



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

## **Call for advice to the European Banking Authority on the performance and review of the EU covered bond framework**

### **Background**

The market for covered bonds in the EU is very large (multi-trillion euro), well-established and highly developed, and it constitutes a key source of cost-effective long-term funding for credit institutions.

Prior to 2019, national covered bond laws in the EU were only subject to a very high level of harmonisation in accordance with Article 54 of Directive 2009/65/EC (the “UCITS Directive”). Article 129 of Regulation (EU) No 575/2013 (the “CRR”) laid down the criteria that banks’ holdings of covered bonds should meet to be assigned a preferential regulatory capital treatment, but the absence of a truly harmonised covered bond framework meant that preferential treatment was granted to instruments of different nature and level of risk. This fragmented regulatory framework created obstacles to the development of an integrated single market for covered bonds in the EU.

As an essential part of the Capital Markets Union (“CMU”) project, the EU adopted on 27 November 2019 a covered bond legislative package composed of Directive 2019/2162 (the “Covered Bond Directive” or “CBD”) and Regulation 2019/2160 amending the CRR. This package sets out a comprehensive minimum harmonisation framework that all covered bonds issued in the EU must meet.

Member States were given until 8 July 2022 to adopt the necessary transposition measures to comply with the CBD.

Article 31 of the CBD (see annex) tasked the Commission with submitting several reports to the co-legislators on the implementation of the covered bond framework and various other related matters following the full transposition of the Directive by Member States. The CBD invited the Commission to accompany the reports with any related legislative proposals that it deemed appropriate.

The Commission services, therefore, seek input and technical assistance from the European Banking Authority (“EBA”) to conduct the reviews referred to in Article 31 of the CBD. The scope of the advice that the Commission seeks is set out in full detail as per the below.

## **Objectives of the EU covered bond framework**

The EU covered bond framework harmonises Member States' legal and regulatory frameworks to provide for a common basis for the issuance of and investment in covered bonds across the EU. On the back of such a harmonised framework, it was sought to:

- ensure that covered bonds are recognisable and treated consistently in all Member States' legal frameworks and for the purposes of applying the EU's regulatory banking framework. To that end, the CBD lays down requirements in relation to, *inter alia*:
  - (a) a definition of "covered bonds" and a set of structural features, namely the dual recourse and bankruptcy remote features;
  - (b) eligibility and other relevant requirements on the cover pool, as well as the pool's coverage and liquidity;
  - (c) public supervision of covered bonds and transparency requirements on the covered bond issuer; and
  - (d) an "European covered bond" label;
- facilitate the development and smooth operation of covered bond markets in the EU and mitigate potential risks and vulnerabilities to financial stability. A key objective was, in particular, to encourage the development of covered bond markets in those Member States where there was none and the growth of those markets that had not sufficiently developed;
- facilitate a stable funding source for credit institutions, which should, in turn, translate into more affordable mortgages for consumers and businesses and provide alternative safe investments to investors.

The covered bond framework recognised that, while underdeveloped in some Member States, covered bonds had proved a very successful funding instrument for credit institutions in certain other Member States. Thus, to assist in the development of the former and avoid disrupting the latter, the CBD laid down minimum harmonising requirements based on widely recognised sound regulatory practices and provided various national discretions that Member States could choose to exercise.

## **Scope and need for technical advice**

### **A. Assessment of the performance of the covered bond framework**

The Commission Services seek advice from the EBA to carry out the review referred to in paragraph 2 of Article 31 of the CBD on the "implementation of this Directive with regard to the level of investor protection and on the developments regarding the issue of covered bonds in the Union". In relation to this, the EBA is requested to assess the performance of

the EU covered bond framework and, for these purposes, the EBA should conduct the following tasks:

- a) evaluate the performance and functioning of EU covered bond markets taking into account, at a minimum, the items referred to in points (a) to (e) of paragraph 2 of Article 31 of the CBD and considering, where appropriate, average levels and main market trends, with particular attention at structural breaks after the application of the CBD. For these purposes, the EBA is asked to assess the following:
  - (i) covered bond issuance volumes in EU markets in recent years with relevant comparisons of volumes for significant periods, including the volumes of covered bonds eligible for the preferential risk weight treatment laid down in Article 129(1) of Regulation (EU) No 575/2013. The analysis should include a breakdown by Member State and, where appropriate, by type of collateral;
  - (ii) the developments regarding the assets collateralising the issue of covered bonds and the level of overcollateralisation;
  - (iii) issuance volumes of comparable funding instruments and markets in recent years, namely securitisations;
  - (iv) relevant credit performance of cover pools and realised yields for covered bond holders in recent years;
  - (v) the liquidity of covered bonds;
  - (vi) the investor base of EU covered bonds. The analysis should consider the prevalent type of investor and their location;
  - (vii) the developments regarding the number of permissions to issue covered bonds;
  - (viii) the extent to which EU credit institutions have made use of the “European covered bond” label in their programmes;
- b) assess whether the implementation of the coverage and liquidity requirements laid down in the CBD have contributed to mitigating the liquidity risks associated with covered bonds;
- c) assess the developments regarding the risks and benefits of the use of exposures as referred to in article 129(1) of Regulation (EU) No 575/2013, and whether or not there are elements of their prudential treatment meriting further consideration;
- d) assess asset encumbrance levels (and their trends over time) of EU credit institutions issuing covered bonds and indicate the contribution that covered bonds make to those levels (and trends);
- e) assess the overall implementation of the CBD carried out by Member States, with a particular focus on the use of national discretions. Indicate the most relevant instances of Member States using such national discretions to apply stricter requirements than those laid down in the CBD;
- f) assess any other matters in connection with the functioning of covered bond markets that the EBA deems appropriate (see point (h) of Article 31(2) of the CBD).

Taking into account any relevant findings from the evaluation referred to above, the Commission Services would welcome the advice from the EBA as to whether the EU covered bond framework has met the harmonisation and market development objectives laid down in the preceding section and, more generally, the objectives of the CMU.

Should the EBA identify areas for improvement, the Commission services would welcome recommendations on appropriate amendments to the EU covered bond framework.

## **B. Assessment of additional items in Article 31 of the CBD**

### **1. Third country equivalence covered bond regime**

Paragraph 1 of Article 31 of the CBD mandates the Commission to submit a report to the co-legislators on the merits of introducing a third country covered bond regime and on the design of such a hypothetical regime.

The Commission Services seek EBA's assistance to determine whether and how an equivalence regime could be introduced for third countries in relation to covered bonds. To that end, the Commission would in particular welcome EBA's advice and input to determine the appropriate criteria and principles that should guide the determination of third country equivalence in relation to covered bonds.

The EBA's advice could in particular also cover the impact that such a hypothetical regime could have on EU markets.

As part of this assessment, the EBA should assess, to the extent possible, to which extent EU credit institutions hold covered bonds issued by credit institutions of third countries, and which ones, and to which extent credit institutions of third countries hold covered bonds issued by EU credit institutions.

The EBA should also collect and assess comparative data on the performance of covered bond markets in significant third country markets, including Brazil, Canada, and Singapore, to the extent possible.

### **2. European Secured Notes ("ESNs")**

Paragraph 5 of Article 31 of the CBD mandates the Commission to submit a report to the co-legislators on the "possibility of introducing a dual-recourse instrument named European Secured Note".

In light of this mandate, the Commission Services would welcome EBA's views as to whether the conclusions laid down in the Authority's report<sup>1</sup> on the assessment of ESNs of 8 July 2018 remain relevant or should, otherwise, be amended, updated, or followed up by additional advice.

### 3. Covered bonds with extendable maturities

In connection with point (f) of paragraph 2 of Article 31 of the CBD, the EBA should examine the relevant market trends in the use of covered bonds with extendable maturity structures and assess the risks and benefits arising from the covered bonds with extendable maturities.<sup>2</sup>

### **C. Green covered bonds and ESG risks of cover pools of covered bonds**

While green covered bonds are not explicitly captured within the Covered Bond Directive, the Commission Services would nonetheless invite the EBA to provide an overview of current developments and an assessment relating to the future possible development of the green covered bond market. As part of its assessment, the Commission services invite the EBA to assess the relevance of introducing disclosure requirements of ESG risks of cover pools of covered bonds, taking into account interlinkages with the Pillar 3 disclosures on ESG risks and the March 2023 ESA/ECB joint statement on disclosures.

### **D. Final considerations**

The Commission services are aware that time and resource constraints may restrict the range of analysis to be conducted by the EBA in certain aspects of this CfA. Should that be the case, the EBA should highlight these limitations in its final response to this CfA.

The EBA's assessment as per the response to this CfA will not prejudice the Commission's final reports under Article 31 of the CBD.

The EBA is invited to provide its response no later than 30 June 2025.

#### *Data submission*

Paragraph 3 of Article 31 of the CBD requires that, by 8 July 2024, Member States provide the Commission with all relevant data to conduct the review referred to in paragraph 2 of that Article.

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<sup>1</sup> [EBA publishes its assessment of European Secured Notes | European Banking Authority \(europa.eu\)](#)

<sup>2</sup> Please note that the study referred to in point (f) of Article 31(2) of the CBD has not been budgeted and, therefore, the EBA should not seek to rely on that study for the purposes of conducting the assessment referred to in point (b).

In light of the assessment required to be conducted for the purposes of this call for advice, the Commission Services will invite Member States to submit all the necessary data in connection with the response to this call for advice directly to the EBA, through the National Competent Authorities. To facilitate the data collection exercise, the EBA is requested to produce a reporting template that will be distributed to Member States' National Competent Authorities.

## ANNEX

### *Article 31*

#### *Reviews and reports*

1. By 8 July 2024, the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council, together with a legislative proposal, if appropriate, on whether and, if so, how an equivalence regime could be introduced for third-country credit institutions issuing covered bonds and for investors in those covered bonds, taking into consideration international developments in the area of covered bonds, in particular the development of legislative frameworks in third countries.
2. By 8 July 2025, the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council on the implementation of this Directive with regard to the level of investor protection and on the developments regarding the issue of covered bonds in the Union. The report shall include any recommendations for further action. The report shall include information on:
  - (a) developments regarding the number of permissions to issue covered bonds;
  - (b) developments regarding the number of covered bonds issued in compliance with the provisions of national law transposing this Directive and with Article 129 of Regulation (EU) No 575/2013;
  - (c) developments regarding the assets collateralising the issue of covered bonds;
  - (d) developments regarding the level of overcollateralisation;
  - (e) cross-border investments in covered bonds, including inward investment from and outward investment to third countries;
  - (f) developments regarding the issue of covered bonds with extendable maturity structures;
  - (g) developments regarding the risks and benefits of the use of exposures as referred to in Article 129(1) of Regulation (EU) No 575/2013;
  - (h) the functioning of covered bond markets.
3. By 8 July 2024, Member States shall transmit information on the issues listed in paragraph 2 to the Commission.
4. By 8 July 2024, after commissioning and receiving a study assessing the risks and benefits arising from covered bonds with extendable maturity structures and after consulting EBA, the Commission shall adopt a report and shall submit that study and that report to the European Parliament and to the Council, together with a legislative proposal, if appropriate.
5. By 8 July 2024, the Commission shall adopt a report on the possibility of introducing a dual-recourse instrument named European Secured Notes. The Commission shall submit that report to the European Parliament and to the Council, together with a legislative proposal, if appropriate.