Covered bond Directive and Regulation

Transitional measures unknotted

24th Central European Covered Bond Conference, 9 June 2022, Warsaw

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'Haken's Gordian Knot', Mick Burton (2015)

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Topics to be discussed

Current **status** of **national implementation**

CBD Article 30 – **Transitional provisions**

CRR Article 129(1) - **Transitional provisions**

CBD Article 27 - **Labelling**

Liquidity buffers & **overcollateralization - post insolvency**

Introducing Panel 1

Implementation of covered bond harmonization and transitional measures

Panelists

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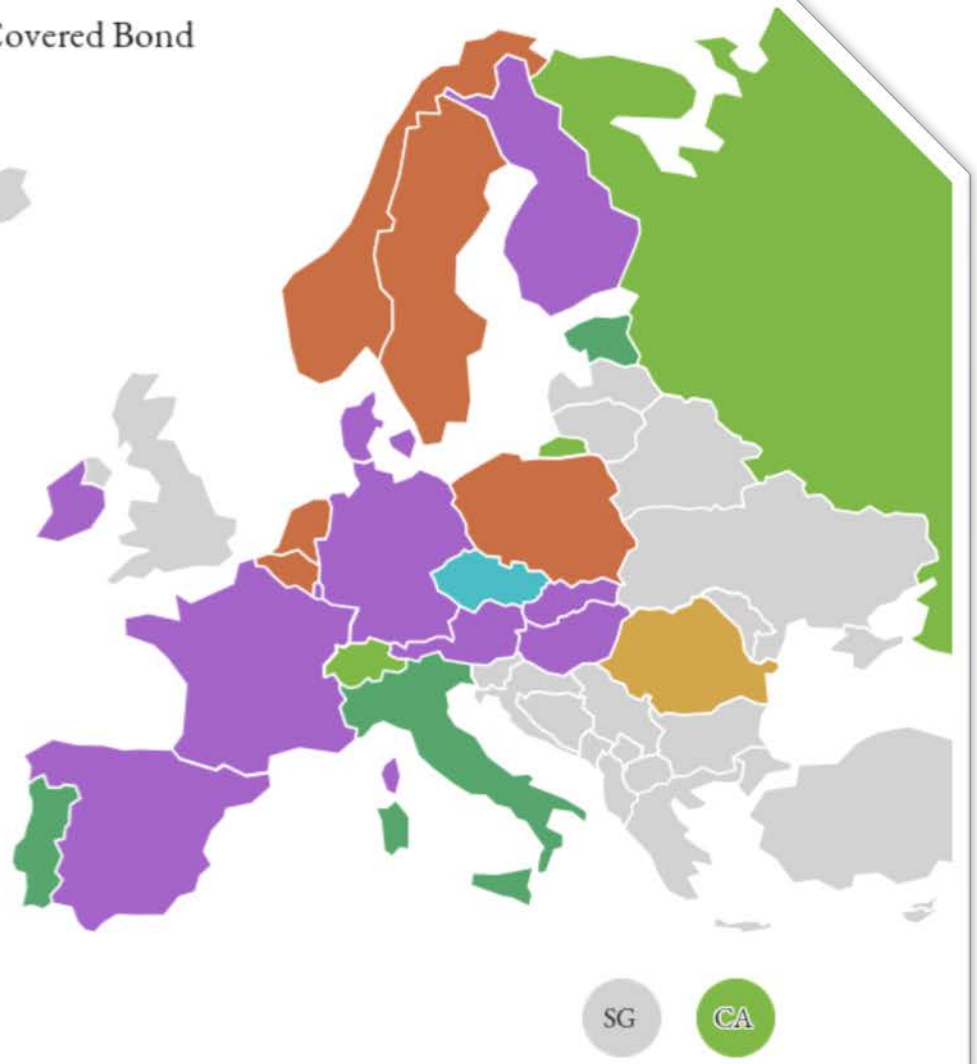
Current status of national implementation

One month before the finish line

Transposition status EU Covered Bond Directive

1.) (new) What is the current status of transposition of the EU Covered Bond harmonisation into national CB law?

- 8 EU CB harmonisation fully implemented and fully in force
- 7 EU CB harmonisation fully implemented (including executive/statutory orders), coming into force at latest on 8 July 2022
- 6 Amendments adopted by Parliament
- 5 Draft legislation in Parliament
- 4 Detailed draft published
- 3 Public hearing on fundamental questions (no detailed draft)
- 2 Draft not yet published
- 1 Not relevant (third country)

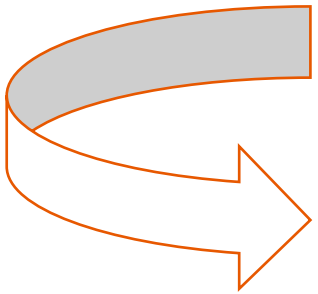


Verband deutscher Pfandbriefbanken (vdp), Roundtable Covered Bond Legislation (RT CBL)

CBD Article 30 - Transitional provisions

Transitional measures – Article 30(1)

*Member states **shall ensure** that **covered bonds issued before 8 July 2022** that comply with the UCITS 52(4) requirements as applicable on the date of their issue, are **not subject to** the minimum requirements set out in **CBD Article 5-12, 15-17 and 19**, but may continue to be referred to as covered bonds in accordance with the CBD until their maturity.*



Member states shall ensure that the **competent authorities** designated pursuant CBD Article 18(2) **monitor** the **compliance of covered bonds** issued before 8 July 2022 with the requirements of **UCITS Article 52(4)**, as applicable on the date of their issue, as well as with the requirements of the CBD, insofar as they are applicable.

The articles subject to grandfathering

Dual recourse and bankruptcy remoteness

Article 4	Dual recourse
Article 5	**Bankruptcy remoteness**
Article 6	**Eligible cover assets**
Article 7	**Non-EU assets**
Article 8	**Intragroup structures**
Article 9	**Joint funding**
Article 10	**Cover pool composition**
Article 11	**Cover pool derivatives**
Article 12	**Segregation of assets**
Article 13	Cover pool monitor
Article 14	Investor information
Article 15	**Coverage requirements**
Article 16	**Cover pool liquidity buffer**
Article 17	**Extendable maturity structures**

Covered bond public supervision

Article 18	Public supervision
Article 19	**Programme permission**
Article 20	Public supervision in insolvency or resolution
Article 21	Reporting to the competent authority
Article 22	Powers of the competent authority
Article 23	Administrative penalties and remedial measures
Article 24	Publication of administrative penalties & remedial measures
Article 25	Cooperation obligations
Article 26	Disclosure requirements
Article 27	Labelling

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Questions

1. What are **the interpretation issues** with CBD Article 30(1)?

2. What do the words ***"shall ensure"*** and ***"are not subject to"*** mean?

3. Does Article 30(1) **prohibit** member states from **applying all provisions** from the CBD **to existing covered bonds** issued before 8 July 2022?

4. Do the transitional measures provide an incentive for the **establishment** of **new covered bond programmes**?

Why is CBD Article 30(1) causing problems in some countries?

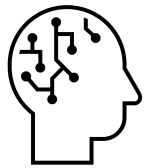
The wording of Article 30(1) is somewhat misleading and open to different interpretations

Harmonisation principal based (Recital 5)

Member State discretion on how to regulate certain aspects in their national covered bond law

Transitional measures for existing CB (Recital 41)

Covered bonds issued before 8 July 2022 should not be affected, and as such be exempted from some requirements



Question:

Ensuring existing covered bonds **are not subject to** some CBD requirements

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Existing covered bonds **are not allowed to be subject to** these CBD requirements

Conclusion:

"Article 30(1) does not mean it is not allowed to apply all CBD articles to existing covered bonds.

Where it only makes sense to apply these provisions to both outstanding and new covered bonds, they may be applied to both groups of covered bonds.

This is most obvious when there is one cover pool securing both the covered bonds issued before 8 July 2022 and those covered bonds issued thereafter."

Source: vdp, Roundtable Covered Bond Legislation (RT CBL)

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Treatment of tap issues – CBD Article 30(2)

Member states may apply CBD Article 30(1) to tap issues of covered bonds for which the opening of the ISIN is before 8 July 2022 for up to 24 months after that date, provided that those comply with all the following requirements:

- The **maturity date** of the covered bond is **before 8 July 2027**
- The **total issue size** of the **tap issue** made after 8 July 2022 **does not exceed twice the total issue size** of the covered bonds outstanding on that date
- The **total issue size** of the **covered bond** at maturity does **not exceed €6bn** or the equivalent amount in domestic currency
- The **collateral assets** are **located** in the **member state** that applies the transitional measures from CBD Article 30(1) to tap issues of covered bonds

Questions

1. **Which countries** allow banks to use the provisions from CBD Article 30(2)?

2. Will **transposition delays** increase the use of CBD Article 30(2)?

3. Could the requirements for tap issues impact **covered bond curves**?

4. Are cover pools with broader **geographical scope** discriminated?

CRR Article 129(7) - Transitional provisions

Grandfathering provisions – CRR Article 129(6) and (7)

Article 129(6)

*Covered bonds issued **before 31 December 2007** shall not be subject to the requirements laid down in **CRR Article 129(1), (1a), (3), (3a) and (3b)***

Article 129(7)

*Covered bonds issued **before 8 July 2022** that comply with the requirements of the CRR applicable at the date of their issue shall not be subject to the requirements laid down in **CRR Article 129(3a) and (3b)**. They shall be eligible for preferential treatment under CRR Article 129(4) and (5) until maturity.*

CRR amendments per Covered Bond Regulation

Article 129(1)	Preferential treatment if: 1. Covered bond per CBD Art(3), 2. CRR Art 129 (1)(a-e),(3, 3a, 3b)
Article 129(1)(c)	Exposure to credit institutions
Article 129(1)(d)(ii)	Securitisation notes (residential)
Article 129(1)(f)(ii)	Securitisation notes (commercial)
Article 129(1a)a-d	Exposures credit institution - limits
Article 129(1b)	Covered bonds as collateral - exempt 129(1a)
Article 129(1c)	80% LTV limit on loan-by-loan basis
Article 129(1d)	60%/70% LTV limit on loan-by-loan basis
Article 129(3)	Immovable properties - monitoring
Article 129(3a)	**Minimum overcollateralisation**
Article 129(3b)	**Eligible substitution assets**
Article 129(6)	Grandfathering covered bonds issued before 31 December 2007
Article 129(7)	Grandfathering covered bonds issued before 8 July 2022
Article 425(1)	Liquidity inflows
Article 427(1)(b)x	Covered bond liabilities
Article 428(1)(h)iii	Matched funding

Article 129(7) does not give an exemption for all new provisions

Covered bonds issued before 8 July 2022 would still have to meet the (new) CRR Article 129(1-3) provisions

CRR Article 129(1)(c): Eligible exposures credit institutions:
Exposures to credit institutions that qualify for credit quality step **(CQS) 1 or 2, or** to **CQS 3** where exposures are in the form of: 1. short-term deposits with an original maturity ≤100 days used to meet cover pool liquidity buffer requirements, or 2. CBD Article 11 derivative contracts, where permitted by the competent authority

CRR Article 129(1a): Limits exposures credit institution:
-Exposures to CQS 1 credit institutions ≤15%;
-Exposures to CQS 2 credit institutions ≤10%;
-Exposures to CQS 3 credit institutions ≤8% (subject to consultation EBA on significant concentration);

-Total exposure to CQS 1, 2 or 3 credit institutions ≤15%;
-Total exposure to CQS 2 or 3 credit institutions ≤10%;

CRR Article 129(1c) and 1(d): LTVs on loan-by-loan basis:
The 80% LTV limit for residential property loans, and 60% or 70% LTV limits for commercial property loans or ship loans, shall apply on a loan-by-loan basis, shall determine the proportion of the loan contributing to the coverage of liabilities attached to the covered bond, and shall apply throughout the entire maturity of the loan

CRR Article 129(3): Monitoring property values:
For **immovable property and ships** collateralizing CRR compliant covered bonds, CRR Article 208 requirements shall be met, eg on legal certainty and monitoring property values and property valuation.

The CRR Art 208(3)(a) **monitoring** of property values shall be carried out frequently and **at least annually** for all immovable properties and ships

Questions

1. **Is grandfathering always possible** related to CRR Article 129(3a) and (3b)?

2. Do the CRR Article 129(7) transitional provisions form an **incentive** for issuers to establish **new covered bond programmes**?

3. Is the **annual monitoring of property values** per CRR Article 129(3) an issue for the **risk weight treatment** of certain covered bonds?

4. Should the **monitoring of property values** be **regulated** by national law?

The issue with the CRR grandfathering provisions

Grandfathering on the level of the covered bond does not work if old and new covered bonds use the same cover pool

Article 129(3a) and (3b) refer to **cover assets**

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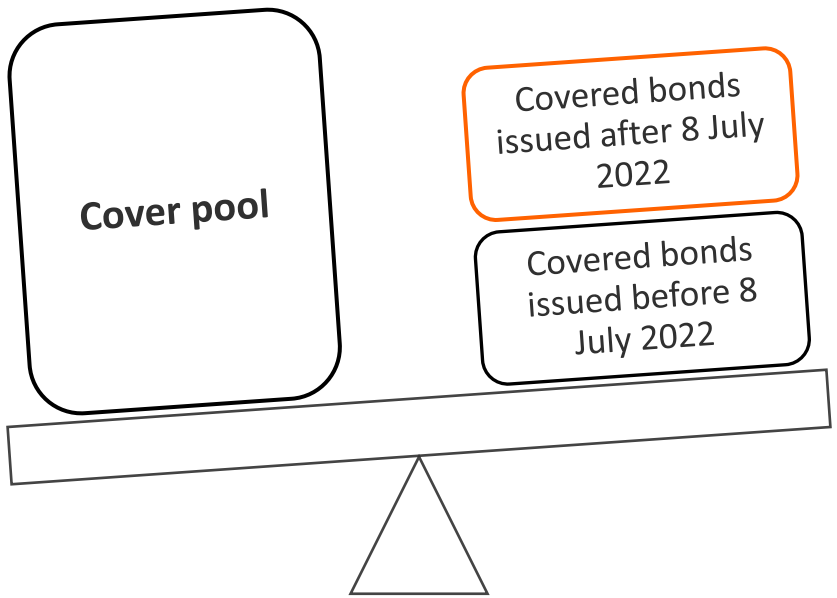
Article 129(7) refers to **covered bonds**



Conclusion

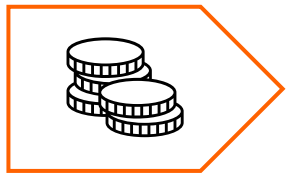
"Where the covered bond legislation does not provide for the opening of new cover pools but instead assumes the continuation of existing cover pools, active covered bond programmes cannot benefit from the grandfathering provision of Article 129(7) CRR, and therefore also need to fulfil the requirements of Article 129(3a) and (3b) CRR for outstanding covered bonds"

Source: vdp, Roundtable Covered Bond Legislation (RT CBL)

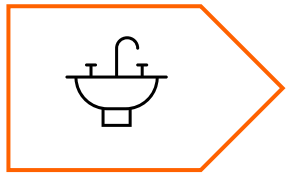
Consequences if the same cover pool secures old and new bonds

Provisions impacting cover assets should apply to both

Examples



New **overcollateralization** requirements

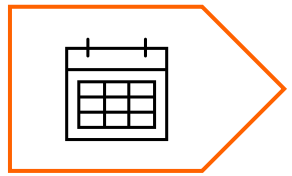


New **liquidity buffer** requirements

New **asset eligibility** requirements

Provisions impacting liabilities may apply only to new bonds

Example



New requirements for **extendible maturities**

But…

… consequences for labelling, not for preferential regulatory treatment

Article 17 CBD fulfilled **Labelling European Covered Bond (Premium)** is allowed

Article 17 CBD not fulfilled **Labelling European Covered Bond (Premium)** is not allowed

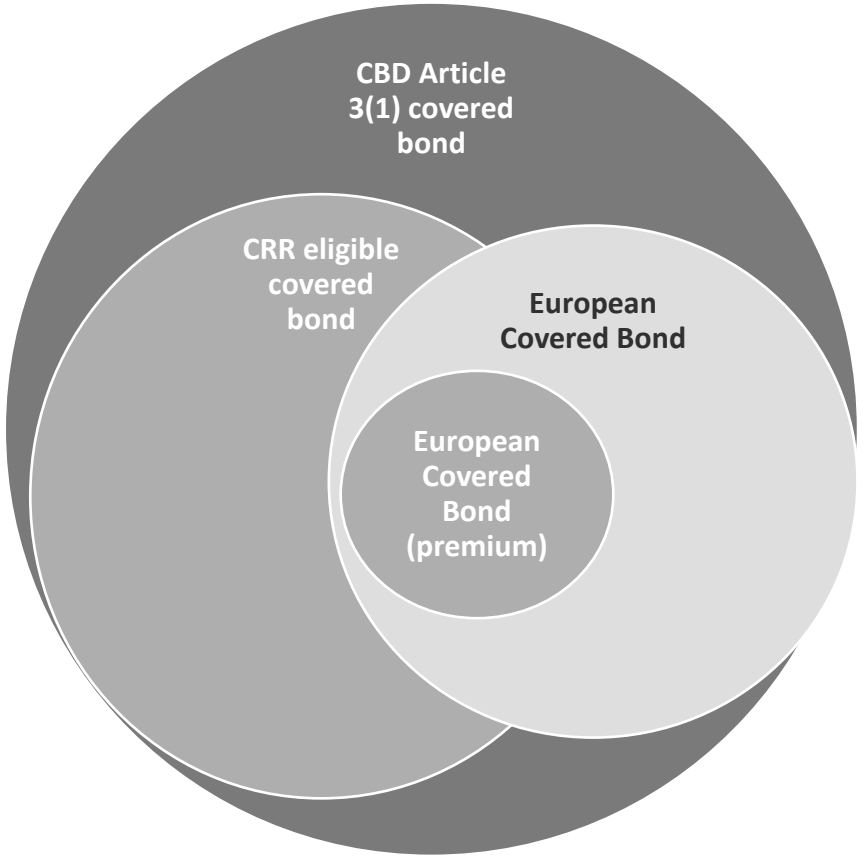
CBD Article 27 - Labelling

EU covered bond labels

Eligibility for preferential treatment does not by definition make a covered bond an EU Covered Bond (Premium)

CBD Article 27(1):
The label '**European Covered Bond**' can only be used for covered bonds that meet the **CBD requirements**

CBD Article 27(2):
The label '**European Covered Bond (Premium)**' can only be used for covered bonds that meet the **CBD** and **amended CRR requirements**



CBD Article 26 *Competent authorities have to publish on their websites a **list of covered bonds** allowed to use the European Covered Bonds label or the European Covered Bonds (Premium) label.*
The EBA has to be notified by this list on an annual basis

Questions

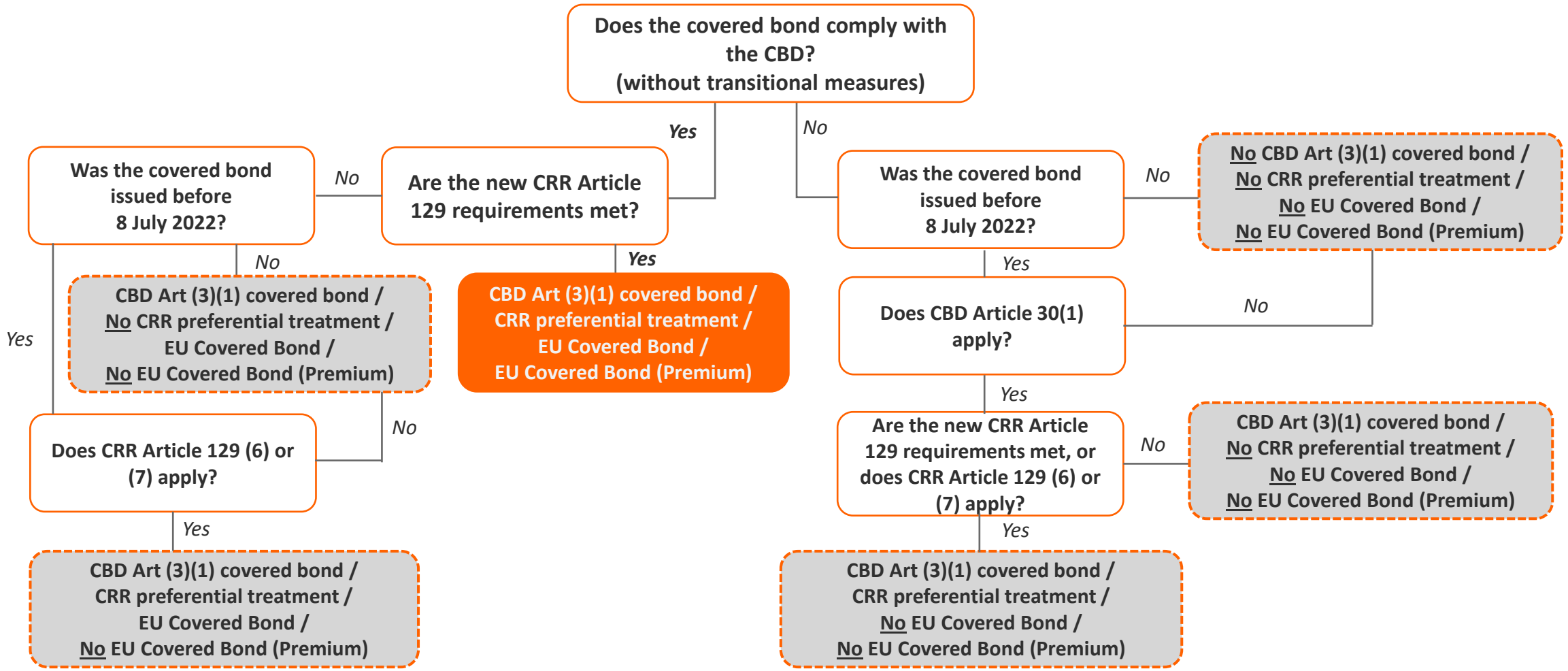
1. How do the transitional measures impact the **labelling** of covered bonds?

2. Are there situations where, due to the transitional measures, covered bonds (existing versus new) will **not** be **able to use the same label**?

3. Can a covered bond benefit from **preferential risk weight treatment**, even if it is not able to use the European Covered Bond (Premium) label?

4. **Please explain your country's situation via the scheme on the next slide**

Transitional measures versus Labelling provisions

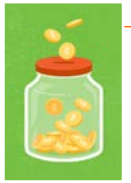


Liquidity buffer and overcollateralisation requirements in a post insolvency situation

Overcollateralisation and liquidity requirements

Until when is it necessary to meet these requirements?

CBD Article 16 on liquidity buffering



Cover pool includes at all times a **liquidity buffer** of liquid assets…

…covering the **net liquidity outflow** of the covered bond programme

The cover pool liquidity buffer shall cover the maximum cumulative net liquidity outflow for **180 calendar days**

Liquid assets are segregated in line with Directive's **asset segregation** provisions

CRR Article 129(3a) on overcollateralisation

Basic overcollateralisation provisions*

*In addition to being collateralised by CRR eligible cover assets, covered bonds are subject to a **minimum overcollateralisation of 5%** (statutory, contractual and voluntary).*

*Nominal amount all **cover assets***

≥

*Nominal amount outstanding **covered bonds***

** Member states may set lower minimum overcollateralisation level ≥ 2% on a nominal basis, if a) underlying risk of assets is considered, or b) valuation assets is based on mortgage lending value*

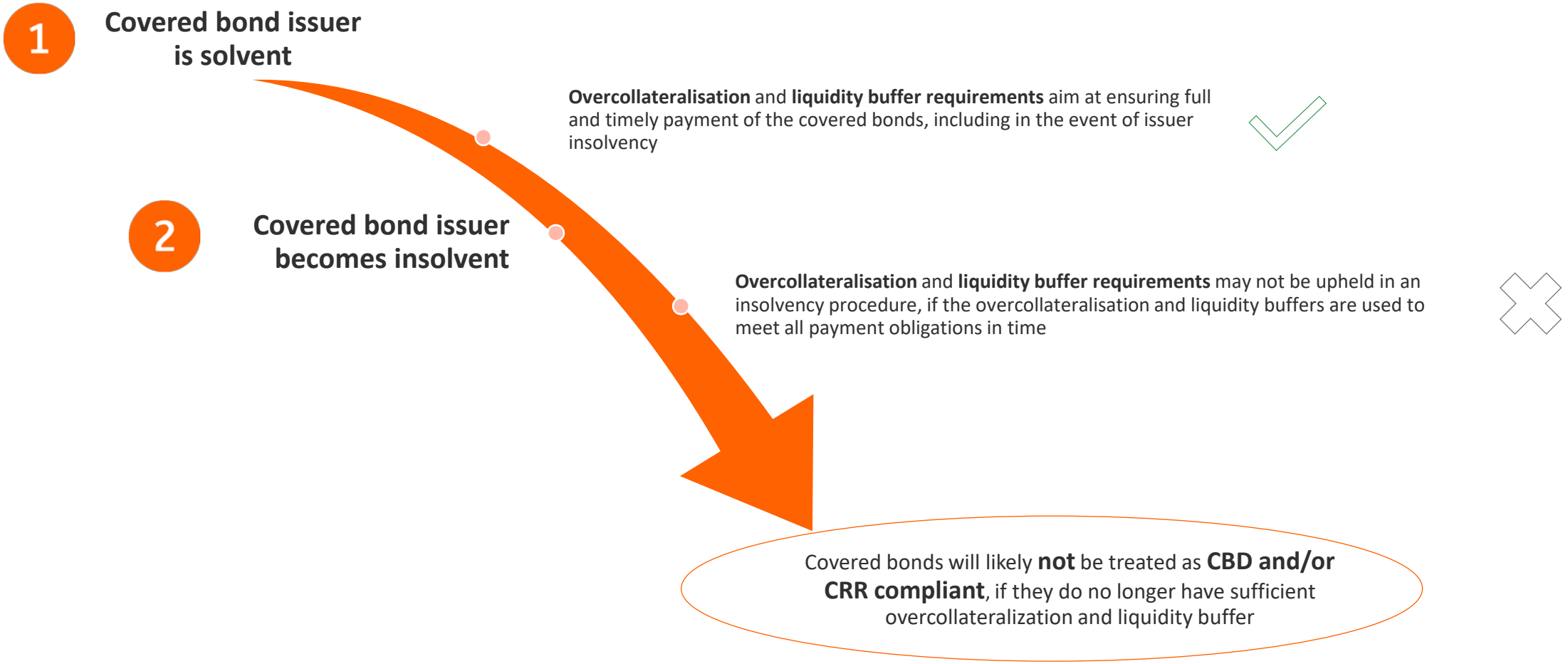
Questions

1. Until when is it necessary to meet the **liquidity buffer requirements**?

2. Until when is it necessary to meet the **overcollateralization requirements**?

3. What are **the consequences** of not meeting these requirements in a post insolvency situation for the preferential treatment of the covered bonds?

The consequences of a post-issuer insolvency breach



Source: vdp, Roundtable Covered Bond Legislation (RT CBL)

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