

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.

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;
- 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.