



**2018/0043(COD)**

17.8.2018

**\*\*\*I**

## **DRAFT REPORT**

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

Committee on Economic and Monetary Affairs

Rapporteur: Bernd Lucke

### ***Symbols for procedures***

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

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

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

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

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

#### **Amendments by Parliament in the form of a consolidated text**

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

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

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	52



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0094),
  - having regard to Article 294(2) and Articles 53 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0113/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of ...<sup>1</sup>,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

**Proposal for a directive  
Citation 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***Having regard to the Resolution of the European Parliament of 4 July 2017 on the report Towards a pan-European covered bonds framework (2017/2005(INI)).***

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<sup>1</sup> OJ C ... of ..., p ...

## Amendment 2

### Proposal for a directive

#### Recital 4

*Text proposed by the Commission*

*Amendment*

**(4) *The treatment of covered bonds can be considered as overall harmonised regarding the conditions for investing in covered bonds. There is however a lack of harmonisation across the Union regarding the conditions for the issue of covered bonds and this has several consequences. Firstly, preferential treatment is granted equally to instruments which can differ in nature and their level of risk and investor protection. Secondly, the existence of different national frameworks or the absence thereof, creates obstacles to the development of a truly integrated single market for covered bonds based on a commonly agreed definition which would ensure an appropriate level of investor protection. Thirdly, the differences in the safeguards provided by national rules can create risk to of financial stability where covered bonds, presenting different level of investor protection, can be purchased as such across the Union and can benefit from preferential prudential treatment under Regulation (EU) No 575/2013 and other Union legislation.*** **deleted**

Or. en

#### *Justification*

*The text is not convincing. Overall, covered bond markets work successfully. Cross border investment is high and covered bonds have weathered the financial crisis very well. The claim of a threat to financial stability is unsubstantiated. The conditions in Article 129 of the CRR are generally perceived as appropriate for granting preferential treatment.*

### Amendment 3

#### Proposal for a directive

##### Recital 5

*Text proposed by the Commission*

(5) ***It is therefore necessary to harmonise*** national regimes ***in order to*** ensure a smooth and continuous development of well-functioning covered bond markets in the Union and ***to*** limit potential risks and vulnerabilities to financial stability. This principle-based harmonisation shall establish a common baseline for the issue of all covered bonds in the Union. Harmonisation requires all Member States to establish covered bond frameworks, which should also help facilitate the development of covered bonds markets in those Member States where there is not currently one. Such a market would provide a stable funding source for credit institutions that would on that basis be better placed to provide affordable mortgages for consumers and businesses and would make safer investments available to investors.

*Amendment*

(5) ***Harmonising some aspects of*** national regimes ***along identified best practices will*** ensure a smooth and continuous development of well-functioning covered bond markets in the Union and limit potential risks and vulnerabilities to financial stability. This principle-based harmonisation shall establish a common baseline for the issue of all covered bonds in the Union. Harmonisation requires all Member States to establish covered bond frameworks, which should also help facilitate the development of covered bonds markets in those Member States where there is not currently one. Such a market would provide a stable funding source for credit institutions that would on that basis be better placed to provide affordable mortgages for consumers and businesses and would make safer investments available to investors.

Or. en

### Amendment 4

#### Proposal for a directive

##### Recital 15

*Text proposed by the Commission*

(15) Another core feature of existing national covered bond frameworks is the fact that assets serving as collateral should be of very high quality in order to ensure ***the robustness*** of the cover pool. ***High quality assets are characterised by having specific features making them eligible*** to cover the claims ***attached to the covered***

*Amendment*

(15) Another core feature of existing national covered bond frameworks is the fact that assets serving as collateral ***for claims in the cover pool*** should be of very high quality in order to ensure ***that the value*** of the cover pool ***is sufficient*** to cover the ***payment obligations of outstanding bonds. Such cover pools may***

***bond.*** It is therefore appropriate to set out the general quality features that assets should respect ***in order to be eligible to serve as collateral.*** Assets listed in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 should be considered ***eligible to serve as collateral in the cover pool, within a covered bond framework, as should loans involving public undertakings as defined in Article 2(b) of Commission Directive 2006/111/EC but also*** other assets of a ***similar*** high quality could be considered eligible ***under the Directive,*** provided that ***it is possible to determine either their market value or mortgage lending value. Furthermore, the Directive should include rules to ensure that assets, including guaranteed loans, can be repossessed or called in through an enforceable protection agreement, whether in the form of a traditional mortgage or by a charge, lien or guarantee providing the same level of legal protection, and thus ensuring the same level of safety for investors. However, those provisions on the eligibility of assets should not prevent Member States from allowing other categories of assets to serve as collateral in their national frameworks provided the assets comply with Union law.*** Member States should ***also*** be free to exclude assets in their national frameworks.

***consist of exposures to authorities with tax raising powers, high quality physical assets or of claims backed by high quality physical assets.*** It is therefore appropriate to set out the general quality features that ***cover pools and their collateral*** assets should respect. Assets listed in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 should be considered ***admissible*** cover ***assets in*** a covered bond framework. Other ***cover*** assets of a ***similarly*** high quality could ***also*** be considered eligible, provided that ***they*** comply with ***the legal requirements and the requirements for the collateral backing the claim for payment as set out in this Directive.*** Member States should be free to exclude assets in their national frameworks.

Or. en

## Amendment 5

### Proposal for a directive

#### Recital 16

*Text proposed by the Commission*

(16) Covered bonds have specific structural features that aim to protect investors at all times. Those features include the requirement that investors in

*Amendment*

(16) Covered bonds have specific structural features that aim to protect investors at all times. Those features include the requirement that investors in



covered bonds have a claim not only on the issuer but also on assets in a dedicated cover pool. To ensure that those assets are of **good** quality, specific requirements on the quality of assets that can be included in the pool should be laid down. Those **structural product related** requirements differ from the prudential requirements applicable to a credit institution issuing covered bonds. The former should not focus on ensuring the prudential health of the issuing institution, but rather aim at protecting investors **by imposing specific requirements on the covered bond itself**. In addition to the **specific** requirement to use high quality assets in the cover pool, it is also appropriate to regulate the general requirements of the features of the cover pool to further strengthen investor protection. Those requirements should include specific rules aimed at protecting the cover pool, including rules on the segregation (including by means of a Special Purpose Vehicle, an SPV) and location of the assets in the cover pool to ensure the fulfilment of the investor's rights including in case of resolution or insolvency of the issuer. It is also important to regulate the composition of the cover pool to ensure **its** homogeneity and facilitate a fair risk assessment by the investor. Furthermore, requirements for **coverage** should be **defined** in this Directive, without prejudice to the right of Member States to **allow** different means of **mitigating e.g. currency and interest rate risks**. The calculation of the coverage and the conditions under which derivatives contracts can be included in the cover pool should also be defined to ensure that cover pools are subject to common high quality standards across the Union.

covered bonds have a claim not only on the issuer but also on assets in a dedicated cover pool. To ensure that those assets are of **high** quality, specific requirements on the quality of assets that can be included in the pool should be laid down. Those 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. In addition to the requirement to use high quality assets in the cover pool, it is also appropriate to regulate the general requirements of the features of the cover pool to further strengthen investor protection. Those requirements should include specific rules aimed at protecting the cover pool, including rules on the segregation (including by means of a Special Purpose Vehicle, an SPV) and location of the assets in the cover pool to ensure the fulfilment of the investor's rights including in case of resolution or insolvency of the issuer. It is also important to regulate the composition of the cover pool to ensure **a degree of homogeneity which allows for a sufficient extent of risk diversification within the limits of this** homogeneity and **to** facilitate a fair risk assessment by the investor. **For this purpose, cover pools should be simple and transparent and should not include exposures secured by second-layer cover pools**. Furthermore, requirements for **risk mitigation** should be **laid out** in this Directive, without prejudice to the right of Member States to **complement these by** different means. The calculation of the coverage and the conditions under which derivatives contracts can be included in the cover pool should also be defined to ensure that cover pools are subject to common high quality standards across the Union.

Or. en

## Amendment 6

### Proposal for a directive Recital 19

*Text proposed by the Commission*

*Amendment*

**(19) Article 129 of Regulation (EU) No 575/2013 sets out a number of conditions for covered bonds collateralised by securitisation entities to be met. One of these conditions concerns the extent to which this type of collateral that can be used and limits the use of such structures to 10 or 15% of the amount of the outstanding covered bonds. This condition may, in accordance with Regulation (EU) No 575/2013, be waived by competent authorities. The Commission's review<sup>27</sup> of the appropriateness of this waiver concluded that the possibility to use securitisation instruments or covered bonds as collateral for issuing covered bonds should only be allowed for other covered bonds ('intragroup pooled covered bond structures') but should be allowed without limits by reference to the amount of outstanding covered bonds. The ability to pool covered bonds from different issuers as cover assets for intragroup funding purposes would facilitate the development of the issue of covered bonds, also in emerging markets and therefore it would be appropriate to introduce a framework for the use of these structures in Union law.**

**deleted**

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<sup>27</sup> *Report from the Commission to the European Parliament and the Council on Article 503 of Regulation (EU) No 575/2013 Capital requirement for covered bonds (COM/2015/0509 final).*

Or. en

## Justification

*This corresponds to the deletion of Article 8, “Intragroup pooled covered bond structures”, which would allow intransparent cover pool structures. The purpose of Article 8 is equally well served by Article 9 “Joint funding” - without violating transparency. The issue of an EBA waiver is dealt with in the Regulation. It is not mentioned in the Directive.*

### Amendment 7

#### Proposal for a directive Recital 22

##### *Text proposed by the Commission*

(22) In a number of Member States, innovative structures for maturity profiles have been developed in order to address potential liquidity risks, including maturity mismatches. These structures include the possibility to extend the scheduled maturity of the covered bond for a certain period of time or to allow the cash flows from the assets in the cover pool to pass directly to the covered bond holders. It is important ***in order to harmonise extendable maturity structures across the Union*** that the conditions under which Member States may allow these structures be defined to ensure that they are not too complex ***or expose investors to increased risks.***

##### *Amendment*

(22) In a number of Member States, innovative structures for maturity profiles have been developed in order to address potential liquidity risks, including maturity mismatches. These structures include the possibility to extend the scheduled maturity of the covered bond for a certain period of time or to allow the cash flows from the assets in the cover pool to pass directly to the covered bond holders. It is important that the conditions under which Member States may allow these structures be defined to ensure that they are not too complex. ***While investors are free to invest in assets with increased risk, the preferential treatment of covered bonds with extendable maturity structures should be scaled down with increasing risk.***

Or. en

### Amendment 8

#### Proposal for a directive Recital 26

##### *Text proposed by the Commission*

(26) As regards the scope of permission, a covered bond programme ***means that one or more cover pools has been established for the inaugural*** covered

##### *Amendment*

(26) As regards the scope of permission, a covered bond programme ***normally consists of a cover pool securing*** covered bond issuances (***with*** different International

bond *issue. Different* issuances (different International Securities Identification Numbers (ISINs)) *of the same covered bond programme do not necessarily constitute separate covered bond programmes.*

Securities Identification Numbers (ISINs)).

Or. en

*Justification*

*The last sentence in the Commission text is a tautology.*

**Amendment 9**

**Proposal for a directive  
Recital 28**

*Text proposed by the Commission*

*Amendment*

**(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.*

*deleted*

Or. en

*Justification*

*This corresponds to the deletions in Article 23 and Article 24, which provide an extent of detail incompatible with a Directive aiming at a principle-based harmonisation. The principle is that penalties are effective, proportionate and dissuasive.*

**Amendment 10**

**Proposal for a directive  
Recital 29**

*Text proposed by the Commission*

*Amendment*

**(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.**

**deleted**

Or. en

*Justification*

*This corresponds to the deletions in Article 23 and Article 24, which provide an extent of detail incompatible with a Directive aiming at a principle-based harmonisation. The principle is that penalties are effective, proportionate and dissuasive.*

## **Amendment 11**

### **Proposal for a directive Recital 33**

*Text proposed by the Commission*

*Amendment*

(33) Covered bonds are currently marketed in the Union under national denominations and labels, some of which are well-established. ***In several Member States however such denominations or labels do not exist.*** It seems therefore ***necessary*** to allow credit institutions which issue covered bonds in the Union to use ***the*** specific 'European Covered Bonds' label when selling covered bonds to both Union and third countries' investors under the condition that those covered bonds comply with the requirements set out in Union law. ***It is necessary to establish such label in order to*** make it easier for ***those*** investors to assess the quality of the covered bonds and hence make them more attractive as an

(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 other pieces of*** Union law, ***in particular with the requirements set in Article 129 of Regulation (EU) No 575/2013, credit institutions should be allowed to use the***

investment vehicle both inside and outside the Union. The use of *that label* should however be facultative and Member States should be able to keep their own national denominations and labelling framework in place in parallel to the 'European Covered Bonds' *label*.

label '*European Covered Bonds (Premium)*'. *This label, indicating a particularly high and well-understood quality, might be attractive even in countries with well-established national labels. The 'European Covered Bonds' labels* 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 *these labels* should however be facultative and Member States should be able to keep their own national denominations and labelling framework in place in parallel to the 'European Covered Bonds' *labels*.

Or. en

#### *Justification*

*The reference to Union law in the Commission text is wrong, because this would exclude covered bonds which do not comply with Article 129 of the CRR.*

### **Amendment 12**

#### **Proposal for a directive Recital 35**

##### *Text proposed by the Commission*

(35) *There is currently no* equivalence regime for the recognition of covered bonds issued by credit institutions in third countries *by the Union except in a prudential context where preferential treatment regarding liquidity is granted to some third-country bonds under certain conditions. The Commission should therefore in close cooperation with EBA assess the need and relevance for an equivalence regime to be introduced for third-country issuers of and investors in covered bonds. The Commission should, no more than 3 years after the date from which Member States are to apply the provisions transposing this Directive,*

##### *Amendment*

(35) *The European Parliament, in its Resolution of 4 July 2017 (2017/2005(INI)) emphasised that market access barriers for issuers in developing covered bond markets outside the EEA should be removed by providing equitable treatment to covered bonds from issuers in third countries, provided their legal, institutional and supervisory environment passes a thorough equivalence assessment by a competent European institution. The key principles of European legislation should serve as a potential benchmark for the covered bond markets globally and since covered bonds markets are rapidly developing in several non-European*

*submit a report to the European Parliament and to the Council, together with a legislative proposal, if appropriate, on this issue.*

*countries, it is imperative to establish an equivalence regime for the recognition of covered bonds issued by credit institutions in third countries **without undue delay**. **By reducing market access barriers to non-EU issuers of covered bonds, this will increase EU investors' choice and access to long term finance, and foster an increase in cross-border investment.***

Or. en

### *Justification*

*Postponing an equivalence regime for more than three years creates an unjustified market barrier and makes the EU benchmark less attractive for third countries.*

## **Amendment 13**

### **Proposal for a directive**

#### **Recital 39**

#### *Text proposed by the Commission*

(39) Since the objectives of this Directive cannot be sufficiently achieved by the Member States ***it is necessary to establish a common framework for covered bonds, ensuring that the structural characteristics of covered bonds across the Union are aligned with the risk features underlying Union preferential treatment***, but can rather, by reason of the need to further develop covered bond markets across the Union and support cross-border investments, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

#### *Amendment*

(39) Since the objectives of this Directive cannot be sufficiently achieved by the Member States, but can rather, by reason of the need to further develop covered bond markets across the Union and support cross-border investments, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Or. en

## Amendment 14

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4

*Text proposed by the Commission*

(4) publication requirements **for competent authorities** in relation to covered bonds.

*Amendment*

(4) publication requirements in relation to covered bonds.

Or. en

*Justification*

*The Directive not only spells out publication requirements for competent authorities, but also for CB issuers. The former is in Title III, the latter in Title II.*

## Amendment 15

### Proposal for a directive

#### Article 3 – paragraph 1 – point 1

*Text proposed by the Commission*

(1) 'covered bond' means a debt obligation issued by a credit institution and secured by a cover pool of assets which covered bond investors have direct recourse **to** as preferred creditors;

*Amendment*

(1) 'covered bond' means a debt obligation issued by a credit institution and secured by a cover pool of assets **to** which, **in the case of resolution or insolvency of the covered bond issuer**, covered bond investors have direct recourse as preferred creditors;

Or. en

*Justification*

*The Commission's definition suggests that CB investors have direct recourse to the cover pool. However, a direct recourse exists only in the case of resolution or insolvency of the issuer.*



## Amendment 16

### Proposal for a directive

#### Article 3 – paragraph 1 – point 2

*Text proposed by the Commission*

(2) 'covered bond programme' means the assets and liabilities as referred to in Article 15 as well as activities of the credit institution related to the issuing of covered bonds under **one** permission granted in accordance with Article 19;

*Amendment*

(2) 'covered bond programme' means the assets and liabilities as referred to in Article 15 as well as activities of the credit institution related to the issuing of covered bonds under permission granted in accordance with Article 19;

Or. en

*Justification*

*There is no reason to emphasise “one” permission.*

## Amendment 17

### Proposal for a directive

#### Article 3 – paragraph 1 – point 3

*Text proposed by the Commission*

(3) 'cover pool' means **the** assets **that constitute the collateral for** the covered bonds **and that are** segregated from other assets held by the credit institution issuing covered bonds;

*Amendment*

(3) 'cover pool' means **a clearly defined set of identifiable** assets **securing the payment obligations of** the covered bond issuer **until maturity of the covered bond and subject to legal arrangements ensuring that the cover pool assets will be** segregated from other assets held by the credit institution issuing covered bonds **at the latest when resolution or insolvency proceedings have been opened over the covered bond issuer;**

Or. en

*Justification*

*Not all cover pools are segregated. As long as the issuer is not in resolution or insolvency, cover pools may not be segregated in some member states. Moreover, the usage of the word “collateral” is problematic. Cover pool assets are often just claims to collateral, for instance in the case of real estate. In these cases, the collateral itself is not a part of the cover pool.*

## Amendment 18

### Proposal for a directive

#### Article 3 – paragraph 1 – point 9

*Text proposed by the Commission*

*Amendment*

(9) *'residential property' means residential property as defined in point (75) of Article 4(1) of Regulation (EU) No 575/2013;*

*deleted*

Or. en

#### *Justification*

*The Directive as amended by the rapporteur would not mention either residential or commercial property. Moreover, it is hard to understand why the Commission text would define “residential property”, but not “commercial property” or real estate held for non-residential, non-commercial purposes.*

## Amendment 19

### Proposal for a directive

#### Article 3 – paragraph 1 – point 14

*Text proposed by the Commission*

*Amendment*

(14) *'net liquidity outflow' means all liabilities, including principal and interest payments and payments under derivative contracts of the covered bond programme after having deducted the inflows derived from the assets in the cover pool;*

(14) *'net liquidity outflow' means all payments made in a certain period, including principal and interest payments and payments under derivative contracts of the covered bond programme, net of all payments received in the same period for claims related to the assets in the cover pool;*

Or. en

#### *Justification*

*The liquidity outflow is a “flow” concept. It cannot be defined with reference to “liabilities”, which is a “stock” concept. Also, it should be made clear that out-payments and in-payments refer to the same time period.*

## Amendment 20

### Proposal for a directive

#### Article 4 – paragraph 1 – point c

##### *Text proposed by the Commission*

(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.

##### *Amendment*

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

Or. en

##### *Justification*

*Pari passu should refer to senior unsecured creditors, cf. EP's INI-report on covered bonds.*

## Amendment 21

### Proposal for a directive

#### Article 5 – paragraph 1

##### *Text proposed by the Commission*

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.

##### *Amendment*

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

Or. en

##### *Justification*

*Not only “automatic” acceleration should be excluded. Bankruptcy remoteness means that there is no form of acceleration.*

## Amendment 22

### Proposal for a directive

#### Article 6 – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

Member States shall **ensure investor protection by requiring** that covered bonds are at all times **collateralised** by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 **or by other high quality assets that meet at least the following** requirements:

*Amendment*

Member States shall **require** that covered bonds are at all times **secured** by high quality **cover assets. Such assets shall include all** assets referred to **as eligible** in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 **in fulfilment of the requirements for the preferential treatment of covered bonds set out in paragraphs 4 and 5 of this Regulation.**

Or. en

#### *Justification*

*Articles 6 and 6a reflect the fact that EU legislation recognises two types of covered bonds: Those which are just UCITS-compliant and those which are also CRR-compliant. The EP has voted to preserve this distinction and to pursue two objectives: the high quality and economic success of CRR-compliant CBs shall not be compromised; a well-defined covered bond framework shall be available for non-CRR compliant assets. Article 6 simply states that all CRR-compliant assets are high quality cover assets satisfying the requirements of this Directive without further qualification. Article 6a allows for a broad range of non-CRR-compliant cover assets. Like in UCITS, there is no restriction as to the specific nature of the cover assets. In fact, even assets which have been discussed under the European Secured Notes (ESN) proposal might be considered. The only requirements for eligible cover assets under Article 6a relate to the specificities of the covered bond framework: Existence of a public register recording ownership and collateral rights, transparency on collateral value, risk mitigation and diversification in cover pools. This also allows for new or unconventional types of collateral, provided they fit in the well-tried covered bond framework. Article 6a thus permits expansion and innovation of the covered bond framework, while Article 6 expresses that established forms of collateral should continue to enjoy regulatory preference over non-conventional cover assets.*

## Amendment 23

### Proposal for a directive

#### Article 6 – paragraph 1 – subparagraph 1 – point a

*Text proposed by the Commission*

*Amendment*

**(a) either the market value or mortgage lending value of the assets can be determined;** *deleted*

Or. en

#### **Amendment 24**

**Proposal for a directive**

**Article 6 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) a mortgage, charge, lien or other guarantee on the asset is enforceable;** *deleted*

Or. en

#### **Amendment 25**

**Proposal for a directive**

**Article 6 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

**(c) all legal requirements for establishing the mortgage, charge, lien or guarantee on the asset have been fulfilled;** *deleted*

Or. en

#### **Amendment 26**

**Proposal for a directive**

**Article 6 – paragraph 1 – subparagraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) the mortgage, charge, lien or guarantee securing the asset enable the** *deleted*

*credit institution issuing covered bonds to realise the value of the asset without undue delay.*

Or. en

#### **Amendment 27**

##### **Proposal for a directive Article 6 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*For the purposes of point (a), Member States shall lay down rules on valuation of assets.* **deleted**

Or. en

#### **Amendment 28**

##### **Proposal for a directive Article 6 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*For the purposes of point (b), Member States shall lay down rules ensuring the prompt filing and registration of mortgages, charges, liens or guarantee on assets in the cover pool.* **deleted**

Or. en

#### **Amendment 29**

##### **Proposal for a directive Article 6 – paragraph 1 – subparagraph 4**

*Text proposed by the Commission*

*Amendment*

*For the purposes of points (b) and (d), Member States shall ensure that credit* **deleted**

*institutions issuing covered bonds assess the enforceability of assets before including such assets in the cover pool.*

Or. en

### **Amendment 30**

#### **Proposal for a directive Article 6 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. Member States shall ensure investor protection by requiring that credit institutions issuing covered bonds have in place procedures to monitor that the assets used as collateral are adequately insured against the risk of damage.** *deleted*

Or. en

### **Amendment 31**

#### **Proposal for a directive Article 6 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. For the purposes of paragraphs 1 and 2, Member States shall require credit institutions issuing covered bonds to document the assets used as collateral and their lending policies regarding their compliance with those paragraphs.** *deleted*

Or. en

### **Amendment 32**

#### **Proposal for a directive Article 6 a (new)**

**Article 6a**

***Cover assets for ordinary covered bonds***

***1. Member States may allow the issuance of covered bonds secured by high quality cover assets not referred to as eligible in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013. In this case, Member States shall require that cover assets provide the credit institution issuing covered bonds with claims for the payment of a clearly determined amount as set out in paragraph 2 and secured by collateral assets as set out in paragraph 3. Member States shall also require that the choice of cover assets mitigates cover pool risk as set out in paragraph 4.***

***2. The claim for payment referred to in paragraph 1 shall meet the following legal requirements:***

***(a) each claim is collateralised by assets for which a public register records ownership and collateral rights or is a loan to a public undertaking as defined in Article 2(b) of Commission Directive 2006/111/EC;***

***(b) each claim is secured by a legally established mortgage, charge, lien or other guarantee and each of these is enforceable;***

***(c) the mortgage, charge, lien or guarantee securing the claim enable the credit Institution issuing covered bonds to receive the payment of the claim in due time and at reasonable cost.***

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

***For the purposes of points (b) and (c), Member States shall ensure that credit institutions issuing covered bonds assess***



*both the enforceability of claims and the expected length of legal proceedings before including such claims in the cover pool.*

*3. The collateral assets referred to in paragraph 1 shall meet one of the following requirements:*

*(a) for physical assets, either the market or the mortgage lending value can be determined or, if this is not possible, the asset is valued by rules laid down by the Member State;*

*(b) for assets in the form of exposures to a counterparty, the counterparty's safety and soundness is inferred from its tax-raising powers or from being subject to either public supervision or an ongoing credit assessment by an independent professional third party. For the purposes of this point, the rating by a nominated ECAI shall be regarded as an independent third party's credit assessment.*

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

*4. The risk mitigation referred to in paragraph 1 shall be ensured by the following requirements:*

*(a) all collateral for cover pool assets shall be adequately insured against the risk of loss or damage and the claim out of the insurance shall be part of the substitution assets of the cover pool;*

*(b) physical assets referred to in point (a) of paragraph 3 serve as collateral for cover pool claims for at most 60% of their value determined according to the applicable rules referred to in paragraph*

3;

*(c) assets in the form of exposures to a counterparty referred to in Paragraph 3 (b) shall be cover pool eligible at a discount rate applicable to their nominal amount and not exceeding*

- 90% of the exposure in case the counterparty has tax raising powers,*
- 80% of the exposure in case the counterparty is under public supervision,*
- 60% of the exposure in case the – counterparty is subject to an ongoing credit assessment by an independent professional third party.*

*Member States shall ensure that credit assessments of independent professional third parties clearly identify a threshold for credit qualities which the professional third party considers to be of Investment grade. Exposures to counterparties shall not be eligible as cover pool assets if a credit assessment of an independent professional third party falls below its own threshold for investment grade quality.*

*(d) The cover pool assets shall be sufficiently granular to enable risk diversification. For the purposes of this point, sufficient granularity shall mean that the cover pool contains at least 500 exposures, loans or other types of claims all of which shall have some degree of idiosyncratic risk.*

*(e) The cover pool shall be free of material concentration. For the purposes of this point, material concentration shall mean that aggregate exposure to a single obligor exceeds 2% of the nominal cover pool value.*

Or. en

## Amendment 33

### Proposal for a directive Article 7 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Assets located outside of the Union but within the European Economic Area may be included in cover pools, provided they satisfy the requirements of Article 6 or Article 6a of this Directive.**

Or. en

## Amendment 34

### Proposal for a directive Article 8

*Text proposed by the Commission*

*Amendment*

**Article 8**

**deleted**

***Intragroup pooled covered bond structures***

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

***(a) the internally issued covered bonds, which are used as collateral for the externally issued covered bonds, are recorded on the balance sheet of the credit institution which issues the externally issued covered bonds;***

***(b) the credit institution issuing the externally issued covered bond has a claim on the credit institution issuing the***

***internally issued covered bonds, which is secured by the internally issued covered bonds;***

***(c) the externally issued covered bonds are sold to covered bond investors outside the group;***

***(d) both the internally and the externally issued covered bonds qualify for credit quality step 1 as referred to in Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 and are collateralised by residential or commercial property mortgages.***

Or. en

### *Justification*

*Allowing the use of internally issued covered bonds (issued for sale within an intragroup) as cover pool assets for externally issued CBs may make cover pools intransparent. While the externally issued CB would be secured by a (first-layer) cover pool, the internally issued covered bonds in this first-layer cover pool would be covered by second-layer cover pools. There would be no limit to the number of second-layer cover pools contributing to the cover of the first-layer cover pool. Unless the number of internally issued CBs is very small, this may easily become an intransparent structure and may greatly impair proper risk assessment by investors. (For instance, in the case of a German Landesbank, there may be a great number of Sparkassen belonging to the same group and each of the Sparkasse could, in principle, participate in the issue of a Landesbank CB by issuing its own internal CB secured by a second-layer cover pool.) Moreover, consistency problems arise in the case where the group sells off smaller institutions which issued internal bonds. Such a sale would generate CBs which have (external) CBs in their cover pool – which is not generally allowed under the Commission text. The purpose of joint funding can be served equally well (and even better!) with Article 9. This Article does not entail the intransparent cover pool structure of Article 8 and it would, unlike Article 8, provide a level playing field between small banks which belong to a group big enough to issue CBs and those which do not.*

### **Amendment 35**

#### **Proposal for a directive Article 9 – paragraph 1**

*Text proposed by the Commission*

1. ***Subject to the provisions in paragraph 2, Member States shall allow the use of loans collateralised by***

*Amendment*

1. Member States shall allow the ***joint funding*** of covered bonds by ***several credit institutions provided the jointly funded***

***residential or commercial property mortgages, charges, liens or other comparable security rights granted by a credit institution as assets in the cover pool for the issue of covered bonds by another credit institution.***

***covered bond is issued by a single credit institution ('the lead institution').***

Or. en

### *Justification*

*The Commission text is too unspecific. Joint funding is important to open up the market for CB issues to small banks. It is therefore imperative to lay out the principles of joint funding in the Directive. The approach taken here is that funding is joint while issuance is single (by the lead institute). This has the advantage that all “external” relations (between issuer and investors) are precisely the same as for conventional covered bonds. On the funding side, national law must regulate the transfer of assets to the issuer’s cover pool. Conditional on these settings, cost and revenue distribution can be freely shaped by the credit institutions.*

### **Amendment 36**

#### **Proposal for a directive Article 9 – paragraph 2**

##### *Text proposed by the Commission*

2. Member States shall ensure ***investor protection by laying down rules regulating the transfer of loans and mortgages, charges, liens or other comparable security rights from the credit institution which issued them to the credit institution issuing covered bonds. Those rules shall ensure that all requirements laid down in Articles 6 and 12 are met.***

##### *Amendment*

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

Or. en

## Amendment 37

### Proposal for a directive Article 9 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Member States shall ensure that jointly funded covered bonds are subject to all applicable rules for covered bonds and covered bond public supervision.**

Or. en

## Amendment 38

### Proposal for a directive Article 10 – paragraph 1

*Text proposed by the Commission*

*Amendment*

Member States shall ***ensure investor protection by*** providing for a sufficient level of homogeneity of the assets in the cover pool so that they shall be of a similar nature in terms of ***structural features, lifetime of assets or risk profile***.

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

***– assets compliant with points (a) to (c) of Article 129(1) of Regulation (EU) No 575/2013;***

***– assets compliant with points (d) to (f) of Article 129(1) of Regulation (EU) No 575/2013;***

***– assets compliant with point (g) of Article 129(1) of Regulation (EU) No 575/2013.***

Or. en

### *Justification*

*The Commission text requires cover pool homogeneity. This wording should be softer, since some degree of heterogeneity is indispensable for risk diversification and liquidity management. Since it is impossible to define the optimal degree of homogeneity in a legal text, Article 10 gives examples of the admissible degree of heterogeneity for CRR-eligible assets.*

#### **Amendment 39**

##### **Proposal for a directive**

##### **Article 12 – paragraph 1 – subparagraph 1 – introductory part**

###### *Text proposed by the Commission*

Member States shall ***ensure investor protection by requiring that*** the segregation of assets in the cover pool ***complies with at least*** the following requirements:

###### *Amendment*

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

Or. en

#### **Amendment 40**

##### **Proposal for a directive**

##### **Article 12 – paragraph 1 – subparagraph 1 – point a**

###### *Text proposed by the Commission*

(a) all assets in the cover pool are identifiable by the credit institution issuing covered bonds;

###### *Amendment*

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

Or. en

#### **Amendment 41**

##### **Proposal for a directive**

##### **Article 12 – paragraph 1 – subparagraph 1 – point b**

###### *Text proposed by the Commission*

(b) all assets in the cover pool ***are subject to legally binding and enforceable***

###### *Amendment*

(b) ***segregation of*** all assets in the cover pool ***can be enforced at the latest***

*separation by* the credit institution issuing covered bonds;

*immediately upon insolvency or resolution of* the credit institution issuing covered bonds;

Or. en

## Amendment 42

### Proposal for a directive

#### Article 14 – paragraph 2 – subparagraph 1 – introductory part

##### *Text proposed by the Commission*

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:

##### *Amendment*

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

Or. en

##### *Justification*

*“Semi-annual” is sufficient as a minimum standard. This is also the current requirement in 129 (7) CRR and Parliament’s position in its INI-report.*

## Amendment 43

### Proposal for a directive

#### Article 14 – paragraph 2 – subparagraph 2

##### *Text proposed by the Commission*

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

##### *Amendment*

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

Or. en

##### *Justification*

*This requirement would overburden issuers. Much of the flood of information would probably not be processed by investors.*



## Amendment 44

### Proposal for a directive Article 14 – paragraph 3

*Text proposed by the Commission*

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.

*Amendment*

3. Member States shall ensure investor protection by requiring credit institutions issuing covered bonds to publish on their website the information made available to investors in accordance with paragraphs 1 and 2. ***Member States shall lay down that electronic access to this information is sufficient for the purposes of this Article.***

Or. en

*Justification*

*This saves costs and protects the environment. There is no reason why the same information should be sent out in paper form. Also, electronic information is easier to process for investors.*

## Amendment 45

### Proposal for a directive Article 15 – paragraph 1 – subparagraph 1 – point c – point iv

*Text proposed by the Commission*

***(iv) derivative contracts held in accordance with Article 11;***

*Amendment*

***deleted***

Or. en

*Justification*

*This must be deleted to resolve a contradiction in the Commission text. According to Article 11, derivative contracts shall be held exclusively for risk hedging purposes. So they cannot contribute to the coverage.*

## Amendment 46

### Proposal for a directive

#### Article 15 – paragraph 1 – subparagraph 1 – point d

*Text proposed by the Commission*

(d) uncollateralised claims where a default is considered to have occurred in accordance with Article 178 of Regulation (EU) No 575/2013 do not contribute to the **cover pool**.

*Amendment*

(d) uncollateralised claims where a default is considered to have occurred in accordance with Article 178 of Regulation (EU) No 575/2013 do not contribute to the **coverage**.

Or. en

## Amendment 47

### Proposal for a directive

#### Article 15 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

For the purposes of point (b) of the first subparagraph, Member States may allow for other principles of calculation provided they do not result in a **lower** level of coverage than that calculated under the nominal principle.

*Amendment*

For the purposes of point (b) of the first subparagraph, Member States may allow for other principles of calculation provided they do not result in a **higher** level of coverage than that calculated under the nominal principle.

Or. en

## Amendment 48

### Proposal for a directive

#### Article 15 – paragraph 1 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 49

### Proposal for a directive

#### Article 16 – paragraph 3 – subparagraph 1 – point a

*Text proposed by the Commission*

(a) assets qualifying as level 1, level 2A and level 2B assets pursuant to Articles 10, 11 and 12 of Delegated Regulation (EU) 2015/61, valued in accordance with Article 9 of that Delegated Regulation and segregated in accordance with Article **13** of this Directive;

*Amendment*

(a) assets qualifying as level 1, level 2A and level 2B assets pursuant to Articles 10, 11 and 12 of Delegated Regulation (EU) 2015/61, valued in accordance with Article 9 of that Delegated Regulation and segregated in accordance with Article **12** of this Directive;

Or. en

## Amendment 50

### Proposal for a directive

#### Article 16 – paragraph 3 – subparagraph 1 – point b

*Text proposed by the Commission*

(b) exposures to **credit** institutions **that qualify for the credit quality step 1, in accordance with** Article 129(1)(c) of Regulation (EU) No 575/2013.

*Amendment*

(b) exposures to institutions **as specified in** Article 129(1)(c) of Regulation (EU) No 575/2013.

Or. en

## Amendment 51

### Proposal for a directive

#### Article 16 – paragraph 3 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**Member States shall ensure that the assets referred to in (a) will only be eligible for satisfying the cover pool liquidity buffer requirement if those assets are not**

*essential for maintaining the credit institution's liquidity buffer referred to in Title II of Delegated Regulation (EU) 2015/61 at least at a level equal to the "net liquidity outflows over a 30 calendar day stress period" referred to in Article 4 of that Delegated Regulation, assuming that the net liquidity outflow of the covered bond programme over the same 30 calendar day stress period is zero on the grounds of a sufficient liquidity buffer contained in the cover pool by virtue of paragraphs 1 and 2.*

Or. en

### *Justification*

*Parliament demanded that the cover pools contain a liquidity buffer for half a year. The Commission has transposed this demand in Article 16 of the Directive. However, there is an open contradiction between the requirement in paragraph 1 (cover pool includes a liquidity buffer "at all times") and the derogation the Commission foresees in paragraph 4 (liquidity buffer is not necessary for the 30 days where the bank has liquidity from LCR requirements). While this derogation is motivated by the legitimate intent to eliminate a double-counting of claims against the bank, it overlooks the fact that upon insolvency of the credit institution the cover pool is segregated from the bank. Since in this case, LCR liquidity remains with the bank, the cover pool would be without liquidity reserves for the first 30 days. Your rapporteur finds this unacceptable and has proposed a different solution which also eliminates double-counting but preserves, even under insolvency of the issuer, the liquidity of the cover pool for 180 days and the LCR reserves of the bank for 30 days under stress.*

## **Amendment 52**

### **Proposal for a directive Article 16 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Where the credit institution issuing covered bonds is subject to liquidity requirements set out in other acts of Union law, Member States may decide that the national rules transposing paragraphs 1, 2 and 3 do not apply throughout the period foreseen in those acts of Union law.**

**deleted**

## Amendment 53

### Proposal for a directive Article 16 – paragraph 5

*Text proposed by the Commission*

5. ***Member States may allow for the calculation of the principal*** for extendable maturity structures ***to be based on the final maturity date of the covered bond.***

*Amendment*

5. For extendable maturity structures, ***Member States shall ensure that the liquidity requirements for the repayment of principal are up-dated after a possible maturity extension so that they always match the payment needs at the time at which the principal is due.***

Or. en

*Justification*

*The Commission text may or may not mean the same thing, but it should, in any case, be worded with more clarity.*

## Amendment 54

### Proposal for a directive Article 17 – paragraph 1 – point b

*Text proposed by the Commission*

(b) the maturity extension is ***not*** triggered at the discretion of the credit institution issuing covered bonds;

*Amendment*

(b) ***a maturity extension may be triggered in the event of insolvency or resolution of the issuer and with approval by the competent supervisory authority. Apart from these events, the maturity extension is neither triggered at the discretion of the credit institution issuing covered bonds nor is the trigger under a more than negligible influence of this credit institution and its business activities;***

Or. en

### *Justification*

*Maturity extensions may be particularly useful when the bank is in trouble. It should therefore be made clear that the decision to enter insolvency or resolution proceedings does not fall under the “discretion” of the bank. (This corresponds to Parliament’s position in the INI-report.) On the other hand, price- and interest rate triggers, while not under the discretion of the bank, may be sensitive to actions the bank has taken. It should be made clear that it would be illegitimate for a bank to indirectly “steer” the development of a pre-defined trigger.*

### **Amendment 55**

#### **Proposal for a directive**

#### **Article 17 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

**(fa) the type of trigger is established by national law and approved by the competent European authority.**

Or. en

### *Justification*

*This is Parliament’s position from its own-initiative report. The provision shall prevent an abundance of “soft” triggers, which, on a macro level, might be difficult to survey and assess from a financial stability point of view.*

### **Amendment 56**

#### **Proposal for a directive**

#### **Article 20 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 57

### Proposal for a directive Article 20 – paragraph 2 – subparagraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

## Amendment 58

### Proposal for a directive Article 20 – paragraph 2 – subparagraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

Where Member States use that option, they shall require that the competent authorities designated pursuant to Article 18(2) **approve of** the appointment and dismissal of the special administrator.

Or. en

## Amendment 59

### Proposal for a directive Article 20 – paragraph 3 – point c

*Text proposed by the Commission*

*Amendment*

(c) carrying out legal transactions necessary for the proper administration of the cover pool, for the on-going monitoring of the coverage of the liabilities attached to the covered bonds, to initiate proceedings in order to recover **assets** in the cover pool and to transfer those remaining assets after all covered bond liabilities are met to the insolvency estate of the credit institution which issued the covered bonds.

(c) carrying out legal transactions necessary for the proper administration of the cover pool, for the on-going monitoring of the coverage of the liabilities attached to the covered bonds, to initiate proceedings in order to recover **asset values** in the cover pool and to transfer those remaining assets after all covered bond liabilities are met to the insolvency estate of the credit institution which issued the covered bonds.

Or. en

**Amendment 60**

**Proposal for a directive  
Article 21 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure investor protection by requiring credit institutions issuing covered bonds to report the information set out in paragraph 2 on covered bond programmes to competent authorities designated pursuant to Article 18(2). The reporting shall be on a regular basis and upon request. Member States shall lay down rules on the frequency of the reporting on a regular basis.

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

Or. en

**Amendment 61**

**Proposal for a directive  
Article 23 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

(f) a credit institution issuing covered

(f) a credit institution issuing covered



bonds issues covered bonds not collateralised in accordance with the provisions transposing Article 6;

bonds issues covered bonds not collateralised in accordance with the provisions transposing Article 6 **and Article 6a**;

Or. en

## Amendment 62

### Proposal for a directive Article 23 – paragraph 1 – point o

*Text proposed by the Commission*

*Amendment*

(o) a credit institution issuing covered bonds fails to fulfil the conditions for extendable maturity structures laid down in the provisions transposing Article 17;

(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;

Or. en

## Amendment 63

### Proposal for a directive Article 23 – paragraph 2 – introductory part

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

### *Justification*

*The Directive shall be principles-based. The principle is that penalties and measures shall be effective, proportionate and dissuasive. The detailed specification with which to reach these aims should be left to States.*

## Amendment 64

### Proposal for a directive Article 23 – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

**(a) a withdrawal of permission to issue covered bonds;** *deleted*

Or. en

## Amendment 65

### Proposal for a directive Article 23 – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

**(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;** *deleted*

Or. en

## Amendment 66

### Proposal for a directive Article 23 – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 67

### Proposal for a directive Article 23 – paragraph 2 – point d

*Text proposed by the Commission*

*Amendment*

**(d) administrative pecuniary penalties.** *deleted*

Or. en

## **Amendment 68**

### **Proposal for a directive Article 23 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Member States shall ensure that when determining the type of administrative penalties or other remedial measures and the amount of those administrative pecuniary penalties, that competent authorities take into account all the following circumstances, where relevant:** *deleted*

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

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

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

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

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

**(f) the level of cooperation by the natural or legal person responsible for the breach with the competent authority;**

**(g) previous breaches by the natural**

*or legal person responsible for the breach;*

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

Or. en

#### *Justification*

*The Directive shall be principles-based. The principle is that penalties and measures shall be effective, proportionate and dissuasive. The detailed specification with which to reach these aims should be left to States.*

#### **Amendment 69**

##### **Proposal for a directive Article 23 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### **Amendment 70**

##### **Proposal for a directive Article 23 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. Member States shall ensure that before taking any decision imposing administrative penalties or remedial measures as set out in paragraph 2, the** **deleted**

*competent authorities designated pursuant to Article 18(2), give the natural or legal person concerned the opportunity to be heard.*

Or. en

#### **Amendment 71**

##### **Proposal for a directive Article 23 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### **Amendment 72**

##### **Proposal for a directive Article 24**

*Text proposed by the Commission*

*Amendment*

**24 [...] deleted**

Or. en

#### *Justification*

*The Directive shall be principles-based. The principle is that penalties and measures shall be effective, proportionate and dissuasive. The detailed specification with which to reach these aims should be left to States.*

#### **Amendment 73**

##### **Proposal for a directive Article 26 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) the list of covered bonds allowed to use the European Covered Bonds label.

(c) the list of covered bonds allowed to use the “European Covered **Bond**” label **and the list of bonds allowed to use the “European Covered Bond (Premium)”** label.

Or. en

**Amendment 74**

**Proposal for a directive  
Article 27 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

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

Or. en

*Justification*

*About 90% of the EU covered bonds market consists of bonds compatible with Article 129 CRR, i. e. premium covered bonds (PCB). It is one intention of the European Covered Bonds framework to develop and stimulate the smaller non-CRR-compliant segment of the market (i. e. ordinary covered bonds, OCB). This shall be done without compromising the quality of the PCB segment or damaging the reputation of the PCBs. Parliament, in its own-initiative report, has emphasized that PCBs and OCBs should be clearly distinguished. This is what the additional “Premium” designation accomplishes.*

## Amendment 75

### Proposal for a directive Article 31 – paragraph 1

*Text proposed by the Commission*

1. ***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 whether an equivalence regime could be introduced for third-country credit institutions issuing covered bonds and for investors in covered bonds, taking into consideration international developments in the area of covered bonds, in particular the development of legislative frameworks in third countries.***

*Amendment*

1. ***The Commission is empowered to adopt delegated acts to supplement this Directive by determining that the legal, supervisory and enforcement arrangements of a third country:***

Or. en

### *Justification*

*The Commission proposes to wait for more than three years before possibly submitting a legislative initiative on the recognition of third-country equivalence. Such a long delay is at odds with the aim of establishing the EU covered bonds framework as a benchmark model for developing covered bonds markets worldwide since a long delay signals a reluctance to open the EU market to non-EU competitors. This said, introducing an equivalence regime now does not necessarily mean that equivalence will be granted to third countries immediately. Instead, it would just provide the framework for which equivalence can be granted if the Commission decides that third countries provide equivalent levels of investor protection to the EU. The absence of even a framework for recognizing equivalence would clearly not incentivize third countries from duplicating the EU model. In addition, there is no reason to wait for details of how Member States have implemented the Directive. The nature of the Commission's minimum harmonising approach is that the standard is based on a common set of principles to be interpreted and developed individually by Member States. This framework is sufficient to allow for equivalence assessments.*

## Amendment 76

### Proposal for a directive Article 31 – paragraph 1 – point a (new)

*Text proposed by the Commission*

*Amendment*

**(a) are equivalent to the requirements laid down in Title II and to the supervisory powers and sanctions laid down in Title III; and**

Or. en

## **Amendment 77**

### **Proposal for a directive Article 31 – paragraph 1 – point b (new)**

*Text proposed by the Commission*

*Amendment*

**(b) are being effectively applied and enforced in an equitable and non-distortive manner in order to ensure effective supervision and enforcement in that third country.**

Or. en

## **Amendment 78**

### **Proposal for a directive Article 31 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

2. **By XX [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 3 years], the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council, on the implementation of this Directive with regard to the level of investor protection and the developments regarding the issue of covered bonds in the Union, including:**

2. **Where the Commission has adopted a delegated act on equivalence with regard to a third country, as referred to in paragraph 1 of this Article, a covered bond shall be deemed to have fulfilled the requirements laid down in Title II, where the issuer is established in that third country.**

Or. en



## **Amendment 79**

### **Proposal for a directive Article 31 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 80**

### **Proposal for a directive Article 31 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

**(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;** *deleted*

Or. en

## **Amendment 81**

### **Proposal for a directive Article 31 – paragraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 82

### Proposal for a directive Article 31 – paragraph 2 – point d

*Text proposed by the Commission*

*Amendment*

**(d) developments regarding the level of overcollateralisation;** **deleted**

Or. en

## Amendment 83

### Proposal for a directive Article 31 – paragraph 2 – point e

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 84

### Proposal for a directive Article 31 – paragraph 2 – point f

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 85

### Proposal for a directive Article 31 – paragraph 3

*Text proposed by the Commission*

3. *For the purposes of paragraph 2 by XX [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 2 years] Member States shall transmit information on points (a) to (f) to the Commission.*

*Amendment*

3. *The Commission shall, in cooperation with ESMA, monitor the effectiveness of the arrangements of a third country determined to be equivalent to the requirements laid down in Title II under a delegated act adopted under paragraph 1 and shall report regularly to the European Parliament and the Council thereon. Where the report reveals an insufficient or inconsistent application of the arrangements by third country authorities, or material regulatory divergence by a third country, the Commission shall consider whether to withdraw the recognition of equivalence of the third country legal framework in question. If the Commission commences action to withdraw or suspend equivalence decisions, it shall set out a transparent procedure governing the withdrawal or suspension of equivalence decisions, in order to provide certainty to the market and support financial stability.*

Or. en

## EXPLANATORY STATEMENT

The European Parliament, in its resolution 2017/2005(INI) 'Towards a pan-European covered bonds framework' of 4 July 2017, supported the creation of a principles-based European covered bonds framework, aiming at

- (i) a clear distinction between covered bonds (CB) which comply with Article 129 CRR ('premium covered bonds' (PCB)) and those which do not ('ordinary covered bonds' (OCB)).
- (ii) regulatory preference of PCBs over OCBs.
- (iii) regulatory preference of OCBs over other forms of collateralized debt.
- (iv) PCBs and OCBs being highly liquid and close to risk-free assets.
- (v) a 'European Secured Notes' (ESN) framework as a third tier after PCBs and OCBs.
- (vi) transparency of covered bond structures to facilitate risk assessment.

The Commission proposals make good progress towards some of these objectives. They ensure (ii), but fail to address (i), (iii) and (v). There are good proposals for (iv) and (vi), but there is also room for improvement.

As for (i), the Commission proposals do not distinguish between PCBs and OCBs. Your rapporteur proposes to split Article 6 of the proposed directive (on eligible assets) into Articles 6 and Article 6a, where the former defines assets eligible for PCBs and the latter assets eligible for OCBs. Moreover, the label 'European Covered Bond' laid down in Article 27 should apply to OCBs, while PCBs are distinguished from OCBs by an additional designation, i. e. 'European Covered Bond (Premium)'.

As for (iii), there is no Commission proposal and OCBs would receive the same risk weight as unsecured exposures to institutions, cf. Articles 120 and 121 of the CRR. This seems inappropriate, since a secured exposure is safer than an unsecured exposure. Also, STS securitisations have recently been granted preferential treatment in the CRR, so it is hard to understand why OCBs compliant with a simple, transparent and standardized European Covered Bonds framework would be treated like unsecured exposures. Your rapporteur suggests to amend Article 129 of the CRR by a new paragraph 8 specifying the risk weights of covered bonds which fail to comply with Article 129, paragraph 1, but qualify for the (ordinary) 'European Covered Bonds' label. Specifically, my suggestion is to grant those covered bonds (which, technically, are 'exposures to institutions') a risk weight equal to 70% of the risk weight for which the exposure would qualify if it were unsecured (Articles 120 and 121 of the CRR).

The issues of (iv) and (v) should be dealt with jointly, since the Commission has not made a proposal which would allow certain types of assets to be relegated to an ESN framework. Your rapporteur therefore suggests the following approach:

- (a) There should be no positive (or negative) list of possible asset types for OCBs. Rather, all types of assets (even those which Parliament had in mind for ESNs) may, in principle, be eligible for OCB cover pools<sup>1</sup>. This allows innovation, growth and development in the OCB segment of the European covered bond market.
- (b) However, OCBs should be liquid and almost risk-free assets. Their cover assets must be of high quality. Given no restrictions on the nature of the cover assets, their quality shall be ensured by requiring strict adherence to the well-tested structural properties of CB cover pool assets in terms of legal requirements (enforceability of claims), asset valuation (not surpassing market or mortgage lending value), and risk mitigation (prudent loan-to-value ratios and sufficient diversification), cf. the proposed Article 6a of the Directive. These requirements protect the covered bond label.

As for (vi), the Commission proposals are generally well suited to enhance transparency and facilitate investors' risk assessment. However, your rapporteur feels that the proposed Article 8 of the Directive (Intragroup pooled CB structures) undermines these objectives and should therefore be deleted. Article 8 would allow cover pools to contain internally issued covered bonds of other banks belonging to the same group as cover assets. The internally issued covered bonds would be covered by second-layer cover pools and there would be no limit to the number of second-layer cover pools contributing to the cover of the first-layer cover pool. Unless the number of internally issued CBs is very small, this may easily become an intransparent structure and may greatly impair a proper risk assessment by investors.

Your rapporteur suggests to delete Article 8 and simultaneously modify Article 9 (Joint funding) such that it serves the same purpose as Article 8 without entailing the same detriments. (A generous transition phase should be granted to the very small number of (Danish) banks which currently use intragroup pooled CB structures.) Under the proposed new wording of Article 9, any number of banks may jointly fund a covered bond issue. All these banks would contribute assets to just one cover pool under the responsibility of a 'lead institution' which issues the covered bond. This would ensure transparency and simplified risk assessment. It would, unlike Article 8, also provide a level playing field between small banks which belong to a group big enough to issue CBs and those which do not.

#### **Other issues:**

##### *Homogeneity of cover pools (Article 10 of the proposed directive)*

Surpassing Parliament's demands, the Commission text required cover pool homogeneity. This wording should be softer, since some degree of heterogeneity is indispensable for risk diversification and liquidity management. Since it is impossible to define the optimal degree of homogeneity in a legal text, Article 10 gives examples of the admissible degree of heterogeneity for CRR-eligible assets.

##### *Extendable maturities (new in Article 129 CRR via Article 1(1) of the proposed regulation)*

Soft bullet and conditional pass-through structures are a new development in the covered bond universe. They have not been taken into account when Article 129 of the CRR was

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<sup>1</sup> This is in line with the very broad approach to CBs taken in the UCITs Directive. Moreover, a positive or negative list of asset types may be hard to reconcile with a principles-based legislation.

devised. Parliament emphasized that regulatory preference should be granted corresponding to the safety of assets. In terms of risk there are pros and cons of extendable maturities, but clearly the longer the possible maturity extension, the more risk is shifted to the investor. Therefore, your rapporteur proposes to amend Article 129 CRR by a new paragraph 7b which gradually increases the risk weight for covered bonds whose maturity can be extended by more than a year.

*Liquidity buffer (Article 16 of the proposed directive)*

Parliament demanded that the cover pool contain a liquidity buffer for half a year. The Commission has transposed this demand in Article 16 of the Directive. However, there is an open contradiction between the requirement in paragraph 1 (cover pool includes "at all times" a liquidity buffer) and the derogation the Commission foresees in paragraph 4 (liquidity buffer is not necessary for the 30 days where the bank has liquidity from LCR requirements). While this derogation is motivated from the legitimate intent to eliminate double-counting claims against the bank, it overlooks the fact that upon insolvency or resolution of the credit institution the cover pool is segregated from the bank. Since in this case, LCR liquidity remains with the bank, the cover pool would be without liquidity reserves for the first 30 days. Your rapporteur finds this unacceptable and has proposed a different solution which also eliminates double-counting but preserves, even under insolvency of the issuer, the liquidity of the cover pool for 180 days and the LCR reserve of the bank for 30 days under stress.

*3rd country equivalence (Article 31 of the proposed directive)*

The Commission proposes to wait for more than three years before possibly submitting a legislative initiative on the recognition of third-country equivalence. Such a long delay is at odds with Parliament's aim of establishing the EU covered bonds framework as a benchmark model for developing covered bonds markets worldwide since a long delay signals a reluctance to open the EU market to non-EU competitors. This said, introducing an equivalence regime now does not necessarily mean that equivalence will be granted to third countries immediately. Instead, it would just provide the framework for which equivalence can be granted if the Commission decides that third countries provide equivalent levels of investor protection. The absence of even a framework for recognizing equivalence would clearly not incentivise third countries to duplicate the EU model. In addition, there is no reason to wait for details of how Member States have implemented the Directive. The nature of the Commission's minimum harmonising approach is that the standard is based on a common set of principles to be interpreted and developed individually by Member States. This framework is sufficient to allow for equivalence assessments of similar measures enacted by third countries.