

Opinion of the European Economic and Social Committee on the

Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds

[COM(2018) 93 final — 2018/0042 (COD)]

Proposal for a Directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU

[COM(2018) 94 final — 2018/0043 (COD)]

(2018/C 367/11)

Rapporteur: **Daniel MAREELS**

Consultation	Council of the European Union, 28.3.2018 European Parliament, 16.4.2018
Legal basis	Articles 53, 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	27.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	165/0/1

1. Conclusions and recommendations

1.1. For the reasons set out below, the EESC very much welcomes the proposals on covered bonds (see point 1.2 and following). The Committee calls for every effort to be made to make rapid progress and achieve a successful outcome. In this regard, it also makes a number of suggestions (see point 1.7 and following).

1.2. Firstly, these proposals fit into a broader context and contribute to the achievement of objectives that are close to the Committee's heart, such as the rapid establishment of a CMU and the completion of EMU. Furthermore, covered bonds promote cross-border financing operations and therefore more private risk-sharing too.

1.3. In addition, a number of EU Member States have traditionally held a very strong position in the international and global markets. The European approach to the prudential treatment of covered bonds serves as a guide throughout the world. The current proposals should be used not only to consolidate this leading position, but where possible also to strengthen it. Particularly in view of the various global power shifts under way between East and West, it is vital that the EU take up a decisive and effective position.

1.4. The opportunity presented in these proposals should be seized upon for promoting the widespread take-up of covered bonds and developing markets for them throughout the EU. Every effort should be made to achieve success here, particularly in the Member States where these instruments and markets are as yet unknown.

1.5. The Committee also broadly welcomes both the chosen approach of minimum harmonisation based on national regimes and the content of the proposals, for which, moreover, solid foundations were laid by the European Parliament, the supervisors and other stakeholders. All of this has enabled a qualitative result to be achieved without distorting existing markets, and at a reasonable cost.

1.6. It is very important that covered bonds enable banks to create additional resources for the long-term financing of the economy. These new funds must then be used to provide additional financing for governments, businesses and households. If this is the case, this proposal could help rebuild confidence in the banking and financial world.

1.7. The Committee is particularly pleased that the proposal also envisages bringing covered bonds within the reach of smaller banks. Nevertheless, the Committee calls for further consideration to be given to how this possibility can be fully harnessed. Without deviating from the generally applicable rules, consideration could be given, for example, to what administrative requirements and other obligations could be adapted for smaller banks.

1.8. The EESC also strongly recommends that use of the European label for covered bonds be made mandatory, and not optional as currently envisaged. A global, forward-looking vision is needed here. Generalised compulsory use of the European label will inevitably enhance Europe's leading position at global level and create opportunities for the (mainly smaller) Member States that will wish to take full advantage of the opportunities offered by the new system. This would give them a guarantee that their products can be distributed on the market and this mandatory use of the label could also enhance investor confidence.

1.9. Taking into account the generally accepted safety and liquidity of covered bonds, as well as the additional protection that they provide since they are not subject to bail-in, the Committee calls for consideration to be given to what further measures need to be taken to attract private savers and consumers to such bonds. As long-term instruments, covered bonds would appear to be particularly suited to pension formation, and consideration could be given here to the PEPP proposals.

1.10. The Committee welcomes the fact that an evaluation of the new system is provided for, but the proposal that this take place after three years seems too short a timeframe. As this is a market matter, and sufficient time must be allowed to gain useful experience with the new rules, the Committee calls for this period to be extended, to 5 years, for example. And Member States could of course closely monitor the situation at national level.

2. Background

2.1. Upon taking office in 2014, the Juncker Commission drew up an 'investment plan for Europe' with a view to achieving its top priorities: growth, jobs and investment⁽¹⁾. One of the plan's main goals is the gradual pursuit of a capital markets union, alongside a digital single market and an energy union. The aim is to develop a well-functioning and integrated capital markets union, encompassing all Member States.

2.2. With the Action Plan on Building a Capital Markets Union⁽²⁾, the Commission committed itself to putting all building blocks for such a union in place by 2019. In total, more than 33 initiatives and actions were planned.

2.3. Following calls for swift progress⁽³⁾⁽⁴⁾, a mid-term review of the Action Plan was conducted in 2017. This resulted in a number of new priority actions with a view to taking account of evolving challenges and changing circumstances, including 'Brexit'.

2.4. Furthermore, the Commission indicated on that occasion that it was necessary 'to step up the level of ambition, to address the obstacles but more importantly to take advantage of those new opportunities'⁽⁵⁾. Against this backdrop, on 8 March 2018 the Commission published a communication on *Completing the Capital Markets Union by 2019 — time to accelerate delivery* and announced a package of measures.

⁽¹⁾ See the website of the European Commission.

⁽²⁾ Action plan of September 2015. *Action Plan on Building a Capital Markets Union* — Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. See COM(2015) 468 final.

⁽³⁾ For example, the European Council called for 'swift and determined progress' on the plan, 'to ensure easier access to finance for businesses and to support investment in the real economy'.

⁽⁴⁾ The Commission also adopted a communication calling for reforms to be stepped up. See COM(2016) 601 final.

⁽⁵⁾ See Communication from the Commission on *Completing the Capital Markets Union by 2019 — time to accelerate delivery*. See COM(2018) 114 final.

2.5. The current proposals on covered bonds, which form part of this package ⁽⁶⁾, include two texts, specifically:

2.5.1. a proposal for a Directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU ⁽⁷⁾; and a

2.5.2. proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds ⁽⁸⁾.

2.6. These proposals are aimed at creating an enabling framework for covered bonds at EU level. That includes a definition of such bonds, the use of a European label in the market, the prudential requirements for obtaining preferential capital treatment and certain obligations on the part of the competent authorities.

3. Observations and comments

3.1. The EESC very much welcomes these proposals which form part of measures to build a CMU, and calls for every effort to be made to move quickly here and achieve a successful outcome.

3.2. First and foremost, these proposals contribute to a number of broader objectives which are of particular interest to the EESC and which it has previously advocated ⁽⁹⁾. These include:

3.2.1. The building of the CMU, which should go hand in hand with greater economic and social convergence and with financial and economic integration, and should increase the security, stability and resilience of the financial and economic system by broadening and diversifying the financing sources of the economy. Rapid implementation of the CMU must remain a top priority.

3.2.2. The proposed rules for covered bonds promote cross-border financing operations and therefore more private risk-sharing too. For the Member States, this is of key importance in preventing asymmetric shocks in the event of crisis, or in reducing the impact thereof. Furthermore, the CMU makes an important contribution to convergent growth between the Member States of the Union, which should enable less developed economies to catch up more quickly with those that are performing better.

3.2.3. The CMU is also vital for the further completion of the EMU, and its implementation is indispensable. Together with a fully-fledged banking union, the CMU should lead to a genuine financial union, one of the four fundamental pillars of the EMU.

3.2.4. Europe is traditionally very strong in the area of covered bonds ⁽¹⁰⁾. These proposals should be used as an opportunity to further strengthen Europe's leading position at global level. More generally, and from an international perspective, it is important that the EU acts effectively and positions itself strongly, especially as a number of global power shifts between East and West are under way.

3.3. These proposals will help to create additional resources for the long-term financing of the economy. Indeed, the issuance of covered bonds enables banks to acquire cost-effective long-term funding. The total size of the currently untapped market potential for covered bonds in terms of issuance could be up to EUR 342 billion and this could lead to potential annual savings for EU borrowers of EUR 1,5 to 1,9 billion ⁽¹¹⁾.

⁽⁶⁾ In addition to the proposal mentioned, the package also includes a proposal on facilitating the cross-border distribution of collective investment funds, a proposal for an enabling framework on European crowdfunding service providers (ECSP) for business, as well as a proposal on the law applicable to the third-party effects of assignments of claims and a communication on the applicable law to the proprietary effects of transactions in securities.

⁽⁷⁾ See Proposal for a Directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU.

⁽⁸⁾ See Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds.

⁽⁹⁾ See, inter alia, ECO/437 — *Mid-term review of the Capital Markets Union Action Plan* (OJ C 81, 2.3.2018, p. 117).

⁽¹⁰⁾ Around 90 % of all covered bonds worldwide are issued by nine European countries. See also the figures published by the European Covered Bond Council (ECBC) in its *European Covered Bond Fact Book*, 12th edition (2017). Globally, the outstanding volume of covered bonds amounts to EUR 2.5 trillion, of which EUR 2.1 trillion has been issued by EU resident institutions (see Commission Staff Working Document — *Impact Assessment SWD(2018) 50 final*).

⁽¹¹⁾ See the Commission Staff Working Document — *Impact Assessment (SWD(2018) 50 final)* accompanying the proposals under discussion.

3.4. In any event, it is important that the new resources benefit the economy. This additional funding should be used by banks for additional lending to governments, households and businesses. If that is the case, this proposal could help rebuild confidence in the banking and financial world.

3.5. In the interests of the stability and safety of the financial system, it is important that this new funding comes through instruments that are safe and liquid in all circumstances, and these proposals contain a number of safeguards to that end. A robust regime for covered bonds should also benefit investors through more and better choices in the markets. The dual recourse⁽¹²⁾ mechanism is of great importance to these investors and it is therefore important that the authorities insist that underlying assets are properly valued by the issuers.

3.6. In line with this, the proposal to create an enabling framework that facilitates the development of covered bonds and markets for these instruments throughout the EU merits the Committee's full support. Every effort should be made to achieve success here, particularly in the Member States⁽¹³⁾ where these instruments and markets are as yet unknown. It is important to remove the last blank spots on the map and ensure that a framework for covered bonds is in place in all Member States.

3.7. With this support, the Committee wishes to recognise and endorse the earlier efforts made over several years by the Commission, the European Parliament, the EBA and others towards a covered bond regime at EU level. The majority of Member States and other stakeholders, such as the trade association the European Covered Bond Council, have also expressed support for this proposal⁽¹⁴⁾.

3.8. The chosen policy option of minimum harmonisation at European level based on national regimes is also fully endorsed by the Committee, since it enables several objectives to be achieved at a reasonable cost. It will also prevent distortions in the existing markets and result in lower transition costs. However, it is important that the existing national regimes endorse the aim of the European proposal in order to spur on the covered bond market. Possible obstacles or restrictions at national level that run counter to this proposal are thus also undesirable.

3.9. As mentioned above, a number of Member States are very strong in this market, but at the same time recent developments show that interest in covered bonds is growing elsewhere in the world. In the light of this, the Committee also considers it important to ensure that Europe's current leading position in this area in the international context be further reinforced, and efforts made to promote the European approach as a global benchmark.

3.10. The Committee also welcomes the fact that an evaluation of the results and success of these new rules is provided for. As this is a market matter, and sufficient time must be allowed to gain useful experience, particularly in the Member States for which this is new, the Committee believes that the proposed period of three years is too short and calls for this period to be extended, for example to five years. Member States are of course free to closely monitor the situation at any time.

4. Further observations and comments

4.1. Overall, therefore, the Commission's approach to covered bonds in providing for clear and comprehensive rules, including a definition, a description of their structural features, public supervision and a European label for covered bonds, as well as the prudential treatment of this instrument, can be supported.

4.2. It is important that this scheme is accessible to and can be effectively used by all banks. In this regard, the Committee welcomes the fact that special attention is being given to the difficulties and problems that smaller banks may encounter when they wish to issue covered bonds. The Committee deems it important that this possibility be fully harnessed. Without deviating from the generally applicable rules, consideration could be given, for example, to what administrative requirements and other obligations could be adapted for smaller banks.

⁽¹²⁾ The dual recourse for holders of covered bonds is the double claim against the cover pool and the issuer.

⁽¹³⁾ Currently, there are still about a dozen Member States in the EU that have no legislative framework in place for covered bonds.

⁽¹⁴⁾ For an overview, see chapter 3 of both the proposal for a Directive and the proposal for a Regulation.

4.3. The use of the European label for covered bonds is to be purely optional, in order to enable the Member States to keep their own national denominations and labelling framework in place⁽¹⁵⁾. The Committee does not share this view, but rather would strongly argue in favour of mandatory use of the European label. A global, forward-looking vision is needed here. Compulsory use of the European label will inevitably enhance Europe's leading position at global level and create opportunities for the (mainly smaller) Member States that will wish to take full advantage of the opportunities offered by the new system. For them the EU label will be a guarantee that their covered bonds can be distributed on the markets. This mandatory use could also enhance investor confidence.

4.4. The covered bond market is currently dominated by professional and institutional investors⁽¹⁶⁾. The Committee calls for consideration to be given to what further measures need to be taken to more actively attract private savers and consumers to such bonds. There are a number of factors in their favour. Covered bonds have traditionally, and even in times of crisis, been considered to be safe and liquid assets; on top of this, the contribution that the current proposals would make should be considered. Moreover, they are not bail-in-able, which is not insignificant in the context of protecting private savers. They thus seem more suitable than some other products⁽¹⁷⁾. As long-term instruments, covered bonds would certainly appear to be useful as regards pension formation, and reference could be made here to the PEPP proposals.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽¹⁵⁾ See recital 33 of the proposal for a Directive.

⁽¹⁶⁾ According to information provided orally by representatives of the Commission, banks account for one third of the market, the ECB one third, and other parties such as investment funds and pension funds the remaining third.

⁽¹⁷⁾ Reference could also be made to the proposals on crowdfunding and peer-to-peer lending. The financial instruments offered in that framework are essentially negotiable financial instruments serving as equity (e.g. shares) or debt (e.g. bonds). The protection provided for in this context for savers and investors can be considered very limited.