

Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU (Text with EEA relevance)

TITLE II

STRUCTURAL FEATURES OF COVERED BONDS

CHAPTER I

Dual recourse and bankruptcy remoteness

Article 4

Dual recourse

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

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

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

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

Article 5

Bankruptcy remoteness of covered bonds

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

CHAPTER 2

Cover pool and coverage

Section I

Eligible assets

Article 6

Eligible cover assets

- 1 Member States shall require that covered bonds are at all times secured by:
 - a assets that are eligible pursuant to Article 129(1) of Regulation (EU) No 575/2013, provided that the credit institution issuing the covered bonds meets the requirements of paragraphs 1a to 3 of Article 129 of that Regulation;
 - b high-quality cover assets that ensure that the credit institution issuing the covered bonds has a claim for payment as set out in paragraph 2 and are secured by collateral assets as set out in paragraph 3; or
 - c assets in the form of loans to or guaranteed by public undertakings, subject to paragraph 4 of this Article.
- 2 The claim for payment referred to in point (b) of paragraph 1 shall be subject to the following legal requirements:
 - a the asset represents a claim for payment of monies that has a minimum value that is determinable at all times, that is legally valid and enforceable, that is not subject to conditions other than the condition that the claim matures at a future date, and that is secured by a mortgage, charge, lien or other guarantee;
 - b the mortgage, charge, lien or other guarantee securing the claim for payment is enforceable;
 - c all legal requirements for establishing the mortgage, charge, lien or guarantee securing the claim for payment have been fulfilled;
 - d the mortgage, charge, lien or guarantee securing the claim for payment enables the credit institution issuing the covered bonds to recover the value of the claim without undue delay.

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

- 3 The collateral assets referred to in point (b) of paragraph 1 shall meet one of the following requirements:
 - a for physical collateral assets, there exist valuation standards that are generally accepted among experts and that are appropriate for the physical collateral asset concerned and there exists a public register that records ownership of and claims on those physical collateral assets; or
 - b for assets in the form of exposures, the safety and soundness of the exposure counterparty is implied by tax-raising powers or by being subject to ongoing public supervision of the counterparty's operational soundness and financial solvability.

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

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

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

- a the public undertakings provide essential public services on the basis of a licence, a concession contract or other form of entrustment granted by a public authority;
- b the public undertakings are subject to public supervision;
- c the public undertakings have sufficient revenue generating powers, which are ensured by the fact of such public undertakings:
 - (i) having adequate flexibility to collect and to increase fees, charges and receivables for the service provided in order to ensure their financial soundness and solvability;
 - (ii) receiving sufficient grants on a statutory basis in order to ensure their financial soundness and solvability in exchange for providing essential public services; or
 - (iii) having entered into a profit and loss transfer agreement with a public authority.

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

- a for each physical collateral asset, that a current valuation at or at less than market value or mortgage lending value exists at the moment of inclusion of the cover asset in the cover pool;
- b that the valuation is carried out by a valuer who possesses the necessary qualifications, ability and experience; and
- c that the valuer is independent from the credit decision process, does not take into account speculative elements in the assessment of the value of the physical collateral asset, and documents the value of the physical collateral asset in a transparent and clear manner.

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

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

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

Article 7

Collateral assets located outside the Union

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

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

Article 8

Intragroup pooled covered bond structures

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

- (a) the internally issued covered bonds are sold to the credit institution issuing the externally issued covered bonds;
- (b) the internally issued covered bonds are used as cover assets in the cover pool for the externally issued covered bonds and are recorded on the balance sheet of the credit institution issuing the externally issued covered bonds;
- (c) the cover pool for the externally issued covered bonds contains only internally issued covered bonds issued by a single credit institution within the group;
- (d) the credit institution issuing the externally issued covered bonds intends to sell them to covered bond investors outside the group;
- (e) both the internally and externally issued covered bonds qualify for credit quality step 1 as referred to in Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 at the time of issue and are secured by eligible cover assets as referred to in Article 6 of this Directive;
- (f) in the case of cross-border intragroup pooled covered bond structures, the cover assets of the internally issued covered bonds comply with the eligibility and coverage requirements of the externally issued covered bonds.

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

Article 9

Joint funding

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

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

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

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

Article 10

Composition of the cover pool

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

Article 11

Derivative contracts in the cover pool

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

- a the derivative contracts are included in the cover pool exclusively for risk hedging purposes, their volume is adjusted in the case of a reduction in the hedged risk and they are removed when the hedged risk ceases to exist;
- b the derivative contracts are sufficiently documented;
- c the derivative contracts are segregated in accordance with Article 12;

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- d the derivative contracts cannot be terminated upon the insolvency or resolution of the credit institution that issued the covered bonds;
- e the derivative contracts comply with the rules laid down in accordance with paragraph 2.

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

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

Article 12

Segregation of cover assets

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

- a all cover assets are identifiable by the credit institution issuing the covered bonds at all times;
- b all cover assets are subject to legally binding and enforceable segregation by the credit institution issuing the covered bonds;
- c all cover assets are protected from any third party claims and no cover asset forms part of the insolvency estate of the credit institution issuing the covered bonds until the priority claim referred to in point (b) of Article 4(1) has been satisfied.

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

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

Article 13

Cover pool monitor

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

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

- a the appointment and dismissal of the cover pool monitor;
- b any eligibility criteria for the cover pool monitor;
- c the role and duties of the cover pool monitor, including in the case of the insolvency or resolution of the credit institution issuing the covered bonds;
- d the obligation to report to the competent authorities designated pursuant to Article 18(2);
- e the right of access to information necessary for the performance of the cover pool monitor's duties.

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

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

- a the internal cover pool monitor is independent from the credit decision process of the credit institution issuing the covered bonds;
- b without prejudice to point (a) of paragraph 2, Member States ensure that the internal cover pool monitor cannot be removed from that function as cover pool monitor without the prior approval of the management body in its supervisory function of the credit institution issuing the covered bonds; and
- c where necessary, the internal cover pool monitor has direct access to the management body in its supervisory function.

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

Article 14

Investor information

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

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

- a the value of the cover pool and outstanding covered bonds;
- b a list of the International Securities Identification Numbers (ISINs) for all covered bond issues under that programme, to which an ISIN has been attributed;
- c the geographical distribution and type of cover assets, their loan size and valuation method;
- d details in relation to market risk, including interest rate risk and currency risk, and credit and liquidity risks;
- e the maturity structure of cover assets and covered bonds, including an overview of the maturity extension triggers if applicable;
- f the levels of required and available coverage, and the levels of statutory, contractual and voluntary overcollateralisation;
- g the percentage of loans where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013 and in any case where the loans are more than 90 days past due.

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

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

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Section II

Coverage and liquidity requirements

Article 15

Coverage requirements

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

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

3 The liabilities referred to in paragraph 2 shall include:

- a the obligations for the payment of the principal amount of outstanding covered bonds;
- b the obligations for the payment of any interest on outstanding covered bonds;
- c the payment obligations attached to derivative contracts held in accordance with Article 11; and
- d the expected costs related to maintenance and administration for the winding-down of the covered bond programme.

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

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

- a primary assets;
- b substitution assets;
- c liquid assets held in accordance with Article 16; and
- d claims for payment attached to derivative contracts held in accordance with Article 11.

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

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

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

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

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

7 By way of derogation from the first subparagraph of paragraph 6, Member States may, in a manner which reflects sound prudential principles and in accordance with applicable

accounting standards, allow for future interest receivable on the cover asset net of future interest payable on the corresponding covered bond to be taken into consideration in order to balance any shortfall in coverage of the principal payment obligation attached to the covered bond where there is a close correspondence as defined in the applicable delegated regulation adopted pursuant to Article 33(4) of Regulation (EU) No 575/2013, subject to the following conditions:

- a payments received during the lifetime of the cover asset and necessary for coverage of the payment obligation attached to the corresponding covered bond are segregated in accordance with Article 12 or are included in the cover pool in the form of cover assets referred to in Article 6 until the payments become due; and
- b prepayment of the cover asset is only possible by way of exercising the delivery option, as defined in the applicable delegated regulation adopted pursuant to Article 33(4) of Regulation (EU) No 575/2013 or, in the case of covered bonds callable at par by the credit institution issuing the covered bonds, by way of the cover asset's borrower paying at least the called covered bond's par amount.

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

Article 16

Requirement for a cover pool liquidity buffer

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

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

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

- a assets qualifying as level 1, level 2A or level 2B assets pursuant to the applicable delegated regulation adopted pursuant to Article 460 of Regulation (EU) No 575/2013, that are valued in accordance with that delegated regulation, and are not issued by the credit institution issuing the covered bonds itself, its parent undertaking, other than a public sector entity that is not a credit institution, its subsidiary or another subsidiary of its parent undertaking or by a securitisation special purpose entity with which the credit institution has close links;
- b short-term exposures to credit institutions that qualify for credit quality step 1 or 2, or short-term deposits to credit institutions that qualify for credit quality step 1, 2 or 3, in accordance with point (c) of Article 129(1) of Regulation (EU) No 575/2013.

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

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

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

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

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

Article 17

Conditions for extendable maturity structures

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

- a the maturity can only be extended subject to objective triggers specified in national law, and not at the discretion of the credit institution issuing the covered bonds;
- b the maturity extension triggers are specified in the contractual terms and conditions of the covered bond;
- c the information provided to investors about the maturity structure is sufficient to enable them to determine the risk of the covered bond, and includes a detailed description of:
 - (i) the maturity extension triggers;
 - (ii) the consequences for a maturity extension of the insolvency or resolution of the credit institution issuing the covered bonds;
 - (iii) the role of the competent authorities designated pursuant to Article 18(2) and, where relevant, of the special administrator with regard to the maturity extension;
- d the final maturity date of the covered bond is at all times determinable;
- e in the event of the insolvency or resolution of the credit institution issuing the covered bonds, maturity extensions do not affect the ranking of covered bond investors or invert the sequencing of the covered bond programme's original maturity schedule;
- f the maturity extension does not change the structural features of the covered bonds regarding dual recourse as referred to in Article 4 and bankruptcy remoteness as referred to in Article 5.

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