

**Law of 8 December 2021 relating to the issue of covered bonds (*lettres de gage*), and:**

- 1° **transposing 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;**
- 2° **implementing Regulation (EU) 2019/2160 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds; and**
- 3° **amending:**
  - (a) **the Law of 5 April 1993 on the financial sector, as amended;**
  - (b) **the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;**
  - (c) **the Law of 17 December 2010 relating to undertakings for collective investment, as amended; and**
  - (d) **the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended.**

We Henri, Grand Duke of Luxembourg, Duke of Nassau,

Having heard our State Council;

With the consent of the Chamber of Deputies;

Having regard to the decision of the Chamber of Deputies of 30 November 2021 and that of the State Council of 7 December 2021 that a second vote is not required;

*Ordered and order:*

## **Title 1 - Provisions relating to the issue of covered bonds**

### **Chapter 1 - Issue of covered bonds**

#### **Art. 1. Definitions**

The following definitions shall apply for the purposes of this law:

- 1° “cover assets” means assets included in a cover pool;
- 2° “ordinary cover assets” means dominant cover assets that determine the nature of the cover pool;
- 3° “substitution assets” means cover assets that contribute to the coverage requirements, other than ordinary cover assets;
- 4° “collateral assets” means physical assets and assets in the form of exposures that secure cover assets;
- 5° “alternative form of certification” means a form of certification of the ownership of and claims on a physical collateral asset, other than a public register, that allows interested third parties to access information in relation to the identification of the encumbered physical collateral asset, the attribution of ownership, the documentation and attribution of encumbrances and the enforceability of security interests, recognised by a Member State in accordance with the third subparagraph of Article 6(3) of 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, hereinafter “Directive (EU) 2019/2162”;
- 6° “renewable energy property” means any key project contract of a renewable energy undertaking, any income from such an undertaking, including, in particular, existing or future income claims and all the payments received which have been generated by renewable energy sources and any necessary equipment for the production, the storage and the transmission, including electricity storage facilities, transformers, power lines, whether under construction or finalised, used to produce this energy produced from renewable sources, where
  - a) this production equipment is used exclusively in connection with renewable energies, and
  - b) the use of storage or transmission equipment in connection with renewable energies amounts to over 50 per cent of its actual use of storage or transmission.

This also refers to the rights of access to and use of the equipment, as described above, the right to feed the renewable energies into the electricity grid as well as all the rights relating to the marketing of renewable energies.

- 7° "public entities" means the States, including the institutions or bodies, central administrations, regional or local authorities, other public authorities and other public bodies or undertakings of each State:
- a) that are a member of the European Union, a Contracting Party to the Agreement on the European Economic Area or a Member country of the Organisation for Economic Co-operation and Development, hereinafter "OECD";
  - b) that are not referred to in letter (a) but which:
    - (i) have the credit quality step 1 given by a credit rating agency registered on the list of credit rating agencies of the European Securities and Markets Authority, hereinafter "ESMA", pursuant to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, hereinafter "Regulation (EC) No 1060/2009", if the asset pool of public-sector covered bonds, mortgage bonds, moveable-property covered bonds and renewable energy covered bonds of the credit institution includes no more than 50 per cent of the cumulated exposures on these States;
    - (ii) have the credit quality step 2 given by a credit rating agency registered on ESMA's list of credit rating agencies pursuant to Regulation (EC) No 1060/2009, if the asset pool of the public-sector covered bonds, mortgage bonds, moveable-property covered bonds and renewable energy covered bonds of the credit institution includes no more than 10 per cent of the cumulated exposures on these States.
- 8° "key project contract" means any of the following project contracts, agreements, rights, loans and commitments, linked to the renewable energy sector:
- a) insurance policies;
  - b) if the renewable energy undertaking does not own the land, the surface rights and other rights of land access and use;
  - c) during the construction phase, the construction and equipment supply contracts;
  - d) electricity purchase agreements entered into with authorised purchasers, or other operating agreements or other trade arrangements;
  - e) grid connection agreements and grid connection use agreements; and
  - f) operating, service and maintenance contracts
- 9° "right of substitution" means the legal or contractual right enabling the issuing credit institution to be substituted in the renewable energy undertaking's position resulting from a key project contract in the case where the renewable energy undertaking was in default under the credit granted to it;
- 10° "rights in rem in immoveable property" means the rights to property and the separate attributes thereof, surface rights, emphyteutic right and all other similar rights in rem in immoveable property provided for by the laws of States which are Member States of the European Union, Contracting Parties to the Agreement on the European Economic Area or Member countries of the OECD or another State referred to in letter (b) of point (7) and conferring any right over immoveable property entered in a public register in one of these States or that is enforceable against third parties. As regards rights in rem that relate to renewable energy immoveable property, independent, written and duly reasoned legal opinions shall confirm the legal validity of such rights and their enforceability against third parties in all the relevant jurisdictions having regard to Article 12(1) and (2), where entering the relevant rights in rem in a public register is not required by law or where no other form of certification exists;
- 11° "rights in rem in moveable property" means the rights to property and the separate attributes thereof, and all other similar rights in rem in moveable property provided for by the laws of States which are Member States of the European Union, Contracting Parties to the Agreement on the European Economic Area or Member countries of the OECD or another State referred to in letter (b) of point (7) and conferring any right over moveable property entered in a public register in one of these States and that is enforceable against third parties. As regards rights in rem that relate to renewable energy moveable property, independent, written and duly reasoned legal opinions shall confirm the legal validity of such rights and their enforceability against third parties in all the relevant jurisdictions having regard to Article 12(1) and (2) where

entering the relevant rights in rem in a public register is not required by law or where no other form of certification exists;

- 12° "renewable energy" means any energy produced from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogas, and energy produced from similar sources;
- 13° "public undertaking" means an undertaking as defined in letter (b) of Article 2 of Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings;
- 14° "credit institution" means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, hereinafter "Regulation (EU) No 575/2013";
- 15° "issuing credit institution" means a credit institution referred to in Article 2 which issues covered bonds under this law;
- 16° "group" means a group as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013;
- 17° "covered bond" means a debt obligation issued in accordance with the provisions of this law, including covered bonds (*obligations garanties*), and which is secured by cover assets to which covered bond investors and counterparties of derivative contracts complying with the provisions of Article 7(3) have direct recourse as preferred creditors;
- 18° "cover pool" means a clearly defined set of cover assets securing the payment obligations attached to covered bonds that are segregated from other assets held by the issuing credit institution in accordance with Article 7(1);
- 19° "covered bond (*obligation garantie*)" means a covered bond that is issued in accordance with the provisions of this law and which is secured by cover assets compliant with Article 4 to which investors in such covered bonds (*obligations garanties*) and counterparties of derivative contracts compliant with the provisions of Article 7(3) have direct recourse as preferred creditors. Covered bonds (*obligations garanties*) are European Covered Bonds and European Covered Bonds (Premium);
- 20° "issue programme" means the structural features of an issue of covered bonds resulting from the provisions of this law and the contractual provisions of the issue concerned, in accordance with the permission granted to the issuing credit institution. An issue programme is associated with a single category of covered bonds as referred to in Article 3(1) and exclusively aims at either European Covered Bonds or European Covered Bonds (Premium) or covered bonds other than covered bonds (*obligations garanties*);
- 21° "resolution" means resolution defined in point (101) of Article 1 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended;
- 22° "segregation" means the actions performed by an issuing credit institution to identify cover assets and put them legally beyond the reach of creditors other than covered bond investors and counterparties of derivative contracts compliant with the provisions of Article 7(3);
- 23° "net liquidity outflow" means all payment outflows falling due on one day, including principal and interest payments and payments under derivative contracts of the covered bond issue programme, net of all payment inflows falling due on the same day for claims related to the cover assets;
- 24° "free sources of renewable energies" means any available source of renewable energy without additional inherent costs, such as the wind or the sun;
- 25° "extendable maturity structure" means a mechanism which provides for the possibility of extending the scheduled maturity of covered bonds for a pre-determined period of time and in the event that a specific trigger occurs;
- 26° "intragroup pooled covered bond structure" means a structure under which covered bonds (*obligations garanties*) issued by a credit institution that belongs to a group within this group, hereinafter "internally issued covered bonds", are used as cover assets for the issue by an issuing credit institution that belongs to the same group, of covered bonds (*obligations garanties*) to investors outside the group, hereinafter "externally issued covered bonds";
- 27° "charges on real property" means ordinary mortgage, antichresis and all other similar charges on real property provided for by the laws of States which are Member States of the European Union, Contracting Parties to the Agreement on the European Economic Area or Member countries of the OECD or another State referred to in letter (b) of point (7) conferring any charge over immoveable property located within any such State entered in a public register in

that State or certified by another form of certification and that is enforceable against third parties. As regards charges on real property that relate to renewable energy immovable property, independent, written and duly reasoned legal opinions shall confirm the legal validity of such rights and their enforceability against third parties in all the relevant jurisdictions having regard to Article 12(1) and (2) where entering the relevant rights in rem in a public register is not required by law or where no other form of certification exists;

- 28° “Charges on moveable property” means the pledge, the lien and all other charges on moveable property provided for by the laws of States which are Member States of the European Union, Contracting Parties to the European Economic Area, Member countries of the OECD or another State referred to in letter (b) of point (7), conferring any charge over moveable property that is enforceable against third parties. The charges on moveable property must be certified by another form of certification, or entered in a public register located within a State which is a Member State of the European Union, a Contracting Party to the European Economic Area, a Member country of the OECD or another State referred to in letter (b) of point (7). As regards charges on moveable property that relate to renewable energy moveable property, independent, written and duly reasoned legal opinions shall confirm the legal validity of such rights and their enforceability against third parties in all the relevant jurisdictions having regard to Article 12(1) and (2) where entering the relevant rights in rem in a public register is not required by law or where no other form of certification exists;
- 29° “overcollateralisation” means the entirety of the statutory level of collateral defined in the second to fourth subparagraphs of Article 6(2) and, where applicable, of the contractual or voluntary level of collateral, that exceeds the coverage requirements set out in Article 6(1) or in the first subparagraph of Article 6(2);
- 30° “market value” means, for the purposes of immovable property, market value as defined in point (76) of Article 4(1) of Regulation (EU) No 575/2013;
- 31° “mortgage lending value” means, for the purposes of immovable property, the mortgage lending value as defined in point (74) of Article 4(1) of Regulation (EU) No 575/2013.

## **Art. 2. Operating conditions for the issue of covered bonds**

Only the persons that fulfil one of the following conditions may carry out the activity of issuing covered bonds within the meaning of this law:

- 1° a bank issuing covered bonds as defined in point (2b-1) of Article 1 of the Law of 5 April 1993 on the financial sector, as amended; or
- 2° a Luxembourg credit institution, other than a bank issuing covered bonds referred to in point (1), that set up the necessary measures to ensure that the total of the cover pools related to the issued covered bonds does not exceed at any moment, 20 per cent of its total liabilities, including own funds, after deduction of eligible deposits as referred to in point (37) of Article 1 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended.

## **Art. 3. Issue of covered bonds**

(1) The activity of issuing covered bonds consists in:

- 1° granting loans secured by rights in rem in immovable property or by charges on real property and in issuing on that basis debt instruments secured by those rights or charges, such instruments being known as “mortgage bonds”;
- 2° granting loans secured by bonds, or by other similar debt instruments fulfilling the requirements set out in paragraph 2, which are in turn coupled with the guarantees indicated in point (1), and issuing on that basis debt instruments covered by those guarantees, such instruments being known as “mortgage bonds”;
- 3° granting loans to public entities and issuing on that basis debt instruments secured by the claims resulting from those loans, such instruments being known as “public-sector covered bonds”;
- 4° granting loans secured by:
- a) public entities;
  - b) bonds issued by public entities;
  - c) bonds fulfilling the requirements set out in paragraph 2 which are issued by credit institutions established in a State which is a Member State of the European Union, a Contracting Party to

the Agreement on the European Economic Area or a Member country of the OECD, or in another State referred to in letter (b) of point (7) of Article 1, such bonds being in turn secured by claims on public entities;

d) other commitments made in any form by public entities;

and issuing on that basis debt instruments secured by the claims resulting from those loans, such instruments being known as “public-sector covered bonds”;

5° granting loans secured by rights in rem in moveable property or by charges on moveable property, and issuing on that basis debt instruments secured by those rights or charges being known as “moveable-property covered bonds” followed by the name of the asset category referred to in the second subparagraph of Article 8(1) which makes up the asset pool related to this asset category;

6° granting loans secured by bonds or by other similar debt instruments fulfilling the requirements set out in paragraph 2, which are in turn coupled with the guarantees indicated in point (5) and issuing on that basis debt instruments covered by those guarantees being known as “moveable-property covered bonds” followed by the name of the asset category referred to in the second subparagraph of Article 8(1) which makes up the asset pool related to this asset category;

7° granting loans secured by rights in rem in moveable or immovable property or by charges on moveable or real property that relate to renewable energy property and by substitute rights in key project contracts, and issuing on that basis debt instruments secured by the claims resulting from those loans, such instruments being known as “renewable energy covered bonds”.

(2) Loans granted in accordance with paragraph 1 may be granted in any form, including in the form of the acquisition of bonds or other similar debt instruments.

These bonds and other similar debt instruments referred to in the first subparagraph are either:

1° covered bonds (*obligations garanties*) issued under intragroup pooled covered bond structures in accordance with Article 13 and coupled with the guarantees referred to in points (1) to (7) of paragraph 1;

2° secured by public entities; or

3° issued by an issuer other than a securitisation vehicle or a compartment of a securitisation vehicle with a minimum of 50 per cent of the issue proceeds are used to refinance renewable energy property, where the cover pool of the renewable energy covered bonds of the issuing credit institution includes no more than 20 per cent of such instruments. These bonds or debt instruments must have at least a credit quality step 2 given by a credit rating agency registered on ESMA's list of credit rating agencies pursuant to Regulation (EC) No 1060/2009. The property that is part of the cover pool of the renewable energy covered bonds of the issuing credit institution must not be made up of more than 20 per cent of bonds or other similar debt instruments as referred to in this point.

(3) The loans referred to in paragraph 1 may have been originated by another credit institution and been purchased by the issuing credit institution for their use as cover assets.

The loans referred to in paragraph 1 may also have been originated by an undertaking other than a credit institution and been purchased by the issuing credit institution for their use as cover assets. Before including these assets in the cover pool, the issuing credit institution shall assess the credit-granting standards of the undertaking which originated the cover assets, or itself perform a thorough assessment of the borrower's creditworthiness.

(4) The issuing credit institution shall document the compliance of its lending policy with the provisions of this law.

#### **Art. 4. Additional conditions for the qualification as “European Covered Bond” or “European Covered Bond (Premium)”**

(1) To qualify as “European Covered Bonds”, the covered bonds must be covered at all times by:

1° collateral assets as set out in paragraph 2; or

2° assets in the form of loans to or guaranteed by public undertakings, in accordance with paragraph 3.

To qualify as “European Covered Bonds (Premium)”, covered bonds must be covered at all times by assets that are eligible pursuant to Article 129(1) of Regulation (EU) No 575/2013 subject to the conditions referred to in Article 129(1a) to (3) of that regulation.

(2) The collateral assets referred to in point (1) of the first subparagraph of paragraph 1 shall meet one of the following requirements:

- 1° for physical collateral asset, there is a public register that records ownership of and claims on those assets or an alternative form of certification as referred to in point (5) of Article 1; or
- 2° for assets in the form of exposures, the safety and soundness of the exposure counterparty is implied for public entities by tax-raising powers or by being subject to ongoing public supervision of the counterparty’s operational soundness and financial solvability.

(3) For the purposes of point (2) of the first subparagraph of paragraph 1, the loans to or guaranteed by public undertakings as ordinary cover assets shall meet all of the following conditions:

- 1° the public undertakings provide essential public services on the basis of a licence, a concession contract or other form of entrustment granted by a public authority;
- 2° the public undertakings are subject to public supervision; and
- 3° the public undertakings have sufficient revenue generating powers, which are ensured by the fact of such public undertakings:
  - a) having adequate flexibility to collect and to increase fees, charges and receivables for the service provided in order to ensure their financial soundness and solvability;
  - b) receiving sufficient grants on a statutory basis in order to ensure their financial soundness and solvability in exchange for providing essential public services; or
  - c) having entered into a profit and loss transfer agreement with a public authority.

(4) The issuing credit institution shall ensure that a dedicated cover pool be constituted for each category of covered bonds qualifying as “European Covered Bond” or “European Covered Bond (Premium)”.

#### **Art. 5. Dual recourse and preferential right of covered bond investors**

(1) Covered bond investors and counterparties of derivative contracts that comply with the provisions of Article 7(3) shall have a claim against the issuing credit institution for the liabilities defined in points (1), (2) and (3) of Article 6(3) and a preferential claim against the cover assets referred to in paragraphs 2 and 3 of this article, as well as, where this preferential claim cannot be fully satisfied, a claim against the remaining assets in accordance with the arrangements provided for in Article 152-5(4) of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended. The claims shall be limited to the full payment obligations attached to the covered bonds.

(2) Without prejudice to the conditions to be fulfilled and the formalities to be completed for the creation and maintenance of the guarantees comprised in the cover assets, these cover assets shall serve, in first instance, to guarantee that the covered bond investors and the counterparties of derivative contracts that comply with the provisions of Article 7(3) are paid the full amount of their claims, within the limits of the full payment obligations attached to the covered bonds, against the issuing credit institution. The cover assets may not be seized or be the subject of any execution or enforcement measure by personal creditors of the issuing credit institution other than covered bond investors and counterparties of derivative contracts that comply with the provisions of Article 7(3).

(3) Registration of the cover assets in the cover register referred to in Article 15 shall confer upon the covered bond investors and counterparties of derivative contracts that comply with the provisions of Article 7(3) preferential rights over those cover assets in priority to all other rights, preferences and priorities of any kind whatsoever, including Treasury rights, without there being any need for the conclusion of any special contract earmarking or pledging the same or any other contract, or for the delivery of the cover assets to the covered bond investors or to any agreed third party, the service of any document or the completion of any other formality. The entry in the register shall constitute good evidence of the date thereof.

(4) Regardless of the date of issue thereof, all covered bonds of the same category shall be secured *pari passu* by the cover assets of the cover pool concerned and the same preferential rights shall be attached to them in the event of the winding-up of the issuing credit institution.

#### **Art. 6. Coverage requirements**

(1) The issuing credit institution shall ensure that the current value of cover assets is equal to or exceeds at all times the current value of the liabilities of the covered bonds in circulation.

The cover assets used to meet the overcollateralisation requirement may not be used to meet the requirements of this paragraph.

(2) The issuing credit institution shall ensure that the total nominal amount of all cover assets is equal to or exceeds the total nominal amount of covered bonds at all times.

The covered bonds referred to in points (1), (2), (5), (6) and (7) of Article 3(1), including where they take the form of covered bonds (*obligations garanties*) referred to in point (1) of the first subparagraph of Article 4(1), are required to meet the minimum level of overcollateralisation referred to in the first subparagraph of Article 129(3a) of Regulation (EU) No 575/2013.

By way of derogation from the second subparagraph, the CSSF may, through a regulation, lower the statutory level of overcollateralisation that applies to covered bonds, including covered bonds (*obligations garanties*), according to the arrangements referred to in the third subparagraph of Article 129(3a) of Regulation (EU) No 575/2013.

The covered bonds referred to in points (3) and (4) of Article 3(1), including where they take the form of covered bonds (*obligations garanties*) referred to in point (2) of the first subparagraph of Article 4(1) shall be subject to a level of statutory overcollateralisation of 10 per cent.

(3) The liabilities of covered bonds in circulation referred to in paragraph 1 shall be made up of the following elements:

- 1° the obligations for the payment of the principal amount of outstanding covered bonds;
- 2° the obligations for the payment of any interest on outstanding covered bonds;
- 3° the payment obligations attached to derivative contracts held in accordance with Article 7(3);  
and
- 4° the expected costs related to maintenance and administration for the winding-down of the covered bond programme. The issuing credit institution may determine the expected costs related to maintenance and administration based on a lump sum of 2 per cent of the current value of liabilities of covered bonds in circulation.

(4) The cover assets referred to in paragraphs 1 and 2 shall consist of:

- 1° ordinary cover assets;
- 2° substitution assets referred to in paragraph 6;
- 3° liquid assets referred to in Article 9; and
- 4° claims for payment attached to derivative contracts held in accordance with Article 7(3).

Uncollateralised claims where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013 shall not contribute to coverage.

(5) The ordinary cover assets referred to in point (1) of the first subparagraph of paragraph 4 shall be comprised of the principal claims coupled with the guarantees, referred to in Article 3(1), and owned by the issuing credit institution as consideration for its liabilities resulting from the issue of covered bonds.

Where the cover assets are owned by the issuing credit institution due to transfer of property for security purposes, this property transfer shall be carried out so as to guarantee the loans and advances in the asset of the balance sheet of the issuing credit institution. The transfer of property for security purposes shall be carried out in accordance with a financial collateral arrangement within the meaning of the Law of 5 August 2005 on financial collateral arrangements, as amended, or another similar arrangement to which a foreign law applies.

Only loans as described in points (3) and (4) of Article 3(1) and due by public entities, without the possibility for the latter to rely on any exception laid down in the underlying relation which gave rise to the loan, shall be used as cover assets for public-sector covered bonds.

(6) The substitution assets referred to in point (2) of the first subparagraph of paragraph 4 shall consist of:

- 1° cash;
- 2° assets in any form, including financial instruments issued by or claims against central banks or credit institutions established in a State which is a Member State of the European Union, Contracting Party to the Agreement on the European Economic Area, Member country of the OECD or another State referred to in letter (b) of point (7) of Article 1;
- 3° covered bonds (*obligations garanties*) issued under intragroup pooled covered bond structures in accordance with Article 13;
- 4° commitments made in any form by public entities, as provided for in points (3) and (4) of Article 3(1).

For each of the cover pools, ordinary cover assets may be replaced to the extent of 20 per cent of the nominal value of the covered bonds in circulation by substitution assets.

#### **Art. 7. Cover pool**

(1) Cover assets shall be divided into as many cover pools that are segregated as there are different categories of covered bonds issued as referred to in Article 3(1), and, where applicable, in accordance with Article 4(4).

(2) The assets may only be included in the cover pool where the claims for payment attached to the cover assets comply with the following conditions:

- 1° the asset represents a claim for payment of monies that has a minimum value that is determinable at all times, that is legally valid and enforceable, that is not subject to conditions other than the condition that the claim matures at a future date, and that is secured by a mortgage, charge, lien or other guarantee;
- 2° the mortgage, charge, lien or other guarantee securing the claim for payment is enforceable;
- 3° all legal requirements for establishing the mortgage, charge, lien or other guarantee securing the claim for payment have been fulfilled; and
- 4° the mortgage, charge, lien or other guarantee securing the claim for payment enables the issuing credit institution to recover the value of the claim without undue delay.

The issuing credit institution shall assess the enforceability of claims for payment and the ability to realise collateral assets before including them in the cover pool. The issuing credit institution shall document this assessment.

(3) The issuing credit institution shall only include claims for payment resulting from derivative contracts in the cover pool where the following conditions are met:

- 1° the derivative contracts are concluded exclusively for risk hedging purposes, their volume is adjusted in the case of a reduction in the hedged risk and they are removed when the hedged risk ceases to exist;
- 2° the derivative contracts are sufficiently documented in accordance with the second subparagraph;
- 3° the derivative contracts, including all collateral received in relation to positions in derivative contracts, shall follow the segregation rules referred to in paragraph 1;
- 4° derivative contracts must be neither terminated nor terminable by the issuing credit institution's counterparty as a result of the opening of suspension of payment or judicial winding-up provided for in Part II of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, or as a result of the opening of a resolution procedure with regard to the issuing credit institution;
- 5° the derivative contracts have been concluded with counterparties that comply with the eligibility criteria referred to in the second subparagraph.

The CSSF shall specify by way of a regulation the necessary documentation to be provided in relation to the derivative contracts referred to in point (2) of the first subparagraph, as well as the eligibility criteria for counterparties to hedging transactions referred to in point (5) of the first subparagraph,

based on any possible link between the issuing credit institution and the counterparty, the credit quality of the counterparty, the nature of the derivative contracts and the possible existence of margin calls with regard to these derivative contracts.

(4) As regards covered bonds other than the covered bonds (*obligations garanties*) referred to in the second subparagraph of Article 4(1), the issuing credit institution shall ensure that the composition of the cover pool follows the prudent person principle and notably that the assets are sufficiently diversified so as to avoid overreliance on or excessive concentration towards an asset, counterparty or particular group of undertakings and a risk concentration in the whole cover pool.

#### **Art. 8. Physical collateral assets**

(1) For immovable physical collateral assets for the purposes of point (1) or (2) of Article 3(1), residential property as well as real estate used for industrial, commercial or professional purposes can be used as guarantee.

For moveable physical collateral assets for the purposes of point (5) or (6) of Article 3(1), the following categories of assets can be used as guarantee:

- 1° aircraft;
- 2° ships and boats;
- 3° railway items.

For immovable physical collateral assets for the purposes of point (7) of Article 3(1), real estate relating to renewable energy projects can be used as guarantee.

For moveable physical collateral assets for the purposes of point (7) of Article 3(1), moveable property relating to renewable energy projects can be used as guarantee.

(2) For covered bonds that take the form of covered bonds (*obligations garanties*) as referred to in Article 4, the physical collateral assets referred to in point (1) of Article 4(2) shall contribute to coverage of liabilities attached to the covered bond (*obligation garantie*) up to the lesser of the principal amount of the liens that are combined with any prior liens and 70 per cent of the value of those physical collateral assets. Physical collateral assets referred to in point (1) of Article 4(2) which secure assets as referred to in the second subparagraph of Article 4(1) shall not be required to comply with the limit of 70 per cent or with the limits of Article 129(1) of Regulation (EU) No 575/2013.

For covered bonds that do not take the form of covered bonds (*obligations garanties*) as referred to in Article 4, assets resulting from loans coupled with guarantees provided for in points (1), (2), (5) and (6) of Article 3(1) may be used as cover assets only up to the lesser of the principal amount of the liens that are combined with any prior liens and 60 per cent of the value of those physical collateral assets. This threshold shall be raised to 80 per cent for assets resulting from loans coupled with guarantees provided for in points (1) and (2) of Article 3(1) and that finance residential property.

For covered bonds that do not take the form of covered bonds (*obligations garanties*) as referred to in Article 4, assets resulting from loans coupled with guarantees provided for in point (7) of Article 3(1) may be used as cover assets only up to the lesser of the principal amount of the liens that are combined with any prior liens and 50 per cent of the estimated realisation value of the renewable energy property serving as guarantee. This rate shall be raised to 60 per cent when the estimated realisation value is based on a regulated and fixed remuneration or when the renewable energy project operates with free renewable energy resources and to 70 per cent of the estimated realisation value when the two conditions are met. These limits may be increased by 10 percentage points in the case of renewable energy property whose construction phase has been completed.

The second and third subparagraphs shall not apply to loans granted in the form of bonds or debt instruments.

(3) Ordinary collateral may be made up to a maximum of 20 per cent of immovable and moveable property which are under construction.

(4) The issuing credit institution shall value the physical collateral assets for the purposes of points (1), (2), (5), (6) or (7) of Article 3(1) in a genuine and prudent way in accordance with the methodology and process for valuation referred to in the second subparagraph.

The methodology and process for the valuation of physical collateral assets referred to in the first subparagraph shall guarantee:

- 1° for each physical collateral asset, that a current valuation at or at less than market value or mortgage lending value exists at the moment of inclusion of the cover asset in the cover pool. The valuation shall take into consideration only the sustainable aspects of the property and the sustainable revenue it is capable of providing to any owner making normal use of it in accordance with its intended purpose;
- 2° that the valuation is carried out by a valuer who possesses the necessary qualifications, ability and experience; and
- 3° that the valuer is independent from the credit decision process, does not take into account speculative elements in the assessment of the value of the physical collateral asset, and documents the value of the physical collateral asset in a transparent and clear manner.

A CSSF regulation shall specify the technical arrangements of points (1) to (3) of the second subparagraph.

This paragraph shall not apply to loans granted in the form of bonds or debt instruments.

(5) The issuing credit institution shall have in place procedures to monitor that the physical collateral assets are adequately insured against the risk of damage and that the insurance claim is segregated in accordance with Article 7(1).

#### **Art. 9. Requirements for liquidity**

The issuing credit institution shall ensure that the cover pool includes at all times a liquidity buffer composed of liquid assets available to cover the net liquidity outflows.

In order to ensure the liquidity of the cover pool covering the maximum cumulative net liquidity outflows over the next 180 days, the issuing credit institution shall carry out a daily reconciliation between all payment outflows falling due on one day, including principal and interest payments and payments under derivative contracts of the covered bond issue programme, net of all payment inflows falling due on the same day for claims related to the cover assets.

The issuing credit institution shall calculate the total daily differences over the next 180 days between these claims and liabilities becoming due. In order to ensure the liquidity for every cover pool, the issuing credit institution shall maintain a liquidity buffer equivalent to the negative value that is the highest in absolute value of the totals calculated for the next 180 days. The liquidity buffer shall be composed of assets that:

- 1° are assets qualifying as level 1, level 2A or level 2B assets within the meaning of Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to liquidity coverage requirement for credit institutions, that are valued in accordance with that delegated regulation, and are not issued by the issuing credit institution, its parent undertaking, other than a public sector entity that is not a credit institution, its subsidiary or another subsidiary of its parent undertaking or by a securitisation special purpose entity (SSPE) within the meaning of point (66) of Article 4(1) of Regulation (EU) No 575/2013 with which the credit institution has close links; or
- 2° are short-term exposures to credit institutions that qualify for credit quality step 1 or 2, or short-term deposits to credit institutions that qualify for credit quality step 1, 2 or 3, in accordance with letter (c) of Article 129(1) of Regulation (EU) No 575/2013.

The issuing credit institution shall ensure that uncollateralised claims where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013 do not contribute to the liquidity buffer of the cover pool.

The restrictions provided for in Articles 3, 6(6) and 8(2) and (3) shall not apply to liquid assets that are only registered in the register referred to in Article 15 in order to cover the liquidity of the cover pool concerned and identified as such in that register.

#### **Art. 10. Extendable maturity structures**

The issuing credit institution may not issue covered bonds the maturity of which can be extended, without prejudice to Article 152-4(3) of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended.

#### **Art. 11. Automatic acceleration**

The issuing credit institution may not issue covered bonds the contractual clauses of which provide that the payment obligations attached to the covered bonds are subject to automatic acceleration as referred to in point (7a) of the second subparagraph of Article 120 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, in case of insolvency or resolution of the issuing credit institution.

#### **Art. 12. Particular requirements for certain guarantees**

(1) Rights in rem in immovable property, rights in rem in moveable property, charges on real property and charges on moveable property as referred to in points (10), (11), (27) and (28) of Article 1 must have such characteristics as to allow the holder thereof to enforce those rights and charges with a view to obtaining payment of all claims secured thereby, without any possibility of such enforcement being impeded by any third-party rights, whether of a public or private nature.

(2) Rights in rem in immovable property, rights in rem in moveable property, charges on real property and charges on moveable property as referred to in points (10), (11), (27) and (28) of Article 1 shall be held either directly by the issuing credit institution or by a third-party credit institution established in a Member State of the European Union, a Contracting Party to the Agreement on the European Economic Area or a Member country of the OECD or another State referred to in letter (b) of point (7) of Article 1, on behalf of the issuing credit institution.

(3) The provisions of Articles 470-3 to 470-19 of the Law of 10 August 1915 on commercial companies, as amended, shall apply with respect to covered bonds, unless there has been a contractual derogation, in which case the contractual conditions of these covered bonds shall specify the regime that applies to the meetings of covered bond holders.

#### **Art. 13. Intragroup pooled covered bond structures**

The issuing credit institution may rely on intragroup pooled covered bond structures. The intragroup pooled covered bond structures shall meet the following requirements:

- 1° the internally issued covered bonds are sold to the credit institution issuing the externally issued covered bonds;
- 2° the internally issued covered bonds are used as cover assets in the cover pool for the externally issued covered bonds and are recorded on the balance sheet of the credit institution issuing the externally issued covered bonds;
- 3° the cover pool for the externally issued covered bonds contains only internally issued covered bonds issued by a single credit institution within the group;
- 4° the credit institution issuing the externally issued covered bonds intends to sell them to covered bond investors outside the group;
- 5° both the internally and 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 at the time of issue and are secured by eligible cover assets as referred to in Article 4;
- 6° in the case of cross-border intragroup pooled covered bond structures, the cover assets of the internally issued covered bonds comply with the eligibility and coverage requirements of the externally issued covered bonds.

For the purposes of point (5) of the first subparagraph, the CSSF may allow covered bonds (*obligations garanties*) that qualify for credit quality step 2 following a change that results in a lower credit quality step of the covered bonds (*obligations garanties*) to continue to be part of an intragroup pooled covered bond structure, provided that the CSSF concludes that the change in credit quality step is not due to a breach of the requirements for permission as set out in Article 14(2). The CSSF shall notify any decision adopted pursuant to this subparagraph to the European Banking Authority, hereinafter "EBA".

## **Chapter 2 - Obligations of an issuing credit institution in relation to the issue of covered bonds**

### **Art. 14. Request for permission for a covered bond issue programme**

(1) Any credit institution referred to in point (1) or (2) of Article 2, which envisages setting up a covered bond issue programme, shall submit a request for permission to the CSSF prior to the issue of the covered bonds under the said programme.

The issue of covered bonds may only start after having obtained the CSSF's permission.

(2) The request for permission for a covered bond issue programme shall be submitted to the CSSF and accompanied by all the information necessary for its assessment.

The request for permission shall include the following elements:

- 1° a programme of operations concerning the issue of covered bonds, including the category and, where they are governed by Article 4, the envisaged volume of covered bonds, as well as a description of the cover assets in terms of structural features, lifetime and risk profile;
- 2° the description of the policies, processes and methodologies aimed at investor protection for the approval, amendment, renewal and refinancing of loans included in the cover pool;
- 3° the description of the human resources, including the management, dedicated to the covered bond issue programme and which have adequate qualifications and knowledge regarding the issue of covered bonds and the administration of the covered bond issue programme;
- 4° the administrative set-up of the cover pool and the measures implemented for the monitoring thereof in accordance with the applicable requirements laid down in this law;
- 5° with respect to a credit institution referred to in point (2) of Article 2, a detailed and comprehensive description of the measures referred to in point (2) of Article 2.

(3) Reasons shall be given whenever a decision of the CSSF over a permission is taken and the applicant shall be notified thereof within three months of receipt of the application or, should the latter be incomplete, within three months of receipt of the information required for the decision. A decision shall, in any case, be taken within six months of receiving the complete application, otherwise the absence of a decision implies a refusal.

(4) By approving a covered bond issue programme, the CSSF gives no undertaking as to the economic or financial soundness or as to the quality of an issue programme or of an issue.

### **Art. 15. Registration of the cover assets in the cover register**

The issuing credit institution shall establish a register, known as the "cover register" in which all cover assets must be entered individually to be identifiable at any time. This register shall include all the transactions that the issuing credit institution carries out in relation to the covered bond issue programme. This register shall be composed of as many parts as there are cover pools, in application of the provisions of Article 7(1).

The issuing credit institution shall have in place adequate and appropriate documentation systems and processes for the purposes of registering the transactions referred to in the first subparagraph.

In the cover register, the issuing credit institution shall identify the liquid assets that are only registered for the purpose of covering the liquidity of the cover pool.

### **Art. 16. Communication to the CSSF**

The issuing credit institution shall communicate to the CSSF at least once a year the information on covered bond issue programmes concerning:

- 1° the eligibility of assets and cover pool requirements in accordance with Articles 3, 4, 6, 7, 8, 12 and 13;
- 2° the segregation of cover assets in accordance with Article 7(1);
- 3° the mission of the special *réviseur d'entreprises agréé* (approved statutory auditor) in accordance with Article 17;
- 4° the coverage requirements in accordance with Article 6;
- 5° the liquidity requirements in accordance with Article 9;

6° as regards the issuing credit institutions referred to in point (2) of Article 2, the total of the cover pools related to the issued covered bonds, the total of liabilities, including own funds, as well as the total of eligible deposits;

7° as regards the issuing credit institutions referred to in point (2) of Article 2, the measures put in place by the issuing credit institution to ensure compliance with point (2) of Article 2.

The CSSF shall specify the technical arrangements for the communication of information referred to in the first subparagraph, including the frequency of such communication, by way of a regulation.

In any event, this information must also be communicated to the CSSF in case of suspension of payment or winding-up of an issuing credit institution, or where it has been established, in accordance with Article 33 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, that this institution is failing or likely to fail.

#### **Art. 17. Audit by a special *réviseur d'entreprises agréé* (approved statutory auditor)**

(1) All issuing credit institutions must have a special *réviseur d'entreprises agréé* (approved statutory auditor) with adequate experience, and distinct from the *réviseur d'entreprises agréé* who carries out the statutory audit of their accounts. The appointment of the special *réviseur d'entreprises agréé*, upon proposal of the issuing credit institution, shall be subject to the authorisation of the CSSF. The special *réviseur d'entreprises agréé* shall be required to report to the CSSF on the findings and observations made in performing their duties on an annual basis. The special *réviseur d'entreprises agréé* may be removed from office by the CSSF at any time.

The remuneration of the special *réviseur d'entreprises agréé* shall be paid by the issuing credit institution.

(2) The special *réviseur d'entreprises agréé* shall ensure that the cover assets that covered bonds must have in accordance with this law are duly furnished and registered in the cover register, that the value thereof is in the prescribed amount and that they continue to exist.

The special *réviseur d'entreprises agréé* shall also ascertain whether the estimated value of immovable properties and moveable properties serving as guarantees in rem has been made in a genuine and prudent way and in accordance with the methodology and process for valuation referred to in Article 8(4) and whether the maximum rate of cover in respect of which the immovable and the moveable property in question may serve as guarantee has been respected. The special *réviseur d'entreprises agréé* shall verify the assessment carried out by the issuing credit institution in accordance with Article 7(2).

The special *réviseur d'entreprises agréé* shall not be required to ascertain whether the estimated value of the immovable property and the moveable property in question corresponds to its actual value.

The special *réviseur d'entreprises agréé* shall ascertain whether the realisation value of the renewable energy property used as cover assets has been determined in a genuine and prudent way and according to the methodology and process for valuation referred to in Article 8(4). The special *réviseur d'entreprises agréé* shall also ascertain whether the frequency of revaluation of the realisation value of the renewable energy property is consistent with the specific nature, facts and circumstances of the underlying property, this revaluation takes place at least annually and it is based on the current market data and adapted valuation assumptions.

(3) The cover assets entered in the cover register may not be removed therefrom without the written consent of the special *réviseur d'entreprises agréé*.

The special *réviseur d'entreprises agréé*, acting jointly with the issuing credit institution, shall ensure the safe-keeping of the cover assets entered in the cover register and of the deeds and documents relating to such assets. At the request of the issuing credit institution, the special *réviseur d'entreprises agréé* is required to release the said cover assets and deeds and documents unto that issuing credit institution and shall consent to the removal of the entries relating thereto from the cover register, insofar as the other items of cover assets entered therein are sufficient to fully cover the covered bonds in circulation.

(4) The special *réviseur d'entreprises agréé*, in the performance of their duties, shall remain wholly independent of the issuing credit institution and its *réviseur d'entreprises agréé* as well as of the

covered bond investors and the CSSF. The special *réviseur d'entreprises agréé* shall have right of access to all information necessary for the purposes of carrying out their duties.

(5) The special *réviseur d'entreprises agréé* shall not represent the covered bond investors.

(6) Before covered bonds are issued, each of them shall be endorsed with a certificate of the special *réviseur d'entreprises agréé* certifying the existence of the cover required by law and the entry thereof in the cover register. The certificate shall be signed and dated by the special *réviseur d'entreprises agréé*.

(7) All disputes between the special *réviseur d'entreprises agréé* and the issuing credit institution shall be settled by the CSSF.

(8) The special *réviseur d'entreprises agréé* shall continue to perform their duties referred to in this article in case of suspension of payment or winding-up of an issuing credit institution, or where it has been established, in accordance with Article 33 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, that this institution is failing or likely to fail. In such a case, the special *réviseur d'entreprises agréé* shall regularly report to the Tribunal as referred to in point (14) of the second subparagraph of Article 120 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, and to the CSSF on the findings and observations made in performing their duties.

#### **Art. 18. Information of covered bond investors**

The issuing credit institution shall provide the covered bond investors with information on its covered bond issue programmes that is sufficiently detailed to allow investment bond investors to assess the profile and risks of these programmes and shall carry out its due diligence. To this end, it shall provide the following information to the covered bond investors at least quarterly:

- 1° the value of the cover pool and the outstanding covered bonds;
- 2° a list of the International Securities Identification Numbers, hereinafter "ISINs" for all covered bond issues under that programme, to which an ISIN has been attributed;
- 3° the geographical distribution and type of cover assets, their loan size and valuation method;
- 4° details in relation to market risk, including interest rate risk and currency risk, and credit and liquidity risks;
- 5° the maturity structure of cover assets and covered bonds;
- 6° the levels of required and available coverage, and the levels of statutory, contractual and voluntary overcollateralisation;
- 7° the percentage of loans where there has been a default in accordance with Article 178 of Regulation (EU) No 575/2013 and in any case where the loans are more than 90 days past due;
- 8° a detailed description of the following information:
  - a) the procedures for the maturity extension referred to in Article 152-4(3) of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended;
  - b) the consequences for the maturity of the insolvency or resolution of the issuing credit institution;
  - c) the role of the CSSF and the administrator with regard to the maturity extension.

For externally issued covered bonds under intragroup pooled covered bond structures as referred to in Article 13, the information referred to in the first subparagraph, or a link thereto, shall be provided by the issuing credit institution to investors in respect of all internally issued covered bonds of the group. The issuing credit institution shall provide this information to the investors at least on an aggregated basis.

The issuing credit institution shall publish on its website the information made available to investors in accordance with the first and the second subparagraphs.

The information referred to in letters (a) and (b) of point (8) of the first subparagraph shall also be stated in the contractual terms and conditions of the covered bonds.

### Chapter 3 - Supervision of covered bonds

#### Art. 19. Competent authority

The CSSF shall be the competent authority to ensure that the provisions of this law are applied. The CSSF shall be in charge of the supervision of the covered bonds, including covered bonds (*obligations garanties*), and the authorisation and supervision of covered bond issue programmes, in order to ensure compliance with and implementation of the provisions of this law.

#### Art. 20. Powers of the CSSF

For the purposes of this law and its implementing measures, the CSSF shall be given all supervisory and investigatory powers for the exercise of its functions. The powers shall be the following:

- 1° have access to any document or data in any form which the CSSF considers could be relevant for the performance of its duties of supervision and investigation and to receive or take a copy of it;
- 2° regularly examine the covered bond issue programme;
- 3° demand or require the provision of information from any person linked to the issue of covered bonds and, where necessary, to summon and question any such person in order to obtain information;
- 4° carry out on-site inspections or investigations of issuing credit institutions;
- 5° require the cessation of any practice that is contrary to the provisions of this law and implement measures to prevent repetition of that practice;
- 6° request the freezing or sequestration of assets with the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court), deciding upon request;
- 7° examine on a continuous basis the measures implemented by the issuing credit institutions concerned in order to comply with point (2) of Article 2;
- 8° require the special *réviseur d'entreprises agréé* to provide the information obtained in the performance of their duties;
- 9° refer information to the State Prosecutor for criminal prosecution;
- 10° require *réviseurs d'entreprises agréés* or experts to carry out on-site verifications or investigations of issuing credit institutions. These verifications and investigations shall be carried out at the expense of the issuing credit institution concerned;
- 11° issue public notices;
- 12° suspend the issue of covered bonds for a maximum period of three months, renewable if the cause of the suspension persists, without however exceeding a total of twelve months.

#### Art. 21. Cooperation obligations

(1) The CSSF, as the authority in charge of supervising covered bonds (*obligations garanties*), shall closely cooperate with the competent authorities of the other Member States, designated pursuant to Article 18(2) of Directive (EU) 2019/2162, for the purposes of their duties pursuant to that directive. They shall provide one another with any information which is relevant for the exercise of their supervisory duties under that directive. They shall communicate to each other upon request all useful information and shall communicate on their own initiative all essential information. Information shall be regarded as essential if it could materially influence the assessment of the issue of covered bonds (*obligations garanties*) in another Member State.

(2) The CSSF shall also cooperate with the competent authorities in charge of the prudential supervision of credit institutions and, in the event of the resolution of an issuing credit institution, with the resolution authorities, where this is necessary to accomplish their relevant duties in order to ensure that the rights and interests of covered bond investors are preserved, including at least by verifying the continuous and sound management of the covered bond issue programme during the period of the resolution process.

(3) The CSSF shall cooperate with the EBA, or, where applicable, with ESMA, for the purposes of performing their duties under Directive (EU) 2019/2162.

## **Art. 22. Disclosure requirements**

(1) The CSSF shall publish and keep up to date the following information on its website:

- 1° the laws, Grand-ducal regulations, regulations and circulars adopted by the CSSF in relation to the issue of covered bonds;
- 2° the list of credit institutions authorised to issue covered bonds;
- 3° the list of covered bonds that are entitled to use the label "European Covered Bond";
- 4° the list of covered bonds that are entitled to use the label "European Covered Bond (Premium)";
- 5° the list of covered bonds other than those referred to in points (3) and (4), by specifying the categories referred to in Article 3(1).

(2) The CSSF shall notify the EBA on an annual basis of the lists referred to in points (2), (3) and (4).

## **Art. 23. Administrative penalties and other administrative measures**

(1) The CSSF may impose the administrative penalties and take the administrative measures provided for in paragraph 2 in the following situations:

- 1° an issuing credit institution has acquired a permission for a covered bond issue programme by means of false statements or other irregular means;
- 2° an issuing credit institution no longer fulfils the conditions under which permission for a covered bond issue programme was given;
- 3° a credit institution issues covered bonds without obtaining the permission in accordance with Article 2 or 14;
- 4° an issuing credit institution acts in breach of Article 5;
- 5° a credit institution issues covered bonds that do not comply with the requirements laid down in Article 11;
- 6° an issuing credit institution issues covered bonds that are not collateralised in accordance with Article 4;
- 7° an issuing credit institution issues covered bonds whose cover assets do not comply with the requirements of Article 3(1), (2) and (4) and Articles 6, 8 and 12(1) and (2);
- 8° an issuing credit institution collateralises covered bonds (*obligations garanties*) in an intragroup pooled covered bond structure in breach of the requirements laid down in the first subparagraph of Article 13;
- 9° an issuing credit institution fails to meet the conditions referred to in the second subparagraph of Article 3(3) applicable to loans originated by an undertaking other than a credit institution and purchased by the issuing credit institution for their use as cover assets;
- 10° an issuing credit institution fails to meet the requirements referred to in Article 6;
- 11° an issuing credit institution fails to meet the requirements regarding derivative contracts provided for in the first subparagraph of Article 7(3);
- 12° an issuing credit institution fails to meet the requirements governing segregation of cover assets laid down in Article 7(1), or registration of cover assets in the cover register referred to in Article 15;
- 13° an issuing credit institution fails to report information or provides incomplete or inaccurate information in breach of Article 18;
- 14° an issuing credit institution repeatedly or persistently fails to maintain a liquidity buffer in breach of the first to fourth subparagraphs of Article 9;
- 15° an issuing credit institution issues covered bonds with extendable maturity structures in breach of Article 10;
- 16° an issuing credit institution fails to report information or provides incomplete or inaccurate information in breach of the first and third subparagraphs of Article 16;
- 17° on those that obstruct the exercise of its supervisory and investigatory powers, that do not follow up on its orders given pursuant to point (5) of Article 20, or that have knowingly provided inaccurate or incomplete information following requests based on points (1), (3) and (4) of Article 20.

(2) In the case of breaches referred to in paragraph 1, the CSSF may impose the following penalties and take the following administrative measures against the issuing credit institution, against the members of the management body or against any other person responsible for a breach:

- 1° withdrawal of the permission for a covered bond issue programme;
- 2° a public statement which indicates the identity of the natural or legal person and the nature of the breach in accordance with Article 25;
- 3° an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
- 4° a temporary ban preventing any member of the issuing credit institution's management body from exercising management functions in such issuing credit institution;
- 5° maximum administrative fines of twice the amount of the benefit derived from the breach where that benefit can be determined, even if that exceeds the maximum amounts in points (6) and (7).
- 6° in the case of a natural person, an administrative fine of up to EUR 5,000,000;
- 7° in the case of a legal person, an administrative fine of up to EUR 5,000,000, or up to 10 per cent of the total annual net turnover of that legal person according to the last available accounts approved by the management body. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual net turnover shall be the total annual turnover according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
- 8° impose a temporary prohibition to perform issues under a covered bond issue programme.

(3) The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.

When determining the type of administrative penalties or other administrative measures and the level of administrative pecuniary penalties, the CSSF shall take into account all relevant circumstances, including, where appropriate:

- 1° the gravity and duration of the breach;
- 2° the degree of responsibility of the natural or legal person responsible for the breach;
- 3° the financial situation of the natural or legal person responsible for the breach, as indicated, for example, by the total turnover of the legal person or the annual income of the natural person;
- 4° the importance of profits gained or losses avoided by the natural or legal person responsible for the breach, insofar as they can be determined;
- 5° the losses for third parties caused by the breach, insofar as they can be determined;
- 6° the level of cooperation of the natural or legal person responsible for the breach with the CSSF, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- 7° previous breaches committed by the natural or legal person responsible for the breach;
- 8° any actual or potential systemic consequences of the breach;
- 9° measures taken by the person responsible for the breach to prevent its repetition.

The decisions taken by the CSSF in the exercise of its powers to impose penalties shall be substantiated.

#### **Art. 24. Remedies**

An action for reversal of the CSSF's decisions taken in accordance with Article 23 may be lodged before the *Tribunal administratif* (Administrative Tribunal) within one month from the date of notification of the decision.

#### **Art. 25. Publication of administrative sanctions and other administrative measures**

(1) The CSSF shall publish on its website the administrative penalties and other administrative measures that were decided or that have acquired the force of *res judicata* and which are imposed under Article 23, including information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty is imposed, without undue delay after that person is informed of those penalties and their publication on the CSSF's website.

(2) By way of derogation from paragraph 1, the CSSF shall publish the decisions imposing administrative penalties or measures on an anonymous basis in any of the following circumstances:

- 1° where the penalty or measure is imposed on a natural person and the publication of personal data is found to be disproportionate;
- 2° where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
- 3° where publication would cause, insofar as it can be determined, disproportionate damage to the natural or legal persons involved.

Alternatively, where the circumstances referred to in the first subparagraph are likely to cease within a reasonable period of time, the publication under paragraph 1 may be postponed for such a period of time.

(3) Any information published pursuant to this article shall remain on the website of the CSSF for five years as from the date of publication. Personal data contained in the publication concerned shall only be kept on the CSSF's website for a maximum period of twelve months.

(4) The CSSF shall inform the EBA of all administrative penalties and other administrative measures relating to the issue of covered bonds (*obligations garanties*) imposed under this article, including any legal action in relation thereto and the outcome thereof, as well as the criminal penalties that acquired the force of *res judicata*, relating to the issue of covered bonds (*obligations garanties*) imposed in accordance with Article 26.

#### **Art. 26. Criminal sanctions**

A term of imprisonment of between eight days and five years and a fine of between EUR 5,000 and EUR 125,000 or only one of these sanctions shall apply to those who:

- 1° issue or seek to issue covered bonds (*obligations garanties*) without authorisation in accordance with Article 2;
- 2° deliberately omit to constitute or maintain cover assets as laid down in Article 6 or constitute cover assets in the knowledge that those assets are insufficient;
- 3° do not respect the protection of the denomination "covered bond" and of the labels "European Covered Bond" and "European Covered Bond (Premium)" laid down in Article 27.

### **Chapter 4 - Protection of the denomination**

#### **Art. 27. Protection of the denomination**

(1) No one may issue in Luxembourg transferable securities or other debt instruments under the denomination of "covered bonds" or under any other identical or similar denomination in another language if they do not meet the conditions laid down in this section.

(2) No one may issue in Luxembourg covered bonds under the label "European Covered Bond" or under its official translation in all official languages of the European Union if they do not meet the conditions laid down in this law, including those referred to in point (1) or (2) of the first subparagraph of Article 4(1).

(3) No one may issue in Luxembourg covered bonds under the label "European Covered Bond (Premium)" or under its official translation in all official languages of the European Union if they do not meet the conditions laid down in this law, including those referred to in the second subparagraph of Article 4(1).

## **Title II - Amending, transitional and final provisions<sup>1</sup>**

### **Chapter 5 - Transitional and final provisions**

#### **Art. 41. Transitional provision**

The covered bonds issued before 8 July 2022 shall not be subject to Articles 3, 4, 6 to 15, 17 and the fourth subparagraph of Article 18 of this law, and may, by way of derogation from Article 27 of this law, use the denomination "covered bond (*obligation garantie*)" in accordance with Directive (EU) 2019/2162 until their maturity. The banks issuing covered bonds that issued covered bonds

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<sup>1</sup> The amending provisions are not included in this version.

before 8 July 2022 shall ensure that these covered bonds continue to meet the provisions of Section 3 of Chapter 1 of Part I of the Law of 5 April 1993 on the financial sector, as amended, as in force on 7 July 2022.

The CSSF shall verify compliance, of the covered bonds and banks issuing covered bonds referred to in the first subparagraph, with the requirements referred to in Section 3 of Chapter 1 of Part I of the Law of 5 April 1993 on the financial sector, as amended, as in force on 7 July 2022, as well as with the requirements of this law, without prejudice to the first subparagraph.

**Art. 42. Abbreviated designation**

Reference to this law shall be made as follows:

“Law of 8 December 2021 relating to the issue of covered bonds”.

**Art. 43. Entry into force**

This law enters into force on 8 July 2022.

We instruct and order that this law be inserted in the Journal officiel du Grand-Duché de Luxembourg in order to be implemented and complied with by all the persons concerned.