

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)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the ordinary legislative procedure⁽²⁾,

Whereas:

- (1) Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council⁽³⁾ provides for very general requirements relating to the structural elements of covered bonds. Those requirements are limited to the need for covered bonds to be issued by a credit institution which has its registered office in a Member State, and to be subject to special public supervision and to a dual recourse mechanism. National covered bond frameworks address those issues while regulating them in much greater detail. Those national frameworks also contain other structural provisions, in particular rules regarding the composition of the cover pool, eligibility criteria for assets, the possibility of pooling assets, transparency and reporting obligations, and rules on liquidity risk mitigation. Member State approaches to regulation also differ in substance. In several Member States, there is no dedicated national framework for covered bonds. As a consequence, the key structural elements with which covered bonds issued in the Union are to comply are not yet set out in Union law.
- (2) Article 129 of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁽⁴⁾ adds further conditions to those referred to in Article 52(4) of Directive 2009/65/EC for obtaining preferential treatment as regards capital requirements which allow credit institutions investing in covered bonds to hold less capital than when investing in other assets. While those additional requirements increase the level of harmonisation of covered bonds within the Union, they serve the specific purpose of establishing the conditions to be satisfied in order for covered bond investors to receive

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such preferential treatment, and are not applicable outside the framework of Regulation (EU) No 575/2013.

- (3) Other Union legal acts, such as Commission Delegated Regulations (EU) 2015/35⁽⁵⁾ and (EU) 2015/61⁽⁶⁾ and Directive 2014/59/EU of the European Parliament and of the Council⁽⁷⁾, also refer to the definition set out in Directive 2009/65/EC as a reference for identifying the covered bonds that benefit from the preferential treatment for covered bond investors under those acts. However, the wording of those acts differs according to their purpose and subject matter, and thus the term ‘covered bond’ is not used consistently.
- (4) Overall, the treatment of covered bonds can be considered to be 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 that has several consequences. First, preferential treatment is granted equally to instruments which differ in nature as well as in their level of risk and investor protection. Second, differences between national frameworks or the absence of such a framework and the lack of a commonly agreed definition of the term ‘covered bond’ could create obstacles to the development of a truly integrated single market for covered bonds. Third, the differences in safeguards provided by national rules could create risks to financial stability because covered bonds with different levels of investor protection can be purchased across the Union and benefit from preferential treatment under Regulation (EU) No 575/2013 and other Union legal acts.
- (5) Harmonising certain aspects of national frameworks based on certain best practices should therefore ensure the smooth and continuous development of well-functioning covered bond markets in the Union and limit potential risks and vulnerabilities to financial stability. Such principle-based harmonisation should establish a common baseline for the issue of all covered bonds in the Union. Harmonisation requires all Member States to establish covered bond frameworks, which should also facilitate the development of covered bond markets in those Member States where there is none. Such a market would provide a stable funding source for credit institutions, which would, on that basis, be better placed to provide affordable mortgages for consumers and businesses and would make alternative safe investments available to investors.
- (6) In its recommendation of 20 December 2012 on funding of credit institutions⁽⁸⁾, the European Systemic Risk Board (‘ESRB’) invited national competent authorities and the European Supervisory Authority (European Banking Authority) (‘EBA’), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽⁹⁾, to identify best practices regarding covered bonds and to encourage the harmonisation of national frameworks. It also recommended that EBA coordinate actions taken by national competent authorities, particularly in relation to the quality and segregation of cover pools, bankruptcy remoteness of covered bonds, the asset and liability risks affecting cover pools and disclosure of the composition of cover pools. The recommendation further called on EBA to monitor the functioning of the covered bond market by reference to best practices identified by EBA for a period of two years, in

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order to assess the need for legislative action and to report to the ESRB and to the Commission accordingly.

- (7) In December 2013, the Commission requested advice from EBA in accordance with Article 503(1) of Regulation (EU) No 575/2013.
- (8) In the report accompanying its opinion of 1 July 2014, responding to both the ESRB recommendation of 20 December 2012 and the Commission's request for advice of December 2013, EBA recommended greater convergence of national legal, regulatory and supervisory covered bond frameworks, so as to further support a single preferential risk weight treatment of covered bonds in the Union.
- (9) As envisaged by the ESRB, EBA monitored the functioning of the covered bond market by reference to the best practices set out in that recommendation for two years. On the basis of that monitoring, EBA delivered a second opinion and report on covered bonds to the ESRB, to the Council and to the Commission on 20 December 2016⁽¹⁰⁾. That report concluded that further harmonisation is necessary to ensure more consistency in terms of definitions and regulatory treatment of covered bonds in the Union. The report further concluded that harmonisation should build on existing well-functioning markets in some Member States.
- (10) Covered bonds are traditionally issued by credit institutions. The inherent purpose of covered bonds is to provide funding for loans, and one of the core activities of credit institutions is to grant loans on a large scale. Accordingly, in order for covered bonds to benefit from preferential treatment under Union law, they are required to be issued by credit institutions.
- (11) Reserving the issue of covered bonds to credit institutions ensures that the issuer has the necessary knowledge to manage the credit risk relating to the loans in the cover pool. It further ensures that the issuer is subject to capital requirements that protect investors under the dual recourse mechanism, which grants the investor, as well as the counterparty of a derivative contract, a claim against both the covered bond issuer and the cover assets. Reserving the issue of covered bonds to credit institutions therefore ensures that covered bonds remain a safe and efficient funding tool, thereby contributing to investor protection and financial stability, which are important public policy objectives in the general interest. That is also in line with the approach of well-functioning national markets in which only credit institutions are permitted to issue covered bonds.
- (12) It is therefore appropriate that only credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 be permitted to issue covered bonds under Union law. Specialised mortgage credit institutions are characterised by the fact that they do not take deposits, but rather take other repayable funds from the public, and as such they fall within the definition of 'credit institution' as laid down in Regulation (EU) No 575/2013. Without prejudice to ancillary activities permitted under applicable national law, specialised mortgage credit institutions are institutions that carry out only mortgage and public sector lending, including funding loans purchased from other credit institutions. The main purpose of this Directive is to regulate the conditions under which credit institutions can issue covered bonds as a financing tool, by laying down

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the product requirements and establishing specific product supervision to which credit institutions are subject, in order to ensure a high level of investor protection.

- (13) The existence of a dual recourse mechanism is an essential concept and element of many existing national covered bond frameworks. It is also a core feature of covered bonds as referred to in Article 52(4) of Directive 2009/65/EC. It is therefore necessary to specify that concept so as to ensure that investors and counterparties of derivative contracts across the Union have a claim against both the covered bond issuer and the cover assets under harmonised conditions.
- (14) Bankruptcy remoteness should also be an essential feature of covered bonds to ensure that covered bond investors are repaid on the maturity of the bond. Automatic acceleration of repayment upon insolvency or resolution of the issuer may disturb the ranking of covered bond investors. It is therefore important to ensure that covered bond investors are repaid in accordance with the contractual schedule, even in the case of insolvency or resolution. Bankruptcy remoteness is accordingly directly linked to the dual recourse mechanism and should therefore also be a core feature of the covered bond framework.
- (15) Another core feature of existing national covered bond frameworks is the requirement that cover assets are of very high quality in order to ensure the robustness of the cover pool. Cover assets are characterised by specific features relating to claims for payment and the collateral assets securing such cover assets. It is therefore appropriate to set out the general quality features of eligible cover assets.
- (16) Assets listed in Article 129(1) of Regulation (EU) No 575/2013 should be eligible cover assets within a covered bond framework. Cover assets which no longer comply with the requirements set out in Article 129(1) of that Regulation should continue to be eligible cover assets under point (b) of Article 6(1) of this Directive, provided that they fulfil the requirements of this Directive. Other cover assets of a similarly high quality can also be eligible under this Directive, provided that such cover assets comply with the requirements of this Directive, including those in relation to the collateral assets securing the claim for payment. For physical collateral assets, ownership should be recorded in a public register to ensure enforceability. Where no public register exists, it should be possible for Member States to provide for an alternative form of certification of ownership and claims that is comparable to that provided by public registration of the encumbered physical asset. Where Member States make use of such alternative form of certification, they should also provide for a procedure for introducing changes to the recording of ownership and claims. Exposures to credit institutions should be eligible cover assets under point (a) or (b) of Article 6(1) of this Directive, depending on whether they comply with the requirements of Article 129 of Regulation (EU) No 575/2013. Exposures to insurance undertakings should also be eligible cover assets under point (b) of Article 6(1) of this Directive. Loans to or guaranteed by public undertakings as defined in point (b) of Article 2 of Commission Directive 2006/111/EC⁽¹¹⁾ can be eligible cover assets, provided that the public undertakings provide essential public services for the maintenance of critical societal activities.

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In addition, such public undertakings should provide their services under a concession or authorisation from a public authority, be subject to public supervision and have sufficient revenue generating powers to ensure their solvability. Where Member States decide to allow assets in the form of loans to or guaranteed by public undertakings in their national framework, they should duly consider the possible impact on competition of allowing such assets. Independently of their ownership, credit institutions and insurance undertakings should not be considered to be public undertakings. Furthermore, Member States should be free to provide in their national frameworks for certain assets to be excluded from eligibility for inclusion in the cover pool. To enable covered bond investors to better assess the risk of a covered bond programme, Member States should also provide for rules on risk diversification in relation to granularity and material concentration, on the number of loans or exposures in the cover pool and on the number of counterparties. Member States should be able to decide on the appropriate level of granularity and material concentration required under their national law.

- (17) 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 against the issuer but also against assets in the cover pool. Those structural product-related requirements differ from the prudential requirements applicable to a credit institution issuing covered bonds. The former should not focus on ensuring the prudential health of the issuing institution, but should rather aim to protect investors by imposing specific requirements on the covered bond itself. In addition to the specific requirement to use high-quality cover assets, it is also appropriate to regulate the general requirements with regard to the features of the cover pool, in order to further strengthen investor protection. Those requirements should include specific rules that aim to protect the cover pool, such as rules on the segregation of the cover assets. Segregation can be achieved in different ways, such as on the balance sheet, by means of a special purpose vehicle or by other means. Nonetheless, the purpose of the segregation of cover assets is to put them legally beyond the reach of creditors other than covered bond investors.
- (18) The location of the collateral assets should also be regulated to ensure the enforcement of investors' rights. It is also important for Member States to lay down rules on the composition of the cover pool. Furthermore, coverage requirements should be specified in this Directive, without prejudice to the right of Member States to allow different means of mitigating risks such as with regard to currencies and interest rates. The calculation of the coverage and the conditions under which derivative contracts can be included in the cover pool should also be defined to ensure that cover pools are subject to common high-quality standards across the Union. The calculation of coverage should follow the nominal principle for the principal. Member States should be able to use a method of calculation other than the nominal principle, provided that the other method is more prudent, namely it does not result in a higher coverage ratio, where the cover assets are the numerator and the covered bond liabilities are the denominator. Member States should be able to require a level of overcollateralisation to covered bonds issued by credit institutions located in the Member State concerned that is higher than the coverage requirement laid down in this Directive.

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- (19) A number of Member States already require that a cover pool monitor perform specific tasks regarding the quality of eligible assets and ensures compliance with national coverage requirements. It is therefore important, in order to harmonise the treatment of covered bonds across the Union, that the tasks and responsibilities of the cover pool monitor, where one is required by the national framework, are clearly defined. The existence of a cover pool monitor does not obviate the responsibilities of national competent authorities as regards covered bond public supervision, particularly as regards compliance with the requirements laid down in the provisions of national law transposing this Directive.
- (20) Article 129 of Regulation (EU) No 575/2013 sets out a number of conditions that covered bonds collateralised by securitisation entities are to meet. One of those conditions concerns the extent to which that type of cover asset can be used and limits the use of such structures to 10 % of the amount of the outstanding covered bonds. That condition can be waived by competent authorities in accordance with Regulation (EU) No 575/2013. The Commission's review of the appropriateness of that waiver concluded that the possibility of using securitisation instruments or covered bonds as cover assets for issuing covered bonds should be allowed only with regard to other covered bonds ('intragroup pooled covered bond structures'), and should be allowed without limit by reference to the amount of outstanding covered bonds. To guarantee an optimum level of transparency, cover pools for externally issued covered bonds should not contain internally issued covered bonds from different credit institutions within the same group. Moreover, as the use of intragroup pooled covered bond structures provides an exemption from the limits on credit institution exposures that are laid down in Article 129 of Regulation (EU) No 575/2013, internally and externally issued covered bonds should be required to qualify for credit quality step 1 at the moment of issue or, in the event of a subsequent change in credit quality step and subject to the approval of the competent authorities, credit quality step 2. Where the internally or externally issued covered bonds cease to meet that requirement, the internally issued covered bonds no longer qualify as eligible assets under Article 129 of Regulation (EU) No 575/2013 and, as a consequence, the externally issued covered bonds from the relevant cover pool do not benefit from the exemption in Article 129(1b) of that Regulation. Where those internally issued covered bonds no longer comply with the relevant credit quality step requirement, they should, however, be eligible cover assets for the purpose of this Directive, provided that they comply with all the requirements laid down in this Directive, and the externally issued covered bonds collateralised by those internally issued covered bonds or other assets that comply with this Directive should therefore also be able to use the label 'European Covered Bond'. Member States should have the option of allowing the use of such structures. It follows that, for that option to be effectively available to credit institutions belonging to a group located in different Member States, all relevant Member States should have exercised that option and transposed the relevant provision in their law.
- (21) Small credit institutions face difficulties when issuing covered bonds as the establishment of covered bond programmes often entails high upfront costs. Liquidity is also particularly important in covered bond markets, and is largely determined by

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the volume of outstanding bonds. It is therefore appropriate to allow for joint funding by two or more credit institutions in order to enable the issue of covered bonds by smaller credit institutions. That would provide for the pooling of cover assets by several credit institutions as cover assets for covered bonds issued by a single credit institution and would facilitate the issue of covered bonds in those Member States where there is currently no well-developed covered bond market. The requirements for the use of joint funding agreements should ensure that cover assets that are sold or, where a Member State has allowed for that option, transferred by way of financial collateral arrangement pursuant to Directive 2002/47/EC of the European Parliament and of the Council⁽¹²⁾ to the issuing credit institutions meet the eligibility and segregation requirements for cover assets under Union law.

- (22) The transparency of the cover pool securing the covered bond is an essential part of that type of financial instrument, as it enhances comparability and allows investors to perform the necessary risk evaluation. Union law includes rules on the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted for trading on a regulated market situated or operating within a Member State. Several initiatives regarding the information to be disclosed to covered bond investors supplementary to such Union law have been developed over time by national legislators and market participants. It is, however, necessary to specify in Union law the minimum common level of information to which investors should have access prior to or at the time of purchase of covered bonds. Member States should be allowed to supplement those minimum requirements with additional provisions.
- (23) A core element of ensuring the protection of covered bond investors is mitigating the instrument's liquidity risk. That is crucial for ensuring the timely repayment of liabilities attached to the covered bond. Therefore, it is appropriate to introduce a cover pool liquidity buffer to address risks of liquidity shortage, such as mismatches in maturities and interest rates, payment interruptions, commingling risks, payment obligations attached to derivative contracts and other operational liabilities falling due within the covered bond programme. The credit institution may experience situations where it becomes difficult to comply with the cover pool liquidity buffer requirement, for example in times of stress where the buffer is used to cover outflows. The competent authorities designated pursuant to this Directive should monitor compliance with the cover pool liquidity buffer requirement, and, if necessary, take measures to ensure that the credit institution complies with the buffer requirement. The liquidity buffer for the cover pool differs from the general liquidity requirements imposed on credit institutions in accordance with other Union legal acts, as the former is directly related to the cover pool and seeks to mitigate liquidity risks specific to it. To minimise regulatory burdens, Member States should be able to allow an appropriate interaction with liquidity requirements established by other Union legal acts that serve purposes different from the cover pool liquidity buffer. Member States should therefore be able to decide that, until the date on which those Union legal acts are amended, the cover pool liquidity buffer requirement is applicable only if no other liquidity requirement is imposed on the credit institution under Union law during the period covered by such other requirements.

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Such decisions should avoid subjecting credit institutions to an obligation to cover the same outflows with different liquid assets for the same period. The possibility for Member States to decide for the cover pool liquidity buffer not to apply should be reassessed in the context of future changes to the liquidity requirements for credit institutions under Union law, including the applicable delegated regulation adopted pursuant to Article 460 of Regulation (EU) No 575/2013. Liquidity risks could be addressed by means other than providing liquid assets, for example by issuing covered bonds subject to extendable maturity structures where the triggers address liquidity shortage or stress. In such cases, Member States should be able to allow for the calculation of the liquidity buffer to be based on the final maturity date of the covered bond, taking into consideration possible maturity extensions, where the triggers address liquidity risks. Furthermore, Member States should be able to allow the cover pool liquidity requirements not to apply to covered bonds that are subject to match funding requirements where incoming payments contractually fall due before outgoing payments and are placed in highly liquid assets in the meantime.

- (24) In a number of Member States, innovative structures for maturity profiles have been developed in order to address potential liquidity risks, including maturity mismatches. Those structures include the possibility of extending the scheduled maturity of the covered bond for a certain period of time or allowing the cash flows from the cover assets to pass directly to the covered bond investors. In order to harmonise extendable maturity structures across the Union it is important to establish the conditions under which Member States are able to allow those structures, to ensure that they are not too complex and do not expose investors to increased risks. An important element of those conditions is to ensure that the credit institution cannot extend the maturity at its discretion. The maturity should be allowed to be extended only where objective and clearly defined trigger events established under national law have occurred or are expected to occur in the near future. Such triggers should aim to prevent default, for example by addressing liquidity shortage, market failure or market disturbance. Extensions could also facilitate the orderly winding-down of credit institutions issuing covered bonds, allowing for extensions in the case of insolvency or resolution to avoid a fire sale of assets.
- (25) The existence of a special public supervision framework is an element defining covered bonds according to Article 52(4) of Directive 2009/65/EC. However, that Directive does not specify the nature and content of such supervision or the authorities that should be responsible for performing such supervision. It is therefore essential that the constitutive elements of such covered bond public supervision are harmonised and that the tasks and responsibilities of the national competent authorities performing it are clearly set out.
- (26) As covered bond public supervision is distinct from the supervision of credit institutions in the Union, Member States should be able to appoint national competent authorities to perform covered bond public supervision that are different from the competent authorities performing the general supervision of the credit institution. However, in order to ensure consistency in the application of covered bond public supervision across the Union, it is necessary to require that the competent authorities performing covered bond public supervision cooperate closely with those performing the general

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- supervision of credit institutions as well as with the resolution authority, where applicable.
- (27) Covered bond public supervision should include granting credit institutions permission to issue covered bonds. As only credit institutions should be permitted to issue covered bonds, authorisation to act as a credit institution should be a prerequisite for being granted that permission. Whereas in Member States participating in the Single Supervisory Mechanism, the European Central Bank is tasked with the authorisation of credit institutions in accordance with point (a) of Article 4(1) of Council Regulation (EU) No 1024/2013⁽¹³⁾, only the authorities designated pursuant to this Directive should be competent to grant permission to issue covered bonds and exercise covered bond public supervision. Accordingly, this Directive should establish the conditions under which credit institutions authorised under Union law can obtain permission to pursue the activity of issuing covered bonds.
- (28) The scope of permission should relate to the covered bond programme. That programme should be subject to supervision under this Directive. A credit institution can have more than one covered bond programme. In that case, separate permission for each programme should be required. A covered bond programme can include one or more cover pools. Multiple cover pools or different issues (different International Securities Identification Numbers (ISINs)) under the same covered bond programme do not necessarily indicate the existence of multiple separate covered bond programmes.
- (29) Existing covered bond programmes should not be required to obtain new permission once the provisions of national law transposing this Directive become applicable. In respect of covered bonds issued under existing covered bond programmes after the date of application of the provisions of national law transposing this Directive, however, credit institutions should comply with all the requirements laid down in this Directive. Such compliance should be supervised by the competent authorities designated under this Directive as part of covered bond public supervision. Member States could give guidance under national law on how to procedurally conduct the compliance assessment after the date from which Member States are to apply the provisions of national law transposing this Directive. The competent authorities should be able to review a covered bond programme and assess the need for a change to the permission for that programme. Such a need for change could be due to substantial changes in the business model of the credit institution issuing the covered bonds, for example following a change of the national covered bond framework or decisions made by the credit institution. Such changes could be considered to be substantial where they require a reassessment of the conditions under which permission to issue covered bonds was granted.
- (30) Where a Member State provides for the appointment of a special administrator, it should be able to lay down rules on the competences and operational requirements for such special administrators. Those rules could exclude the possibility for the special administrator to collect deposits or other repayable funds from consumers and retail investors, but allow the collection of deposits or other repayable funds only from professional investors.

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- (31) In order to ensure compliance with the obligations imposed on credit institutions issuing covered bonds and in order to ensure similar treatment and compliance across the Union, Member States should be required to provide for administrative penalties and other administrative measures which are effective, proportionate and dissuasive. Member States should also be able to provide for criminal penalties instead of administrative penalties. Member States that choose to provide for criminal penalties should notify the relevant criminal law provisions to the Commission.
- (32) Administrative penalties and other administrative measures provided for 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 covered bond public supervision, the power to impose penalties and the level of administrative pecuniary penalties that may be imposed. Before any decision imposing administrative penalties or other administrative measures is taken, the addressee should be given the opportunity to be heard. However, Member States should be able to provide for exceptions to the right to be heard in respect of administrative measures other than administrative penalties. Any such exception should be limited to cases of imminent danger in which urgent action is necessary in order to prevent significant losses to third parties such as covered bond investors or to prevent or remedy significant damage to the financial system. In such cases, the addressee should be given the opportunity to be heard after the measure has been imposed.
- (33) Member States should be required to ensure that the competent authorities performing 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 the Union, when determining the type of administrative penalties or other administrative measures and the level of those penalties. Member States could include administrative measures in relation to the extension of maturity under extendable maturity structures. Where Member States provide for such measures, those measures could enable competent authorities to invalidate a maturity extension and could lay down conditions for such invalidation to address the situation where a credit institution extends the maturity in breach of the objective triggers laid down in national law, or in order to ensure financial stability and investor protection.
- (34) In order to detect potential breaches of the requirements for issuing and marketing covered bonds, competent authorities performing covered bond public supervision should have the necessary investigatory powers and effective mechanisms to encourage the reporting of potential or actual breaches. Those mechanisms should be without prejudice to the rights of defence of any person or entity adversely affected by the exercise of those powers and mechanisms.
- (35) Competent authorities performing covered bond public supervision should also have the power to impose administrative penalties and adopt other administrative measures in order to ensure the greatest possible scope for action following a breach and to help prevent further breaches, irrespective of whether such measures are qualified as an administrative penalty or other administrative measure under national law. Member

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States should be able to provide for penalties in addition to those provided for in this Directive.

- (36) Existing national laws on covered bonds are characterised by the fact that they are subject to detailed regulation at national level and supervision of covered bond issues and programmes to ensure that the rights of covered bond investors are upheld at all times. That supervision includes the ongoing monitoring of the features of the programme, the coverage requirements and the quality of the cover pool. An adequate level of investor information about the regulatory framework governing the issue of covered bonds is an essential element of investor protection. It is therefore appropriate to ensure that competent authorities publish regular information concerning the provisions of national law transposing this Directive and on the manner in which they perform their covered bond public supervision.
- (37) Covered bonds are currently marketed in the Union under national denominations and labels, some of which are well-established while others are not. It therefore seems appropriate to allow credit institutions which issue covered bonds in the Union to use a specific label, ‘European Covered Bond’, when selling covered bonds to both Union and third-country investors under the condition that those covered bonds comply with the requirements set out in this Directive. If such covered bonds also comply with the requirements set out in Article 129 of Regulation (EU) No 575/2013, credit institutions should be allowed to use the label ‘European Covered Bond (Premium)’. That label, indicating that specific additional requirements have been met resulting in a strengthened and well-understood quality, might be attractive even in Member States with well-established national labels. The aim of the labels ‘European Covered Bond’ and ‘European Covered Bond (Premium)’ is to make it easier for investors to assess the quality of the covered bonds and hence to make them more attractive as an investment vehicle both inside and outside the Union. The use of those two labels should, however, be voluntary, and Member States should be able to maintain their own national denominations and labelling frameworks in parallel to those two labels.
- (38) In order to assess the application of this Directive, the Commission should, in close cooperation with EBA, monitor the development of covered bonds in the Union and report to the European Parliament and to the Council on the level of investor protection and the development of the covered bond markets. The report should also focus on the developments regarding the assets collateralising the issue of covered bonds. As the use of extendable maturity structures has been increasing, the Commission should also report to the European Parliament and to the Council on the functioning of covered bonds with extendable maturity structures and the risks and benefits deriving from the issue of such covered bonds.
- (39) A new class of financial instruments under the name of European Secured Notes (ESNs), covered by assets that are riskier than public exposures and mortgages and that are not eligible cover assets under this Directive, has been proposed by market participants and others as an additional instrument for banks to finance the real economy. The Commission consulted EBA on 3 October 2017 for an assessment of the extent to which ESNs could use the best practices defined by EBA for traditional

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covered bonds, the appropriate risk treatment of ESNs and the possible effect of ESN issues on bank balance sheet encumbrance levels. In response, EBA issued a report on 24 July 2018. In parallel to EBA's report, the Commission published a study on 12 October 2018. The Commission study and the EBA report concluded that further assessment was required on, for example, regulatory treatment. The Commission should therefore continue to assess whether a legislative framework for ESNs would be appropriate and submit a report to the European Parliament and to the Council on its findings, together with a legislative proposal, if appropriate.

- (40) There is currently no equivalence regime for the recognition by the Union of covered bonds issued by credit institutions in third countries, except in a prudential context where preferential treatment regarding liquidity is granted to some third-country bonds under certain conditions. The Commission should therefore, in close cooperation with EBA, assess the need and relevance for an equivalence regime to be introduced for third-country issuers of, and investors in, covered bonds. The Commission should, no more than two years after the date from which Member States are to apply the provisions of national law transposing this Directive, submit a report thereon to the European Parliament and to the Council, together with a legislative proposal, if appropriate.
- (41) Covered bonds are characterised by having a scheduled maturity of several years. It is therefore necessary to include transitional measures to ensure that covered bonds issued before 8 July 2022 are not affected. Covered bonds issued before that date should therefore continue to comply with the requirements laid down in Article 52(4) of Directive 2009/65/EC on an ongoing basis and should be exempt from most of the new requirements laid down in this Directive. Such covered bonds should be able to continue to be referred to as covered bonds, provided that their compliance with Article 52(4) of Directive 2009/65/EC, as applicable on the date of their issue, and with the requirements of this Directive that are applicable to them, is subject to supervision by the competent authorities designated pursuant to this Directive. Such supervision should not extend to the requirements of this Directive from which such covered bonds are exempt. In some Member States, ISINs are open for a longer period, allowing for covered bonds to be issued continuously under that code with the purpose of increasing the volume (issue size) of that covered bond (tap issues). The transitional measures should cover tap issues of covered bonds under ISINs opened before 8 July 2022 subject to a number of limitations.
- (42) As a consequence of laying down a uniform framework for covered bonds, the description of covered bonds in Article 52(4) of Directive 2009/65/EC should be amended. Directive 2014/59/EU defines covered bonds by reference to Article 52(4) of Directive 2009/65/EC. Since that definition should be amended, Directive 2014/59/EU should also be amended. Furthermore, to avoid affecting covered bonds issued in accordance with Article 52(4) of Directive 2009/65/EC before 8 July 2022, those covered bonds should continue to be referred to as covered bonds until their maturity. Directives 2009/65/EC and 2014/59/EU should therefore be amended accordingly.
- (43) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁽¹⁴⁾, Member States have

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undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

- (44) Since the objective of this Directive, namely to establish a common framework for covered bonds to ensure that the structural characteristics of covered bonds across the Union correspond to the lower risk profile justifying Union preferential treatment, cannot be sufficiently achieved by the Member States, but can rather, by reason of the need to further develop the covered bond market and support cross-border investment in the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (45) The European Central Bank was consulted and delivered its opinion on 22 August 2018.
- (46) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽¹⁵⁾ and delivered an opinion on 12 October 2018.
- (47) Credit institutions issuing covered bonds process significant amounts of personal data. Such processing should at all times comply with Regulation (EU) 2016/679 of the European Parliament and of the Council⁽¹⁶⁾. Likewise, the processing of personal data by EBA when, as required by this Directive, it maintains a central database of administrative penalties and other administrative measures that are communicated to it by national competent authorities, should be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council⁽¹⁷⁾,

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- (1) [OJ C 367, 10.10.2018, p. 56.](#)
- (2) Position of the European Parliament of 18 April 2019 (not yet published in the Official Journal) and decision of the Council of 8 November 2019.
- (3) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ([OJ L 302, 17.11.2009, p. 32.](#))
- (4) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([OJ L 176, 27.6.2013, p. 1.](#))
- (5) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([OJ L 12, 17.1.2015, p. 1.](#))
- (6) Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions ([OJ L 11, 17.1.2015, p. 1.](#))
- (7) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council ([OJ L 173, 12.6.2014, p. 190.](#))
- (8) Recommendation of the European Systemic Risk Board of 20 December 2012 on funding of credit institutions (ESRB/2012/2) ([OJ C 119, 25.4.2013, p. 1.](#))
- (9) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ([OJ L 331, 15.12.2010, p. 12.](#))
- (10) EBA Report on covered bonds — Recommendations on harmonisation of covered bond frameworks in the EU (2016), EBA-Op-2016-23.
- (11) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings ([OJ L 318, 17.11.2006, p. 17.](#))
- (12) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ([OJ L 168, 27.6.2002, p. 43.](#))
- (13) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ([OJ L 287, 29.10.2013, p. 63.](#))
- (14) [OJ C 369, 17.12.2011, p. 14.](#)
- (15) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ([OJ L 8, 12.1.2001, p. 1.](#))
- (16) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ([OJ L 119, 4.5.2016, p. 1.](#))
- (17) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ([OJ L 295, 21.11.2018, p. 39.](#))