

European Covered Bond Council (ECBC)

Collation of Feedback on the Covered Bond Legislative Package

Brussels, 16 May 2018

The **European Mortgage Federation - European Covered Bond Council (EMF-ECBC)** welcomes the European Commission's [legislative package on covered bonds](#), which aims at completing the Capital Markets Union (CMU) in the EU.

The EMF-ECBC appreciates the long and careful consideration given by the European Institutions to preparing the draft framework for the key qualitative characteristics of the covered bond asset class, and to maintaining its fundamental role in the long-term funding strategies of European lenders and is ready to play a role in the further implementation process.

We greatly appreciate the constructive dialogue that has taken place to date between the Industry and the EU Institutions on this crucial topic for the EU, as well as the proposal's recognition of the fundamental role played by the [Covered Bond Label](#) as a globally recognised benchmark in improving transparency, harmonisation and setting high qualitative standards. As we move forward with the implementation of the Directive, the Industry stands ready to continue its key role in supporting the European Institutions' push for a strong EU covered bond framework to improve the efficient funding of the real economy and to contribute to the further development of covered bonds across the whole EU.

Against this background the ECBC's present paper highlights key concerns with an EU-wide relevance which have been identified by the 14 jurisdictions which took part in this feedback collection exercise. This collection of feedback can help to map the potential issues to be addressed in the coming legislative debates.

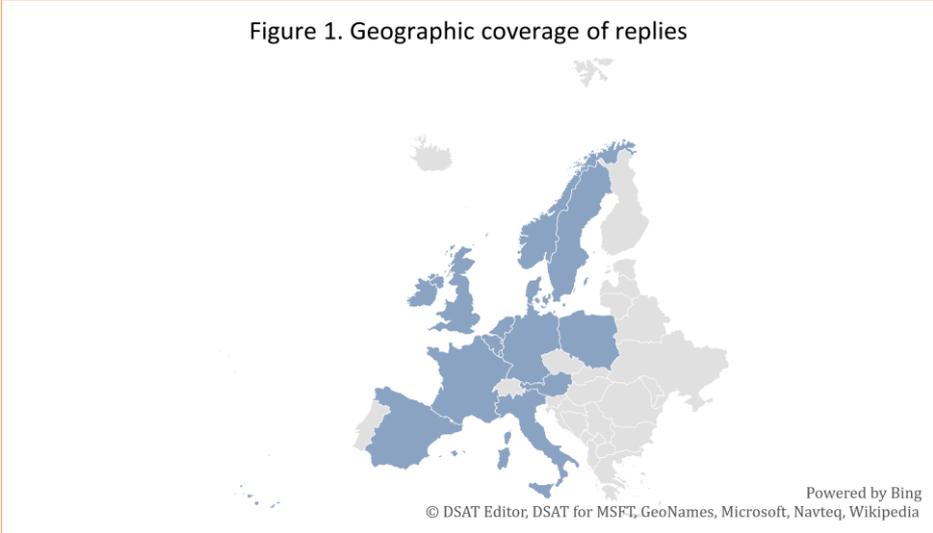
The paper is organised as follows:

- First, besides an introductory statistical description of the replies received, we present a brief overview of the major concerns highlighted in respect of the most commented Articles.
- Second, the paper presents for each country a detailed grid of the four key concerns ranked by priority with a clear indication of their level of seriousness. In this grid, the concern is precisely identified and there are also proposals for amendment to the legislative package in order to provide constructive input.
- Third, the paper concludes with an annex which presents the first wave of feedback received by the EMF-ECBC and which formed the basis for the present document.
- Finally, with a view to providing a comprehensive sense of the broader market view of the legislative package, in annex to this annex is the latest feedback provided by the Covered Bond Investor Council (CBIC). Please note that this feedback does not express an official ECBC perspective but has been included for completeness of information.

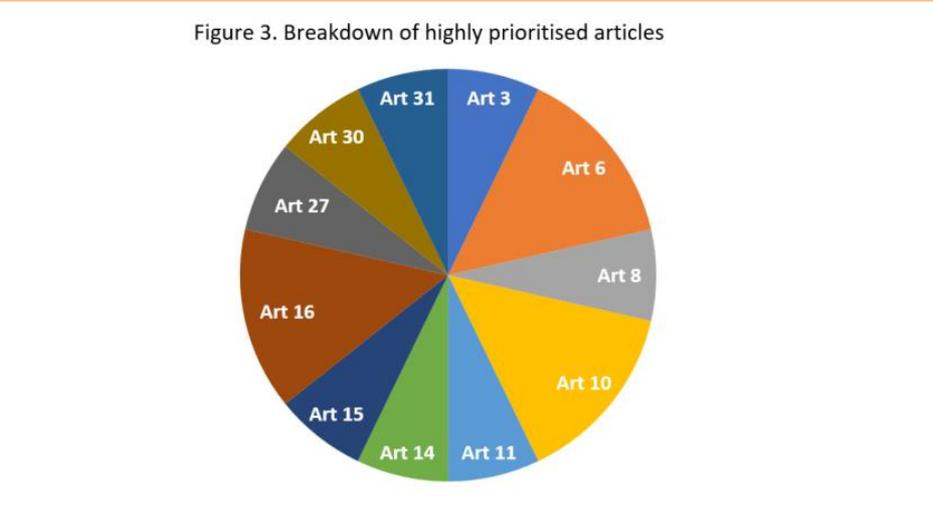
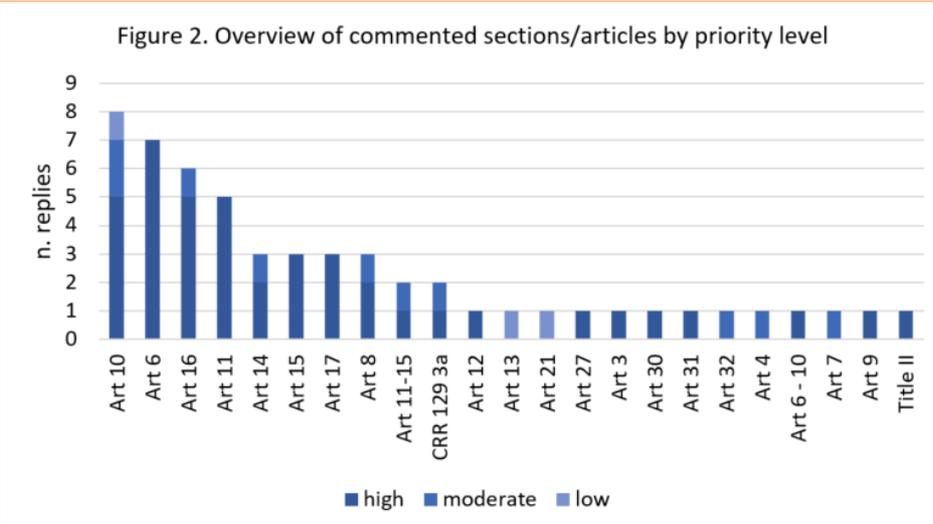
Preliminary Remarks

With a view to mapping the key concerns of its members regarding the European Commission proposal for a legislative package, the EMF-ECBC asked its members to highlight the four major concerns with an EU-wide scope for each covered bond jurisdiction, clearly ranking them by importance, flagging the level of seriousness of each concern expressed and proposing an amendment or a rewording of the passage concerned. In total, 55 concerns were received from 14 jurisdictions which represent 95.7% of the outstanding market in the EEA and over 86% of the global covered bond market outstanding¹, thus constituting significant geographic coverage of the covered bond market. All but two concerns highlighted relate to concern articles or specific sections from the directive, indicating that in the legislative package proposed by the European Commission the Directive is the subject of most discussion.

¹ Calculations are based on the 2016 year-end covered bond outstanding figures present in the ECBC Covered Bond Fact Book.



Nearly three out of four concerns highlighted are marked as being of a high level of seriousness. The most comments were received in relation to five articles – Art. 10, Art. 6, Art. 11, Art 16 and Art 15 – and when analysing the breakdown of which concerns ranked first in the various jurisdictions, Art. 10, Art. 6 and Art. 16 stand out in this respect.



In the remainder of this section we present a brief overview of the concerns highlighted in respect of the most commented Articles:

Article 10 – Composition of the cover pool

There is a lack of clarity regarding what is considered to be a “*sufficient level of homogeneity of the assets in the cover pool*”. A number of respondents point out that it is not clear whether it will be possible to pool other assets, such as public-sector loans, derivatives, commercial real estate loans, together with residential real estate loans. A further concern relates to whether or not assets with different maturities in the same pool can be considered as sufficiently homogeneous. Finally, some respondents are concerned that since there is no such requirement in Art. 129 of the CRR, this could create a discrepancy particularly with regard to current cover pools.

Article 6 – Eligible assets

As a result of the broad drafting of the provision, a large number of jurisdictions are concerned about the potential for a watering down of the quality of the covered bond asset class.

Article 11 – Derivative contracts in the cover pool

Some jurisdictions are concerned that inserting a limit on derivative may harm hedging strategies. Other jurisdictions take the view that derivatives should be excluded from the cover pool. The treatment of derivatives and posted margin/collateral needs to be clarified in the directive.

Article 16 – Requirement for a cover pool liquidity buffer

This article is not in line with Art 129 of the CRR regarding the credit quality steps of the exposures. Moreover, this article adds an additional liquidity buffer to the one already in place for the LCR.

Art 15 – Requirements for coverage

The reference to nominal value is considered to be unclear. It is suggested that the coverage should also include a market value concerning derivative contracts.

Overview Table of Comments

Where	What	Who commented
Art. 3	Definitions	Poland
Art. 4	Dual recourse	United Kingdom
Art. 6	Eligible assets	Germany , Italy , Luxembourg , Netherlands , Spain , Sweden
Art. 7	Assets located outside of the Union	Luxembourg
Art. 8	Intragroup pooled covered bond structures	Austria , Denmark , Spain
Art. 9	Joint funding	Austria
Art 10	Composition of the cover pool	Austria , France , Ireland , Italy , Norway , Poland , Spain , United Kingdom
Art. 11	Derivative contracts in the cover pool	Denmark , France , Ireland , Italy , Norway , Poland , Sweden
Art. 12	Segregation of assets in the cover pool	Germany
Art. 13	Cover pool monitor	United Kingdom
Art. 14	Investor information	Belgium , Spain
Art. 15	Requirements for coverage	Denmark , France , Ireland , Netherlands , Poland
Art. 16	Requirements for a cover pool liquidity buffer	Austria , France , Ireland , Italy , Norway , Sweden
Art. 17	Conditions for extendable maturity structures	Germany , Netherlands
Art. 21	Reporting to the competent authorities	Belgium
Art. 27	Labelling	Netherlands
Art. 30	Transitional measures	Ireland
Art. 31	Reviews and reports	United Kingdom
Art. 32	Transposition	Norway
Title II	Structural Features of Covered Bonds	Sweden
CRR Art 129 3		Denmark , Italy , Poland

Detailed Country Replies (ordered alphabetically):

1. Austria

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Art. 8	(d) both the internally and the 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 and are collateralised by residential or commercial property mortgages.	Intragroup pooled covered bond structures should be allowed for all assets eligible in accordance with Art. 6 of the directive (not only mortgage backed assets). Rating requirements are not needed, as long as the externally placed covered bond qualifies for certain quality limits.	No eligible asset class should be discriminated. Lending to regional governments by regional banks within banking groups should not be discriminated but supported by the opportunity to reach critical mass for covered bond issuance on group level. Intragroup rating requirements discriminates small banks as in most cases they and their covered bond issues are not rated. A rating on the external issue should be sufficient to limit quality risks as the two-level structures are very critically reviewed by the rating agencies.	Very high	(d) the externally issued covered bonds qualify for credit quality step 1 or 2 as referred to in Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 and are collateralised by assets in accordance with Article 6 of this Directive.
2	Art. 9	(1) Subject to the provisions in paragraph 2, Member States shall allow the use of loans collateralised by residential or commercial property mortgages, charges, liens or other comparable security rights granted by a credit institution as assets in the cover pool for the issue of covered bonds by another credit institution.	Joint funding should be allowed for all assets eligible in accordance with Art. 6 of the directive (not only mortgage backed assets).	No eligible asset class should be discriminated. Lending to regional governments by regional banks should not be discriminated but supported by the opportunity to reach critical mass for covered bond issuance.	Very high	(1) Subject to the provisions in paragraph 2, Member States shall allow the use of loans collateralised by assets in accordance with Article 6 of this Directive granted by a credit institution as assets in the cover pool for the issue of covered bonds by another credit institution.
3	Art. 16(4)		According to the EBA recommendation, CB buffer should be eligible for LCR.	It is not clear if liquidity buffer requirement is on top of the LCR requirements.	Very high	Covered bond liquidity buffer should be treated as “unencumbered” in other acts of Union law that set out liquidity requirements (e.g. LCR, NSFR...)
4	Art. 10	“Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile. ”	It is unclear how homogenous the assets should be. It should be marked that even within one asset class, the assets may vary significantly by tenor and risk profile as well as structural features. This regulation is completely opposite to the current market practice where mixed cover pools are held in several European countries.	Especially for smaller issuers the competitive management of several homogeneous cover pools is impossible due to the required critical mass per cover pool	Very high	Delete Art 10

Source: Raiffeisen Austria

2. Belgium

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Directive article 14 par 2	"the following minimum portfolio information: (c) details as to risks in relation to interest rates, currency, credit, market and liquidity"	It is not clear what is meant precisely by 'credit' and 'market'. In case of 'credit', we would oppose to anything more than arrears data. Not clear what 'market' means. For 'liquidity', will it be sufficient to provide the results of the 180-day liquidity test?	interpretation issue	High	more detail required
2	Directive article 14 par 2	"Member States may also require the information to be provided on a loan-by-loan basis."	We think this sentence needs to be deleted because: (i) this will result in different approaches, e.g. different (national) reporting templates; (ii) it may provide sensitive information to third parties, in particular when most of the institution's portfolio is provided as cover asset; (iii) taking out this sentence will not eliminate the possibility of national regulators to implement it if necessary, but it will become the exception	very difficult to implement on a common basis	High	deletion
3	Directive article 21 par 2	"The reporting obligations to be laid down pursuant to paragraph 1 shall require the information to be provided at least on the following requirements of the covered bond programme: (a) dual recourse in accordance with Article 4; (b) bankruptcy remoteness of the covered bond in accordance with Article 5; (c) the eligibility of assets and cover pool requirements in accordance with Articles 6 to 11; (d) the segregation of assets in the cover pool in accordance with Article 12; (e) the functioning of the cover pool monitor in accordance with Article 13; (f) the investor information requirements in accordance with Article 14; (g) the coverage requirements in accordance with Article 15; (h) the cover pool liquidity buffer in accordance with Article 16; (i) the conditions for extendable maturity structures in accordance with Article 17."	All elements listed in the second paragraph (except element (h)) make no sense to be reported on a regular basis, as they will be decided on a programme basis for which all information will have been given during the specific covered bond license request.	These elements are part of the regulatory review and do not change over time. Hence it is strange to repeatedly report on them towards investors	Low	Should be reported to the Regulator as part of license procedure and regulatory review

Source: Febelfin

3. Denmark

Overall assessment: the European Commission has succeeded with a balanced approach to harmonisation and it is important to keep these features in the final framework. In our view it is a good foundation on which to build a European covered bond framework.

It is important that the covered bonds legislation underpins the very high quality of covered bonds by setting requirements to the assets that can collateralise the issued covered bonds. Any dilution of the covered bonds by broadening the asset classes should be avoided. A broader asset base should be in a funding instrument like the European Secured Note.

Regarding any requirements on the composition of the cover pool we would highlight the importance of being able to have cover pools with both residential and commercial mortgage loans. There has already been taken care of the different risk profile on residential and commercial real estate by different LTV limits and for the investors there is extensive disclosure on the composition of the cover pool.

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Article 15, 1 (a) and (b) – Requirements for coverage in the covered bonds directive	Member State shall ensure investor protection by requiring covered bond programmes to comply at all times with at least the following coverage requirements: (a) all liabilities of the covered bonds, including the obligations for the payment of principal and any accrued interest of outstanding covered bonds and costs related to maintenance and administration of a covered bond programme, are covered by the assets in the cover pool; (b) the calculation of the level of coverage required ensures that the total nominal amount of all assets in the cover pool are at least of the same value as the total nominal amount of outstanding covered bonds ('nominal principle');	As the coverage requirement is worded it is unclear what the "nominal principle" means. For instance, on derivative contracts, where market values can be positive, zero or negative, and differ substantially from the nominal principal. A positive market value of derivative contracts should be included in the coverage. In general, the coverage requirements in both 1(a) and 1(b) need to be more precise. At the same time, it should still be principle based leaving room for the necessary national flexibility and still keeping the high quality of covered bonds.		High	
1	Article 11,2 – Derivative contracts in the cover pool in the covered bonds directive	Rules regarding cover pool derivative contracts including in article 11, 2 (b) a limit on the amount of derivative contracts in the cover pool.		It is positive with the possibility to use derivatives to mitigate risk between loans and issued covered bonds. But the use of derivatives should not be limited as this would mean that it will not always be possible to mitigate all risk on the covered bonds. This will affect the prices on the issued covered bonds and hence the interest rates of borrowers.	High	2. For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least: (a) the eligibility criteria for the hedging counterparties; (b) the limits on the amount of derivative contracts in the cover pool (c) the necessary documentation to be provided in relation to derivative contracts.

Source: Finance Denmark

1	Article 8 - Intragroup pooled covered bond structures in the covered bonds directive	<p>Rules on intragroup pooled covered bonds structures including a criterion saying that:</p> <p>(d) both the internally and the 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 and are collateralised by residential or commercial property mortgages.</p>		<p>Setting a credit quality requirement on both the internally and externally covered bonds to be used would give an unwanted rating volatility which should be avoided. This requirement should be deleted. Also we see no justification of why the use of intragroup joint funding should be limit to be used on for covered bonds qualifying for credit quality step 1.</p>	High	<p>Member States may lay down rules regarding the use, by way of an intragroup transaction, of covered bonds issued by a credit institution belonging to a group ('internally issued covered bonds') as collateral for the external issue of covered bonds by another credit institution 'belonging to the same group ('externally issued covered bonds')'. Member States shall ensure investor protection by including at least the following requirements in those rules:</p> <p>(a) the internally issued covered bonds, which are used as collateral for the externally issued covered bonds, are recorded on the balance sheet of the credit institution which issues the externally issued covered bonds;</p> <p>(b) the credit institution issuing the externally issued covered bond has a claim on the credit institution issuing the internally issued covered bonds, which is secured by the internally issued covered bonds;</p> <p>(c) the externally issued covered bonds are sold offered to covered bond investors outside the group;</p> <p>(d) both the internally and the 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 and are collateralised by residential or commercial property mortgages.</p>
1	CRR 129, 3a	The continuous compliance with LTV-levels CRR 129 (1b), (1c) -and (3a) OC requirements	<p>The proposed OC-requirement appears to take into account only a part of the credit risk mitigation tools specialised mortgage banks. Thus the OC requirement on top of substitution assets in form of other eligible assets than mortgage loans (for instance government bonds) counting as eligible assets replacing the part of the loans breaching the LTV-limits will be more burdensome for the specialised mortgage banks. The specialised mortgage banks have at an unchanged level of capital less capacity to add extra collateral to absorb falling prices on property. This interaction between requirements will not underpin financial stability.</p>		High	

4. France

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Article 10 of Directive: "Composition of the cover pool"	"Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile."	The underlined quotation seems to be a strong amendment of the mixed covered pool as they exist in several European countries. Indeed, residential real estate loans, commercial real estate loans and public-sector exposures do not have similar lifetime nor risk profile.	This amendment is in contradiction with the EBA and European Commission's objective which is reminded on page 4 of the Directive: "A fundamental aim of the approach in this package is to avoid disrupting well-functioning and mature national markets"	High	"Member States shall ensure investor protection by providing for a sufficient level of homogeneity of the assets in the cover pool."
2	Article 11	<p>2. For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least:</p> <p>(a) the eligibility criteria for the hedging counterparties;</p> <p><u>(b) the limits on the amount of derivative contracts in the cover pool;</u></p> <p>(c) the necessary documentation to be provided in relation to derivative contracts.</p>	The underlined quotation seems to be not logical. Indeed, if derivative contracts should be used for hedging purpose only and by consequence if they offer an additional surety for investors of covered bonds, why the Members States shall limit the amount of derivative contracts in the cover pool?	More generally, we don't understand why derivative contracts are associated with the cover pool? Actually, we can use derivative contract to hedge interest rate risk or currency risk for assets but also for covered bonds. In France, derivatives contracts used to hedge risks on assets and covered bonds benefit from the legal privilege. This point is not taken into account in the Directive and could be added.	High	<p>Article 11 Derivative contracts in the cover pool</p> <p>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:</p> <p>(a) the derivative contracts are included in the cover pool exclusively for risk hedging purposes;</p> <p>(b) the derivative contracts are sufficiently documented;</p> <p>(c) the derivative contracts are segregated in accordance with Article 12;</p> <p>(d) the derivative contracts cannot be terminated upon the insolvency or resolution of the credit institution issuing covered bonds;</p> <p>(e) the derivative contracts comply with the rules laid down in accordance with paragraph 2.</p> <p>2. For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least:</p> <p>(a) the eligibility criteria for the hedging counterparties;</p> <p>(b) the limits on the amount of derivative contracts in the cover pool;</p> <p>(cob) the necessary documentation to be provided in relation to derivative contracts.</p> <p>3. When derivative contracts are concluded to hedge risks linked to covered bond issuance or assets in the cover pool, they benefit from the provisions mentioned in Chapter 1 (Dual recourse and bankruptcy remoteness).</p>

3	Article 15	<p>(a) all liabilities of the covered bonds, including the obligations for the payment of principal and any accrued interest of outstanding covered bonds and costs related to maintenance and administration of a covered bond programme, are covered by the assets in the cover pool;</p> <p>(b) the calculation of the level of coverage required ensures that the total nominal amount of all assets in the cover pool are at least of the same value as the total nominal amount of outstanding covered bonds ('nominal principle');</p>	We don't understand the difference / articulation between the subparagraph (a) and (b) of Article 15.	To be more precise it should be important to indicate that (a) subparagraph concerns accounting values in the same way that (b) subparagraph concerns nominal values.	High	(a) all accounting liabilities of the covered bonds, including the obligations for the payment of principal and any accrued interest of outstanding covered bonds and costs related to maintenance and administration of a covered bond programme, are covered by the accounting assets in the cover pool;
4	Article 16	<p>3. Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets:</p> <p>(a) assets qualifying as level 1, level 2A and level 2B assets pursuant to Articles 10, 11 and 12 of Delegated Regulation (EU) 2015/61, valued in accordance with Article 9 of that Delegated Regulation and segregated in accordance with Article 13 of this Directive;</p> <p>(b) exposures to credit institutions that qualify for the credit quality step 1, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.</p>	The liquidity buffer doesn't take into account eligible assets to European Central Bank.	Eligible assets to European Central Bank refinancing should be included into the liquidity buffer. Indeed, if necessary they can easily permit to obtain liquidity used to reimburse covered bonds.	Moderate	<p>3. Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets:</p> <p>(a) assets qualifying as level 1, level 2A and level 2B assets pursuant to Articles 10, 11 and 12 of Delegated Regulation (EU) 2015/61, valued in accordance with Article 9 of that Delegated Regulation and segregated in accordance with Article 13 of this Directive;</p> <p>(b) exposures to credit institutions that qualify for the credit quality step 1, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.</p> <p>(c) assets eligible to European Central Bank refinancing.</p>

Source: CFF, Caffil

5. Germany

Overall assessment: The proposal appears consistent, well structured, substantial and principles-based, meeting our expectations. It addresses all important aspects which are necessary to create a sound legal European covered bond framework, while leaving enough room to specificities and traditions of national covered bond regimes. Covered bond public supervision is strengthened, allocating supervision and licensing to the competent national authorities. This represents an added value of the proposal.

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Article 6		Definition of High quality assets - High quality assets are not defined. Missing definition impacts on the quality of cover pools		High	Introduction of qualitative criteria to narrow down eligible assets. Collateral eligibility should be confined to movable and immovable goods
2	Article 12		Segregation trigger is unclear - Asset segregation seems to be required at all times. However, segregation only occurs in the moment of default		High	It must be made clear that segregation occurs only in case of insolvency. During going concern, registration of assets in the cover register shall be sufficient
3	Art. 17 par. 1 lit.(d)		No definition of maturity extension trigger provided. Exclusion of discretionary powers is not specified - Missing definition leads to legal uncertainties. Exclusion of discretion must be confined to the pre-insolvency period. After insolvency, discretion is necessary		High	Definition of maturity extension triggers. Exclusion of discretion shall be restricted to the going concern status, i.e. trigger event requires default of the issuing institution
4	Art. 17 par. 1 lit. (e)		Unclear meaning of 'ranking' - The area of reference of 'ranking' is important. Ranking shall refer to the ranking of covered bonds in the insolvency proceedings and not to the issue of payouts		High	Clarify to what 'ranking' refers to.

Source: vdp

6. Ireland

Overall there are few surprises and a good level of principles based approach where national authorities can work within the parameters set by the Directive. It is positive to see tangible progress being made by the Commission on providing clarity and harmonisation of the European Covered Bond product while maintaining the existing efficient functioning national systems already in place. In addition, it is encouraging to see that the proposed directive is looking to legislate for several elements that the Irish legislation already encompasses or that Irish issuers already provide, as part of their on-going operations outside Irish legislative requirements e.g. transparency, cover pool monitor etc.

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	article 30 Directive	“covered bonds issued before xx”	There is no grandfathering of (i) cover pools (including derivatives) or (ii) covered bond programmes, which are in place when the Directive comes into effect.	Article 30 only grandfathers existing covered bonds. There will be a single historical pool which will need to collateralise covered bonds issued under the Directive. Assets (including derivatives) comprised in a pool when the Directive comes into effect should be grandfathered. Covered bond programmes which are established when the Directive comes into effect will have to be approved by competent authorities before any further issues take place which will freeze market issuance, unless they are grandfathered.	High	In the first line, after “covered bonds issued” insert “ and cover assets comprised in cover pools and covered bond programmes established, ”.
2	Article 11.2(b) Directive/ Article 15.1(b) & 15.2 Directive	“...limits on the amount of derivative contracts...” (article 11.2(b)); “...the total amount of all assets...” (articles 15.1(b)); “...calculation of coverage and the calculation of liabilities is based on the same methodology.” (article 15.2).	Confirmation required that, as derivatives can only be used for hedging, valuation of derivatives should be on a net cash flow basis to confirm with “nominal principle”.	To confirm to nominal principle, pool derivatives should be valued on a net cash flow basis and not a mark to market or other basis.	High	After article 11.2 add a new sub-article as follows: “ 3. The limits of amounts of derivative contracts in a cover pool for the purposes of paragraph 2(b) shall require those contracts to only have the effect of hedging assets and/or liabilities in respect of the cover pool ”. At the end of article 15.2 add “ Derivative contracts comprised in a cover pool shall be valued on a net cash flow basis ”.
3	article 10 Directive	“...sufficient homogeneity of the assets in the cover pool so that they shall be of a similar nature in terms of structural features, lifetime of assets or risk profile”.	This homogeneity requirement is not a current feature of article 129 CRR and hence will not be a feature of current cover pools. It may be capable of being met in the case of domestic residential covered bond programmes, but not cross border ones or commercial or public credit programmes. Arguably, the requirement in the case of residential programmes would inhibit cross border provision of services in the EU in the residential loan market. Pool derivatives and substitution assets should be excluded from this requirement as they will be bespeaking to relevant pool assets/liabilities. Pool derivatives should be capable of addressing homogeneity issues in the case of FX and IR disparities.	See “Description of The Issue” in this column.	High	In article 10 after “homogeneity” insert “ primary ”. At the end of article 10 insert “ This article shall not apply to public credit assets, commercial credit assets, derivative contracts or substitution assets comprised in the cover pool and, in the case of residential credit assets, shall be applied having regard to the geographic and other market features of relevant assets comprised in the cover pool ”.
4	article 16. 3(b)	“(b) exposures to credit institutions that qualify for credit quality step 1, in accordance with article 129(1)(c) ...”.	No provision for step 2 as per article 129.1a CRR (under Regulation) and current article 129(1)(c) CRR. Under article 129 1(c)/1(a) step 2 exposures are restricted to maturities up to 100 days, but step 2 exposures should be capable of covering the first 100 days of the liquidity buffer of 180 days required under article 16 Directive. Reference to CRR in article 3(b) Directive ignores Regulation changes.	See “Description of the Issue” in this column.	High	After “credit quality step 1”, insert “ or credit quality step 2 ”.

7. Italy

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Directive Art 11 – Derivative contracts in the cover pool + Regulation art 129 (c)	Art. 11 Directive “Member States shall lay down rules for cover pool derivative contracts including at least: (a) the eligibility criteria for the hedging counterparties;” Art 129 (c) Regulation “(c) exposures to credit institutions that qualify for the credit quality step 1 or credit quality step 2 as set out in this Chapter”	The covered bond framework should specify counterparty eligibility criteria, limits on the amount of derivative contracts in the pool, necessary documentation on derivative contracts. The Regulation provides the requirements for the preferential treatment. In particular, covered bonds can be collateralised by exposures to credit institutions that qualify for the credit quality step 1 or credit quality step 2.	Derivative contracts should not be included in the covered pool. The EMIR Regulation should be modified, in order to provide that derivative contracts relative to covered bond issues can be guaranteed by Central Counterpart. Otherwise, it is necessary to provide that derivative counterparties can qualify also for the credit quality “step 3”. A different provision would restrict the derivative contracts to a very limited number of eligible counterparties, paving the way for an unwarranted and unnecessary systemic risk and increasing the all-in cost of the programmes.	high	<u>Primary proposal:</u> Deletion of art. 11 (derivative contracts are not included in the covered pool) <u>Alternative proposal:</u> Art 129 (c) Regulation “(c) exposures to credit institutions that qualify for the credit quality step 1, or credit quality step 2 or credit quality step 3 as set out in this Chapter”
2	Directive Art. 16 – Requirement for a cover pool liquidity buffer	Art. 16 Directive “(3) Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets: (a) assets qualifying as level 1, level 2A and level 2B assets pursuant to Articles 10, 11 and 12 of Delegated Regulation (EU) 2015/61, valued in accordance with Article 9 of that Delegated Regulation and segregated in accordance with Article 13 of this Directive; (b) exposures to credit institutions that qualify for the credit quality step 1, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.”	Liquidity buffers covers the net liquidity outflows of the covered bond program over the next 180 days. Liquid assets are Level 1, 2A assets and Level 2B as well as exposures to credit institutions qualifying “step 1”.	As all European banks are subject to liquidity requirements according to the paragraph 4 of art. 16, liquidity buffer should not be required in all jurisdictions, beyond Member State’s decisions. This would guarantee a better harmonisation of covered bond structures across Europe. If it is not possible to follow this proposal, banks should be allowed to use for the liquidity buffer purpose assets which are not CRR liquidity requirement eligible. Otherwise, it is necessary to allow that exposure to all credit institutions can be eligible for liquidity buffer purposes.	High	<u>Primary proposal:</u> Deletion of art. 16 (liquidity buffer is not required) <u>Alternative proposal:</u> Art. 16 Directive “(3) Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets: (a).... (b) exposures to credit institutions that qualify for the credit quality step 1, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013. ”
3	Directive Art 10 – Composition of the cover pool	Art. 10 “Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile”		It is necessary to confirm the possibility to issue covered bonds collateralised by residential and commercial mortgage loans. Moreover, it is needed to clarify the concept of homogeneity in terms of lifetime, as covered assets can be represented by mortgages with different maturities, ranging from 5 to 30 years.	High	Art. 10 “Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile. ”

4	Directive Art 6 – Eligible assets	<p>Art 6 (1) “Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or by other high-quality assets that meet at least the following requirements: (a) either the market value or mortgage lending value of the assets can be determined; (b) a mortgage, charge, lien or other guarantee on the asset is enforceable; (c) all legal requirements for establishing the mortgage, charge, lien or guarantee on the asset have been fulfilled; (d) the mortgage, charge, lien or guarantee securing the asset enable the credit institution issuing covered bonds to realise the value of the asset without undue delay.”</p>	<p>Covered bonds could be collateralised by high quality assets different from those referred to in Art 129(1) CRR points (a) to (g).</p> <p>It’s not clear if a new regulation for European Secured Notes (ESNs) will be proposed.</p>	<p>Due to the broad scope of article 6 and the room for interpretation in the wording of recital 15, as well as the legislative provision indicating the high qualitative features, we would propose to reconsider the introduction of the “European Secured notes” concept, which would prevent a watering down of the qualitative scope of the covered bond label and also at the same time be fully aligned with the proposal of the Own initiative report of the European Parliament.</p> <p>At the same time, it is necessary to recognize in the Regulation a preferential prudential treatment for ESNs, different from the treatment recognised to covered bond.</p>	High	<p>Art. 6 - bis “1. Member States may allow credit institutions issuing debt instruments covered by different assets than those required for covered bonds, labelled “European Secured Notes” (ESNs). 2. EBA lays down the minimum requirements that ESNs covered assets have to meet. 3. The Regulation (EU) 575/2013 allows for a preferential treatment of ESNs.”</p>
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Source: ABI

8. Luxembourg

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Article 6	1. Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or by other high-quality assets that meet at least the following requirements:	As stated under Point 15 in the recital clause, also public undertakings as defined in Article 2(b) of Commission Directive 2006/111/EC should be considered eligible to serve as collateral in the cover pool	Explicitly stated in the recital clause	High	1. Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or loans to public undertakings as defined in article 2(b) of Commission Directive 2006/111/EC or by other high-quality assets that meet at least the following requirements:
2	Article 6	(a) either the market value or mortgage lending value of the assets can be determined;	For asset classes (e.g. renewable energy), where a market value cannot be observed, the mortgage lending value has to be determined. So far, the wording of mortgage lending value is used in connection with assets where a prompt filling and registration of mortgages, charges, liens or guarantee on assets in the pool is required. For cases where this is not legally required (see next point), the lending value should also be calculable on an estimated realisation value without the necessity of using the multi pillar valuation model.	In most of the mortgage lending value concepts, the income value is used, beside the property value and the market value, to determine the final mortgage value. These expected income streams form also the basis for the calculation of an estimated realisation value, which includes, like in the calculation of the income value and the property value, certain risk buffers/risk deductions.	High	(a) either the market value, the mortgage lending value or another suitable value based on international valuation standards of the assets can be determined;
3	Article 6	For the purposes of point (b), Member States shall lay down rules ensuring the prompt filing and registration of mortgages, charges, liens or guarantee on assets in the cover pool.	Regarding assets where there is no legal requirement for a public register for the relevant mortgages, charges, liens or guarantee independent, written and reasoned legal opinions should be sufficient to confirm the legal effectiveness of such rights and their enforceability against third parties and in all relevant jurisdictions.	There are assets, where no public registration is required to secure the enforceability. For these cases independent, written and reasoned legal opinions are sufficient to confirm the legal effectiveness.	High	For the purposes of point (b), Member States shall lay down rules ensuring the prompt filing and registration of mortgages, charges, liens or guarantee on assets in the cover pool. Where there is no legal requirement for a public register for the relevant mortgages, charges, liens or guarantee on assets in the cover pool independent, written and reasoned legal opinions have to confirm the legal effectiveness of such rights and their enforceability against third parties and in all relevant jurisdictions.
4	Article 7	2. Where Member States allow for the inclusion referred to in paragraph 1, they shall ensure investor protection by verifying whether the assets located outside of the Union meet all the requirements set out in Article 6 and that the realisation of such assets is legally enforceable in a way similar to assets located within the Union.	Although the issued covered bonds are grandfathered (see article 30 - Transitional measures), this is - so far, not the case for assets in the cover pool itself. As some cover pools contain also assets outside the European Union where there is an uncertainty if the assets are legally enforceable in a way similar to assets within the Union, these assets which are in the cover pool before the date laid down in the second subparagraph of Article 32(1) of this Directive +1 day should be exempt from the requirements of Article 7 2 until their maturity date.	Assets outside the European Union form part of some cover pools in some European jurisdiction. Although the legally enforceability in a way similar to assets located within the Union is already preferred, there are some assets where there is an uncertainty on the legal enforceability in a way similar to assets within the Union. This is (sometimes limited by the amount of assets) accepted. To avoid unnecessary disruptions for those cover pools and the corresponding covered bonds, an exemption of the requirements for those assets which are already in the pool should be acceptable.	Moderate	2. Where Member States allow for the inclusion referred to in paragraph 1, they shall ensure investor protection by verifying whether the assets located outside of the Union meet all the requirements set out in Article 6 and that the realisation of such assets is legally enforceable in a way similar to assets located within the Union. Assets outside the Union which are in the cover pool before the date laid down in the second subparagraph of Article 32(1) of this Directive +1 day should be exempt from the requirements of Article 7 2 until their maturity date.

9. The Netherlands

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Article 27	Covered bonds are currently marketed in the Union under national denominations and labels, some of which are well-established. In several Member States however such denominations or labels do not exist. It seems therefore necessary to allow credit institutions which issue covered bonds in the Union to use the 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 Union law. It is necessary to establish such label in order to 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 that label 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.	The EC suggests introducing a European Covered Bonds label which issuers can use to market their covered bonds. The DACB feels that given the broad definitions used in the Directive the bar could be set too low to qualify for this label, i.e. the label could be perceived as 'weak'. It might therefore be better to only allow issuers to use this new label only if they meet both the requirements of the new Directive and the Regulation.		High	
2	Article 6.1	Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or by other high quality assets that meet at least the following requirements: (a) either the market value or mortgage lending value of the assets can be determined; (b) a mortgage, charge, lien or other guarantee on the asset is enforceable; (c) all legal requirements for establishing the mortgage, charge, lien or guarantee on the asset have been fulfilled; (d) the mortgage, charge, lien or guarantee securing the asset enable the credit institution issuing covered bonds to realise the value of the asset without undue delay. For the purposes of point (a), Member States shall lay down rules on valuation of assets. For the purposes of point (b), Member States shall lay down rules ensuring the prompt filing and registration of mortgages, charges, liens or guarantee on assets in the cover pool. For the purposes of points (b) and (d), Member States shall ensure that credit institutions issuing covered bonds assess the enforceability of assets before including such assets in the cover pool	The definition of high quality assets is too broad. The DACB feels that high quality assets should be limited to those mentioned in CRR Article 129(1).		High	

3	Article 15.2	Member States shall ensure that the calculation of coverage and the calculation of liabilities is based on the same methodology	Dutch issuers base their coverage calculations on the notional amounts for the primary cover assets (Dutch residential mortgages) as well as for the outstanding covered bonds. However, when issuers also include liquid (substitution) assets in their cover pool than these assets have to value at their market value. Dutch issuers therefore propose to adjust the text to reflect this.		high	Change text so that liquid assets are exempt from this obligation
4	Article 17	Conditions for extendable maturity structures (c) the information provided to the investor about the maturity structure is sufficient to enable them to determine the risk of the covered bond, and includes a detailed description of: (ii) the consequences for the maturity extensions in the case of insolvency or resolution of the credit institution issuing covered bonds;	Paragraph (c) (ii) could cause confusion, since this could be interpreted as the obligation to provide information to investors on what the impact of a maturity extension would have on the bail-in process / resolution		high	We suggest changing this text into: (ii) the consequences of the maturity extensions.

Source: DACB

10. Norway

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Directive, Article 16	4. Where the credit institution issuing covered bonds is subject to liquidity requirements set out in other acts of Union law, Member States may decide that the national rules transposing paragraphs 1, 2 and 3 do not apply throughout the period foreseen in those acts of Union law.	<p>The paragraph is reasonable, but does not solve the issue with assets in the cover pool being perceived as encumbered when calculating the LCR.</p> <p>To avoid the need for an additional liquidity buffer outside the cover pool, one should add a paragraph stating that liquid assets in the cover pool that are encumbered for the benefit of the covered bond investors should be considered unencumbered when calculating the fulfilment of liquidity requirements.</p> <p>If deemed necessary, the paragraph should be implemented by amending Commission Delegated Regulation (EU) 2015/61 on the LCR.</p>	<p>It is not rational to impose requirements that forces issuers to have an additional liquidity buffer outside the cover pool, only to fulfil the LCR requirement. The purpose with the liquidity in the pool is to cover outgoing cashflows, and this liquidity is not in any way encumbered for being used to redeem maturing covered bonds. The two liquidity buffers will serve the same purpose of ensuring liquidity for the covered bond investors. Hence, the covered bonds directive/LCR delegated act should be amended so that the assets in a segregated liquidity buffer in the cover pool are deemed unencumbered when calculating the fulfilment of liquidity requirements.</p> <p>The possibility of double liquidity requirements was also raised as a concern in the EBA report on covered bonds from 2016. Also note that the topic has been commented by the Basel Committee on Banking Supervision in the second set of frequently asked questions (FAQs) on the LCR framework (June 2017). Their answer on question 16 states an alternative solution which enables amounts in the pool that will become unencumbered in the next 30 days to be considered as inflows.</p>	High	<p>Add the following paragraph in Art.16:</p> <p>7. Assets in the cover pool liquidity buffer as referred to in paragraph 1 should be considered unencumbered when calculating liquidity requirements set out in other acts of Union Law.</p>

2	Directive, Article 11	<p>2. For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least:</p> <p>(...) (b) the limits on the amount of derivative contracts in the cover pool;</p>	<p>Given the requirements in paragraph 1 of Article 11 (especially that derivative contracts are included in the cover pool for risk hedging purposes only (cf. Art. 11. 1. (a)), we do not see the need for a limit on the amount of derivative contracts in the cover pool.</p>	<p>From a risk perspective, it is not rational to limit the issuers hedging of risk. A limitation will be negative for the covered bond investors. Also, the impact from derivative contracts on the cover pool are dependent on market fluctuations outside of the issuers control.</p>	High	<p>Delete Article 11 (b): (b) the limits on the amount of derivative contracts in the cover pool;</p>
3	Directive, Article 32	<p>1. Member States shall adopt and publish, by [to be inserted – entry into force + 1 year] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.</p>	<p>The transposition period should be extended to 2 years.</p>	<p>Allowing a longer transposition period will ensure a correct implementation in the different jurisdictions, enabling a successful transition to a harmonized and well-functioning covered bonds market in Europe.</p>	Medium	<p>1. Member States shall adopt and publish, by [to be inserted – entry into force + 2 years] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.</p>
4	Directive, Article 10	<p>Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile.</p>	<p>We have interpreted the term “lifetime of assets” as an approximate measure on the average duration of the underlying assets in the cover pool, i.e. that the average duration will not differ substantially over time. It would be highly problematic if the term is meant to reflect the time until maturity for e.g. the individual mortgages included in the cover pool. These loans are by nature granted with different maturities.</p> <p>The paragraph should be amended to clarify what is meant by “lifetime of assets.”</p>	<p>As the individual mortgages in a cover pool typically have different time until maturity, a requirement on common maturity standards would imply a large decline in eligible mortgages and have a detrimental impact on covered bond markets.</p>	Low, given that our interpretation is correct	<p>Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile. Lifetime of assets reflect the average duration of the underlying assets in the cover pool over time.</p>

Source: Finance Norway

11. Poland

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Art. 3 of the Directive	'specialised mortgage credit institution' means a credit institution which funds loans solely through the issue of covered bonds, which is permitted by law to carry out mortgage and public-sector lending only and which is not permitted to take deposits but can take other repayable funds from the public	Definition assumes that loans are funded solely by issuance of covered bonds	Currently mortgage banks (specialised banks in Poland) do not fund mortgage loans only through covered bonds issuance because of: a) Requirement of overcollateralization which cannot be funded by covered bonds, b) Before the issue mortgage bank gathers loans with the purpose to refinance them by future issue – until that time funding comes from other sources.	High	“specialized mortgage credit institution” means credit institution which funds granted loans or purchased receivables through the issue of covered bonds, which is permitted by law to carry out mortgage and public-sector lending only and which is not permitted to take deposits but can take other repayable funds
2	Art.10 of the Directive	Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile.	The possibility of multiple separate cover pools consisting of assets acceptable from the perspective of Art. 129 CRR should be clearly allowed.	Multiple separate homogeneous cover pools would have positive impact on development of mortgage banking and covered bonds market.	Moderate	We propose to add to the Art. 10 second sentence as follows: “Nevertheless multiple separate homogeneous cover pools in respect of asset class should be allowed.”
3	Art. 11 item 2(b) – applies also to Art. 15	For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least: b) the limits on the amount of derivative contracts in the cover pool	Limits amounts of derivative contracts should be removed	Derivatives contracts are used for hedging purposes. This aim should decide how many contracts should be concluded. Introduction of any limits can make impossible to hedge the risk because of limits. It is also unclear how such amount should be calculated.	Moderate	
4	Art. 129 par 3 (a) of the Regulation	Competent authorities designated pursuant to Article 18(2) of Directive (EU) 20xx/xxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU] may decide to apply a lower minimum level of overcollateralisation to covered bonds provided that the following conditions are met: a) (a) the calculation of overcollateralisation is either based on a model which takes into account the assigned risk weights of the assets or a model where the valuation of the assets is subject to mortgage lending value as defined in Article 4(1)(74)	From the draft does not result directly that OC will be calculated by using the full amount of mortgage loans included in the cover pool and not limited to 80% or 60% of market or mortgage lending value of property. For coverage requirement 80% and 60% limits will apply.	We propose to apply full loans amount not limited by 80% or 60% of market or mortgage lending value.	Moderate	

Source: PKO Bank Hipoteczny S.A.

12. Spain

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Article 10 of Directive	The entire article	Description of homogeneity per reference to “structural features, lifetime or risk portfolio” is too wide and imprecise	<p>Current wording is unclear how homogenous the assets should be, particularly on tenor and risk profile. It is opposed to current market practices in many jurisdictions where exist mixed covered pools and large portfolios with a wide range of maturities matching different bonds.</p> <p>If the current wording becomes definitive will introduce a clear increase in management complexity and will be more difficult to optimize the use of the cover pool. It will prevent use of CB structures which have worked well.</p>	High	Remove the article
2	Article 6 of Directive	The entire article	High quality requirements for “other” assets are very vague, enabling potential eligibility of assets that should not.	Current wording could allow SMEs and other unsuitable loans to be considered as collateral and we disagree with it.	High	
3	Article 14.2 of Directive	Member States may also require the information to be provided on a loan by loan basis	National discretion not appropriate in this case.	Loan by loan information clearly unnecessary for CB pools and dangerous States could eventually introduce it.	Moderate	
4	Article 8.C of Directive	The externally issued CB are sold to CB investors outside the group	There is a risk the provision could be interpreted as a prohibition of retention of the issued bonds by the issuer.	Not all CB issued are immediately sold, quite often they are retained in the issuer’s portfolio for further uses.	Moderate	

Source: Spanish Mortgage Association

13. Sweden

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Article 16	Whole Article 16 Cover pool liquidity buffer	<p>The proposed liquidity buffer regulation may have potential negative impact on issuers and investors in comparison with the well-functioning national regulations. This liquidity requirement affects undesirably the management of the whole Banking Group's liquidity. It also adds a liquidity requirement at bank level which already is set by CRR.</p> <p>Coordination in practice between LCR requirements and liquidity buffer must be clarified.</p> <p>The wording of the article 16 unfortunately result in that the liquidity buffer is made a structural element for covered bonds to be classified as a covered bond, as it is a part of title II of the directive. If the issuer breaches the liquidity reserve requirement instruments cease to exist to be a covered bond and then the investor will not be able to keep his preferential treatment. Furthermore, it will not be possible for the covered bonds to be exempted from the clearing requirement in EMIR.</p>	<p>The EU harmonisation efforts must not disturb well-functioning markets and not affect ordinary banking business; the requirement will interfere with the banks' liquidity strategies based on CRR. These rules must be foreseeable for a well-functioning market. The requirements and the drafting will increase the liquidity risk or at least lead to increased difficulties for the issuer to handle liquidity risk and the problems may also cause systemic risk. Liquidity questions in relation to CRR must be brought up to light in a CRR context and not be addressed in covered bond legislation.</p>	High	<p>Delete article 16. If that is not feasible we strongly request for an amendment in art 16 item 4:</p> <p>"Where the Credit institution issuing covered bonds or the group to which the credit institution is part, is subject to liquidity requirements"</p>
2	Title II Structural Features, art 4-17	All of Title II	<p>The definition of a covered bond should be in line with the current definition in UCITS, we believe there has been a drafting error leading to unreasonable and unintended consequences when all the articles 4-17 must be fulfilled at all times to constitute a covered bond.</p>	<p>The definition of a covered bond should be clear and transparent, too many variables will not benefit the covered bond product but lead to confusion amongst issuers and investors.</p> <p>It must be clear that a subsequent breach in relation to any of the articles 4-17 would not result in instruments ceases to exist as covered bonds and subsequently holders loses their priority right in case of bankruptcy and preferential treatment of the existing stock of covered bonds at the time of breach.</p> <p>The drafting increases the liquidity risk or causes serious difficulties for issuers to handle liquidity risk and may also lead to systemic risk.</p>	High	<p>Rewrite article 3(1) so only the following elements should be included as structural elements:</p> <ol style="list-style-type: none"> 1 Dual recourse 2 Asset segregation 3 Bankruptcy remoteness 4 Special supervision <p>The amendments to CRR article 129 should like BRRD and UCITS refer to article 3(1) in the directive so the original intentions of a harmonised treatment of covered bonds in EU could be achieved.</p>

3	Art 11	Article 11 2 (b) the limits on the amount of derivative contracts in the cover pool	The directive suggests limits on the amounts of derivative contracts in the cover pool. This is already in article 129 CRR and point (a) article 11(1) already limit the use of derivatives for hedging purposes.	<p>Limiting the amounts of derivative contracts could potentially harm large and important markets, like in Sweden and Denmark, where the use of derivatives to mitigate currency and interest risk is of utmost importance.</p> <p>Restriction in using derivatives can lead to higher risks within the cover pool which negatively could affect investors and lead to higher funding costs. A further limitation for the use of derivatives will harm the issuers possibility to handle interest rate and currency risks related to cover pool assets well as covered bonds. With limitations on the amount of derivatives the issuer might have to leave cover pool risks unhedged.</p> <p>It is a clear misconception that a limit on the amount of derivatives would automatically reduce risks related to derivatives. In fact, it could lead to the opposite. A higher amount of outstanding derivatives could have a much lower risk than a low number depending on the actual risk of the swap portfolio per counterparty. Using the amount of derivatives as a tool to minimize risks is a very bad choice and could harm the possibility to hedge risks. The exposure to swap counterparties is already regulated in article 129 in CRR and any further limitation could have serious negative effects.</p> <p>Regarding coverage, the derivative contracts must be calculated at market value to fulfil their purpose.</p>	High	Remove Art 11 item 2(b).
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4	Art 6 Art 10	<p>Art 6 Eligible assets Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 <u>or by other high-quality assets that meet at least the following requirements:</u></p> <p><u>(a) either the market value or mortgage lending value of the assets can be determined;</u></p> <p><u>(b) a mortgage, charge, lien or other guarantee on the asset is enforceable;</u></p> <p><u>(c) all legal requirements for establishing the mortgage, charge, lien or guarantee on the asset have been fulfilled;</u></p> <p><u>(d) the mortgage, charge, lien or guarantee securing the asset enable the credit institution issuing covered bonds to realise the value of the asset without undue delay.</u></p>	<p>The second part of point 1 marked yellow: “or by other high-quality assets that meet at least the following requirements” lead to an ability to include other asset so long as certain requirement are met: the value can be determined; there is a valid lien; legal requirements for the lien are fulfilled; and the lien can be realised in good time.</p>	<p>Alternative assets such as aircraft loans, floating charges (i.e.: företagshypotek) – software licenses can be included with these provisions. However, this article may also comprise European Secured Notes which we expected to follow-on later, and certainly not in the covered bond directive. This possibility, within the draft Directive, to include other assets in the pool may risk diluting the cover bond brand which is undesirable and not in line with the intention of the directive. To avoid this risk, it is important that the wording of the directive only allows for the traditional high-quality assets used for covered bond issuance.</p> <p>Article 10 is unnecessary if there is a stricter restriction on eligible assets. Article 10 could otherwise damage well-functioning, national markets. If article 10 remains it could be difficult to have government bonds and mortgage loans in the same cover pool.</p>	High	<p>Art 6 Eligible assets Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or by other high-quality assets that meet at least the following requirements:</p> <p>(a) either the market value or mortgage lending value of the assets can be determined;</p> <p>(b) a mortgage, charge, lien or other guarantee on the asset is enforceable;</p> <p>(c) all legal requirements for establishing the mortgage, charge, lien or guarantee on the asset have been fulfilled;</p> <p>(d) the mortgage, charge, lien or guarantee securing the asset enable the credit institution issuing covered bonds to realise the value of the asset without undue delay.</p> <p>Art 10 Composition of the cover pool Because of a firmer requirement on eligible assets in the cover pool there is no need for article 10, which should be deleted.</p>
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Source: ASCB

14. United Kingdom

Ranking of priority	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of seriousness	Proposal for a wording update
1	Article 31	By XX [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 3 years], the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council whether an equivalence regime could be introduced for third-country credit institutions issuing covered bonds and for investors in covered bonds, taking into consideration international developments in the area of covered bonds, in particular the development of legislative frameworks in third countries	The lengthy period to an assessment of third country regimes will lead to a period of uncertainty regarding the status of UK Covered bonds in its interaction with the Brexit timetable and transitional rules.	Clarity of the status of UK covered bonds would be very helpful to investors based in the EU	High	tbc
2	Article 4 1(b)	In case of insolvency or resolution of the credit institution issuing covered bonds, a priority claim on the principal and any accrued interest from assets included in the cover pool;	No explicit reference to segregated structures which causes some potential conflict in later articles relating to Derivatives	To explicitly accommodate jurisdictions with a segregated structure (eg UK, Netherlands, Ireland & Italy) by clarifying the reference to 'priority claim'	Moderate	tbc
3	Article 10	Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile.	A lack of clarity on the degree of homogeneity of assets	There is considerable debate in securitisation over similar requirements in the STS requirements	Moderate	tbc
4	Article 13	A cover pool monitor shall be separate and independent from the credit institution issuing covered bonds and from that credit institution's auditor.	Under segregated structures the SPV auditors and issuers auditors may be different but not clear if the SPV auditor can also be Cover Pool monitor	It will be more costly to have different firms performing two roles	Low	Delete 'and from that credit institutions auditor'

Source: UKRBC

Annex 1. Collation of Feedback (March 2018)

European Covered Bond Council (ECBC)

Collation of Feedback on the Covered Bond Legislative Package

The **European Mortgage Federation - European Covered Bond Council** ([EMF-ECBC](#)) welcomes the adoption of the European Commission's [legislative package on covered bonds](#), which aims at completing the Capital Markets Union (CMU) in the EU.

The EMF-ECBC appreciates the long and careful consideration given by the European Institutions to preparing the draft framework for the key qualitative characteristics of the covered bond asset class, and to maintaining its fundamental role in the long-term funding strategies of European lenders and is ready to play a role in the further implementation process.

We greatly appreciate the constructive dialogue that has taken place to date between the Industry and the EU Institutions on this crucial topic for the EU, as well as the proposal's recognition of the fundamental role played by the [Covered Bond Label](#) as a globally recognised benchmark in improving transparency, harmonisation and setting high qualitative standards. As we move forward with the implementation of the Directive, the Industry stands ready to continue its key role in supporting the European Institutions' push for a strong EU covered bond framework to improve the efficient funding of the real economy and to contribute to the further development of covered bonds across the whole EU.

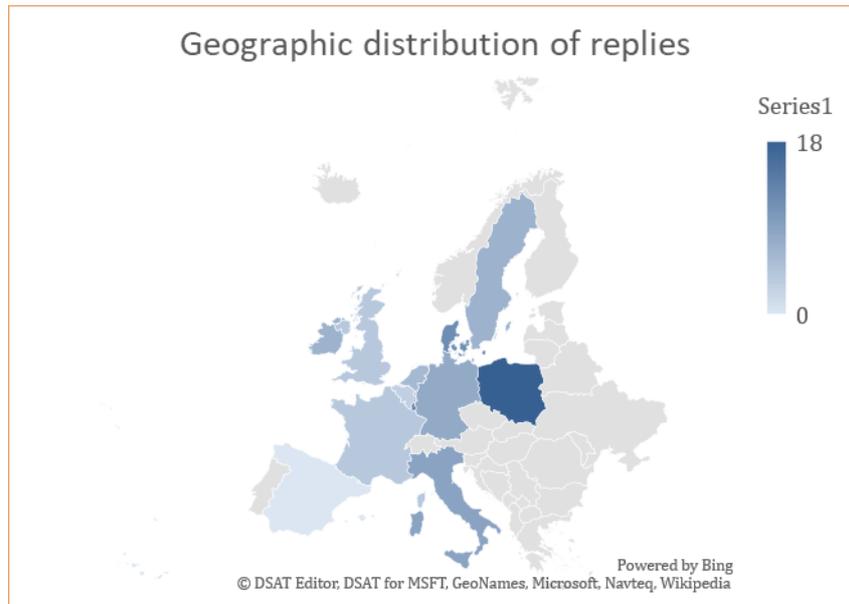
Against this background the ECBC has established a Task Force on the EU framework for Covered Bonds with the aim of analysing critical areas at European and national levels. This collection of feedback can help in mapping the potential issues to be addressed in the coming legislative debates. This collection will form the basis of the discussion during the Steering Committee Meeting on 17 April 2018 in Vancouver.

As a summary, the Secretariat has prepared a table of the Articles of the directive and of the proposed amendments to the CRR, together with the list of countries which contributed to the feedback exercise.

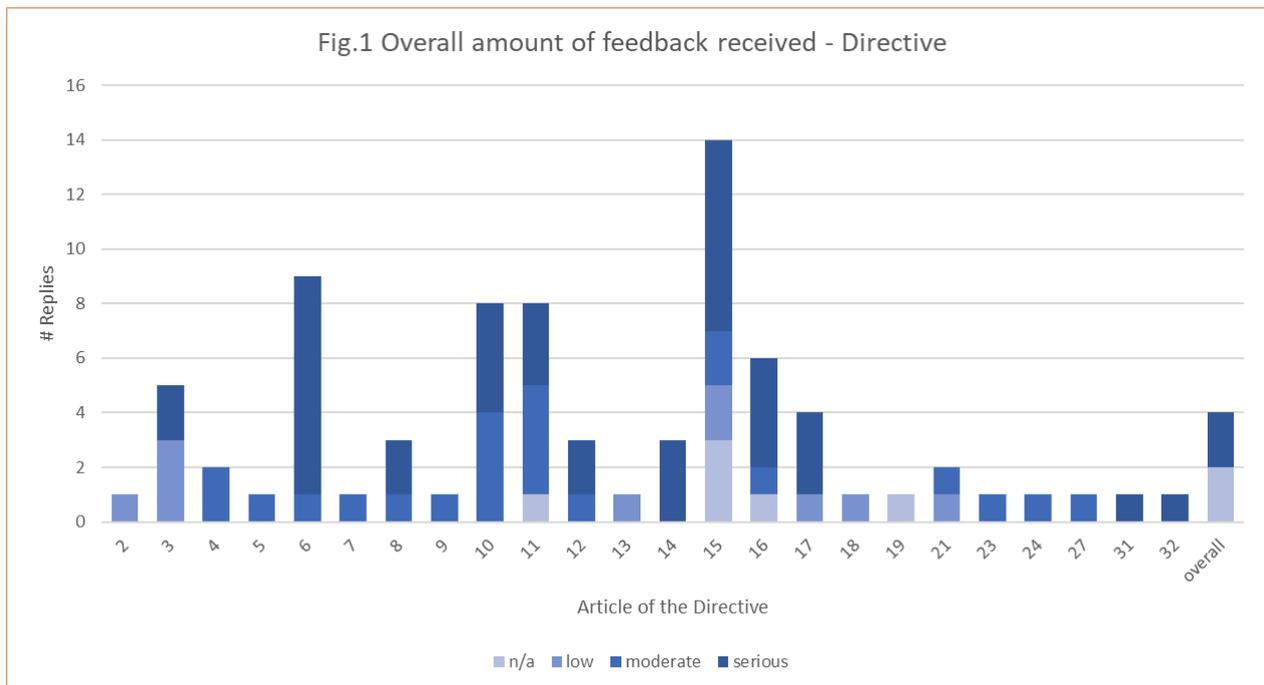
Feedback provided by the Covered Bond Investor Council (CBIC) can also be found in annex.

Preliminary Statistics:

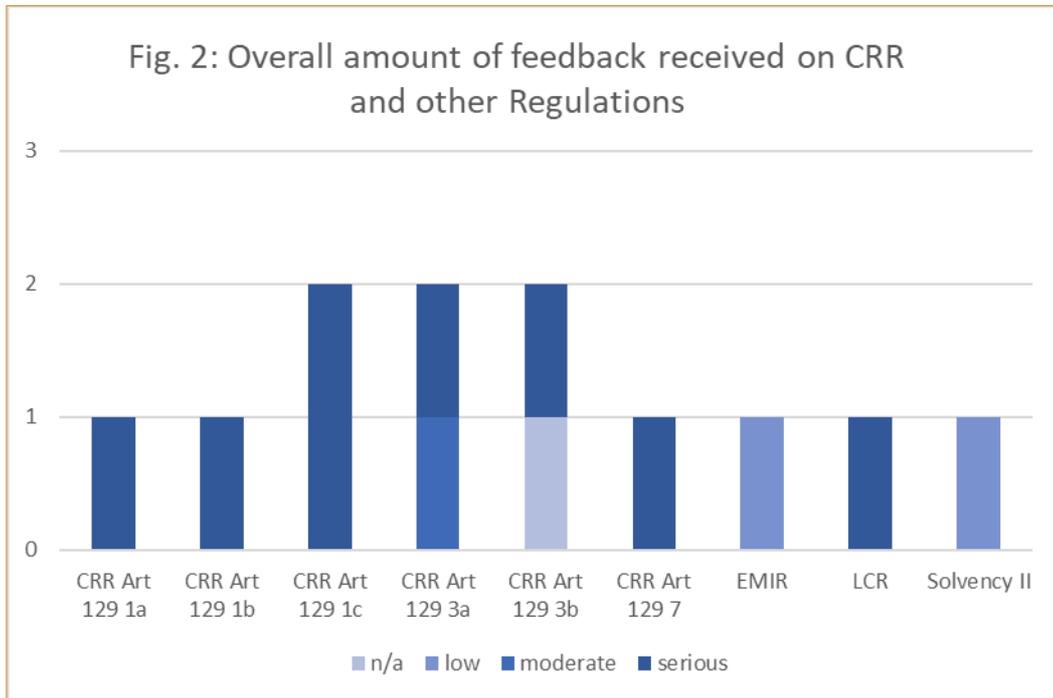
Out of the overall 93 comment lines from 12 jurisdictions received by the ECBC the feedback exercise showed that the majority of comments are notably concentrated around the directive (83), while 12 comments were received in relation to the amendment of the CRR and to other legal texts. Some replies concern jointly the directive and the regulation, which explains why the partial feedback on the directive and the regulation do not equal the total number of comments received.



When analysing at a first glance in Fig 1. the feedback on the directive, two trends emerge. Firstly, many of the comments are highlighted as being of moderate to high priority by the respondents and secondly, the largest number of comments were received in relation to Art 15 (*Requirements for coverage*), Art 6 (*Eligible Assets*), Art 10 (*Composition of the Cover Pool*) and Art 11 (*Derivative contracts in the cover pool*).



Looking at the replies received on the Regulation, the relatively few replies equally spread around Art 129 of the CRR with a certain concentration around Par 1 and Par 3 as can be seen in Figure 2.



Overview tables of the comments

1) Directive

Article	What	Who commented
Recital 15	Collateral assets	<i>CBIC</i>
Recital 20	Transparency	<i>CBIC</i>
Recital 35	Third country recognition	<i>CBIC</i>
Art 2	Scope	Poland
Art 3	Definitions	Denmark (item (13)), Poland (items (1), (3), (4) and (5))
Art 4	Dual Recourse	Poland (par 1), UK (par 1b)
Art 5	Bankruptcy remoteness of the covered bonds	Poland
Art 6	Eligible assets	Germany (par 1), Denmark , Italy , Luxembourg , Poland , Sweden (par 1), <i>CBIC</i>
Art 7	Assets located outside the Union	Luxembourg
Art 8	Intragroup pooled covered bond structures	Denmark , Italy and Luxembourg (item d), <i>CBIC</i>
Art 9	Joint funding	Luxembourg (par 1)
Art 10	Composition of the cover pool	Denmark , France , Germany , Italy , Poland , Spain , Sweden , UK , <i>CBIC</i>
Art 11	Derivative contracts in the cover pool	Denmark , France , Italy , Luxembourg (par 1, 2a and 2b), Netherlands , Poland and Sweden (par 2b)
Art 12	Segregation of assets in the cover pool	Germany , Ireland , Poland (par 1c)
Art 13	Cover pool monitor	UK , <i>CBIC</i>
Art 14	Investor information	Belgium (par 2 and 2c), Italy (par 2c)
Art 15	Requirements for coverage	Denmark , France , Germany , Ireland (par 1b and 1c), Italy (par 1c(v)), Netherlands (par 1c(iv), 1c(v), 2), Poland (par 1a 1c 1d), Sweden (par 1a)
Art 16	Liquidity buffer	Denmark , France , Italy (par 3), Netherlands (par 3), Spain (par 4), Sweden (par from 2 onwards), <i>CBIC</i>
Art 17	Conditions for extendable maturity structures	Germany (par 1d and 1e), Netherlands , Poland (par 1d), <i>CBIC</i>
Art 18	Covered bond public supervision	Poland
Art 19	Permission for covered bond programmes	Ireland (par 3 and 4)
Art 21	Reporting to the competent authorities	Belgium (par 2), Italy (par 2)
Art 23	Administrative penalties and remedial measures	Ireland
Art 24	Publication of administrative sanctions and remedial measures	Luxembourg (par 1-8)
Art 31	Reviews and Reports	UK , <i>CBIC</i>
Art 32	Transposition	Luxembourg

2) Regulation

Article	Country responding
Art 129 par 1a	Denmark
Art 129 par 1b	Denmark
Art 129 par 1c	Italy
Art 129 par 3a	Denmark , Poland , Sweden , <i>CBIC</i>
Art 129 par 3b	Denmark
Art 129 par 7	Denmark
LCR (Arts 10-11)	Luxembourg
Solvency II	Luxembourg
EMIR	Luxembourg

Detailed Country Replies (ordered alphabetically):

1. Belgium

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
Febelfin	EU-wide	Directive article 14 par 2	"the following minimum portfolio information: (c) details as to risks in relation to interest rates, currency, credit, market and liquidity"	It is not clear what is meant precisely by 'credit' and 'market'. In case of 'credit', we would oppose to anything more than arrears data. Not clear what 'market' means. For 'liquidity', will it be sufficient to provide the results of the 180-day liquidity test?	interpretation issue	serious	more detail required
Febelfin	EU-wide	Directive article 14 par 2	"Member States may also require the information to be provided on a loan-by-loan basis."	We think this sentence needs to be deleted because: (i) this will result in different approaches, e.g. different (national) reporting templates; (ii) it may provide sensitive information to third parties, in particular when most of the institution's portfolio is provided as cover asset; (iii) taking out this sentence will not eliminate the possibility of national regulators to implement it if necessary, but it will become the exception	very difficult to implement on a common basis	serious	deletion

Febelfin	National	Directive article 21 par 2	<p>"The reporting obligations to be laid down pursuant to paragraph 1 shall require the information to be provided at least on the following requirements of the covered bond programme: (a) dual recourse in accordance with Article 4; (b) bankruptcy remoteness of the covered bond in accordance with Article 5; (c) the eligibility of assets and cover pool requirements in accordance with Articles 6 to 11; (d) the segregation of assets in the cover pool in accordance with Article 12; (e) the functioning of the cover pool monitor in accordance with Article 13; (f) the investor information requirements in accordance with Article 14; (g) the coverage requirements in accordance with Article 15; (h) the cover pool liquidity buffer in accordance with Article 16; (i) the conditions for extendable maturity structures in accordance with Article 17."</p>	<p>All elements listed in the second paragraph (except element (h)) make no sense to be reported on a regular basis, as they will be decided on a programme basis for which all information will have been given during the specific covered bond license request.</p>	<p>These elements are part of the regulatory review and do not change over time. Hence it is strange to repeatedly report on them towards investors</p>	low	<p>Should be reported to the Regulator as part of license procedure and regulatory review</p>
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2. France

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
Crédit Foncier	EU-wide	Article 10 of Directive: "Composition of the cover pool"	"Member States shall ensure investor protection by providing for a sufficient level of homogeneity of the assets in the cover pool so that they shall be of a <u>similar nature in terms of structural features, lifetime of assets or risk profile.</u> "	The underlined quotation seems to be a strong amendment of the mixed covered pool as they exist in several European countries. Indeed, residential real estate loans, commercial real estate loans and public-sector exposures do not have similar lifetime nor risk profile.	This amendment is in contradiction with the EBA and European Commission's objective which is reminded on page 4 of the Directive: "A fundamental aim of the approach in this package is to avoid disrupting well-functioning and mature national markets"	serious	"Member States shall ensure investor protection by providing for a sufficient level of homogeneity of the assets in the cover pool." Or/and the definition of the 2016 EBA report: "Homogeneous pools consisting exclusively of one primary asset class (not taking into account asset classes included in the pool as substitution assets) should be preferred in principle. Nevertheless, for mortgage (residential and commercial) loans, mixed pools could be considered; A broad range of claims on/guaranteed by public sector entities are considered as one asset class. "
Caffil		Article 11	Derivatives	We don't understand why, if derivative contracts should be used for hedging purpose only and by consequence if they offer an additional surety for investors of covered bonds, the Members States shall limit the amount of derivative contracts in the cover pool? It seems not logical. More generally, we don't understand why derivative contracts are associated with the cover pool? In fact, we can use derivative contract to hedge interest rate risk or currency risk for assets but also for covered bonds. In France, derivatives contracts used to edge risks on assets and covered bonds benefit from the legal privilege. This point is not taken into account in the Directive.			
Caffil		Article 15	Coverage Ratio	We don't understand the difference / articulation			

				between the subparagraph (a) and (b) of Article 15. Do these two requirements have to be calculated on a nominal basis or 15a) should consider future cash flows? In addition, the requirement of minimum overcollateralization of 5% in the 129 CRR should be apply to the 15b) (my comprehension) or to 15a) or both?			
Caffil		Article 16	Liquidity Buffer	The paragraph 4 is not fully clear. We understand that, if the issuer is concerned by liquidity requirements set out in Union law, Member States may decide that the national rules do not apply the requirement of liquidity buffer throughout the period foreseen in those acts of Union law. What is the intention of the EC on this point? Is it to not count twice the LCR and the liquidity buffer at 180 days? And concerning the NSFR?			

3. Denmark

Overall assessment: It is our assessment that the European Commission has succeeded with a balanced approach to harmonisation and it is important to keep these features in the final framework. In our view it is a good foundation on which to build a European covered bond framework. With the proposal the high quality of covered bonds is maintained by setting requirements for the assets that can collateralise the issued covered bonds. The proposal defines the core elements that characterises covered bonds and preserves the special public supervision of issuers of covered bonds. These requirements will help to provide a high degree of security for investors which is key in providing cheap and stable funding to homeowners and businesses.

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
FIDA	EU-wide	Article 3	[...] (13) 'match funding requirement' means rules requiring that the cash flows between liabilities and assets falling due be matched by ensuring that payments from borrowers be received prior to making payments to covered bond investors and that the amounts received from the borrowers are at least equivalent in value to the payments to be made to the covered bond investors; [...]		This is a clarification of the definition.	serious	[...] (13) 'match funding requirement' means rules requiring that the cash flows between liabilities and assets falling due be matched by ensuring that payments from borrowers be received prior to making payments to covered bond investors and that the amounts received from the borrowers are at least equivalent in value to the payments to be made to the covered bond investors taking payments under derivative contracts into account ; [...]
FIDA	EU-wide	Article 6	1. Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or by other high-quality assets that meet at least the following requirements: (a) either the market value or mortgage lending value of the assets can be determined; (b) a mortgage, charge, lien or other guarantee on the asset is enforceable; (c) all legal requirements for establishing the mortgage, charge, lien or guarantee on the asset have been fulfilled; (d) the mortgage, charge, lien or guarantee securing the asset enable the credit institution issuing covered bonds to realise the value of the asset without undue delay. For the purposes of point (a), Member States shall lay down rules on valuation of assets. For the purposes of point (b), Member States shall lay down rules ensuring the prompt filing and		The use of the word "assets" needs clarification. "Eligible assets" are exposures or loans secured by underlying collateral in form of high quality assets. Basically, the requirements in article 6 apply to the underlying assets.	serious	1. Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or by other high-quality assets in form of exposures or loans secured by underlying assets that meet at least the following requirements: (a) either the market value or mortgage lending value of the underlying assets can be determined; (b) a mortgage, charge, lien or other guarantee on the underlying asset is enforceable; (c) all legal requirements for establishing the mortgage, charge, lien or guarantee on the underlying asset have been fulfilled; (d) the mortgage, charge, lien or guarantee securing the asset enable the credit institution issuing covered bonds to realise the value of the underlying asset without undue delay. For the purposes of point (a), Member States shall lay down rules on valuation of underlying assets. For the purposes of point (b), Member States shall lay down rules ensuring the prompt filing and registration of mortgages, charges, liens or guarantee on the underlying assets in the cover pool .

			<p>registration of mortgages, charges, liens or guarantee on assets in the cover pool.</p> <p>For the purposes of points (b) and (d), Member States shall ensure that credit institutions issuing covered bonds assess the enforceability of assets before including such assets in the cover pool.</p> <p>2. Member States shall ensure investor protection by requiring that credit institutions issuing covered bonds have in place procedures to monitor that the assets used as collateral are adequately insured against the risk of damage.</p> <p>3. For the purposes of paragraphs 1 and 2, Member States shall require credit institutions issuing covered bonds to document the assets used as collateral and their lending policies regarding their compliance with those paragraphs.</p>			<p>For the purposes of points (b) and (d), Member States shall ensure that credit institutions issuing covered bonds assess the enforceability of the underlying assets before including such assets in the cover pool.</p> <p>2. Member States shall ensure investor protection by requiring that credit institutions issuing covered bonds have in place procedures to monitor that the underlying assets used as collateral are adequately insured against the risk of damage.</p> <p>3. For the purposes of paragraphs 1 and 2, Member States shall require credit institutions issuing covered bonds to document the assets used as collateral and their lending policies regarding their compliance with those paragraphs.</p>
FIDA	EU-wide	Article 8	<p>Member States may lay down rules regarding the use, by way of an intragroup transaction, of covered bonds issued by a credit institution belonging to a group ('internally issued covered bonds') as collateral for the external issue of covered bonds by another credit institution 'belonging to the same group' ('externally issued covered bonds'). Member States shall ensure investor protection by including at least the following requirements in those rules:</p> <p>(a) the internally issued covered bonds, which are used as collateral for the externally issued covered bonds, are recorded on the balance sheet of the credit institution which issues the externally issued covered bonds;</p> <p>(b) the credit institution issuing the externally issued covered bond has a claim on the credit institution issuing the internally issued covered bonds, which is secured by the internally issued covered bonds;</p> <p>(c) the externally issued covered bonds are sold to covered bond investors outside the group;</p> <p>(d) both the internally and the externally issued covered bonds qualify for credit quality step 1 as referred to in Part Three, Title II, Chapter 2 of</p>	Article 8 sets the legal requirements for intragroup joint funding. Setting a credit quality requirement on the covered bonds would give an unwanted rating volatility which should be avoided.	serious	<p>Member States may lay down rules regarding the use, by way of an intragroup transaction, of covered bonds issued by a credit institution belonging to a group ('internally issued covered bonds') as collateral for the external issue of covered bonds by another credit institution 'belonging to the same group' ('externally issued covered bonds'). Member States shall ensure investor protection by including at least the following requirements in those rules:</p> <p>(a) the internally issued covered bonds, which are used as collateral for the externally issued covered bonds, are recorded on the balance sheet of the credit institution which issues the externally issued covered bonds;</p> <p>(b) the credit institution issuing the externally issued covered bond has a claim on the credit institution issuing the internally issued covered bonds, which is secured by the internally issued covered bonds;</p> <p>(c) the externally issued covered bonds are sold offered to covered bond investors outside the group;</p> <p>(d) both the internally and the 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 and are collateralised by residential or commercial property mortgages.</p>

			Regulation (EU) No 575/2013 and are collateralised by residential or commercial property mortgages.				
FIDA	EU-wide	Article 10	Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile.		The use of the word “assets” needs clarification. “Assets” are exposures or loans secured by underlying collateral in form of high quality assets. When it comes to “lifetime” this essentially only makes sense when it comes to the underlying assets.	serious	Member States shall ensure investor protection by 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 structural features, lifetime of underlying assets or risk profile.
FIDA	EU-wide	Article 11	<p>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:</p> <p>(a) the derivative contracts are included in the cover pool exclusively for risk hedging purposes;</p> <p>(b) the derivative contracts are sufficiently documented;</p> <p>(c) the derivative contracts are segregated in accordance with Article 12;</p> <p>(d) the derivative contracts cannot be terminated upon the insolvency or resolution of the credit institution issuing covered bonds;</p> <p>(e) the derivative contracts comply with the rules laid down in accordance with paragraph 2.</p> <p>2. For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least:</p> <p>(a) the eligibility criteria for the hedging counterparties;</p> <p>(b) the limits on the amount of derivative contracts in the cover pool;</p> <p>(c) the necessary documentation to be provided in relation to derivative contracts.</p>		The use of derivatives should not be limited as this would mean that it will not always be possible to mitigate all risk on the covered bonds. This will affect the prices on the issued covered bonds and hence the interest rates of borrowers.		<p>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:</p> <p>(a) the derivative contracts are included in the cover pool exclusively for risk hedging purposes;</p> <p>(b) the derivative contracts are sufficiently documented;</p> <p>(c) the derivative contracts are segregated in accordance with Article 12;</p> <p>(d) the derivative contracts cannot be terminated upon the insolvency or resolution of the credit institution issuing covered bonds;</p> <p>(e) the derivative contracts comply with the rules laid down in accordance with paragraph 2.</p> <p>2. For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least:</p> <p>(a) the eligibility criteria for the hedging counterparties;</p> <p>(b) the limits on the amount of derivative contracts in the cover pool;</p> <p>(c) the necessary documentation to be provided in relation to derivative contracts.</p>
FIDA	EU-wide	Article 15			[Revert with comments]		
FIDA	EU-wide	Article 16	<p>[...]</p> <p>3. Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets:</p> <p>(a) assets qualifying as level 1, level 2A and level 2B assets pursuant to Articles 10, 11 and 12 of</p>		Correction to keep consistency with CRR 129.	serious	<p>[...]</p> <p>3. Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets:</p> <p>(a) assets qualifying as level 1, level 2A and level 2B assets pursuant to Articles 10, 11 and 12 of Delegated Regulation (EU) 2015/61, valued in accordance with Article 9 of</p>

			<p>Delegated Regulation (EU) 2015/61, valued in accordance with Article 9 of that Delegated Regulation and segregated in accordance with Article 13 of this Directive;</p> <p>(b) exposures to credit institutions that qualify for the credit quality step 1, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.</p> <p>For the purposes of point (b) of the first subparagraph, Member States shall ensure that uncollateralised claims from defaulted exposures in accordance with Article 178 of Regulation (EU) No 575/2013 cannot contribute to the cover pool liquidity buffer. [...]</p>			<p>that Delegated Regulation and segregated in accordance with Article 13 of this Directive;</p> <p>(b) exposures to credit institutions that qualify for the credit quality step 1 or 2, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.</p> <p>For the purposes of point (b) of the first subparagraph, Member States shall ensure that uncollateralised claims from defaulted exposures in accordance with Article 178 of Regulation (EU) No 575/2013 cannot contribute to the cover pool liquidity buffer. [...]</p>
FIDA	EU-wide	CRR 129 1a	<p>"1a. For the purposes of point (c) of the first subparagraph of paragraph 1, the following shall apply:</p> <p>(a) for exposures to credit institutions that qualify for the credit quality step 1 the exposure shall not exceed 15 % of the nominal amount of outstanding covered bonds of the issuing credit institution;</p> <p>(b) for exposures to credit institutions that qualify for the credit quality step 2 the exposure shall not exceed 10 % of the total exposure of the nominal amount of outstanding covered bonds of the issuing credit institution;</p> <p>(c) the total exposure to credit institutions that qualify for the credit quality step 1 or the credit quality step 2 shall not exceed 15 % of the total exposure of the nominal amount of outstanding covered bonds of the issuing credit institution.</p> <p>This paragraph shall not apply to the use of covered bonds as eligible collateral as permitted pursuant to Article 9 of Directive (EU) 20xx/xxxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU]."</p>	Correction of reference to article 8 in the covered bond directive. In the recital 7 the same correction is needed.	serious	<p>"1a. For the purposes of point (c) of the first subparagraph of paragraph 1, the following shall apply:</p> <p>(a) for exposures to credit institutions that qualify for the credit quality step 1 the exposure shall not exceed 15 % of the nominal amount of outstanding covered bonds of the issuing credit institution;</p> <p>(b) for exposures to credit institutions that qualify for the credit quality step 2 the exposure shall not exceed 10 % of the total exposure of the nominal amount of outstanding covered bonds of the issuing credit institution;</p> <p>(c) the total exposure to credit institutions that qualify for the credit quality step 1 or the credit quality step 2 shall not exceed 15 % of the total exposure of the nominal amount of outstanding covered bonds of the issuing credit institution.</p> <p>This paragraph shall not apply to the use of covered bonds as eligible collateral as permitted pursuant to Article 9 of Directive (EU) 20xx/xxxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU]."</p>

FIDA	EU-wide	CRR 129 1b	"1b. For the purposes of point (d)(i) of the first subparagraph of paragraph 1, the limit of 80 % shall refer to the portion of the loan contributing to the coverage of liabilities attached to the covered bond and be applicable throughout the entire maturity of the loan."		Correction of missing reference to article 129 (1) (e).	serious	"1b. For the purposes of point (d)(i) and (e) of the first subparagraph of paragraph 1, the limit of 80 % shall refer to the portion of the loan contributing to the coverage of liabilities attached to the covered bond and be applicable throughout the entire maturity of the loan."
FIDA	EU-wide	CRR 129 3b			[Revert with comments on the interaction between CRR 129 (1b), (1c) and (3a)]		
FIDA	EU-wide	CRR 129 3b	"3b. Eligible assets referred to in paragraph 1 may be included in the cover pool as substitution assets as defined in Article 3(11) of Directive (EU) 20xx/xxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU] for the primary assets as defined in Article 3(10) of that Directive, subject to the limits on credit quality and exposure size as set out in paragraph 1 of this Article.";		The use of Covered bonds as substitution assets should not be subject to limits as covered bonds are an assets class of high quality.	serious	"3b. Eligible asset referred to in paragraph 1 may be included in the cover pool as substitution assets as defined in Article 3(11) of Directive (EU) 20xx/xxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU] for the primary assets as defined in Article 3(10) of that Directive, subject to the limits on credit quality and exposure size as set out in paragraph 1 of this Article. Covered bonds used as substitution assets are not subject to the limits on exposure size ";
FIDA	EU-wide	CRR 129 7	"7. Covered bonds issued before [OP please insert the date of application of this amending Regulation] shall not be subject to the requirements of paragraphs 3a and 3b. They shall be eligible for the preferential treatment under paragraphs 4 and 5 until their maturity."		All existing CRR-compliant covered bonds should remain eligible for preferential treatment.	serious	"7. Covered bonds issued before [OP please insert the date of application of this amending Regulation] shall not be subject to the requirements of paragraphs 3a and 3b or changes made to paragraphs 1 and 3 and article 496 applicable from [OP please insert the date of application of this amending Regulation] . They shall be eligible for the preferential treatment under paragraphs 4 and 5 until their maturity."

4. Germany

Overall assessment: The proposal appears consistent, well structured, substantial and principles-based, meeting our expectations. It addresses all important aspects which are necessary to create a sound legal European covered bond framework, while leaving enough room to specificities and traditions of national covered bond regimes. Covered bond public supervision is strengthened, allocating supervision and licensing to the competent national authorities. This represents an added value of the proposal.

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
vdp	EU-wide	Article 6	Eligible assets - Eligibility of public sector lending	Reference to Art. 129 CRR only covers public sector lending eligible for preferential treatment à too narrow		serious	A specific par. should be dedicated to public sector lending. It should be made clear that the requirements a) to d) don't apply to public assets
vdp	EU-wide	Article 6	Eligible assets - Definition of high quality assets	High quality assets are not defined. Missing definition impacts on the quality of cover pools		serious	Introduction of qualitative criteria to narrow down eligible assets. Collateral eligibility should be confined to movable and immovable goods
vdp	national	Article 10	Composition of cover pools - General & unspecified criteria	Too much room for divergent transpositions, unconvincing criteria		moderate	Deletion. Investors have access to extensive disclosures on the composition of cover pools
vdp	EU-wide	Article 12	Asset segregation - Segregation trigger is unclear	Asset segregation seems to be required at all times. However, segregation only occurs in the moment of default		serious	It must be made clear that segregation occurs only in case of insolvency. During going concern, registration of assets in the cover register shall be sufficient
vdp	national	Article 15	Requirements for coverage - Correlation between operational cost and OC, definition of accrued interest	Operational cost is supposed to be covered by OC, accrued interests cannot be calculated numerically		serious	
vdp	EU-wide	Art. 17 par. 1 lit.(d)	Extendable maturity structures - No definition of maturity extension trigger provided. Exclusion of discretionary powers are not confined	Missing definition leads to legal uncertainties. Exclusion of discretion must be confined to the pre-insolvency period. After insolvency, discretion is necessary		serious	Definition of maturity extension triggers. Exclusion of discretion restricted to the going concern status, i.e. trigger event requires default of the issuing institution
vdp	EU-wide	Art. 17 par. 1 lit.(e)	Extendable maturity structures - Unclear meaning of 'ranking'	The area of reference of 'ranking' is important. Ranking shall refer to the ranking of covered bonds in the insolvency proceedings and not to the issue of timely subordination		serious	

5. Ireland

Overall there are few surprises and a good level of principles based approach where national authorities can work within the parameters set by the Directive. It is positive to see tangible progress being made by the Commission on providing clarity and harmonisation of the European Covered Bond product while maintaining the existing efficient functioning national systems already in place. In addition, it is encouraging to see that the proposed directive is looking to legislate for a number of elements that the Irish legislation already encompasses or that Irish issuers already provide, as part of their on-going operations outside Irish legislative requirements e.g. transparency, cover pool monitor etc.

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
BPFI		Article 19	par. 3 and 4	passage appears to highlight the ability for Covered Bond programmes to be established and bonds issued under both the SBP and the UBP – confirmation of this is requested.			
BPFI		Article 15	Overcollateralisation	The directive makes clear the focus will remain on nominal OC limits. We believe harmonisation on a nominal OC standard is less optimal than a prudent market value approach;			
BPFI		Article 15	par 1b and 1c - Treatment of derivatives in OC	we had indicated previously in feedback to ECBC that inclusion of derivatives in coverage calculations would be unwelcome, given potential volatility in valuations. However, it has been included in the Directive. We believe including derivative collateral towards OC requirements is flawed. This collateral is not for the benefit of bondholders, but derivative counterparts, is maintained on a separate register, and has the potential to introduce volatility to the OC number, all else being equal.		serious	
BPFI		Article 12	Derivative Collateral			serious	
BPFI		Article 15	par 1c	Operational cost is supposed to be included in coverage calculations		serious	
BPFI		Art 23		Very strong and detailed focus on penalties including that Member States ensure that fines and penalties can apply to members of the management body and other individuals responsible for breaches under national law		moderate	

6. Italy

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
ABI	EU-wide	Directive Art 6 – Eligible assets	Art 6 (1) “Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or by other high-quality assets that meet at least the following requirements: (a) either the market value or mortgage lending value of the assets can be determined; (b) a mortgage, charge, lien or other guarantee on the asset is enforceable; (c) all legal requirements for establishing the mortgage, charge, lien or guarantee on the asset have been fulfilled; (d) the mortgage, charge, lien or guarantee securing the asset enable the credit institution issuing covered bonds to realise the value of the asset without undue delay.”	Covered bonds could be collateralised by high quality assets different from those referred to in Art 129(1) CRR points (a) to (g). It’s not clear if a new regulation for European Secured Notes (ESNs) will be proposed.	Due to the broad scope of article 6 and the room for interpretation in the wording of recital 15, as well as the legislative provision indicating the high qualitative features, we would propose to reconsider the introduction of the “European Secured notes” concept, which would prevent a watering down of the qualitative scope of the covered bond label and also at the same time be fully aligned with the proposal of the Own initiative report of the European Parliament. At the same time, it is necessary to recognise in the Regulation a preferential prudential treatment for ESNs, different from the treatment recognised to covered bond.	Serious risk	Art. 6 - bis “1. Member States may allow credit institutions issuing debt instruments covered by different assets than those required for covered bonds, labelled “European Secured Notes” (ESNs). 2. EBA lays down the minimum requirements that ESNs covered assets have to meet. 3. The Regulation (EU) 575/2013 allows for a preferential treatment of ESNs.”
ABI	EU-wide	Directive Art 8 – Intergroup pooled covered bond structures	Art. 8 (1) (d) “Member States shall ensure investor protection by including at least the following requirements in those rules: (d) both the internally and the 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 and are collateralised by residential or commercial property mortgages”.	Both the internally and the externally issued covered bonds have to qualify for credit quality step 1 and have to be collateralised by residential or commercial property mortgages.	Intragroup pooled structures should favour banking group funding through covered bonds. Requirements on credit quality of internally and externally covered bonds limit banking group possibility of using the intergroup pooled covered bond structures. However, it is necessary to ensure banking groups can use multi-origination schemes (e.g. covered bonds collateralised by assets originated by different banks within the group), in order to issue covered bonds.	Serious risk	Art 8 (1) (d) “Member States shall ensure investor protection by including at least the following requirements in those rules: (d) both the internally and the 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 and are collateralised by residential or commercial property mortgages”
ABI	EU and national wide	Directive Art 10 – Composition of the cover pool	Art. 10 “Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile”		It is necessary to confirm the possibility to issue covered bonds collateralised by residential and commercial mortgage loans. Moreover, it is needed to clarify the concept of homogeneity in terms of lifetime, as covered assets can be represented by mortgages with different maturities, ranging from 5 to 30 years.	Serious risk	Art. 10 “Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile.”
ABI	EU and national wide	Directive Art 11 – Derivative contracts in	Art. 11 Directive “Member States shall lay down rules for cover pool derivative contracts including at least: (a) the eligibility criteria for the hedging counterparties;	The covered bond framework should specify counterparty eligibility criteria, limits on the amount of derivative contracts in the pool, necessary documentation on derivative contracts.	Derivative contracts should not be included in the covered pool. The EMIR Regulation should be modified, in order to provide that derivative contracts	Serious risk	<u>Primary proposal:</u> Deletion of art. 11 (derivative contracts are not included in the covered pool)

		the cover pool + Regulation art 129 (c) Art 129 (c) Regulation "(c) exposures to credit institutions that qualify for the credit quality step 1 or credit quality step 2 as set out in this Chapter"	The Regulation provides the requirements for the preferential treatment. Covered bonds can be collateralised by exposures to credit institutions that qualify for the credit quality step 1 or credit quality step 2.	relative to covered bond issues can be guaranteed by Central Counterpart. Otherwise, it is necessary to provide that derivative counterparties can qualify also for the credit quality "step 3". A different provision would restrict the derivative contracts to a very limited number of eligible counterparties, paving the way for an unwarranted and unnecessary systemic risk and increasing the all-in cost of the programmes.		<u>Alternative proposal:</u> Art 129 (c) Regulation "(c) exposures to credit institutions that qualify for the credit quality step 1, or credit quality step 2 or credit quality step 3 as set out in this Chapter"
ABI	EU and national wide	Directive Art. 14 – Investor information	Art. 14 Directive “(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: (c) details as to risks in relation to interest rates, currency, credit, market and liquidity; Member States may also require the information to be provided on a loan-by-loan basis.”	Member States shall ensure the information provided to investors is done so on a quarterly basis and includes information on interest rate, currency, credit, market and liquidity risk. Moreover, all the information required by art. 14 of the directive can be provided on loan by loan basis.	It is necessary to eliminate the provision regarding the possibility that Member States can require loan by loan information. Loan by loan information do not add any value for investors in the covered bond contest considering that these securities are collateralised by homogeneous assets which facilitate a fair risk assessment by investors. Besides, the investors’ assessment of covered bonds is primarily based on the creditworthiness of the issuer, as these securities are characterised by their dual recourse nature. On the other hand, this piece of information increases operations costs. Moreover, it is necessary specify that information on credit, market and liquidity risks is qualitative.	Serious risk	Art. 14 Directive “(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: (c) qualitative details as to risks in relation to interest rates, currency, credit, market and liquidity; Member States may also require the information to be provided on a loan-by-loan basis.”
ABI	EU wide	Directive Art. 15 – Requirements for coverage	Art. 15 Directive “Member State shall ensure investor protection by requiring covered bond programmes to comply at all times with at least the following coverage requirements: (v) statutory overcollateralisation; ...”	Statutory overcollateralisation is part of nominal coverage.	Assets relative to overcollateralisation are not different from normal eligible assets. For this reason, overcollateralization should not be included among the coverage assets considered in art. 15.	Serious risk	Art. 15 - Directive “Member State shall ensure investor protection by requiring covered bond programmes to comply at all times with at least the following coverage requirements: (iv) derivative contracts held in accordance with Article 11; (v) statutory overcollateralisation; ...”

ABI	EU and national wide	Directive Art. 16 – Requirement for a cover pool liquidity buffer	<p>Art. 16 Directive</p> <p>“(3) Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets:</p> <p>(a) assets qualifying as level 1, level 2A and level 2B assets pursuant to Articles 10, 11 and 12 of Delegated Regulation (EU) 2015/61, valued in accordance with Article 9 of that Delegated Regulation and segregated in accordance with Article 13 of this Directive;</p> <p>(b) exposures to credit institutions that qualify for the credit quality step 1, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.”</p> <p>”.</p>	<p>Liquidity buffers covers the net liquidity outflows of the covered bond programme over the next 180 days. Liquid assets are Level 1, 2A assets and Level 2B as well as exposures to credit institutions qualifying “step 1”</p>	<p>As all European banks are subject to liquidity requirements according to the paragraph 4 of art. 16, liquidity buffer should not be required in all jurisdictions, beyond Member State’s decisions. This would guarantee a better harmonisation of covered bond structures across Europe.</p> <p>If it is not possible to follow this proposal, banks should be allowed to use for the liquidity buffer purpose assets which are not CRR liquidity requirement eligible.</p> <p>Otherwise, it is necessary to allow that exposure to all credit institutions can be eligible for liquidity buffer purposes.</p>	Serious risk	<p><u>Primary proposal:</u> Deletion of art. 16 (liquidity buffer is not required)</p> <p><u>Alternative proposal:</u> Art. 16 Directive “(3) Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets:</p> <p>(a)....</p> <p>(b) exposures to credit institutions that qualify for the credit quality step 1, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.”</p>
ABI	National	Directive Art. 21 – Reporting to the competent authorities	<p>Art. 21 Directive</p> <p>“... 2. The reporting obligations to be laid down pursuant to paragraph 1 shall require the information to be provided at least on the following requirements of the covered bond programme:</p> <p>(a) dual recourse in accordance with Article 4;</p> <p>(b) bankruptcy remoteness of the covered bond in accordance with Article 5;</p> <p>(c) the eligibility of assets and cover pool requirements in accordance with Articles 6 to 11;</p> <p>(d) the segregation of assets in the cover pool in accordance with Article 12;</p> <p>(e) the functioning of the cover pool monitoring in accordance with Article 13;</p> <p>(f) the investor information requirements in accordance with Article 14;</p> <p>(g) the coverage requirements in accordance with Article 15;</p> <p>(h) the cover pool liquidity buffer in accordance with Article 16;</p> <p>(i) the conditions for extendable maturity structures in accordance with Article 17.</p> <p>3. Member States shall provide for rules on the reporting on the requirements set out in paragraph 2 by the credit institutions issuing covered bonds to the competent authority designated pursuant to Article 18(2) in the event of insolvency or resolution of a credit institution issuing covered bonds”.</p>	<p>Covered bond issuers must report information on covered bond programmes to their competent authorities (c.f. Art 18(d)), including information on dual recourse, bankruptcy remoteness eligibility of assets, segregation of assets, the functioning of the cover pool monitor, the investor information, coverage requirements, the liquidity buffer and conditions for extendable maturity structures</p>	<p>In Italy, most of information requested are already provided by the cover pool monitor. It is necessary to avoid a duplication of reporting activities.</p>	Moderate risk	

7. Luxembourg

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
ABBL	National	Article 6 of the Directive	1. Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or by other high-quality assets that meet at least the following requirements:	As stated under Point 15 in the recital clause, also public undertakings as defined in Article 2(b) of Commission Directive 2006/111/EC should be considered eligible to serve as collateral in the cover pool	Explicitly stated in the recital clause	serious risk	1. Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or loans to public undertakings as defined in article 2(b) of Commission Directive 2006/111/EC or by other high-quality assets that meet at least the following requirements:
ABBL	National	Article 6 of the Directive	(a) either the market value or mortgage lending value of the assets can be determined;	For asset classes (e.g. renewable energy), where a market value cannot be observed, the mortgage lending value has to be determined. So far, the wording of mortgage lending value is used in connection with assets where a prompt filing and registration of mortgages, charges, liens or guarantee on assets in the pool is required. For cases where this is not legally required (see next point), the lending value should also be calculable on an estimated realisation value without the necessity of using the multi pillar valuation model.	In most of the mortgage lending value concepts, the income value is used, beside the property value and the market value, to determine the final mortgage value. These expected income streams form also the basis for the calculation of an estimated realisation value, which includes, like in the calculation of the income value and the property value, certain risk buffers/risk deductions.	serious risk	(a) either the market value, the mortgage lending value or another suitable value based on international valuation standards of the assets can be determined;
ABBL	National	Article 6 of the Directive	For the purposes of point (b), Member States shall lay down rules ensuring the prompt filing and registration of mortgages, charges, liens or guarantee on assets in the cover pool.	With regard to assets where there is no legal requirement for a public register for the relevant mortgages, charges, liens or guarantee independent, written and reasoned legal opinions should be sufficient to confirm the legal effectiveness of such rights and their enforceability against third parties and in all relevant jurisdictions.	There are assets, where no public registration is required to secure the enforceability. For these cases independent, written and reasoned legal opinions are sufficient to confirm the legal effectiveness.	serious risk	For the purposes of point (b), Member States shall lay down rules ensuring the prompt filing and registration of mortgages, charges, liens or guarantee on assets in the cover pool. Where there is no legal requirement for a public register for the relevant mortgages, charges, liens or guarantee on assets in the cover pool independent, written and reasoned legal opinions have to confirm the legal effectiveness of such rights and their enforceability against third parties and in all relevant jurisdictions.
ABBL	EU-wide	Article 7 of the Directive	2. Where Member States allow for the inclusion referred to in paragraph 1, they shall ensure investor protection by verifying whether the assets located outside of the Union meet all the requirements set out in Article 6 and that the realisation of such assets is legally enforceable in a way similar to assets located within the Union.	Although the issued covered bonds are grandfathered (see article 30 - Transitional measures), this is - so far, not the case for assets in the cover pool itself. As some cover pools contain also assets outside the European Union where there is an uncertainty if the assets are legally enforceable in a way similar to assets within the Union, these assets which are in the cover pool before the date laid down in the second subparagraph of Article 32(1) of this Directive +1 day should be exempt from the requirements of Article 7 2 until their maturity date.	Assets outside the European Union form part of some cover pools in some European jurisdiction. Although the legal enforceability in a way similar to assets located within the Union is already preferred, there are some assets where there is an uncertainty on the legal enforceability in a way similar to assets within the Union. This is (sometimes limited by the amount of assets) accepted. To avoid unnecessary disruptions for those cover pools and the corresponding covered bonds, an exemption of the requirements for those assets which are already in the pool should be acceptable.	moderate	2. Where Member States allow for the inclusion referred to in paragraph 1, they shall ensure investor protection by verifying whether the assets located outside of the Union meet all the requirements set out in Article 6 and that the realisation of such assets is legally enforceable in a way similar to assets located within the Union. Assets outside the Union which are in the cover pool before the date laid down in the second subparagraph of Article 32(1) of this Directive +1 day should be exempt from the requirements of Article 7 2 until their maturity date.

ABBL	EU-wide	Article 8 (d) of the Directive	(d) both the internally and the 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 and are collateralised by residential or commercial property mortgages.	Intragroup pooled covered bond structures should be allowed not only for covered bonds collateralised by residential or commercial property mortgages but for all eligible Assets in accordance Article 6 of the directive. The restriction on the covered bonds qualifying for credit quality step 1 is too tight. Also, credit quality step 2 should be allowed.	Discrimination of eligible assets based on Article 6 other than residential or commercial property mortgages should be avoided. Credit quality Step 2 covered bonds still represent a high quality. The use of intragroup pooled covered bonds structures (and the underlying assets) vs the direct use of the underlying assets should not be overly penalized as there is no rating requirement in the directive for the directly used assets in a cover pool.	moderate	(d) both the internally and the externally issued covered bonds qualify for credit quality step 1 or 2 as referred to in Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 and are collateralised by assets in accordance with Article 6 of this Directive.
ABBL	EU-wide	Article 9-1 of the Directive	1. Subject to the provisions in paragraph 2, Member States shall allow the use of loans collateralised by residential or commercial property mortgages, charges, liens or other comparable security rights granted by a credit institution as assets in the cover pool for the issue of covered bonds by another credit institution.	Joint funding should be allowed not only for the use of loans collateralised by residential or commercial property mortgages, charges. Liens or other comparable security rights but for all eligible assets based in accordance with Article 6 of this directive.	Discrimination of eligible assets based on Article 6 other than residential or commercial property mortgages should be avoided.	moderate	1. Subject to the provisions in paragraph 2, Member States shall allow the use of loans collateralised by assets in accordance with Article 6 of this Directive granted by a credit institution as assets in the cover pool for the issue of covered bonds by another credit institution.
ABBL	EU-wide	Article 11 1 e and 2 (a-b)	2. For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least: (a) the eligibility criteria for the hedging counterparties; (b) the limits on the amount of derivative contracts in the cover pool;	Derivative contracts which were completed before the date laid down in the second subparagraph of Article 32(1) of this Directive + 1day should be exempt from the requirements of Article 11 1e und 11 2 a-b until their maturity.	To support the stability of the cover pool, derivate contracts used for hedging purposes in the cover pool, it is justified that they are exempt from the mentioned requirements. This is especially the case for non CRR-compliant cover pools where an issuer can only hedge with a counterpart within the same-group to be exempt from central-clearing - Cover Pools are not allowed to post collateral.	moderate	2. For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least: (a) the eligibility criteria for the hedging counterparties; (b) the limits on the amount of derivative contracts in the cover pool; Derivative contracts which were completed before the date laid down in the second subparagraph of Article 32(1) of this Directive + 1day should be exempt from the requirements of Article 11 1e und 11 2 a-b until their maturity.
ABBL	EU-wide	Article 24 1-8 of Directive	Article 24 Publication of administrative sanctions and remedial measures 1. Member States shall ensure that the provisions transposing this Directive include rules requiring that administrative sanctions and remedial measures be published without undue delay on the official website of the competent authorities designated pursuant to Article 18(2).....8. Member States shall ensure that any publication referred to in paragraphs 2 to 6 remains on the official website of the competent authority designated pursuant to Article 18(2) for at least five years after its publication. Personal data contained in the publication shall only be kept on the official website for the period which is necessary and in accordance with the applicable personal data protection rules.	Publication on the type and nature of the breach incl. the identity on whom the penalty is imposed to is not appropriate and bears a high reputational risk for the issuer even in the case of an immaterial breach. Even a publication on an anonymous basis is not appropriate esp. in countries with a small amount of issuers.	Prohibit the unjustified creation of a reputational risk for an issuer	moderate	Delete Article 24 1-8

ABBL	EU-wide	Article 32 of the Directive	1. Member States shall adopt and publish, by [to be inserted – entry into force + 1 year] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	Transposition period of 1 year should be extended.	The implementation of some articles into local law needs time for extended analysis and the following conversion. In addition, the forming of opinion on some articles is needed to implement proper rules on a comparable basis within Europe (e.g. Investor Information, conditions for extendable maturity structures)	serious risk	1. Member States shall adopt and publish, by [to be inserted – entry into force + 2 years] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
ABBL	EU-wide	Article 27 of the Directive	Member States shall allow credit institutions to use the label European Covered Bonds in respect of covered bonds which meet the requirements laid down in the provisions transposing this Directive.	As stated in the directive, the label will be "granted" as long as the provisions of this directive are met. As there are some stakeholders prefer to grant the label if the provisions of the CRR have to be fulfilled in addition to the directive, this has to be circumvented.	The compliance with the provisions of the directive should be sufficient to get the European Covered Bond Label as this directive replaces Article 52(4) of Directive 2009/65/EC. Requiring the compliance with provisions of the CRR to get the label undermines the sense and the value of the Directive.	moderate	Unchanged Wording: Member States shall allow credit institutions to use the label European Covered Bonds in respect of covered bonds which meet the requirements laid down in the provisions transposing this Directive.
ABBL	EU-wide	LCR	Articles 10+11 of the LCR Regulation (2015/61)	Articles 10+11 of the LCR Regulation (2015/61) explain the requirements for Covered Bonds to be eligible as liquid assets for the liquidity coverage requirements. It should be clarified that covered bonds based on the new directive + maintenance of current rating requirements is sufficient to be eligible. The mix up with the lower risk weighting which is only granted for covered bonds if they are CRR compliant should be dispelled.	Fulfilling the provisions of the new covered bond directive and the maintenance of current rating requirements should be sufficient to be treated as an eligible asset for the liquidity coverage requirements as only high-quality assets in accordance with Article 6 are allowed as cover of the covered bonds. In addition, a preferential treatment itself is not a satisfying argument for being a liquid asset or not.	serious risk	Changing the reference to article 129(4) in the way that only the credit steps are applicable and not the risk weights.
ABBL	EU-wide	Solvency II	Solvency II Rules on capital charges	As currently the UCITS compliance + Step 1 rating is required to adopt a lower capital charge; UCITS should replace be the new Covered Bond Directive	Intension to replace the UCITS 52(4) with the new Covered Bond Directive	low risk	Change of the corresponding links in the Solvency II Directive
ABBL	EU-wide	EMIR	European Market Infrastructure Regulation (Commission Delegate Regulation (EU) 2016/551) Article 30 No requirement to post collateral for derivatives in a cover pool if certain conditions are met: f.) the covered bond to which the OTC derivative contract is associated meets the requirements of paragraphs (1), (2) and (3) of Article 129 of Regulation (EU) No 575/2013	Variation margin and initial margin is not posted by the covered bond issuer or cover pool if certain requirements are fulfilled. One requirement is that the covered bond to which the OTC derivatives contracts are associated to meets the requirements of par. 1-3 of Article 129 CRR. With the new Covered Bond Directive which defines a covered bond very detailed, the new Directive should be the reference for Article 30 rather than the CRR.	The new Covered Bond Directive is an appropriate reference for Article 30 in relation to the treatment of derivatives associated to covered bonds for hedging purposes. When EMIR was implemented, there was only the UCITS 52(4) which explains a covered bond on a high level. This was the reason to additional requirements to Article 30. With the new Directive, a harmonized definition is available and can be used.	low risk	Change of Article 30 in referring to the new Covered Bond Directive.

8. Netherlands

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
DACB	EU-wide	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:	Dutch issuers interpret the first sentence of this Article as follows: the different jurisdictions are allowed to exclude derivative contracts from the cover pool (eg. for OC calculation purposes etc.). If this is the correct interpretation than there are no comments from the Dutch issuers.		Moderate	
DACB	National	Article 15 – Requirements for coverage	15-1 (iv) derivative contracts held in accordance with Article 11;	Dutch issuers ignore the derivatives contracts in their coverage calculations, they will continue to do so since no derivative contract are held in accordance with Article 11.		Low	
DACB	EU-wide	Article 15 – Requirements for coverage	15-1 (v) statutory overcollateralisation;	In our opinion statutory overcollateralization is not an asset, it is a (minimum) measure of the extent by which a cover pool should be overcollateralised.		Serious	
DACB	National	Article 15 – Requirements for coverage	15-2 Member States shall ensure that the calculation of coverage and the calculation of liabilities is based on the same methodology	Dutch issuers base their coverage calculations on the notional amounts for the primary cover assets (Dutch residential mortgages) as well as for the outstanding covered bonds. However, when issuers also include liquid (substitution) assets in their cover pool than these assets have to value at their market value. Dutch issuers therefore propose to adjust the text to reflect this.		Serious	Change test so that liquid assets are exempt from this obligation
DACB	EU-wide	Article 16	16-3 Member States shall ensure that the cover pool liquidity buffer referred to in paragraph 1 consists of the following types of assets: (b) exposures to credit institutions that qualify for the credit quality step 1, in accordance with Article 129(1)(c) of Regulation (EU) No 575/2013.	Exposure to credit institutions are limited to credit quality step 1 only, we feel that – under certain circumstances – exposure to credit quality step 2 credit institutions should continue to be possible.		Moderate	
DACB	EU-wide	Article 17	Article 17 – Conditions for extendable maturity structures (c) the information provided to the investor about the maturity structure is sufficient to enable them to determine the risk of the covered bond, and includes a detailed description of: (ii) the consequences for the maturity extensions in the case of insolvency or resolution of the credit institution issuing covered bonds;	Paragraph (c) (ii) could cause confusion, since this could be interpreted as the obligation to provide information to investors on what the impact of a maturity extension would have on the bail-in process / resolution		Serious	We suggest changing this text into: <i>(ii) the consequences of the maturity extensions.</i>

9. Poland

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
PKO Bank Hipoteczny S.A.	EU-wide	Art. 3 of the Directive	Credit institution' means credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013	"Credit institution" – as for credit institutions only purchasing portfolios the phrase "to grant credits for its own account" should be changed in such a way to include also credit institutions, which purchase loans.	Definition of "credit institution" is referenced to point 1 of the Art. 4(1) of CRR which may lead to lack of possibility to issue covered bonds by the banks which based their business model only on purchasing of receivables (pooling)	low risk	
PKO Bank Hipoteczny S.A.	EU-wide	Art. 3 of the Directive	„Covered bond” means a debt obligation issued by a credit institution and secured by cover pool, of which the covered bonds investors can directly satisfy their claims as preferred creditors	Issuers of covered bonds	Clear confirmation that covered bonds can be issued by specialized mortgage credit institution	low risk	„covered bond” means a debt obligation issued by a credit institution or a specialized mortgage credit institution and secured by cover pool, of which the covered bonds investors can directly satisfy their claims as preferred creditors
PKO Bank Hipoteczny S.A.	EU-wide	Art. 3 of the Directive	'specialised mortgage credit institution' means a credit institution which funds loans solely through the issue of covered bonds, which is permitted by law to carry out mortgage and public-sector lending only and which is not permitted to take deposits but can take other repayable funds from the public	Definition assumes that loans are funded solely by issuance of covered bonds	Currently mortgage banks (specialised banks in Poland) do not fund mortgage loans only through covered bonds issuance because of: a) Requirement of overcollateralization which cannot be funded by covered bonds, b) Before the issue mortgage bank gathers loans with the purpose to refinance them by future issue – until that time funding comes from other sources.	serious	specialized mortgage credit institution” means credit institution which funds granted loans or purchased receivables through the issue of covered bonds, which is permitted by law to carry out mortgage and public-sector lending only and which is not permitted to take deposits but can take other repayable funds
PKO Bank Hipoteczny S.A.	National	Art. 4 of the Directive	Member States shall lay down rules entitling the covered bonds investors to the following claims) in case of insolvency of the credit institution issuing covered bonds and in the event that the priority claim as referred to in point (b) cannot be fully satisfied, a claim on the insolvency estate of that credit institution, which ranks pari passu with the claims of the credit institution's ordinary unsecured creditors determined in accordance with the national laws governing the ranking in normal insolvency procedures.	It should be clarified what will be the position of claims connected with insolvency costs and derivative contracts within insolvency proceedings.	Draft of the Directive does not clarify what will be the position of claims resulting from costs of insolvency proceedings and liabilities resulting from derivatives transactions (in our opinion derivatives transactions should be ranked pari passu with covered bond investors).	moderate	
PKO Bank Hipoteczny S.A.	National	Art. 5 of the Directive	Member States shall ensure that the payment obligations attached to the covered bonds are not subject to automatic acceleration upon the insolvency or resolution of the credit institution issuing covered bonds	We propose introducing a right for investors to vote and decide about further maturity extension and sale of assets.	The maturity extension after default is more acceptable for investors when they have right to vote and decide about it.	moderate	

PKO Bank Hipoteczny S.A.	EU-wide	Art. 6 of the Directive	The whole content of the Art. 6. - eligible assets	Clarification or change of the word "assets" used in this provision.	The wording of proposed Art. 6 is unclear because of the word „assets“ used in the context of mortgage lending value (Art. 6. 1 (a), insurance against the risk of damage (Art. 6. 2), the requirement regulated by Art. 6.3, i.e. „to document the assets used as collateral“). According to the definition included in the Art. 4. 74 of the CRR the use of mortgage lending value relates to immovable property and not to the asset meant as “a loan”.	moderate	
PKO Bank Hipoteczny S.A.	EU-wide	Art.10 of the Directive	Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile.	The possibility of multiple separate cover pools consisting of assets acceptable from the perspective of Art. 129 CRR should be clearly allowed.	Multiple separate homogeneous cover pools would have positive impact on development of mortgage banking and covered bonds market.	moderate	We propose to add to the Art. 10 second sentence as follows: “Nevertheless multiple separate homogeneous cover pools in respect of asset class should be allowed.”
PKO Bank Hipoteczny S.A.	EU-wide	Art. 11 item 2(a)	For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least: a) the eligibility criteria for the hedging counterparties	We propose to remove a right of Member States to define eligibility criteria	Eligibility criteria in practice are defined by rating agencies. In this case Member States will have to introduce criteria compliant with those defined by rating agencies. Otherwise they may contradict each other.	moderate	
PKO Bank Hipoteczny S.A.	EU-wide	Art. 11 item 2(b) – applies also to Art. 15	For the purposes of ensuring compliance with the requirements listed in paragraph 1, Member States shall lay down rules for cover pool derivative contracts including at least: b) the limits on the amount of derivative contracts in the cover pool	Limits amounts of derivative contracts should be removed	Derivatives contracts are used for hedging purposes. This aim should decide how many contracts should be concluded. Introduction of any limits can make impossible to hedge the risk because of limits. It is also unclear how such amount should be calculated.	moderate	

PKO Bank Hipoteczny S.A.	EU-wide	Art. 12 item 1 (c)	Member States shall ensure investor protection by requiring that the segregation of assets in the cover pool complies with at least the following requirements: c) all assets in the cover pool are protected from any third-party claims and do not form part of the insolvency estate of the credit institution issuing covered bonds.	The following expression:“ all assets in the cover pool are protected from any third-party claims” should be rephrased or explained in the context of other banks rights in case of syndicated loans – the purpose of demanded explanation is to keep the possibility to include receivables of banks resulting from syndicated loans in the cover pool. We also propose to precise that this point refers to general insolvency estate (if separate insolvency estate dedicated to satisfying claims of covered bonds investors exists).	Syndicated loans are common market practice in financing large projects especially in case of commercial investments. In the context of derivative contracts covered bonds investors should have right to use assets included in cover pool in case of issuer insolvency.	moderate	
PKO Bank Hipoteczny S.A.	EU-wide	Art. 15 item 1(a)	Member State shall ensure investor protection by requiring covered bond programmes to comply at all times with at least the following coverage requirements: all liabilities of the covered bonds, including the obligations for the payment of principal and any accrued interest of outstanding covered bonds and costs related to maintenance and administration of a covered bond programme, are covered by the assets in the cover pool	To clarify how the expression:“ costs related to maintenance of a covered bonds programme” should be interpreted in the context of definition of specialized mortgage credit institution”.	Nearly whole activity of specialized mortgage bank is to issue covered bonds and can be treated as related to maintenance and administration of covered bonds programme. Therefore, it is not clear what type of costs should be taken into account to fulfil coverage requirements.	moderate	
PKO Bank Hipoteczny S.A.	EU-wide	Art. 15 item 1(c)	Member State shall ensure investor protection by requiring covered bond programmes to comply at all times with at least the following coverage requirements: the following assets in the cover pool contribute to the coverage requirement, (i) primary assets, (ii) substitution assets, (iii) liquid assets held in accordance with Article 16; (iv) derivative contracts held in accordance with Article 11; (v) statutory overcollateralisation;	Removal „liquid assets” from this provision	Liquid assets should cover net outflows in the 180 days horizon (according to Art 16) and not only accrued interest. Coverage requirement refers only to accrued interest.	moderate	

PKO Bank Hipoteczny S.A.	EU-wide	Art. 15 item 1(d)	Member State shall ensure investor protection by requiring covered bond programmes to comply at all times with at least the following coverage requirements: d) uncollateralised claims where a default is considered to have occurred in accordance with Article 178 of Regulation (EU) No 575/2013 do not contribute to the cover pool	Change of wording by replacement the expression: „do not contribute to the cover pool” with: „ do not contribute to requirements for coverage”	The cover pool should be treated as separate register (according to Art 12). In this register there can be defaulted exposures but they should not contribute to coverage requirement and OC.	low risk	
PKO Bank Hipoteczny S.A.	EU-wide	Art. 17 item 1 (d)	Member States may allow for the issue of covered bonds with extendable maturity structures where investor protection is ensured by at least the following: d) the final maturity date of the covered bond can at all times be determined	It should be stated how to define „the final maturity date” and not the specific final maturity date itself	Specific final maturity date can change (if it is calculated as the longest asset in cover pool + X years) – from investors point of view it is crucial how the way to define the final maturity date is stipulated	low risk	
PKO Bank Hipoteczny S.A.	National	Art.18	Covered bond public supervision	Resignation from separate supervision authority concept.	Financial supervisions currently existing in Member States are enough to control covered bonds market.	low risk	
PKO Bank Hipoteczny S.A.	EU-wide	Art. 129 par 3 (a) of the Regulation	Competent authorities designated pursuant to Article 18(2) of Directive (EU) 20xx/xxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU] may decide to apply a lower minimum level of overcollateralisation to covered bonds provided that the following conditions are met: a) (a) the calculation of overcollateralisation is either based on a model which takes into account the assigned risk weights of the assets or a model where the valuation of the assets is subject to mortgage lending value as defined in Article 4(1)(74)	From the draft does not result directly that OC will be calculated by using the full amount of mortgage loans included in the cover pool and not limited to 80% or 60% of market or mortgage lending value of property. For coverage requirement 80% and 60% limits will apply.	We propose to apply full loans amount not limited by 80% or 60% of market or mortgage lending value.	moderate	

10. Spain

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
AHE	EU-wide	Art 10	Composition of the cover pool		Lack of clarity on the scope of the article. Concept of homogeneity and risk of hindering consolidated structures which have worked properly, e.g. commercial and residential mortgages in the same pool.	serious	Return to EBA best practices emphasizing idea of transparency
AHE	EU-wide	Art 16.4			Coordination in practice between LCR requirements and liquidity buffer regulation are not clear enough. How far can go national legislation??	serious	

11. Sweden

Overall assessment: This is not a necessary directive, markets are working fine right now and no complaint has been heard

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
ASCB	EU-wide	Article 16	Paragraph 2 and onward	Liquidity buffers for a certain operation in a bank is not a way to handle liquidity risk in that bank	There is already a regulation on liquidity risk (LCR) and article 16 might interfere with the liquidity planning in a universal bank that have a covered bond operation within the bank.	Serious	Delete article 16.2 to 16.6
ASCB	EU-wide	Article 6	Second part of paragraph 1	Definition of eligible assets should just be the reference to CRR point (a) to (g) art. 129(1).	It is important to keep the pools clean and not allow too many uncertain and rare assets. With this writing the commission means that software licenses could be a part of the cover pool.	Serious	Delete paragraph 1 from after the reference to CRR and point (a) to (d): 1. Member States shall ensure investor protection by requiring that covered bonds are at all times collateralised by high quality assets referred to in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 or by other high quality assets that meet at least the following requirements: (a) either the market value or mortgage lending value of the assets can be determined; (b) a mortgage, charge, lien or other guarantee on the asset is enforceable; (c) all legal requirements for establishing the mortgage, charge, lien or guarantee on the asset have been fulfilled; (d) the mortgage, charge, lien or guarantee securing the asset enable the credit institution issuing covered bonds to realise the value of the asset without undue delay.

ASCB	EU-wide	Article 15	Article 15(1a)	It is not necessary to introduce a new method of calculating OC.	It is not possible to identify maintenance and administrative costs for the covered bond operation in a bank that has its covered bond operation as an integrated part of the operation.	Serious	Delete in line with this in article 15 (1a): (a) all liabilities of the covered bonds, including the obligations for the payment of principal and any accrued interest of outstanding covered bonds and costs related to maintenance and administration of a covered bond programme, are covered by the assets in the cover pool;
ASCB	EU-wide	CRR art. 129	Paragraph 3a	The level of OC should not be higher than 5 %	Eu has introduced a standard of OC-requirement in EMIR at 2 %. This should not be changed before it has been tested and assessed. There have not been any problems with this level and therefore it should not be changed	Serious	Change 3a according to this: 3a. In addition to being collateralised by the eligible assets listed in paragraph 1, covered bonds shall be subject to a minimum level of 2% of overcollateralisation as defined in Article 3(12) of Directive (EU) 20xx/xxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU].
ASCB	EU-wide	Art 11	Article 2b	There is no need to limit to use derivatives for hedging purposes	As long as article 11.1a is in force, and derivatives are just used for hedging purposes, there should not be any other kinds of restrictions when it comes to use of derivatives.	Serious	Delete article 11(2b)
ASCB	EU-wide	Art 10	-	It is not obvious that a covered bond should be more robust if the pool is more homogenous.	If focus among regulators should be to limit the ability to just have certain high-quality assets in the pool the limitation of diversification is not needed.	Moderate	Delete article 10

12. UK

Institution	Scope of Challenge	Location	Precise passage concerned	Description of the Issue	Justification for potential amendment	Level of priority	Proposal for a wording update
UKRCBC	National (several)	Directive Article 4 1 (b)	in case of insolvency or resolution of the credit institution issuing covered bonds, a priority claim on the principal and any accrued interest from assets included in the cover pool;	No explicit reference to segregated structures which causes some potential conflict in later articles relating to Derivatives	To explicitly accommodate jurisdictions with a segregated structure (e.g. UK, Netherlands, Ireland & Italy) by clarifying the reference to 'priority claim'	Moderate	tbc
UKRCBC	EU wide	Directive Article 10	Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile.	A lack of clarity on the degree of homogeneity of assets	There is considerable debate in securitisation over similar requirements in the STS requirements	Moderate	tbc
UKRCBC	National	Directive Article 13	A cover pool monitor shall be separate and independent from the credit institution issuing covered bonds and from that credit institution's auditor.	Under segregated structures the SPV auditors and issuers auditors may be different but not clear if the SPV auditor can also be Cover Pool monitor	Will be costlier to have different firms performing two roles	Low	tbc
UKRCBC	National	Directive Article 31	By XX [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 3 years], the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council whether an equivalence regime could be introduced for third-country credit institutions issuing covered bonds and for investors in covered bonds, taking into consideration international developments in the area of covered bonds, in particular the development of legislative frameworks in third countries	The lengthy period to an assessment of third country regimes will lead to a period of uncertainty regarding the status of UK Covered bonds in its interaction with the Brexit timetable and transitional rules.	Clarity of the status of UK covered bonds would be very helpful to investors based in the EU	High	tbc

Annex 2: CBIC position on European legislation on covered bonds – April 2018

Introduction

On 12 March 2018 the European Commission launched their long-awaited legislative proposal on covered bonds, in the form of a directive on covered bonds and a regulation amending the treatment of covered bond exposures under the CRR.

The ICMA Asset Management and Investor Council's (AMIC) Covered Bond Investor Council (CBIC) has followed the progress of the European Commission's deliberations with interest. On 5 January 2016 CBIC responded to the Commission's consultation on covered bonds as preparation for this legislative initiative.

This paper forms an initial analysis of the legislation and offers some targeted suggestions for improvements.

General comments

The Covered Bonds Investor Council (CBIC) welcomes the European Commission's legislation on covered bonds. Although we may have expressed some concern in the past regarding the need for this legislation, the extensive preparatory work by the European Banking Authority (EBA) (the 2016 report on covered bonds) and the Commission (consultation, impact assessment) has laid the ground for a sensible proposal that should achieve the objectives sought.

In particular, investors appreciate that the high-level framework directive will provide an easy to use blueprint for those countries that do not yet have a covered bond law to introduce one.

Also, the CBIC welcomes the overcollateralisation (OC) regime introduced in the regulation amending the CRR. The minimum 5% level is welcome, as it should prevent potential issuance below that level.

Investors are pleased that in many of the areas that national traditions have developed a robust national covered bond framework are allowed to exist within this European framework. This flexibility should minimise disruption to well-functioning national covered bond frameworks that are relied on by issuers and investors. However, this flexibility is in some areas of the text taken too far and risks lowering standards.

We will develop some of these thoughts in our detailed comments below. In several cases, we believe the EBA could play a useful report in providing helpful guidance to market participants and to countries developing or updating their covered bond frameworks.

Detailed comments

Assets in the cover pool

In trying to allow sufficient flexibility for existing national frameworks, the directive is too imprecise with the definition of eligible assets in Article 6. While defining eligible assets as those allowed by Article 129 of the Capital Requirements Regulation (CRR), the directive also allows "other high quality assets" that have to meet certain legal requirements set out in four points (Article 6(1)(a)-(d)). Recital (15) also allows loans to public undertakings as defined in Article 2(b) of Commission Directive 2006/111/EC. We find it incongruous that this specific reference to loans to public undertakings is included in the Recital but not in the relevant Article on eligible assets.

While we agree that it is not unwarranted to set some basic principles for what "other high quality assets" could mean, in order not to permanently limit eligible assets to Article 129 assets, the criteria set out in Article 6 are useful but not sufficient for investors who need certainty on the high quality of the eligible assets in the cover pool.

CBIC therefore suggests that the legislation is amended to allow the EBA a role in giving clarity about what the “other high quality assets” could mean. We believe that empowering the EBA to draft guidance on high quality assets other than Article 129 assets, and reviewing that guidance every five years, would help investor certainty about the quality of European covered bonds. Such guidance could, for instance, include specific reference to the loans to public undertakings if the EBA decided to include them in the list of “other high quality assets”.

Similarly, Article 10 allows Member States to define what “sufficient level of homogeneity” should mean for assets in the cover pool. In order to prevent cover pools where the national definitions of “homogeneity” are too loose, the EBA should be given a role in giving guidance on some minimum standards.

The EBA is already creating criteria for homogenous assets for simple, transparent and standardised (STS) securitisations, so there is already some historical work that can be used as the basis for guidance.

Transparency

We understand and support the principles based approach of the directive. However, in allowing so much flexibility to Member States, investors are concerned that standards could fall lower than what they are currently. Investors have worked with issuers for many years to create a Harmonised Transparency Template (HTT), provided by the European Covered Bond Council (ECBC) in the use of their Covered Bond Label. Investors appreciate the HTT as a useful disclosure

Therefore, while retaining the principles based approach in the directive is fine, we believe there is scope to refer to industry initiatives in the recitals to keep the HTT in mind as high standard of transparency that investors appreciate.

Third countries

CBIC welcomes the intention by the Commission in the legislation to submit a report on an equivalence regime that could be introduced for third country covered bond frameworks. However, three years is too long a time period for a report to be submitted. Any practical equivalence steps would take much longer time still. Meanwhile, investors would not be able to achieve capital benefit from investing in third country covered bonds even if the regime is equivalent to the European one.

Therefore, we would propose to reduce the amount of time before the report on equivalence is submitted to two years instead of three to allow a swifter implementation of equivalence regimes for third countries. The EBA should also start the process by submitting a report to the Commission one year after application to help design the technical framework for equivalence assessments.

We understand that it is impossible to introduce hard rules on third party equivalence whilst the Brexit negotiations are on-going but would prefer that the EBA start to consider this topic with regard to existing third-party regimes sooner rather than later and certainly before the three years deadline referred to in the current text.

Our members would benefit from the ability to diversify their investments better if an appropriate alignment of risk and prudential treatment was available for third country frameworks.

Extendable maturity structures

CBIC welcomes the criteria in Article 17 for the use of extendable maturities. We do not object to extendable maturities but are concerned that their use should be more strictly controlled to prevent abuse.

To this end, we are concerned that the event of default of the issuer is not in itself a trigger in Article 17, even though the EBA suggested this as a condition to extendable maturity covered bonds on page 137 of their 2016 report. We consider that the current wording, that states that the trigger should not be ‘at the discretion of the issuer’, is too weak without the introduction of a trigger in the event of default, in the form of the insolvency of the issuer.

Cover pool liquidity buffer

CBIC welcomes the broad transposition of current best practice and EBA recommendations for liquidity pool buffers in Article 16. However, given the important framework this legislation will set for European covered bonds, we believe it is worth specifying in slightly greater detail what some of the liquidity pool concepts could mean.

Specifically, we believe it is worth giving the EBA a role in providing some guidance on how to calculate the cover pool liquidity buffer covering net liquidity outflow for 180 days in Article 16, for example, defining whether coupon payments in assets in collateral supporting derivatives should be included in the calculation.

Furthermore, we are concerned that Liquidity Coverage Ratio (LCR) buffers held outside cover pools may be used as a substitute for cover pool liquidity buffers in Article 16 paragraph 4. LCR buffers do not offer the same segregated protection to investors in covered bonds as cover pool buffers do. Therefore, we recommend reversing this to allow cover pool liquidity buffers to be used for LCR buffer purposes.

Intragroup pooled covered bonds

CBIC appreciates the need to allow for intragroup pooled covered bonds, either under existing structures in some Member States or in the future to potentially promote the asset class among more issuers.

However, the proposal is inconsistent. By requiring a CRR Credit Quality Step 1 (AA-) minimum rating for the issuer of the “internal covered bonds” in addition to the external covered bond, the proposal could limit the use of this tool in those countries where it may be most useful in countries with lower ratings. We would propose to remove the minimum rating requirement for the internal covered bond.

Cover pool monitors

CBIC believes that where cover pool monitors are used, EBA could provide guidance on the minimum criteria for the roles and duties of cover pool monitors to help provide more certainty to investors and to countries considering requiring the use of cover pool monitors.

Overcollateralisation

CBIC appreciates the importance of allowing current overcollateralisation (OC) models to exist within the new European Covered Bond label being created and supports the minimum nominal 5% OC level in the regulation. However, the directive and regulation introduce the potential for confusion by allowing various calculation methods which could result in lower nominal OC levels. The proposals are too complex and hard to grasp for a regulatory regime that wants to harmonise and make things more transparent.

We believe a clearer way to achieve harmonisation would be to allow the different methods of calculation but to not allow OC levels lower than 5% based on the nominal principle.

ENDS

Annex – Suggested CBIC amendments to directive on the issue of covered bonds and covered bond public supervision

Transparency

Recital 20

Text proposed by the Commission	Suggested amendment
<p>(20) Transparency of the cover pool securing the covered bond is an essential part of this type of financial instrument as it enhances comparability and allows investors to perform the necessary risk evaluation. Directive 2003/71/EC12 of the European Parliament and of the Council includes rules on the drawing up, the approval and the distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State. Several initiatives regarding the information to be disclosed to covered bond investors to supplement Directive 2003/71/EC have been developed over time by national legislators and market participants. It is however necessary to specify at Union level what the minimum common level of information investors should have access to prior to or when buying covered bonds. Member States should be allowed to supplement these minimum requirements with additional provisions.</p>	<p>(20) Transparency of the cover pool securing the covered bond is an essential part of this type of financial instrument as it enhances comparability and allows investors to perform the necessary risk evaluation. Directive 2003/71/EC12 of the European Parliament and of the Council includes rules on the drawing up, the approval and the distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State. Several initiatives regarding the information to be disclosed to covered bond investors to supplement Directive 2003/71/EC have been developed over time by national legislators and market participants. It is however necessary to specify at Union level what the minimum common level of information investors should have access to prior to or when buying covered bonds. Member States should be allowed to supplement these minimum requirements with additional provisions, <i>for instance by reference to transparency initiatives under existing covered bond labels in the Union.</i></p>

Eligible Assets

Article 6

Text proposed by the Commission	Suggested amendment
	<p>4. By 1 June 2019, EBA shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations specifying the types of assets meeting the criteria for other high-quality assets in paragraph 1. EBA shall review that guidance every 5 years.</p>

Recital (15)

Text proposed by the Commission	Suggested Amendment
<p>Another core feature of existing national covered bond frameworks is the fact that assets serving as collateral should be of very high quality in order to ensure the robustness of the cover pool. High quality assets are characterised by having specific features making them eligible to cover the claims attached to the covered bond. It is therefore appropriate to set out the general quality features that assets should respect in order to be eligible to serve as collateral. Assets listed in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 should be considered eligible to serve as collateral in the cover pool, within a covered bond framework, as should loans involving public undertakings as defined in Article 2(b) of Commission Directive 2006/111/EC but also other assets of a similar high quality could be considered eligible under the Directive, provided that it is possible to determine either their market value or mortgage lending value. Furthermore, the Directive should include rules to ensure that assets, including guaranteed loans, can be repossessed or called in through an enforceable protection agreement, whether in the form of a traditional mortgage or by a charge, lien or guarantee providing the same level of legal protection, and thus ensuring the same level of safety for investors. However, those provisions on the eligibility of assets should not prevent Member States from allowing other categories of assets to serve as collateral in their national frameworks provided the assets comply with Union law. Member States should also be free to exclude assets in their national frameworks.</p>	<p>Another core feature of existing national covered bond frameworks is the fact that assets serving as collateral should be of very high quality in order to ensure the robustness of the cover pool. High quality assets are characterised by having specific features making them eligible to cover the claims attached to the covered bond. It is therefore appropriate to set out the general quality features that assets should respect in order to be eligible to serve as collateral. Assets listed in points (a) to (g) of Article 129(1) of Regulation (EU) No 575/2013 should be considered eligible to serve as collateral in the cover pool, within a covered bond framework, as could other assets of a similar high quality such as loans involving public undertakings as defined in Article 2(b) of Commission Directive 2006/111/EC but also other assets of a similar high quality could be considered eligible under the Directive, provided that it is possible to determine either their market value or mortgage lending value. The EBA should provide guidance with regard to what other assets of high quality should include. Furthermore, the Directive should include rules to ensure that assets, including guaranteed loans, can be repossessed or called in through an enforceable protection agreement, whether in the form of a traditional mortgage or by a charge, lien or guarantee providing the same level of legal protection, and thus ensuring the same level of safety for investors. However, those provisions on the eligibility of assets should not prevent Member States from allowing other categories of assets to serve as collateral in their national frameworks provided the assets comply with Union law. Member States should also be free to exclude assets in their national frameworks.</p>

Intragroup pooled covered bond structures

Article 8

Text proposed by the Commission	Suggested amendment
<p>Member States may lay down rules regarding the use, by way of an intragroup transaction, of covered bonds issued by a credit institution belonging to a group ('internally issued covered bonds') as collateral for the external issue of covered bonds by another credit institution 'belonging to the same group ('externally issued covered bonds'). Member States shall ensure investor protection by including at least the following requirements in those rules:</p> <p>(a) the internally issued covered bonds, which are used as collateral for the externally issued covered bonds, are recorded on the balance sheet of the credit institution which issues the externally issued covered bonds;</p> <p>(b) the credit institution issuing the externally issued covered bond has a claim on the credit institution issuing the internally issued covered bonds, which is secured by the internally issued covered bonds;</p> <p>(c) the externally issued covered bonds are sold to covered bond investors outside the group;</p> <p>(d) both the internally and the 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 and are collateralised by residential or commercial property mortgages.</p>	<p>Member States may lay down rules regarding the use, by way of an intragroup transaction, of covered bonds issued by a credit institution belonging to a group ('internally issued covered bonds') as collateral for the external issue of covered bonds by another credit institution 'belonging to the same group ('externally issued covered bonds'). Member States shall ensure investor protection by including at least the following requirements in those rules:</p> <p>(a) the internally issued covered bonds, which are used as collateral for the externally issued covered bonds, are recorded on the balance sheet of the credit institution which issues the externally issued covered bonds;</p> <p>(c) the credit institution issuing the externally issued covered bond has a claim on the credit institution issuing the internally issued covered bonds, which is secured by the internally issued covered bonds;</p> <p>(d) the externally issued covered bonds are sold to covered bond investors outside the group;</p> <p>(e) both the internally and the 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 and are collateralised by residential or commercial property mortgages.</p>

Homogeneity

Article 10

Text proposed by the Commission	Suggested amendment
<p>Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile.</p>	<p>1. Member States shall ensure investor protection by 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 structural features, lifetime of assets or risk profile.</p> <p>2. By 1 June 2019, EBA shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations specifying minimum criteria for homogenous assets under paragraph 1.</p>

Cover pool monitor

Article 13

Text proposed by the Commission	Suggested amendment
	<p>5. By 1 June 2019, EBA shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations specifying minimum criteria for the role and duties of cover pool monitors under paragraph 2(c).</p>

Requirement for cover pool liquidity buffer

Article 16

Text proposed by the Commission	Suggested amendment
<p>4. Where the credit institution issuing covered bonds is subject to liquidity requirements set out in other acts of Union law, Member States may decide that the national rules transposing paragraphs 1, 2 and 3 do not apply throughout the period foreseen in those acts of Union law.</p>	<p>4. Where the credit institution issuing covered bonds is subject to liquidity requirements set out in other acts of Union law, Member States may decide that the <i>assets used for the purposes of paragraph 1 may be used to fulfil those liquidity requirements set out in acts of Union law.</i></p>
	<p><i>7. By 1 June 2019, EBA shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations specifying the types of assets that can be used for the purposes of paragraph 1. EBA shall review these guidelines and recommendations every 5 years.</i></p>

Conditions for extendable maturity structures

Article 17

Text proposed by the Commission	Suggested amendment
<p>1. Member States may allow for the issue of covered bonds with extendable maturity structures where investor protection is ensured by at least the following:</p> <p>(a) the maturity extension triggers are specified in contract or statute;</p> <p>(b) the maturity extension is not triggered at the discretion of the credit institution issuing covered bonds;</p> <p>(c) the information provided to the investor about the maturity structure is sufficient to enable them to determine the risk of the covered bond, and includes a detailed description of:</p> <p>(i) the maturity extensions trigger;</p> <p>(ii) the consequences for the maturity extensions in the case of insolvency or resolution of the credit institution issuing covered bonds;</p> <p>(iii) the role of the competent authority designated pursuant to Article 18(2) and of the special administrator with regard to the maturity extension, where relevant;</p> <p>(d) the final maturity date of the covered bond can at all times be determined;</p> <p>(e) the maturity extension does not affect the ranking of covered bond investors;</p> <p>(f) the maturity extension does not change the structural features of the covered bonds regarding dual recourse as referred to in Article 4 and bankruptcy remoteness as referred to in Article 5.</p>	<p>1. Member States may allow for the issue of covered bonds with extendable maturity structures where investor protection is ensured by at least the following:</p> <p>(a) the maturity extension triggers are specified in contract or statute;</p> <p>(b) the maturity extension is not triggered at the discretion of the credit institution issuing covered bonds;</p> <p>(c) The maturity extension may only be effected upon: (i) the insolvency of the credit institution issuing the covered bond; and (ii) breach of triggers defined in sub-paragraph (d)(i);</p> <p>(d) the information provided to the investor about the maturity structure is sufficient to enable them to determine the risk of the covered bond, and includes a detailed description of:</p> <p>(i) the maturity extensions trigger;</p> <p>(ii) the consequences for the maturity extensions in the case of insolvency or resolution of the credit institution issuing covered bonds;</p> <p>(iii) the role of the competent authority designated pursuant to Article 18(2) and of the special administrator with regard to the maturity extension, where relevant;</p> <p>(e) the final maturity date of the covered bond can at all times be determined;</p> <p>(f) the maturity extension does not affect the ranking of covered bond investors;</p> <p>(g) the maturity extension does not change the structural features of the covered bonds regarding dual recourse as referred to in Article 4 and bankruptcy remoteness as referred to in Article 5.</p>

Reviews and Reports

Article 31

Text proposed by the Commission	Suggested amendment
<p>1. By XX [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 3 years], the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council whether an equivalence regime could be introduced for third-country credit institutions issuing covered bonds and for investors in covered bonds, taking into consideration international developments in the area of covered bonds, in particular the development of legislative frameworks in third countries.</p>	<p>1. By XX [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 2 years], the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council whether an equivalence regime could be introduced for third-country credit institutions issuing covered bonds and for investors in covered bonds, taking into consideration international developments in the area of covered bonds, in particular the development of legislative frameworks in third countries. By XX [OP: please insert date laid down in the second subparagraph of Article 32(1) of this Directive + 1 year] the EBA should submit a report to the Commission to establish a technical framework for third country equivalence assessment.</p>

Recital (35)

Text proposed by the Commission	Suggested amendment
<p>There is currently no equivalence regime for the recognition of covered bonds issued by credit institutions in third countries by the Union 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 3 years after the date from which Member States are to apply the provisions transposing this Directive, submit a report to the European Parliament and to the Council, together with a legislative proposal, if appropriate, on this issue.</p>	<p>There is currently no equivalence regime for the recognition of covered bonds issued by credit institutions in third countries by the Union 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 2 years after the date from which Member States are to apply the provisions transposing this Directive, submit a report to the European Parliament and to the Council, together with a legislative proposal, if appropriate, on this issue. To assist the Commission, the EBA should submit a report to the Commission no more than 1 year after the date from which Member States are to apply the provisions transposing this Directive.</p>

Suggested CBIC amendment to proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds

Article 1

Text proposed by the Commission	Suggested amendment
<p>"3a. In addition to being collateralised by the eligible assets listed in paragraph 1, covered bonds shall be subject to a minimum level of 5 % of overcollateralisation as defined in Article 3(12) of Directive (EU) 20xx/xxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU].</p> <p>For the purposes of the first subparagraph, the total nominal amount of all assets in the cover pool shall be at least of the same value as the total nominal amount of outstanding covered bonds ('nominal principle') and consist of eligible assets as set out in paragraph 1.</p> <p>The assets contributing to a minimum level of overcollateralisation shall not be subject to the limits on exposure size as set out in points (b) and (c) of the first subparagraph of paragraph 1 and shall not count towards those limits.</p> <p>Competent authorities designated pursuant to Article 18(2) of Directive (EU) 20xx/xxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU] may decide to apply a lower minimum level of overcollateralisation to covered bonds provided that the following conditions are met:</p> <p>(a) the calculation of overcollateralisation is either based on a model which takes into account the assigned risk weights of the assets or a model where the valuation of the assets is subject to</p>	<p>"3a. In addition to being collateralised by the eligible assets listed in paragraph 1, covered bonds shall be subject to a minimum level of 5 % of overcollateralisation as defined in Article 3(12) of Directive (EU) 20xx/xxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU].</p> <p>For the purposes of the first subparagraph, the total nominal amount of all assets in the cover pool shall be at least of the same value as the total nominal amount of outstanding covered bonds ('nominal principle') and consist of eligible assets as set out in paragraph 1.</p> <p>The assets contributing to a minimum level of overcollateralisation shall not be subject to the limits on exposure size as set out in points (b) and (c) of the first subparagraph of paragraph 1 and shall not count towards those limits.</p> <p>Competent authorities designated pursuant to Article 18(2) of Directive (EU) 20xx/xxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU] may decide to apply a lower minimum level of overcollateralisation to covered bonds provided that the following conditions are met:</p> <p>(a) the calculation of overcollateralisation is either based on a model which takes into account the assigned risk weights of the assets or a model where the valuation of the assets is subject to</p>

<p>mortgage lending value as defined in Article 4(1)(74);</p> <p>(b) the minimum level of overcollateralisation cannot be lower than 2 % based on the nominal principle.</p>	<p>mortgage lending value as defined in Article 4(1)(74);</p> <p>(b) the minimum level of overcollateralisation cannot be lower than ≥ 5 % based on the nominal principle.</p>
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