

3.4 BELGIUM

By Dries Janssens, Belfius Bank

I. FRAMEWORK

The legal basis for Belgian covered bonds is incorporated into the banking law, meaning the law of 25 April 2014 on the status and the supervision of credit institutions (the "Banking Law"). The legislation with respect to Belgian covered bonds has been supplemented by two Royal Decrees and several regulations.

The following gives an overview of the legislative framework for Belgian covered bonds:

- > The Law of 25 April 2014 on the status and supervision of credit institutions (*Wet van 25 april 2014 op het statuut van en het toezicht op kredietinstellingen/Loi du 25 avril 2014 relative au statut et au contrôle des établissements de crédit*), as amended by the Law of 26 November 2021 (the "**Banking Law**");
- > The Law of 3 August 2012 on various measures to facilitate the mobilization of claims in the financial sector (the "**Mobilisation Law**");
- > The Royal Decree of 11 October 2012 on the issuance of Belgian covered bonds by Belgian credit institutions", as amended by the Royal Decree of 15 February 2022 (the "**Covered Bond Royal Decree**");
- > The Royal Decree of 11 October 2012 on the cover pool administrator in the context of the issuance of Belgian covered bonds by a Belgian credit institution, as amended by the Royal Decree of 15 February 2022 (the "**Cover Pool Administrator Royal Decree**");
- > The Regulation of the National Bank of Belgium ("NBB") concerning the practical modalities for the application of the Law of 25 April 2014 as amended by the law of 26 November 2021 in view of transposing Directive (EU) 2019/2162 (the "**NBB Covered Bonds Regulation**"); and
- > The Regulation of the NBB addressed to the cover pool monitors of Belgian credit institutions that issue of Belgian covered bonds (the "**NBB Cover Pool Monitor Regulation**").

II. STRUCTURE OF THE ISSUER

Belgian covered bonds can be issued by credit institutions established in Belgium. However, such institutions first need to be licensed by the NBB as covered bond issuer (general authorization as issuer) and also the covered bond program itself needs to get approval from the NBB (specific program license).

An extensive issuer license file detailing aspect like its strategy, solvency, risk management, asset encumbrance, IT systems, internal audit, etc. needs to be submitted. At program level the issuer has to detail the impact of the covered bond issuance on its overall liquidity, the quality of the cover assets and maturity matching of assets/liabilities in the program. The statutory auditor of the issuer has to report to the NBB on the organizational capacity of the credit institution to issue and follow up the covered bonds.

The license is conditional upon respecting the program limits that the NBB has approved. If licensed, the issuer and the program(s) are added to specific lists that are available for consultation on NBB's website.

The indirect issuance limit on covered bonds, limiting the amount of cover assets to 8% of the Belgian GAAP balance sheet, will be abolished as from 1 January 2024. In the meanwhile, under certain circumstances/conditions stipulated in the Covered Bond Royal Decree, the issuer can request a (temporary) waiver of this limit.

At program level a distinction is made between Article 129 CRR-compliant European covered bonds (premium), i.e. "Belgian pandbrieven/lettres de gage", and non-Article 129 CRR-compliant European covered bonds, i.e. "Belgian covered bonds". The denomination of both terms is protected by law. However, the way that the Banking Law and the Royal Decree are stipulated, makes that in practice the Belgian credit institutions are

only able to issue Article 129 CRR-compliant European covered bonds (premium). Therefore, in what follows we will only concentrate on the Belgian pandbrieven.

Consultation of the NBB's website will hence give an overview of:

- > Belgian credit institutions licensed to issue covered bonds
- > Belgian pandbrieven programs and their specific issuances

When a credit institution issues Belgian pandbrieven, its assets consist by operation of law of its general estate on the one hand and (one or more) separate, ringfenced "special estate(s)" on the other hand. Assets become part of the cover pool upon registration in a register held by the issuer for such purpose. As of that moment these assets form part of the special estate and are excluded from general bankruptcy claw back risk.

The Belgian pandbrieven investors have a direct recourse to (i) the general estate of the issuing credit institution (i.e. repayment of the Belgian pandbrieven is an obligation of the issuing bank as a whole) and (ii) the special estate, that comprises the cover pool that is exclusively reserved for the Belgian pandbrieven investors under the specific program to which the special estate is attached and for the claims of other parties that are or can be identified in the issue conditions.

When insolvency proceedings or resolution proceedings are opened with regard to the issuing credit institution, by operation of law, Belgian pandbrieven investors fall back on the cover pool assets (= the special estate) for the timely payment of their bonds but at the same time they continue to have a claim against the insolvent general estate. Creditors that are not related to the special estate do not have any recourse to these cover pool assets.

III. COVER ASSETS

All assets and instruments that are legally segregated for the benefit of the Belgian pandbrieven investors in a segregated estate constitute the cover pool. The cover pool can be composed of assets that are part of any of the following categories:

- > category 1: residential mortgage loans
- > category 2: commercial mortgage loans
- > category 3: exposure to the public sector
- > category 4: exposure on financial institutions, in the form of short-term notes (max 3 months), short-term deposits (maximum initial term 100 days) or derivatives

These four general categories are subject to further eligibility criteria:

- > geographical scope: OECD, except for category 1 and 2 that are further restricted to EEA;
- > for the mortgage loans mentioned in category 1 and 2: the loans need to be guaranteed by first lien (and subsequent lower ranking) mortgages on residential respectively commercial properties located in the EEA. Mortgage loans with properties under construction/in development can only be added to the cover pool if they do not represent more than 15% of all the mortgage loans taken up in the cover pool. Residential real estate is defined as real estate property that is destined for housing or for leasing as housing by the owner. Commercial real estate is real estate property that is primarily used for industrial or commercial purposes or for other professional activities such as offices or other premises intended for the exercise of a commercial or services activity;
- > for category 3: exposure to the public sector can only be (i) exposure to or guaranteed by central governments, central banks, public sector entities, regional governments and local authorities or (ii) exposure to

or guaranteed by multilateral development banks or international organizations that qualify as a minimum for a 0% risk weighting as set out in article 117 and 118 CRR;

- > for category 4: only exposures to counterparties with credit quality step 1 or step 2 as set out in Article 136 CRR. Maximum 10% exposure to credit quality step 2. Total exposure to category 4 maximum 15%. For derivatives, (i) they cannot be terminated upon insolvency/resolution of the issuing credit institution; (ii) they must be under a separate credit support annex (CSA); (iii) group related entities are not eligible; (iv) only LCR level 1 assets are eligible for collateral posting; and (v) they can only be used to cover interest rate risk or currency risk.

The cover pool can be composed of assets out of each of the four categories. But for each program (and accordingly for each segregated estate), assets out of one of the first three categories (so either residential mortgage loans, commercial mortgage loans or exposure to public sector) need to represent a value of at least 85% of the nominal amount of Belgian pandbrieven outstanding under such program. In practice this comes down to three types of Belgian pandbrieven programs that can be set up: residential mortgage covered bond program, commercial mortgage covered bond program or public covered bond program. How such value is determined, is explained in the following chapter.

IV. VALUATION AND LTV CRITERIA

The valuation rules of the cover assets determine the maximum amount of Belgian pandbrieven that can be issued. The value of the cover assets of each of the categories as mentioned in the section above will be determined as follows:

- > category 1: minimum of [the outstanding loan amount, 80% of the value of the mortgaged property, the mortgage inscription amount (which can include Belgian mortgage mandates but upon the condition that there is a first lien mortgage inscription of at least 60% related to one and the same property)].
- > category 2: minimum of [the outstanding loan amount, 60% of the value of the mortgaged property, the mortgage inscription amount].
- > category 3: value is equal to the book value (nominal amount outstanding).
- > category 4: for derivative exposure, the value is based on the close-out amount. For short-term deposits and short-term notes the value is based on the book value.

Additional valuation rule applicable to any category: in case of delinquencies above 30 days, the value as determined per category is reduced by 50%. In case of default, no value can be given anymore.

When it comes to property valuation (applicable to cat 1 and cat 2), the royal decree stipulates that this should be done cfr. Art. 208 CRR. The value of the real estate has to be controlled at least annually.

V. ASSET-LIABILITY MANAGEMENT

Each issuer is required to perform several asset cover tests. The first one has been already mentioned in section III and requires that the value of either category 1, 2 or 3 is at least 85% of the nominal amount of Belgian pandbrieven (the "**85% asset coverage test**"). Secondly the value of the cover assets has to exceed the nominal amount of Belgian pandbrieven by 5% at all times (5% overcollateralisation) (the "**overcollateralisation test**"). Finally, the sum of the interest, principal and other revenues has to be sufficiently high to cover for the sum of interests, principal and other costs due under/with regard to the Belgian pandbrieven, as well as any other obligation of the Belgian pandbrieven program (the "amortization test").

Next to the asset cover tests, a liquidity test has to be performed whereby the issuer calculates its maximum net liquidity outflow within the next 180 days (the "**liquidity test**"). This amount has to be covered by (sufficiently)

liquid cover assets. Liquid assets are assets that (i) meet the cover asset eligibility criteria and (ii) qualify as Level 1 LCR assets or category 4 short-term notes or category 4 short-term paper.

If an issuing credit institution fails to meet the requirements of the liquidity test, it has 14 days to take the necessary redress measures. As long as an issuing credit institution has not taken the necessary redress measures, it is not allowed to issue new Belgian covered bonds.

The issuer is also required to manage and limit its interest and currency risk related to the program and will be able to sustain severe & adverse interest/exchange rate movements.

Finally, it is important to highlight that the tests have to be met on a daily basis. It is the task of the cover pool monitor to verify at least once a month whether the issuer is compliant with all the tests.

An issuer will have the possibility to create retained Belgian pandbrieven for liquidity purposes.

VI. TRANSPARENCY

The royal decree imposes monthly investor reporting. It sets minimum disclosure criteria.

VII. COVER POOL MONITOR AND BANKING SUPERVISION

A Belgian credit institution licensed to issue Belgian pandbrieven is subject to special supervision by the NBB as well as the permanent control by a cover pool monitor.

The cover pool monitor:

- > is chosen by the issuer from those persons appearing on the official list of certified/statutory auditors established by the NBB;
- > shall be appointed subject to prior approval from the NBB;
- > cannot be the certified/statutory auditor of the issuer.

The main tasks of a cover pool monitor consist of ensuring compliance with legal and regulatory requirements, e.g. are the cover assets duly recorded in the register, do the cover assets fulfil the eligibility criteria, is the value correctly registered, etc. The cover pool monitor is required to perform these tasks not only on an ongoing basis, but also prior to the first issuance of Belgian pandbrieven by the credit institution. The ongoing verifications must be done at least once a month.

Next to that the cover pool monitor has a reporting obligation towards the NBB on several aspects such as level of overcollateralisation and results of the different tests that have to be performed. The issuer is obliged to provide full cooperation to the cover pool monitor and shall give the cover pool monitor the right to review the register, loan documents, accounting book, or any other document. The NBB at its discretion can ask the cover pool monitor to perform other tasks and verifications.

If the NBB considers that a category of Belgian pandbrieven no longer fulfills the criteria or the issuer no longer fulfills its obligations, it can withdraw the license of the issuer and consequently withdraw the issuer from the list of Belgian covered bond issuers. Such a deletion from the list will be reported to the European Commission but does not have consequences for existing Belgian pandbrieven holders.

VIII. SEGREGATION OF COVER ASSETS AND BANKRUPTCY REMOTENESS OF COVERED BONDS

Assets need to be registered before they form part of the segregated estate. The law protects these registered assets (including all collateral and guarantees related to such assets) from a claim of the creditors of the insolvent general estate and therefore they are not affected by the start of insolvency proceedings against the issuer. Also, any assets that would be posted via a CSA that is in place would be protected from insolvency proceedings as it is required to register these types of assets as well, although as explained before one cannot consider those as pure cover assets.

The cover assets once registered are exclusively and by operation of law reserved for the benefit of the Belgian pandbrievens investors and other creditors that might be linked to the program (e.g. a swap counterparty of which the derivative is included in the cover pool). These creditors also have a claim on the general estate. Only when all obligations at program level have been satisfied, will any remainder of assets of the segregated estate return to the general estate of the issuer. Before such time, the bankruptcy receiver of the credit institution, in consultation with the NBB, could ask the restitution of cover assets if and when there is certainty that not all assets will be necessary to satisfy the obligations under the Belgian pandbrievens program.

Commingling risk has been addressed in the Belgian framework both pre- and post-insolvency. Collections received from cover assets as of the date of bankruptcy will by law be excluded from the insolvent general estate. Registered collections received from the cover assets before the date of bankruptcy are part of the segregated estate and legally protected via the right of 'revindication'. Pursuant to this mechanism, if collections from the cover assets cannot be identified in the general estate, unencumbered assets in the general estate will be selected by taking into account criteria specified in the issue conditions. Set-off and claw back risk have been addressed by the Mobilisation Law.

Upon the initiation of bankruptcy proceedings or the instruction of an exceptional recovery measure by the competent supervisor with regard to the credit institution, or even before whenever the NBB considers it to be necessary (e.g. at the moment the license is withdrawn), a cover pool administrator ("gestionnaire de portefeuille") will be appointed that will take over the management of the Belgian pandbrievens program from the credit institution. The cover pool administrator (appointed by the NBB) is legally entrusted with all powers that are necessary for the management of the segregated estate, and can take all such actions (some in consultation with/upon approval of both the NBB and the representative of the noteholders) required to fulfill in a timely manner the obligations under the Belgian pandbrievens. Such actions could consist in a (partial) sale of the underlying cover assets, taking out a loan, issuance of new bonds to use for ECB purposes or any other action that might be needed to fulfill the obligations. Acceleration of the Belgian pandbrievens is not possible, unless after the appointment of a cover pool administrator:

- > noteholders would decide otherwise;
- > (after consultation with the noteholders' representative and with the consent of the NBB) it is clear that further deterioration of the cover assets would lead to a situation whereby it is impossible to satisfy the obligations under the Belgian pandbrievens (i.e. in a situation of insolvency of the cover pool).

The bankruptcy receiver has a legal obligation to cooperate with the NBB and the cover pool administrator in order to enable them to manage the special estate in accordance with the law.

The Cover Pool Administrator Royal Decree specifies the tasks of the cover pool administrator. These include, amongst other things, to procure the payment of interest and principal on the Belgian covered bonds, collection of moneys from the cover assets (including any enforcement), entering into relevant hedging and liquidity transactions and carrying out of certain administrative tasks. The cover pool administrator will also have to test compliance with the cover tests and inform the NBB and the noteholders' representative thereof.

IX. RISK-WEIGHTING & COMPLIANCE WITH EUROPEAN LEGISLATION

The legislation when taken together with the practices, processes and procedures across the industry should fall within the criteria of Article 129 CRR.¹ Belgian pandbrievens comply with the requirements of Article 129 CRR if and to the extent they are listed by the NBB as such.

¹ Please click on the following link for further information on the UCITS Directive and the Capital Requirements Regulation (CRR): <https://hypo.org/ecbc/covered-bonds/>.

Issuers: Argenta Spaarbank, Belfius, BNP Paribas Fortis, KBC and ING Belgium.



COVERED BOND LABEL : Argenta Spaarbank NV/SA and BNP Paribas Fortis NV/SA (1 pool).

For the most up-to-date information, please consult the new ECBC Covered Bond Comparative Database webpage on the Covered Bond Label website www.coveredbondlabel.com.

In the context of the transposition of the Covered Bond Directive (the final deadline for which was 8 July 2022), the ECBC has undertaken a full review and update of the Covered Bond Comparative Database to take account of the latest regulatory developments. This unique reference tool can be accessed via the link hosted on the Covered Bond Label website (www.coveredbondlabel.com/legislation/comparative_database).

For further national information on the Belgian market, please see compare.coveredbondlabel.com/frameworks. To access the "Country Comparison" feature of the database, please see compare.coveredbondlabel.com/compare/select/frameworks.