**European Financial Markets Lawyers Group**

- THE CHAIRMAN -

1 October 2020

Mr. Marcel Haag
Horizontal Policies
Mr. Martin Spolc
Sustainable Finance
Directorate-General for Financial Stability
Financial Services and Capital Market Union
European Commission
1049 Bruxelles
Belgium

Dear Mr Haag, dear Mr Spolc,

**Re: EFMLG response to the European Commission targeted consultation on the establishment on an EU Green Bond Standard (EU GBS)**

As you may know, the European Financial Market Lawyers Group (EFMLG) intends to foster the harmonization of laws and market practices in the EU and to facilitate the progress in the Capital Markets Union.

From this perspective of our work, the EFMLG is submitting by means of this letter its response to the Commission targeted consultation on the EU GBS. The EFMLG is very pleased with the possibility to contribute to the EU GBS process. We apologize for not submitting it through the online questionnaire and we thank you in advance for your consideration of the points raised below.

1. On the extent to which an EU GBS, as proposed by the Technical Expert Group (TEG), would address the issues related to the absence of economic benefits associated with the issuance of green bonds, the lack of available green projects and assets, as well as the complexity of the external review procedure(s):

The EU GBS alone may not solve the issues related to the absence of economic benefits associated with the issuance of green bonds or the lack of available green projects and assets. In principle, the accumulation of GBS obligations would lead to additional costs which would not make green bond issuance activities more profitable. Also, given the restrictions brought by the GBS criteria, it is unlikely that the number of green projects and assets may increase notably. Thus, we are very supportive of the optionality of the GBS as proposed by the TEG: the GBS should co-exist with current market practices and in particular for non-EU use of proceeds.

2. On accreditation:

We do welcome the soundness of the review procedures that the TEG has recommended with regard to the EU GBS and agree that verifiers of EU Green Bonds should be subject to an accreditation. This would potentially simplify the external review procedures and its associated costs and provide an independent and harmonized supervision of external verifiers. It is fundamental that verifiers have a sound understanding of the EU GBS and the EU Taxonomy to assess the alignment of a green bond with the EU GBS.

An EU harmonized accreditation regime would provide comfort to issuers, investors and intermediaries as the EU GBS is targeted to be applied at the EU level. In terms of supervision, ESMA could already leverage on its experience in supervising credit rating agencies ("CRAs") given the similarities of activities and actors. In some cases, it can even be expected that third party verifiers will be part of wider CRA groups.

3. On the alignment of eligible green projects with the EU Taxonomy:

We welcome the EU Taxonomy as a very useful tool to support the energy and ecological transition as well as its ambition to be a key reference for green bonds. However, a number of obstacles to its use for both issuers and market participants remain. The binary approach of the EU Taxonomy might likely restrict considerably the scope of eligible projects when there is already a widely recognised lack of available green projects and assets. Beyond the highly ambitious technical screening criteria, the assessment of the alignment with the detailed do-no-significant-harm ("DNSH") principles may constitute a heavy operational burden for both market participants and external certifiers.

Furthermore, the Taxonomy's use by market participants is entirely dependent on data from corporates with respect to their alignment with the Taxonomy. We welcome that Article 8 of the Taxonomy Regulation requires companies subject to the Non-Financial Reporting Directive ("NFRD") to disclose metrics on their activities' alignment with the Taxonomy.

Non-financial undertakings shall disclose the following: (a) the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable; and (b) the proportion of their capital expenditure and the proportion of their operating expenditure related to assets or processes associated with economic activities that qualify as environmentally sustainable.

However, there are still no sound methodologies for undertakings to assess and report on this alignment. We trust that the review of NFRD will contribute to bridging the data gap, but we still do not discern the critical synchronization between the timetable of the review of the NFRD and the Taxonomy Regulation[1].

4. On the information disclosed in green bonds prospectuses:

In Europe much progress has been made in harmonizing prospectuses and efforts also continue to provide harmonized reportings, which is a key element for investors. But the latter are never part of the prospectus (since they are published up to 1 year after issuance). Most institutional investors buying green bonds are sophisticated and make their assessment based on all available information (not only that contained in the prospectus).

On the issuer side, the vast majority, if not all issuers, already feel bound / committed to their obligations under their green bond framework and the given green bond issuance. In addition to the good faith of the vast majority of issuers, the reputational risk is strong enough to encourage issuers to stick to their commitments. The rare cases of alleged greenwashing were not related to a lack of information in a prospectus (or elsewhere), but essentially related to a choice of assets which market participants eventually considered not to be "green" enough.

Finally, issuers should have the possibility to include links to their framework and second party opinion (SPO) (i.e. incorporation by reference) instead of having to "copy-paste" in the prospectus what is already written in these documents. Of course, this means that both frameworks and SPOs must be publicly available on the issuer's website (which is already the case for almost all issuers).

Yours sincerely,

The Chairman

[1] As put forward by the French Financial Markets Authority ("AMF") under its response to the EC consultation on the NFRD review: "Overall, the AMF remains concerned by the misalignment of the timetable of Disclosure, Benchmark and Taxonomy Regulations on one hand, and the NFRD revision on other hand".