

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 III

COVERED BOND PUBLIC SUPERVISION

Article 18

Covered bond public supervision

1 Member States shall ensure investor protection by providing that the issue of covered bonds is subject to covered bond public supervision.

2 For the purposes of the covered bond public supervision referred to in paragraph 1, Member States shall designate one or more competent authorities. They shall inform the Commission and EBA of those designated authorities and shall indicate any division of functions and duties.

3 Member States shall ensure that the competent authorities designated pursuant to paragraph 2 monitor the issue of covered bonds to assess compliance with the requirements laid down in the provisions of national law transposing this Directive.

4 Member States shall ensure that credit institutions issuing covered bonds register all their transactions in relation to the covered bond programme and have in place adequate and appropriate documentation systems and processes.

5 Member States shall further ensure that appropriate measures are in place to enable the competent authorities designated pursuant to paragraph 2 of this Article to obtain the information necessary to assess the compliance with the requirements laid down in the provisions of national law transposing this Directive, investigate possible breaches of those requirements, and impose administrative penalties and other administrative measures in accordance with the provisions of national law transposing Article 23.

6 Member States shall ensure that the competent authorities designated pursuant to paragraph 2, have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to covered bond public supervision.

Article 19

Permission for covered bond programmes

1 Member States shall ensure investor protection by requiring permission for a covered bond programme to be obtained before issuing covered bonds under that programme. Member States shall confer the power to grant such permission upon the competent authorities designated pursuant to Article 18(2).

2 Member States shall lay down the requirements for the permission referred to in paragraph 1, including at least the following:

- a an adequate programme of operations setting out the issue of covered bonds;

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- b adequate policies, processes and methodologies aimed at investor protection for the approval, amendment, renewal and refinancing of loans included in the cover pool;
- c management and staff dedicated to the covered bond programme which have adequate qualifications and knowledge regarding the issue of covered bonds and the administration of the covered bond programme;
- d an administrative set-up of the cover pool and the monitoring thereof that meets the applicable requirements laid down in the provisions of national law transposing this Directive.

Article 20

Covered bond public supervision in the event of insolvency or resolution

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

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

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

3 Where Member States provide for the appointment of a special administrator in accordance with paragraph 2, they shall adopt rules laying down the tasks and responsibilities of that special administrator at least in relation to:

- a the discharge of the liabilities attached to the covered bonds;
- b the management and realisation of cover assets, including their transfer together with covered bond liabilities to another credit institution issuing covered bonds;
- c the legal transactions necessary for the proper administration of the cover pool, for the ongoing monitoring of the coverage of the liabilities attached to the covered bonds, for the initiation of proceedings in order to bring assets back into the cover pool and for the transferral of the remaining assets to the insolvency estate of the credit institution which issued the covered bonds after all covered bond liabilities have been discharged.

For the purposes of point (c) of the first subparagraph, Member States may allow the special administrator to operate, in the case of the insolvency of the credit institution issuing the covered bonds, under the authorisation held by that credit institution, subject to the same operational requirements.

4 Member States shall ensure the coordination and exchange of information for the purposes of the insolvency or resolution process among the competent authorities designated pursuant to Article 18(2), the special administrator, where such an administrator has been appointed, and, in case of resolution, the resolution authority.

Article 21

Reporting to the competent authorities

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

2 The reporting obligations to be laid down pursuant to paragraph 1 shall require that the information to be provided includes information on at least the following:

- a the eligibility of assets and cover pool requirements in accordance with Articles 6 to 11;
- b the segregation of cover assets in accordance with Article 12;
- c where applicable, the functioning of the cover pool monitor in accordance with Article 13;
- d the coverage requirements in accordance with Article 15;
- e the cover pool liquidity buffer in accordance with Article 16;
- f where applicable, the conditions for extendable maturity structures in accordance with Article 17.

3 Member States shall provide for rules on the information to be provided under paragraph 2 by the credit institutions issuing covered bonds to the competent authorities designated pursuant to Article 18(2) in the event of the insolvency or resolution of a credit institution issuing covered bonds.

Article 22

Powers of competent authorities for the purposes of covered bond public supervision

1 Member States shall ensure investor protection by giving competent authorities designated pursuant to Article 18(2) all supervisory, investigatory and sanctioning powers that are necessary to perform the task of covered bond public supervision.

2 The powers referred to in paragraph 1 shall include at least the following:

- a the power to grant or refuse permission pursuant to Article 19;
- b the power to regularly review the covered bond programme in order to assess compliance with the provisions of national law transposing this Directive;
- c the power to carry out on-site and off-site inspections;
- d the power to impose administrative penalties and other administrative measures in accordance with the provisions of national law transposing Article 23;
- e the power to adopt and implement supervisory guidelines relating to the issue of covered bonds.

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Article 23

Administrative penalties and other administrative measures

1 Without prejudice to the right of Member States to provide for criminal penalties, Member States shall lay down rules establishing appropriate administrative penalties and other administrative measures that apply at least in the following situations:

- a a credit institution has acquired a permission for a covered bond programme by means of false statements or other irregular means;
- b a credit institution no longer fulfils the conditions under which permission for a covered bond programme was given;
- c a credit institution issues covered bonds without obtaining the permission in accordance with the provisions of national law transposing Article 19;
- d a credit institution issuing covered bonds fails to meet the requirements set out in the provisions of national law transposing Article 4;
- e a credit institution issues covered bonds that do not comply with the requirements set out in the provisions of national law transposing Article 5;
- f a credit institution issues covered bonds that are not collateralised in accordance with the provisions of national law transposing Article 6;
- g a credit institution issues covered bonds that are collateralised by assets located outside the Union in breach of the requirements laid down in the provisions of national law transposing Article 7;
- h a credit institution collateralises covered bonds in an intragroup pooled covered bond structure in breach of the requirements laid down in the provisions of national law transposing Article 8;
- i a credit institution issuing covered bonds fails to fulfil the conditions for joint funding laid down in the provisions of national law transposing Article 9;
- j a credit institution issuing covered bonds fails to meet the requirements of composition of the cover pool laid down in the provisions of national law transposing Article 10;
- k a credit institution issuing covered bonds fails to meet the requirements regarding derivative contracts in the cover pool laid down in the provisions of national law transposing Article 11;
- l a credit institution issuing covered bonds fails to comply with the requirements of the segregation of cover assets in accordance with the provisions of national law transposing Article 12;
- m a credit institution issuing covered bonds fails to report information or provides incomplete or inaccurate information in breach of the provisions of national law transposing Article 14;
- n a credit institution issuing covered bonds repeatedly or persistently fails to maintain a cover pool liquidity buffer in breach of the provisions of national law transposing Article 16;
- o a credit institution that issues covered bonds with extendable maturity structures fails to fulfil the conditions for extendable maturity structures laid down in the provisions of national law transposing Article 17;
- p a credit institution issuing covered bonds fails to report information or provides incomplete or inaccurate information on its obligations in breach of the provisions of national law transposing Article 21(2).

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

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

- a a withdrawal of permission for a covered bond programme;
- b a public statement which indicates the identity of the natural or legal person and the nature of the breach in accordance with Article 24;
- c an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
- d administrative pecuniary penalties.

3 Member States shall also ensure that the penalties and measures referred to in paragraph 1 are effectively implemented.

4 Member States shall ensure that, when determining the type of administrative penalties or other administrative measures and the amount of administrative pecuniary penalties, the competent authorities designated pursuant to Article 18(2) take into account all the following circumstances, where relevant:

- a the gravity and the duration of the breach;
- b the degree of responsibility of the natural or legal person responsible for the breach;
- c the financial strength of the natural or legal person responsible for the breach, including by reference to the total turnover of the legal person or the annual income of the 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 those profits or losses can be determined;
- e the losses caused to third parties by the breach, insofar as those losses can be determined;
- f the level of cooperation by the natural or legal person responsible for the breach with the competent authorities designated pursuant to Article 18(2);
- g any previous breaches by the natural or legal person responsible for the breach;
- h any actual or potential systemic consequences of the breach.

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

6 Member States shall ensure that before taking any decision imposing administrative penalties or other administrative measures as set out in paragraph 2, the competent authorities designated pursuant to Article 18(2) give the natural or legal person concerned the opportunity to be heard. Exceptions to the right to be heard may apply for the adoption of those other administrative measures where urgent action is necessary to prevent significant losses to third parties or significant damage to the financial system. In such cases, the person concerned shall be given the opportunity to be heard as soon as possible after the adoption of the administrative measure and, where necessary, that measure shall be revised.

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

Article 24

Publication of administrative penalties and other administrative measures

1 Member States shall ensure that the provisions of national law transposing this Directive include rules requiring that administrative penalties and other administrative measures be published without undue delay on the official websites of the competent authorities designated pursuant to Article 18(2). The same obligations apply where a Member State decides to provide for criminal penalties pursuant to the second subparagraph of Article 23(1).

2 The rules adopted pursuant to paragraph 1 shall require at a minimum the publication of any decision which cannot or can no longer be appealed, and which is imposed for breach of the provisions of national law transposing this Directive.

3 Member States shall ensure that such a publication includes information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty or measure is imposed. Subject to paragraph 4, Member States shall further ensure that such information is published without undue delay after the addressee has been informed of that penalty or measure as well as of the publication of the decision imposing that penalty or measure on the official websites of the competent authorities designated pursuant to Article 18(2).

4 Where Member States permit publication of a decision imposing penalties or other measures against which an appeal is pending, the competent authorities designated pursuant to Article 18(2) shall, without undue delay, also publish on their official websites information on the status of the appeal and the outcome thereof.

5 Member States shall ensure that the competent authorities designated pursuant to Article 18(2) publish the decision imposing penalties or measures on an anonymous basis and in accordance with national law, in any of the following circumstances:

- a where the penalty or measure is imposed on a natural person and the publication of personal data is found to be disproportionate;
- b where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
- c where publication would cause, insofar as it can be determined, disproportionate damage to the credit institutions or the natural persons involved.

6 Where a Member State publishes a decision imposing a penalty or measure on an anonymous basis, it may allow for the publication of the relevant data to be postponed.

7 Member States shall ensure that any final court ruling that annuls a decision imposing a penalty or measure is also published.

8 Member States shall ensure that any publication referred to in paragraphs 2 to 6 remains on the official websites of the competent authorities designated pursuant to Article 18(2) for at least five years from the date of publication. Personal data contained in the publication shall only be retained on the official website for the period which is necessary and in accordance with the applicable personal data protection rules. Such a retention period shall be determined taking into account the limitation periods provided for in the legislation of the Member States concerned but shall in no case be longer than ten years.

9 The competent authorities designated pursuant to Article 18(2) shall inform EBA of any administrative penalties and other administrative measures imposed, including, where relevant, any appeal in relation thereto and the outcome thereof. Member States shall ensure that those competent authorities receive information and details of the final judgement in relation to any criminal penalty imposed, which those competent authorities shall also submit to EBA.

10 EBA shall maintain a central database of administrative penalties and other administrative measures communicated to them. That database shall be accessible only to the competent authorities designated pursuant to Article 18(2) and shall be updated on the basis of the information provided by those competent authorities in accordance with paragraph 9 of this Article.

Article 25

Cooperation obligations

1 Member States shall ensure that the competent authorities designated pursuant to Article 18(2) cooperate closely with the competent authorities performing the general supervision of credit institutions in accordance with relevant Union law applicable to those institutions and with the resolution authority in the event of the resolution of a credit institution issuing covered bonds.

2 Member States shall further ensure that the competent authorities designated pursuant to Article 18(2) cooperate closely with each other. That cooperation shall include providing one another with any information which is relevant for the exercise of the other authorities' supervisory tasks under the provisions of national law transposing this Directive.

3 For the purposes of the second sentence of paragraph 2 of this Article, Member States shall ensure that the competent authorities designated pursuant to Article 18(2) communicate:

- a all relevant information at the request of another competent authority designated pursuant to Article 18(2); and
- b on their own initiative, any essential information to other competent authorities designated pursuant to Article 18(2) in other Member States.

4 Member States shall also ensure that the competent authorities designated pursuant to Article 18(2) cooperate with EBA or, where relevant, with the European Supervisory Authority (European Securities and Markets Authority), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽¹⁾, for the purposes of this Directive.

5 For the purposes of this Article, information shall be regarded as essential if it could materially influence the assessment of the issue of covered bonds in another Member State.

Article 26

Disclosure requirements

1 Member States shall ensure that the following information is published by the competent authorities designated pursuant to Article 18(2) on their official websites:

- a the texts of their national laws, regulations, administrative rules and general guidance adopted in relation to the issue of covered bonds;
- b the list of credit institutions permitted to issue covered bonds;

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- c the list of covered bonds that are entitled to use the label ‘European Covered Bond’ and the list of covered bonds that are entitled to use the label ‘European Covered Bond (Premium)’.

2 The information published in accordance with paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the different Member States’ competent authorities designated pursuant to Article 18(2). That information shall be updated to take account of any changes.

3 The competent authorities designated pursuant to Article 18(2) shall notify EBA on an annual basis of the list of credit institutions referred to in point (b) of paragraph 1 and the lists of covered bonds referred to in point (c) of paragraph 1.

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- (1) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ([OJ L 331, 15.12.2010, p. 84](#)).