



Plenary sitting

A8-0390/2018

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*****I**

REPORT

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))

Committee on Economic and Monetary Affairs

Rapporteur: Bernd Lucke

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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 Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of 22 August 2018¹,
 - having regard to the opinion of the European Economic and Social Committee of 11 July 2018²,
 - having regard to Rule 59 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. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

¹ OJ C 382, 23.10.2018, p. 2.

² OJ C 367, 10.10.2018, p. 56.

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■.

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

(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 53 and 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 Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council³ 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 a special public supervision as well as a dual recourse mechanism. National covered bond frameworks address these 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, the eligibility criteria of assets, the possibility to pool assets, the transparency and reporting obligations, and the rules on liquidity risk mitigation. Member State approaches to regulation also differ on substance. In several Member States, there is no dedicated national framework for

¹ *OJ C 382, 23.10.2018, p. 2.*

² *OJ C 367, 10.10.2018, p. 56.*

³ 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).

covered bonds. As a consequence, the key structural elements that covered bonds issued in the Union are to comply with are not yet set out in Union law.

- (2) Article 129 of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹ adds further conditions to those referred to in Article 52(4) of Directive 2009/65/EC in order to obtain preferential prudential treatment as regards capital requirements which allow credit institutions investing in covered bonds to hold less capital than when investing in other assets. Whereas those additional requirements increase the level of harmonisation of covered bonds within the Union, they serve the specific purpose to define the conditions to receive such preferential treatment for covered bond investors, and are not applicable outside the framework of Regulation (EU) No 575/2013.
- (3) Other pieces of Union law, including Commission Delegated Regulation (EU) 2015/61², Commission Delegated Regulation (EU) 2015/35³ and Directive 2014/59/EU of the European Parliament and of the Council⁴, also refer to the definition set out in Directive 2009/65/EC as a reference for identifying the covered bonds that may benefit from the preferential treatment those acts put in place for covered bond investors. However the wording of those acts differs according to their purposes and subject-matters and therefore there is no consistent use of the term 'covered bonds'.
- (4) The treatment of covered bonds can be considered as overall 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 this has *at least two* consequences. Firstly, preferential treatment is granted equally to instruments which can differ in nature and their level of risk and investor protection. Secondly, differences in safeguards provided by national rules can create risk to financial stability where covered bonds, presenting different level of investor protection, can be purchased as such across the Union and can benefit from preferential prudential treatment under Regulation (EU) No 575/2013 and other Union legislation.
- (5) ***Harmonising certain aspects of national regimes alongside identified best practices will ensure a smooth and continuous development of well-functioning covered bond***

¹ 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).

² 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).

³ 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).

⁴ Directive 2014/59/EU of the European Parliament and of the Council of the 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).

markets in the Union and to limit potential risks and vulnerabilities to financial stability. This 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 help facilitate the development of covered bonds markets in those Member States where there is not currently one. Such a market would provide a stable funding source for credit institutions that would on that basis be better placed to provide affordable mortgages for consumers and businesses and would make safer investments available to investors.

- (6) The European Systemic Risk Board ('ESRB') issued a recommendation¹ inviting national competent authorities and the European Banking Authority ('EBA') to identify best practices regarding covered bonds and to encourage harmonisation of national frameworks. It also recommends that EBA coordinates actions taken by national supervisory 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 calls on EBA to monitor the functioning of the market for covered bonds by reference to the best practices as identified by EBA for a period of two years, in order to assess the need for legislative action and to report such need to the ESRB and to the Commission.
- (7) The Commission issued a call for advice to EBA in accordance with Article 503(1) of Regulation (EU) No 575/2013 in December 2013.
- (8) In response to both the ESRB recommendation of 20 December 2012 and the call for advice from the Commission in December 2013, EBA issued a report on 1 July 2014². That report recommends greater convergence of national legal, regulatory and supervisory covered bond frameworks, so as to further support the existence of a single preferential risk weight treatment to covered bonds in the Union.
- (9) As envisaged by the ESRB, EBA further monitored the functioning of the market for covered bonds by reference to the best practices set out in that recommendation for two years. On that basis, EBA delivered a second report on covered bonds to the ESRB, to the Council and to the Commission on 20 December 2016³. That report concluded that further harmonisation would be necessary to ensure more consistent definitions and regulatory treatment of covered bonds in the Union. The report further concluded that harmonisation should build on the existing well-functioning markets in some Member States.
- (10) Covered bonds are traditionally issued by credit institutions. The inherent nature of the instrument is to provide funding for loans and one of the core activities of credit institutions is to grant loans on a large scale. Accordingly, Union legislation granting

¹ Recommendation of the European Systemic Risk Board of 20 December 2012 on funding of credit institutions (ESRB/2012/2) (2013/C 119/01).

² *EBA Report on EU covered bond frameworks and capital treatment* (2014).

³ *EBA Report on covered bonds - Recommendations on harmonisation of covered bond frameworks in the EU* (2016), EBA-Op-2016-23.

preferential treatment to covered bonds requires them to be issued by credit institutions.

- (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 underpinning the investor protection of the dual recourse mechanism, which grants the investor a claim on both the covered bond issuer and the assets in the cover pool. Restricting 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. It would also be in line with the approach of well-functioning national markets that only allow credit institutions to issue covered bonds.
- (12) It is therefore appropriate that only credit institutions as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 should be able to issue covered bonds under Union law. The main purpose of this Directive is to regulate the conditions under which those credit institutions can issue covered bonds as a financing tool by laying down the product requirements and specific product supervision they are subject to 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 bonds frameworks and is also a core element 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 across the Union have a claim on both the covered bond issuer and the assets in the cover pool under harmonised conditions.
- (14) Bankruptcy remoteness should also be an essential feature of covered bonds to ensure that the covered bonds investors are repaid on the maturity of the bond. Automatic acceleration of repayment upon default of the issuer may disturb the ranking of those who have invested in covered bonds and therefore it is important to ensure that covered bonds investors be repaid in accordance with the contractual schedule and also in case of default. 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 fact that assets serving as collateral should be of very high quality in order to ensure ***that the value of the cover pool is sufficient to cover the payment obligations of outstanding bonds. Such cover pools could consist of exposures to authorities with tax raising powers or of claims backed by high quality physical assets.*** High quality assets are characterised by having specific features ***relating to the claim being secured and the collateral asset backing them.*** It is therefore appropriate to set out the general quality features of ***cover pools and their collateral assets.*** Assets listed in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 should be considered eligible to serve as collateral in the cover pool, within a covered bond framework, as should loans to ***public undertakings operating under public supervision or an investment grade rating by a nominated ECAI. Other cover assets of a similarly high quality could also be considered to be eligible, provided that they comply with the requirements of***

this Directive, including the requirements for collateral backing the claim for payment. Member States should also be free to exclude assets in their national frameworks.

- (15a) *Debt instruments covered by strategic assets of importance for growth, innovation and sustainability, which are riskier than government debt and mortgages and do not fall within this Directive, should have the possibility of being eligible for a new class of financial instruments under the name of European Secured Notes (ESNs). It is also necessary to establish such a framework in order to take into account the specificities of SME finance in the Union economy. ESNs might provide a useful additional instrument for banks to fund the real economy.*
- (16) 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 on the issuer but also on assets in a dedicated cover pool. To ensure that those assets are of **high** quality, specific requirements on the quality of assets that can be included in the pool should be laid down. **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 rather aim at protecting investors by imposing specific requirements on the covered bond itself. In addition to the specific requirement to use high quality assets in the cover pool, it is also appropriate to regulate the general requirements of the features of the cover pool to further strengthen investor protection. Those requirements should include specific rules aimed at protecting the cover pool, including rules on the segregation (including by means of a Special Purpose Vehicle, an SPV) and location of the assets in the cover pool to ensure **a degree of homogeneity which allows for a sufficient extent of risk diversification within the limits of that** homogeneity and facilitate a fair risk assessment by the investor. **To that end, cover pools should be simple and transparent.** Furthermore, requirements for **risk mitigation** should be **laid out** in this Directive, without prejudice to the right of Member States **to complement those by** different means. The calculation of the coverage and the conditions under which derivatives 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.
- (17) A number of Member States already require that a cover pool monitor performs 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, when 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 special public supervision.
- (18) 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. This would provide for the pooling of assets by several credit

institutions as collateral for covered bonds issued by a single credit institution and would facilitate the issue of covered bonds in those Member States where there are not currently well-developed markets. It is important that the requirements for the use of joint funding agreements ensure that assets ***sold or transferred by way of financial collateral arrangement pursuant to Directive 2002/47/EC*** to the issuing credit institutions meet the requirements of eligibility of assets and segregation of cover assets under Union law.

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- (20) Transparency of the cover pool securing the covered bond is an essential part of this type of financial instrument as it enhances comparability and allows investors perform the necessary risk evaluation. Directive 2003/71/EC¹ of the European Parliament and of the Council includes rules on the drawing up, the approval and the distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State. Several initiatives regarding the information to be disclosed to covered bond investors to supplement Directive 2003/71/EC have been developed over time by national legislators and market participants. It is however necessary to specify at Union level what the minimum common level of information investors should have access to prior to or when buying covered bonds. Member States should be allowed to supplement these minimum requirements with additional provisions.
- (21) A core element in 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, derivatives and other operational liabilities falling due within the covered bond programme. The liquidity buffer for the cover pool differs from the general liquidity requirements imposed on credit institutions in accordance with other acts of Union law in that 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 acts of Union or national law and serving different purposes than the cover pool liquidity buffer. It should therefore be possible for Member States to decide that the cover pool liquidity buffer requirement should only be applicable if no other liquidity requirement is imposed on the credit institution under Union or national law during the period covered by such other requirements.
- (22) In a number of Member States, innovative structures for maturity profiles have been developed in order to address potential liquidity risks, including maturity mismatches. These structures include the possibility to extend the scheduled maturity of the covered bond for a certain period of time or to allow the cash flows from the assets in the cover pool to pass directly to the covered bond holders. ***Maturity extensions, when providing an alternative to insolvency or resolution, allow credit institutions***

¹ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

to mitigate fire sales and increase investor protection. However, it is important ■ *that the conditions under which it is possible for Member States to allow these structures be defined to ensure that they are not too complex. It is also important to ensure that credit institutions cannot extend maturity at their sole discretion. Maturity should only be extended when objective and clearly defined trigger events occur.*

- (23) 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 define the nature, content and 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.
- (24) As the covered bond public supervision is distinct from the supervision of credit institutions in the Union, Member States should be able to appoint different national competent authorities to perform these different supervisory roles than the one 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 the covered bond public supervision cooperate closely with the competent authority performing the general supervision of credit institutions.
- (25) Covered bond public supervision should entail the granting of permission for credit institutions to issue covered bonds. As only credit institutions should be allowed to issue covered bonds, authorisation as a credit institution should be a prerequisite for that permission. This Directive should include provisions governing the conditions under which credit institutions authorised under Union law can obtain permission to pursue the activity of issuing covered bonds under a covered bond programme.
- (26) As regards the scope of permission, a covered bond programme *normally consists of a cover pool securing* covered bond issue. Different issuances (*with* different International Securities Identification Numbers (ISINs)).
- (27) 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.
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- (30) In order to detect potential breaches of the requirements relating to the issue and marketing of covered bonds, competent authorities performing the 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.
- (31) Competent authorities performing the 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 additional penalties to, and higher level of administrative pecuniary penalties than those provided for in this Directive.

- (32) Existing national laws on covered bonds are characterised by the fact that they are subject to detailed regulation on national level and a supervision of the covered bonds issues and programmes to ensure that the rights of the investors are upheld at all times in relation to issue of covered bonds. That supervision includes the ongoing monitoring of the features of the programme, the coverage requirements and of 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 their national measures transposing this Directive and on the way they perform their covered bond public supervision.
- (33) Covered bonds are currently marketed in the Union under national denominations and labels, some of which are well-established *while others are not*. It seems therefore *sensible* to allow credit institutions which issue covered bonds in the Union to use a specific 'European Covered Bonds' label when selling covered bonds to both Union and third countries' investors under the condition that those covered bonds comply with the requirements set out in *this Directive. If 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 a particularly high and well-understood quality, might be attractive even in Member States with well-established national labels. The two 'European Covered Bonds' labels* make it easier for those investors to assess the quality of the covered bonds and hence make them more attractive as an investment vehicle both inside and outside the Union. The use of *those labels* should however be facultative and Member States should be able to keep their own national denominations and labelling framework in place in parallel to the 'European Covered Bonds' *labels*.
- (34) 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 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, including the possibility for Member States to allow covered bonds to be issued in order to fund loans to public undertakings.
- (35) *The European Parliament, in its Resolution of 4 July 2017 entitled Towards a pan-European covered bonds framework, emphasised that market access barriers for issuers in developing covered bond markets outside the EEA should be removed by providing equitable treatment to covered bonds from issuers in third countries, provided their legal, institutional and supervisory environment passes a thorough equivalence assessment by a competent Union institution. The key principles of Union law should serve as a potential benchmark for the covered bond markets globally. Since covered bonds markets are rapidly developing in several third*

countries, it is imperative to establish an equivalence regime to be introduced for third country ***without undue delay. Reducing market access barriers to third country*** issuers of covered bonds ***will increase Union investors' choice and access to long term finance, and also foster increases in cross-border investment.***■

- (36) Covered bonds are characterised as having a scheduled maturity of several years. It is therefore necessary to include transitional measures to ensure that covered bond already issued on ... [OP: Please insert the date laid down in the second subparagraph of Article 32(1) of this Directive] are not affected.
- (37) 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 modified. Directive 2014/59/EU defines covered bonds by referring to Article 52(4) of Directive 2009/65/EC and given that this description is modified, Directive 2014/59/EU should be modified as well. Furthermore, to avoid affecting covered bonds issued in accordance with Article 52(4) of Directive 2009/65/EC before ... [OP: Please insert the date laid down in the second subparagraph of Article 32(1) of this Directive], those covered bonds should continue to be referred to or defined as covered bonds until their maturity. Directive 2009/65/EC and 2014/59/EU should therefore be amended accordingly.
- (38) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹, 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.
- (39) Since the objectives of this Directive cannot be sufficiently achieved by the Member States ■ but can rather, by reason of the need to further develop covered bond markets across the Union and support cross-border investments, 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 those objectives.
- (40) 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 Council² and delivered an opinion on...³,

¹ OJ C 369, 17.12.2011, p. 14.

² 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).

³ [OJ C (...).]

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 shall apply:

- (1) 'covered bond' means a debt obligation issued *under public supervision in accordance with Article 18* by a credit institution *or by a specialised mortgage credit institution* and *which is a dual recourse instrument in accordance with Article 4, which is bankruptcy remote in accordance with Article 5, for which the assets in the cover pool are segregated in accordance with Article 12, and which is collateralised by eligible assets in accordance with, as the case may be, Article 6 or Article 6a*;
- (2) 'covered bond programme' means the assets and liabilities as referred to in Article 15 as well as activities of the credit institution related to the issuing of covered bonds under permission granted in accordance with Article 19;
- (3) 'cover pool' means *a clearly defined set of identifiable assets securing the payment obligations of the covered bond issuer until maturity of the covered bond and subject to legal arrangements ensuring that those assets will be* segregated from other assets held by the credit institution issuing covered bonds *at the latest when resolution or insolvency proceedings have been opened in respect of the covered bond issuer*;
- (4) 'credit institution' means credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;
- (5) 'specialised mortgage credit institution' means a credit institution which:

- (a) funds **granted** loans **or purchased receivables** through the issue of covered bonds,
- (b) is permitted by law to carry out mortgage and public sector lending only, **and**
- (c) is not permitted to take deposits but can take other repayable funds,

without prejudice to ancillary and additional activities restricted and specified by national law of the Member States;

- (6) 'acceleration of a covered bond' means a situation in which a covered bond, **upon insolvency or resolution of the credit institution issuing the covered bond, becomes** immediately due and payable and in respect of which the payments to the covered bond investors **have an enforceable claim** to be repaid earlier than the original maturity date;
- (7) '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;
- (8) '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;
- (10) 'primary asset' means a dominant asset in the cover pool determining the nature of the cover pool;
- (11) 'substitution asset' means an asset contributing to the coverage requirements, other than the primary assets;
- (12) 'overcollateralisation' means the **entirety of** statutory, **voluntary** or contractual level of collateral exceeding the coverage requirement as set out in Article 15, **excluding other current or future additional guarantees that could be provided in accordance with national regulation and could vary over time;**
- (13) 'match funding requirement' means rules requiring that the cash flows between liabilities and assets falling due be matched by ensuring that payments from borrowers be received prior to making payments to covered bond investors and that the amounts received from the borrowers are at least equivalent in value to the payments to be made to the covered bond investors;
- (14) 'net liquidity outflow' means all **payments made in a certain period**, including principal and interest payments and payments under derivative contracts of the covered bond programme, **net of all payments received in the same period for claims related to** the assets in the cover pool;
- (15) 'extendable maturity structure' means a mechanism providing for the possibility to extend the scheduled maturity of covered bonds for a certain period of time and in the event that a specific trigger occurs;
- (16) 'covered bond public supervision' means the supervision of covered bonds programmes ensuring compliance with and enforcement of the requirements applicable to the issue of covered bonds;

(17) 'special administrator' means the person or entity appointed to administrate a covered bond programme in the event of insolvency of the credit institution issuing covered bonds under that programme;

(17a) '*resolution*' means reorganisation measures within the meaning of the seventh indent of Article 2 of Directive 2001/24/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 the covered bonds investors to the following claims:
 - (a) a claim on the credit institution issuing covered bonds;
 - (b) in case of insolvency or resolution of the credit institution issuing covered bonds, a priority claim on the principal and any accrued interest from assets included in the cover pool;
 - (c) in case of insolvency of the credit institution issuing covered bonds and in the event that the priority claim as referred to in point (b) cannot be fully satisfied, a claim on the insolvency estate of that credit institution, which ranks *pari passu* with the claims of the credit institution's *senior* unsecured creditors determined in accordance with the national laws governing the ranking in normal insolvency procedures.
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, in the case of insolvency of a specialised mortgage credit institution, Member States may lay down rules granting the covered bond investors 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 procedures, but junior to any other preferred creditors.

Article 5 Bankruptcy remoteness of the covered bonds

Member States shall ensure that the payment obligations attached to the covered bonds are not

subject to automatic acceleration upon the insolvency or resolution of the credit institution issuing covered bonds.

Chapter 2 Cover pool and coverage

SECTION I ELIGIBLE ASSETS

Article 6

Cover assets for covered bonds (premium)

Member States shall **require** that covered bonds (premium) are at all times **secured** by high quality **cover assets**. **Such assets shall include all** assets referred to as **eligible** in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013. ■

Article 6a

Cover assets for ordinary covered bonds

1. **Member States may allow the issuance of covered bonds secured by high quality cover assets not referred to as eligible in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013. In that event, Member States shall require that cover assets provide the credit institution issuing the covered bonds with claims for the payment of a clearly determined amount of money as set out in paragraph 2 of this Article and secured by collateral assets as set out in paragraph 3. Member States shall also require that the choice of cover assets mitigates cover pool risk as set out in paragraph 4.**
2. **Member States shall lay down rules ensuring that the claim for payment referred to in paragraph 1 meets the following legal requirements:**
 - (a) **each claim is collateralised by assets for which a public register records ownership and collateral rights or is a loan to a public undertaking as defined in point (b) of Article 2 of Commission Directive 2006/111/EC;**
 - (b) **each claim that is not a loan to a public undertaking as defined in point (b) of Article 2 of Commission Directive 2006/111/EC, is secured by a legally established mortgage, charge, lien or other guarantee, each of which is enforceable;**
 - (c) **the mortgage, charge, lien or guarantee referred to in point (b) enable the credit institution issuing covered bonds to receive the payment of the claim in due time and at reasonable cost.**

For the purposes of points (a) and (b), Member States shall lay down rules ensuring the prompt filing or registration of mortgages, charges, liens or guarantees on the claims in the cover pool.

For the purposes of points (b) and (c), Member States shall ensure that credit institutions issuing covered bonds assess both the enforceability of claims and the expected length of legal proceedings before including such claims in the cover pool.

3. Member States shall lay down rules ensuring that the collateral assets referred to in paragraph 1 meet one of the following requirements:

- (a) for physical assets, either the market or the mortgage lending value is able to be determined or, if that is not possible, the asset is valued by rules laid down by the Member State;*
- (b) for loans to a public undertaking, that undertaking is subject to public supervision, or the exposure or the counterparty is rated as investment-grade by a nominated ECAI.*

For the purposes of the asset valuation rules referred to in point (a), Member States shall require that the collateral physical asset is valued by an independent valuer possessing the necessary qualifications, ability and experience to carry out the valuation. Moreover, Member States shall lay down a valuation methodology and process designed to yield values which are equal to or less than the unknown market or mortgage lending value of an asset at the moment of inclusion in the cover pool.

4. Member States shall ensure the risk mitigation referred to in paragraph 1 by imposing the following requirements:

- (a) all collateral for cover pool assets shall be adequately insured against the risk of loss or damage and the claim out of the insurance shall be part of the substitution assets of the cover pool;*
- (b) physical assets referred to in point (a) of paragraph 3 serve as collateral for cover pool claims with at most 70% of their value. For physical assets referred to in points (d) to (g) of Article 129(1) of Regulation (EU) No 575/2013, the percentage of the value may be higher, but it shall not exceed the maximum percentage applicable to that type of asset in that Regulation. The value shall be determined in accordance with the applicable rules referred to in paragraph 3 of this Article at the time of initial funding of the loans with covered bonds;*
- (c) loans to public undertakings referred to in point (b) of paragraph 3 shall be cover pool eligible at a discount rate applicable to their nominal amount and not exceeding
 - 80% of the exposure where the counterparty is under public supervision,*
 - 60% of the exposure where the counterparty is subject to a credit assessment by an ECAI of not less than its own threshold for investment grade quality;**
- (d) the cover pool assets shall be sufficiently granular to enable risk diversification;*

(e) *the cover pool shall be free of material concentration.*

EBA shall develop draft regulatory technical standards further specifying for each class of primary assets of a cover pool:

- (a) *the minimum number of distinct cover pool assets that ensures sufficient granularity, as referred to in point (d) of the first subparagraph;*
- (b) *the absence of material concentration, referred to in point (e) of the first subparagraph, as a percentage of aggregate exposure not to be exceeded by any exposure to a single obligor.*

The EBA shall submit those draft regulatory standards by ... [one year after the date of entry into force of this Directive].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No. 1093/2010.

Article 7

Assets located outside of the Union

1. Subject to the provision in paragraph 2, Member States may allow credit institutions issuing covered bonds to include assets located outside of the Union in the cover pool.
 2. Where Member States allow for the inclusion referred to in paragraph 1, they shall ensure investor protection by verifying whether the assets located outside of the Union meet all the requirements set out in Article 6 *or Article 6a. Member States shall ensure that the collateral offers a similar level of security to collateral held in the Union* and that the realisation of such assets is legally enforceable in a way similar to assets located within the Union.
- 2a. Member States shall allow the inclusion in the cover pools of assets located outside of the Union but within the European Economic Area, provided that those assets satisfy the requirements of Article 6 or Article 6a of this Directive.*

Article 8

Intragroup pooled covered bond structures

Member States may lay down rules regarding the use, by way of an intragroup transaction, of covered bonds issued by a credit institution belonging to a group ('internally issued covered bonds') as *cover assets* for the external issue of covered bonds by another credit institution belonging to the same group ('externally issued covered bonds'). Member States shall ensure investor protection by including at least the following requirements in those rules:

- (-a) *the internally issued covered bonds comply with this Directive;*

- (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 recorded on the balance sheet of the credit institution issuing the externally issued covered bond*; ■ ;
- (ba) *the cover pool does not contain internally issued covered bonds from different issuers*;
- (c) the externally issued covered bonds are sold to covered bond investors outside the group;
- (ca) *covered bond investors intending to buy the externally issued covered bonds have full access to the investor information laid out in Article 14 of this Directive for all internally issued covered bonds of the group*;
- (d) both the internally and the 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 and are *eligible assets as referred to in Article 6 or Article 6a*.■ .

Article 9 Joint funding

1. ■ Member States shall allow the *joint funding* of covered bonds by *several credit institutions provided the jointly funded covered bond is issued by a single credit institution ('the lead institute')*.

Member States shall ensure investor protection by laying down rules regulating *the sale or transfer by way of financial collateral arrangement pursuant to Directive 2002/47/EC of loans and mortgages*, charges, liens or other comparable security rights from the credit institution which issued them to the credit institution issuing the covered bonds. ■

2. *Member States shall lay down rules limiting joint funding to the use of eligible cover assets as referred to in Article 6 or Article 6a as cover assets in the cover pool for the issue of covered bonds by the lead institute. Member States shall ensure that in the event of insolvency or resolution of the lead institute, all covered bond investors have direct recourse to all cover pool assets as laid down in point (b) of Article 4(1) and a residual claim against the lead institute as laid down in point (c) of the that paragraph. Member States may lay down rules regulating remaining investors' claims against credit institutions which have contributed to the joint funding of the cover pool if the insolvency estate of the lead institute is insufficient.*
- 2a. *Member States shall ensure that jointly funded covered bonds are subject to all applicable rules for covered bonds and covered bond public supervision.*

Article 10
Composition of the cover pool

1. Member States shall **lay down rules** providing for a sufficient level of homogeneity of the assets in the cover pool so that they shall be of a similar nature in terms of ***the type of collateral backing the claims in the cover pool***. ***With respect to the assets referred to in Article 6, a cover pool shall be considered sufficiently homogenous provided that all of its primary assets belong to one of the following three groups:***

- assets that comply with points (a) to (c) of Article 129(1) of Regulation (EU) No 575/2013;

- assets that comply with points (d) to (f) of Article 129(1) of Regulation (EU) No 575/2013;

- assets that comply with point (g) of Article 129(1) of Regulation (EU) No 575/2013.

Member States shall allow multiple separate homogeneous cover pools in respect of a class of primary assets. This Article shall not apply to public credit assets, derivative contracts or substitution assets comprised in the cover pool.

2. ***EBA shall monitor the range of practices in the area referred to in paragraph 1 of this Article and shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines on the application of this Article.***

Article 11
Derivative contracts in the cover pool

1. Member States shall ensure ***that*** derivative contracts ***can*** be included in the cover pool. ***They shall also ensure that, where derivatives are part of the cover pool at least the following requirements are met:***

(a) the derivative contracts are included in the cover pool exclusively for risk hedging purposes; ***the valuation of which is calculated on a net cash flow basis;***

(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 issuing 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 cover pool derivative contracts including at least:

- (a) the eligibility criteria for the hedging counterparties;
-
- (c) the necessary documentation to be provided in relation to derivative contracts.

Article 12 Segregation of assets in the cover pool

Member States shall **lay down rules regulating** the segregation of assets in the cover pool. **Those rules shall include** the following requirements:

- (a) all assets in the cover pool are identifiable by the credit institution issuing covered bonds **at all times**;
- (b) **segregation of** all assets in the cover pool **shall be enforced at the latest immediately upon insolvency or resolution of** the credit institution issuing covered bonds;
- (c) all assets in the cover pool are protected from any third party claims and do not form part of the insolvency estate of the credit institution issuing covered bonds **until the priority claim referred to in point (b) of Article 4(1) is satisfied**.

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

■

Article 13 Cover pool monitor

1. Member States may require that **a credit institution** issuing covered bonds **appoints** 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 use 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 insolvency or resolution of the credit institution issuing covered bonds;
 - (d) the obligation to report to the competent authority designated pursuant to Article 18(2);

- (e) the right of access to necessary information for the performance of the cover pool monitor's duties.
3. The cover pool monitor shall be separate and independent from the credit institution issuing covered bonds and from that credit institution's auditor. However, *the competent authority designated pursuant to Article 18(2), may, on a case-by-case basis, authorise the credit institution issuing covered bonds to monitor its cover pool.*
4. Where Member States use the option provided for in paragraph 1, they shall notify EBA.

Article 14 Investor information

1. Member States shall ensure that the credit institution issuing covered bonds provides information on 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 *biannual* basis and includes the following minimum portfolio information:
- (a) the value of the cover pool and outstanding covered bonds;
 - (b) the geographical distribution and type of assets in the cover pool, their loan size and valuation method;
 - (c) details as to risks in relation to interest rates, currency, credit, market and liquidity;
 - (d) the maturity structure of assets in the cover pool and covered bonds, *including an overview of the maturity extension triggers if applicable;*
 - (e) the levels of required *and available* coverage, *including statutory*, contractual and voluntary overcollateralisation;
 - (f) the percentage of loans that are more than ninety days past due.

Member States shall ensure that the information is provided to investors on 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 provide that electronic access to that information is sufficient for the purposes of this Article.*

SECTION II
COVERAGE AND LIQUIDITY REQUIREMENTS

Article 15
Requirements for coverage

1. Member State shall ensure investor protection by requiring covered bond programmes to comply at all times with at least the following coverage requirements:
 - (a) ***the sum of all payment claims on the assets in the cover pool is, at all times, at least equal to the sum of all payment obligations attached to the corresponding*** covered bonds, including the obligations for the payment of principal and any accrued interest of outstanding covered bonds and costs related to maintenance and administration of a covered bond programme, are covered by the assets in the cover pool;
 - (b) the calculation of the level of coverage required ensures that:
 - (i) the total nominal amount of all assets in the cover pool, ***with the exception of assets which are derivatives***, are at least of the same value as the total nominal amount of outstanding covered bonds ('nominal principle'); ***and***
 - (ii) ***assets and liabilities resulting from derivatives are valued on a net cash flow basis***;
 - (c) the following assets in the cover pool contribute to the coverage requirement:
 - (i) primary assets;
 - (ii) substitution assets;
 - (iii) liquid assets held in accordance with Article 16;
 - (iv) ***cash payments received from derivative contracts held in the cover pool***;
 - (v) statutory overcollateralisation;
 - (d) uncollateralised claims where a default is considered to have occurred in accordance with Article 178 of Regulation (EU) No 575/2013 do not contribute to the ***coverage***.

For the purposes of point (a) of the first subparagraph, Member States may allow for a lump sum calculation of the costs related to maintenance and administration of a covered bond programme.

For the purposes of point (b) of the first subparagraph, Member States may allow for other principles of calculation provided they do not result in a ***higher calculation*** of

coverage than that calculated under the nominal principle.

2. Member States shall ensure that the calculation of coverage and the calculation of liabilities is based on the same methodology.

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 net liquidity outflow for 180 calendar days ***except in the periods of stress as defined in point 11 of Article 3 of Delegated Regulation (EU) 2015/61.***
3. Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets:
 - (a) assets qualifying as level 1, level 2A and level 2B assets pursuant to Articles 10, 11 and 12 of Delegated Regulation (EU) 2015/61, valued in accordance with Article 9 of that Delegated Regulation and segregated in accordance with Article 12 of this Directive;
 - (b) exposures to credit institutions **■**, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.

For the purposes of point (a) of the first subparagraph, Member States shall ensure that own-issued covered bonds cannot contribute to the cover pool liquidity buffer.

For the purposes of point (b) of the first subparagraph, Member States shall ensure that uncollateralised claims from defaulted exposures in accordance with Article 178 of Regulation (EU) No 575/2013 cannot contribute to the cover pool liquidity buffer.

- 3a. ***Liquid assets in the cover pool liquidity buffer shall not contribute towards the liquidity requirements set out in Delegated Regulation (EU) 2015/61.***
4. ***By way of derogation from paragraph 3a, Member States may decide that the liquid assets in the cover pool liquidity buffer that are referred to in point (a) of paragraph 3 can contribute towards the liquidity requirements set out in Delegated Regulation (EU) 2015/61, up to the amount of the net liquidity outflow of the covered bond programme. That possibility, however, is without prejudice to the requirement that those liquid assets in the cover pool liquidity buffer are held separately within the covered bond programme and, in the case of resolution or insolvency of the issuer, segregated from the liquid assets held for the purposes of the liquidity requirements set out in Delegated Regulation (EU) 2015/61.***
 5. ***For extendable maturity structures, Member States shall ensure that the liquidity requirements for the repayment of principal are updated after a possible maturity***

extension so that they always match the payment needs up to the time when the last principal is due.

6. Member States shall ensure that the requirements set out in in paragraph 1 do 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 extension triggers are specified in contract or statute;
 - (b) *the maturity can be extended only in the event of insolvency or resolution of the issuer and with approval by the competent supervisory authority or under objective financial triggers established by national law;*
 - (c) the information provided to the investor 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 extensions trigger;
 - (ii) the consequences for the maturity extensions in the case of insolvency or resolution of the credit institution issuing covered bonds;
 - (iii) the role of the competent authority designated pursuant to Article 18(2) and of the special administrator with regard to the maturity extension, where relevant;
 - (d) the final maturity date of the covered bond can at all times be determined;
 - (e) the maturity extension does not affect the ranking of covered bond investors;
 - (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.
- 1a. *The EBA shall develop draft technical standards further specifying the objective financial triggers referred to in point (b) of paragraph 1, including objective tests for such triggers. The EBA shall submit those draft regulatory standards by ... [one year after the date of entry into force of this Directive].*

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the third subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.
2. Member States which allow the issue of covered bonds with extendable maturity structures shall notify EBA of their decision.

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 a 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 so as to assess compliance with the requirements laid down in the national provisions 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 to obtain the information needed in order to assess the compliance with the requirements laid down in the national provisions transposing this Directive, investigate possible breaches of those requirements, and impose administrative penalties and remedial measures in accordance with the national provisions 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 permissions 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 refinance 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 that meets the applicable requirements laid down in the national provisions transposing this Directive.

Article 20

Covered bond public supervision in insolvency or resolution

1. 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 competent* management of the covered bond programme during the period of the resolution process.
2. Member States may provide for a special administrator to be appointed in the case of the insolvency of a credit institution issuing covered bonds to ensure that the rights and interests of the covered bond investors are preserved, including at least by verifying the continuous *and competent* management of the covered bond programme during the period of the insolvency process.

Where Member States use that option, they shall require that the competent authorities designated pursuant to Article 18(2) *are required to approve of* 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) discharging the liabilities attached to the covered bonds;
 - (b) managing and realising assets in the cover pool, including their transfer together with covered bond liabilities to another credit institution issuing covered bonds;
 - (c) carrying out legal transactions necessary for the proper administration of the cover pool, for the on-going monitoring of the coverage of the liabilities attached to the covered bonds, to initiate proceedings in order to recover *asset values* in the cover pool and to transfer those remaining assets after all covered bond liabilities are met to the insolvency estate of the credit institution which issued the covered bonds.
4. Member States shall ensure the coordination and exchange of information for the purposes of the insolvency or resolution process between the competent authorities

designated pursuant to Article 18(2), the special administrator where such an administrator has been appointed and 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 competent authorities designated pursuant to Article 18(2). The reporting shall be on a regular basis and upon request *by the competent authorities*. Member States shall lay down rules on the frequency of the reporting on a regular basis.
2. The reporting obligations to be laid down pursuant to paragraph 1 shall require the information to be provided at least on the following requirements of the covered bond programme:
 - (a) dual recourse in accordance with Article 4;
 - (b) bankruptcy remoteness of the covered bond in accordance with Article 5;
 - (c) the eligibility of assets and cover pool requirements in accordance with Articles 6 to 11;
 - (d) the segregation of assets in the cover pool in accordance with Article 12;
 - (e) the functioning of the cover pool monitor in accordance with Article 13;
 - (f) the investor information requirements in accordance with Article 14;
 - (g) the coverage requirements in accordance with Article 15;
 - (h) the cover pool liquidity buffer in accordance with Article 16;
 - (i) the conditions for extendable maturity structures in accordance with Article 17.
3. Member States shall provide for rules on the reporting on the requirements set out in paragraph 2 by the credit institutions issuing covered bonds to the competent authority designated pursuant to Article 18(2) in the event of insolvency or resolution of a credit institution issuing covered bonds.

Article 22 Powers of competent authorities for the purposes of covered bonds 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 the following:

- (a) the power to grant or refuse permissions pursuant to Article 19;
- (b) the power to regularly review the covered bond programme in order to assess compliance with this Directive;
- (c) the power to carry out on-site and off-site inspections;
- (d) the power to impose administrative sanctions or penalties and remedial measures in accordance with the national provisions 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. Member States shall lay down rules establishing appropriate administrative penalties and other administrative measures applicable at least in the following situations:
 - (a) a credit institution has acquired a permission to issue covered bonds through false statements or other irregular means;
 - (b) a credit institution no longer fulfils the conditions under which a permission was given;
 - (c) a credit institution issues covered bonds without obtaining the permission in accordance with the provisions transposing Article 19;
 - (d) a credit institution issuing covered bonds fails to meet the requirements set out in the provisions transposing Article 4;
 - (e) a credit institution issuing covered bonds issues covered bonds not complying with the requirements set out in the provisions transposing Article 5;
 - (f) a credit institution issuing covered bonds issues covered bonds not collateralised in accordance with the provisions transposing Article 6 *and Article 6a*;
 - (g) a credit institution issuing covered bonds issues covered bonds collateralised by assets located outside the Union in breach of the requirements laid down in the provisions transposing Article 7;
 - (h) a credit institution issuing covered bonds collateralises covered bonds in an intragroup pooled covered bonds structure in breach of the requirements laid down in the provisions transposing Article 8;
 - (i) a credit institution issuing covered bonds fails to fulfil the conditions for joint funding laid down in the provisions 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 transposing Article 10;
- (k) a credit institution issuing covered bonds includes derivative contracts in the cover pool other than for hedging purposes or fails to meet the requirements laid down in the provisions transposing Article 11;
- (l) the credit institution issuing covered bonds fails to comply with the requirements of segregation of assets in the cover pool in accordance with the provisions 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 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 transposing Article 16;
- (o) a credit institution issuing covered bonds *with extendable maturity structures* fails to fulfil the conditions for extendable maturity structures laid down in the provisions transposing Article 17;
- (p) a credit institution issuing covered bonds fails to report information or provides incomplete or inaccurate information on the obligations in breach of the provisions transposing points (a) to (i) of Article 21(2).

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

2. The *administrative* penalties and *other administrative* measures referred to in paragraph 1 shall be effective, proportionate and dissuasive. █

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3. Member States shall also ensure that administrative penalties and remedial measures are effectively implemented.

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Article 25 Cooperation obligations

1. Member States shall ensure that competent authorities designated pursuant to Article 18(2) cooperate closely with the competent authority performing the general

- supervision of credit institutions in accordance with relevant Union law applicable to those institutions.
2. Member States shall further ensure that 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 national provisions transposing this Directive.
 3. For the purposes of the second sentence of paragraph 2, Member States shall ensure that the competent authorities designated pursuant to Article 18(2) carry out the following:
 - (a) communicate all relevant information upon request from another such competent authority;
 - (b) communicate on their own initiative any essential information to other competent authorities in other Member States.
 4. Member States shall also ensure that the competent authorities referred to in paragraph 1 cooperate with EBA 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 website:
 - (a) the texts of their national laws, regulations, administrative rules and general guidance adopted in relation to the issue of covered bonds;
 - (b) the list of credit institutions permitted to issue covered bonds;
 - (c) the list of covered bonds allowed to use ***'European Covered Bond' label and the list of bonds allowed to use the 'European Covered Bond (Premium)'*** label.
2. The information published in accordance with paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States. This information shall be updated to take account of any changes.
3. For the purposes of points (b) and (c) of paragraph 1, competent authorities designated pursuant to Article 18(2) shall on an annual basis notify EBA of the lists of credit institutions and covered bonds.

TITLE IV LABELLING

Article 27 Labelling

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

Member States shall ensure that the label ‘European Covered Bond (Premium)’ and its translation in all official languages of the Union is only used for covered bonds which meet the requirements laid down in the provisions transposing this Directive and which comply with the eligibility requirements of Article 129 of Regulation (EU) No 575/2013.

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:

"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 [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day] and met the requirements set out in this paragraph, in the version applicable on the date of their issue, or where bonds fall under the definition of covered bonds in accordance with point (1) of Article 3 of Directive (EU) 20XX/XX of the European Parliament and of the Council*.

* [OP: Please insert reference to Directive (EU) .../... of the European Parliament and of the Council of ... on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EU and Directive 2014/59/EU (OJ C [...], [...], p. [...]).";

(2) the third subparagraph is deleted.

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 an instrument as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council*, in the version applicable on the

date of its issue, and issued before ... [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day] or a covered bond as defined in point (1) of Article 3 of Directive (EU) 20XX/XX of the European Parliament and of the Council**;

* 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).

** [OP: Please insert reference to Directive (EU) .../... of the European Parliament and of the Council of ... on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EU and Directive 2014/59/EU (OJ C [...], [...], p. [...])]."

TITLE VI FINAL PROVISIONS

Article 30 Transitional measures

Member States shall ensure that covered bonds issued before XX [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day"] and complying with the requirements laid down in Article 52(4) of Directive 2009/65/EC, in the version 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.

The first paragraph of this Article also applies to new tranches or tap issues of a series of covered bonds for which the first issue date is prior to [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day].

Article 31 *Equivalence*

1. *The Commission is empowered to adopt delegated acts to supplement this Directive by determining that the legal, supervisory and enforcement arrangements of a third country:*
 - (a) *are equivalent to the requirements laid down in Title II and to the supervisory powers and sanctions laid down in Title III; and*
 - (b) *are being effectively applied and enforced in an equitable and non-distortive manner in order to ensure effective supervision and enforcement in that third country.*
2. *Where the Commission adopts a delegated act on equivalence with regard to a third country, as referred to in paragraph 1 of this Article, a covered bond shall be*

deemed to have fulfilled the requirements laid down in Title II where the issuer is established in that third country.

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3. *The Commission shall, in cooperation with EBA, monitor the effectiveness of the requirements equivalent to those laid down in Title II, by third countries in respect of which a delegated act has been adopted and shall regularly report thereon to the European Parliament and the Council. Where the report reveals an insufficient or inconsistent application of the equivalent requirements by third country authorities, or material regulatory divergence by a third country, the Commission shall consider whether to withdraw the recognition of equivalence of the third country legal framework in question. If the Commission commences action to withdraw or suspend equivalence decisions, it shall set out a transparent procedure governing the withdrawal or suspension of equivalence decisions, in order to provide certainty to the market and support financial stability.*

Article 31a Reviews and reports

1. *By ... [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 3 years], 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 the developments regarding the issue of covered bonds in the Union, including:*
 - (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 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 and outward investment from and to third countries;*
 - (f) *developments regarding the issue of covered bonds with extendable maturity structures;*
 - (g) *an assessment on the functioning of the covered bonds markets and recommendations for further action.*
2. *By ... [two years after the date of entry into force of this Directive], the Commission shall, after ordering and receiving a study on the subject and after consulting the EBA and the ECB, adopt a report assessing the risks stemming from extendable maturities of covered bonds with such structures. Particular emphasis shall be devoted to the risks borne by investors which hold such bonds in times of crisis. The*

Commission shall submit that study and that report to the European Parliament and to the Council, together with a proposal if appropriate.

3. *By ... [two years after the date of entry into force of this Directive], the Commission shall, after ordering and receiving a study on the subject and after consulting the EBA and the ECB, adopt a report on the possibility of introducing a dual recourse instrument named European Secured Notes. The Commission shall submit that study and that report to the European Parliament and to the Council, together with a proposal if appropriate.*
4. *For the purposes of paragraph 1, by ... [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 2 years] Member States shall transmit information on points (a) to (f) to the Commission.*

Article 32 Transposition

1. Member States shall adopt and publish, by ... [two years after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from ... [two years and one day after the date of entry into force of this Directive].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions 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 Brussels,

*For the European Parliament
The President*

*For the Council
The President*

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Covered bonds and covered bond public supervision	
References	COM(2018)0094 – C8-0113/2018 – 2018/0043(COD)	
Date submitted to Parliament	7.3.2018	
Committee responsible Date announced in plenary	ECON 16.4.2018	
Committees asked for opinions Date announced in plenary	JURI 16.4.2018	
Not delivering opinions Date of decision	JURI 27.3.2018	
Rapporteurs Date appointed	Bernd Lucke 31.5.2018	
Discussed in committee	10.9.2018	18.10.2018
Date adopted	20.11.2018	
Result of final vote	+: 34	–: 16
	0: 1	
Members present for the final vote	Hugues Bayet, Pervenche Berès, David Coburn, Thierry Cornillet, Esther de Lange, Markus Ferber, Jonás Fernández, Giuseppe Ferrandino, Stefan Gehrold, Sven Giegold, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Danuta Maria Hübner, Petr Ježek, Barbara Kappel, Wolf Klinz, Georgios Kyrtos, Philippe Lamberts, Werner Langen, Bernd Lucke, Olle Ludvigsson, Ivana Maletić, Marisa Matias, Costas Mavrides, Alex Mayer, Luděk Niedermayer, Stanisław Ożóg, Dimitrios Papadimoulis, Sirpa Pietikäinen, Dariusz Rosati, Pirkko Ruohonen-Lerner, Anne Sander, Alfred Sant, Pedro Silva Pereira, Paul Tang, Ramon Tremosa i Balcells, Ernest Urtasun, Marco Valli, Tom Vandenkendelaere, Miguel Viegas, Jakob von Weizsäcker	
Substitutes present for the final vote	Andrea Cozzolino, Ashley Fox, Jeppe Kofod, Paloma López Bermejo, Michel Reimon, Joachim Starbatty, Lieve Wierinck	
Substitutes under Rule 200(2) present for the final vote	Pilar Ayuso, Helga Stevens	
Date tabled	26.11.2018	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

34	+
ALDE	Thierry Cornillet, Petr Ježek, Wolf Klinz, Ramon Tremosa i Balcells, Lieve Wierinck
ECR	Ashley Fox, Bernd Lucke, Stanisław Ozóg, Pirkko Ruohonen-Lerner, Joachim Starbatty, Helga Stevens
ENF	Barbara Kappel
PPE	Pilar Ayuso, Markus Ferber, Stefan Gehrold, Brian Hayes, Gunnar Hökmark, Danuta Maria Hübner, Georgios Kyrtos, Esther de Lange, Werner Langen, Ivana Maletić, Luděk Niedermayer, Sirpa Pietikäinen, Dariusz Rosati, Anne Sander, Tom Vandenkendelaere
S&D	Jeppe Kofod, Alex Mayer, Jakob von Weizsäcker
VERTS/ALE	Sven Giegold, Philippe Lamberts, Michel Reimon, Ernest Urtasun

16	-
EFDD	David Coburn
GUE/NGL	Paloma López Bermejo, Marisa Matias, Dimitrios Papadimoulis, Miguel Viegas
S&D	Hugues Bayet, Pervenche Berès, Andrea Cozzolino, Jonás Fernández, Giuseppe Ferrandino, Roberto Gualtieri, Olle Ludvigsson, Costas Mavrides, Alfred Sant, Pedro Silva Pereira, Paul Tang

1	0
EFDD	Marco Valli

Key to symbols:

+ : in favour

- : against

0 : abstention