

# ENVIRONMENT & CLIMATE CHANGE | ESG NEWS FLASH

## ESG | Legal update

The following legislation was recently published in the Official Journal of the European Union (OJEU):

- ❖ **Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November on European Green Bonds** and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds ("EU Green Bond Regulation");
- ❖ **Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December** establishing a **European single access point** providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability;
- ❖ **Commission Delegated Directive (EU) 2023/2775 of 17 October** amending Directive 2013/34/EU of the European Parliament and of the Council as regards the **adjustments of the size criteria for micro, small, medium-sized and large undertakings or groups**; and
- ❖ **Commission Delegated Regulation (EU) 2023/2772 of 31 July** supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards **sustainability reporting standards**.

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## European Union Green Bonds

The European Green Bond Regulation was published in the OJUE on November 30, 2023, in line with the Commission's Communication of 14 January 2020 entitled «Sustainable Europe Investment Plan. European Green Deal Investment Plan», envisaging the establishment of a standard for environmentally sustainable obligations, with the aim of increasing investment opportunities and facilitating the identification of environmentally sustainable investments through clear labels.

The European Green Bond Regulation:

- i. lays down uniform requirements for bond issuers wishing to use the designation “European Green Bond” or “EuGB” for their bonds that are made available to investors in the Union;
- ii. establishes a system for subjecting external verifiers of European Green Bonds to registration and supervision by the European Securities Authority (ESMA); and
- iii. provides optional disclosure templates for bonds marketed as environmentally sustainable and for sustainability-linked bonds in the Union.

The European Green Bond Regulation is closely linked to Regulation (EU) 2020/852 of 18 June (Taxonomy Regulation), another essential tool for sustainable financing. The Taxonomy Regulation, which establishes criteria for determining whether an economic activity is considered environmentally sustainable, is used as a measure in the European Green Bond Regulation, in particular since the proceeds from bonds using the designation “European Green Bond” or “EuGB” should be allocated to economic activities that are either environmentally sustainable, and therefore aligned with the environmental objectives set out in the Taxonomy Regulation, or that contribute to the transformation of activities so that they can fulfil the applicable criteria in order to become environmentally sustainable.

The European Green Bond Regulation entered into force on December 20, 2023 and will apply as from December 21, 2024.

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## European single access point

Regulation (EU) 2023/2859, published on December 20, 2023, in the OJEU, established the European Single Access Point (ESAP), in the context of the Capital Markets Union package, presented by the Commission on 25 November 2021.

The entity responsible for establishing and operating ESAP is the European Securities and Markets Authority (ESMA), which will have until July 10, 2027 to do so.

ESAP does not impose any additional reporting requirements on European companies, as its objective is to centralize access to information already made public in application of relevant European directives and regulations, particularly in matters of sustainability, thus making it easier for investors to consult this information.

ESAP will centralize, by way of example and in matters of sustainability, information made public under the following legislation:

- Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November on sustainability-related disclosures in the financial services sector;
- Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds;
- Directive 2013/34/EU of the European Parliament and of the Council of 26 June on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

One of the objectives of creating the single European access point is to give companies greater visibility among investors and enhance financing opportunities, especially for small and medium-sized companies.

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Regulation (EU) 2023/2859 will come into force on January 9, 2024.

### **Adjustments of the size criteria for micro, small, medium-sized and large undertakings or groups for the purposes of the CSRD**

Commission Delegated Directive (EU) 2023/2775, of October 17, was published in the OJEU on December 21, 2023, aiming to adjust the size criteria for micro, small, medium and large undertakings or groups envisaged in Directive 2013/34/EU of the European Parliament and of the Council, as amended by Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December (**CSRD**), in order to take into account the impact of inflation.

The importance of this adjustment lies in the reclassification of certain companies, which will mean that certain micro, small and medium-sized undertakings will not be subject to EU provisions on financial reporting and sustainability, that only apply to large undertakings and small and medium-sized undertakings that are public-interest entities.

Therefore, the changes approved by Delegated Directive (EU) 2023/2775 will have a significant impact on the number of undertakings covered by the duty to report on sustainability matters, provided for in Directive 2013/34/EU, as amended by CSRD.

The table below summarizes said changes, as regards sustainability reporting.

Categories	Balance sheet		Net turnover	
	Previous criteria	Approved adjustment	Previous criteria	Approved adjustment
Micro-undertakings	≤ €0.35M	≤ €0.45M	≤ €0.7M	≤ €0.9M
Small undertakings and groups <sup>1</sup>	≤ €4M	≤ €5M	≤ €8M	≤ €10M
Medium-sized undertakings and groups	≤ €20M	≤ €25M	≤ €40M	≤ €50M
Large undertakings and groups	> €20M	> 25M	> €40M	> €50M

<sup>1</sup> Regarding small groups, there is also an update of the threshold values that Member States will not be able to exceed, if they define thresholds other than those provided for in 2013/34/EU. Therefore, they cannot exceed 7,500,000 euros in terms of balance sheet value (previously 6,000,000 euros) and 15,000,000 euros in terms of net turnover (previously 12,000,000 euros).

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European Union Member States will have until December 24, 2024, to adopt the necessary laws, regulations and administrative provisions to comply with this Directive, so that these thresholds can apply to financial years beginning on or after 1 January 2024, and may allow companies to apply such provisions to financial years starting on or after 1 January 2023.

### **ESRS - European sustainability reporting standards**

Commission Delegated Regulation (EU) 2023/2772, of 31 July, was published in the OJUE on December 22, 2023, and contains the long-awaited European Sustainability Reporting Standards ("ESRS").

[As previously mentioned in our News Flash on this subject](#), the ESRS were designed to harmonize and guide how companies covered by the CSRD should report such information, in line with the European Green Deal.

The main objective of the ESRS is to ensure that the information reported by companies to their stakeholders on environmental, social and governance impacts, risks and opportunities is reliable and comparable.

The 12 reporting standards are put forth in the annexes to the Regulation and are divided as follows:

- ❖ ESRS 1 **General requirements**
- ❖ ESRS 2 **General disclosures**
- ❖ ESRS E1 **Climate change**
- ❖ ESRS E2 **Pollution**
- ❖ ESRS E3 **Water and marine resources**
- ❖ ESRS E4 **Biodiversity and ecosystems**
- ❖ ESRS E5 **Resource use and circular economy**
- ❖ ESRS S1 **Own workforce**
- ❖ ESRS S2 **Workers in the value chain**
- ❖ ESRS S3 **Affected communities**
- ❖ ESRS S4 **Consumers and end-users**
- ❖ ESRS G1 **Business conduct**

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This delegated regulation will apply as from January 1, 2024 to financial years beginning on or after January 1, 2024.

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This information flash does not exempt you from reading Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November, Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December, Commission Delegated Directive (EU) 2023/2775 of 17 October, and Commission Delegated Regulation (EU) 2023/2772 of 31 July.

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