

**WSG 2020 Banking & Finance
Group Meeting
Green Finance in Germany**

Vienna, February 14, 2020

Green Finance in Germany

I. Definition of Green Finance in Germany

II. Legal Framework in Germany

1. EU
2. German Law

III. Practice Aspects of Green Finance

1. Sustainability Linked Loans
2. Green Bonds
3. Corporate Reporting

4. Other Practice Aspects of Green Finance

IV. Current trends in Germany

I. Definition of Green Finance in Germany

- Distinction between the terms Sustainable Finance / Green Finance?
- Sustainable Finance
 - In connection with the achievement of sustainability goals
 - 17 Sustainable Development Goals (SDGs), United Nations
 - Paris Agreement, United Nations
 - ESG: Environmental, Social, Governance
- Green Finance
 - Not uniformly defined or used
 - Can be considered a narrower concept → only the E in ESG
 - G 20 Green Finance Group 2016:
„financing of investments that provide environmental benefits in the broader context of environmentally sustainable development“

II. Legal Framework in Germany

1. EU

- Legislative package under the „Action Plan: Financing Sustainable Growth” of the European Commission of 28 March 2018 (COM(2018) 97 final):
 - (i) Proposal for a regulation on the establishment of a framework to facilitate sustainable investment of 24 May 2018 (COM/2018/353 final) (so-called taxonomy regulation draft)
 - (ii) Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector
 - (iii) Regulation (EU) 2019/2089 of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks

- Directive 2014/95/EU of 22 October 2014 (CSR Directive)

II. Legal Framework in Germany

2. German Law

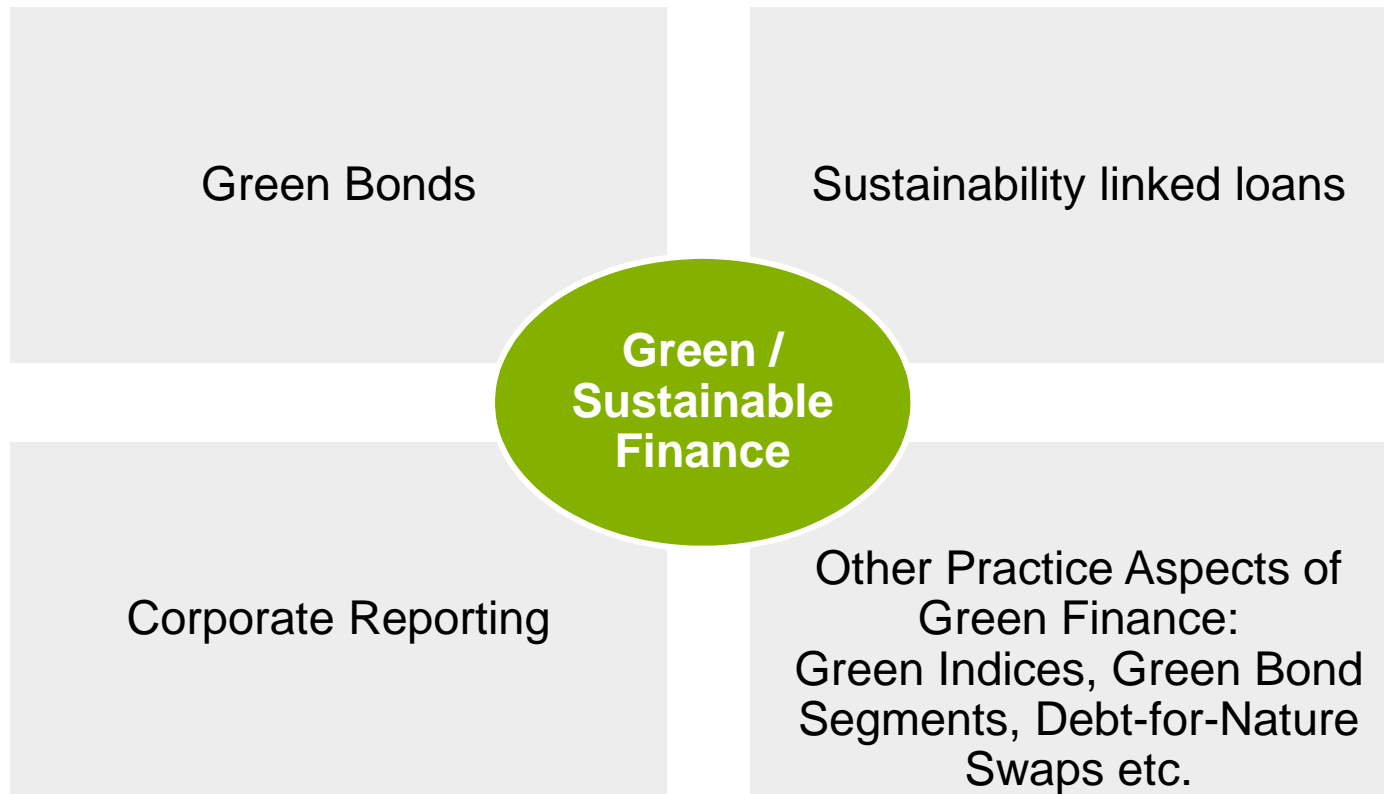
- Provisions relating to sustainability in German stock corporation law and in German Corporate Governance Code in connection with section 161 of the German stock corporation act (*AktG*)
- Amendment of the Shareholders' Rights Directive / Act on the Implementation of the Shareholders' Rights Directive II (*ARUG II*):
 - Sustainable focus of the remuneration of the executive board in the context of *Say on Pay*, mandatory inclusion of social and environmental aspects in accordance with Section 87 (1) sentence 1 AktG
 - Comply-or-explain obligations for institutional investors and asset managers (see § 134a-134c AktG)

II. Legal Framework in Germany

2. German Law

- BaFin Guidance Notice on Dealing with Sustainability Risks of 20 September 2019
 - BaFin intends to provide companies supervised by the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – BaFin) with guidance on dealing with the increasingly important issue of sustainability risks
 - Objective: Credit institutions, insurance companies and capital management companies should systematically include sustainability risks in their risk management
 - On the basis of ESG (environmental, social and governance) criteria
 - Addresses Risks for financial market actors (and their customers or the financial system)
- The German Federal Government set up an Advisory Council for Sustainable Finance to advise on the development and implementation of its Sustainable Finance Strategy

III. Practice Aspects of Green Finance



1. Green Bonds

- Most successful instrument in connection with green financing
- Green Bonds are special bonds that (re)finance activities that have a positive impact on the climate and environment, thus supporting the transition to a low-carbon, climate-friendly economy
- Qualification as "green" is not yet regulated in the EU
- In Europe, this gap is filled by the widely accepted categorisation of the *Green Bond Principles* (GBP) of the International Capital Market Association (ICMA) with the *Climate Bond Standard* as the associated seal
- Green Bonds often suffer from a lack of transparency in the use of funds and credibility

1. Green Bonds

■ Recent Transactions:

- E.on
- EnBW
- Otto Group
- Porsche (Green Schuldschein)
- Enel
- DZ BANK

2. Sustainability Linked Loans

- Advantage: Companies that are too small to issue green bonds can participate in sustainable financial structures through the Sustainability Linked Loans
- First the Green Loan Principles in 2018 and then the Sustainability Linked Loan Principles (SLLP) based on them were developed by the three leading credit market associations in Europe, the USA and Asia (Loan Market Association, Loan Syndications and Trading Association and Asia Pacific Loan Market Association) and published on 20 March 2019.
- The SLLP adds two new aspects to the sales of "green" financial products: (i) they no longer aim to promote environmental aspects only, but rather ESG, and (ii) they address potentially any borrower seeking to improve its sustainability performance.

2. Sustainability Linked Loans

■ Recent Transactions:

- "Positive Incentive Loan" of Deutsche Börse AG granted by a banking consortium with BNP Paribas and Commerzbank as lead managers in the amount of EUR 750,000,000
- "Sustainable Loan" granted to mechanical engineering company Dürr in the amount of EUR 750,000,000
- Henkel: syndicated "Green Loan" in the aggregate amount of EUR 1,500,000,000
- Telefónica: "Sustainability-Linked Loan" in the amount of EUR 750,000,000
- Continental: syndicated revolving credit facility in the amount of EUR 4,000,000,000 taking sustainability components into account
- Voith: bilateral credit facility which includes "positive incentive" components granted by LBBW

3. Corporate Reporting

- Increasing corporate transparency in social and environmental matters through the CSR Directive
- As a result of the „Action Plan: Financing Sustainable Growth” two further measures of the European Commission :
 - "Fitness Check" on the suitability of the current legal framework for corporate reporting
 - Consultation on the Update of the Non-Binding Guidelines on Non-Financial Reporting specifically with regard to the reporting of climate-related information

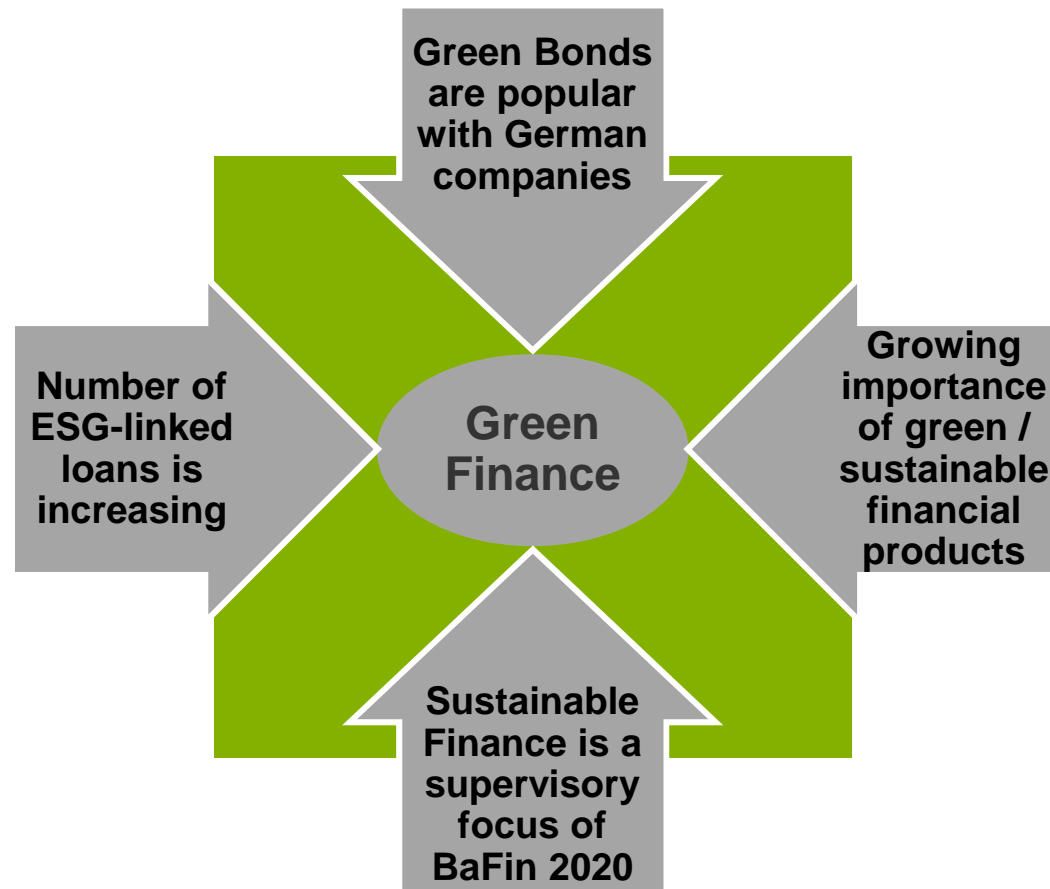
4. Further Areas of Application

- Sustainability / ESG is a common investment topic for institutional investors
- A segment of special rating agencies and index creators has emerged, which collect, verify and certify sustainability information as gatekeepers between companies and investors
 - Green indices as benchmark for green funds
 - Provided by specialists (*Sustainalytics, oekom*), but also banks or *Thomson Reuters* and *Bloomberg*
- Banking:
 - Concerns for state development banks, multilateral development banks and special sustainability and ethical banks
 - Integration into normal lending business: risk-based lending, value-based approach or impact lending, positive incentive loans

4. Further Areas of Application

- Many financial centres and stock exchanges are now engaged in sustainable finance, e.g.
 - London Exchange Group (LSEG) and Japan Exchange Group (JPX) working together in the field of sustainability
 - Green and Sustainable Finance Cluster Germany of the Hessen Ministry of Economics and Deutschen Börse
 - Hub for Sustainable Finance by the German Council for Sustainable Development (*Rat für Nachhaltige Entwicklung*) and Deutsche Börse AG
- Green Bond Segment of Deutsche Börse AG
- Further financial innovations in connection with Sustainable Finance:
 - Micro-insurance, micro-credits, innovative peer-to-peer and swarm financing, emissions trading, other virtual units of account to reduce climate-damaging emissions with a market mechanism
- Instruments of public finance (so-called Debt-for-Nature Swaps and so far only planned index-linked carbon bonds)

IV. Current trends in Germany



Contact



Michael Neises

Goetheplatz 5 – 7
60313 Frankfurt am Main
T +49 69 97561 303
F +49 69 97561 200
m.neises@heuking.de

Michael Neises is a partner in the Frankfurt office of Heuking Kühn Lüer Wojtek and advises on financing transactions (acquisition finance, corporate lending, asset and project finance and capital market transactions).

Prior to joining Heuking Kühn Lüer Wojtek, Michael Neises was the head of the Corporate-Finance-Team of a German boutique law firm. Since 2004, Michael worked at international law firm Dewey & LeBoeuf primarily on cross border corporate finance and capital markets transactions. He was head of the German Desk in the London office of Dewey & LeBoeuf from 2008 to 2010.

Michael Neises started his career at Clifford Chance in 2001 and is dual qualified as a German Rechtsanwalt and as an English solicitor.

Prior to becoming a lawyer, Michael Neises trained with Deutsche Bank and gained work experience in the corporate finance teams of the Hannover, Magdeburg and Osaka branches of Deutsche Bank AG.

Our contact details:

Berlin

Kurfürstendamm 32
10719 Berlin
T +49 30 88 00 97-0
F +49 30 88 00 97-99

Düsseldorf

Georg-Glock-Straße 4
40474 Düsseldorf
T +49 211 600 55-00
F +49 211 600 55-050

Hamburg

Neuer Wall 63
20354 Hamburg
T +49 40 35 52 80-0
F +49 40 35 52 80-80

München

Prinzregentenstraße 48
80538 München
T +49 89 540 31-0
F +49 89 540 31-540

Chemnitz

Weststraße 16
09112 Chemnitz
T +49 371 38 203-0
F +49 371 38 203-100

Frankfurt

Goetheplatz 5-7
60313 Frankfurt am Main
T +49 69 975 61- 0
F +49 69 975 61-200

Köln

Magnusstraße 13
50672 Köln
T +49 221 20 52-0
F +49 221 20 52-1

Stuttgart

Augustenstraße 1
70178 Stuttgart
T +49 711 22 04 579-0
F +49 711 22 04 579-44

Zürich

Bahnhofstrasse 69
8001 Zürich/Schweiz
T +41 44 200 71-00
F +41 44 200 71-01



Thank you very much for your attention!

This material is for general information purposes only and should not be construed as legal advice or any other advice on any specific facts or circumstances. No one should act or refrain from acting based upon any information herein without seeking professional legal advice. Heuking Kühn Lüer Wojtek Partnerschaft mit beschränkter Berufshaftung von Rechtsanwälten und Steuerberatern (Heuking) makes no warranties, representations, or claims of any kind concerning the content herein. Heuking and the contributing presenters or authors expressly disclaim all liability to any person in respect of the consequences of anything done or not done in reliance upon the use of contents included herein.