DEBT CAPITAL MARKETS

ECB Asset Purchase Programmes: What do corporate debt issuers need to know?

19 November 2020

Corporate bond issuances are increasingly being structured so that the bonds are eligible for purchase under the European Central Bank's Asset Purchase Programmes. Ireland is a jurisdiction of choice for corporates looking to establish treasury vehicles to issue debt that meets the European Central Bank's requirements. This briefing explains why that is the case, and the eligibility criteria that corporate debt issuers need to consider.

Efforts by regulators and governments to provide additional supports to businesses during the COVID-19 pandemic have led to renewed interest in the Asset Purchase Programmes (**APPs**) of the European Central Bank (**ECB**).

The pandemic emergency purchase programme (**PEPP**), which expanded the ECB's corporate sector purchase programme (**CSPP**) and other asset purchase programmes, has been of particular interest to corporate debt issuers. Although corporate debt issuers cannot issue debt instruments directly to the ECB, bonds can be structured so that they are eligible for the CSPP or the PEPP, which may have pricing advantages and liquidity benefits.

Only Eurobonds issued by issuers established in the Eurozone can access the CSPP and the PEPP. Either the issue, the issuer or the guarantor of the corporate bond needs to be rated. If a guarantee is needed to meet the credit-quality criteria, the guarantor must be EEA-established, and the guarantee must be governed by an EU law[1]. As such, this briefing is particularly relevant for non-Eurozone issuers and non-EEA guarantors, such as those in the United States and in the United Kingdom post-Brexit. Acceptable listing venues include Euronext Dublin's regulated market and Global Exchange Market (**GEM**) and the Vienna MTF (a multilateral trading facility).

Corporate bonds that comply with CSPP eligibility criteria may also be eligible for use as collateral in Eurosystem credit operations (that is, these bonds can be 'repoed' to the ECB by eligible counterparties).

WHAT IS THE EUROSYSTEM?

The **Eurosystem** refers to the ECB and the national central banks (**NCBs**) of the Eurozone member states. The eligibility criteria which marketable debt securities must satisfy to be eligible for use as collateral in Eurosystem credit operations are set out in the Eurosystem's General Framework (as modified by its Temporary Framework). The main criteria set out in the General Framework are also relevant to the CSPP and the PEPP, and some of these are discussed below.

WHAT ARE THE CSPP AND PEPP?

CSPP

The CSPP was launched in June 2016. It forms part of the Eurosystem's wider non-standard monetary policy action and is one of the tools in the ECB's expanded APP.[2] The CSPP involves outright purchases of investment grade euro-denominated bonds by certain NCBs[3] on the secondary market. As mentioned above, the criteria set out in the General Framework for Eurosystem eligibility also apply (with some amendments) to the CSPP.

PEPP

The temporary €750 billion PEPP was announced by the ECB on 18 March 2020. The size of the programme has since been increased to €1,350 billion. Net asset purchases under the PEPP will continue until at least the end of June 2021, or longer if the ECB considers that the COVID-19 crisis phase is not over. Purchases under the PEPP are separate from, and in addition to, purchases carried out under the APP. As at 6 November 2020, the ECB has purchased €641,644 million of assets under the PEPP.[4]

1 It is worth noting that, following Brexit, UK guarantors and English law-governed guarantees are not expected to meet ECB requirements.

2 The other three Asset Purchase Programmes are the Third Covered Bond Purchase Programme, the Public Sector Purchase Programme, and the Asset Backed Securities Purchase Programme.

3 NCBs currently conducting purchases are Nationale Bank van België/Banque Nationale de Belgique, the Deutsche Bundesbank, the Banco de España, the Banca d'Italia, the Banque de France and Suomen Pankki – Finlands Bank.

4 Up-to-date data is available here. This figure does not relate exclusively to corporate bonds/commercial paper.

SUSTAINABILITY-LINKED BONDS: KEY RECENT DEVELOPMENT

On 22 September 2020, the ECB announced that bonds with coupons linked to sustainability performance targets (otherwise known as '***sustainability-linked bonds***') will become eligible as collateral in Eurosystem credit operations from 1 January 2021. Those sustainability-linked bonds will also be eligible for purchase under the CSPP and the PEPP, provided that the applicable CSPP/PEPP eligibility criteria are complied with. In each case, the coupons must be linked to a performance target referring to one or more of the environmental objectives set out in the EU Taxonomy Regulation and/or to one or more of the United Nations Sustainable Development Goals relating to climate change or environmental degradation.

CORPORATE BONDS: ELIGIBILITY FOR THE CSPP / PEPP

Criteria

As mentioned above, the bond must comply with the eligibility criteria that marketable assets must meet to be eligible as collateral for Eurosystem credit operations (including being issued in new global note form (if bearer bonds) or being notes issued through the safekeeping structure for international debt securities launched in 2010 (if registered bonds)).

The same eligibility criteria apply in respect of the PEPP as apply in respect of the CSPP (save that some requirements are relaxed for Greek Government bonds and maturity requirements in respect of public sector securities).

Commercial Paper

When it launched the PEPP, the ECB confirmed that commercial paper issued by non-financial institutions would be eligible for both the PEPP and the CSPP, making all commercial paper of "*sufficient credit quality*" eligible for purchase under both programmes (previously, this was not the case under the CSPP).

OTHER KEY POINTS

Other key points to note include:

- there is **no minimum issuance volume** for corporate bonds eligible for purchase under the CSPP. To be eligible for purchase, a commercial paper security must have a minimum outstanding issuance amount of €10 million
- the issue, the issuer or the guarantor must have the **requisite rating**. Note that if the issue is rated, it is that rating that will be taken into account to assess eligibility for the CSPP/PEPP

The table below summarises other key eligibility criteria for corporate bonds under the CSPP/PEPP.

Asset type	Corporate bonds (also includes commercial paper issued by non-financial corporates)
Acceptable markets	EEA regulated markets Non-regulated markets accepted by the ECB (notably, this includes Euronext Dublin's GEM and the Vienna MTF)
Currency	Euro
Place of establishment of the Issuer	Eurozone only (Jurisdiction of ultimate parent is not relevant, provided all other eligibility criteria are met)
Place of establishment of the Guarantor	If a guarantor is needed to establish credit quality, the guarantor must be established in the EEA, and the guarantee must be governed by an EU law

Ireland is a member of the EU, the EEA and the Eurozone and is a common law jurisdiction whose legal concepts will be recognised by most investors and advisers. An efficient tax structure which facilitates finance vehicles incorporated in Ireland, together with an extensive network of double-taxation treaties, increase Ireland's attractiveness as a jurisdiction to establish debt issuing vehicles. Please read our briefing on [Establishing SPVs in Ireland] for further information.

Euronext Dublin's regulated market and GEM are both acceptable markets under the ECB's General Framework and for the purposes of the CSPP/PEPP. Generally the listing will bring the securities within the scope of the Market Abuse Regulation[5] (**MAR**). In practice, this has not been an issue for issuers that already have debt or equity instruments with an EEA listing. For US listed issuers that have not had securities listed on an EEA stock exchange prior to an ECB-eligible bond listing, MAR compliance can be added to existing SEC compliance structures. In practice, we have not encountered situations where a disclosure obligation is triggered under MAR that would not otherwise be triggered under US law, and we therefore envisage MAR compliance will not pose a material additional compliance burden for issuers.

KEY TAKEAWAYS

Eligibility

Debt instruments (including commercial paper) issued by corporates are eligible for purchase under the CSPP and the PEPP, subject to satisfying certain criteria (including minimum rating requirements). The ECB plans to keep the PEPP in place until at least end-June 2021. The Eurosystem is applying a flexible purchase approach under the PEPP and may accelerate or decelerate purchases over time as appropriate to meet its monetary policy objectives. Sustainability-linked bonds will also be eligible for Eurosystem credit operations, and the CSPP and PEPP, from 1 January 2021 provided that eligibility criteria are met.

Ireland as a jurisdiction of choice

As outlined above, Ireland is an attractive jurisdiction to establish a corporate debt issuing vehicle for issuers seeking access to the CSPP/PEPP or to the Eurosystem collateral framework.

Our experience

Arthur Cox has extensive experience assisting issuers and investors on corporate bond issues, including under Irish law. Many of these transactions have been structured to be eligible as collateral in Eurosystem credit operations or to be APP-eligible. Our recent corporate bond experience includes:

- acting on the issuer side of the following standalone corporate bond issuances:
  - daa finance plc (guaranteed by daa plc) (governed by Irish law)
  - all of eir's corporate bond issuances
- acting on the issuer side of updates to and trades under the following programmes:
  - Ryanair DAC's €5 million EMTN Programme (Ryanair recently added optionality to issue bonds under Irish law)

5 Regulation (EU) 596/2014.

- CRH's €8,000,000,000 MTN Programme
- Vodafone International Financing DAC's €30 billion EMTN Programme
- Atlas Copco's $3 billion EMTN Programme
- Glencore's US$20 million EMTN Programme
- Phoenix Group's £5,000,000,000 EMTN Programme

- acting for the underwriters on Dell Bank International DAC's Eurobond issuances (all governed by Irish law)
- advising the dealers on the update of, and all trades under, the Bank of Ireland €25,000,000,000 EMTN Programme (governed by Irish law)

Our listings team has also acted as listing agent on a large number of corporate bond issuances on the Euronext Dublin markets and Vienna MTF.

KEY CONTACTS

DEBT CAPITAL MARKETS

Cormac Kissane
Partner, Head of Finance
+353 1 920 1186
cormac.kissane@arthurcox.com

Glenn Butt
Partner
+353 1 920 1197
glenn.butt@arthurcox.com

Aiden Small
Partner
+353 1 920 1072
aiden.small@arthurcox.com

Phil Cody
Partner, Head of New York Office
+353 1 920 3290
phil.cody@arthurcox.com

Brendan Wallace
Partner
+353 1 920 1069
brendan.wallace@arthurcox.com

Maedhbh Clancy
Of Counsel
+353 1 920 1225
maedhbh.clancy@arthurcox.com

Aisling Kelly
Senior Associate
+353 1 920 1255
aisling.kelly@arthurcox.com

Sinead Cantillon
Professional Support Lawyer
+353 1 920 1083
sinead.cantillon@arthurcox.com

EQUITY CAPITAL MARKETS

Stephen Ranalow
Partner
+353 1 920 1241
stephen.ranalow@arthurcox.com