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NEW FRAMEWORK APPLICABLE TO ITALIAN COVERED BONDS: COMPARING THE MAIN DIFFERENCES AND SIMILARITIES WITH OTHER EUROPEAN JURISDICTIONS

On 30 March 2023, following a public consultation which began at the start of this year[1], the Bank of Italy has published the updated provisions applicable to covered bonds, included in Part Three, Chapter 3, of Bank of Italy Circular Letter No. 285 of 17 December 2013 ("**Circular 285**" and the "**New BoI Regulation**") which became effective on 31 March 2023 (the "**Effective Date**").

The New BoI Regulation enacts the provisions of Italian law 130/99 ("**Italian Law 130**") introduced in 2021[2] to implement in Italy both Directive (EU) 2019/2162 (the "**Covered Bond Directive**") and Regulation (EU) 2019/2160 (the "**Covered Bond Regulation**" and, together with the Covered Bond Directive, the "**European CB Legislation**").

Accordingly, the European CB Legislation is now fully implemented and effective in Italy as of the Effective Date.

We have prepared an overview of the main changes introduced by the European CB Legislation to the existing legislative framework governing Italian covered bonds and analysis on how the changes have been implemented in other EU jurisdictions.

THE FRAMEWORK ITALIAN COVERED BONDS

The European CB Legislation introduced a harmonised and principle-based regulatory framework for covered bonds issued by European banks, allowing a certain level of discretion to each Member State to implement the minimum requirements identified at the European level.

In Italy, Title 1-*bis* of Italian Law 130 and the New BoI Regulation, while confirming certain main structural features for covered bonds, including but not limited to the

Key issues

- On 31 March 2023, Italy implemented the new legislative framework, transposing the Covered Bond Legislation.
- Issuance of covered bonds under covered bond programmes established following the Effective Date requires an authorisation from the Bank of Italy (timeframe is 90 days after application for authorization).
- Issuance of covered bonds under covered bond programmes established prior to the Effective Date must be notified to the Bank of Italy 30 days in advance.
- Pursuant to Article 129-ter of the CRR, the preferential risk weighting treatment under the CRR applies to covered bonds with a minimum level of over-collateralisation of 5%. Grandfathering provisions are available for covered bonds issued prior to the Effective Date.
- Covered bonds issued by Italian banks in accordance with Title 1-*bis* of Italian Law 130 and Article 129, paragraph 3 of the CRR, as amended by the Covered Bond Regulation, may be traded using the "European covered bond (premium)" label.

[1] "*Documento di consultazione sulle disposizioni della Banca d'Italia in materia di "Obbligazioni bancarie garantite*"", launched by the Bank of Italy on 12 January 2023 and completed on 7 February 2023.

[2] Legislative Decree No. 190 of 5 November 2021 (the "Decree 190") introduced Title 1-*bis* which abrogates (i) articles 7-bis, 7-ter and 7-*quater* of Italian Law 130, (ii) Decree of the Minister of Economy and Finance No. 310 of 14 December 2006, and (iii) the emergency decree No. 213 of 12 April 2007.

"dual recourse" principle in favour of the investors (i.e., the possibility for the investors to seek recourse both on the assets of the issuer and the assets segregated as collateral for the issuance)[3] and the segregation regime for assets granted as collateral (achieved through the sale of the assets to an Italian special purpose vehicle (SPV))[4], introduced, among other things, the following important new provisions:

1. a supervisory role for the Bank of Italy on the issuance of covered bonds, comprising: (i) an **authorisation** process for the issuance of covered bonds under newly established covered bond programmes after the Effective Date[5]*;* and (ii) a requirement of **prior notification** to the Bank of Italy for the issuance of covered bonds under covered bond programmes established prior to the Effective Date;

2. amendments to the **eligibility criteria** by, among other things, introducing the hedging derivative contracts among the eligible assets and excluding the asset-backed securities that were included under the previous legislative framework;

3. the **removal of the quantitative limits to the assignments** introduced in 2007 under Circular 285 and based on the capitalisation levels of the issuer/the banking group of the issuer. Such limits are substituted by internal operating limits set by the issuer, established in compliance with the issuer's internal policies as to risk management objectives and operative tolerance thresholds. Issuers shall put in place appropriate internal measure to verify and ensure, on a continuative basis, compliance with such limits. Ongoing changes and/or updates to such limits can be made through the life of the programme where necessary in order to align to any changes to the strategy and operation policies of the issuer;

4. a requirement of **over-collateralisation of 5%** for covered bonds to benefit from the preferential prudential treatment referred to in Regulation (EU) No. 575/2013 (the "**CRR**");

5. a **liquidity buffer** requirement;

6. specific **public disclosure requirements**, including, among other things, the publication on the issuer's website of information relating to the liquidity buffer and the exposure levels of the derivative contracts, on a quarterly basis, on March 31, June 30, September 30 and December 31, or should a covered bond programme have collection periods which are not aligned with such calendar quarters, the relevant information shall be provided in line with the collection periods under the relevant programme but, in any case, on a quarterly basis; and

7. the "European covered bonds" and "European covered bonds (*premium*)" labels and relevant requirements.

[3] Article 7-*quaterdecies* of Italian Law 130.

[4] Article 7-*octies* of Italian Law 130.

[5] Article 7-*noviesdecies* of Italian Law 130.

MAIN CHANGES AND THEIR IMPLEMENTATION IN ITALY AND OTHER EUROPEAN JURISDICTIONS

1. The authorisation/notification process

Italian perspective:

A) Authorisation for issuances under newly established covered bond programmes (i.e., after the Effective Date)

Pursuant to Article 19 of the Covered Bond Directive, Article 7-*noviesdecies* of Italian Law 130 and Chapter 3, Section II (*Autorizzazione dei programmi di emissione di obbligazioni bancarie garantite*) of the New BoI Regulation, Italian banks that intend to establish new covered bond programmes must apply for authorisation from the Bank of Italy, being the authority designated to exercise public supervision for the covered bond market in Italy. The application must contain, among other things:

- a resolution of the issuer's corporate body with strategic supervision functions approving the programme, together with an opinion of the issuer's auditing body;
- a description of the covered bonds programme outlining the structural features of the programme, describing among others, (i) the type and amount of assets to be segregated from time to time, (ii) the characteristics of any hedging agreement, (iii) modalities of compliance with the mandatory tests, (iv) whether the bank intends to trade the covered bonds under the covered bond programme with the "European covered bonds (*premium*)" label, a statement of compliance with the over-collateralisation requirements of Article 129, paragraph 3-*bis* of the CRR, as amended by the Covered Bond Regulation, (v) compliance with the liquidity buffer requirements in the appropriate statement, (vi) any mechanism for the extension of the covered bonds maturity and relevant effects on the liquidity reserve requirements, (vii) the characteristics of the covered bonds to be issued under the programme and the relevant investors target, (viii) the entities part to the programme - including information on the originator(s), if different from the issuer, and the relevant type and amount of assets contributed into the programme - and (ix) the asset monitor and the other services providers and players involved in the programme, together with a report where the issuer sets out the objectives of the programme, identifies the relevant risks also at a consolidated level, highlights the effects on the technical and capital balances of the issuer and describes the organisational arrangements for maintenance of the programme (including details in relation to the qualifications and skills of the personnel in charge of the issuer's operative management and the number of resources available for such purpose), the modalities and processes for the management of operative risks and the monitoring process of the cover pool; and
- a statement from the issuer's auditing firm certifying that the criteria for determining the purchase price of the assets to be segregated is in line with the requirements applied for the preparation of the financial statements.

Once the application is submitted, the Bank of Italy will analyse several aspects prior to deciding on the authorisation, including (i) the sustainability of the programme and its eligibility to ensure, among other things, protection of the investors, and (ii) the adequacy of organisational arrangements, including the issuer's technical resources and the qualifications and skills of the personnel in charge of the issuer's operative management.

Following completion of the above activities:

- the Bank of Italy will grant or deny its authorisation within 90 days from the date it receives the application;
- the issuer may proceed with the first issuance after registration of the authorisation granted by the Bank of Italy in the register under article 13 of the Legislative Decree 385 of 1 September 1993 (*Testo Unico Bancario*); and
- the issuer must inform the Bank of Italy of the first issuance within 10 calendar days following the issuance.

The Bank of Italy can revoke any authorisation granted (e.g., where an authorisation has been obtained by submitting false statements or improperly, or if the circumstances under which the authorisation was granted cease to exist).

After receiving authorisation from the Bank of Italy, the issuer must notify the Bank of Italy if it intends to make changes to the programme that affect compliance with the requirements under the law as implemented by the New BoI Regulation. In absence of a response, the issuer may implement the amendments to the programme after 60 days have passed from the date of the notification. In addition, if the programme provides for an automatic extension of the maturity of the covered bonds[6], and once such maturity has actually been extended, the issuer must inform the Bank of Italy that the conditions for such extension have been satisfied, within 10 days from satisfaction. Finally, an issuer, upon the unwinding of a covered bond programme and redemption in full of the covered bonds issued thereunder, shall promptly inform the Bank of Italy so that it can update accordingly the register under article 13 of Legislative Decree 385 of 1 September 1993.

B) Notification for issuances under covered bond programmes established prior to the Effective Date

The authorisation process referred to in the paragraph above does not apply to issuances under covered bond programmes established prior to the Effective Date. Nevertheless, issuers of existing programmes shall ensure that covered bonds issued following the Effective Date will comply with the provisions of Title 1-*bis* of Italian Law 130. Accordingly, issuers intending to issue new covered bonds under existing programmes should notify the Bank of Italy at least 30 days before their first new issuance[7], certifying that, where necessary, the programme has been updated in compliance with the provisions of Title 1-*bis* of Italian Law 130.

In particular, the notice shall be completed with the following documents, necessary to allow the Bank of Italy to check the actual compliance of the relevant programme with the applicable legislation:

- a statement from the issuer's corporate body with strategic monitoring duties (subject to prior consultation with the supervisory board) confirming compliance of the programme with the new legislation as to (i) type of eligible assets and relevant valuation criteria; (ii) inclusion of any derivative assets; (iii) tests (iv) liquidity requirements (v) any maturity extension provisions (vi) asset monitor; and
- an opinion from the asset monitor certifying compliance of the programme with the requirements of the new legal framework implemented through Title 1-*bis* of Italian Law 130 and the New BoI Regulation (it being understood that the

[6] Article 7-*terdecies* of Italian Law 130.

[7] Provided that such notification is required for the first issuance following the Effective Date only, while it is not required for any further issuance occurring thereafter.

certification shall only cover the aspects that have been introduced under the new legislation).

A detailed scheme of the information required for this notice is attached to the New BoI Regulation.

C) Other notification to the Bank of Italy by 30 June 2023

Issuers, irrespective of their intention to issue further covered bonds (and also with respect to dormant programmes in relation to which no further issuances are envisaged), shall, by 30 June 2023, provide the Bank of Italy with a summary of the characteristics of any of their outstanding covered bond programmes as at the Effective Date[8].

A scheme of the information required for this notice is attached to the New BoI Regulation and includes, with respect to each programme, the following information:

a) date of establishment and termination of the programme;

b) programme limit and characteristics of the relevant covered bonds (e.g. soft bullet/conditional pass-through);

c) description of any mechanism for the extension of the covered bonds already issued under the programme and relevant target investors;

d) indication of amounts, characteristics and maturity of the issuances envisaged during the life of the programme and in any case up to 31 December 2026;

e) in case the issuer no longer intends to issue further covered bonds, a description of the modalities for the unwinding of the programme;

f) details of the entities party to the programme - including information on the originator(s), if different from the issuer, and the relevant type and amount of assets contributed into the programme.

European perspective:

France

In France, the authority designated to exercise public supervision on the covered bond market is the French Resolution and Prudential Control Authority (*Autorité de Contrôle Prudentiel et de Résolution*) (the "**ACPR**"), which grants authorisation to establish a covered bond programme. The timeframe for the authorisation process is not specified, and the ACPR typically grants authorisations within 60 to 90 days from the date of application.

The above authorisation process applies only to issuances under covered bond programmes established following implementation of the Covered Bond Directive (i.e., 13 July 2022), and does not affect issuances made prior to such date that had not yet reached their maturity on 13 July 2022.

As in Italy, any amendment under a programme (including programmes established prior to the implementation of the Covered Bond Directive) requires only notification to the ACPR, but no express authorisation needs to be granted.[9]

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[8] Issuers intending to issue further covered bonds that, by 30 June 2023, will have already provided the Bank of Italy with the notice referred under paragraph B) above are exempt from delivering this separate notice while the relevant information shall be included in the notice for the new issuance.

[9] The reporting institutions must notify in writing the *Secretariat Général* of the ACPR of any

Germany

In Germany, the authority designated to exercise public supervision over the covered bond market is the German Federal Financial Supervisory Authority ("**BaFin**"). Unlike other European jurisdictions, credit institutions intending to operate in the covered bond (*Pfandbrief*) market were already required to obtain written permission from the BaFin even before the implementation of the Covered Bond Directive.

No specific timeframe was previously specified, nor is provided further to the implementation of the Covered Bond Directive, for the permitting process.

Accordingly, the implementation of the Covered Bond Directive has had no effect on the permitting process, which remains the same for programmes established prior to and after the implementation of the Covered Bond Directive.

After receiving permission to operate a covered bond business, no further authorisation or notification is required for any amendments to be implemented under a programme.

Luxembourg

In Luxembourg, the authority designated to exercise public supervision over covered bond issuers, which are either credit institutions operating under their universal banking licence or covered bond banks operating under a specialised banking licence, is the *Commission de Surveillance du Secteur Financier* (the "**CSSF**"). It grants authorisation to establish new covered bond programmes. The timeframe for the authorisation process is three months after receipt of a complete application, including any supplemental information required. If a decision is not issued by the CSSF within six months from receipt of the complete application, the absence of the decision constitutes an implied refusal of the application.

The authorisation process in Luxembourg does not affect issuances under covered bonds programmes established prior to the implementation of the Covered Bond Directive (i.e., 8 July 2022)[10].

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substantial change in the programme which relates to:

1. the documents describing the policies, processes and procedures to ensure the protection of investors with respect to the authorisation, modification, renewal and refinancing of loans included in the entity's assets; and/or
2. the documents describing the administrative framework and organisation applicable to the management of the assets of the entity that meets the requirements applicable to *sociétés de crédit foncier or sociétés de financement de l'habitat*, as the case may be; and/or
3. where applicable, the legal opinion which confirms that bonds issued under the programme are subject to the provisions of a foreign law that do not contravene to French legal and regulatory provisions applicable to *sociétés de crédit foncier and sociétés de financement de l'habitat*.

[10] Article 41 of the Law of 2021 (as defined below) provides that: "*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 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 (the "**FSL**"), 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 FSL, as in force on 7 July 2022, as well as with the requirements of this law, without prejudice to the first subparagraph."

Finally, no specific authorisation or notification is foreseen in the authorisation process for any amendments to be implemented under a programme, without prejudice to communication or other processes that might be triggered by the change under other legal provisions.

Czech Republic

In the Czech Republic, the authority designated to exercise public supervision on the covered bond market is the Czech National Bank (the "**CNB**"), which authorises the establishment of covered bond programmes. The timeframe for the authorisation process is not specified, and the CNB should in general decide on the authorisation within approximately 30 days from receipt of the application, provided that the documentation submitted is complete[11].

The authorisation process in Czech Republic is required for issues under covered bonds programmes established both prior to and after the implementation of the Covered Bond Directive (i.e., 29 May 2022)[12].

Finally, the law does not address whether an additional authorisation or notification is required for any amendments to be implemented under a programme.

Spain

In Spain, the Bank of Spain (*Banco de España*) ("**BoS**") is responsible for the public supervision of covered bond programmes. The issue of covered bonds requires the prior authorisation of BoS of the "covered bond programme" for each category of covered bonds to be issued, in accordance with Spanish Royal Decree Law 24/2021 of 2 November ("**RDL 24/2021**"). The Issuer must appoint a cover pool monitor for each covered bond programme, which will act at all times in the interest of holders of covered bonds in respect of the relevant cover pool and whose function is to permanently monitor the cover pool. The cover pool monitor to be appointed for each covered bond programme must be also authorised by the BoS.

The timeframe for the authorisation process is three months.

The authorisation process in Spain applies to issuances under covered bonds programmes established both prior and following the implementation of the Covered Bond Directive (i.e., 8 July 2022)[13].

Any issuance of covered bonds under a covered bond programme must be notified to the BoS.

Although there is no specific provision in RDL 24/2021, any amendments to be implemented under a programme will have to be authorised by the BoS.

Belgium

In Belgium, the authority designated to exercise public supervision on the covered bond market is the National Bank of Belgium (the "**NBB**"). Belgian law provides that

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[11] The deadline may be extended under certain circumstances (e.g., if the case is particularly complex).

[12] Although the authorisation for new issues of covered bonds under an existing covered bond programme would not require the relevant issuer to amend the terms and conditions of the covered bonds, nor create separate cover pools or covered blocks.

[13] Indeed, Spanish issuers had to apply for an authorisation of the covered bond programme(s) covering all the outstanding covered bonds. RDL 24/2021 provides that at least three months prior to the entry into force of the new covered bond legal regime on 8 July 2022, credit institutions that had outstanding covered bonds had to apply to the BoS for the authorisation and registration of a cover pool monitor for the relevant covered bond programme(s).

an issuer of covered bonds must obtain a general authorisation to issue covered bonds, and a specific authorisation with respect to each programme, from the NBB. The NBB will resolve upon the authorisation process within the following timeframe:

1. in case of general authorisations to issue covered bonds, within 4 months of the date on which the file submitted by the applicant is deemed complete, and within 6 months of the date on which the file is submitted by the applicant; and

2. in case of specific authorisations, within 3 months of the date on which the file submitted by the applicant is deemed complete, and within 9 months of the date on which the file is submitted by the applicant.

Belgian law does not specify whether the above authorisation process applies to issuances under covered bonds programmes established prior to the implementation of the Covered Bond Directive, but in practice all "active" programmes of Belgian issuers have now been approved by the NBB.

Finally, the law does not address whether an additional authorisation or notification is required for any amendments to be implemented under a programme.

The Netherlands

In the Netherlands, the authority designated to exercise a public supervision on the covered bond market is the Dutch Central Bank ("**DCB**"), which grants approval to establish new covered bond programmes. The timeframe for the approval process is thirteen weeks after receipt of a complete application, including any supplemental information required.

No specific authorisation is required for amendments under a programme. Significant amendments to the terms and conditions of covered bonds must be notified to the DCB in advance.

The approval requirement does not apply to covered bonds that were issued before 8 July 2022 in accordance with the applicable law at that time. However, the Dutch regulatory framework does require credit institutions to provide sufficiently detailed information on the relevant covered bond programmes to investors at least on a quarterly basis, including the minimum portfolio information referred in article 14(2) of the Covered Bond Directive. Also, the credit institution shall continue to observe the covered bond legislation that applied until 8 July 2022, pursuant to which covered bonds could be registered with the DCB to enable alternative investment funds and credit institutions certain preferential treatments when investing in such bonds. As of 8 July 2022, no new issuances can be made under a covered bond programme not adapted to the new laws and regulations.

Covered bond programmes established prior to 8 July 2022 that are adapted to the new laws and regulations are in principle not subject to a new prior approval decision from the DCB. However, for the purposes of the ongoing supervision of covered bond programmes, DNB will assess whether these programmes comply with the new laws and regulations. DNB has drawn up a self-assessment form which was made available to the banks that already had a covered bond programme in place. If DNB concludes on the basis of the assessment that the programme complies with the new laws and regulations, DNB will confirm this by means of a decision, following which the covered bonds may be sold under the label ‘European Covered Bond (Premium)' in accordance with article 27 of the Covered Bonds Directive.[14]

[14] Note that covered bond programs will be approved by the DCB only where the bonds meet the requirements of both the Covered Bond Directive and article 129 CRR.

2. Over-collateralisation requirement

Italian perspective:

The Covered Bond Regulation has amended Article 129-*ter* of the CRR to provide that the preferential risk weighting treatment under the CRR applies to covered bonds with a minimum level of over-collateralisation of 5% (i.e. where the nominal value of the cover pool exceeds by 5% the nominal value of the issued covered bonds).

In addition, the Covered Bond Regulation grants to each Member State, through its appropriate supervisory authority, the discretion to lower such limits down to 2%, to the extent that the lower over-collateralisation level is calculated to take into account the risk of the underlying assets.

The Bank of Italy has not exercised the discretion to decrease the over-collateralisation requirement to a level lower than 5%.

European perspective:

France

The French legislator has not exercised the discretion to decrease the over-collateralisation requirement to a level lower than 5%.

In fact, the transposition of the Covered Bond Directive into French law did not modify the legal minimum threshold which was already set at 105% in Article R. 513-8 of the *French Code monétaire et financier*.

Germany

The German legislator has exercised the discretion to decrease the over-collateralisation requirement to a level lower than 5% with respect to covered bond programmes with certain underlying assets.

Even before the implementation of the Covered Bond Directive, the German Covered Bond Act (the "***Pfandbriefgesetz***") required the present value (*Barwert*) of the registered cover assets (*eingetragene Deckungswerte*) to exceed the present value of liabilities by 2% (so-called present value securing over-collateralisation).

To implement the requirements set out in the Covered Bond Directive, the so-called nominal-value securing over-collateralisation was introduced, which is to be 2% of the nominal value for mortgage and public sector covered bonds while remaining at 5% for ship and aircraft covered bonds.

Luxembourg

As in Italy and France, no regulation exercising this discretion has been published so far, although the CSSF may, through a regulation, lower the statutory level of over-collateralisation of 5% that applies to covered bonds other than public covered bonds. Public covered bonds are subject to a 10% over-collateralisation level without a discretionary power having been granted to the CSSF to decrease this level.

Czech Republic

The CNB has exercised discretion to decrease the over-collateralisation requirement to 2%. Accordingly, the aggregate value of all cover assets included in the cover pool must represent at least 102% of the aggregate value of all debts that

are covered by the respective cover pool[15].

Spain

The Spanish legislator has not exercised the discretion to decrease the over-collateralisation requirement to a level lower than 5%.

Belgium

The Belgian regulator has not exercised the discretion to decrease the over-collateralisation requirement to a level lower than 5%.

The Netherlands

The Dutch legislator has not exercised the discretion to decrease the over-collateralisation requirement to a level lower than 5%.

3. Liquidity buffer requirement

Italian perspective:

Pursuant to Article 16 of the Covered Bond Directive, Article 7-*duodecies* of Italian Law 130 and Chapter 3, Section III (*Requisiti delle obbligazioni bancarie garantite e marchio*) of the New BoI Regulation, an issuer must ensure, on an ongoing basis and for the entire duration of the programme, that a liquidity buffer is established in order, among other things, to cover a maximum cumulative net liquidity outflow over the next 180 day-period.

The liquidity buffer must be formed by so-called "liquid assets", such as freely transferable assets[16] that can be converted quickly into cash in private markets within a short timeframe and without significant loss in value and positions towards, or deposits with, banks with high credit quality, which meet the requirements under Article 129 of the CRR, as amended by the Covered Bond Regulation.

The Bank of Italy has clarified that no separate reserve shall be necessary to comply with the liquidity buffer requirement. Accordingly, any liquidity generated from the cover pool and/or any other reserve already established under the programme that meet the requirements above can be validly considered for the purposes of compliance with such requirement.

Italian law has not set out in any detail the parameters for checking and disclosing compliance with the liquidity buffer requirement and therefore issuers are granted the flexibility to implement their preferred monitoring and disclosure process. This could be achieved, for example, by adding a specific test under the programme documents or by other means and through related disclosure on the issuer's website.

European perspective:

France

In France, the liquidity buffer was implemented through Article R. 513-7 of the

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[15] Expected costs related to the maintenance and administration of the cover pool, of 1% of the cumulative nominal value of the covered blocks falling within the cover pool, must be added to the value of all debts covered by the cover pool.

[16] According to Delegated Regulation (EU) 2015/61, adopted pursuant to Article 460 of the CRR.

French Code *monétaire et financier* (amended by Article 3 of the *Décret* No. 2022-766 dated 2 May 2022), pursuant to which issuers must at all times cover all their cash requirements for the next 180 days.

As in Italy, French law does not make reference to (i) the creation of a separate reserve, or (ii) a specific test to check compliance; however, issuers should adopt a specific process to monitor their 180-day liquidity.

Germany

In Germany, even before the implementation of the Covered Bond Directive, German law already required a 180-day liquidity buffer, according to which the issuer must provide sufficient liquid funds to cover the largest liquidity shortfall over the next 180 days[17].
German law does not provide (i) for the creation of a separate reserve[18], or (ii) a specific test to check compliance[19].

Luxembourg

In Luxembourg, the liquidity buffer was implemented by Article 9 of the Luxembourg Law of 8 December 2021 on the issue of covered bonds (the "**Law of 2021**"), pursuant to which, among other things, the issuer must ensure that the cover pool includes at all times a liquidity buffer composed of liquid assets available to cover the net liquidity outflows[20].

No Luxembourg legal provision refers to the creation of a separate reserve. Compliance with the liquidity buffer requirements must be disclosed to the CSSF[21] and is verified by the special approved statutory auditor (*réviseur d'entreprises agréé spécial*) of the covered bond issuing bank as part of its cover pool control functions.

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[17] The German law regarding the liquidity buffer was merely amended to the extent that only values that meet the requirements of the Delegated Regulation (EU) 2015/61 and short-term risk position vis-à-vis credit institutions with sufficient creditworthiness can be used for the liquidity buffer.

[18] Under German law, the liquidity buffer is simply included in the cover register (*Deckungsregister*) together with all other cover assets (*Deckungswerte*).

[19] However, pursuant to the *Pfandbriefgesetz* credit institutions that issue covered bonds are required to submit reports on cover pools in relation to their covered bonds, in particular regarding their value, within two weeks of the end of each quarter to the BaFin. Additionally, these credit institutions must now publish certain information on their website, including information regarding the liquidity buffer.

[20] In particular, according to Article 9, paragraph 2, of the Law of 2021, 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.

[21] Indeed, Article 16 of the Law of 2021 further provides that the information that the issuing credit institutions must communicate to the CSSF includes information regarding the liquidity requirements in accordance with Article 9. Furthermore, there is a special approved statutory auditor (*réviseur d'entreprises agréé*) who is, in accordance with Article 17(2), subpara. 1, of the Law of 2021, in charge of "ensuring 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." CSSF Circular 18/707 (as amended) (applicable to an analogous predecessor provision in the FSL) provides in its annex that the tasks of the special approved statutory auditor extend also to examining that the liquidity buffer calculations have been made properly by the issuer credit institution. However, such examination by the special approved statutory auditor does not appear to be on an ongoing basis, but ex post when preparing the annual report of the special approved statutory auditor to the CSSF.

Czech Republic

In Czech Republic, the liquidity buffer was implemented under Act No. 190/2004 Coll. on Bonds pursuant to which, among other things, the liquidity buffer must cover the maximum cumulative net liquidity outflow over a period of 180 days.

Under Czech law (i) no legal provision refers to the creation of a separate reserve, and (ii) there is no specific test to check the compliance[22].

Spain

In Spain, the liquidity buffer was implemented under RDL 24/2021, pursuant to which the liquidity buffer under a covered bond programme must cover the net liquidity outflow during the following 180 days.

The cover pool monitor appointed by the issuer for each covered bond programme must ensure that the liquidity level is sufficient and that the liquidity buffer is maintained.

The Issuer shall provide to the BoS upon request any information that the BoS deems necessary and, at least on a quarterly basis, the information required by RDL 24/2021, including information on the liquidity buffer.

Belgium

Under Belgian law, each "special estate"[23] must contain sufficient liquid and available cover assets to provide a liquidity buffer in order to enable the issuer to cover the net liquidity outflow of the relevant issue or programme, and the maximum amount of the sum of the net liquidity outflows calculated over a 180 days period[24].

The issuer will build into the programme a liquidity buffer test to be verified by itself and by the asset monitor[25] on a monthly basis. If the issuer fails to meet the requirements relating to the liquidity buffer, it will have a 14 days grace period to cure the breach, failing which it will no longer be allowed to issue new covered bonds (both under the relevant programme or on a stand-alone basis) until the breach is cured.

The Netherlands

In the Netherlands, the liquidity buffer was implemented through article 40(k) of the Prudential Rules Decree (*Besluit prudentiële regels* Wft), a Decree which implements the Dutch Financial Supervision Act (*Wet op het financieel toezicht*). In line with the Covered Bond Directive, the liquidity buffer shall cover the maximum cumulative net liquidity outflow during the following 180 days.

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[22] However, Czech law specifies in detail what the liquidity buffer may consist of. Issuers should therefore pay particular attention to securing and maintaining the required level of liquidity (in addition to requirements mentioned in para 1 above). A fine of up to CZK 20,000,000 (approximately EUR 830,000) can be imposed by the CNB for non-compliance.

[23] According to the Belgian covered bonds legislation, the assets of a credit institution that has issued Belgian covered bonds is composed of a "general estate" and of one or more "special estates". Each special estate is a segregated pool of cover assets which is exclusively allocated to satisfy the obligations towards the Belgian covered bondholders and creditors, as set out in the relevant conditions of the issuance.

[24] Furthermore, where an extended maturity is specified for an issue of Belgian covered bonds, the principal amount of such Belgian covered bonds to be taken into account for the purpose of the calculation of the net liquidity outflow, can be based on the maximum maturity as stipulated in the conditions of the issuance.

[25] Only auditors are eligible to be cover pool monitors, and they have to be approved by the regulator before they are appointed.

Dutch law does not provide (i) for the creation of a separate reserve[26], or (ii) a specific test to check compliance[27]. Generally, compliance with the cover pool requirements needs to be verified by a cover pool monitor who is appointed by the issuer. The cover pool monitor shall be either:

1. separate and independent from the credit institution issuing the covered bonds and from that credit institution's auditor (i.e. an external cover pool monitor); or
2. not separate from the credit institution (i.e. an internal cover pool monitor) provided the requirements set out in article 13 of the Covered Bond Directive are satisfied, including that the internal cover pool monitor is independent from the credit decision process of the credit institution issuing the covered bonds and has direct access to the management body in its supervisory function.

In case of an external cover pool monitor, compliance with the coverage requirements (referred in article 15 Covered Bond Directive) and the liquidity buffer requirement must be verified by an auditor (not being the credit institution's auditor), while in case of an internal cover pool monitor, compliance with these requirements must be verified by the credit institution's auditor.

4. Covered bonds «premium» label

Italian perspective:

Pursuant to Article 27 of the Covered Bond Directive, Article 7-*viciesbis* of Italian Law 130 and Chapter 3, Section III (*Requisiti delle obbligazioni bancarie garantite e marchio*) of the New BoI Regulation, covered bonds issued by Italian banks in compliance with (i) the requirements of Title 1-*bis* of Italian Law 130, and (ii) the requirements under the New BoI Regulation, may be traded using the "*European covered bond*" label.

Covered bonds issued by Italian banks pursuant to Title 1-*bis* of Italian Law 130 that also satisfy the provisions under Article 129 of the CRR, as amended by the Covered Bond Regulation (including the minimum over-collateralisation requirement of at least 5% pursuant to article 129 paragraph 3-bis of the CRR), may be traded using the "*European covered bond (premium)*" label.

Nevertheless, the New BoI Regulation has not clarified whether the assessment to label the covered bonds as "premium" is to be carried out by the issuer or by a specific external controller. Our view is that the issuer should make such assessment itself.

The Bank of Italy will publish on its website a list of the covered bonds labelled as "*European covered bond*" and "*European covered bond (premium)*"[28].

European perspective:

France

In France there were already several issuances of covered bonds traded with the

[26] Under Dutch law, the liquidity buffer is simply included in the cover pool (*dekkingspool*) together with all other cover assets (*dekkingsactiva*).

[27] However, pursuant to the Prudential Rules Decree, credit institutions that issue covered bonds are required to submit reports on cover pools in relation to their covered bonds, in particular regarding their value, at least on an annual basis to the DCB.

[28] Article 7-*viciesbis* of Italian Law 130

label of "European Covered Bond (Premium)". The list of French covered bonds issuance labelled as "European Covered Bond (Premium)" is published on the website of the ACPR.

The French regime (Article L. 513-23 of the French Code *monétaire et financier*) expressly provides for the appointment of a specific controller who verifies compliance of the covered bonds with the provisions of Article 129 of the CRR, as amended by the Covered Bond Regulation, in order for those to be traded with the label as "European Covered Bond (Premium)".

Germany

In Germany, even before the implementation of the Covered Bond Directive, pursuant to the *Pfandbriefgesetz* a label existed for covered bonds meeting the requirements under Article 129 of the CRR (in its previous formulation). Through the implementation of the Covered Bond Directive, the label of "European Covered Bond (Premium)" is now attributed to covered bonds meeting the requirements of Article 129 of the CRR, as amended by the Covered Bond Regulation, to the extent that the relevant underlying assets consist of mortgage, public sector and ship covered bonds.

In Germany, so far, no covered bonds were traded using the label of "European Covered Bond (Premium)".

Luxembourg

Luxembourg has also not yet experienced an issuance of covered bonds labelled as "European Covered Bond (Premium)", although several credit institutions with a universal banking license are interested or appear to wish to set up programmes under the Law of 2021 (which introduced this option for universal banks for the first time) and to issue such covered bonds thereunder or covered bonds under the national regime (e.g., renewable energy covered bonds introduced in Luxembourg law in 2018) that will not necessarily meet the requirements of the Covered Bond Directive framework to benefit from the "European Covered Bond (Premium)" label.

The applicable legislation makes no express reference to the modalities to check compliance with the requirements of Article 129 of the CRR, as amended by the Covered Bond Regulation, and accordingly on how to obtain the relevant label.

The primary obligation to ensure compliance with the requirements of the Law of 2021 to be permitted to use the relevant label lies with the issuer. However, Article 17(6) of the Law of 2021 also provides that a special approved statutory auditor (*réviseur d'entreprises agréé spécial*) must certify, before each covered bond issuance, the existence of the cover assets required by law and the relevant entry in the cover pool register.

Czech Republic

The Czech Republic has also not yet experienced an issuance of covered bonds labelled as "European Covered Bond (Premium)", while several issuance with the label of "European Covered Bonds" have been issued in the jurisdiction.

Spain

In Spain there are already several issuances of covered bonds traded with the label of "European Covered Bond (Premium)". The list of Spanish covered bonds issuance labelled as "European Covered Bond (Premium)" is published on the website of the BoS.

The "European Covered Bond (Premium)" label is granted if the covered bonds issued fall within certain categories which are recognised as premium by RDL 24/2021[29].

Belgium

In Belgium, there have been several issuances of covered bonds traded with the label of "European Covered Bond (Premium)", and the NBB publishes a list of covered bonds issued under this label.

An issuer is authorised to label its covered bonds as "European Covered Bond (Premium)" if the covered bonds satisfy the requirements set out in the relevant Belgian laws and regulations, and the composition and valuation of the cover assets comply with the provisions of Article 129 of the CRR.

The Netherlands

Covered bonds issued by Dutch banks and approved by the DCB may be traded using the "European covered bond (premium)" label, particularly because the laws implementing the Covered Bond Directive imply that the DCB will grant approval only if the covered bonds are secured by assets that are eligible pursuant to Article 129(1) of the CRR and the credit institution issuing the covered bonds meets the requirements of paragraphs 1a to 3 of Article 129 CRR.

The assessment whether covered bonds comply with the Dutch regulations (and can thus be labelled as "premium") is first carried out by the issuer itself and will be confirmed by the DCB.

The list of approved Dutch covered bonds (all labelled as "European Covered Bond (Premium)") is published on the website of the DCB. So far, the list contains 13 covered bond programs of 9 banks in total.

Grandfathering provisions

The combined provisions of Article 30 of the Covered Bond Directive and Title 1-*bis* of Italian Law 130 state that the new legal framework introduced thereunder applies to covered bonds issued after the full implementation in Italy of the European Covered Bond Legislation, and therefore after the Effective Date.

The Bank of Italy has further clarified that covered bonds issued after the Effective Date in connection with a covered bond programme established prior to such date, are not subject to authorisation by the Bank of Italy, although they are nevertheless subject to a notification requirement (see above section 1B) "*The authorisation/notification process – Italian perspective – Notification for issuances under covered bond programmes established prior to the Effective Date*" and section 1C) "*The authorisation/notification process – Italian perspective – Other notification to the Bank of Italy by 30 June 2023*").

Accordingly, Article 129(7) of the CRR, as amended by the Covered Bond Regulation, introduced grandfathering provisions for covered bonds issued before 8 July 2022 (which for Italian covered bonds it is reasonable to be intended to apply

[29] The categories idenfitied as premium under RDL 24/2021 are: a) «cédulas hipotecarias»; b) «cédulas territoriales»; c) «cédulas de internacionalización»; d) «bonos hipotecarios»; e) «bonos territoriales»; f) «bonos de internacionalización». As of now, and according to the registries of BoS, only the categories of "cédulas hipotecarias", "cédulas territoriales" and "cédulas de internacionalización" have been issued.

to covered bonds issued prior to the Effective Date)[30], providing that such covered bonds that complied with the requirements of the CRR (in its previous formulation) as at the date of their issuance are eligible for the preferential risk weighting treatment under the CRR until their maturity.

[30] CRR refers to 8 July 2022 as the date set out in the Covered Bond Directive as deadline for the implementation of such directive in each of the Member States. Nonetheless in Italy full implementation occurred only on the Effective Date, after publication of the New BoI Regulation.

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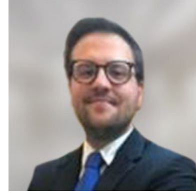

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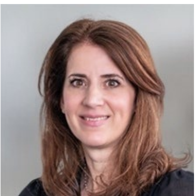

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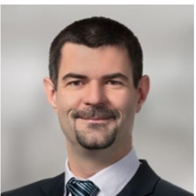

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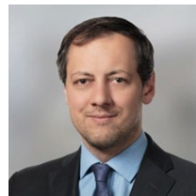

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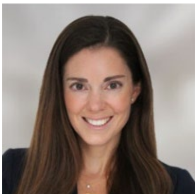

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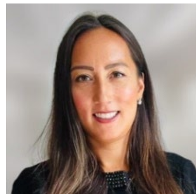

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