Council of the European Union

Brussels, 18 October 2019
(OR. en)

8501/19

Interinstitutional File:
2018/0043(COD)

CODEC 932
EF 158
ECOFIN 406
IA 135
PE 192

INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU - Outcome of the European Parliament's first reading and Corrigendum procedure (Strasbourg, 18 April 2019 and Brussels, 10 October 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint Declaration on practical arrangements for the codecision procedure [1], a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this legislative file at first reading.

[1] OJ C 145, 30.6.2007, p.5.

This file was expected [2] to undergo the Corrigendum procedure [3] in the new European Parliament after adoption by the previous Parliament of its position at first reading.

II. VOTES

At its sitting of 18 April 2019 and following informal interinstitutional negotiations, the European Parliament adopted an amendment (without legal linguistic revision) to the Commission proposal and a legislative resolution with a view to the adoption of the abovementioned proposal, constituting the European Parliament's position at first reading. It reflects what had been provisionally agreed between the Institutions.

After finalisation of the adopted text by the legal linguists, on 10 October 2019 the European Parliament approved a corrigendum to the position adopted at first reading.

With this corrigendum, the Council should be able to approve the position of the European Parliament as set out in the Annex [4] hereto, thus bringing to a close the first reading for both Institutions.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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[2] 8507/19.

[3] Rule 241, EP Rules of Procedure.

[4] The text of the amendments adopted and the European Parliament's legislative resolution are set out in the Annex. The amendments are presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol " ▌ " indicates deleted text.

Covered bonds and covered bond public supervision ***I

1. European Parliament legislative resolution of 18 April 2019 on the proposal for a directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU (COM(2018)0094 – C8-0113/2018 – 2018/0043(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2018)0094),

– having regard to Article 294(2) and Articles 53 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0113/2018),

– having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

– having regard to Article 294(3) and Article 114 of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 11 July 2018[5],

– having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 20 March 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rules 59 and 39 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A8-0390/2018),

1. Adopts its position at first reading hereinafter set out;

2. Takes note of the statement by the Commission annexed to this resolution;

3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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5 OJ C 367, 10.10.2018, p. 56.

P8_TC1-COD(2018)0043

Position of the European Parliament adopted at first reading on 18 April 2019 with a view to the adoption of Directive (EU) 2019/… of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[6],

Acting in accordance with the ordinary legislative procedure[7],

[6] OJ C 367, 10.10.2018, p. 56.
[7] Position of the European Parliament of 18 April 2019.

Whereas:

(1) Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council[8] provides for very general requirements relating to the structural elements of covered bonds. Those requirements are limited to the need for covered bonds to be issued by a credit institution which has its registered office in a Member State, and to be subject to special public supervision and to a dual recourse mechanism. National covered bond frameworks address those issues while regulating them in much greater detail. Those national frameworks also contain other structural provisions, in particular rules regarding the composition of the cover pool, eligibility criteria for assets, the possibility of pooling assets, transparency and reporting obligations, and rules on liquidity risk mitigation. Member State approaches to regulation also differ in substance. In several Member States, there is no dedicated national framework for covered bonds. As a consequence, the key structural elements with which covered bonds issued in the Union are to comply are not yet set out in Union law.

[8] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

(2) Article 129 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[9] adds further conditions to those referred to in Article 52(4) of Directive 2009/65/EC ***for obtaining*** preferential treatment as regards capital requirements which allow credit institutions investing in covered bonds to hold less capital than when investing in other assets. While those additional requirements increase the level of harmonisation of covered bonds within the Union, they serve the specific purpose ***of establishing*** the conditions ***to be satisfied in order for covered bond investors to receive*** such preferential treatment, and are not applicable outside the framework of Regulation (EU) No 575/2013.

(3) Other Union legal acts, ***such as*** Commission Delegated Regulations (EU) 2015/35[10] and (EU) 2015/61[11] and Directive 2014/59/EU of the European Parliament and of the Council[12], also refer to the definition set out in Directive 2009/65/EC as a reference for identifying the covered bonds that benefit from the preferential treatment for covered bond investors under those acts. However**,** the wording of those acts differs according to their ***purpose*** and ***subject matter, and*** thus the term 'covered bond' is not used consistently.

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9 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

10 Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

11 Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

12 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

(4) Overall, the treatment of covered bonds can be considered ▌ to be harmonised regarding the conditions for investing in covered bonds. There is, however, a lack of harmonisation across the Union regarding the conditions for the issue of covered bonds and that has several consequences. First, preferential treatment is granted equally to instruments which differ in nature ***as well as in*** their level of risk and investor protection. Second, ***differences between*** national frameworks or the absence ***of such a framework and the lack of a commonly agreed definition of the term 'covered bond' could create*** obstacles to the development of a truly integrated single market for covered bonds ▌. Third, the differences in ▌ safeguards provided by national rules could create ***risks*** to ▌ financial stability because covered bonds ***with*** different ***levels*** of investor protection can be purchased across the Union and benefit from preferential treatment under Regulation (EU) No 575/2013 and other Union legal acts.

(5) ***Harmonising certain aspects of*** national frameworks based on ***certain best practices should therefore*** ensure the smooth and continuous development of well-functioning covered bond markets in the Union and ▌ limit potential risks and vulnerabilities to financial stability. ***Such*** principle-based harmonisation ***should*** establish a common baseline for the issue of all covered bonds in the Union. Harmonisation requires all Member States to establish covered bond frameworks, which should also facilitate the development of covered bond markets in those Member States where there is ***none***. Such a market would provide a stable funding source for credit institutions, which would, on that basis, be better placed to provide affordable mortgages for consumers and businesses and would make alternative safe investments available to investors.

(6) In its recommendation of 20 December 2012 on funding of credit institutions[13], the European Systemic Risk Board ('ESRB') invited national competent authorities and the European Supervisory Authority (European Banking Authority) ('EBA'), ***established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[14],*** to identify best practices regarding covered bonds and to encourage the harmonisation of national frameworks. It also recommended that EBA coordinate actions taken by national competent authorities, particularly in relation to the quality and segregation of cover pools, bankruptcy remoteness of covered bonds, the asset and liability risks affecting cover pools and disclosure of the composition of cover pools. The recommendation further called on EBA to monitor the functioning of the covered bond market by reference to best practices identified by EBA for a period of two years, in order to assess the need for legislative action and to report to the ESRB and to the Commission accordingly.

(7) In December 2013, the Commission ***requested*** advice ***from*** EBA in accordance with Article 503(1) of Regulation (EU) No 575/2013.

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13 Recommendation of the European Systemic Risk Board of 20 December 2012 on funding of credit institutions (ESRB/2012/2) (OJ C 119, 25.4.2013, p. 1).

14 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

(8) In the report accompanying its opinion of 1 July 2014, responding to both the ESRB recommendation of 20 December 2012 and the ***Commission's request*** for advice ***of*** December 2013, EBA recommended greater convergence of national legal, regulatory and supervisory covered bond frameworks, so as to further support ▌ a single preferential risk weight treatment ***of*** covered bonds in the Union.

(9) As envisaged by the ESRB, EBA monitored the functioning of the covered bond market by reference to the best practices set out in that recommendation for two years. On the basis of that monitoring, EBA delivered a second opinion and report on covered bonds to the ESRB, to the Council and to the Commission on 20 December 2016[15]. That report concluded that further harmonisation ***is*** necessary to ensure more consistency in terms of definitions and regulatory treatment of covered bonds in the Union. The report further concluded that harmonisation should build on existing well-functioning markets in some Member States.

(10) Covered bonds are traditionally issued by credit institutions. The inherent purpose of covered bonds is to provide funding for loans**,** and one of the core activities of credit institutions is to grant loans on a large scale. Accordingly, in order for covered bonds to benefit from preferential treatment under Union law, they are required to be issued by credit institutions.

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15 EBA Report on covered bonds - Recommendations on harmonisation of covered bond frameworks in the EU (2016), EBA-Op-2016-23.

(11) Reserving the issue of covered bonds to credit institutions ensures that the issuer has the necessary knowledge to manage the credit risk relating to the loans in the cover pool. It further ensures that the issuer is subject to capital requirements that protect investors under the dual recourse mechanism, which grants the investor, as well as ***the counterparty of a derivative contract,*** a claim against both the covered bond issuer and the ***cover*** assets. Reserving the issue of covered bonds to credit institutions therefore ensures that covered bonds remain a safe and efficient funding tool, thereby contributing to investor protection and financial stability, which are important public policy objectives in the general interest. That is also in line with the approach of well-functioning national markets ***in which*** only credit institutions ***are permitted*** to issue covered bonds.

(12) It is therefore appropriate that only credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 be ***permitted*** to issue covered bonds under Union law. ***Specialised mortgage credit institutions are characterised by the fact that they do not take deposits, but rather take other repayable funds from the public, and as such they fall within the definition of 'credit institution' as laid down in Regulation (EU) No 575/2013. Without prejudice to ancillary activities permitted under applicable national law, specialised mortgage credit institutions are institutions that carry out only mortgage and public sector lending, including funding loans purchased from other credit institutions***. The main purpose of this Directive is to regulate the conditions under which credit institutions can issue covered bonds as a financing tool, by laying down the product requirements and ***establishing*** specific product supervision ***to which*** credit institutions are subject***,*** in order to ensure a high level of investor protection.

(13) The existence of a dual recourse mechanism is an essential concept and element of many existing national covered bond frameworks. It is also a core feature of covered bonds as referred to in Article 52(4) of Directive 2009/65/EC. It is therefore necessary to specify that concept so as to ensure that investors ***and counterparties of derivative contracts*** across the Union have a claim against both the covered bond issuer and the ***cover*** assets under harmonised conditions.

(14) Bankruptcy remoteness should also be an essential feature of covered bonds to ensure that ▌ covered bond investors are repaid on the maturity of the bond. Automatic acceleration of repayment upon insolvency or resolution of the issuer may disturb the ranking of covered bond investors***. It is*** therefore ▌ important to ensure that covered bond investors are repaid in accordance with the contractual schedule***, even*** in the case of insolvency or resolution. Bankruptcy remoteness is accordingly directly linked to the dual recourse mechanism and should therefore also be a core feature of the covered bond framework.

(15) Another core feature of existing national covered bond frameworks is the ***requirement*** that ***cover*** assets are of very high quality in order to ensure the robustness of the cover pool. ***Cover*** assets are characterised by specific features ***relating*** to claims ***for payment and the collateral assets securing such cover assets***. It is therefore appropriate to set out the general quality features of eligible ***cover assets***.

(16) Assets listed in Article 129(1) of Regulation (EU) No 575/2013 should be eligible ***cover assets*** within a covered bond framework. ***Cover assets which no longer comply with the requirements set out in Article 129(1) of that Regulation should continue to be eligible cover assets under point (b) of Article 6(1) of this Directive, provided that they fulfil the requirements of this Directive. Other*** cover assets of a similarly high quality can also be eligible under this Directive***, provided that such cover assets comply with the requirements of this Directive, including those in relation to the collateral assets securing the claim for payment. For physical collateral assets, ownership should be recorded in a public register to ensure enforceability. Where no public register exists, it should be possible for Member States to provide for an alternative form of certification of ownership and claims that is comparable to that provided by public registration of the encumbered physical asset. Where Member States make use of such alternative form of certification, they should also provide for a procedure for introducing changes to the recording of ownership and claims. Exposures to credit institutions should be eligible cover assets under point (a) or (b) of Article 6(1) of this Directive, depending on whether they comply with the requirements of Article 129 of Regulation (EU) No 575/2013. Exposures to insurance undertakings should also be eligible cover assets under point (b) of Article 6(1) of this Directive. Loans to or guaranteed by*** public undertakings as defined

in point (b) of Article 2 of Commission Directive 2006/111/EC[16] can be eligible ***cover assets,*** provided that ***the public undertakings provide essential public services for the maintenance of critical societal activities. In addition, such public undertakings should provide their services under a concession or authorisation from a public authority, be subject to public supervision and have sufficient revenue generating powers to ensure their solvability***. ***Where Member States decide to allow assets in the form of loans to or guaranteed by public undertakings in their national framework, they should duly consider the possible impact on competition of allowing such assets. Independently of their ownership, credit institutions and insurance undertakings should not be considered to be public undertakings. Furthermore,*** Member States should ▌ be free to provide in their national frameworks for ***certain*** assets to be excluded from eligibility for inclusion in the cover pool***. To enable covered bond investors to better assess the risk of a covered bond programme, Member States should also provide for rules on risk diversification in relation to granularity and material concentration, on the number of loans or exposures in the cover pool and on the number of counterparties. Member States should be able to decide on the appropriate level of granularity and material concentration required under their national law.***

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16 Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (PB L 318, 17.11.2006, p. 17).

(17) Covered bonds have specific structural features that aim to protect investors at all times. Those features include the requirement that investors in covered bonds have a claim not only against the issuer but also against assets in the cover pool. ▌ Those structural product-related requirements differ from the prudential requirements applicable to a credit institution issuing covered bonds. The former should not focus on ensuring the prudential health of the issuing institution, but should rather aim to protect investors by imposing specific requirements on the covered bond itself. In addition to the specific requirement to use high-quality ***cover assets***, it is also appropriate to regulate the general requirements with regard to the features of the cover pool, in order to further strengthen investor protection. Those requirements should include specific rules that aim to protect the cover pool, ***such as*** rules on the segregation ***of the cover assets***. ***Segregation can be achieved in different ways, such as on the balance sheet,*** by means of a special purpose vehicle ***or by other means. Nonetheless, the purpose of the segregation of cover assets is to put them legally beyond the reach of creditors other than covered bond investors.***

(18) ***The*** location of the ***collateral assets should also be regulated*** to ensure the enforcement of investors' rights ▌. It is also important ***for Member States to lay down rules on*** the composition of the cover pool ▌. Furthermore, ***coverage*** requirements should be specified in this Directive, without prejudice to the right of Member States to allow different means of mitigating risks such as with regard to currencies and interest rates. The calculation of the coverage and the conditions under which derivative contracts can be included in the cover pool should also be defined to ensure that cover pools are subject to common high-quality standards across the Union. ***The calculation of coverage should follow the nominal principle for the principal. Member States should be able to use a method of calculation other than the nominal principle, provided that the other method is more prudent, namely it does not result in a higher coverage ratio, where the cover assets are the numerator and the covered bond liabilities are the denominator. Member States should be able to require a level of overcollateralisation to covered bonds issued by credit institutions located in the Member State concerned that is higher than the coverage requirement laid down in this Directive.***

(19) A number of Member States already require that a cover pool monitor perform specific tasks regarding the quality of eligible assets and ensures compliance with national coverage requirements. It is therefore important, in order to harmonise the treatment of covered bonds across the Union, that the tasks and responsibilities of the cover pool monitor, ***where*** one is required by the national framework, are clearly defined. The existence of a cover pool monitor does not obviate the responsibilities of national competent authorities as regards ***covered bond*** public supervision***, particularly as regards compliance with the requirements laid down in the provisions of national law transposing this Directive***.

(20) Article 129 of Regulation (EU) No 575/2013 sets out a number of conditions that covered bonds collateralised by securitisation entities are to meet. One of those conditions concerns the extent to which that type of cover asset can be used and limits the use of such structures to 10 % of the amount of the outstanding covered bonds. That condition can be waived by competent authorities in accordance with Regulation (EU) No 575/2013. The Commission's review of the appropriateness of that waiver concluded that the possibility of using securitisation instruments or covered bonds as cover assets for issuing covered bonds should be allowed only with regard to other covered bonds ('intragroup pooled covered bond structures'), and should be allowed without limit by reference to the amount of outstanding covered bonds. To guarantee an optimum level of transparency, cover pools for externally issued covered bonds should not contain internally issued covered bonds from different credit institutions within the same group. Moreover, as the use of intragroup pooled covered bond structures provides an exemption from the limits on credit institution exposures that are laid down in Article 129 of Regulation (EU) No 575/2013, internally and externally issued covered bonds should be required to qualify for credit quality step 1 at the moment of issue or, in the event of a subsequent change in credit quality step and subject to the approval of the competent authorities, credit quality step 2. Where the internally or externally issued covered bonds cease to meet that requirement, the internally issued covered bonds no longer qualify as eligible assets under Article 129 of Regulation (EU) No 575/2013 and, as a consequence, the externally issued covered bonds from the relevant cover pool do not benefit from the exemption in Article 129(1b) of that Regulation. Where those internally issued covered bonds no longer comply with the relevant credit quality step

requirement, they should, however, be eligible cover assets for the purpose of this Directive, provided that they comply with all the requirements laid down in this Directive, and the externally issued covered bonds collateralised by those internally issued covered bonds or other assets that comply with this Directive should therefore also be able to use the label 'European Covered Bonds'. Member States should have the option of allowing the use of such structures. It follows that, for that option to be effectively available to credit institutions belonging to a group located in different Member States, all relevant Member States should have exercised that option and transposed the relevant provision in their law.

(21) Small credit institutions face difficulties when issuing covered bonds as the establishment of covered bond programmes often entails high upfront costs. Liquidity is also particularly important in covered bond markets, and is largely determined by the volume of outstanding bonds. It is therefore appropriate to allow for joint funding by two or more credit institutions in order to enable the issue of covered bonds by smaller credit institutions. That would provide for the pooling of ***cover*** assets by several credit institutions as cover ***assets*** for covered bonds issued by a single credit institution and would facilitate the issue of covered bonds in those Member States where there is currently ***no*** well-developed covered bond ***market***. ***The*** requirements for the use of joint funding agreements ***should*** ensure that ***cover*** assets ***that are sold or, where a Member State has allowed for that option,*** transferred ***by way of financial collateral arrangement pursuant to Directive 2002/47/EC*** of the European Parliament and of the Council[17] to the issuing credit institutions meet the ▌eligibility▌ and segregation ***requirements for*** cover assets under Union law.

▌

[17] Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

(22) The transparency of the cover pool securing the covered bond is an essential part of that type of financial instrument, as it enhances comparability and allows investors ***to*** perform the necessary risk evaluation. Union law includes rules on the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted ***for*** trading on a regulated market situated or operating within a Member State. Several initiatives regarding the information to be disclosed to covered bond investors ***supplementary to*** such Union law have been developed over time by national legislators and market participants. It is, however, necessary to specify ***in*** Union ***law*** the minimum common level of information to which investors should have access prior to or ***at the time of purchase of*** covered bonds. Member States should be allowed to supplement those minimum requirements with additional provisions.

(23) A core element ***of*** ensuring the protection of covered bond investors is mitigating the instrument's liquidity risk. That is crucial for ensuring the timely repayment of liabilities attached to the covered bond. Therefore***,*** it is appropriate to introduce a cover pool liquidity buffer to address risks of liquidity shortage, such as mismatches in maturities and interest rates, payment interruptions, commingling risks, payment obligations attached to derivative contracts and other operational liabilities falling due within the covered bond programme. ***The credit institution may experience situations where it becomes difficult to comply with the cover pool liquidity buffer requirement, for example in times of stress where the buffer is used to cover outflows. The competent authorities designated pursuant to this Directive should monitor compliance with the cover pool liquidity buffer requirement, and, if necessary, take measures to ensure that the credit institution complies with the buffer requirement.*** The liquidity buffer for the cover pool differs from the general liquidity requirements imposed on credit institutions in accordance with other Union legal acts, ***as*** the former is directly related to the cover pool and seeks to mitigate liquidity risks specific to it. To minimise regulatory burdens, Member States should be able to allow an appropriate interaction with liquidity requirements established by other Union ▌ legal acts that serve purposes different from the cover pool liquidity buffer. Member States ***should*** therefore ***be able to*** decide that***, until the date on which those Union legal acts are amended,*** the cover pool liquidity buffer requirement ***is*** applicable only if no other liquidity requirement is imposed on the credit institution under Union ▌ law during the period covered by such other requirements. ***Such decisions should avoid subjecting credit institutions to an obligation to cover the same outflows with different liquid assets for the same period. The possibility for Member States to decide for the cover pool liquidity buffer not to apply should be reassessed in the context of future changes to the liquidity requirements for credit institutions under Union law, including the applicable delegated regulation adopted pursuant to Article 460 of Regulation (EU) No 575/2013. Liquidity risks could be addressed by means other than providing liquid assets, for example by issuing covered bonds subject to extendable maturity structures where the triggers address liquidity shortage or stress. In such cases, Member States should be able to allow for the calculation of the liquidity buffer to be based on the final maturity date of the covered bond, taking into consideration possible maturity extensions, where the triggers address liquidity risks. Furthermore, Member States should be able to allow the cover pool liquidity requirements not to apply to covered***

bonds that are subject to match funding requirements where incoming payments contractually fall due before outgoing payments and are placed in highly liquid assets in the meantime.

(24) In a number of Member States, innovative structures for maturity profiles have been developed in order to address potential liquidity risks, including maturity mismatches. ***Those*** structures include the possibility of extending the scheduled maturity of the covered bond for a certain period of time or allowing the cash flows from the ***cover*** assets ▌ to pass directly to the covered bond investors. ***In*** order to harmonise extendable maturity structures across the Union ***it is important to establish*** the conditions under which Member States are able to allow those structures, ▌ to ensure that they are not too complex and do not expose investors to increased risks. ***An important element of those conditions is to ensure that the credit institution cannot extend the maturity at its discretion. The maturity should be allowed to be extended only where objective and clearly defined trigger events established under national law have occurred or are expected to occur in the near future. Such triggers should aim to prevent default, for example by addressing liquidity shortage, market failure or market disturbance. Extensions could also facilitate the orderly winding-down of credit institutions issuing covered bonds, allowing for extensions in the case of insolvency or resolution to avoid a fire sale of assets.***

(25) The existence of a special public supervision framework is an element defining covered bonds according to Article 52(4) of Directive 2009/65/EC. However, that Directive does not specify the nature and content of such supervision or the authorities that should be responsible for performing such supervision. It is therefore essential that the constitutive elements of such covered bond public supervision are harmonised and that the tasks and responsibilities of the national competent authorities performing it are clearly set out.

(26) As covered bond public supervision is distinct from the supervision of credit institutions in the Union, Member States should be able to appoint national competent authorities to perform covered bond public supervision that are different from the competent authorities performing the general supervision of the credit institution. However in order to ensure consistency in the application of covered bond public supervision across the Union, it is necessary to require that the competent authorities performing covered bond public supervision cooperate closely with those performing the general supervision of credit institutions as well as with the resolution authority, where applicable.

(27) Covered bond public supervision should include ▌ granting ▌ credit institutions ***permission*** to issue covered bonds. As only credit institutions should be ***permitted*** to issue covered bonds, authorisation to act as a credit institution should be a prerequisite for being granted that permission. ***Whereas in Member States participating in the Single Supervisory Mechanism, the European Central Bank is tasked with the authorisation of credit institutions in accordance with point (a) of Article 4(1) of Council Regulation (EU) No 1024/2013[18], only the authorities designated pursuant to this Directive should be competent to grant permission to issue covered bonds and exercise covered bond public supervision***. ***Accordingly, this*** Directive should establish the conditions under which credit institutions authorised under Union law can obtain permission to pursue the activity of issuing covered bonds ▌.

(28) ***The*** scope of permission ***should relate to the*** covered bond programme ▌. ***That programme should be subject to supervision under this Directive. A credit institution can have more than one covered bond programme. In*** that ***case, separate permission for each programme should be required. A covered bond programme can include*** one or more cover pools ▌. ***Multiple cover pools or different issues*** (different International Securities Identification Numbers (ISINs)) ***under*** the same covered bond programme do not necessarily indicate the existence of multiple separate covered bond programmes.

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18 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

(29) Existing covered bond programmes should not be required to obtain new permission once the provisions of national law transposing this Directive become applicable. In respect of covered bonds issued under existing covered bond programmes after the date of application of the provisions of national law transposing this Directive, however, credit institutions should comply with all the requirements laid down in this Directive. Such compliance should be supervised by the competent authorities designated under this Directive as part of covered bond public supervision. Member States could give guidance under national law on how to procedurally conduct the compliance assessment after the date from which Member States are to apply the provisions of national law transposing this Directive. The competent authorities should be able to review a covered bond programme and assess the need for a change to the permission for that programme. Such a need for change could be due to substantial changes in the business model of the credit institution issuing the covered bonds, for example following a change of the national covered bond framework or decisions made by the credit institution. Such changes could be considered to be substantial where they require a reassessment of the conditions under which permission to issue covered bonds was granted.

(30) Where a Member State provides for the appointment of a special administrator, it should be able to lay down rules on the competences and operational requirements for such special administrators. Those rules could exclude the possibility for the special administrator to collect deposits or other repayable funds from consumers and retail investors, but allow the collection of deposits or other repayable funds only from professional investors.

(31) In order to ensure compliance with the obligations imposed on credit institutions issuing covered bonds and in order to ensure similar treatment and compliance across the Union, Member States should be required to provide for administrative penalties and other administrative measures which are effective, proportionate and dissuasive. ***Member States should also be able to provide for criminal penalties instead of administrative penalties. Member States that choose to provide for criminal penalties should notify the relevant criminal law provisions to the Commission.***

(32) Administrative penalties and other administrative measures provided for by Member States should satisfy certain essential requirements in relation to the addressees of those penalties or measures, the criteria to be taken into account in their application, the publication obligations of competent authorities performing covered bond public supervision, the power to impose penalties and the level of administrative pecuniary penalties that may be imposed. ***Before any decision imposing administrative penalties or other administrative measures is taken, the addressee should be given the opportunity to be heard. However, Member States should be able to provide for exceptions to the right to be heard in respect of administrative measures other than administrative penalties. Any such exception should be limited to cases of imminent danger in which urgent action is necessary in order to prevent significant losses to third parties such as covered bond investors or to prevent or remedy significant damage to the financial system. In such cases, the addressee should be given the opportunity to be heard after the measure has been imposed.***

(33) Member States should be required to ensure that the competent authorities performing covered bond public supervision take into account all relevant circumstances in order to ensure a consistent application of administrative penalties or other administrative measures across the Union, when determining the type of administrative penalties or other administrative measures and the level of those penalties. ***Member States could include administrative measures in relation to the extension of maturity under extendable maturity structures. Where Member States provide for such measures, those measures could enable competent authorities to invalidate a maturity extension and could lay down conditions for such invalidation to address the situation where a credit institution extends the maturity in breach of the objective triggers laid down in national law, or in order to ensure financial stability and investor protection.***

(34) In order to detect potential breaches of the requirements ***for issuing*** and marketing ▌ covered bonds, competent authorities performing covered bond public supervision should have the necessary investigatory powers and effective mechanisms to encourage the reporting of potential or actual breaches. Those mechanisms should be without prejudice to the rights of defence of any person or entity adversely affected by the exercise of those powers and mechanisms.

(35) Competent authorities performing covered bond public supervision should also have the power to impose administrative penalties and adopt other administrative measures in order to ensure the greatest possible scope for action following a breach and to help prevent further breaches, irrespective of whether such measures are qualified as an administrative penalty or other administrative measure under national law. Member States should be able to provide for penalties in addition to those provided for in this Directive.

(36) Existing national laws on covered bonds are characterised by the fact that they are subject to detailed regulation at national level and supervision of covered bond issues and programmes to ensure that the rights of ▌ covered bond investors are upheld at all times. That supervision includes the ongoing monitoring of the features of the programme, the coverage requirements and the quality of the cover pool. An adequate level of investor information about the regulatory framework governing the issue of covered bonds is an essential element of investor protection. It is therefore appropriate to ensure that competent authorities publish regular information concerning the provisions of national law transposing this Directive and on the ***manner in which*** they perform their covered bond public supervision.

(37) Covered bonds are currently marketed in the Union under national denominations and labels, some of which are well-established ***while others are*** not. It therefore seems ***appropriate*** to allow credit institutions which issue covered bonds in the Union to use ***a*** specific label, 'European Covered Bonds', when selling covered bonds to both Union and third-country investors under the condition that those covered bonds comply with the requirements set out in ***this Directive. If such covered bonds also comply with the requirements set out in Article 129 of Regulation (EU) No 575/2013, credit institutions should be allowed to use the label 'European Covered Bonds (Premium)'. That label, indicating that specific additional requirements have been met resulting in a strengthened and well-understood quality, might be attractive even in Member States with well-established national labels. The aim of the labels 'European Covered Bond' and 'European Covered Bond (Premium)' is to*** make it easier for investors to assess the quality of the covered bonds and hence to make them more attractive as an investment vehicle both inside and outside the Union. The use of ***those two labels*** should, however, be voluntary, and Member States should be able to ***maintain*** their own national denominations and labelling frameworks in parallel to those two ***labels***.

(38) In order to assess the application of this Directive**,** the Commission should, in close cooperation with EBA, monitor the development of covered bonds in the Union and report to the European Parliament and to the Council on the level of investor protection and the development of the covered bond markets. The report should also focus on the developments regarding the assets collateralising the issue of covered bonds ▌. As ***the use of extendable maturity structures has been increasing, the Commission should also report to the European Parliament and to the Council on the functioning of covered bonds with extendable maturity structures and the risks and benefits deriving from the issue of such covered bonds.***

(39) A new class of financial instruments under the name of European Secured Notes (ESNs), covered by assets that are riskier than public exposures and mortgages and that are not eligible cover assets under this Directive, has been proposed by market participants and others as an additional instrument for banks to finance the real economy. The Commission consulted EBA on 3 October 2017 for an assessment of the extent to which ESNs could use the best practices defined by EBA for traditional covered bonds, the appropriate risk treatment of ESNs and the possible effect of ESN issues on bank balance sheet encumbrance levels. In response, EBA issued a report on 24 July 2018. In parallel to EBA's report, the Commission published a study on 12 October 2018. The Commission study and the EBA report concluded that further assessment was required on, for example, regulatory treatment. The Commission should therefore continue to assess whether a legislative framework for ESNs would be appropriate and submit a report to the European Parliament and to the Council on its findings, together with a legislative proposal, if appropriate.

(40) There is currently no equivalence regime for the recognition ***by the Union*** of covered bonds issued by credit institutions in third countries, except in a prudential context where preferential treatment regarding liquidity is granted to some third-country bonds under certain conditions. The Commission should therefore, in close cooperation with EBA, assess the need and relevance for an equivalence regime to be introduced for third-country issuers of, and investors in, covered bonds. The Commission should, no more than ***two*** years after the date from which Member States are to apply the provisions of national law transposing this Directive, submit a report thereon to the European Parliament and to the Council, together with a legislative proposal, if appropriate.

(41) Covered bonds are characterised by having a scheduled maturity of several years. It is therefore necessary to include transitional measures to ensure that covered bonds ▌ issued ***before ...*** [30 months after the date of entry into force of this Directive] are not affected. ***Covered bonds issued before that date should therefore continue to comply with the requirements laid down in Article 52(4) of Directive 2009/65/EC on an ongoing basis and should be exempt from most of the new requirements laid down in this Directive. Such covered bonds should be able to continue to be referred to as covered bonds, provided that their compliance with Article 52(4) of Directive 2009/65/EC, as applicable on the date of their issue, and with the requirements of this Directive that are applicable to them, is subject to supervision by the competent authorities designated pursuant to this Directive. Such supervision should not extend to the requirements of this Directive from which such covered bonds are exempt. In some Member States, ISINs are open for a longer period, allowing for covered bonds to be issued continuously under that code with the purpose of increasing the volume (issue size) of that covered bond (tap issues). The transitional measures should cover tap issues of covered bonds under ISINs opened before … [30 months after the date of entry into force of this Directive] subject to a number of limitations.***

(42) As a consequence of laying down a uniform framework for covered bonds, the description of covered bonds in Article 52(4) of Directive 2009/65/EC should be ***amended***. Directive 2014/59/EU defines covered bonds by reference to Article 52(4) of Directive 2009/65/EC. Since that definition ***should be amended***, Directive 2014/59/EU should also be ***amended***. Furthermore, to avoid affecting covered bonds issued in accordance with Article 52(4) of Directive 2009/65/EC before **…** [***30 months after the date of entry into force of this Directive***], those covered bonds should continue to be referred to as covered bonds until their maturity. Directives 2009/65/EC and 2014/59/EU should therefore be amended accordingly**.**

(43) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[19], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

19 OJ C 369, 17.12.2011, p. 14.

(44) Since the objective of this Directive, ***namely to establish*** a common framework for covered bonds ***to ensure*** that the structural characteristics of covered bonds across the Union ***correspond to*** the ***lower*** risk ***profile justifying*** Union preferential treatment, cannot be sufficiently achieved by the Member States, but can rather, by reason of the need to further develop ***the*** covered bond ***market*** and support cross-border investment ***in the Union***, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(45) The European Central Bank was consulted and delivered its opinion on 22 August 2018.

(46) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council[20] and delivered an opinion on 12 October 2018[21].

(47) ***Credit institutions issuing covered bonds process significant amounts of personal data. Such processing should at all times comply with Regulation (EU) 2016/679 of the European Parliament and of the Council[22]. Likewise, the processing of personal data by EBA when, as required by this Directive, it maintains a central database of administrative penalties and other administrative measures that are communicated to it by national competent authorities, should be carried out in accordance with*** Regulation (EU) 2018/1725 of the European Parliament and of the Council[23].

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20 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

21 OJ C … [not yet published in the Official Journal].

22 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

23 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Directive lays down the following investor protection rules concerning:

(1) requirements for issuing covered bonds;

(2) the structural features of covered bonds;

(3) covered bond public supervision;

(4) publication requirements ▌ in relation to covered bonds.

Article 2

Scope

This Directive applies to covered bonds issued by credit institutions established in the Union.

Article 3

Definitions

For the purposes of this Directive, the following definitions apply:

(1) 'covered bond' means a debt obligation that is issued by a credit institution ***in accordance with the provisions of national law transposing the mandatory requirements of this Directive*** and that is secured by ***cover assets to*** which covered bond investors have direct recourse ▌ as preferred creditors;

(2) 'covered bond programme' means the ***structural features of a covered bonds issue that are determined by statutory rules and by contractual terms and conditions,*** in accordance with ***the permission granted to the credit institution issuing the covered bonds***;

(3) 'cover pool' means ***a clearly defined set of*** assets ***securing the payment obligations attached to*** covered bonds that are segregated from other assets held by the credit institution issuing the covered bonds;

(4) 'cover assets' means assets included in a cover pool;

(5) 'collateral assets' means physical assets and assets in the form of exposures that secure cover assets;

(6) 'segregation' means the actions performed by a credit institution issuing covered bonds to identify cover assets and put them legally beyond the reach of creditors other than covered bond investors and counterparties of derivative contracts;

(7) 'credit institution' means ***a*** credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;

(8) 'specialised mortgage credit institution' means a credit institution which funds loans solely ***or mainly*** through the issue of covered bonds, which is permitted by law only to carry out mortgage and public sector lending and which is not permitted to take deposits, but which takes other repayable funds from the public;

(9) ***'automatic*** acceleration' means a situation in which a covered bond ***automatically becomes*** immediately due and payable ***upon the insolvency or resolution of the issuer*** and in respect of which the ▌ covered bond investors ***have an enforceable claim for repayment at a time*** earlier than the original maturity date;

(10) 'market value' means, for the purposes of immovable property, market value as defined in point (76) of Article 4(1) of Regulation (EU) No 575/2013;

(11) 'mortgage lending value' means, for the purposes of immovable property, the mortgage lending value as defined in point (74) of Article 4(1) of Regulation (EU) No 575/2013;

▌

(12) 'primary ***assets***' means ▌ dominant cover ***assets that determine*** the nature of the cover pool;

(13) 'substitution ***assets'*** means ***cover assets that contribute*** to the coverage requirements, other than primary assets;

(14) 'overcollateralisation' means the ***entirety of the*** statutory***,*** contractual ***or voluntary*** level of collateral ***that exceeds*** the coverage requirement ▌ set out in Article 15;

(15) 'match funding ***requirements***' means rules requiring that the cash flows between liabilities and assets falling due be matched by ensuring ***in contractual terms*** and conditions that payments from borrowers ***and counterparties of derivative contracts fall due before*** payments ***are made*** to covered bond investors and ***to the counterparties of derivative contracts,*** that ***the*** amounts received are at least ***equal*** in value to the payments to be made to covered bond investors ***and to counterparties of derivative contracts, and that the amounts received from borrowers and counterparties of derivative contracts are included in the cover pool in accordance with Article 16(3) until the payments become due to the covered bond investors and counterparties of derivative contracts***;

(16) 'net liquidity outflow' means all ***payment outflows falling due on one day***, including principal and interest payments and payments under derivative contracts of the covered bond programme***, net of all payment*** inflows ***falling due on the same day for claims related to*** the cover ***assets***;

(17) 'extendable maturity structure' means a mechanism ***which provides*** for the possibility of extending the scheduled maturity of covered bonds for a ***pre-determined*** period of time and in the event that a specific trigger occurs;

(18) 'covered bond public supervision' means the supervision of covered bond programmes ensuring compliance with, and the enforcement of, the requirements applicable to the issue of covered bonds;

(19) 'special administrator' means the person or entity appointed to administrate a covered bond programme in the event of the insolvency of ***a*** credit institution issuing covered bonds under that programme***, or when such credit institution has been determined to be failing or likely to fail pursuant to Article 32(1) of Directive 2014/59/EU or, in exceptional circumstances, where the relevant competent authority determines that the proper functioning of that credit institution is seriously at risk***;

(20) 'resolution' means resolution as defined in point (1) of Article 2(1) of Directive 2014/59/EU;

(21) 'group' means a group as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013;

(22) 'public undertakings' means public undertakings as defined in point (b) of Article 2 of Commission Directive 2006/111/EC.

TITLE II

STRUCTURAL FEATURES OF COVERED BONDS

Chapter 1

Dual recourse and bankruptcy remoteness

Article 4

Dual recourse

1. Member States shall lay down rules entitling covered bond investors ***and counterparties of derivative contracts that comply with Article 11*** to the following claims:

(a) a claim against the credit institution issuing the covered bonds;

(b) in the case of the insolvency or resolution of the credit institution issuing the covered bonds, a priority claim against the principal and any accrued ***and future*** interest on ***cover assets***;

(c) in the case of the insolvency of the credit institution issuing the covered bonds and in the event that the priority claim as referred to in point (b) cannot be fully satisfied, a claim against the insolvency estate of that credit institution, which ranks *pari passu* with the claims of the credit institution's ordinary unsecured creditors determined in accordance with the national laws governing the ranking in normal insolvency proceedings.

2. The claims referred to in paragraph 1 shall be limited to the full payment obligations attached to the covered bonds.

3. For the purposes of point (c) of paragraph 1 of this Article, in the case of the insolvency of a specialised mortgage credit institution, Member States may lay down rules granting the covered bond investors ***and counterparties of derivative contracts that comply with Article 11*** a claim that ranks senior to the claim of that specialised mortgage credit institution's ordinary unsecured creditors, determined in accordance with the national laws governing the ranking of creditors in normal insolvency proceedings, but junior to any other preferred creditors.

Article 5

Bankruptcy remoteness of covered bonds

Member States shall ensure that the payment obligations attached to covered bonds are not subject to automatic acceleration upon the insolvency or resolution of the credit institution issuing the covered bonds.

Chapter 2

Cover pool and coverage

Section I

Eligible assets

Article 6

Eligible ***cover*** assets

1. Member States shall ***require*** that covered bonds are at all times ***secured*** by:

(a) assets that are ***eligible*** pursuant to Article 129(1) of Regulation (EU) No 575/2013, ***provided*** that ***the credit institution issuing the covered bonds meets the requirements of paragraphs 1a to 3 of Article 129 of that Regulation;***

(b) high-quality ***cover assets that ensure that the credit institution issuing the covered bonds has a claim for payment as set out in paragraph 2 and are secured by collateral assets as set out in paragraph 3; or***

(c) ***assets in the form of loans to or guaranteed by public undertakings, subject to paragraph 4 of this Article.***

2. The claim for payment referred to in point (b) of paragraph 1 shall be subject to the following legal requirements:

(a) ***the asset represents a claim for payment of monies that has a minimum value that is determinable at all times, that is legally valid and enforceable, that is not subject to conditions other than the condition that the claim matures at a future date, and that is secured by a mortgage, charge, lien or other guarantee;***

(b) ***the*** mortgage, charge, lien or other guarantee ***securing the claim for payment*** is enforceable;

(c) all legal requirements for establishing the mortgage, charge, lien or guarantee ***securing the claim for payment*** have been fulfilled;

(d) the mortgage, charge, lien or guarantee securing the ***claim for payment enables*** the credit institution issuing the covered bonds to ***recover*** the value of the ***claim*** without undue delay.

Member States shall ***require*** that credit institutions issuing covered bonds assess the enforceability of ***claims for payment and the ability to realise collateral*** assets before including ***them*** in the cover pool.

3. The collateral assets referred to in point (b) of paragraph 1 shall meet one of the following requirements:

(a) for physical collateral assets, there exist valuation standards that are generally accepted among experts and that are appropriate for the physical collateral asset concerned and there exists a public register that records ownership of and claims on those physical collateral assets; or

(b) for assets in the form of exposures, the safety and soundness of the exposure counterparty is implied by tax-raising powers or by being subject to ongoing public supervision of the counterparty's operational soundness and financial solvability.

Physical collateral assets referred to in point (a) of the first subparagraph of this paragraph shall contribute to coverage of liabilities attached to the covered bond up to the lesser of the principal amount of the liens that are combined with any prior liens and 70 % of the value of those physical collateral assets. Physical collateral assets referred to in point (a) of the first subparagraph of this paragraph which secure assets as referred to in point (a) of paragraph 1 shall not be required to comply with the limit of 70 % or with the limits of Article 129(1) of Regulation (EU) No 575/2013.

Where, for the purposes of point (a) of the first subparagraph of this paragraph, no public register for a particular physical collateral asset exists, Member States may provide for an alternative form of certification of the ownership of and claims on that physical collateral asset, insofar as that form of certification provides protection that is comparable to the protection provided by a public register in the sense that it allows interested third parties, in accordance with the law of the Member State concerned, to access information in relation to the identification of the encumbered physical collateral asset, the attribution of ownership, the documentation and attribution of encumbrances and the enforceability of security interests.

4. For the purposes of point (c) of paragraph 1, covered bonds secured by loans to or guaranteed by public undertakings as primary assets shall be subject to a minimum level of 10 % of overcollateralisation and subject to all the following conditions:

(a) the public undertakings provide essential public services on the basis of a licence, a concession contract or other form of entrustment granted by a public authority;

(b) the public undertakings are subject to public supervision;

(c) the public undertakings have sufficient revenue generating powers, which are ensured by the fact of such public undertakings:

(i) having adequate flexibility to collect and to increase fees, charges and receivables for the service provided in order to ensure their financial soundness and solvability,

(ii) receiving sufficient grants on a statutory basis in order to ensure their financial soundness and solvability in exchange for providing essential public services, or

(iii) having entered into a profit and loss transfer agreement with a public authority.

5. Member States shall lay down rules on the methodology and process for the valuation of physical collateral assets which secure assets as referred to in points (a) and (b) of paragraph 1. Those rules shall ensure at least the following:

(a) for each physical collateral asset, that a current valuation at or at less than market value or mortgage lending value exists at the moment of inclusion of the cover asset in the cover pool;

(b) that the valuation is carried out by a valuer who possesses the necessary qualifications, ability and experience; and

(c) that the valuer is independent from the credit decision process, does not take into account speculative elements in the assessment of the value of the physical collateral asset, and documents the value of the physical collateral asset in a transparent and clear manner.

6. Member States shall ***require*** that credit institutions issuing covered bonds have in place procedures to monitor that ***the physical*** collateral assets ***which secure assets as referred to in points (a) and (b) of paragraph 1*** of this Article are adequately insured against the risk of damage ***and that the insurance claim is segregated in accordance with Article 12***.

7. ▌ Member States shall require credit institutions issuing covered bonds to document the ***cover*** assets ▌ ***referred to in points (a) and (b) of paragraph 1 and the*** compliance ***of*** their lending policies ▌ with the provisions of national law transposing ***this Article***.

8. ***Member States shall lay down rules ensuring risk diversification in the cover pool in relation to granularity and material concentration for assets not eligible under point (a) of paragraph 1.***

Article 7

Collateral assets located outside ▌ the Union

1. Subject to ▌ paragraph 2, Member States may allow credit institutions issuing covered bonds to include ***assets in the cover pool that are secured by collateral assets*** located outside ▌ the Union ▌ .

2. Where Member States allow for the inclusion ***of assets*** as referred to in paragraph 1, they shall ensure investor protection by ***requiring that credit institutions verify that those collateral assets*** meet all the requirements set out in Article 6***. Member States shall ensure that those collateral assets offer a level of security similar to that of collateral assets located in the Union and shall ensure*** that the realisation of ***those collateral*** assets is legally enforceable in a way ***which is equivalent in effect to the realisation of collateral*** assets located ***in*** the Union.

Article 8

Intragroup pooled covered bond structures

Member States may lay down rules regarding the use ▌ of ▌ intragroup ***pooled covered bond structures under which*** covered bonds issued by a credit institution ***that belongs*** to a group ('internally issued covered bonds') ***are used*** as ***cover assets*** for the external issue of covered bonds by another credit institution ***that belongs*** to the same group ('externally issued covered bonds'). ***Those rules*** shall ***include*** at least the following requirements ▌ :

(a) the internally issued covered bonds ***are sold to the credit institution issuing the externally issued covered bonds***;

(b) ***the internally issued covered bonds are used as cover assets in the cover pool for*** the externally issued covered ***bonds and are recorded on the balance sheet of*** the credit institution issuing ***the externally*** issued covered bonds;

(c) the cover pool for the externally issued covered bonds contains only internally issued covered bonds issued by a single credit institution within the group;

(d) ***the credit institution issuing*** the externally issued covered bonds ***intends to sell them*** to covered bond investors outside the group;

(e) both the internally and externally issued covered bonds qualify for credit quality step 1 as referred to in Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 ***at the time of issue*** and are ***secured by eligible cover assets as referred to in Article 6 of this Directive***;

(f) in the case of cross-border intragroup pooled covered bond structures, the cover assets of the internally issued covered bonds comply with the eligibility and coverage requirements of the externally issued covered bonds.

For the purposes of point (e) of the first subparagraph of this Article, competent authorities designated pursuant to Article 18(2) may allow covered bonds that qualify for credit quality step 2 following a change that results in a lower credit quality step of the covered bonds to continue to be part of an intragroup pooled covered bond structure, provided that those competent authorities conclude that the change in credit quality step is not due to a breach of the requirements for permission as set out in the provisions of national law transposing Article 19(2). Competent authorities designated pursuant to Article 18(2) shall subsequently notify EBA of any decision pursuant to this subparagraph.

Article 9

Joint funding

1. Member States shall allow ***eligible cover assets that were originated by a credit institution and have been purchased*** by a credit institution ***issuing covered bonds to be used as cover*** assets ▌ for the issue of covered bonds ▌ .

Member States shall regulate such purchases in order to ensure that the requirements set out in Articles 6 and 12 are met.

2. Without prejudice ***to the requirement set out in*** the second subparagraph of ***paragraph 1 of this Article, Member States may allow transfers by way of financial collateral arrangement pursuant to Directive 2002/47/EC.***

3. Without prejudice to the requirement set out in the second subparagraph of paragraph 1, ***Member States may also allow assets that were originated by an undertaking that is not a credit institution to be used as cover assets. Where Member States exercise that option, they shall require that the credit institution issuing the covered bonds either assess the credit-granting standards of the undertaking which originated the cover assets, or itself perform a thorough assessment of the borrower's creditworthiness.***

Article 10

Composition of the cover pool

Member States shall ensure investor protection by ***laying down rules on the composition of cover pools. Those rules shall, where relevant, set the conditions for the inclusion by credit institutions issuing covered bonds of primary assets that have differing characteristics*** in terms of structural features, lifetime ▌ or risk profile ***in the cover pool***.

Article 11

Derivative contracts in the cover pool

1. Member States shall ensure investor protection by allowing derivative contracts to be included in the cover pool only where at least the following requirements are met:

   (a) the derivative contracts are included in the cover pool exclusively for risk hedging purposes***, their volume is adjusted in the case of a reduction in the hedged risk and they are removed when the hedged risk ceases to exist***;

   (b) the derivative contracts are sufficiently documented;

(c) the derivative contracts are segregated in accordance with Article 12;

(d) the derivative contracts cannot be terminated upon the insolvency or resolution of the credit institution that issued the covered bonds;

(e) the derivative contracts comply with the rules laid down in accordance with paragraph 2.

2. For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for ▌ derivative contracts ***in the cover pool. Those rules shall specify:***

(a) the eligibility criteria for the hedging counterparties;

▌

(b) the necessary documentation to be provided in relation to derivative contracts.

Article 12

Segregation of ***cover*** assets ▌

1. Member States shall ***lay down rules regulating*** the segregation of ***cover*** assets***. Those rules shall include*** at least the following requirements:

   (a) all ***cover*** assets ▌ are identifiable by the credit institution issuing the covered bonds ***at all times***;

   (b) all ***cover*** assets ▌ are subject to legally binding and enforceable ***segregation*** by the credit institution issuing the covered bonds;

   (c) all ***cover*** assets ▌ are protected from any third party claims and no cover asset forms part of the insolvency estate of the credit institution issuing the covered bonds ***until the priority claim referred to in point (b) of Article 4(1) has been satisfied***.

   For the purposes of the first subparagraph, the ***cover*** assets ▌ shall include any collateral received in connection with derivative contract positions.

2. The segregation of ***cover*** assets ▌ referred to in paragraph 1 shall also apply in the case of insolvency or resolution of the credit institution issuing covered bonds.

Article 13

Cover pool monitor

1. Member States may require that credit institutions issuing covered bonds appoint a cover pool monitor to perform ongoing monitoring of the cover pool with regard to the requirements set out in Articles 6 to 12 and Articles 14 to 17.

2. Where Member States ***exercise*** the option provided for in paragraph 1, they shall lay down rules at least on the following aspects:

   (a) the appointment and dismissal of the cover pool monitor;

   (b) any eligibility criteria for the cover pool monitor;

   (c) the role and duties of the cover pool monitor, including in the case of the insolvency or resolution of the credit institution issuing the covered bonds;

   (d) the obligation to report to the competent ***authorities*** designated pursuant to Article 18(2);

   (e) the right of access to ▌ information ***necessary*** for the performance of the cover pool monitor's duties.

3. ***Where Member States exercise the option provided for in paragraph 1, the*** cover pool monitor shall be separate and independent from the credit institution issuing the covered bonds and from that credit institution's auditor.

Member States may, however, allow a cover pool monitor that is not separate from the credit institution ('internal cover pool monitor') where:

(a) the internal cover pool monitor is independent from the credit decision process of the credit institution issuing the covered bonds;

(b) without prejudice to point (a) of paragraph 2, Member States ensure that the internal cover pool monitor cannot be removed from that function as cover pool monitor without the prior approval of the management body in its supervisory function of the credit institution issuing the covered bonds ; and

(c) where necessary, the internal cover pool monitor has direct access to the management body in its supervisory function.

4. Where Member States ***exercise*** the option provided for in paragraph 1, they shall notify EBA.

Article 14

Investor information

1. Member States shall ensure that credit institutions issuing covered bonds provide information on their covered bond programmes that is sufficiently detailed to allow investors to assess the profile and risks of that programme and to carry out their due diligence.

2. For the purposes of paragraph 1, Member States shall ensure that the information is provided to investors at least on a quarterly basis and includes the following minimum portfolio information:

(a) the value of the cover pool and outstanding covered bonds;

(b) a list of the International Securities Identification Numbers (ISINs) for all covered bond issues under that programme, to which an ISIN has been attributed;

(c) the geographical distribution and type of ***cover*** assets ▌, their loan size and valuation method;

(d) details ▌ in relation to ***market risk, including*** interest ***rate risk and*** currency ***risk, and*** credit ▌ and liquidity ***risks***;

(e) the maturity structure of ***cover*** assets ▌ and covered bonds***, including an overview of the maturity extension triggers if applicable***;

(f) the levels of required ***and available*** coverage, ***and the levels of statutory,*** contractual and voluntary overcollateralisation;

(g) the percentage of loans ***where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013 and in any case where the loans*** are more than 90 days past due.

Member States shall ensure that for externally issued covered bonds under intragroup pooled covered bond structures as referred to in Article 8, the information referred to in the first subparagraph of this paragraph, or a link thereto, is provided to investors in respect of all internally issued covered bonds of the group. Member States shall ensure that ***that*** information is provided to investors on ***at least*** an aggregated basis. ▌

3. Member States shall ensure investor protection by requiring credit institutions issuing covered bonds to publish on their website the information made available to investors in accordance with paragraphs 1 and 2. ***Member States shall not require those credit institutions to publish that information on paper.***

Section II

Coverage and liquidity requirements

Article 15

Coverage requirements ▌

1. Member ***States*** shall ensure investor protection by requiring covered bond programmes to comply at all times with at least the ▌ coverage requirements laid down ***in paragraphs 2 to 8.***

2. ***All*** liabilities of the covered bonds ***shall be covered by claims for payment attached to the cover assets.***

3. ***The liabilities referred to in paragraph 2 shall include:***

(a) the obligations for the payment of ***the*** principal ***amount*** of outstanding covered bonds***;***

(b) ***the obligations for the payment of any interest on outstanding covered bonds;***

(c) ***the payment obligations attached to derivative contracts held in accordance with Article 11; and***

(d) ***the expected*** costs related to maintenance and administration ***for the winding-down*** of ***the*** covered bond programme ▌.

For the purposes of point (d) of the first subparagraph, Member States may allow a lump sum calculation.

▌

4. ***The*** following ***cover*** assets ***shall*** be considered to contribute to the coverage requirement:

(a) primary assets;

(b) substitution assets;

(c) liquid assets held in accordance with Article 16; ***and***

(d) ***claims for payment attached to*** derivative contracts held in accordance with Article 11**.**

▌

Uncollateralised claims where a default is considered to have occurred ***pursuant to*** Article 178 of Regulation (EU) No 575/2013 do not contribute to ***coverage***.

5. For the purposes of point (c) of the first subparagraph of paragraph 3 and point (d) of the first subparagraph of paragraph 4, Member States shall lay down rules on the valuation of derivative contracts.

6. The calculation of the required coverage shall ensure that the aggregate principal amount of all cover assets is equal to or exceeds the aggregate principal amount of outstanding covered bonds ('nominal principle').

Member States may allow for other principles of calculation, provided that they do not result in a ***higher ratio*** of coverage than that calculated under the nominal principle.

Member States shall lay down rules on the calculation of any interest payable in respect of outstanding covered bonds and interest receivable in respect of cover assets, which shall reflect sound prudential principles in accordance with applicable accounting standards.

7. By way of derogation from the first subparagraph of paragraph 6, Member States may, in a manner which reflects sound prudential principles and in accordance with applicable accounting standards, allow for future interest receivable on the cover asset net of future interest payable on the corresponding covered bond to be taken into consideration in order to balance any shortfall in coverage of the principal payment obligation attached to the covered bond where there is a close correspondence as defined in the applicable delegated regulation adopted pursuant to Article 33(4) of Regulation (EU) No 575/2013, subject to the following conditions:

(a) payments received during the lifetime of the cover asset and necessary for coverage of the payment obligation attached to the corresponding covered bond are segregated in accordance with Article 12 or are included in the cover pool in the form of cover assets referred to in Article 6 until the payments become due; and

(b) prepayment of the cover asset is only possible by way of exercising the delivery option, as defined in the applicable delegated regulation adopted pursuant to Article 33(4) of Regulation (EU) No 575/2013 or, in the case of covered bonds callable at par by the credit institution issuing the covered bonds, by way of the cover asset's borrower paying at least the called covered bond's par amount.

8. Member States shall ensure that the calculation of cover ***assets*** and liabilities is based on the same methodology. ***Member States may allow for different calculation methodologies for the calculation of cover assets on the one hand and liabilities on the other, provided that the use of such different methodologies does not result in a higher ratio of coverage than that calculated using the same methodology for the calculation of both cover assets and liabilities.***

Article 16

Requirement for a cover pool liquidity buffer

1. Member States shall ensure investor protection by requiring that the cover pool includes at all times a liquidity buffer composed of liquid assets available to cover the net liquidity outflow of the covered bond programme.

2. The cover pool liquidity buffer shall cover the ***maximum cumulative*** net liquidity outflow over the next 180 days.

3. Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 of this Article consists of the following types of assets***, segregated in accordance with Article 12 of this Directive***:

(a) assets qualifying as level 1, level 2A ***or*** level 2B assets pursuant to ***the applicable delegated regulation adopted pursuant to Article 460 of*** Regulation (EU) ***No 575/2013, that are valued*** in accordance with that ***delegated regulation, and are not issued by the credit institution issuing the covered bonds itself, its parent undertaking, other than a public sector entity that is not a credit institution, its subsidiary or another subsidiary of its parent undertaking or by a securitisation special purpose entity with which the credit institution has close links***;

(b) ***short-term*** exposures to credit institutions that qualify for ▌ credit quality step 1 ***or 2, or short-term deposits to credit institutions that qualify for credit quality step 1, 2 or 3***, in accordance with point (c) of Article 129(1) of Regulation (EU) No 575/2013.

Member States may restrict the types of liquid assets to be used for the purposes of points (a) and (b) of the first subparagraph.

▌ Member States shall ensure that uncollateralised claims from ▌ exposures ***considered in default pursuant to*** Article 178 of Regulation (EU) No 575/2013 cannot contribute to the cover pool liquidity buffer.

4. Where credit institutions issuing covered bonds are subject to liquidity requirements set out in other ▌ Union ***legal acts that result in an overlap with the cover pool liquidity buffer***, Member States may decide ***not to apply*** the provisions of national law transposing paragraphs 1, 2 and 3 ***for*** the period ***provided for*** in those ***Union legal*** acts ▌ . ***Member States may exercise that option only until the date on which an amendment to those Union legal acts to eliminate the overlap becomes applicable and shall inform the Commission and EBA where they exercise that option.***

5. Member States may allow for the calculation of the principal for extendable maturity structures to be based on the final maturity date ***in accordance with the contractual terms and conditions*** of the covered bond.

6. Member States ***may provide*** that paragraph 1 does not apply to covered bonds that are subject to match funding requirements.

Article 17

Conditions for extendable maturity structures

1. Member States may allow for the issue of covered bonds with extendable maturity structures where investor protection is ensured by at least the following:

(a) the maturity ***can only be extended subject to objective*** triggers ***specified in national law, and not at the discretion of the credit institution issuing the covered bonds***;

(b) the maturity ***extension triggers are specified in the contractual terms and conditions of the covered bond***;

(c) the information provided to investors about the maturity structure is sufficient to enable them to determine the risk of the covered bond, and includes a detailed description of:

(i) the maturity ***extension triggers***;

(ii) the consequences ***for a maturity extension*** ▌ of the insolvency or resolution of the credit institution issuing the covered bonds;

(iii) the role of the competent ***authorities*** designated pursuant to Article 18(2) and***,*** ***where relevant,*** of the special administrator with regard to ***the*** maturity extension ▌;

(d) the final maturity date of the covered bond is at all times determinable;

(e) ***in the event of the insolvency or resolution of the credit institution issuing the covered bonds, maturity extensions do*** not affect the ranking of covered bond investors ***or invert the sequencing of the covered bond programme's original maturity schedule***;

(f) ***the*** maturity extension does not change the structural features of the covered bonds regarding dual recourse as referred to in Article 4 and bankruptcy remoteness as referred to in Article 5.

2. Member States which allow the issue of covered bonds with extendable maturity structures shall notify EBA accordingly.

TITLE III

COVERED BOND PUBLIC SUPERVISION

Article 18

Covered bond public supervision

1. Member States shall ensure investor protection by providing that the issue of covered bonds is subject to covered bond public supervision.

2. For the purposes of the covered bond public supervision referred to in paragraph 1, Member States shall designate one or more competent authorities. They shall inform the Commission and EBA of those designated authorities and shall indicate any division of functions and duties.

3. Member States shall ensure that the competent authorities designated pursuant to paragraph 2 monitor the issue of covered bonds to assess compliance with the requirements laid down in the provisions of national law transposing this Directive.

4. Member States shall ensure that credit institutions issuing covered bonds register all their transactions in relation to the covered bond programme and have in place adequate and appropriate documentation systems and processes.

5. Member States shall further ensure that appropriate measures are in place to enable the competent authorities designated pursuant to paragraph 2 of this Article to obtain the information necessary to assess the compliance with the requirements laid down in the provisions of national law transposing this Directive, investigate possible breaches of those requirements, and impose administrative penalties and ***other administrative*** measures in accordance with the provisions of national law transposing Article 23.

6. Member States shall ensure that the competent authorities designated pursuant to paragraph 2, have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to covered bond public supervision.

Article 19

Permission for covered bond programmes

1. Member States shall ensure investor protection by requiring permission for a covered bond programme to be obtained before issuing covered bonds under that programme. Member States shall confer the power to grant such permission upon the competent authorities designated pursuant to Article 18(2).

2. Member States shall lay down the requirements for the permission referred to in paragraph 1, including at least the following:

   (a) an adequate programme of operations setting out the issue of covered bonds;

   (b) adequate policies, processes and methodologies aimed at investor protection for the approval, amendment, renewal and ***refinancing*** of loans included in the cover pool;

(c) management and staff dedicated to the covered bond programme which have adequate qualifications and knowledge regarding the issue of covered bonds and the administration of the covered bond programme;

(d) an administrative set-up of the cover pool ***and the monitoring thereof*** that meets the applicable requirements laid down in the provisions of national law transposing this Directive.

Article 20

Covered bond public supervision in the event of insolvency or resolution

1. The competent authorities designated pursuant to Article 18(2) shall cooperate with the resolution authority in the event of the resolution of a credit institution issuing covered bonds in order to ensure that the rights and interests of the covered bond investors are preserved, including at least by verifying the continuous ***and sound*** management of the covered bond programme during the period of the resolution process.

2. Member States may provide for ***the appointment of*** a special administrator to ▌ ensure that the rights and interests of the covered bond investors are preserved, including at least by verifying the continuous ***and sound*** management of the covered bond programme during the ***necessary*** period ▌ .

Where Member States exercise that option, they ***may*** require ***their*** competent authorities designated pursuant to Article 18(2) ***to approve the appointment and dismissal of the special administrator. Member States that exercise that option shall at least require that those competent authorities*** be consulted regarding the appointment and dismissal of the special administrator.

3. Where Member States provide for the appointment of a special administrator in accordance with paragraph 2, they shall adopt rules laying down the tasks and responsibilities of that special administrator at least in relation to:

(a) ***the discharge of*** the liabilities attached to the covered bonds;

(b) ***the management*** and ***realisation of*** cover ***assets***, including their transfer together with covered bond liabilities to another credit institution issuing covered bonds;

(c) ***the*** legal transactions necessary for the proper administration of the cover pool, for the ongoing monitoring of the coverage of the liabilities attached to the covered bonds, ***for the initiation of*** proceedings in order to ***bring*** assets ***back into*** the cover pool and ***for the transferral of*** the remaining assets ▌ to the insolvency estate of the credit institution which issued the covered bonds ***after all covered bond liabilities have been discharged***.

For the purposes of point (c) of the first subparagraph, Member States may allow the special administrator to operate, in the case of the insolvency of the credit institution issuing the covered bonds, under the authorisation held by that credit institution, subject to the same operational requirements.

4. Member States shall ensure the coordination and exchange of information for the purposes of the insolvency or resolution process among the competent authorities designated pursuant to Article 18(2), the special administrator, where such an administrator has been appointed, and, in case of resolution, the resolution authority.

Article 21

Reporting to the competent authorities

1. Member States shall ensure investor protection by requiring credit institutions issuing covered bonds to report the information set out in paragraph 2 on covered bond programmes to the competent authorities designated pursuant to Article 18(2). That reporting shall be carried out on a regular basis as well as at the request ***of those competent authorities***. Member States shall lay down rules on the frequency of ***that regular*** reporting ▌.

2. The reporting obligations to be laid down pursuant to paragraph 1 shall require ***that*** the information to be provided ***includes information on*** at least ▌ the following ▌ :

▌

(a) the eligibility of assets and cover pool requirements in accordance with Articles 6 to 11;

(b) the segregation of ***cover*** assets ▌ in accordance with Article 12;

(c) where applicable, the functioning of the cover pool monitor in accordance with Article 13;

▌

(d) the coverage requirements in accordance with Article 15;

(e) the cover pool liquidity buffer in accordance with Article 16;

(f) where applicable, the conditions for extendable maturity structures in accordance with Article 17.

3. Member States shall provide for rules on the information to be provided under ▌ paragraph 2 by the credit institutions issuing covered bonds to the competent ***authorities*** designated pursuant to Article 18(2) in the event of the insolvency or resolution of a credit institution issuing covered bonds.

Article 22

Powers of competent authorities for the purposes of covered bond public supervision

1. Member States shall ensure investor protection by giving competent authorities designated pursuant to Article 18(2) all supervisory, investigatory and sanctioning powers that are necessary to perform the task of covered bond public supervision.

2. The powers referred to in the paragraph 1 shall include ***at least*** the following:

(a) the power to grant or refuse permission pursuant to Article 19;

(b) the power to regularly review the covered bond programme in order to assess compliance with the provisions of national law transposing this Directive;

(c) the power to carry out on-site and off-site inspections;

(d) the power to impose administrative ▌ penalties and ***other administrative*** measures in accordance with the provisions of national law transposing Article 23;

(e) the power to adopt and implement supervisory guidelines relating to the issue of covered bonds.

Article 23

Administrative penalties and ***other administrative*** measures

1. ***Without prejudice to the right of Member States to provide for criminal penalties,*** Member States shall lay down rules establishing appropriate administrative penalties and ***other administrative*** measures that apply at least in the following situations:

(a) a credit institution has acquired a permission ***for a*** covered ***bond programme*** by means of false statements or other irregular means;

(b) a credit institution no longer fulfils the conditions under which ▌ permission ***for a covered bond programme*** was given;

(c) a credit institution issues covered bonds without obtaining the permission in accordance with the provisions of national law transposing Article 19;

(d) a credit institution issuing covered bonds fails to meet the requirements set out in the provisions of national law transposing Article 4;

(e) a credit institution issues covered bonds ***that do*** not ***comply*** with the requirements set out in the provisions of national law transposing Article 5;

(f) a credit institution issues covered bonds that are not collateralised in accordance with the provisions of national law transposing Article 6;

(g) a credit institution issues covered bonds ***that are*** collateralised by assets located outside the Union in breach of the requirements laid down in the provisions of national law transposing Article 7;

(h) a credit institution collateralises covered bonds in an intragroup pooled covered bond structure in breach of the requirements laid down in the provisions of national law transposing Article 8;

(i) a credit institution issuing covered bonds fails to fulfil the conditions for joint funding laid down in the provisions of national law transposing Article 9;

(j) a credit institution issuing covered bonds fails to meet the requirements of composition of the cover pool laid down in the provisions of national law transposing Article 10;

(k) a credit institution issuing covered bonds fails to meet the requirements regarding derivative contracts in the cover pool laid down in the provisions of national law transposing Article 11;

(l) a credit institution issuing covered bonds fails to comply with the requirements of the segregation of ***cover*** assets ▌ in accordance with the provisions of national law transposing Article 12;

(m) a credit institution issuing covered bonds fails to report information or provides incomplete or inaccurate information in breach of the provisions of national law transposing Article 14;

(n) a credit institution issuing covered bonds repeatedly or persistently fails to maintain a cover pool liquidity buffer in breach of the provisions of national law transposing Article 16;

(o) a credit institution that issues covered bonds ***with extendable maturity structures*** fails to fulfil the conditions for extendable maturity structures laid down in the provisions of national law transposing Article 17;

(p) a credit institution issuing covered bonds fails to report information or provides incomplete or inaccurate information on its obligations in breach of the provisions of national law transposing Article 21(2).

Member States may decide not to provide for administrative penalties or other administrative measures for breaches which are subject to criminal penalties under their national law. In such cases, Member States shall communicate the relevant criminal law provisions to the Commission.

2. The penalties and measures referred to in paragraph 1 shall be effective, proportionate and dissuasive and shall include at least the following:

(a) a withdrawal of permission ***for a*** covered ***bond programme***;

(b) a public statement which indicates the identity of the natural or legal person and the nature of the breach in accordance with Article 24;

(c) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(d) administrative pecuniary penalties.

3. Member States shall also ensure that ***the*** penalties and ▌ measures ***referred to in paragraph 1*** are effectively implemented.

4. Member States shall ensure that, when determining the type of administrative penalties or other ***administrative*** measures and the amount of administrative pecuniary penalties, the competent authorities designated pursuant to Article 18(2) take into account all the following circumstances, where relevant:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the natural or legal person responsible for the breach;

(c) the financial strength of the natural or legal person responsible for the breach, including by reference to the total turnover of the legal person or the annual income of the natural person;

(d) the importance of profits gained or losses avoided because of the breach by the natural or legal person responsible for the breach, insofar as those profits or losses can be determined;

(e) the losses caused to third parties by the breach, insofar as those losses can be determined;

(f) the level of cooperation by the natural or legal person responsible for the breach with the competent ***authorities designated pursuant to Article 18(2)***;

(g) any previous breaches by the natural or legal person responsible for the breach;

(h) any actual or potential systemic consequences of the breach.

5. Where the provisions referred to in paragraph 1 apply to legal persons, Member States shall also ensure that the competent authorities designated pursuant to Article 18(2) apply the administrative penalties and ***other administrative*** measures set out in paragraph 2 of this Article to members of the management body and to other individuals who under national law are responsible for the breach.

6. Member States shall ensure that before taking any decision imposing administrative penalties or ***other administrative*** measures as set out in paragraph 2, the competent authorities designated pursuant to Article 18(2) give the natural or legal person concerned the opportunity to be heard. ***Exceptions to the right to be heard may apply for the adoption of those other administrative measures where urgent action is necessary to prevent significant losses to third parties or significant damage to the financial system. In such cases, the person concerned shall be given the opportunity to be heard as soon as possible after the adoption of the administrative measure and, where necessary, that measure shall be revised.***

7. Member States shall ensure that any decision imposing administrative ***penalties or other administrative*** measures as set out in paragraph 2 is properly reasoned and is subject to a right of appeal.

Article 24

Publication of administrative ***penalties*** and ***other administrative*** measures

1. Member States shall ensure that the provisions of national law transposing this Directive include rules requiring that administrative ***penalties*** and ***other administrative*** measures be published without undue delay on the official ***websites*** of the competent authorities designated pursuant to Article 18(2). ***The same obligations apply where a Member State decides to provide for criminal penalties pursuant to the second subparagraph of Article 23(1).***

2. The rules adopted pursuant to paragraph 1 shall require at a minimum the publication of any decision which can***not or can no longer be appealed,*** and which is imposed for breach of the provisions of national law transposing this Directive.

3. Member States shall ensure that such a publication includes information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty ***or measure*** is imposed. ***Subject to paragraph 4, Member States*** shall further ensure that such information is published without undue delay after ***the addressee has been*** informed of ***that penalty or measure as well as of the publication of the decision imposing that penalty or measure on the official websites of the competent authorities designated pursuant to Article 18(2)***.

4. Where Member States permit publication of ***a decision imposing*** penalties or other measures against which an appeal ***is pending***, the competent authorities designated pursuant to Article 18(2) shall, without undue delay, also publish on their official ***websites*** information ***on*** the status of the appeal and the outcome thereof.

5. Member States shall ensure that the competent authorities designated pursuant to Article 18(2) publish the ***decision imposing*** penalties ***or measures*** on an anonymous basis and ▌ in accordance with national law, in any of the following circumstances:

   (a) where the penalty ***or measure*** is imposed on a natural person and the publication of personal data is found to be disproportionate;

   (b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

   (c) where publication would cause, insofar as it can be determined, disproportionate damage to the credit institutions or the natural persons involved.

6. ***Where a Member State publishes*** a decision ***imposing a penalty*** or measure on an anonymous basis, ***it*** may allow for the publication of the relevant data to be postponed.

7. Member States shall ensure that any final court ruling ***that annuls*** a decision imposing ***a penalty*** or ▌ measure ***is*** also published.

8. Member States shall ensure that any publication referred to in paragraphs 2 to 6 remains on the official ***websites*** of the competent ***authorities*** designated pursuant to Article 18(2) for at least five years ***from the date of*** publication. Personal data contained in the publication shall only be retained on the official website for the period which is necessary and in accordance with the applicable personal data protection rules. ***Such a retention period shall be determined taking into account the limitation periods provided for in the legislation of the Member States concerned but shall in no case be longer than ten years.***

9. The competent authorities designated pursuant to Article 18(2) shall inform EBA of any administrative ***penalties*** and ***other administrative*** measures imposed, including, where relevant, any appeal in relation thereto and the outcome thereof. Member States shall ensure that those competent authorities receive information and details of the final judgement in relation to any criminal ***penalty*** imposed***,*** which those ***competent authorities*** shall also submit to EBA.

10. EBA shall maintain a central database of administrative ***penalties*** and ***other administrative*** measures communicated to them. That database shall be accessible only to the competent authorities designated pursuant to Article 18(2) and shall be updated on the basis of the information provided by those competent authorities in accordance with paragraph 9 of this Article.

Article 25

Cooperation obligations

1. Member States shall ensure that the competent authorities designated pursuant to Article 18(2) cooperate closely with the competent ***authorities*** performing the general supervision of credit institutions in accordance with relevant Union law applicable to those institutions ***and with the resolution authority in the event of the resolution of a credit institution issuing covered bonds***.

2. Member States shall further ensure that the competent authorities designated pursuant to Article 18(2) cooperate closely with each other. That cooperation shall include providing one another with any information which is relevant for the exercise of the other authorities' supervisory tasks under the provisions of national law transposing this Directive.

3. For the purposes of the second sentence of paragraph 2 of this Article, Member States shall ensure that the competent authorities designated pursuant to Article 18(2) ***communicate***:

(a) all relevant information ***at the*** request ***of*** another ▌ competent authority ***designated pursuant to Article 18(2)***; and

(b) on their own initiative, any essential information to other competent authorities ***designated pursuant to Article 18(2)*** in other Member States.

4. Member States shall also ensure that the competent authorities designated pursuant to Article 18(2) cooperate with EBA ***or, where relevant, with the European Supervisory Authority (European Securities and Markets Authority), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[24],*** for the purposes of this Directive.

5. For the purposes of this Article, information shall be regarded as essential if it could materially influence the assessment of the issue of covered bonds in another Member State.

Article 26

Disclosure requirements

1. Member States shall ensure that the following information is published by the competent authorities designated pursuant to Article 18(2) on their official ***websites***:

   (a) the texts of their national laws, regulations, administrative rules and general guidance adopted in relation to the issue of covered bonds;

[24] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(b) the list of credit institutions permitted to issue covered bonds;

(c) the list of covered bonds ***that are entitled to*** use the label **'**European Covered ***Bond' and the list of covered bonds that are entitled to use the label 'European Covered Bond (Premium)'***.

2. The information published in accordance with paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the different Member States' competent authorities designated pursuant to Article 18(2). That information shall be updated to take account of any changes.

3. The competent authorities designated pursuant to Article 18(2) shall ▌ notify EBA on an annual basis of the list of credit institutions referred to in point (b) of paragraph 1 and the list of covered bonds ***referred to in point (c) of paragraph 1***.

TITLE IV

LABELLING

Article 27

Labelling

1. Member States shall ***ensure that*** the label ***'***European Covered ***Bond' and its official translation in all official languages of the Union is used only for*** covered bonds which meet the requirements laid down in the provisions of national law transposing this Directive.

2. ***Member States shall ensure that the label 'European Covered Bond (Premium)' and its official translation in all official languages of the Union is used only for covered bonds which meet the requirements laid down in the provisions of national law transposing this Directive and which meet the requirements of Article 129 of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/… of the European Parliament and of the Council[+25].***

[+] PO: Please insert in the text the number of the Regulation contained in document 2018/0042 (COD) and insert the number, date and OJ reference of that Regulation in the corresponding footnote.

25 Regulation (EU) 2019/… of the European Parliament and of the Council of … amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds (OJ L …, p….).

TITLE V

AMENDMENTS TO OTHER DIRECTIVES

Article 28

Amendment to Directive 2009/65/EC

Article 52(4) of Directive 2009/65/EC is amended as follows:

(1) the first subparagraph is replaced by the following:

"4.Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 25 % where bonds were issued before … [30 months after the date of entry into force of this amending Directive] and met the requirements set out in this paragraph as applicable on the date of their issue, or where bonds fall under the definition of covered bonds in point (1) of Article 3 of Directive (EU) 20…/… of the European Parliament and of the Council*[+].

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* Directive (EU) …/… of the European Parliament and of the Council of … on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EU and 2014/59/EU (OJ L …, …, p. …).";

(2) the third subparagraph is deleted.

[+] OJ: Please insert in the text the number of this Directive .

Article 29

Amendment to Directive 2014/59/EU

In Article 2(1) of Directive 2014/59/EU, point 96 is replaced by the following:

"(96) 'covered bond' means a covered bond as defined in point (1) of Article 3 of Directive (EU) 20…/… of the European Parliament and of the Council*[+] or, with regard to an instrument that was issued before ... [30 months after the date of entry into force of this amending Directive], a bond as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council**, as applicable on the date of its issue;

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* Directive (EU) …/… of the European Parliament and of the Council of … on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EU and 2014/59/EU (OJ L …, …, p. …).

** Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).".

[+] OJ: Please insert in the text the number of this Directive.

TITLE VI

FINAL PROVISIONS

Article 30

Transitional measures

1. Member States shall ensure that covered bonds issued before **…** [30 months after the date of entry into force of this Directive] that comply with the requirements laid down in Article 52(4) of Directive 2009/65/EC, as applicable on the date of their issue, are not subject to the requirements set out in Articles 5 to 12 and Articles 15, 16, 17 and 19 of this Directive, but may continue to be referred to as covered bonds in accordance with this Directive until their maturity.

Member States shall ensure that the competent authorities designated pursuant to Article 18(2) of this Directive monitor the compliance of covered bonds issued before … [30 months after the date of entry into force of this Directive] with the requirements laid down in Article 52(4) of Directive 2009/65/EC, as applicable on the date of their issue, as well as with the requirements of this Directive, insofar as they are applicable in accordance with the first subparagraph of this paragraph.

2. Member States may apply paragraph 1 to tap issues of covered bonds for which the opening of the ISIN is before … [30 months after the date of entry into force of this Directive] for up to 24 months after that date, provided that those issues comply with all the following requirements:

(a) the maturity date of the covered bond is before …[90 months after the date of entry into force of this Directive];

(b) the total issue size of tap issues made after …[30 months after the date of entry into force of this Directive] does not exceed twice the total issue size of the covered bonds outstanding on that date;

(c) the total issue size of the covered bond at maturity does not exceed EUR 6 000 000 000 or the equivalent amount in domestic currency;

(d) the collateral assets are located in the Member State that applies paragraph 1 to tap issues of covered bonds.

Article 31

Reviews and reports

1. By … [54 months after the date of entry into force of this Directive], the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council***, together with a legislative proposal, if appropriate, on*** whether ***and, if so, how*** an equivalence regime could be introduced for third-country credit institutions issuing covered bonds and for investors in ***those*** covered bonds, taking into consideration international developments in the area of covered bonds, in particular the development of legislative frameworks in third countries.

2. By … [66 months after the date of entry into force of this Directive], the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council on the implementation of this Directive with regard to the level of investor protection and on the developments regarding the issue of covered bonds in the Union. The report shall include any ***recommendations for further action. The report shall include information on:***

(a) developments regarding the number of permissions to issue covered bonds;

(b) developments regarding the number of covered bonds issued in compliance with the provisions of national law transposing this Directive and with Article 129 of Regulation (EU) No 575/2013;

(c) developments regarding the assets collateralising the issue of covered bonds;

(d) developments regarding the level of overcollateralisation;

(e) cross-border investments in covered bonds, including inward ***investment from*** and outward investment ▌ to third countries;

(f) developments regarding the issue of covered bonds with extendable maturity structures;

(g) developments regarding the risks and benefits of the use of exposures as referred to in Article 129(1) of Regulation (EU) No 575/2013;

(h) the functioning of covered bond markets.

3. By **...** [54 months after the date of entry into force of this Directive], Member States shall transmit information on the issues listed in paragraph 2 to the Commission.

4. By ... [54 months after the date of entry into force of this Directive], after commissioning and receiving a study assessing the risks and benefits arising from covered bonds with extendable maturity structures and after consulting EBA, the Commission shall adopt a report and shall submit that study and that report to the European Parliament and to the Council, together with a legislative proposal, if appropriate.

5. By ... [54 months after the date of entry into force of this Directive], the Commission shall adopt a report on the possibility of introducing a dual-recourse instrument named European Secured Notes. The Commission shall submit that report to the European Parliament and to the Council, together with a legislative proposal, if appropriate.

Article 32

Transposition

1. Member States shall adopt and publish, by ... [***18 months after the date of entry into force of this Directive***], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures at the latest from **...** [30 months after the date of entry into force of this Directive].

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 33

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 34

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament	*For the Council*
The President	*The President*

Statement on change of Delegated Regulation (EU) 2015/61 with regard to liquidity coverage requirements for credit institutions

The requirements for a dedicated liquidity buffer for covered bonds set out in Article 16 of the proposal for [a Directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU] may result in an overlap with the requirements for credit institutions to maintain a general liquidity buffer, as set out in Delegated Regulation (EU) 2015/61.

In order to address this overlap and to ensure, at the same time, that a dedicated liquidity buffer for covered bonds is applied also during the period covered by the Liquidity Coverage Ratio (LCR), the Commission is willing to amend Delegated Regulation (EU) 2015/61 in order to cater for the specific situation of covered bonds. Such amendment should be adopted in time for it to be able to enter into force before the date of application of the Directive on the issue of covered bonds and covered bond supervision.