



20.3.2019

PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

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 (COM(2018)0094 – C8-0113/2018 – 2018/0043(COD))

The interinstitutional negotiations on the aforementioned proposal for a regulation have led to a compromise. In accordance with Rule 69f(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on Economic and Monetary Affairs for decision by way of a single vote.

DIRECTIVE 2019/...
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/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 , , p. .

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 for obtaining 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 of defining the conditions for receiving 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 acts of Union law, such as 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 which those acts grant for covered bond investors. However, the wording of those acts differs according to their purpose and subject-matter so there is no consistent use of the term 'covered bonds'.
- (4) The treatment of covered bonds can be considered 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 as well as in their level of risk and investor protection. Secondly, differences between national frameworks or the absence of such a framework, together with the lack of a commonly agreed definition of covered bonds, could create obstacles to the development of a truly integrated single market for covered bonds. Thirdly, the differences in safeguards provided by national rules can create risks to financial stability where covered bonds with different levels of investor protection can be purchased under that designation across the Union and might 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) Harmonising certain aspects of national regimes alongside identified best practices should therefore ensure a smooth and continuous development of well-functioning covered bond markets in the Union and limit potential risks and vulnerabilities to financial stability. Such principle-based harmonisation should establish a common baseline for the issue of all covered bonds in the Union. Harmonisation requires all Member States to establish covered bond frameworks, which should also help facilitate the development of covered bonds markets in those Member States where currently there is none. 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 requested advice from EBA in accordance with Article 503(1) of Regulation (EU) No 575/2013 in December 2013.
- (8) In response to both the ESRB recommendation of 20 December 2012 and the Commission's request for advice of 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 a single preferential risk weight treatment of covered bonds in the Union.

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

- (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 is 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.
- (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 cover assets. 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 in which only credit institutions are permitted to issue covered bonds.

⁹ *EBA Report on covered bonds - Recommendations on harmonisation of covered bond frameworks in the EU* (2016), EBA-Op-2016-23.

- (12) It is therefore appropriate that only credit institutions as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 should be permitted to issue covered bonds under Union law. Specialised mortgage credit institutions are characterised by not taking deposits but rather other repayable funds from the public, and as such they comply with that definition. Without prejudice to ancillary activities permitted under applicable national law, 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 establishing specific product supervision to which they are subject, in order to ensure a high level of investor protection.
- (13) The existence of a dual recourse mechanism is an essential concept and element of many existing national covered 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 cover assets under harmonised conditions.
- (14) Bankruptcy remoteness should also be an essential feature of covered bonds to ensure that 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. It is therefore important to ensure that covered bonds investors be repaid in accordance with the contractual schedule, even 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 requirement that cover assets should be of very high quality in order to ensure the robustness of the cover pool. Those cover assets are characterised by specific features relating to the claims for payment and the collateral assets securing those cover assets. It is therefore appropriate to set out the general quality features that assets should respect in order to be eligible cover assets. Assets listed in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 should be considered eligible cover assets within a covered bond framework. This includes the case where such cover assets no longer comply with any of the requirements set out in those points, but are considered eligible cover assets under point (b) of paragraph 1, as long as they fulfil the requirements of this Directive. Loans to or guaranteed by public undertakings as defined in Article 2(b) of Commission Directive 2006/111/EC might be considered eligible cover assets provided that the public undertakings provide essential public services for the maintenance of critical societal activities. In addition, public undertakings should provide their services under a concession or authorisation from a public authority, should be subject to public supervision and should have sufficient revenue generating powers to ensure their solvability. Where Member States decide to allow assets in the form of loans to or guaranteed by public undertakings in their national framework, they should duly consider the possible impact on competition in relation to those assets. Independently of their ownership, credit institutions or insurance companies should not be considered public undertakings. Therefore, exposures to credit institutions should be considered eligible cover assets under Article 6(1)(a) or (b) of this Directive, depending on whether they comply or not with the requirements of Article 129 of the Regulation (EU) No 575/2013. Exposures to insurance companies should also be considered eligible cover assets under Article 6(1)(b) of this Directive. Other cover assets of a similar high quality might also be considered eligible under the Directive, provided that such cover assets comply with the requirements of this Directive, including those in relation to the collateral assets securing the claim for payment. For physical collateral assets, ownership should be recorded in a public register to ensure enforceability. Where no public register exists, it should be possible for Member States to provide for an alternative form of certification of ownership and claims that is comparable to that provided by public registration of the encumbered physical asset. Where Member States

make use of such alternative form of certification, they should also provide for a procedure for introducing changes to the recording of ownership and claims. Member States should be free to exclude certain assets in their national frameworks. To enable covered bond investors to better assess the risk of a covered bond programme, Member States should also provide for rules on risk diversification in relation to granularity and material concentration on the number of loans or exposures in the cover pool and the number of counterparties. Member States should be able to decide on the appropriate level of granularity and material concentration requested under their national law.

- (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. 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 cover assets, 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, such as rules on the segregation of the cover assets. Segregation can be achieved in different ways, such as on balance sheet, by means of a Special Purpose Vehicle (SPV) or other means. Nonetheless, the purpose of the segregation of assets is to put them beyond the legal reach of creditors other than covered bond holders. The location of the cover assets should also be regulated to ensure the fulfilment of the investor's rights. It is also important for Member States to lay down rules on the composition of the cover pool. Furthermore, coverage requirements should be defined in this Directive, without prejudice to the right of Member States to allow different means of mitigating, for instance, currency and interest rate risks. The calculation of the coverage and the conditions under which derivative contracts can be included in the cover pool should also be defined to ensure that cover pools are subject to common high quality standards across the Union. The calculation of coverage should follow the nominal principle for the principal. Member States should be able to use another method of calculation than the nominal principle provided that it is more prudent, that is, it does not result in a

higher coverage ratio, where the cover assets as calculated are the numerator and the covered bond liabilities as calculated are the denominator. Member States should be able to require a level of overcollateralisation to covered bonds issued by credit institutions located in the Member State concerned that is higher than the coverage requirement 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, where one is required by the national framework, are clearly defined. The existence of a cover pool monitor does not obviate the responsibilities of national competent authorities as regards covered bond public supervision, particularly as regards compliance with the requirements in Articles 6 to 12 and 14 to 17 of this Directive.

(17a) Article 129 of Regulation (EU) No 575/2013 sets out a number of conditions for covered bonds collateralised by securitisation entities. One of those conditions concerns the extent to which that type of collateral asset can be used and limits the use of such structures to 10% or 15% of the amount of the outstanding covered bonds. That condition can be waived by competent authorities in accordance with Regulation (EU) No 575/2013. The Commission's review of the appropriateness of this waiver concluded that the possibility to use securitisation instruments or covered bonds as collateral assets for issuing covered bonds should only be allowed for other covered bonds ('intragroup pooled covered bond structures'), and should be allowed without limits by reference to the amount of outstanding covered bonds. To guarantee an optimum level of transparency, cover pools for externally issued covered bonds should not contain internally issued covered bonds from different credit institutions within the group. Also, as the use of intragroup pooled covered bond structures provides 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 step 1 at the moment of issue or, in the event of a subsequent change in credit quality step and subject to the approval of the competent authorities, credit quality step 2. Where the externally or internally issued covered bonds cease to meet that requirement, 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, the externally issued covered bonds from the relevant cover pool will not benefit from the exemption in Article 129(1aa) of that Regulation. Where those internally issued covered bonds no longer comply with the relevant credit quality step

requirement, they should however be eligible cover assets for the purpose of this Directive provided that they comply with all requirements in this Directive, and the externally issued covered bonds collateralised by those internally issued covered bonds or other assets compliant with this Directive should therefore also be able to use the label European Covered Bonds. Allowing the use of such 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, all relevant Member States should have exercised this option and transposed that provision into their legislation.

- (18) Small credit institutions face difficulties when issuing covered bonds as the establishment of covered bond programmes often entails high upfront costs. Liquidity is also particularly important in covered bond markets and is largely determined by the volume of outstanding bonds. It is therefore appropriate to allow for joint funding by two or more credit institutions in order to enable the issue of covered bonds by smaller credit institutions. This would provide for the pooling of cover assets by several credit institutions as collateral assets for covered bonds issued by a single credit institution and would facilitate the issue of covered bonds in those Member States where there currently is no well-developed market. The requirements for the use of joint funding agreements should ensure that cover assets that are sold or, where a Member State has allowed for that option, transferred by way of financial collateral arrangement pursuant to Directive 2002/47/EC to the issuing credit institutions meet the eligibility and segregation requirements for 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 to perform the necessary risk evaluation. Directive 2003/71/EC¹⁰ 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 for trading on a regulated market situated or operating within a Member State. Several initiatives regarding the information to be disclosed to covered bond investors supplementary to Directive 2003/71/EC have been developed over time by national legislators and market participants. It is however necessary to specify in Union law the minimum common level of information investors should have access to prior to or at the time of purchase of covered bonds. Member States should be allowed to supplement these minimum requirements with additional provisions.
- (21) A core element of ensuring the protection of covered bond investors is mitigating the instrument's liquidity risk. That is crucial for ensuring the timely repayment of liabilities attached to the covered bond. Therefore, it is appropriate to introduce a cover pool liquidity buffer to address risks of liquidity shortage, such as mismatches in maturities and interest rates, payment interruptions, commingling risks, derivatives and other operational liabilities falling due within the covered bond programme. The credit institution may experience situations where it becomes difficult to comply with the cover pool liquidity buffer requirement, for example in times of stress where the buffer is used to cover outflows. The competent authorities designated pursuant to Article 18(2) should monitor the compliance with the cover pool liquidity buffer, and, if needed, take measures to require the credit institution to reinstate it. 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 as the former is directly related to the cover pool and seeks to mitigate liquidity risks specific to it. To minimise regulatory burdens, Member States should be able to allow an appropriate interaction with liquidity requirements established by other acts of Union law and serving different purposes than the cover pool liquidity buffer. Member States should therefore be able to decide that, until the date on which those acts of Union law are amended, the cover pool

¹⁰ 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).

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 credit institutions being 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 apply be reassessed in the context of future changes to the liquidity requirements for credit institutions under Union law, including the delegated regulation adopted pursuant to Article 460 of Regulation (EU) 575/2013. Liquidity risks could be addressed by other means than providing liquid assets, for example by issuing covered bonds subject to extendable maturity structures where the triggers address liquidity shortage or stress. In that case, Member States should be able to allow for the calculation of the liquidity buffer to be based on the final maturity date of the covered bond, taking into consideration possible maturity extensions, where the triggers address liquidity risks. Furthermore, Member States should be able to allow that the cover pool liquidity requirements do not apply to covered bonds that are subject to match funding requirements where incoming payments contractually fall due before outgoing payments and are placed in highly liquid assets in the meantime.

- (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. Those 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 cover assets to pass directly to the covered bond holders. In order to harmonise extendable maturity structures across the Union it is important to define the conditions under which Member States may allow these structures to ensure that they are not too complex or expose investors to increased risks. An important element thereof is to ensure that the credit institution cannot extend the maturity at its discretion. The maturity should only be allowed to be extended where objective and clearly defined trigger events established under national law have occurred or are expected to occur within the near future. Such triggers should aim to prevent default, for example by addressing liquidity shortage, market failure or market disturbance. Extensions could also facilitate the orderly wind-down of credit institutions issuing covered bonds, allowing for extensions in the case of insolvency or resolution to avoid a fire sale of assets.

- (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 authorities performing the general supervision of credit institutions.
- (25) Covered bond public supervision should entail granting credit institutions permission to issue covered bonds. As only credit institutions should be permitted to issue covered bonds, authorisation as a credit institution should be a prerequisite for that permission. Whereas in Member States participating in the Single Supervisory Mechanism, the European Central Bank is tasked with the authorisation of credit institutions in accordance with point (a) of Article 4 (1) of Council Regulation (EU) No. 1024/2013, only the authorities designated pursuant to this Directive should be competent to grant permission to issue covered bonds and exercise covered bond public supervision. In addition, 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) The scope of permission should relate to the covered bond programme. Such a programme should be subject to supervision under this Directive. A credit institution can have more than one covered bond programme. In that case, a separate permission for each programme should be required. A covered bond programme can include one or more cover pools. Multiple cover pools or different issues (different International

Securities Identification Numbers (ISINs)) under the same covered bond programme do not necessarily constitute separate covered bond programmes.

- (26a) Existing covered bond programmes are not required to obtain a new permission once the new rules of national law transposing this Directive become applicable. The credit institution issuing covered bonds should however comply with all requirements of this Directive. That compliance should be supervised by the competent authorities designated under this Directive as part of the covered bond public supervision. Member States could give guidance under national law on how to procedurally conduct the compliance assessment after the date from which Member States are to apply the provisions transposing this Directive. The competent authorities should be able to review a covered bond programme and assess the need for a change to the permission for that programme. Such a need to change could be due to substantial changes in the business model of the credit institution issuing covered bonds, for example following a change of the national covered bond framework or decisions made by the credit institution. Such changes could be considered substantial where they require a reassessment of the conditions under which permission to issue cover bonds was granted.
- (26b) Where a Member State provides for the appointment of a special administrator, it should be able to lay down rules on the competences and operational requirements for such a special administrator. Those rules could exclude the possibility for the special administrator to collect deposits or other repayable funds from consumers and retail investors, but allow the collection of deposits or other repayable funds only from professional investors.
- (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 should also be able to provide for criminal penalties. Member States that choose to provide for criminal instead of administrative penalties should notify the relevant criminal law provisions to the Commission.

- (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 other administrative measures is taken, the addressee should be given the opportunity to be heard. However, Member States should be able to provide for exceptions to the right to be heard in respect of other administrative measures. Any such exception should be limited to cases of imminent danger in which urgent action is needed in order to prevent significant losses to third parties such as covered bond investors or to prevent or remedy significant damage to the financial system. In such cases, the addressee should be given the opportunity to be heard after the measure has been imposed.
- (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. Member States could include administrative measures in relation to the extension of maturity under extendable maturity structures. Where Member States provide for such measures, those measures could enable competent authorities to invalidate a maturity extension and could lay down conditions for such invalidation to address the situation where a credit institution extends the maturity in breach of the objective triggers laid down in national law, or in order to ensure financial stability and investor protection.
- (30) In order to detect potential breaches of the requirements for issuing and marketing 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 levels 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 investors are upheld at all times in relation to the 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 manner in which they perform their covered bond public supervision.
- (33) Covered bonds are currently marketed in the Union under national denominations and labels, some of which are well-established while others are not. It seems therefore sensible to allow credit institutions which issue covered bonds in the Union to use a specific 'European Covered Bonds' label when selling covered bonds to both Union and third countries' investors under the condition that those covered bonds comply with the requirements set out in this Directive. If covered bonds also comply with the requirements set out in Article 129 of Regulation (EU) No 575/2013, credit institutions should be allowed to use the label 'European Covered Bonds (Premium)'. That label, indicating that specific additional requirements have been met resulting in a strengthened and well-understood quality, might be attractive even in Member States with well-established national labels. The aim of the two labels 'European Covered Bond' and 'European Covered Bond (Premium)' is to make it easier for investors to assess the quality of the covered bonds and hence make them more attractive as an investment vehicle both inside and outside the Union. The use of those labels should

however be facultative and Member States should be able to maintain their own national denominations and labelling framework in parallel to the 'European Covered Bonds' labels.

- (34) In order to assess the application of this Directive, the Commission should in close cooperation with EBA monitor the development of covered bonds in the Union and report to the European Parliament and the Council on the level of investor protection and the development of the covered bond markets. The report should also focus on the developments regarding the assets collateralising the issue of covered bonds. The use of extendable maturity structures has been increasing. The Commission should therefore report to the European Parliament and to the Council on the functioning and the risks and benefits deriving from the issue of covered bonds with extendable maturities. A new class of financial instruments under the name of European Secured Notes (ESNs), covered by assets that are riskier than public exposures and mortgages and that are not eligible cover assets under this Directive, has been proposed by market participants and others as an additional instrument for banks to finance the real economy. The Commission consulted EBA on 3 October 2017 for an assessment of the extent to which ESNs could use the 'best practices' defined by EBA for traditional covered bonds, the appropriate risk treatment of ESNs and the possible effect of ESN issues on bank balance sheet encumbrance levels. In response to this, EBA issued a report on 24 July 2018. In parallel to EBA's report, the Commission published a study on 12 October 2018. The Commission study and EBA report concluded that further assessment was required on, for example, regulatory treatment. The Commission should therefore continue to assess whether a legislative framework for ESNs would be appropriate and report to the European Parliament and to the Council on its findings, together with a legislative proposal, if appropriate.

- (35) There is currently no equivalence regime for the recognition by the Union of covered bonds issued by credit institutions in third countries except in a prudential context where preferential treatment regarding liquidity is granted to some third-country bonds under certain conditions. The Commission should therefore in close cooperation with EBA assess the need and relevance for an equivalence regime to be introduced for third-country issuers of and investors in covered bonds. The Commission should, no more than two years after the date from which Member States are to apply the provisions 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 issued before [OP: Please insert the date laid down in the second subparagraph of Article 32(1) of this Directive] are not affected. Covered bonds issued before that date should therefore 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. Such covered bonds should be able to continue to be referred to as covered bonds provided that their compliance with Article 52(4) of Directive 2009/65/EC, as applicable on the date of their issue, and with the requirements of this Directive that are applicable to them, is subject to supervision by the competent authorities designated pursuant to this Directive. Such supervision should not extend to the requirements of this Directive from which such covered bonds are exempt. In some Member States, ISINs are open for a longer period allowing for covered bonds to be issued continuously under that code with the purpose of increasing the volume (issue size) of that covered bond (tap issues). The transitional measures should cover tap issues of covered bonds under ISINs opened before ... [OP: please insert the date laid down in the second 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 amended. Directive 2014/59/EU defines covered bonds by referring to Article 52(4) of Directive 2009/65/EC and given that this description should be amended, Directive 2014/59/EU should be amended 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 documents¹¹, 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, of establishing a common framework for covered bonds to ensure that the structural characteristics of covered bonds across the Union correspond to the lower risk profile justifying Union preferential treatment, cannot be sufficiently achieved by the Member States, but can rather, by reason of the need to further develop the covered bond market and support cross-border investments in the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (39a) The European Central Bank was consulted and delivered its opinion on 22 August 2018.

¹¹ 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 Council¹² and delivered an opinion on...¹³. 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 other administrative 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 in relation to covered bonds.

¹² 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).

¹³ [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 provisions of national law transposing the mandatory requirements of this Directive and secured by cover assets to which covered bond investors have direct recourse as preferred creditors;
- (2) 'covered bond programme' means the structural features of a covered bonds issue determined by statutory rules, contractual terms and conditions, in accordance with the permission granted to the credit institution issuing covered bonds;
- (3) 'cover pool' means a clearly defined set of assets securing the payment obligations attached to the covered bonds and that are segregated from other assets held by the credit institution issuing covered bonds;
 - (3a) 'cover assets' means assets included in a cover pool;
 - (3b) 'collateral assets' means the physical assets and assets in the form of exposures securing the cover assets;
 - (3c) 'segregation' means the actions performed by the credit institution issuing covered bonds of identifying cover assets and of putting them beyond the legal reach of creditors other than covered bond investors and counterparties of derivative contracts;
- (4) 'credit institution' means a 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' means a situation in which a covered bond automatically becomes immediately due and payable upon insolvency or resolution of the issuer and in respect of which the covered bond investors have an enforceable claim for repayment at a time earlier than the original maturity date;
- (7) 'market value' means, for the purposes of immovable property, market value as defined in point (76) of Article 4(1) of Regulation (EU) No 575/2013;
- (8) 'mortgage lending value' means, for the purposes of immovable property, the mortgage lending value as defined in point (74) of Article 4(1) of Regulation (EU) No 575/2013;
- (10) 'primary assets' means dominant cover assets that determine the nature of the cover pool;
- (11) 'substitution assets' means cover assets that contribute to the coverage requirements, other than the primary assets;
- (12) 'overcollateralisation' means the entirety of the statutory, contractual or voluntary level of collateral that exceeds the coverage requirement set out in Article 15;
- (13) 'match funding requirements' means rules requiring that the cash flows between liabilities and assets falling due be matched by ensuring in contractual terms that payments from borrowers and counterparties of derivative contracts fall due before payments being made to covered bond investors and to the counterparties of derivative contracts, that those amounts are at least equal in value to the payments to be made to covered bond investors and to counterparties of derivative contracts, and that the amounts received from borrowers and counterparties of derivative contracts are included in the cover pool in accordance with Article 16(3) until the payments are due to the covered bond investors and counterparties of derivative contracts.

- (14) 'net liquidity outflow' means all payment outflows falling due on one calendar day, including principal and interest payments and payments under derivative contracts of the covered bond programme, net of all payment inflows falling due on the same calendar day for claims related to the cover assets;
- (15) 'extendable maturity structure' means a mechanism which provides for the possibility to extend the scheduled maturity of covered bonds for a pre-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 of a credit institution issuing covered bonds under that programme, or when such credit institution has been determined to be failing or likely to fail pursuant to Article 32(1) of Directive 2014/59/EU or, in exceptional circumstances, where the relevant competent authority determines that the proper functioning of that credit institution is seriously at risk;
- (17a) 'resolution' means resolution as defined in point (1) of Article 2(1) of Directive 2014/59/EU;
- (18) 'group' means a 'group' as defined in point (137) of Article 4(1) of Regulation (EU) No 575/2013;

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 that comply 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 cover assets;
 - (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 that comply with Article 11 a claim that ranks senior to the claim of that specialised mortgage credit institution's ordinary unsecured creditors determined in accordance with the national laws governing the ranking of creditors in normal insolvency 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 by:
 - (a) assets referred to as eligible in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 and provided that the credit institution issuing covered bonds meets the requirements of paragraphs (1a) to (3) of Article 129 of that Regulation;
 - (b) high quality cover assets that ensure that the credit institution issuing covered bonds has a claim for payment as set out in paragraph 2 and secured by collateral assets as set out in paragraph 3; or
 - (c) assets in the form of loans to or guaranteed by public undertakings as defined in point (b) of Article 2 of Commission Directive 2006/111/EC, subject to paragraph 4.

2. The claim for payment referred to in point (b) of paragraph 1 shall be subject to the following legal requirements:
 - (a) the asset represents a claim for payment of monies that has a minimum value determinable at all times, that is legally valid and enforceable, that is not subject to conditions other than the condition that the claim matures at a future date and that the claim 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 point (b) of paragraph 1 shall meet one of the following requirements:
 - (a) for physical assets, there exist valuation standards that are generally accepted among experts and that are appropriate for the physical asset concerned and there exists a public register that records ownership and claims on those 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.

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

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

attribution of ownership, to the documentation and attribution of encumbrances and to the enforceability of security interests.

4. For the purposes of point (c) of paragraph 1, covered bonds secured by loans to or guaranteed by public undertakings as primary assets shall be subject to a minimum level of 10 % of overcollateralisation, as defined in Article 3(12), and to all of the following conditions:
 - (a) the public undertakings provide essential public services on the basis of a licence, a concession contract or other form of entrustment granted by a public authority;
 - (b) the public undertakings are subject to public supervision;
 - (c) the public undertakings have sufficient revenue generating powers, which are ensured by such public undertakings:
 - (i) having adequate flexibility to collect and to increase fees, charges and receivables for the service provided in order to ensure their financial soundness and solvability,
 - (ii) receiving sufficient grants on a statutory basis in order to ensure their financial soundness and solvability in exchange for providing essential public services, or
 - (iii) having entered into a profit and loss transfer agreement with a public authority.
5. Member States shall lay down rules on the methodology and process for the valuation of physical assets used as collateral assets referred to in points (a) and (b) of paragraph 1. Those rules shall ensure at least the following:
 - (a) for each physical collateral asset, that a current valuation at or at less than market value or mortgage lending value exists at the moment of inclusion of the cover asset in the cover pool;
 - (b) that the valuation is carried out by a valuer who possesses the necessary qualifications, ability and experience; and

- (c) that the valuer is independent from the credit decision process, does not take into account speculative elements in the assessment of the value of the collateral asset and documents the value of the collateral asset in a transparent and clear manner.
- 6. Member States shall require that credit institutions issuing covered bonds have in place procedures to monitor that physical assets used as collateral assets referred to in points (a) and (b) of paragraph 1 are adequately insured against the risk of damage and that the insurance claim is segregated in accordance with Article 12.
- 7. Member States shall require credit institutions issuing covered bonds to document the cover assets as referred to in points (a) and (b) of paragraph 1 and the compliance of their lending policies with this Article.
- 8. Member States shall lay down rules ensuring risk diversification in the cover pool in relation to granularity and material concentration for assets not referred to as eligible under point (a) of paragraph 1.

Article 7

Collateral assets located outside the Union

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

Article 8

Intragroup pooled covered bond structures

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

- (a) the internally issued covered bonds, are sold to the credit institution issuing the externally issued covered bonds;
- (b) the internally issued covered bonds are used as cover assets in the cover pool for the externally issued covered bonds and are recorded on the balance sheet of the credit institution issuing the externally issued covered bonds;
- (ba) the cover pool for the externally issued covered bonds only contains internally issued covered bonds issued by a single credit institution within the group;
- (c) the credit institution issuing the externally issued covered bonds intends to sell them to covered bond investors outside the group;

- (d) both the internally and externally issued covered bonds qualify for credit quality step 1 [...] as referred to in Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 at the time of issue and are secured by eligible cover assets as referred to in Article 6;
- (da) in the case of cross border intra group pooled covered bond structures, the cover assets of the internally issued covered bonds comply with the eligibility and coverage requirements of the externally issued covered bonds.

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

Article 9

Joint funding

1. Member States shall allow eligible cover assets that were originated by a credit institution and have been purchased by a credit institution issuing covered bonds to be used as cover assets for the issue of covered bonds. Member States shall regulate such purchases in order to ensure that the requirements set out in Articles 6 and 12 are met.
2. In addition to the requirement set out in paragraph 1, Member States may allow transfers by way of financial collateral arrangement pursuant to Directive 2002/47/EC.

Member States may also allow assets that were originated by an undertaking that is not a credit institution to be used as cover assets. Where Member States exercise that option, they shall require that the credit institution issuing covered bonds either assesses the credit-granting standards of the undertaking from which it purchases the cover assets, or itself performs a thorough assessment of the borrower's creditworthiness.

Article 10

Composition of the cover pool

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

Article 11

Derivative contracts in the cover pool

1. Member States shall ensure investor protection by allowing derivative contracts to be included in the cover pool only where at least the following requirements are met:
 - (a) the derivative contracts are included in the cover pool exclusively for risk hedging purposes, their volume is adjusted in case of a reduction in the risk hedged and they are removed when the risk hedged ceases to exist;
 - (b) the derivative contracts are sufficiently documented;
 - (c) the derivative contracts are segregated in accordance with Article 12;
 - (d) the derivative contracts cannot be terminated upon the insolvency or resolution of the credit institution 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 derivative contracts in the cover pool.

Those rules shall specify, to the extent 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 cover assets

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

- (a) all cover assets are identifiable by the credit institution issuing covered bonds at all times;
- (b) all cover assets are subject to legally binding and enforceable segregation by the credit institution issuing covered bonds;
- (c) all cover assets are protected from any third party claims and do not form part of the insolvency estate of the credit institution issuing covered bonds until the priority claim referred to in point (b) of Article 4(1) is satisfied.

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

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

Article 13

Cover pool monitor

1. Member States may require that credit institutions issuing covered bonds appoint a cover pool monitor to perform ongoing monitoring of the cover pool with regard to the requirements set out in Articles 6 to 12 and Articles 14 to 17.
2. Where Member States exercise the option provided for in paragraph 1, they shall lay down rules at least on the following aspects:
 - (a) the appointment and dismissal of the cover pool monitor;
 - (b) any eligibility criteria for the cover pool monitor;

- (c) the role and duties of the cover pool monitor, including in the case of insolvency or resolution of the credit institution issuing covered bonds;
 - (d) the obligation to report to the competent authorities designated pursuant to Article 18(2);
 - (e) the right of access to information necessary for the performance of the cover pool monitor's duties.
3. Where Member States exercise the option provided for in paragraph 1, 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 where:
- (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 ensure that the internal cover pool monitor shall not be removed from the function as cover pool monitor without the prior approval of the management body of the credit institution issuing covered bonds in its supervisory function; and
 - (c) the internal cover pool monitor has direct access to the management body in its supervisory function where necessary.
4. Where Member States exercise the option provided for in paragraph 1, they shall notify EBA.

Article 14

Investor information

1. Member States shall ensure that 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;
 - (aa) a list of the International Securities Identification Numbers (ISINs) for all covered bond issues under that programme;
 - (b) the geographical distribution and type of cover assets, their loan size and valuation method;
 - (c) details in relation to market risk, including interest rate risk and currency risk, and risks in relation to credit and liquidity;
 - (d) the maturity structure of cover assets and covered bonds, including an overview of the maturity extension triggers if applicable;
 - (e) the levels of required and available coverage, and of statutory, contractual and voluntary overcollateralisation;
 - (f) the percentage of loans where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013 and in any case where the loans are more than ninety days past due.

Member States shall ensure that for externally issued covered bonds under intragroup pooled covered bond structures as referred to in Article 8, the information referred to in points (a) to (f) of the first subparagraph of this paragraph, or a link thereto, is provided to investors in respect of all internally issued covered bonds of the group.

Member States shall ensure that that information is provided to investors at least on an aggregated basis.

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

Section II
Coverage and liquidity requirements

Article 15
Coverage requirements

1. Member States shall ensure investor protection by requiring covered bond programmes to comply at all times with at least the coverage requirements in paragraphs 2 to 8.
2. All liabilities of the covered bonds shall be covered by payment claims attached to the cover assets.
3. The liabilities referred to in paragraph 2 shall include:
 - (a) the obligations for the payment of the principal amount of outstanding covered bonds;
 - (b) the obligations for the payment of any interest on outstanding covered bonds;
 - (c) payment obligations attached to derivative contracts held in accordance with Article 11; and
 - (d) the expected costs related to maintenance and administration for the winding-down of the covered bond programme.

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

4. The following cover assets shall contribute to the coverage requirement:
 - (a) primary assets;
 - (b) substitution assets;
 - (c) liquid assets held in accordance with Article 16; and
 - (d) payment claims attached to derivative contracts held in accordance with Article 11.

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

5. For the purposes of point (c) of paragraph 3 and point (d) of paragraph 4, Member States shall lay down rules on the valuation of derivative contracts.
6. The calculation of the required coverage shall ensure that the aggregate principal amount of all cover assets is equal to or exceeds the aggregate principal amount of outstanding covered bonds ('nominal principle').

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

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

7. By way of derogation from the first subparagraph of paragraph 6, Member States may, in a manner which reflects sound prudential principles and in accordance with applicable accounting standards, allow for future interest receivable on the cover asset net of future interest payable on the corresponding covered bond to be taken into consideration in order to balance any shortfall in coverage of the principal payment obligation attached to the covered bond, where there is a close correspondence 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 attached to the corresponding covered bond are segregated in accordance with Article 12 or included in the cover pool in the form of cover assets referred to in Article 6 until the payments are due; and
 - (b) prepayment of the cover asset is only possible by way of exercising the delivery option, as defined in the delegated regulation adopted pursuant to Article 33(4) of Regulation (EU) 575/2013 or, in the case of covered bonds callable at par by the credit institution issuing covered bonds, by way of the cover asset's borrower paying at least the called covered bond's par amount.
8. Member States shall ensure that the calculation of assets and the calculation of liabilities is based on the same methodology. Member States may allow for different calculation

methodologies, provided they do not result in a higher ratio of coverage than that calculated under the same methodology.

Article 16

Requirement for a cover pool liquidity buffer

1. Member States shall ensure investor protection by requiring that the cover pool includes at all times a liquidity buffer composed of liquid assets available to cover the net liquidity outflow of the covered bond programme.
2. The cover pool liquidity buffer shall cover the 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 or level 2B assets pursuant to Articles 10, 11 and 12 of the delegated regulation adopted pursuant to Article 460 of Regulation (EU) 575/2013, valued in accordance with Article 9 of that delegated regulation, and not own issued in accordance with Article 7(3) of that delegated regulation;
 - (b) short-term exposures to credit institutions that qualify for credit quality step 1 or 2, or short-term deposits to credit institutions that qualify for credit quality step 1, 2 or 3, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.

Member States may decide to restrict the types of liquid assets referred to in points (a) and (b) of the first subparagraph.

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

4. Where the credit institution issuing covered bonds is subject to liquidity requirements set out in other Union legal acts that result in an overlap with the cover pool liquidity buffer, Member States may decide not to apply the national rules transposing paragraphs 1, 2 and 3 for the period provided for in those Union legal acts. Member States may only make use of that option until the date on which an amendment to those

Union legal acts to eliminate the overlap applies and shall inform the Commission and EBA where they do so.

5. Member States may allow for the calculation of the principal for extendable maturity structures to be based on the final maturity date in accordance with the terms and conditions 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 can only be extended subject to objective triggers established in national law, and not at the discretion of the credit institution issuing covered bonds;
 - (b) the maturity extension triggers are specified in the contractual terms and conditions of the covered bond;
 - (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 extension triggers;
 - (ii) the consequences of insolvency or of resolution of the credit institution issuing covered bonds for a maturity extension;
 - (iii) the role of the competent authorities designated pursuant to Article 18(2) and, where relevant, of the special administrator with regard to a maturity extension;
 - (d) the final maturity date of the covered bond can at all times be determined;

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

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 other administrative 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 refinancing of loans included in the cover pool;
 - (c) management and staff dedicated to the covered bond programme which have adequate qualifications and knowledge regarding the issue of covered bonds and the administration of the covered bond programme;
 - (d) an administrative set-up of the cover pool and the monitoring thereof that meets the applicable requirements laid down in the national provisions transposing this Directive.

Article 20

Covered bond public supervision in insolvency or resolution

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

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

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

3. Where Member States provide for the appointment of a special administrator in accordance with paragraph 2, they shall adopt rules laying down the tasks and responsibilities of that special administrator at least in relation to:
 - (a) the discharge of the liabilities attached to the covered bonds;
 - (b) the management and realisation of cover assets, including their transfer together with covered bond liabilities to another credit institution issuing covered bonds;
 - (c) the legal transactions necessary for the proper administration of the cover pool, for the on-going monitoring of the coverage of the liabilities attached to the covered bonds, for the initiation of proceedings in order to bring assets back into the cover pool and for the transferral of those remaining assets to the insolvency estate of the credit institution which issued the covered bonds after all covered bond liabilities have been discharged. For those purposes, Member States may allow a special administrator to operate, in the case of insolvency of the credit institution issuing covered bonds, under the authorisation held by that credit institution, subject to the same operational requirements.
4. Member States shall ensure the coordination and exchange of information for the purposes of the insolvency or resolution process between the competent authorities designated pursuant to Article 18(2), the special administrator where such an administrator has been appointed and the resolution authority.

Article 21

Reporting to the competent authorities

1. Member States shall ensure investor protection by requiring credit institutions issuing covered bonds to report the information set out in paragraph 2 on covered bond programmes to competent authorities designated pursuant to Article 18(2). The reporting shall be on a regular basis and upon request by those competent authorities. Member States shall lay down rules on the frequency of that regular reporting.
2. The reporting obligations to be laid down pursuant to paragraph 1 shall require that the information to be provided includes information on at least the following:
 - (a) the eligibility of assets and cover pool requirements in accordance with Articles 6 to 11;
 - (b) the segregation of cover assets in accordance with Article 12;
 - (c) 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 set out in paragraph 2 by the credit institutions issuing covered bonds to the competent authorities 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 other administrative measures in accordance with the national provisions transposing Article 23;
 - (e) the power to adopt and implement supervisory guidelines relating to the issue of covered bonds.

Article 23

Administrative penalties and other administrative measures

1. Without prejudice to the right of Member States to provide for criminal penalties, Member States shall lay down rules establishing appropriate administrative penalties and other administrative measures 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 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 that do not comply 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 that are 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 cover assets in accordance with the provisions transposing Article 12;
- (m) a credit institution issuing covered bonds fails to report information or provides incomplete or inaccurate information in breach of the provisions transposing Article 14;
- (n) a credit institution issuing covered bonds repeatedly or persistently fails to maintain a cover pool liquidity buffer in breach of the provisions transposing Article 16;
- (o) a credit institution issuing covered bonds with extendable maturity structures fails to fulfil the conditions for extendable maturity structures laid down in the provisions transposing Article 17;

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

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

2. The penalties and measures referred to in paragraph 1 shall be effective, proportionate and dissuasive and shall include at least the following:
 - (a) a withdrawal of permission for a covered bond programme;
 - (b) a public statement, which indicates the identity of the natural or legal person and the nature of the breach in accordance with Article 24;
 - (c) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
 - (d) administrative pecuniary penalties.
3. Member States shall also ensure that the penalties and measures referred to in paragraph 1 are effectively implemented.
4. Member States shall ensure that when determining the type of administrative penalties or other administrative measures and the amount of 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 authorities;
 - (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 other administrative measures set out in paragraph 2 of this Article, to members of the management body, and to other individuals who under national law are responsible for the breach.
6. Member States shall ensure that before taking any decision imposing administrative penalties or other administrative measures as set out in paragraph 2, the competent authorities designated pursuant to Article 18(2) give the natural or legal person concerned the opportunity to be heard. Exceptions to the right to be heard may apply for the adoption of those other administrative measures where urgent action is 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 administrative measure and, where necessary, that measure shall be revised.

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

Article 24

Publication of administrative penalties and other administrative measures

1. Member States shall ensure that the provisions transposing this Directive include rules requiring that administrative penalties and other administrative measures be published without undue delay on the official websites of the competent authorities designated pursuant to Article 18(2). The same obligations apply where a Member State decides to provide for criminal penalties pursuant to first sentence and last subparagraph of Article 23(1).
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 or measure is imposed. Subject to paragraph 4, Member States shall further ensure that such information is published without undue delay after the addressee has been informed of that penalty or measure as well as of the publication on the official websites of the competent authorities of the decision imposing that penalty or measure.
4. Where Member States permit publication of a decision imposing penalties against which an appeal is pending, competent authorities designated pursuant to Article 18(2) shall, without undue delay, also publish on their official websites information on the status of the appeal and the outcome thereof.
5. Member States shall ensure that competent authorities designated pursuant to Article 18(2) publish the decision imposing penalties or measures on an anonymous basis and in accordance with national law, in any of the following circumstances:
 - (a) where the penalty or measure is imposed on a natural person and the publication of personal data is found to be disproportionate;

- (b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
 - (c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or the natural persons involved.
6. Where a Member State publishes a decision imposing a penalty or measure on an anonymous basis, it may allow for the publication of the relevant data to be postponed.
 7. Member States shall ensure that any final court ruling that annuls a decision imposing a penalty or measure is also published.

8. Member States shall ensure that any publication referred to in paragraphs 2 to 6 remains on the official websites of the competent authorities designated pursuant to Article 18(2) for at least five years from the date of publication. Personal data contained in the publication shall only be 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 shall in any case be no longer than ten years.
9. Competent authorities designated pursuant to Article 18(2) shall inform EBA of any administrative penalties and other administrative 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 competent authorities shall also submit to EBA.
10. EBA shall maintain a central database of administrative penalties and other administrative measures communicated to them. That database shall be 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 authorities performing the general supervision of credit institutions in accordance with relevant Union law applicable to those institutions and with the resolution authority in the event of the resolution of a credit institution issuing covered bonds.
2. Member States shall further ensure that 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) do the following:
 - (a) communicate all relevant information at the request of another competent authority designated pursuant to Article 18(2);
 - (b) communicate on their own initiative any essential information to other competent authorities designated pursuant to Article 18(2) in other Member States.
4. Member States shall also ensure that the competent authorities referred to in paragraph 1 cooperate with EBA or, where relevant, 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 websites:
 - (a) the texts of their national laws, regulations, administrative rules and general guidance adopted in relation to the issue of covered bonds;
 - (b) the list of credit institutions permitted to issue covered bonds;
 - (c) the list of covered bonds that can use the ‘European Covered Bond’ label and the list of covered bonds that can use the ‘European Covered Bond (Premium)’ label.
2. The information published in accordance with paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States. This information shall be updated to take account of any changes.

3. For the purposes of points (b) and (c) of paragraph 1, competent authorities designated pursuant to Article 18(2) shall notify EBA of the lists of credit institutions and covered bonds on an annual basis.

TITLE IV
LABELLING

Article 27
Labelling

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

TITLE V
AMENDMENTS TO OTHER DIRECTIVES

Article 28
Amendment to Directive 2009/65/EC

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

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

"Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 25 % where bonds were issued before [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day] and met the requirements set out in this paragraph, in the version applicable on the date of their issue, or where bonds fall under the definition of covered bonds in accordance with point (1) of Article 3 of Directive (EU) 20XX/XX of the European Parliament and of the Council*.

* [OP: Please insert reference to Directive (EU) .../... of the European Parliament and of the Council of ... on the issue of covered bonds and covered bond public

supervision and amending Directive 2009/65/EU and Directive 2014/59/EU (OJ C [...], [...], p. [...])).";

- (2) the third subparagraph is deleted.

Article 29

Amendment to Directive 2014/59/EU

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

"(96) 'covered bond' means an instrument as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council*, in the version applicable on the date of its issue, and issued before ... [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day] or a covered bond as defined in point (1) of Article 3 of Directive (EU) 20XX/XX of the European Parliament and of the Council**;

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

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

TITLE VI

FINAL PROVISIONS

Article 30

Transitional measures

1. Member States shall ensure that covered bonds issued before ... [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 pursuant to Article 18(2) of this Directive supervise the compliance of covered bonds issued before ... [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 the first subparagraph of this paragraph.

2. Member States may allow the first paragraph to also apply to tap issues of covered bonds for which the opening of the ISIN is before ... [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 that those issues comply with all of the following requirements:
 - (a) the maturity date of the covered bond is before ... [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 5 years];
 - (b) the total issue size 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] does not exceed twice the total issue size of the covered bonds outstanding at ... [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day];
 - (c) the total issue size of the covered bond at maturity does not exceed EUR 6 000 000 000 or the equivalent amount in domestic currency;
 - (d) the collateral assets are located in the Member State that exercised that option when transposing this Directive.

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, together with a legislative proposal, if appropriate, on whether and how an equivalence regime could be introduced for third-country credit institutions issuing covered bonds and for investors in those covered bonds, taking into consideration international developments in the area of covered bonds, in particular the development of legislative frameworks in third countries.

2. By 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, and recommendations for further action. The report shall include the following developments:
 - (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 investment from and outward investment to third countries;
 - (f) developments regarding the issue of covered bonds with extendable maturity structures;
 - (g) developments regarding the risks and benefits of the use of exposures as referred to in Article 129 of Regulation (EU) No 575/2013;
 - (h) the functioning of covered bond markets.

3. For the purposes of paragraph 2, by ... [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 2 years] Member States shall transmit information on points (a) to (g) to the Commission.
4. By ...[OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 2 years], after ordering and receiving a study assessing the risks and benefits deriving from covered bonds with extendable maturity structures and after consulting EBA, the Commission shall adopt a report and shall submit that study and that report to the European Parliament and to the Council, together with a legislative proposal, if appropriate.

5. By ... [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 2 years], the Commission shall adopt a report on the possibility of introducing a dual recourse instrument named European Secured Notes. The Commission shall submit that report to the European Parliament and to the Council, together with a legislative proposal, if appropriate.

Article 32

Transposition

1. Member States shall adopt and publish, by ... [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
