



Technical working document
produced in connection with ECB Opinion CON/2018/37¹
Drafting proposal in relation to the proposed directive

Text proposed by the Commission	Amendments proposed by the ECB ²
Amendment 1 Recital 12	
<p>‘(12) It is therefore appropriate that only credit institutions as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 should be able to issue covered bonds under Union law. The main purpose of this Directive is to regulate the conditions under which those credit institutions can issue covered bonds as a financing tool by laying down the product requirements and specific product supervision they are subject to in order to ensure a high level of investor protection.’</p>	<p>‘(12) It is therefore appropriate that only credit institutions as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 should be able to issue covered bonds under Union law. The main purpose of this Directive is to regulate the conditions under which those credit institutions can issue covered bonds as a financing tool by laying down the product requirements and specific product supervision they are subject to in order to ensure a high level of investor protection. The specific product supervision under this Directive is without prejudice to the tasks concerning the prudential supervision of credit institutions conferred upon the European Central Bank (ECB) under Article 127(6) of the Treaty.’</p>
<p><u>Explanation</u></p> <p><i>The proposed amendment clarifies that the product supervision under the proposed directive is distinct from, and without prejudice to, the tasks conferred upon the ECB under Article 127(6) of the Treaty and Council Regulation (EU) No 1024/2013³, such as the ECB’s exclusive task to authorise credit</i></p>	

¹ This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published in the Legal framework section of the ECB’s website alongside the opinion itself.

² Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

³ 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).

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<p><i>institutions (which may, depending on the national legal framework, include the general authorisation to issue covered bonds) or the ECB's exclusive task to ensure that the prudential risks arising from covered bond issuances, as well as from investments in covered bonds, are adequately managed and assessed by credit institutions. See also General Observations third paragraph of the opinion.</i></p>	
<p style="text-align: center;">Amendment 2 Article 3, point (1)</p>	
<p>'(1) "covered bond" means a debt obligation issued by a credit institution and secured by a cover pool of assets which covered bond investors have direct recourse to as preferred creditors;'</p>	<p>'(1) "covered bond" means a debt obligation issued by a credit institution and secured by a cover pool of assets to which covered bond investors have direct recourse to as preferred creditors;'</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>Including a requirement for recourse to be 'direct' could exclude covered bonds issued under existing national legal frameworks which use a special purpose vehicle to hold the assets and guarantee the issuer's liabilities under the covered bonds.</i></p>	
<p style="text-align: center;">Amendment 3 Article 3, point (12)</p>	
<p>'(12) "overcollateralisation" means the statutory or contractual level of collateral exceeding the coverage requirement as set out in Article 15;'</p>	<p>'(12) "overcollateralisation" means the statutory, or contractual or voluntary level of collateral exceeding the coverage requirement as set out in Article 15;'</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>It is proposed to add voluntary overcollateralisation as an additional component of overcollateralization, with the result that such voluntary overcollateralization would be subject to segregation requirements. This would ensure that voluntary overcollateralisation would benefit from the safeguards under the Bank Recovery and Resolution Directive. See also Amendment 10 and paragraph 1 of the opinion.</i></p>	
<p style="text-align: center;">Amendment 4 Article 3 (new definition)</p>	
<p>No text</p>	<p>"successor credit institution" means a credit institution that assumes the rights and obligations of an issuing credit institution</p>

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	under covered bonds;'
<i>Explanation</i> New definition proposed for Articles 4 and 5 of the proposed directive.	
Amendment 5 Article 4	
'1. Member States shall lay down rules entitling the covered bonds investors to the following claims:	'1. Member States shall lay down rules entitling the covered bonds investors to the following claims:
(a) a claim on the credit institution issuing covered bonds;	(a) a claim on the credit institution issuing covered bonds or the successor credit institution;
(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; [...]	(b) in case of insolvency or resolution of the credit institution issuing covered bonds or the successor credit institution , a priority claim on the principal and any accrued interest the proceeds from assets included in the cover pool; (bb) in the event that the priority claim as referred to in point (b) cannot be fully satisfied, a claim on the credit institution issuing covered bonds or the successor credit institution, which ranks <i>pari passu</i> with the claims of the credit institution's or, as the case may be, the successor credit institution's ordinary unsecured creditors; [...]
3. For the purposes of point (c) of paragraph 1, in the case of insolvency of a specialised mortgage credit institution, Member States may lay down rules granting the covered bond investors a claim that ranks senior to the claim of that specialised mortgage credit institution's ordinary unsecured creditors determined in accordance with the national laws governing the ranking of creditors in normal insolvency procedures, but junior to any other preferred	3. For the purposes of point (bb) or (c) of paragraph 1, in the case of insolvency of a specialised mortgage credit institution, Member States may lay down rules granting the covered bond investors a claim that ranks senior to the claim of that specialised mortgage credit institution's ordinary unsecured creditors determined in accordance with the national laws governing the ranking of creditors in normal insolvency procedures, but junior to any other

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creditors.'	preferred creditors.'
<p style="text-align: center;"><u>Explanation</u></p> <p><i>Dual recourse should extend not only to the covered bond issuing credit institution, but also to any successor credit institution when the dual recourse becomes relevant, e.g. in case of resolution or insolvency of such entity. Further, it should be clarified that a covered bondholder has an ordinary, unsecured claim against a credit institution in the event that its claim cannot be satisfied against the proceeds from the assets in the cover pool.</i></p>	
<p style="text-align: center;">Amendment 6</p> <p style="text-align: center;">Article 5</p>	
<p>'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.'</p>	<p>'Member States shall ensure that the payment obligations attached to the covered bonds are not subject to automatic acceleration upon the default, insolvency or resolution of the credit institution issuing covered bonds or the successor credit institution.'</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>A default (e.g., payment failure) by a credit institution should be added to the events that should not lead to automatic acceleration of the payment obligations of the covered bonds.</i></p>	
<p style="text-align: center;">Amendment 7</p> <p style="text-align: center;">Article 7(2)</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 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. Such assets located outside of the Union may not exceed [20%] of the total cover pool at issuance of the covered bond until maturity.'</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>It should be ensured that cover pools are generally limited to assets located in the EEA, as this ensures that liquidation of collateral in the case of the issuer's insolvency is legally enforceable. Legal rights with</i></p>	

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<p><i>respect to assets located outside the EEA should be legally enforceable in a broadly similar way to the enforceability of such rights in EU jurisdictions (see, e.g., the requirements on legal certainty for immovable property collateral under Article 208 (2) CRR⁴). To reach this aim a maximum limit on such assets should be introduced to ensure the homogeneity of the pool, to foster the European character of the product and to support investors' understanding of cover pool risks. See paragraph 2.2 of the opinion.</i></p>	
<p>Amendment 8 Article 10</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>'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>,</p>
<p>No text</p>	<p>2. Regulatory limits or criteria should ensure that a cover pool shall not materially deteriorate prior to maturity in terms of structural features, the maturity structure of assets or risk profile.</p>
<p><u>Explanation</u></p> <p><i>Member States should only allow cover pools to be mixed if they make sure that the risk profile and the composition of the cover pool should not change over time. See paragraph 2.3 of the opinion.</i></p>	
<p>Amendment 9 Article 12.1</p>	
<p>'1. [...] For the purposes of the first subparagraph, the assets in the cover pool shall include any collateral received in connection with derivative contract positions.'</p>	<p>'1. [...] For the purposes of the first subparagraph, the assets in the cover pool shall include any collateral received in connection with derivative contract positions and any collateral received by way of overcollateralization, but shall not include any</p>

⁴ See also pp. 43-44 of the EBA Recommendation.

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	<p>additional guarantees not forming part of the overcollateralization required by applicable national laws.</p> <p>For the purposes of point (b) in the first subparagraph, the assets in the cover pool shall be separated either by (i) registration of the assets in the cover pool in a cover pool register, (ii) transfer of assets in the cover pool to a separate legal entity or (iii) segregation of the assets in the cover pool in a specialised mortgage credit institution.'</p>
<p><i>Explanation</i></p> <p><i>It is proposed to specify in the proposed directive various methods for the segregation of assets in the cover pool.</i></p> <p><i>Furthermore, it is suggested to clarify that the segregation requirement not only applies to the requirements for coverage but also to all overcollateralisation, including any overcollateralisation provided on a voluntary basis.</i></p> <p><i>See paragraph 2.5.4 of the opinion.</i></p>	
<p>Amendment 10</p> <p>Article 13</p>	
<p>'1. Member States may require that credit institutions issuing covered bonds appoint a cover pool monitor to perform ongoing monitoring of the cover pool with regard to the requirements set out in Articles 6 to 12 and Articles 14 to 17.'</p>	<p>'1. Member States may shall require that credit institutions issuing covered bonds appoint a cover pool monitor at the issuance of a covered bond to perform ongoing monitoring of the cover pool with regard to the requirements set out in Articles 6 to 12 and Articles 14 to 17.'</p>
<p>'2. Where Member States use the option provided for in paragraph 1, they shall lay down rules at least on the following aspects: [...].'</p>	<p>'2. Where Member States use the option provided for in paragraph 1, they shall lay down rules at least on the following aspects: [...].'</p>
<p>'[...]</p> <p>4. Where Member States use the option provided for in paragraph 1, they shall notify EBA.'</p>	<p>'[...]</p> <p>4. Where Member States use the option provided for in paragraph 1, they shall notify EBA. Member States shall require that the</p>

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	compliance with the rules laid down pursuant to paragraph 2 of cover pool monitors is monitored by the competent authority.’
<p><i>Explanation</i></p> <p><i>The proposed directive should require rather than permit the appointment of a cover pool monitor. Such cover pool monitor ensures that the high quality of the cover pool is maintained during the lifetime of the covered bond. Minimum requirements lead to a harmonised and comparable approach which leads to harmonisation of the standards throughout the Union. See paragraph 2.6-5 of the opinion.</i></p>	
<p>Amendment 11</p> <p>Article 14</p>	
<p>[...]</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>[...]</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 and transaction information:</p>
(a) the value of the cover pool and outstanding covered bonds;	(a) the value of the cover pool and outstanding covered bonds;
No text	(b) separate lists of international securities identification numbers (ISINs) for cover bonds issued;
(b) the geographical distribution and type of assets in the cover pool, their loan size and valuation method;	(b) (c) the geographical distribution and type of assets in the cover pool, their loan size, their loan-to-value ratio and their valuation method, including the indexation method used if applicable;
(c) details as to risks in relation to interest rates, currency, credit, market and liquidity;	(c) (d) details as to risks in relation to interest rates, currency, credit, market and liquidity and related hedging arrangements;
(d) the maturity structure of assets in the cover pool and covered bonds;	(d) (e) the maturity structure of assets in the cover pool and covered bonds, including an overview of the maturity extension triggers if applicable;
(e) the levels of required coverage, contractual	(e) (f) the levels of required and available coverage,

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and voluntary overcollateralisation;	including statutory , contractual and voluntary overcollateralisation, with asset coverage tests if applicable ;
f) the percentage of loans that are more than ninety days past due.	(fg) the percentage of loans that are more than ninety days past due.;
No text	(h) an overview of the key transaction parties ;
No text	(i) a glossary with definitions, data sources and criteria .
Member States shall ensure that the information is provided to investors on an aggregated basis. Member States may also require the information to be provided on a loan-by-loan basis.'	Member States shall ensure that the information is provided to investors on an aggregated basis. Member States may also require the information to be provided on a separate or loan-by-loan basis.'
'3. Member States shall ensure investor protection by requiring credit institutions issuing covered bonds to publish on their website the information made available to investors in accordance with paragraphs 1 and 2.'	'3. Member States shall ensure investor protection by requiring credit institutions issuing covered bonds to publish on their website the information made available to investors in accordance with paragraphs 1 and 2. EBA shall develop a template for this purpose by [date] .'
<p><u>Explanation</u></p> <p><i>Separate lists with the international securities identification numbers (ISINs) for the outstanding covered bonds help to identify the respective covered bonds. The loan-to-value ratio should be accompanied by an explanation of the indexation method to assist comparability. Maturity extension triggers should be listed for a better evaluation of risk. All forms of collateralisation should be mentioned for an assessment of the risk structure. Key transaction parties should be listed for the evaluation of counterparty risk. A glossary helps to create a common understanding and easy access to information. Templates help to harmonise information and therefore help investor due diligence of comparable products. Such templates could be based on templates already used and created in the market through market initiatives. See paragraph 2.7-6 of the opinion.</i></p>	
<p>Amendment 12</p> <p>Article 15(1)</p>	
<p>'1. [...]</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</p>	<p>'1. [...]</p> <p>(b) the calculation of the level of coverage required ensures that (i) the total nominal amount of all assets with the exception of assets which are</p>

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same value as the total nominal amount of outstanding covered bonds ('nominal principle');	<u>derivatives</u> are at least of the same value as the total nominal amount of outstanding covered bonds ('nominal principle') <u>and (ii) assets and liabilities resulting from derivatives are measured at market value;</u>
<p>(c) the following assets in the cover pool contribute to the coverage requirement:</p> <p>(i) primary assets;</p> <p>(ii) substitution assets;</p> <p>(iii) liquid assets held in accordance with Article 16;</p> <p>(iv) derivative contracts held in accordance with Article 11;</p> <p>(v) statutory overcollateralisation;</p>	<p>(c) the following assets in the cover pool contribute to the coverage requirement:</p> <p>(i) primary assets;</p> <p>(ii) substitution assets;</p> <p>(iii) liquid assets held in accordance with Article 16;</p> <p>(iv) derivative contracts held in accordance with Article 11;</p> <p>(v) statutory overcollateralisation;</p>
<p>(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.</p> <p>[...]</p>	<p>(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 coverage requirement.</p> <p>For the purpose of point (a) of the first subparagraph, the same limits as set out in Article 129 of Regulation (EU) No 575/2013 shall be applicable.</p> <p>For the purpose of the limit on the value of the property comprising the collateral security, such property shall be monitored and updated at least on a yearly basis by using an indexation method.</p> <p>[...]</p>
<p><u>Explanation</u></p> <p><i>The nominal calculation principle cannot be applied to derivative contracts which can be either assets or liabilities during the life of the derivative but will return to zero market value at maturity of the derivative contract. The applicable calculation method should be clarified so that assets and liabilities resulting from derivatives are measured at market value. All claims where a default is considered to have occurred should not contribute to the requirements for coverage.</i></p> <p><i>Statutory overcollateralisation should also be removed as an asset which can contribute to the coverage</i></p>	

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<p><i>requirement since logically overcollateralization is not relevant to the coverage requirement.</i></p> <p><i>Loan-to-value limits should also apply for the calculation of the minimum coverage on the same basis as in Article 129 of Regulation (EU) No 575/2013.</i></p> <p><i>See paragraph 3.1 of the opinion.</i></p>	
<p>Amendment 13</p> <p>Article 16</p>	
<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 style="padding-left: 40px;">(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, valuated in accordance with Article 9 of that Delegated Regulation and segregated in accordance with Article 13 of this Directive;</p> <p>[...]</p>	<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 style="padding-left: 40px;">(a) assets qualifying as level 1, and level 2A and level 2B assets pursuant to Articles 10, and 11 and 12 of Delegated Regulation (EU) 2015/61, valuated in accordance with Article 9 of that Delegated Regulation, not own-issued in accordance with Article 7(3) of that Delegated Regulation, segregated in accordance with Article 13 of this Directive and appropriately diversified in accordance with Article 8.1 of that Delegated Regulation;</p> <p>[...]</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 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 Delegated Regulation (EU) 2015/61, Member States may decide that the part of the cover pool liquidity buffer which consists of assets in accordance with point (a) of paragraph 3 may contribute towards those liquidity requirements, but only up to the amount of the net liquidity outflow of the covered bond programme national rules transposing paragraphs 1, 2 and 3 do not apply throughout the period foreseen in those acts of Union law.</p>
<p>'5. Member States may allow for the</p>	<p>'5. Member States may allow for the</p>

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<p>calculation of the principal for extendable maturity structures to be based on the final maturity date of the covered bond. [...]</p>	<p>calculation of the principal for extendable maturity structures to be based on the final maturity date of the covered bond. [...]</p>
<p><u>Explanation</u></p> <p><i>It is suggested to limit assets eligible for the cover pool liquidity buffer to assets qualifying as level 1 and level 2A of Delegated Regulation (EU) 2015/61 as only these assets provide for sufficient liquidity as required for a liquidity buffer. The assets constituting a liquidity buffer should not have been issued by the credit institution itself in accordance with article 7(3) of the Delegated Regulation as the risk would cumulate in one credit institution. The liquid assets eligible for the cover pool liquidity buffer should be sufficiently diversified to cater for sufficient flexibility in enforcing them. Claims where a default is considered to have occurred should not contribute to the cover pool liquidity buffer.</i></p> <p><i>The cover pool liquidity buffer should cover the entire net liquidity outflow for 180 calendar days without derogation. In addition, in order to avoid duplication of liquidity requirements, the part of the cover pool liquidity buffer which consists of assets in accordance with article 3(a) of Delegated Regulation (EU) 2015/61 may contribute toward those liquidity requirements in accordance with the Delegated Regulation (EU) No 2015/61. To clarify the calculation method further any assets and liabilities pursuant to the covered bond should only contribute to the credit institutions' liquidity up to the net liquidity outflow.</i></p> <p><i>It is suggested that the calculation of the principal redemption for covered bonds with extendable maturity structures be based on the scheduled maturity date.</i></p> <p><i>See paragraphs 3.2 and 3.3 of the opinion.</i></p>	
<p>Amendment 14</p> <p>Article 17(1)</p>	
<p>'1. Member States may allow for the issue of covered bonds with extendable maturity structures where investor protection by at least the following: (a) the maturity extension triggers are specified in contract or statute; [...]</p>	<p>'1. Member States may allow for the issue of covered bonds with extendable maturity structures where investor protection by at least the following: (a) the maturity extension triggers are specified in contract or statute; [...]</p>
<p><u>Explanation</u></p> <p><i>For transparency and standardisation reasons it is recommended to ensure that maturity extension triggers are specified in the applicable statute, in order not to weaken the high quality of the 'covered bond' product by extendable maturity structures which can be triggered upon issuer discretion based upon subjective considerations. This would strengthen investor protection by introducing more objective</i></p>	

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<i>and comprehensible triggers. See paragraph 4 of the opinion.</i>	
Amendment 15 Article 23	
<p>‘1. Member States shall lay down rules establishing appropriate administrative penalties and remedial measures applicable at least in the following situations:</p> <p>(a) a credit institution has acquired a permission to issue covered bonds through false statements or other irregular means;’</p>	<p>‘1. Member States shall lay down rules establishing appropriate administrative penalties and remedial measures applicable at least in the following situations:</p> <p>(a) a credit institution has acquired a permission to issue covered bonds for a covered bond programme in accordance with the provisions transposing Article 19 through false statements or other irregular means;’</p>
<p>‘(b) a credit institution no longer fulfils the conditions under which a permission was given; [...].’</p>	<p>‘(b) a credit institution no longer fulfils the conditions under which a permission for a covered bond programme in accordance with the provisions transposing Article 19 was given; [...].’</p>
<p>‘2. The penalties and measures referred to in paragraph 1 shall be effective, proportionate and persuasive and shall include at the least the following:</p> <p>(a) a withdrawal of permission to issue covered bonds; [...].’</p>	<p>‘2. The penalties and measures referred to in paragraph 1 shall be effective, proportionate and persuasive and shall include at the least the following:</p> <p>(a) a withdrawal of the permission given in accordance with the provisions transposing Article 19 to issue covered bonds for a covered bond programme; [...].’</p>
<p><u>Explanation</u></p> <p><i>There is a distinction between the authorisation for credit institutions to issue covered bonds in general and the permission for a covered bond programme under the proposed directive. The former, if provided in national legal frameworks, involves the general assessment of the prudential fitness of a supervised entity and is to be granted within the context of the Single Supervisory Mechanism (SSM) by the ECB. The latter, as introduced by the proposed directive, is granted by the competent authorities of the Member States pursuant to the national legislation transposing Article 19 of the proposed directive. Article 23 needs to be amended to clarify that the provisions on administrative penalties and remedial measures under the proposed directive refer only to the permission for a covered bond programme</i></p>	

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<p><i>under Article 19 of the proposed directive, and not to any general permission under prudential rules.</i></p>	
<p style="text-align: center;">Amendment 16 Article 25(1)</p>	
<p>‘1. Member States shall ensure that competent authorities designated pursuant to Article 18(2) cooperate closely with the competent authority performing the general supervision of credit institutions in accordance with relevant Union law applicable to those institutions.’</p>	<p>‘1. Member States shall ensure that competent authorities designated pursuant to Article 18(2) cooperate closely with, and may provide all the necessary information upon the request of, the competent authority performing the general supervision of credit institutions in accordance with relevant Union law applicable to those institutions.’</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>It is important that the competent authorities of the Member States with a supervisory mandate under the proposed directive are not prevented from providing information to the competent authorities performing the general supervision of credit institutions in accordance with relevant Union law applicable to those institutions. See paragraph 5-2 of the opinion.</i></p>	
<p style="text-align: center;">Amendment 17 Article 27</p>	
<p>‘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.’</p>	<p>‘Member States shall allow credit institutions to use the label European EU Covered Bonds in respect of covered bonds which meet the requirements laid down in the provisions transposing this Directive.’</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The term should be neutral and not be confused with the European Central Bank. See paragraph 6 of the opinion.</i></p>	
<p style="text-align: center;">Amendment 18 Article 28</p>	
<p>‘Article 52(4) of Directive 2009/65/EC is amended as follows: (1) the first subparagraph is replaced by the</p>	<p>‘Article 52(4) of Directive 2009/65/EC is amended as follows: (1) the first subparagraph is replaced by the</p>

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<p>following:</p> <p>"Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 25 % where bonds were issued before [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day] and met the requirements set out in this paragraph, in the version applicable on the date of their issue, or where bonds fall under the definition of covered bonds in accordance with point (1) of Article 3 of Directive (EU) 20XX/XX of the European Parliament and of the Council*.</p> <p>[...].'</p>	<p>following:</p> <p>"Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 25 % where bonds were issued before [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day] and met the requirements set out in this paragraph, in the version applicable on the date of their issue, or where bonds fall under the definition of covered bonds in accordance with point (1) of Article 3 of Directive (EU) 20XX/XX of the European Parliament and of the Council*.</p> <p>[...].'</p>
<p><u>Explanation</u></p> <p><i>Only if all requirements set out in the proposed directive, including, for example, the 'dual recourse' principle, are met is the term used in the same manner as had been set out in UCITS, such that Member States may raise the 5% limit subject to which a UCITS may invest in securities issued by the same issuer to 25% in respect of covered bonds.</i></p>	
<p>Amendment 19</p> <p>Article 29</p>	
<p>'In Article 2(1) of Directive 2014/59/EU, point 96 is replaced by the following:</p> <p>"(96) 'covered bond' means an instrument as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council*, in the version applicable on the date of its issue, and issued before [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day] or a covered bond as defined in point (1) of Article 3 of Directive (EU) 20XX/XX of the European Parliament and of the Council**;</p> <p>[...].'</p>	<p>'In Article 2(1) of Directive 2014/59/EU, point 96 is replaced by the following:</p> <p>"(96) 'covered bond' means an instrument as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council*, in the version applicable on the date of its issue, and issued before [OP: please insert the date laid down in the second subparagraph of Article 32(1) of this Directive + 1 day] or a covered bond complying with all the requirements of as defined in point (1) of Article 3 of Directive (EU) 20XX/XX of the European Parliament and of the Council**;</p> <p>[...].'</p>

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<p><u>Explanation</u></p> <p>See explanation to Amendment 20 above.</p>	
<p>Drafting proposal in relation to the proposed regulation</p>	
<p>Amendment 20</p> <p>Article 1 point 1(b)</p>	
<p>'(b) the following paragraphs 1a, 1b and 1c are inserted:</p> <p>1a. For the purposes of point (c) of the first subparagraph of paragraph 1, the following shall apply:</p> <ul style="list-style-type: none"> (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; (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; (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>	<p>'(b) the following paragraphs 1a, 1b and 1c are inserted:</p> <p>1a. For the purposes of point (c) of the first subparagraph of paragraph 1, the following shall apply:</p> <ul style="list-style-type: none"> (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; (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; (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>A competent authority may, after consulting EBA, partly waive the application of point (a) and (b) above and allow for exposures to credit institutions that qualify for the credit quality step 3; provided that the total exposure to credit institutions that qualify for the credit quality step 3 shall in no circumstances exceed</p>

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	<p>5% of the total exposure of the nominal amount of outstanding covered bonds of the issuing credit institution; and provided further that the total exposure to credit institutions that qualify for the credit quality step 1, the credit quality step 2 or the credit quality step 3 shall not exceed 15% of the total exposure of the nominal amount of outstanding covered bonds of the issuing credit institution; and provided further that the competent authority confirms in writing that there are significant potential concentration problems in the Member State concerned due to the application of the credit quality step 1 and 2 requirements referred to in points (a) and (b) above.</p> <p>[...]</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>	<p>This paragraph shall not apply to the use of covered bonds as eligible collateral as permitted pursuant to Article 98 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>
<p>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.</p>	<p>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. For the purpose of the limit on the value of the pledged properties, such properties shall be monitored and updated at least on a yearly basis by the competent authority by using an indexation method. The full loan amount irrespective of such limit shall be subject to the segregation of assets in the cover pool pursuant to Article 12 of Directive (EU) 20xx/xxxx [OP: Please insert reference to Directive (EU) on the issue of covered bonds</p>

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	and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU].
1c. For the purposes of point (f)(i) and point (g) of the first subparagraph of paragraph 1, the limit of 60 % 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.”;	1c. For the purposes of point (f)(i) and point (g) of the first subparagraph of paragraph 1, the limit of 60 % 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.
<p><u>Explanation</u></p> <p><i>In connection with the preferential capital treatment of covered bonds, the first amendment allows a competent authority to allow for exposures to credit institutions which fulfil credit quality step 3, but only under narrowly defined circumstances in order to cater for the additional risk involved therewith. In no circumstances should such exposures exceed 5% of the total exposure of the nominal amount of outstanding covered bonds of the issuing credit institution. Also, the competent authority must confirm in writing that there are significant potential concentration problems in the Member State concerned if such exposures were to be confined to credit institutions meeting credit quality step 1 or credit quality step 2 only.</i></p> <p><i>This second amendment corrects an incorrect reference.</i></p> <p><i>The third amendment aims at a continuous monitoring of the overcollateralization level. See paragraph 7.2 of the opinion.</i></p> <p><i>This fourth amendment aims at excluding ships from preferential capital treatment. See paragraph 7.3 of the opinion.</i></p>	
<p>Amendment 21</p> <p>Article 1 point 1(d)</p>	
<p>‘(d) [...]</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>‘(d) [...]</p> <p>The assets contributing to a minimum level of overcollateralisation shall not be subject to the limits on credit quality and exposure size as set out in points (b) and (c) of the first subparagraph of paragraph 1 and shall not count towards those limits of this Article.</p>
[...]	[...]

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<p>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.";</p>	<p>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 and provided that such substitution assets shall not exceed 20 % of the total nominal amount of all outstanding covered bonds of the issuer.";</p>
<p><u>Explanation</u></p> <p><i>The first amendment aims at ensuring that the assets contributing to the overcollateralisation are subject to the same limits on the exposure size and credit quality set out in paragraph (1) of Article 129 of Regulation (EU) No 575/2013. See paragraph 7.4 of the opinion.</i></p> <p><i>The second amendment aims at ensuring homogeneity and facilitating investor due diligence. See paragraph 7.5 of the opinion.</i></p>	