

Procedure file

| Basic information | |
|--|--|
| COD - Ordinary legislative procedure (ex-codecision procedure) Directive | 2018/0043(COD) Procedure completed |
| Issue of covered bonds and covered bond public supervision Amending Directive 2009/65/EC Amending Directive 2014/59/EU | 2008/0153(COD) 2012/0150(COD) |
| Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.10 Financial supervision | |

| Key players | | | |
|-------------------------------|--|---|------------|
| European Parliament | Committee responsible | Rapporteur | Appointed |
| |  ECON Economic and Monetary Affairs |  LUCKE Bernd | 31/05/2018 |
| | | Shadow rapporteur | |
| | |  ROSATI Dariusz | |
| | |  SANT Alfred | |
| | |  NAGTEGAAL Caroline | |
| | |  LAMBERTS Philippe | |
| | |  KAPPEL Barbara | |
| | Committee for opinion | Rapporteur for opinion | Appointed |
| |  JURI Legal Affairs | The committee decided not to give an opinion. | |
| | Committee for opinion on the legal basis | Rapporteur for opinion | Appointed |
| |  JURI Legal Affairs | | 11/03/2019 |
| | |  LEBRETON Gilles | |
| Council of the European Union | Council configuration | Meeting | Date |
| | Economic and Financial Affairs ECOFIN | 3725 | 08/11/2019 |
| European Commission | Commission DG | Commissioner | |
| | Financial Stability, Financial Services and Capital Markets Union | DOMBROVSKIS Valdis | |

| Key events | | | |
|------------|---|---|---------|
| 12/03/2018 | Legislative proposal published | COM(2018)0094 | Summary |
| 16/04/2018 | Committee referral announced in Parliament, 1st reading | | |
| 20/11/2018 | Vote in committee, 1st reading | | |
| 20/11/2018 | Committee decision to open interinstitutional negotiations with report adopted in committee | | |
| 26/11/2018 | Committee report tabled for plenary, 1st reading | A8-0390/2018 | Summary |
| 28/11/2018 | Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71) | | |
| 10/12/2018 | Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71) | | |
| 01/04/2019 | Approval in committee of the text agreed at 1st reading interinstitutional negotiations | PE637.303 GEDA/A/(2019)002708 | |
| 17/04/2019 | Debate in Parliament |  | |
| 18/04/2019 | Results of vote in Parliament |  | |
| 18/04/2019 | Decision by Parliament, 1st reading | T8-0432/2019 | Summary |
| 08/11/2019 | Act adopted by Council after Parliament's 1st reading | | |
| 25/11/2019 | End of procedure in Parliament | | |
| 27/11/2019 | Final act signed | | |
| 18/12/2019 | Final act published in Official Journal | | |

| Technical information | |
|--|--|
| Procedure reference | 2018/0043(COD) |
| Procedure type | COD - Ordinary legislative procedure (ex-codecision procedure) |
| Procedure subtype | Legislation |
| Legislative instrument | Directive |
| | Amending Directive 2009/65/EC 2008/0153(COD) Amending Directive 2014/59/EU 2012/0150(COD) |
| Legal basis | Treaty on the Functioning of the EU TFEU 114; Treaty on the Functioning of the EU TFEU 053-p1 |
| Mandatory consultation of other institutions | European Economic and Social Committee European Committee of the Regions |
| Stage reached in procedure | Procedure completed |

Documentation gateway

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|---|-------------|---|------------|-----|---------|
| Legislative proposal | | COM(2018)0094 | 12/03/2018 | EC | Summary |
| Committee draft report | | PE626.780 | 17/08/2018 | EP | |
| European Central Bank: opinion, guideline, report | | CON/2018/0037 OJ C 382 23.10.2018, p. 0002 | 22/08/2018 | ECB | Summary |
| Amendments tabled in committee | | PE627.923 | 26/09/2018 | EP | |
| Committee report tabled for plenary, 1st reading/single reading | | A8-0390/2018 | 26/11/2018 | EP | Summary |
| Coreper letter confirming interinstitutional agreement | | GEDA/A/(2019)002708 | 20/03/2019 | CSL | |
| Text agreed during interinstitutional negotiations | | PE637.303 | 20/03/2019 | EP | |
| Specific opinion | JURI | PE637.262 | 03/04/2019 | EP | |
| Text adopted by Parliament, 1st reading/single reading | | T8-0432/2019 | 18/04/2019 | EP | Summary |
| Commission response to text adopted in plenary | | SP(2019)440 | 08/08/2019 | EC | |
| Draft final act | | 00086/2019/LEX | 27/11/2019 | CSL | |

Additional information

| | |
|-------------------|--------------------------|
| Research document | Briefing |
|-------------------|--------------------------|

Final act

[Directive 2019/2162](#)
[OJ L 328 18.12.2019, p. 0029](#) Summary

Issue of covered bonds and covered bond public supervision

PURPOSE: to harmonise national regimes in order to ensure a smooth and continuous development of well-functioning covered bond markets in the Union and to limit potential risks and vulnerabilities to financial stability.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: this proposal for a Directive is part of a package of measures to deepen the [Capital Markets Union](#) (CMU), together with the Communication "[Completing Capital Markets Union by 2019: time to accelerate delivery](#)". The package includes this proposal, as well as a proposal to facilitate the cross-border distribution of investment funds, a proposal on the law applicable to the third-party effects of assignments of claims and a Communication on the applicable law to the proprietary effects of transactions in securities.

Covered bonds are financial instruments that are generally issued by banks to fund the economy. They facilitate the financing of mortgage and public sector loans, thereby supporting lending more broadly. Covered bonds fared well during the financial crisis and proved to be a reliable and stable funding source at a time as other funding channels dried up.

However, diverse rules across Member States affect the credit strength of those instruments. In addition, covered bonds markets are unevenly developed across the Single Market. While they are very important in some Member States, they are less developed in others.

While they benefit from preferential prudential and regulatory treatment in various respects in the light of the lower risks (e.g. banks investing in them do not have to set aside as much regulatory capital as when they invest in other assets), Union law does not comprehensively address what actually constitutes a covered bond.

The Commission considers that a Union legislative framework on covered bonds should:

- expand the capacity of credit institutions to provide financing to the real economy and contribute to the development of covered bonds across the Union, particularly in Member States where no market for them currently exists;
- increase cross-border flows of capital and investment which would provide investors with a wider and safer range of investment opportunities, contribute to financial stability and help finance the real economy.

The framework consists of a Directive on definitions and standards for covered bonds and a [Regulation](#) amending the Capital Requirements Regulation (CRR) the two instruments should be seen as a single package.

This proposal seeks to amend Article 129 of Regulation (EU) No 575/2013 (CRR Regulation).

IMPACT ASSESSMENT: of the four options considered, the option chosen is that of minimum harmonisation based on national regimes. It is based on the recommendations made in the 2016 European Banking Authority (EBA) report, with the exception of a few deviations.

It is likely to be the most effective in achieving the objectives, while at the same time being efficient and minimising disruption and transition costs. It is also one of the more ambitious options in regulatory terms, while enjoying the most support from stakeholders.

CONTENT: this proposed Directive will specify the core elements of covered bonds and provide a common definition as a consistent and sufficiently detailed point of reference for prudential regulation purposes, applicable across financial sectors.

The Directive defines covered bonds as debt obligations issued by credit institutions and secured against a ring-fenced pool of assets to which bondholders have direct recourse as preferred creditors.

The Directive, in continuity with this tradition, only allows credit institutions to issue covered bonds. This is coherent with the inherent nature of the instrument which is to provide funding for loans, and granting loans on a large scale is a credit institution's business. In addition, credit institutions have the necessary knowledge and management capability of credit risk in relation to the loans in the cover pool and they are subject to sound capital requirements which contribute to underpin the investor protection as laid down in the dual recourse mechanism.

The proposal also establishes:

- a more articulated series of structural requirements of coverage bonds: (i) dual recourse gives investors a double claim on both the issuer of covered bonds and the assets in the cover pool; (ii) bankruptcy protection; (iii) ensure the quality of the cover pool, in particular ensuring that only high-quality assets are used as collateral; (iv) liquidity and transparency requirements; (v) regulation of the structures to ensure they are not unnecessarily complex or opaque; (vi) the possibility for Member States to require a cover pool monitor;
- covered bond public supervision: in order to protect investors, the proposed Directive harmonises the components of such supervision and specifies the tasks and responsibilities of the national competent authorities performing it. Member States should be able to appoint different competent authorities;
- rules authorising the use of the European covered bonds label: the proposal allows credit institutions to use the specific 'European Covered Bonds' label when issuing covered bonds. The use of the label would make it easier for investors to assess the quality of the covered bonds. It should however be facultative and Member States should be able to keep their own national denominations and labelling framework in place in parallel to the 'European Covered Bonds' label, provided that these comply with the requirements set out in this Directive;
- publication obligations of competent authorities performing the covered bond public supervision: administrative penalties and other administrative measures laid down 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 the covered bond public supervision, the power to impose penalties and the level of administrative pecuniary penalties that may be imposed.

Issue of covered bonds and covered bond public supervision

OPINION of the European Central Bank on a proposal for a directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU; and on a proposal for a regulation of the European Parliament and of the Council on amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds.

The ECB welcomes the objectives of the proposed directive [and regulation](#) of promoting further integration of Union financial markets and deepening the Capital Markets Union (CMU). It sees the proposed directive as an important step towards creating a developed, harmonised, high quality and transparent covered bond market in the Union.

The ECB also sees merit in the proposed directive serving as a basis for new national legislation on covered bonds. However, the implementation of the proposed directive might not lead to full harmonisation to the extent that Member States will have flexibility in its implementation. This degree of flexibility should not endanger the objective of further convergence towards a common, high standard in all Member States.

Specific observations on the proposed directive

Eligible assets

The ECB welcomes the qualitative requirements for eligible assets by which covered bonds must be collateralised, which include both certain predefined high-quality assets and other high quality assets that meet certain requirements. However, regarding these other high quality assets, the relevant requirements may not be sufficient to ensure the harmonised treatment of assets as high-quality assets.

Therefore, the ECB supports the introduction of stricter requirements into the proposed directive.

Regarding the eligibility of assets located outside the Union, the ECB suggests that a maximum share of such assets should be introduced to ensure the homogeneity of the cover pool, to foster the European character of the covered bond product and to support investors understanding of cover pool risks.

The proposed directive should also:

-clarify that the segregation requirement applies to all assets, including assets held by way of overcollateralisation, even if such overcollateralisation is provided on a voluntary basis;

-clarify that assets in the cover pool should be segregated either by: (a) registration of the cover pool assets in a cover pool register; (b) transfer of the cover pool assets to a special purpose vehicle; or (c) holding the cover pool assets in a specialised mortgage credit institution.

-make the appointment of a cover pool monitor at issuance of a covered bond mandatory rather than merely voluntary. The cover pool monitor should at least comply with the minimum requirements set out in the proposed directive;

-require additional and more detailed information in order to further facilitate investor due diligence and comparability of covered bonds. Moreover, the information should be presented in a template format.

The ECB makes further recommendations.

Coverage and liquidity requirements. The ECB stresses the need to have a number of additional criteria to ensure investor protection. Less liquid assets, such as Level 2B assets, should not contribute to the cover pool liquidity buffer. Additionally, assets issued by the credit institution itself, its parent undertaking, its subsidiary, another subsidiary of its parent undertaking, or a securitisation special purpose entity with which the credit institution has close links should not be used as part of the liquidity buffer. Member States should ensure a sufficient level of diversification to enable a rapid liquidation of these assets without a significant loss in value.

Soft bullet and conditional pass-through structures. The ECB notes that over the past few years covered bonds with extendable maturity structures whereby the scheduled maturity date of the covered bonds can be extended by the issuing credit institution have been used more extensively, while the specific risks posed by these structures may not have been sufficiently considered.

Effective cooperation between supervisory authorities. The ECB should be able to request relevant information on an ad-hoc basis from the competent authorities responsible for covered bond public supervision in order to take this information into account for the ongoing prudential supervision of the credit institution concerned.

Label for covered bonds issued by credit institutions established in the Union. Certain issues remain to be clarified at Member State level, such as the competent authority to grant the label and specified requirements relating to the granting of the label. The ECB suggests a neutral name, e.g. EU Covered Bond.

Issue of covered bonds and covered bond public supervision

The Committee on Economic and Monetary Affairs adopted the report by Bernd LUCKE (ECR, DE) on the proposal for a directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows.

Purpose: this proposal responds to the need to further develop covered bond markets across the Union and support cross-border investments. It lays down the following investor protection rules concerning:

- requirements for issuing covered bonds;
- the structural features of covered bonds;
- covered bond public supervision;
- publication requirements in relation to covered bonds.

In its resolution of [4 July 2017](#) entitled 'Towards a pan-European covered bonds framework', Parliament stressed the need to remove barriers to market access for issuers in emerging covered bond markets outside the European Economic Area by providing equitable treatment to covered bonds issued in third countries, provided that their legal, institutional and supervisory environment is subject to a rigorous equivalence assessment by a competent European institution.

Definitions: Members clarified the definition of a 'covered bond' to mean a debt obligation issued under public supervision by a credit institution or by a specialised mortgage credit institution and which is a dual recourse instrument, which is bankruptcy remote, for which the assets in the cover pool are segregated, and which is collateralised by eligible assets.

'Cover pool' means a clearly defined set of identifiable assets securing the payment obligations of the covered bond issuer until maturity of the covered bond and subject to legal arrangements ensuring that those assets will be segregated from other assets held by the credit institution issuing covered bonds at the latest when resolution or insolvency proceedings have been opened in respect of the covered bond issuer.

Cover assets for ordinary covered bonds: the amending Directive shall allow the issuance of covered bonds secured by high quality cover assets to use a special label European Covered Bonds when selling covered bonds to EU or third country investors, provided that these covered bonds comply with the requirements set out in the directive.

The amended text specifies that if covered bonds also comply with the requirements set out in Article 129 of Regulation (EU) No 575/2013 (Capital Requirements Regulation or CRR), credit institutions shall be allowed to use the label European Covered Bonds (Premium). That label, indicating a particularly high and well-understood quality, might be attractive even in Member States with well-established national labels. The two European Covered Bonds labels make it easier for those investors to assess the quality of the covered bonds and hence make them more attractive as an investment vehicle both inside and outside the Union.

The use of those labels should however be facultative and Member States should be able to keep their own national denominations and labelling framework in place in parallel to the 'European Covered Bonds' labels.

Member States shall establish rules to ensure that the right to claim for payment and collateral assets comply with a series of legal requirements listed in the amended Directive. The conditions imposed by Member States to mitigate risks are also specified.

The European Banking Authority (EBA) shall develop draft regulatory technical standards further specifying for each class of primary assets of

a cover pool: (i) the minimum number of distinct cover pool assets that ensures sufficient granularity; (ii) the absence of material concentration, as a percentage of aggregate exposure not to be exceeded by any exposure to a single obligor.

Under the amended Directive, Member States:

- allow the joint funding of covered bonds by several credit institutions provided the jointly funded covered bond is issued by a single credit institution (the lead institute);
- lay down rules providing for a sufficient level of homogeneity of the assets in the cover pool so that they shall be of a similar nature in terms of the type of collateral backing the claims in the cover pool;
- ensure that derivative contracts can be included in the cover pool, where derivatives are part of the cover pool at least certain requirements should be met;
- lay down rules regulating the segregation of assets in the cover pool;
- ensure investor protection by requiring that the cover pool includes at all times a liquidity buffer composed of liquid assets available to cover the net liquidity outflow of the covered bond programme.

Member States shall ensure that the label European Covered Bond and its translation in all official languages of the Union is only used for covered bonds which meet the requirements laid down in the provisions transposing this Directive and that comply with the criteria set out in Article 129 of Regulation (EU) No 575/2013.

Issue of covered bonds and covered bond public supervision

The European Parliament adopted by 425 votes to 109, with 39 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU.

The position of the European Parliament adopted at first reading under the ordinary legislative procedure has amended the Commission proposal as follows:

An EU framework for covered bonds

The proposed Directive responds to the need to further develop covered bond markets throughout the Union and to support cross-border investment. It shall set minimum harmonisation requirements that all cover bonds marketed in the EU would have to comply with. Such principles-based harmonisation shall ensure the harmonious and continuous development of well-functioning covered bond markets in the Union and limit potential risks and vulnerabilities to financial stability.

The proposed Directive establishes investor protection rules concerning:

- requirements for issuing covered bonds;
- the structural features of covered bonds;
- covered bond public supervision;
- publication requirements in relation to covered bonds.

'Covered bond' means a debt obligation issued by a credit institution in accordance with the provisions of national law transposing the mandatory requirements of this Directive and secured by cover assets to which covered bond investors have direct recourse as preferred creditors.

European covered bond label

Covered bonds are currently marketed in the Union under national denominations and labels, some of which are well-established while others are not. It seems therefore sensible to allow credit institutions which issue covered bonds in the Union to use a specific 'European Covered Bonds' label when selling covered bonds to both Union and third countries' investors under the condition that those covered bonds comply with the requirements set out in this Directive. If 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 Bonds (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 two 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 make them more attractive as an investment vehicle both inside and outside the Union.

The use of those labels should however be facultative and Member States should be able to maintain their own national denominations and labelling framework in parallel to the 'European Covered Bonds' labels.

Eligible cover assets

Under the amended text, Member States shall require that the secured obligations be guaranteed at all times by:

- assets referred to as eligible under Article 129(1) of Regulation (EU) No 575/2013, provided that the credit institution issuing the covered bonds complies with the requirements set out in the Regulation;
- high quality cover assets that ensure that the credit institution issuing covered bonds has a claim for payment and secured by collateral assets;
- assets in the form of loans to or guaranteed by public undertakings as defined in Commission Directive 2006/111/EC.

The requirements to be met by the assets used as collateral are specified.

Member States shall:

- establish rules concerning the methods and process for the valuation of physical assets used as collateral assets;

- require credit institutions issuing covered bonds to put in place procedures to verify that the physical assets used as collateral are sufficiently insured against the risk of damage;

- establish rules on risk diversification in the cover pool in relation to granularity and material concentration for assets not referred to as eligible.

In addition, Member States shall:

- ensure investor protection by laying down rules on the composition of cover pools;

- ensure investor protection by allowing derivatives contracts to be included in the cover pool only where at least the following requirements are met;

- establish rules on the segregation of cover assets;

- ensure that credit institutions issuing covered bonds provides information on 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;

- ensure investor protection by requiring covered bond programmes to comply at all times with at least the coverage requirements;

- require that the cover pool includes at all times a liquidity buffer composed of liquid assets available to cover the net liquidity outflow of the covered bond programme;

- ensure that the issue of covered bonds is subject to a covered bond public supervision;

- lay down, without prejudice to the right of Member States to provide for the system of criminal sanctions, rules laying down administrative sanctions and other appropriate administrative measures applicable in certain situations.

Issue of covered bonds and covered bond public supervision

PURPOSE: to adopt new rules on harmonised product requirements and the supervision of covered bonds in order to ensure a high level of investor protection.

LEGISLATIVE ACT: Directive (EU) 2019/2162 of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU.

CONTENT: the newly adopted legal framework (consisting of a Directive and a [Regulation](#)) sets minimum harmonisation requirements that all covered bonds marketed in the EU shall comply with.

Covered bonds are financial instruments issued by a credit institution and backed by a separate pool of assets - typically mortgages or government debt securities - over which investors have a preferential right in the event of the issuer's default. Covered bonds are an efficient source of financing for the economy and provide a high level of security for investors.

Harmonisation requires all Member States to establish frameworks for covered bonds, which should facilitate the development of covered bond markets in Member States where none exist. Such a market shall provide a stable source of funding for credit institutions, which shall be better placed to offer affordable mortgages to consumers and businesses and safe alternative investments to investors.

Objective and scope

The Directive provides a common definition of covered bonds and lays down investor protection rules concerning:

- requirements for the issuance of covered bonds;

- structural features of covered bonds;

- public supervision of covered bonds;

- publication requirements for covered bonds.

European covered bond label

Credit institutions issuing covered bonds in the Union shall use a special label "European covered bond" when selling covered bonds to investors in the Union or in third countries, provided that the covered bonds comply with the requirements set out in this Directive.

Where covered bonds also meet the requirements set out in the Capital Requirements Regulation (CRR), credit institutions shall use the label European Covered Bond (Premium). This label, which indicates a particularly high and widely recognised quality, may prove 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 shall, however, be voluntary, and Member States shall be able to maintain their own national denominations and labelling frameworks in parallel to those two labels

Cover assets

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. Accordingly, the Directive defines general quality criteria for eligible cover assets.

Bankruptcy remoteness shall also be an essential feature of covered bonds to ensure that covered bond investors are repaid on the maturity of the bond.

ENTRY INTO FORCE: 7.1.2020.

TRANSPOSITION: no later than 8.1.2021.

APPLICATION: from 8.7.2022.