



EUROPEAN CENTRAL BANK  
EUROSYSTEM

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ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 11 August 2021

on a draft law on mortgage banks and covered bonds and related laws

(CON/2021/26)

### Introduction and legal basis

On 4 July 2021 the European Central Bank (ECB) received a request from the Finnish Ministry of Finance for an opinion on a draft law on mortgage banks and covered bonds and related laws (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the sixth indent of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft law relates to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets and the ECB's specific tasks concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

### **1. Purpose of the draft law**

The purpose of the draft law is to replace the current Law on mortgage banks<sup>2</sup>. It implements Directive (EU) 2019/2162 of the European Parliament and of the Council<sup>3</sup> in Finnish law. In addition, the draft law contains certain provisions that are not required in order to implement Directive (EU) 2019/2162 but are designed to promote competition and harmonise the regulation of this area in view of the pronounced international and Nordic dimension of the covered bonds market.

### **2. General observations**

The vast majority of the draft law's provisions do not exceed the scope of Directive (EU) 2019/2162 with respect to the ECB's fields of competence.

### **3. Specific observations**

*Allocation of supervisory competences regarding covered bonds*

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<sup>1</sup> Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

<sup>2</sup> Laki kiinnitysluottopankkitoiminnasta 16.7.2010/688.

<sup>3</sup> Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU (OJ L 328, 18.12.2019, p. 29).

- 3.1 The draft law's provisions regarding the right to issue additional authorisations for the issuance of covered bonds must be interpreted in line with Council Regulation (EU) No 1024/2013<sup>4</sup>, Article 4(1)(a) of which gives the ECB the exclusive task of authorising credit institutions and withdrawing authorisations of credit institutions. In accordance with Article 6(4) of Regulation (EU) No 1024/2013, the ECB exercises this responsibility in respect of both significant and less significant institutions. This task is exercised for all banking activities listed in Annex I of Directive 2013/36/EU of the European Parliament and of the Council<sup>5</sup> as well as for any additional activity allowed under national law<sup>6</sup>.
- 3.2 The ECB wishes to draw the consulting authority's attention to the allocation of competences between the ECB, in its capacity as microprudential supervisor, and the national competent authorities (NCAs) specifically with regard to the issuance of covered bonds as well as the necessity to ensure that this allocation is not affected by the draft law.
- 3.3 The ECB has previously opined on the allocation of competences between the ECB and the NCAs<sup>7</sup>, noting that Directive (EU) 2019/2162 makes provision for the supervision of covered bonds by the NCAs and that this product supervision is distinct from and without prejudice to the ECB's prudential supervisory tasks under Regulation (EU) No 1024/2013 and, in particular, does not affect the ECB's exclusive task of authorising credit institutions and withdrawing authorisations of credit institutions, which may, depending on the national legal framework, include a general authorisation to issue covered bonds. Similarly, the ECB remains competent to ensure that the prudential risks arising from covered bond issuances as well as investments in covered bonds are adequately managed and assessed by credit institutions. The ECB has also previously noted<sup>8</sup> that any possible authorisation for a specific covered bond programme or supervision of covered bonds as a financial product would be considered as a product-specific regulation and, as such, to fall under the supervision of a national competent authority.
- 3.4 As is the case in various other Member States within the Single Supervisory Mechanism (SSM), in Finland a general banking licence does not include authorisation to issue covered bonds. A specific authorisation is required, which takes the form of an extension to the general banking licence<sup>9</sup>.
- 3.5 The draft law implements Article 19 of Directive (EU) 2019/2162, which requires permission for a covered bond programme to be obtained before issuing covered bonds under it, and introduces licensing requirements for issuance of covered bonds.
- 3.6 For mortgage banks specifically, paragraph 8 of the draft law is clear that the mortgage bank licence, as a 'general' licence, also covers permission to issue covered bonds. As in other Member States within the SSM where the activity of issuing covered bonds is covered by a general banking licence,

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4 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

5 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

6 See paragraph 3.1 of Opinion CON/2019/1. All ECB opinions are published on EUR-Lex.

7 See General observations in Opinion CON/2018/37.

8 See paragraph 3.1 of Opinion CON/2019/1.

9 See pages 22 and 35 of the draft legislative proposal.

the granting of such a general licence falls within the ECB's competence, without entailing any shift of competences between the ECB and the NCAs, as noted in paragraph 3.2<sup>10</sup>.

- 3.7 However, as regards the new type of licensing requirements for credit institutions and deposit banks (i.e. those other than mortgage banks) the part of the explanatory memorandum that addresses paragraph 9 of the draft law states that 'an extension of the authorisation of a credit institution to mortgage banking activities, as it currently stands, would be replaced by an authorisation procedure for the issue of covered bonds, in which the authorisation authority would always be the financial supervisory authority, irrespective of whether the credit institution is directly supervised by the European Central Bank or not'<sup>11</sup>.
- 3.8 The ECB understands that the requirement for *Finanssivalvonta* (FIN-FSA, Financial Supervisory Authority) to grant an authorisation is intended to implement Article 19 of Directive (EU) 2019/2162. It highlights, however, that any power granted to FIN-FSA should be without prejudice to the ECB's exclusive task of authorising credit institutions and withdrawing authorisations of credit institutions under Article 4(1)(a) of Regulation (EU) No 1024/2013, as noted in paragraphs 3.2 and 3.4.
- 3.9 The ECB would therefore suggest revisiting the explanatory memorandum and the draft legislation based on the above clarification on the delineation of competences between the ECB and the NCAs. It should be clarified that the task of assessing the prudential aspects of an authorisation of an entity that wishes to engage in issuance of covered bonds remains with the ECB also in relation to credit institutions and deposit banks. Although the abovementioned provisions of the draft law refer to the Financial Supervisory Authority in respect of authorisation to issue covered bonds within the meaning of Article 19 of Directive (EU) 2019/2162, it should be clarified that this competence cannot replace the ECB's prudential assessment, as explained above. Finally, the ECB notes that it is up to the national legislator to decide whether a two-step authorisation process regarding the activity of issuing covered bonds is necessary or whether the general authorisation to engage in the issuance of covered bonds should be integrated into the general banking licence.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 11 August 2021.

[signed]

*The President of the ECB*

Christine LAGARDE

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<sup>10</sup> See also the Banking Supervision webpage 'National powers exercised by the ECB' on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>11</sup> See paragraph 3.5 of the Explanatory Memorandum under '*Bond schemes, their supervision and authorisation procedures*'.