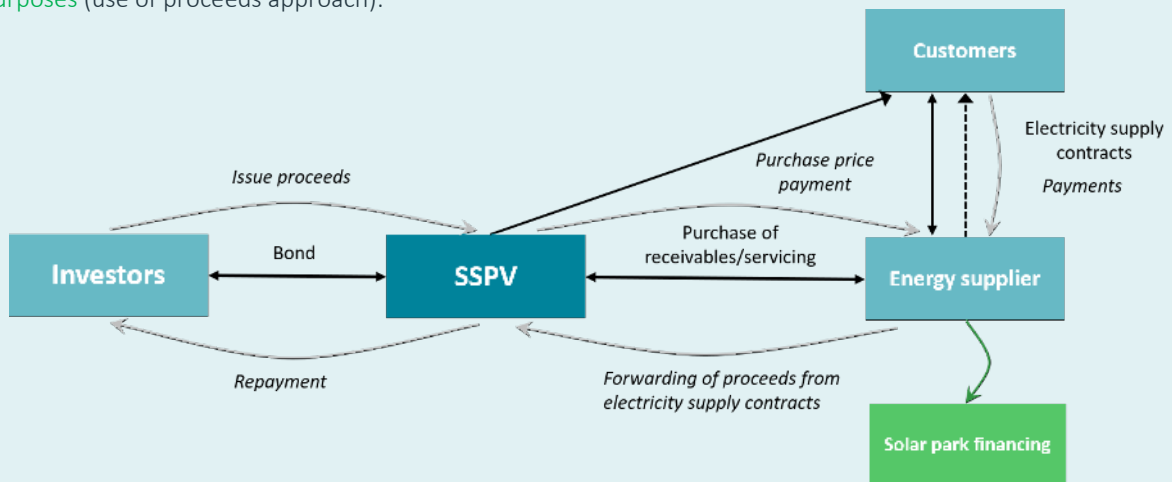
originator. Unlike a traditional corporate bond, the purpose of a securitisation bond is therefore not to provide liquidity at issuer level, but at the level of the originator, who is not the issuer of the bond.

Against this background, the sustainability of the securitisation bond can in principle be assessed via the following means:

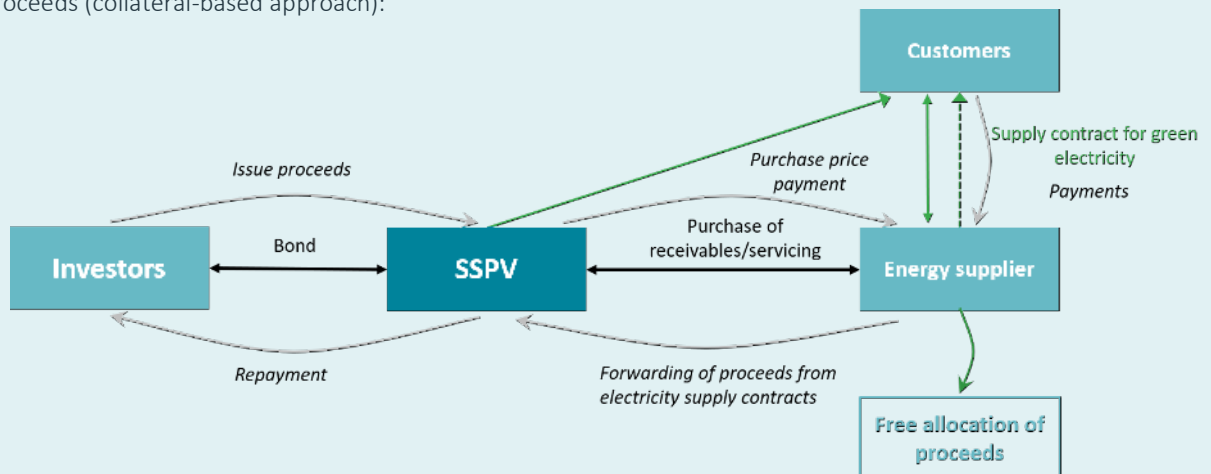
- **Future allocation of the proceeds from the bond issue** of the SSPV by the originator for sustainable purposes (use of proceeds approach),

Practical example – Solar ABS:

Securitisation of receivables, for example from electricity supply contracts, and use of the proceeds for **sustainable purposes** (use of proceeds approach):



Securitisation of **green receivables**, for example from supply contracts for **green electricity**, and free allocation of proceeds (collateral-based approach):



- **Purchase of green assets in the form of green risk exposures or receivables** of the originator by the

SSPV and refinancing of the purchase on the capital market (collateral-based approach).



In a report published in 2022, the European Banking Authority (EBA) presented a proposal of a suitable legal framework for sustainable securitisations.⁴ As a first step, it recommended applying the EUGBS, with certain modifications, to sustainable securitisations, including to the use of proceeds approach. In a second step, it advised establishing a separate legal framework which fully takes into account the specific structural features of securitisations. In this respect, various solutions were deemed conceivable, from the securitisation of a minimum share of green risk exposures (light green), to a combination of a minimum share of green risk exposures and sustainability requirements for the use of proceeds (medium green), up to 100% of proceeds being used for sustainable purposes (dark green).⁵

D. Modified application of the EUGBS to securitisations

The EUGBS largely implements the EBA's proposal. In Chapter 3, the EUGBS contains special conditions for the use of the designation "European Green Bond" or "EuGB" for securitisation bonds, which modify the general requirements of the EUGBS, taking into account the structural characteristics of securitisations. As recommended by the EBA, the EUGBS focuses on the originator's use of the proceeds from the bond issue (use of proceeds approach). As there are currently still very few risk exposures that can be securitised and are EU-taxonomy aligned, the EUGBS (only) excludes certain risk exposures, rather than requiring the securitisation of a minimum share of green receivables. Instead of establishing a separate legal framework for sustainable securitisation, a regular review and potential expansion of the scope of application is planned (for the time being).

⁴ EBA Report on developing a framework for sustainable securitisation, 2 March 2022, EBA/REP/2022/06.

⁵ See Freytag, A separate legal framework for sustainable securitisations, Börsen-Zeitung, 23 July 2022, p. 9, available at https://gsk.de/wp-content/uploads/2022/07/2022-07-23_Boersen-Zeitung_Rechtsrahmen-nachhaltige-Verbriefung_Freytag.pdf.

⁶ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for

Scope of application

The scope of application of the section on European green securitisations in the EUGBS is limited to securitisations

- within the meaning of Article 2(1) of the Securitisation Regulation (EU) 2017/2402⁶,
- that are not issued as a synthetic securitisation within the meaning of Article 2(10) of the Securitisation Regulation (EU) 2017/2402, and
- for which a securities prospectus within the meaning of the Prospectus Regulation (EU) 2017/1129⁷ must be prepared.

Securitisations that are not covered by the Securitisation Regulation, privately placed securitisations and synthetic securitisations do not (for the time being) fall within the scope of the EUGBS. Irrespective of the foregoing, given that the EUGBS is a voluntary standard, market participants are still free to issue securitisation bonds on the basis of the Green Bond Principles. However, they will not be able to use the labels "European Green Bond" or "EuGB" established by the EUGBS.

Modification of the EUGBS for securitisation bonds

The EUGBS has been modified for securitisation bonds as follows, concerning in particular:

- The **requirement to use the proceeds in an EU-taxonomy-aligned manner** applies to the **originator** instead of the SSPV (issuer). This includes all proceeds generated by the originator through the sale of risk exposures to the SSPV (Art. 16(1) EUGBS). In this respect, special rules are applicable to the securitisation of exposures created by multiple originators (Art.

securitisation and creating a specific framework for simple, transparent and standardised securitisation.

⁷ 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.



16(3) EUGBS). In addition, the originator must pay attention to the **exclusion of certain securitised exposures** (Art. 18 EUGBS). Exposures used to finance fossil fuels, for example, are completely excluded; those that finance the generation of electricity or heat from fossil fuels, on the other hand, are permitted, provided they meet the “do no significant harm” criteria mentioned above.

- The **originator** must carry out a pre-issuance review and, prior to the issue, publish the **European Green Bond factsheet** (Art. 10 EUGBS), which must contain additional information in the case of securitisation bonds, including compliance with the requirements on the exclusion of certain exposures.
- As the issuer of a green securitisation bond, the **SSPV is required to publish a prospectus** (Art. 14 EUGBS). The prospectus must contain an additional statement that the bond is a securitisation bond and that the originator is responsible for fulfilling the commitments undertaken in the prospectus regarding the use of proceeds (Art. 19 EUGBS).
- The **information** and **disclosure obligations** before and after the bond issue apply to both the originator and the SSPV.

To ensure effective and appropriate supervision, the competent authority of the home Member State is responsible for supervising compliance with the requirements of the EUGBS by the originator and the SSPV (Art. 44 et seq. EUGBS).

E. Outlook and practical challenges

The adoption of the EUGBS, in particular the inclusion of a harmonised, voluntary legal framework for green securitisations, is to be welcomed. In view of the European Commission’s aim to revive the European securitisation market, it represents a consequent first step in the right direction to enable the financing of sustainable projects through sustainable true sale securitisations, for example in the renewable energy and infrastructure sectors. Financing sustainable projects through true sale

securitisations in a taxonomy-compliant manner should be equally possible in order to avoid competitive disadvantages compared to other forms of financing.

However, given the initially narrow scope of application of the EUGBS, the EU legislator should – as provided for in the Regulation itself within five years of the EUGBS coming into force – consider extending the scope of application to also cover synthetic securitisations, particularly with respect to the granting of green bank loans.

As regards the practice and structuring of green securitisation transactions, it remains to be seen which delegated acts are still to be adopted and how supervisory practice will develop. In particular, the implementation of the disclosures required under the EUGBS in the securities prospectus and the new requirements for sustainability reporting are likely to result in a number of legal and operational implementation issues. Regardless of the specific structure and any implementation issues, one may assume that the creation of a new legal framework for green securitisations will not necessarily open up new structuring options for all, but certainly for some originators and SSPVs as well as for some asset classes, and undoubtedly also for investors.



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