

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 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.

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.