



COMMISSION PROPOSAL	DRAFTING SUGGESTIONS	COMMENTS
<p>(26) As regards the scope of permission, a covered bond programme means that one or more cover pools has been established for the inaugural covered bond issue. Different issuances (different International Securities Identification Numbers (ISINs)) of the same covered bond programme do not necessarily constitute separate covered bond programmes.</p>	<p>As regards the scope of permission, a covered bond programme means that one or more cover pools has been established for the inaugural covered bond issue. Different issuances (different International Securities Identification Numbers (ISINs)) of the same covered bond programme do not <b>necessarily</b> constitute separate covered bond programmes.</p>	<p>This word is to be deleted – to avoid the impression that normally a special cover pool for every ISIN would be required.</p>
<p><i>Article 3 Definitions</i></p>		
<p>(3) 'cover pool' means the assets that constitute the collateral for the covered bonds and that are segregated from other assets held by the credit institution issuing covered bonds;</p>	<p>(3) 'cover pool' means the assets that constitute the collateral for the covered bonds and <b>in the event of insolvency</b> are segregated from other assets held by the credit institution issuing covered bonds;</p>	<p>The requirement that cover pool assets are segregated from the other assets is confusing as in many Member States this segregation does not occur during the going concern of the credit institution, but only at the moment of the opening of an insolvency proceedings of the issuer (also see comment to Art. 12). As a going concern, cover pools are not segregated from the other assets.</p>
<p>(4) 'credit institution' means credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;</p>	<p>(4) 'credit institution' means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant <b>or purchase</b> credits for its own account;</p>	<p>The definition should be changed to include also credit insitutions, which purchase loans for the purpose of covered bonds issuance.</p>



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(5) '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;	(5) 'specialised mortgage credit institution' means a credit institution which funds loans <del>solely</del> 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;	The word „solely” needs to be deleted – due to funding limits and overcollateralisation requirement - mortgage loans are funded also by other sources of capital.
(9) 'residential property' means residential property as defined in point (75) of Article 4(1) of Regulation (EU) No 575/2013;		To be considered: definition of “commercial property” could also be added to the drafted text.
(12) 'overcollateralisation' means the statutory or contractual level of collateral exceeding the coverage requirement as set out in Article 15;	(12) 'overcollateralisation' means the statutory <del>or contractual</del> level of collateral exceeding the coverage requirement as set out in Article 15;	The definition should refer only to the statutory OC, as the contractual OC is less reliable and unverifiable.
(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;	(13) 'match funding requirement' means rules requiring that the cash flows between liabilities and assets falling due be matched by ensuring that <del>payments</del> <b>amounts received from borrowers be received prior to making payments to covered</b> <del>will</del> <b>be used to satisfy</b> 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;	The new wording reflects covered bonds models where there is no strict connection between given credits and covered bonds which fund those particular credits.

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<p><i>Article 4</i> <i>Dual recourse</i></p>		
<p>1. Member States shall lay down rules entitling the covered bonds investors to the following claims:</p>		
<p><i>new provision</i></p>	<p><b>d) in case of insolvency of the credit institution issuing covered bonds the claims resulting from derivatives transactions rank <i>pari passu</i> with the claims of covered bonds holders.</b></p>	<p>The draft does not clarify what will be the position of claims resulting from derivative contracts in the event of insolvency. Suggested provision evens out the position of covered bonds holders and derivative partners.</p>
<p><b>Chapter 2</b> <b>Cover pool and coverage</b></p>		
<p><i>Article 6</i> <i>Eligible assets</i></p>		
<p>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:</p>	<p>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 <del>or by other high quality assets that meet at least the following requirements:</del></p>	<p>To be considered: delete the marked section.</p> <p>The condition of high quality assets described in art. 129 (1) CRR are stricter than the new ones mentioned in art. 6 (1) letters a-d. Using the conjunction "or" makes it unrightfully possible to issue two alternative instruments under the same name "covered bond", although one is of high quality standard (129 CRR) and another minor</p>



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<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>For the purposes of point (a), Member States shall lay down rules on valuation of assets.</p> <p>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.</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><del>(a) either the market value or mortgage lending value of the assets can be determined;</del></p> <p><del>(b) a mortgage, charge, lien or other guarantee on the asset is enforceable;</del></p> <p><del>(c) all legal requirements for establishing the mortgage, charge, lien or guarantee on the asset have been fulfilled;</del></p> <p><del>(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.</del></p> <p><del>For the purposes of point (a), Member States shall lay down rules on valuation of assets. [should be valuation of real estate].</del></p> <p><del>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.</del></p> <p><del>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. [should be enforceability of collateral].</del></p>	<p>standard fulfilling only a-d (art. 6 CB Directive). Two standards of covered bonds would also be misleading for the perception of market participants and CB investors, causing distortion in the transparency in the legal quality of CB. One legally protected name “Covered Bond” would therefore hug two different and not homogenic financial instruments. Does it make sense from the regulatory and from the market perspective?</p> <p>Leaving “or...a-d” would be also confusing because technically it seems to create a legal “gate” to omit requirements deriving from 129 CRR and still use the name “covered bond” based only on letters a-d. It is important to reflect that alternative conditions expressed in letters a-d (in contrary to precise CRR formulations) are full of usharp terms (f.ex “guarantee on the asset”; “valuation of the asset”). Especially the missing specification of the ‘high quality assets’ requirement creates a qualitative uncertainty of the proposal.</p> <p>If the marked section is to stay in the final version of the draft, we also note an unclear use of the term ‘asset’. It should be replaced by terms “real estate” or “collateral” – as shown it the drafting suggestions.</p>



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<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>2. Member States shall ensure investor protection by requiring that credit institutions issuing covered bonds <del>have in place procedures to monitor that the assets</del> <b>require that real estate</b> used as collateral is adequately insured against the risk of damage.</p>	<p>As a rule, it is the collateral (i.e. real estate) that should be insured against the risk of damage – and not the asset (i.e. the loan).</p> <p>We propose to delete the requirement for credit institutions to monitor the insurance of the real estate, as it refers to the complex problem of the right of a bank to insure the real estate directly (which is not always possible) or to require the cession of the insurance from the debtor to the creditor.</p>
<p>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.</p>	<p>2. Where Member States allow for the inclusion referred to in paragraph 1, they shall ensure investor protection by verifying whether the <del>assets</del> <b>real estate</b> located outside of the Union meet all the requirements set out in Article 6 and that the realisation of such <del>assets</del> <b>collateral</b> is legally enforceable in a way similar to assets located within the Union.</p>	<p>Again – misleading use of term “asset” must be clarified.</p>
<p style="text-align: center;"><i>Article 8</i> <i>Intragroup pooled covered bond structures</i></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</p>	<p>Member States may lay down rules regarding the use, by way of an intragroup transaction, of covered bonds issued <del>or credits granted or purchased</del> <b>by</b> a credit institution belonging to a group ('internally issued covered bonds') as collateral for the external</p>	<p>This change enables the pursuing of intragroup transactions in line with existing models based on purchasing the credit pools, and not only purchasing the covered bonds, within the group.</p>



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<p>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>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>The Commission should also confirm that the pooling within groups is also allowed on a cross-border level.</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>(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, <del>or public sector exposures.</del></p>	<p>Lit. (d) is missing public sector lending. Therefore, public sector lending should be added to lit. (d).</p>
<p style="text-align: center;"><i>Article 9 Joint funding</i></p>		
<p>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.</p>	<p>1. Subject to the provisions in paragraph 2, Member States shall allow the use of <b>public sector exposures</b> or 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.</p>	<p>The current wording is missing the public sector covered bonds.</p>

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<p>2. Member States shall ensure investor protection by laying down rules regulating the transfer of loans and mortgages, charges, liens or other comparable security rights from the credit institution which issued them to the credit institution issuing covered bonds. Those rules shall ensure that all requirements laid down in Articles 6 and 12 are met.</p>	<p>2. Member States shall ensure investor protection by laying down rules regulating the transfer of loans and mortgages, charges, liens or other comparable security rights from the credit institution which <b>issued granted</b> them to the credit institution issuing covered bonds. Those rules shall ensure that all requirements laid down in Articles 6 and 12 are met.</p>	<p>Correction of wording.</p>
<p><i>Article 10</i> <i>Composition of the cover pool</i></p>		
<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 propose to delete article 10 as there is uncertainty regarding the proposed criteria of asset homogeneity. The proposed provision could lead to fragmentation of cover pool, which would increase their costs and liquidity risk.</p> <p>The division of assets in the cover pool to mortgage and public classes is sufficient.</p>
<p><i>Article 11</i> <i>Derivative contracts in the cover pool</i></p>		
<p>1. Member States shall ensure investor protection by allowing derivative contracts to be</p>	<p>1. Member States shall ensure investor protection by allowing derivative contracts to be</p>	<p>The current requirements are too detailed and may need extensive legislative initiatives in Member States.</p>

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<p>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>included in the cover pool only where <del>at least the following requirements are met:</del></p> <p><del>(a) the derivative contracts are included in the cover pool exclusively for risk hedging purposes;</del></p> <p><del>(b) the derivative contracts are sufficiently documented;</del></p> <p><del>(c) the derivative contracts are segregated in accordance with Article 12;</del></p> <p><del>(d) the derivative contracts cannot be terminated upon the insolvency or resolution of the credit institution issuing covered bonds;</del></p> <p><del>(e) the derivative contracts comply with the rules laid down in accordance with paragraph 2.</del></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><del>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:</del></p>	
<p>(a) the eligibility criteria for the hedging counterparties;</p>	<p><del>(a) the eligibility criteria for the hedging counterparties;</del></p>	<p>Eligibility criteria in practice are defined by rating agencies and not by Member States.</p>
<p>(b) the limits on the amount of derivative contracts in the cover pool;</p>	<p><del>(b) the limits on the amount of derivative contracts in the cover pool;</del></p>	<p>Introduction of any limits can make impossible to hedge the risk because of limits. It is also unclear how such amount should be calculated.</p>



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(c) the necessary documentation to be provided in relation to derivative contracts.	<del>(e) the necessary documentation to be provided in relation to derivative contracts.</del>	In par. 2 (c), we see the need clarifying to whom the necessary documentation must be provided.
<i>Article 12</i> <i>Segregation of assets in the cover pool</i>		
1. Member States shall ensure investor protection by requiring that the segregation of assets in the cover pool complies with at least the following requirements:	<b>In case of insolvency of covered bonds issuer,</b> Member States shall ensure investor protection by requiring that the segregation of assets in the cover pool complies with at least the following requirements:	The requirement that cover pool definition are segregated from the other assets is confusing as in many Member States this segregation does not occur during the going concern of the credit institution, but only at the moment of the opening of an insolvency proceedings of the issuer (also see comment to Art. 12). As a going concern, cover pools are not segregated from the other assets.  It needs to be made clear, that segregation of assets is achieved by transparent registration in cover pool.
2. The segregation of assets in the cover pool referred to in paragraph 1 shall also apply in the case of insolvency or resolution of the credit institution issuing covered bonds.	<del>The segregation of assets in the cover pool referred to in paragraph 1 shall also apply in the case of insolvency or resolution of the credit institution issuing covered bonds.</del>	The whole article should refer to the case of insolvency of the covered bonds issuer.



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<p><i>Article 14</i> <i>Investor information</i></p>		
<p>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:</p>	<p>2. For the purposes of paragraph 1, Member States shall ensure that the information is provided to investors <del>at least</del> on a quarterly basis and includes the following minimum portfolio information:</p>	<p>Proposed provision will ensure better consistency in meeting information requirements.</p>
<p><i>Article 15</i> <i>Requirements for coverage</i></p>		
<p>1. Member State shall ensure investor protection by requiring covered bond programmes to comply at all times with at least the following coverage requirements:</p>		
<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>In case of specialized mortgage banks nearly all their activity (and therefore: costs) is to “maintain and administrate” the issuance of covered bonds. So this category of costs needs to be precisely specified.</p>
<p>(iii) liquid assets held in accordance with Article 16;</p>	<p><del>(iii) liquid assets held in accordance with Article 16;</del></p>	<p>According to art. 16, liquid assets should cover net outflows in the next 180 days – which is a liquidity requirement and not a coverage requirement.</p>

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(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.	(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 <del>cover pool</del> . <b>coverage calculation</b>	It's acceptable to maintain the defaulted exposures in the cover pool, however they shouldn't be included in the coverage and overcollateralisation calculations.
<i>Article 16</i> <i>Requirement for a cover pool liquidity buffer</i>		
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.		The wording needs further clarification. What is the relation between the LCR requirement and liquidity buffer regulation?
5. Member States may allow for the calculation of the principal for extendable maturity structures to be based on the final maturity date of the covered bond.	5. Member States may allow for the calculation of the principal for extendable maturity structures to be based on the <del>final</del> <b>extended</b> maturity date of the covered bond.	Correction of wording.
<i>Article 17</i> <i>Conditions for extendable maturity structures</i>		
2. Member States which allow the issue of covered bonds with extendable maturity structures shall notify EBA of their decision.	Member States which allow the issue of covered bonds with extendable maturity structures shall notify EBA of their decision and EBA should publicly disclose this notification.	EBA should be obliged to disclose the above notifications to the market.



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	<i>END</i>	<i>END</i>