



Brussels, 23 November 2018
(OR. en)

Interinstitutional File:
2018/0043 (COD)

14658/18
ADD 2

EF 306
ECOFIN 1127
CODEC 2099

'I' ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee

No. Cion doc.: COM(2018) 94 final

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
- Mandate for negotiations with the European Parliament
= Compromise proposal

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 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 Committee¹,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C 367, 10.10.2018, p. 56-60.

Whereas:

- (1) Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council² 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 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 Council³ 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.

² 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).

³ 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).

- (3) Other pieces of Union law, including Commission Delegated Regulation (EU) 2015/61⁴, Commission Delegated Regulation (EU) 2015/35⁵ and Directive 2014/59/EU of the European Parliament and of the Council⁶, 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 several consequences. Firstly, preferential treatment is granted equally to instruments which can differ in nature and their level of risk and investor protection. Secondly, the existence of different national frameworks or the absence thereof, creates obstacles to the development of a truly integrated single market for covered bonds based on a commonly agreed definition which would ensure an appropriate level of investor protection. Thirdly, the differences in the safeguards provided by national rules can create risk to of 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.

⁴ 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).

⁵ 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).

⁶ 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).

- (5) It is therefore necessary to harmonise national regimes in order to ensure a smooth and continuous development of well-functioning covered bond markets in the Union and to limit potential risks and vulnerabilities to financial stability. This principle-based harmonisation shall 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 recommendation⁷ 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.

⁷ Recommendation of the European Systemic Risk Board of 20 December 2012 on funding of credit institutions (ESRB/2012/2) (2013/C 119/01).

- (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 2014⁸. 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 2016⁹. 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 preferential treatment to covered bonds requires them to be issued by credit institutions.

⁸ *EBA Report on EU covered bond frameworks and capital treatment* (2014).

⁹ *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 underpinning the investor protection of the dual recourse mechanism, which grants the investor and the counterparty of a derivative contract 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. Specialised mortgage credit institutions are characterised by not taking deposits, but other repayable funds from the public and as such they comply with this definition. Without prejudice to ancillary activities permitted under applicable national laws, specialised mortgage credit institutions are institutions that only carry out 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 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 and counterparties of derivative contracts 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 the robustness of the cover pool. High quality assets are characterised by having specific features relating to the claims being secured and the collateral assets backing them. It is therefore appropriate to set out the general quality features that assets should respect in order to be eligible to serve as collateral. Assets listed in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 should be considered eligible as cover assets within a covered bond framework. Loans involving public undertakings as defined in Article 2(b) of Commission Directive 2006/111/EC can be considered eligible as long as the public undertakings provide essential public services for the maintenance of critical societal activities. Such services are indispensable and not easily replaceable, therefore a stronger support from public authorities is assumed on grounds of these authorities not being in a position to do without the service provided. Other cover assets of a similar high quality could also be considered eligible under the Directive, provided that they comply with the legal requirements and the requirements for the collateral backing the claim for payment, reflecting their nature as either physical assets or assets in the form of exposures. For physical collateral assets, ownership should be recorded in a public register to ensure enforceability. Where a public register is not available Member States should provide for an alternative form of certification of ownership and claims, including identification of assets concerned, attribution of ownership, documentation and attribution of encumbrances, ensuring the enforceability of security interests, that is comparable to that provided by public registration of the encumbered physical asset. When Member States make use of this alternative form of certification, they should also provide for a procedure for introducing changes to the recording of ownership and claims. Member States should be free to exclude assets in their national frameworks.

- (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 good 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. Those include rules on the segregation of the assets in the cover pool. Segregation can be achieved in different ways, e.g. on-balance sheet; by means of a Special Purpose Vehicle, an SPV; or, by other means. Irrespective, the purpose of the segregation of assets is to put them beyond legal reach of creditors other than covered bond holders, whether the actual separation is implemented immediately, at the time of issuance or later at the time of the resolution or insolvency of the issuer. The location of the assets in the cover pool should also be regulated to ensure the fulfilment of the investor's rights. It is also important to regulate the composition of the cover pool to ensure its transparency and facilitate a fair risk assessment by the investor. Member States may also decide to lay down rules on the level of homogeneity required from assets in the cover pool. This should ensure a well-balanced approach between requiring investor protection by mandatory rules on transparency and allowing a sufficient level of flexibility in relation to more detailed national rules on homogeneity. Furthermore, requirements for coverage should be defined in this Directive, without prejudice to the right of Member States to allow different means of mitigating e.g. currency and interest rate risks. 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. The calculation of coverage should follow the nominal principle for the principal. In order not to disincentivise hedging of foreign exchange risk which translates via currency conversion into the principal amounts of regular cover assets or coverable liabilities, the counterbalancing value changes of such derivatives should be allowed to be taken into account within the calculation of the nominal principle coverage. 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 in Article 15.

- (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 covered bond public supervision, particularly as regards compliance with the provisions of Article 6 to 12 and 14 to 17 of this Directive.

(18) Article 129 of Regulation (EU) No 575/2013 sets out a number of conditions for covered bonds collateralised by securitisation entities to be met. One of these conditions concerns the extent to which this type of collateral can be used and limits the use of such structures to 10 or 15% of the amount of the outstanding covered bonds. This condition may, in accordance with Regulation (EU) No 575/2013, be waived by competent authorities. The Commission's review¹⁰ of the appropriateness of this waiver concluded that the possibility to use securitisation instruments or covered bonds as collateral for issuing covered bonds should only be allowed for other covered bonds ('intragroup pooled covered bond structures') but should be allowed without limits by reference to the amount of outstanding covered bonds. The ability to pool covered bonds from different issuers as cover assets for intragroup funding purposes would facilitate the development of the issue of covered bonds, also in emerging markets and therefore it would be appropriate to introduce a framework for the use of these structures in Union law. Allowing the use of these structures is envisaged as a Member State option. It follows that, for this option to be effectively available to credit institutions belonging to a group located in different Member States, it is necessary that all relevant Member States exercise this option and lay down such rules in the transposition of this provision into their national legislation. The same applies to a transfer by way of financial collateral arrangement according to Article 9. As the use of these intragroup pooled covered bond structures allows for an exemption from the limits on credit institution exposures pursuant to Article 129 of Regulation (EU) No 575/2013, it should be required that the externally and internally issued covered bonds qualify for credit quality steps 1 or 2. In a scenario in which the externally or the internally issued covered bonds lose the required rating, the internally issued covered bonds will no longer qualify as eligible assets under Article 129 of Regulation (EU) No 575/2013 and, as a consequence, all the externally covered bonds issued from the relevant cover pool will not benefit from the exemption in that provision, and therefore not be compliant with Article 129 of Regulation (EU) No 575/2013. The internally issued covered bonds which no longer comply with the rating requirement in Article 8 of this Directive would however be considered as eligible cover assets in accordance with this Directive provided they comply with all requirements in Article 6, and the externally issued covered bonds

¹⁰ Report from the Commission to the European Parliament and the Council on Article 503 of Regulation (EU) No 575/2013 Capital requirement for covered bonds (COM/2015/0509 final).

collateralised by these internally issued covered bonds or other assets compliant with Article 6 will therefore also be able to use the label European Covered bonds.

- (19) 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 cover 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 cover assets either sold or, as a Member State option, 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.
- (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/EC¹¹ 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.

¹¹ 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).

(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 law and serving different purposes than the cover pool liquidity buffer. Member States should therefore be able to decide that the cover pool liquidity buffer requirement is only applicable if no other liquidity requirement is imposed on the credit institution under Union law during the period covered by such other requirements. Such decision should avoid that the credit institution would be subject to an obligation to cover the same outflows with different liquid assets for the same period. This provision implies however that the possibility for Member States to decide for the cover pool liquidity buffer not to be applicable may have to be reassessed in the context of future changes in the liquidity framework for credit institutions deriving from Union law, including Commission Delegated Regulation (EU) 2015/61 on Liquidity Coverage Requirement. Furthermore, Member States may allow that the cover pool liquidity requirement does not apply to covered bonds that are subject to match funding requirements where incoming payments contractually fall due prior to outgoing payments and are placed in highly liquid assets in the meantime.

- (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. It is important in order to harmonise extendable maturity structures across the Union that the conditions under which Member States may allow these structures be defined to ensure that they are not too complex or expose investors to increased risks. An important element in this is to ensure that the credit institution cannot extend the maturity upon discretion. The maturity can only be extended when objective and clearly defined trigger events have occurred or are expected to occur within the near future.
- (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. Whereas within the Member States participating in the Single Supervisory Mechanism, the European Central Bank is tasked with the authorisation of credit institutions according to Article 4 (1)(a) of Council Regulation (EU) No. 1024/2013, competence for the granting of the permission to issue covered bonds follows the allocation in accordance with Article 19 of this Directive, i.e. exclusively as per the allocation of covered bond public supervision effected by Member States' legal acts transposing Article 18(2) of this Directive. Further, 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.
- (26) As regards the scope of permission, it relates to the covered bond programme. Covered bond programmes refer to the structural features under which a credit institution issues covered bonds. These structural features are determined by the contractual terms and conditions as well as statutory rules enacted in the applicable framework. In essence the applicable legal framework under which the credit institution issues covered bonds links the covered bonds to a cover pool. Hence, the structural features terms and conditions for the issue of covered bonds within a credit institution, encompass the assets and liabilities segregated in accordance with the Directive and the administrative and organisational setup relating to the issue of covered bonds. The programme should be the subject of supervision under this Directive. A credit institution can have more than one covered bond programme. In that case, each programme will require a separate permission. One or more cover pools can be established within each covered bond programme. Multiple cover pools or different issuances (different International Securities Identification Numbers (ISINs)) of the same covered bond programme do not necessarily constitute separate covered bond programmes.

- (26a) Already existing covered bond programmes authorised under national law are not required to obtain a new permission once the new rules of national law transposing the Directive become effective. The credit institution issuing covered bonds will however have to comply with all requirements of the Directive. The required compliance is overseen by the competent authority designated pursuant to Article 18(2) as part of the covered bond public supervision. Member States may give further guidance in national law on how to procedurally conduct the compliance assessment after the new rules of the Directive become effective. Article 22 of this Directive lists the powers of competent authorities for the purposes of covered bonds public supervision, including the power to review the covered bond programme regularly in order to assess compliance with this Directive. The competent authority may review a covered bond programme and assess the need for a change in the permission for that programme. This can be due to substantial changes in the business model of the credit institution issuing covered bonds, whether these follow from a change of the national covered bond framework or from decisions made by the credit institution. Substantial changes may be considered to have occurred when these changes require a reassessment of the conditions under which permission to issue cover bonds is granted in accordance with Article 19 of this Directive.
- (26b) When appointing a special administrator, Member States may lay down rules on the measures of and defining the operational requirements for the special administrator, including limiting the special administrator to collect deposits or other repayable funds from consumers and retail investors, but allow the issuer to collect deposits or other repayable funds from institutional investors only.
- (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. Member States may also decide to lay down criminal penalties. If they do so instead of administrative penalties these Member States should communicate to the Commission the relevant criminal law provisions.

- (28) Those administrative penalties and other administrative measures laid down 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 the 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 remedial measures is taken, the person concerned should be given the opportunity to be heard. However, Member States should be able to provide for exceptions to the right to be heard for remedial measures. Any exception should be limited to cases of imminent danger where urgent action is needed in order to prevent significant losses to third parties such as covered bond investors or significant damage to the financial system. In such a case, the person concerned should be given the opportunity to be heard after the remedial measure has been imposed.
- (29) Member States should be required to ensure that the competent authorities performing the 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 Member States, when determining the type of administrative penalties or other administrative measures and the level of those penalties.
- (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. In several Member States however such denominations or labels do not exist. It seems therefore necessary to allow credit institutions which issue covered bonds in the Union to use the 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 Union law. It is necessary to establish such label in order to 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 that label 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' label.

- (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.
- (35) There is currently no equivalence regime for the recognition of covered bonds issued by credit institutions in third countries by the Union 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 2 years after the date from which Member States are to apply the provisions transposing this Directive, submit a report to the European Parliament and to the Council, together with a legislative proposal, if appropriate, on this issue.

- (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 the [OP: Please insert the date laid down in the second subparagraph of Article 32(1) of this Directive] are not affected. Therefore, covered bonds issued before this date should comply with the requirements laid down in Article 52(4) of Directive 2009/65/EC on an on-going basis and should be exempted from most of the new requirements laid down in this Directive. Since covered bonds issued before [OP: Please insert the date laid down in the second subparagraph of Article 32(1) of this Directive] may continue to be referred to as covered bonds, the 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 should be subject to supervision by the competent authorities designated under this Directive. Such supervision does not extend to requirements under this directive from which covered bonds issued before [OP: Please insert the date laid down in the second subparagraph of Article 32(1) of this Directive] are exempted. In some Member States ISIN codes are open for a longer period allowing for covered bonds to be issued continuously under that code with the purpose of increasing the volume of that covered bond ('tap issues'). The transitional measures should cover tap issues of covered bonds under ISIN codes opened prior to [OP: please insert the date laid down in the first subparagraph of Article 32(1) of this Directive + 1 day] subject to a number of limitations.
- (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 documents¹², 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 it is necessary to establish a common framework for covered bonds, ensuring that the structural characteristics of covered bonds across the Union are aligned with the risk features underlying Union preferential treatment, 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.
- (39a) The European Central Bank has been consulted and delivered an opinion on a 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 and on a proposal for a regulation of the European Parliament and of the Council on amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds.

¹² OJ C 369, 17.12.2011, p. 14.

- (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 Council¹³ and delivered an opinion on¹⁴. 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 (General Data Protection Regulation) . Likewise, the processing of personal data by the European Banking Authority when, as required by the Directive, it maintains a central database of administrative sanctions and remedial measures that are communicated to it by the national competent authorities, should be carried out in compliance with Regulation (EC) No 45/2001.

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 for competent authorities in relation to covered bonds.

¹³ 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).

¹⁴ [OJ C (...).]

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 by a credit institution in accordance with the national provisions transposing this Directive and secured by a cover pool of assets which covered bond investors have direct recourse to as preferred creditors;
- (2) 'covered bond programme' means the structural features underpinning the issue of covered bonds by a credit institution, determined by the contractual terms and conditions as well as statutory rules, by virtue of which covered bonds are attached to a cover pool;
- (3) 'cover pool' means the assets securing the covered bonds and that are segregated from other assets held by the credit institution issuing covered bonds;
- (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 funds loans solely or mainly through the issue of covered bonds, which is permitted by law to carry out mortgage and public sector lending only and which is not permitted to take deposits but take other repayable funds from the public;
- (6) 'automatic acceleration of a covered bond' means a situation in which a covered bond upon insolvency or resolution of the issuer automatically becomes immediately due and payable and in respect of which 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;
- (9)
- (10) 'primary assets' means dominant assets in the cover pool determining the nature of the cover pool;
- (11) 'substitution assets' means assets contributing to the coverage requirements, other than the primary assets;
- (12) 'overcollateralisation' means the entirety of the statutory, contractual or voluntary level of collateral exceeding the coverage requirement as set out in Article 15;
- (13) 'match funding requirement' means rules requiring that the cash flows between liabilities and assets falling due be matched by ensuring contractually that payments from borrowers and counterparties of derivative contracts are falling due prior to payments to covered bond investors and the counterparties of derivative contracts and that the amounts contractually falling due from the borrowers and counterparties of derivative contracts are at least equivalent in value to the payments to be made to the covered bond investors and counterparties of derivative contracts. Further, the amounts received from borrowers and counterparties of derivative contracts shall be placed in the cover pool in assets according to Article 16 (3) of this Directive until the payments are due to the covered bond investors and counterparties of derivative contracts;

- (14) 'net liquidity outflow' means all liabilities, including principal and interest payments and payments under derivative contracts of the covered bond programme falling due one calendar day after having deducted the inflows derived from the assets in the cover pool falling due on the same calendar day;
- (15) 'extendable maturity structure' means a mechanism providing for the possibility to extend the scheduled maturity of covered bonds for a determined 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, or when the credit institution issuing covered bonds under that programme has been determined to be failing or likely to fail or in exceptional circumstances where the proper functioning of the issuing credit institution is seriously perilled;
- (18) 'group' means a group of undertakings of which at least one is an institution and which consists of a parent undertaking and its subsidiaries, or of undertakings linked to each other by a relationship as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council.

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 and counterparties of derivative contracts complying with Article 11 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 and future 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 ordinary 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 and counterparties of derivative contracts complying 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 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

Eligible cover assets

1. Member States shall require that covered bonds are at all times secured
 - (a) by assets referred to as eligible in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 and subject to the requirements of paragraphs (1a), (1b), (1c), (2) and (3) of Article 129 of that Regulation being met by the credit institution issuing covered bonds or
 - (b) by high quality cover assets ensuring the credit institution issuing covered bonds a claim for payment as set out in paragraph 2 and secured by collateral assets as set out in paragraph 3.

Member States may include in point (a) assets in the form of loans involving public undertakings as defined in Article 2(b) of Commission Directive 2006/111/EC, insofar as they are of a similar high quality as assets eligible in accordance with this paragraph due to these public undertakings providing essential public services and their safety and soundness being ensured by sufficient revenue generating powers.

2. The claim for payment referred to in paragraph 1 point (b) shall meet the following legal requirements:
- (a) the asset represents a claim for payment of monies with a minimum value determinable at all points in time, which is legally valid and enforceable and not subject to conditions other than that it matures at a future date and 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 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 collateral assets before including them in the cover pool.

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

- (a) for physical assets, valuation standards generally accepted among experts and appropriate for the physical asset exists and a public register records ownership and claims on the physical assets;
- (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.

Where, for the purposes of point (a), a public register is not available for a specified physical asset, Member States may provide for an alternative form of certification of ownership and claims over that physical asset, insofar as it is equivalent to the protection provided by a public register.

4. Member States shall lay down rules on the valuation methodology and process for physical assets used as collateral assets referred to in paragraph 1 point (a) and (b). The rules shall ensure at least the following:

- (a) for the collateral physical asset a current valuation at or at less than market value or mortgage lending value exists at the moment of inclusion in the cover pool;
- (b) the valuer executing the valuation process possesses the necessary qualifications, ability and experience to execute a valuation;
- (c) the valuer shall be independent from credit decision process, shall not take into account speculative elements in the assessment of the value and shall document the value in a transparent and clear manner.

5. Member States shall require that credit institutions issuing covered bonds have in place procedures to monitor that physical assets used as collateral assets referred to in paragraph 1 point (a) and (b) are adequately insured against the risk of damage and the insurance claim is segregated in accordance with Article 12.
6. Member States shall require credit institutions issuing covered bonds to document the cover assets as referred to in paragraph 1 point (a) and (b) and their lending policies regarding their compliance with this Article.

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 requiring assets located outside of the Union to meet all the requirements set out in Article 6 and that the realisation of such assets is legally enforceable in a way similar to assets located within the Union.

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, 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 externally issued covered bonds are intended to be sold to covered bond investors outside the group;
- (d) both the internally and the externally issued covered bonds qualify for credit quality step 1 or credit quality step 2 as referred to in Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 and are collateralised by eligible cover assets as referred to in Article 6;
- (e) in case of cross border intra group pooled covered bonds, cover assets of the internally issued covered bonds shall comply with the eligibility and coverage requirements of the externally issued covered bonds.

Article 9

Joint funding

1. Subject to the provisions in paragraph 2, Member States shall allow the use of eligible cover assets as referred to in Article 6 sold to the credit institution issuing covered bonds as cover assets in the cover pool for the issue of covered bonds by another credit institution.
2. Member States shall ensure investor protection by laying down rules regulating the sale of eligible cover assets as referred to in Article 6 to the credit institution from which they originated to the credit institution issuing covered bonds. Those rules shall ensure that all requirements laid down in Articles 6 and 12 are met.

Member States may allow for the use of transfer by way of financial collateral arrangement pursuant to Directive 2002/47/EC instead of requiring a sale.

Member States may allow for cover assets to be originated by an undertaking that is not a credit institution. Where Member States use this option, they shall require that the issuing credit institution either performs an own assessment of the obligor's creditworthiness or verifies that the originating undertaking has effective processes in order to ensure that credit-granting is based on a thorough assessment of the obligor's creditworthiness and, for cover assets that are loan claims, assesses the credit granting standards of that undertaking.

Article 10

Composition of the cover pool

Member States shall ensure investor protection by laying down rules on the composition of cover pools. The rules shall describe, where relevant, the conditions for credit institutions issuing covered bonds to include primary cover assets that have different characteristics in terms of structural features, lifetime of the cover assets or risk profile. Member States may lay down rules on the level of homogeneity required from assets 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;
 - (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 where relevant:
 - (a) the eligibility criteria for the hedging counterparties;
 - (b) the necessary documentation to be provided in relation to derivative contracts.

Article 12

Segregation of assets in the cover pool

1. Member States shall ensure investor protection by requiring that the segregation of assets in the cover pool complies with at least the following requirements:
 - (a) all assets in the cover pool are identifiable by the credit institution issuing covered bonds;
 - (b) all assets in the cover pool are subject to legally binding and enforceable segregation by 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.

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

2. The segregation of assets in the cover pool 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 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 directly to the competent authority designated pursuant to Article 18(2);
 - (e) the right of access to direct necessary information for the performance of the cover pool monitor's duties.
3. Where Member States use the option provided for in paragraph 1, a cover pool monitor shall be separate and independent from the credit institution issuing covered bonds and from that credit institution's auditor.

4. Member States may allow a cover pool monitor that is not separate from the credit institution under the following conditions:
 - (a) the internal cover pool monitor is independent from the credit decision process of the credit institution issuing covered bonds;
 - (b) without prejudice to letter (a) of paragraph 2, Member States shall ensure that the internal cover pool monitor shall not be removed from the function as cover pool monitor without prior approval of the management body of the credit institution issuing covered bonds in its supervisory function; and
 - (c) the internal cover pool monitor shall have direct access to the management body in its supervisory function where necessary.
5. 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 quarterly basis and includes the following minimum portfolio information:
- (a) the value of the cover pool and outstanding covered bonds;
 - (b) separate list of International Securities Identification Numbers (ISINs) for covered bonds issued;
 - (c) the geographical distribution and type of assets in the cover pool, their loan size and valuation method;
 - (d) details as to risks in relation to interest rates, currency, credit and liquidity;
 - (e) the maturity structure of assets in the cover pool and covered bonds, including an overview of the maturity extension triggers if applicable;
 - (f) the levels of required coverage, contractual and voluntary overcollateralisation;
 - (g) the percentage of loans where a default is considered to have occurred in accordance with Article 178 of Regulation (EU) No 575/2013.
 - (h) a glossary with definitions, data sources and criteria.

Member States shall ensure that the information is provided to investors on an aggregated basis. Member States may also require the information to be provided on a loan-by-loan 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.

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) all liabilities of the covered bonds, including
 - (i) the obligations for the payment of principal of outstanding covered bonds;
 - (ii) the obligations for the payment of any interest of outstanding covered bonds;
 - (iii) payment obligations attached to derivative contracts held in accordance with Article 11; and
 - (iv) the expected costs related to maintenance and administration for the wind-down of the covered bond programmeare covered by payment claims attached to the primary and substitution assets in the cover pool;
 - (b) the following assets in the cover pool contribute to the coverage requirement:
 - (i) liquid assets held in accordance with Article 16;
 - (ii) claims attached to derivative contracts held in accordance with Article 11.
 - (c) 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.

2. The calculation of the level of coverage required 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').

For this purpose, Member States may allow derivative contracts relating to currencies to be included in the calculation of the level of coverage in accordance with the nominal principle, calculated at market value.

Where the derivative contract relating to currencies is governed by a master agreement including only derivative contracts relating to currencies, the market value shall be replaced by the amount payable by one counterparty to the other upon early termination of the master agreement.

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

3. By derogation to paragraph 2, Member States may allow taking into consideration future interest receivable on the cover asset net of future interest payable on the corresponding covered bond to balance any shortfall in coverage of the covered bond's principal payment obligation, if there is a close correspondence within the meaning of Article 2 of Commission Delegated Regulation (EU) No 523/2014, subject to following conditions:
 - (a) payments received during the lifetime of the cover asset and necessary for coverage of the payment obligation of the corresponding covered bond are segregated in accordance with Article 12 directly or by means of other eligible cover assets according to article 6, and
 - (b) prepayment of the cover asset is only possible by way of exercising the delivery option, or in case of covered bonds callable at par by the issuing credit institution, by way of the cover asset's borrower at least paying the called covered bond's par amount.

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 for 180 calendar days.
3. Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets, segregated in accordance with Article 12 of this Directive:
 - (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, not own issued in accordance with Article 7(3) of that Delegated Regulation;
 - (b) short-term exposures to credit institutions that qualify for the credit quality step 1 or 2, or short-term deposits to credit institutions that qualify for the credit quality step 1, 2 or 3 in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.

Member States may decide to restrict the types of liquid assets eligible for the cover pool liquidity buffer.

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.

4. Where the credit institution issuing covered bonds is subject to liquidity requirements set out in other acts of Union law resulting in overlapping with the cover pool liquidity buffer, Member States may decide that the national rules transposing paragraphs 1, 2 and 3 do not apply throughout the period foreseen in those acts of Union law. Member States making use of this option shall inform the Commission and the EBA.
5. Member States may allow for the calculation of the principal for extendable maturity structures to be based on the final maturity date of the covered bond.
6. Member States may allow that the requirements set out 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 extension is not triggered at the discretion of the credit institution issuing covered bonds;
 - (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 of 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 triggered in the event of insolvency or resolution of the issuing credit institution does not affect the ranking of covered bond investors or invert the sequencing of the covered bonds 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 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 and the monitoring hereof 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 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, the determination that a credit institution issuing covered bonds is failing or likely to fail or in exceptional circumstances where the proper functioning of the issuing credit institution is seriously perilled to ensure that the rights and interests of the covered bond investors are preserved, including at least by verifying the continuous management of the covered bond programme during the period of the insolvency process.

Where Member States use that option, they may require that the competent authorities designated pursuant to Article 18(2) 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) 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 assets 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. For these purposes, Member States may provide rules enabling a special administrator to operate under the authorisation the credit institution issuing covered bonds held prior to its insolvency, 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 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. 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) the eligibility of assets and cover pool requirements in accordance with Articles 6 to 11;
 - (b) the segregation of assets in the cover pool in accordance with Article 12;
 - (c) 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) 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 at least 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 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 remedial measures

1. Without prejudice to the right of Member States to lay down criminal penalties, member States shall lay down rules establishing appropriate administrative penalties and remedial measures applicable at least in the following situations:
- (a) a credit institution has acquired a permission for a covered bond programme through false statements or other irregular means;
 - (b) a credit institution no longer fulfils the conditions under which a permission for a covered bond programme 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;
- (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 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 for administrative penalties for infringements which are subject to criminal penalties under their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions.

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 administrative penalties and remedial measures are effectively implemented.
4. Member States shall ensure that when determining the type of administrative penalties or other remedial measures and the amount of those administrative pecuniary penalties, that competent authorities 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 a legal person or the annual income of a 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 they 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 authority;
 - (g) 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 competent authorities designated pursuant to Article 18(2) apply the administrative penalties and remedial 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 remedial 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 remedial measures where urgent action is needed in order to prevent significant losses to third parties or significant damage to the financial system. In such a case, the person concerned shall be given the opportunity to be heard as soon as possible after the adoption of such remedial measure and, where necessary, the remedial measure shall be revised.
7. Member States shall ensure that any decision imposing administrative penalties or remedial measures as set out in paragraph 2 is properly reasoned and is subject to the right of appeal.

Article 24

Publication of administrative penalties and remedial measures

1. Member States shall ensure that the provisions transposing this Directive include rules requiring that administrative penalties and remedial measures be published without undue delay on the official website of the competent authorities designated pursuant to Article 18(2). The same obligations applies in case a Member State decides to lay down criminal penalties according to Article 23 paragraph 1 first sentence and paragraph 1 last subparagraph.

2. The rules adopted pursuant to paragraph 1 shall require at a minimum the publication of any decision which has not been appealed or can no longer be appealed and which is imposed for breach of the provisions 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 is imposed. Subject to paragraph 4, they shall further ensure that such information is published without undue delay after that person is informed of those penalties and also of the publication on the official website of the competent authority of the decision imposing those penalties.
4. Where Member States permit publication of penalties against which an appeal lies, competent authorities designated pursuant to Article 18(2) shall, without undue delay, also publish on their official website information on the status of the appeal and the outcome thereof.
5. Member States shall ensure that competent authorities designated pursuant to Article 18(2) publish the penalties on an anonymous basis and in a manner in accordance with national law, in any of the following circumstances:
 - (a) where the penalty 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 institutions or the natural persons involved.

6. In the case of a decision to publish a penalty or measure on an anonymous basis, Member States may allow for the publication of the relevant data to be postponed.
7. Member States shall ensure that any final court ruling annulling a decision imposing an administrative penalty or a remedial measure be also published.
8. Member States shall ensure that any publication referred to in paragraphs 2 to 6 remains on the official website of the competent authority designated pursuant to Article 18(2) for at least five years after its publication. Personal data contained in the publication shall only be kept on the official website for the period which is necessary and in accordance with the applicable personal data protection rules. Such retention period shall be determined taking into account the limitation periods provided for in the legislation of the Member States concerned but no longer than ten years.
9. Competent authorities designated pursuant to Article 18(2) shall inform EBA of any administrative penalties and remedial measures imposed, including, where appropriate, any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and details of the final judgement in relation to any criminal penalty imposed which they shall also submit to EBA.
10. EBA shall maintain a central database of administrative penalties and remedial measures communicated to them. That database shall be only accessible to competent authorities and shall be updated on the basis of the information provided by the competent authorities in accordance with paragraph 9.

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 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 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 or ESMA 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.
- 1a. Member States may lay down rules to publish a list of covered bonds allowed to use the European Covered Bonds 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) of paragraph 1, competent authorities designated pursuant to Article 18(2) shall on an annual basis notify EBA of the lists of credit institutions.

TITLE IV

LABELLING

Article 27

Labelling

Member States shall allow credit institutions to use the label European Covered Bonds in respect of covered bonds which meet the requirements laid down in the provisions transposing this Directive.

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 Article 2 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 under the definition of covered bonds in accordance with Article 2 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

1. 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.

Member States shall ensure that the competent authorities designated in accordance with Article 18 of this Directive supervise the compliance of 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"] with the requirements laid down in Article 52(4) of Directive 2009/65/EC in the version applicable on the date of their issue as well as with the requirements of this directive applicable in accordance with subparagraph 1.

2. Member States may allow the first paragraph to also apply to tap issues of covered bonds for which the opening of the ISIN code is prior to [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive] for up to 24 months after [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive] provided the issues comply with all of the following requirements:
- (a) the maturity date of the covered bond is prior to [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 5 years];
 - (b) the total volume of tap issues made after [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day] may not exceed twice the outstanding volume of the covered bonds issued prior to [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive+ 1 day];
 - (c) the final volume of the covered bond at maturity may not exceed the equivalence of 6 000 000 000 EUR;
 - (d) the assets of the cover pool must be located in the Member State that used this option when transposing this provision into national legislation.

Article 31

Reviews and reports

1. By XX [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 2 years], the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council whether and how an equivalence regime could be introduced for third-country credit institutions issuing covered bonds and for investors in 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 XX [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
3. For the purposes of paragraph 2 by XX [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 [to be inserted – entry into force + 18 months] 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 at the latest from [transposition deadline + 12 months].

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