PROBLEMS AND OPINIONS

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The role of tokenization in the development of the retail covered bond market

Absctract

The article examines the possibility of tokenising covered bonds and addresses whether the marginal Polish retail covered bond market may benefit from tokenisation as a catalyst for its revival and increased attractiveness for retail investors. In the author's view, tokenization alone is not a sufficient incentive to make covered bonds a popular investment and savings instrument among retail investors, as it does not alter the nature of this type of securities.

The first part presents an analysis of the benefits of tokenising financial instruments, justifying the adopted research objective. It then outlines the legal framework, with particular emphasis on the Act of 29 August 1997 on Covered Bonds and Mortgage Banks, governing the issuance, transfer and exercise of rights arising from covered bonds. The subsequent part advances a dogmatic legal argument demonstrating that the Polish legal system does not adhere to the principle of numerus clausus of securities, which allows tokenisation to be regarded as permissible in principle.

The concluding section outlines prospective developments in EU law, including the draft Regulation of 4 December 2025 (2025/0383(COD)), and formulates de lege ferenda postulates concerning domestic law on the tokenisation of mortgage covered bonds.

The article applies the dogmatic legal method, supplemented by the comparative legal method.

Keywords: tokenisation, covered bonds, DLT, blockchain, securities

JEL Codes: K22, G21, G23, G28

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Introduction

Mortgage bonds have been part of the domestic economic and legal system for over 250 years. In 1769, the Silesian Land Credit Society (German: *Schlesische Landschaft*) was established, a compulsory association of landowners under public law, set up to secure cheap loans for agriculture. Its activities were based on a legal framework enabling the granting of loans through refinancing via mortgage bonds. As a result, claims secured against properties encumbered with loans were created (Michalski 2006, p. 524). Undoubtedly, therefore, in the case of this type of debt financing instrument, one can speak of a long and rich history. Nevertheless, despite the strong roots of mortgage bonds in the Polish legal system (Michalski 2006, pp. 524–525), they have not become a popular market solution capable of attracting the interest of retail investors[1]. One of the reasons for this, according to A. Dżuryk, is, among other things, the lack of sufficiently attractive legal and regulatory conditions that would stimulate the development of the domestic covered bond market (Dżuryk 2018, p. 72). This article aims to analyse whether adapting the current legal framework to the development of distributed ledger technology[2] could help to change this situation.

Firstly, the article will present the current legal situation *de lege lata*, thereby identifying the relevant framework governing the trading of covered bonds. In particular, it will address issues related to the form in which such securities exist. These observations will be supplemented by a presentation of the actual state of the covered bond market, with particular emphasis on its scale at the national level. Subsequently, the crux of the research problem will be presented, focusing on the phenomenon of securities tokenisation. These observations will enable the author to present his view on the potential impact of tokenisation on increasing the attractiveness of covered bonds. In the following section, the possibility of tokenising debt securities, including covered bonds, within the current legislative framework will be analysed. The article will conclude with *de lege ferenda* recommendations, the adoption of which may contribute to strengthening the domestic debt securities market.

1. Covered bonds – current legal and factual status

As noted in the introduction to this article, mortgage bonds have a historically established position amongst the various instruments of the capital market, particularly from a pan-European perspective. In the Polish context, their presence in trading was closely linked to historical developments, ranging from relative

[1] It is worth noting that for nearly the last 100 years, there have been no issues of covered bonds aimed at retail investors. This situation changed at the end of 2025, when Powszechna Kasa Oszczędności Bank Polski S.A. carried out the first such issue, with retail customers as the target investors (see https://www.pkobp.pl/media/aktualnosci/produktowe/pierwsza-od-niemal-100-lat-emisja-hipotecznych-listow-zastawnych-dla-klientow-detalicznych, accessed on 8 June 2026).

[2] Hereinafter referred to as: DLT.

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growth during the period of partition, through systemic legal difficulties in the Second Polish Republic[3], to the post-war period, when mortgage bonds completely disappeared from trading, until their normative and de facto restoration in the 1990s (Janiak 2016, pp. 299–307). Regardless of this, their legal structure and nature remained, in principle, unchanged, and their current form does not deviate from the original assumptions regarding this type of security.

Pursuant to Article 2a of the Act of 29 August 1997 on Covered Bonds and Mortgage Banks[4], a covered bond is a debt security issued by a mortgage bank (for an analysis of the model of entities authorised to issue covered bonds in Europe see: Stöcker 2014, pp. 190–201; Lassen 2005, pp. 4–8). It is secured by assets, in respect of which the holders of covered bonds have a claim both against a separate insolvency estate and against the mortgage bank. This comprehensive definition characterises the covered bond as a debt security for which mortgage banks hold the exclusive right of issue, and the debt represented by which is secured by specific assets. These assets constitute collateral against which the holders of the security have a direct claim as preferential creditors (Buczek 2024, pp. 58–59).

Article 2a of the Covered Bonds Act was incorporated into the national legal system by the 2022 Amendment of the Covered Bonds Act[5], which was intended to bring domestic law into line with Directive 2019/2162[6]. The drafters of the 2022 Amendment of the Covered Bonds Act explicitly stated that the definition introduced was intended to reflect the characteristics of a covered bond (German: *gedeckte Schuldverschreibung*; French: *obligation garantie*) within the meaning of Article 3(1) of Directive 2019/2162[7]. In accordance with this provision, a covered bond is a debt instrument issued by a credit institution, in accordance with the provisions of national law transposing the mandatory requirements of Directive 2019/2162, which is secured by assets to which investors purchasing the covered bonds have a direct claim as senior creditors. Although the national definition of covered bonds appears to be narrower than the EU concept of covered bonds, due to the unambiguous identification of the assets that may serve as their collateral,

3 At that time, following the period of partition, the Regulation of the President of the Republic of Poland on Banking Law of 17 March 1928 (Journal of Laws No. 34, item 321; hereinafter: Banking Law of 1928) was adopted in 1928, which established the rules governing the conduct of business by mortgage banks. These provisions clearly designated mortgage banks as entities authorised to purchase and sell mortgage bonds on their own account (Article 69(3) of the Banking Law of 1928).

4 The Act of 29 August 1997 on Covered Bonds and Mortgage Banks (consolidated text: Journal of Laws of 2023, item 110; hereinafter: Covered Bonds Act).

5 The Act of 7 April 2022 amending the Act on Covered Bonds and Mortgage Banks and certain other acts (Journal of Laws, item 872, as amended; hereinafter: 2022 Amendment of the Covered Bonds Act).

6 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 (OJ (EU) L 328, 2019, p. 29, as amended; hereinafter: Directive 2019/2162).

7 Explanatory memorandum to the draft Act amending the Act on Covered Bonds and Mortgage Banks and certain other Acts of 4 January 2021, RCL legislative work list number: UC68, p. 4.

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their legal structure fully corresponds to the EU model. This issue was noted during the legislative work on the draft of the 2022 Amendment of the Covered Bonds Act, in which it was pointed out that some of the definitions introduced into the national legal system under the amendment in question differ from the originals in Directive 2019/2162. However, this was intended to be a deliberate legislative measure aimed at adapting them to national solutions and the terminology adopted in the Covered Bonds Act (Niewęgłowski 2022, p. 4). Consequently, covered bonds share the same characteristics as secured bonds, which are designed to ensure continuous investor protection. The relevant provisions include a requirement that investors purchasing covered bonds have a claim not only against the issuer but also against the assets in the pool of assets serving as collateral[8].

Notwithstanding the introduction of the above definition of covered bonds into the national legal system in 2022, the concept had already been in use and had established a meaning within the previous legal framework, with the proviso that the definitions at that time were of a doctrinal and practical nature, rather than normative. According to A. Stopyra and R. Woźniak, who describe the definition of mortgage bonds prior to 2022 Amendment of the Covered Bonds Act, they constituted a security embodying a monetary claim which the creditor held against the issuer (i.e. the mortgage bank) (Stopyra, Woźniak 2017, Nb 2). A. Janiak defined the concept in a similar manner, pointing to the creditor nature of this security, as well as its systemic proximity to bonds (which the author rightly considers mortgage bonds to be a type of) (Janiak 2016, p. 309). The legal nature of this type of security, in the view of legal scholars describing this issue prior to the implementation of Directive 2019/2162, boils down to the incorporation of a monetary obligation in the form of a security, comprising a principal obligation (redemption of the mortgage bond at its minimum value) and an ancillary obligation (payment of interest due on the dates specified in the terms of issue) (Michalski 2006, pp. 551–552). An obligation of this kind is subject to mandatory mortgage security (in the case of mortgage-backed covered bonds), or security in the form of a specific type of claim arising from loans granted or guaranteed by specific 'public' borrowers with a very high ability to repay their obligations (public covered bonds). These types of security determine the dichotomous classification of mortgage bonds, which is directly reflected *de lege lata* in Article 2b in conjunction with Article 3(1)–(2) of the Covered Bonds Act. However, such doctrinal definitions are critically assessed by A. Dżuryk, who argues that they overlook the most important feature of covered bonds, namely the principle of the creditor's dual recourse against the debtor and the security of the covered bond (Dżuryk 2018, p. 68). It is precisely this mechanism of double security that constitutes, *par excellence*, the legal essence of this type of debt security, under which the creditor has a claim against the issuer (a personal debtor, liable with their assets) and against a specific pool of assets (a real obligation – up to the value of the segregated assets constituting the security) (Dżuryk 2018, p. 70).

[8] Directive 2019/2162, recital 17.

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Importantly, from the perspective of this article, the definitions referred to – both the legal definition set out in Article 2a of the Covered Bonds Act and the doctrinal definitions developed previously – do not restrict the concept of mortgage bonds to securities embodied in specific media. Currently, mortgage bonds exist in both dematerialised and physical form (Article 5a(1)–(2) of the Covered Bonds Act). An analysis of the aforementioned provisions leaves no doubt that the legislator has nevertheless created a clear preference for mortgage bonds issued in dematerialised form, which is consistent with broader legal changes in recent years concerning the forms of bonds, investment certificates and shares (Famirski 2024, p. 78). The widespread and mandatory dematerialisation of this type of security is justified, above all, by the security of trading, which involves eliminating the possibility of theft, loss, destruction or forgery of a paper-based security (Famirski 2024, pp. 78–79). Importantly, dematerialisation, understood as a change in the medium of the claims associated with a security, does not alter the legal nature of the security, including the rules governing the transfer of rights arising therefrom, nor the rules regarding the presentation of formal proof of entitlement by the holder (Godlewski, Sójka 2022, No. 4). In this respect, there is a specific functional analogy between securities in documentary form and those in dematerialised form. This is because dematerialisation does not serve to detach securities from the existing body of doctrinal and normative literature in light of their fundamental functions – increasing liquidity and facilitating the demonstration of title by the holder (Romanowski 2016, pp. 6–20). This does not mean, however, that the method of transferring rights from this type of security remains unchanged in any way. I share the view expressed by J. Jastrzębski that, in the case of dematerialised securities, we are dealing with an autonomous regime in this respect, similar to the traditional system of alienation of rights. A full analysis of this, however, goes beyond the scope of this article (see Jastrzębski 2009, pp. 354–398).

The mandatory dematerialisation of mortgage bonds itself is a consequence of the legal changes introduced by the 2018 Act on Strengthening Supervision[9], under which Article 5a(1)–(4) was added to the Covered Bonds Act, setting out the current requirements regarding the form of mortgage bonds. Importantly, the original version of the draft Act on Strengthening Supervision of 2018 provided that mortgage bonds, like 'normal' bonds, could not exist in physical form at all (see Article 5 and Article 13(3) of the 2018 draft Act on Strengthening Supervision[10]). However, had this solution been adopted, it would have prevented the offering of covered bonds on foreign markets, which until now have relied primarily on physical forms of debt securities[11]. For this

[9] Act of 9 November 2018 amending certain acts in connection with the strengthening of financial market supervision and investor protection in that market (Journal of Laws, item 2243, as amended; hereinafter: the 2018 Act on the Strengthening of Supervision).

[10] Draft Act amending certain acts in connection with the strengthening of supervision and investor protection in the financial market, Sejm of the Republic of Poland, 8th Term, Sejm document No. 2812.

[11] It is worth noting that it is only relatively recently that Euroclear and Clearstream announced the transition to the issuance and trading of fully dematerialised Eurobonds (see Euroclear, 'Euroclear

reason, during the legislative work on the 2018 Act on Strengthening Supervision, the Sejm's Public Finance Committee proposed an amendment to Article 5a of the Covered Bonds Act, by adding an exception to the general rule of dematerialisation of covered bonds. This would apply to mortgage bonds with a unit nominal value exceeding the equivalent of EUR 100,000[12]. Under the 2022 Amendment of the Covered Bonds Act, this threshold was slightly modified by reference to an amount *equal to or higher* than the equivalent of EUR 100,000, which was dictated by considerations of trading on international debt securities markets (Niewęgłowski 2022, pp. 4–5). Against the backdrop of these changes, the *de lege lata* regime governing the form of these securities was developed. As a rule, they are dematerialised (Article 5a(1) of the Covered Bonds Act), unless they are covered bonds with a unit nominal value of at least the equivalent of EUR 100,000 (Article 5a(2) of the Covered Bonds Act).

Despite significant legislative developments concerning mortgage bonds in recent years and their technological advancement linked to mandatory dematerialisation, the domestic retail market for mortgage bonds is virtually non-existent in practice. The solutions adopted by the legislator do not appear to be attracting the attention of retail investors from Poland to this savings and investment segment. This observation must be made despite the fact that the changes introducing the mandatory dematerialisation of mortgage bonds have led to increased legal certainty, as well as greater flexibility and convenience for investors (savers) (Szczygieł 2024, pp. 85–86).

According to research by C. Martysz, which presents statistics as at 30 June 2024, sovereign debt securities account for approximately 65% of the domestic market for outstanding debt securities. The combined category of bonds issued by banks and mortgage-backed securities, on the other hand, accounts for only around 2.5% of this market (Martysz 2025, pp. 6–7). Furthermore, this research shows that when making investment decisions, retail investors in Poland are approximately 33 times more likely to invest their funds in sovereign debt securities than in the broad spectrum of non-government debt securities, of which mortgage-backed securities constitute only a small proportion (Martysz 2025, pp. 9–10). I believe that these results are a consequence, not a cause, of the issue under analysis. It appears that the Polish model of mortgage financing has developed as a model utilising various sources of funding. However, where lending is already financed by mortgage bonds, these are primarily issues targeted at institutional investors. Whilst this is not an exception within the European Union, it should be noted that in Germany – a country closely related to Poland in this respect, both systemically and historically – issues of mortgage bonds with low face values are more common[13].

and Clearstream digitise Eurobond issuance, revolutionising the market', 16 March 2026 (accessed on 8 June 2026: https://www.euroclear.com/newsandinsights/en/press/2026/mr-10-euroclear-clearstream-digitise-eurobond-issuance.html)).

[12] Report of the Public Finance Committee on the government's draft act amending certain acts in connection with the strengthening of supervision and investor protection in the financial market, Sejm of the Republic of Poland, 8th Term, Document No. 2863, 25–26 September 2018.

[13] It is currently estimated that there are over 150 issues of covered bonds in circulation in Germa-

Given the positive impact of covered bonds on the ability of mortgage banks to conduct extensive lending, thereby helping to meet housing needs in Poland, it is worth considering whether making covered bonds more attractive through technology could increase the likelihood of individual investors choosing them.

2. Tokenisation and the substantive legal structure of securities

For tokenisation to be possible, it is necessary to provide technology enabling the secure, stable and practical recording of tokens and their trading history. A solution commonly used in this regard is so-called blockchain technology. It constitutes a type of database in which the collected information is organised into separate sets, referred to as blocks, each of which is assigned a unique identification number. These blocks are arranged in an ordered chronological sequence, thereby forming an continuous chain. The scope of information that can be recorded within individual blocks remains open and may include, *inter alia*, property rights, debts and claims, as well as declarations of intent or knowledge. I believe that it can be successfully utilised within securities markets, a view also supported by the legal frameworks of other European countries. This is because it is a technological solution, rather than a substantive legal change affecting the structure and nature of the assets subject to registration on the DLT blockchain.

Taking into account the essence of securities tokenisation, which, in my view, boils down to the implementation of a new technological solution within the existing processes of the capital market, it must be concluded that the benefits arising from it are not revolutionary in nature, although they do contribute to improving the functioning of financial markets. The literature indicates that the main advantages of tokenisation include, *inter alia*, enhanced resilience to cyber threats, the reduction or complete elimination of intermediaries involved in the trading process, shorter clearing and settlement times, and a reduction in transaction costs and processing times (Bilski, Kiełbus 2024, pp. 76–77). The use of DLT also confers immutability on the data records stored within the blockchain, which is one of its key properties (Karasek-Wojciechowicz 2021, p. 8).

At the same time, I believe that the recording of securities using blockchain technology, represented by relevant tokens, does not differ significantly, in substantive legal terms, from the recording of securities in a securities account, as referred to in Article 4 of the Act on Trading in Financial Instruments[14]. I do not believe that a mere change in the technology used for recording and registering securities (including mortgage bonds) affects the rules governing the formal proof of title or the exercise of the rights

ny, with maturities exceeding 12 months (as at 27 March 2026) (accessed on 8 June: https://www.pfandbrief.de/privatanleger/).

[14] The Act of 29 July 2005 on Trading in Financial Instruments (i.e. Journal of Laws of 2024, item 722, as amended; hereinafter: the Act on Trading in Financial Instruments).

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contained therein. In the case of creditor's rights incorporated in a security in the form of a token, for the creation of such a security to be effective, it is, in my view, necessary to satisfy two cumulative conditions. Firstly, there must be a valid and effective agreement between the issuer of the security and its holder[15], i.e. the entity entitled under that security. Secondly, it must be recorded in a register based on blockchain technology[16]. The fulfilment of both these conditions together is constitutive of the legal existence of the tokenised security in question (Włoczka 2022, p. 80). These characteristics are akin to those of securities recorded in a 'traditional' register on a securities account.

Notwithstanding the above, from a technological and systemic perspective, tokenisation is not, however, a panacea in itself for the low level of interest in mortgage bonds among retail investors. This is because it does not affect the essence of the securities. It may, however, contribute to increasing the attractiveness and economic efficiency of the market for this type of security (IOSCO 2025, pp. 12–13). Changing the current IT and technological architecture surrounding the covered bond market to systems utilising tokenisation and DLT does not alter the value and characteristics of the covered bonds themselves; therefore, it should not be expected to revolutionise the current shape of the market on its own. Nevertheless, the implementation of such solutions may attract interest and help promote this form of saving among retail customers.

An example that illustrates, to some extent, this argument is the development of the German covered bond market. In 2021, a legal framework was adopted there that expressly recognises the permissibility of trading in tokenised securities, which also applies to covered bonds[17]. As a side note, it is worth noting that the German legislature has explicitly determined that tokenised securities are subject to the regime of property law and are treated as 'things' within the meaning of private law. Thus, tokenisation essentially amounts to nothing more than a change in the medium in which the rights arising from the security are embodied, whilst maintaining the continuity of the contractual relationship (Conreder, Diederichsen, Okonska 2021, p. 2594). Regardless of these solutions, as indicated above, covered bonds do not enjoy significant popularity among retail investors in Germany. The mere authorisation of securities tokenisation has not influenced the behaviour of retail investors.

[15] This condition forms part of the so-called contractual theory of the creation of a security, which has been widely accepted in Poland at least since the resolution issued by a panel of seven judges of the Supreme Court in 1995. (see the resolution of the Supreme Court (7) of 29 June 1995, III CZP 66/95, OSNC 1995, No. 12, item 168).

[16] This condition reflects an element of the so-called 'issuance theory' of the creation of securities, in which the element of 'putting into circulation' is realised in the case of tokenisation through an appropriate entry on the blockchain (Osiak 2022, p. 27; Sójka 2015, p. 721). This theory is also accepted in the case law of the common courts concerning the creation of dematerialised securities – see the judgment of the Court of Appeal in Warsaw of 10 November 2004, VI ACa 276/04, LEX No. 166784.

[17] Gesetz über elektronische Wertpapiere (eWpG) vom 3. Juni 2021 (Bundesgesetzblatt I S. 1423).

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An analysis of the Swiss legal system supports this conclusion. In 2020, legislation was adopted there sanctioning the possibility of securities existing in tokenised form[18]. This amendment to Swiss contract law meant that securities registered on the blockchain were granted a status equivalent to that of traditional securities (Guilliaume, Riva, 2021, p. 219; Langer, Pinior, 2024, p. 8). From a substantive legal perspective, this amendment served to a certain extent to clarify, rather than revolutionise, the Swiss securities law regime. It is accepted that tokenisation and DLT technology are relative to the rights embodied in the tokens in question, and that the legal nature of a given right is determined by its content, not the form of the medium[19] .

In view of the above, I believe that whilst the tokenisation of covered bonds is a sound solution and indicative of a high level of technological development in a country's financial markets, it does not *ipso facto* render tokenised securities more desirable to retail investors.

3. The possibility of tokenising mortgage-backed securities *de lege lata*

In view of the above, I consider the tokenisation of covered bonds to be, in principle, permissible under the current legal framework in Poland. This stems from my view that tokenisation forms part of the broader conceptual category of dematerialization (see the author's more detailed comments on the tokenisation of securities: Włoczka 2026, pp. 31–37), which in itself is undoubtedly permissible. Nevertheless, given the difficulties associated with the operation of a register of dematerialised securities, this solution may not currently be feasible.

Firstly, I take the view that there are no arguments preventing the tokenisation of debt securities. From a private law perspective, I see no justification for opposing the possibility of the parties agreeing that a given obligation, embodied in the form of a token, should be accompanied by appropriate documentary clauses (see Zoll 2004, pp. 37–66). In particular, a reference to the *numerus clausus* principle of securities cannot serve as such an argument, given its invalidity, as this principle does not apply to debt securities (Włoczka 2025, pp. 33–35), and thus, *inter alia*, to covered bonds.

At the same time, bearing in mind Article 5a(3)–(4) of the Covered Bond Act, in the case of the tokenisation of covered bonds, a significant challenge may arise in relation to the obligation to register them (as dematerialised securities) in a securities depository operated in accordance with the Act on Trading in Financial

[18] Federal Act of the Swiss Confederation of 25 September 2020 on the adaptation of federal law to developments in distributed electronic register technology (German: *Bundesgesetz zur Anpassung des Bundesrechts an Entwicklungen der Technik verteilter elektronischer Register*), RO 2021 33.

[19] Judgment of the Federal Administrative Court of the Swiss Confederation (Bundesverwaltungsgericht, BVGer) of 16 January 2024, ref. no. B-4185/2020, Division II, para. 4.2.2.

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Instruments, which is maintained by the Polish Central Securities Depository[20]. The concept of a securities depository is defined in Article 3(21) of the Act on Trading in Financial Instruments and unambiguously refers to the operation of a system for the registration and record-keeping of securities by the CSD or a company to which the CSD would delegate the performance of specific activities. For this reason, legal scholarship indicates that the tokenisation of debt securities is not possible under current law (Czaplicki 2022, pp. 87–88).

One must agree with P. Czaplicki's observation that, in order to enable the tokenisation of debt securities: "(...) *it would be necessary to allow bonds to be registered not only within a centralised securities depository, but also in registers that may take the form of a distributed and decentralised* database" (Czaplicki 2022, p. 89). At the same time, it is worth noting that the Act on Trading in Financial Instruments already permits the maintenance of securities accounts in the form of DLT (Article 3(28aa) of the Act on Trading in Financial Instruments). This means that the foundations for systemic solutions that can be utilised in this regard already exist.

4. Conclusions and proposals *de lege ferenda*

In view of the above, it is necessary to draw several conclusions.

Firstly, it appears that the lack of widespread interest to date in offering mortgage bonds to retail investors (from a supply perspective), combined with the lack of clear demand from such investors for investing in mortgage bonds (from a demand perspective), is the result of the natural development of the market. There are, after all, no legal reasons that would justify such a systematisation of the use of mortgage bonds by mortgage banks in Poland, the best example of which is the recent first issue of such bonds to retail customers. This means that the lack of a wide offering of mortgage bonds to retail investors in Poland is rooted in established market practice, and is not due to regulatory considerations. Notwithstanding the foregoing, recent market experience indicates that issues directed at retail investors tend to attract robust demand for mortgage-backed debt securities[21].

Secondly, *de lege lata*, the regulatory framework for mortgage bonds does not preclude the possibility of their tokenisation. This is because, for several years now, the default and preferred form of mortgage bonds in circulation has been dematerialised, which, in my view, also encompasses tokenisation.

[20] Hereinafter referred to as: CSD.

[21] It should be noted that the issuance constituted a success and attracted greater interest from retail investors than initially anticipated by the issuer. Investors subscribed for mortgage covered bonds with an aggregate value of PLN 1.155 billion, whereas the initial size of the primary offering amounted to PLN 1 billion. Furthermore, the subscription period was shortened by more than two weeks due to the offering being fully subscribed (https://www.pkobp.pl/media/aktualnosci/produktowe/pierwsza-emisja-hipotecznych-listow-zastawnych-dla-inwestorow-indywidualnych-zakonczona-wczesniej, accessed on 8 June 2026).

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Thirdly, whilst the tokenisation of securities in *the broad sense* brings many positive effects for financial markets, it does not constitute a revolution affecting the substantive legal nature of securities. Tokenisation should be understood as a change in the form of the medium to one utilising DLT and *blockchain* architecture. The experiences of countries such as Germany and Switzerland, whose legal frameworks regarding securities closely resemble Polish law, confirm these observations. The restructuring of the current IT and technological infrastructure of the covered bond market towards solutions based on tokenisation and DLT technology will not alter their fundamental characteristics or value; consequently, it should not be expected to lead, in itself, to a significant transformation of the market structure. At the same time, the implementation of such solutions may increase the recognition of this instrument and foster growing interest in it among retail investors. However, this change would stem from the 'novelty' of the solution and the potential curiosity of investors associated with it, rather than from significant differences in the economic and legal value it might bring to retail investors.

Fourthly, and perhaps most importantly, under the current legal framework, the tokenisation of covered bonds is not possible due to the incompatibility of a solution requiring the registration of securities with the CSD with the operational model of tokenised covered bonds.

Nevertheless, the above observations can be addressed relatively easily. As mentioned above, the Trading Act already recognises the existence of securities accounts in DLT form. At the same time, Regulation 2022/858[22] permits bonds and 'other forms of securitised debt' to exist in tokenised form (Article 3(1)(b) of Regulation 2022/858), provided they are not overly complex instruments that contain an embedded derivative or have a structure that makes it difficult for the client to understand the associated risks. Covered bonds fall within the concept of securitised debt, and their nature does not meet the criteria for excessive complexity. This was confirmed by the European Securities and Markets Authority[23] in its review report on Regulation 2022/858 (ESMA 2025, para. 117), which in this regard refers to the 2016 ESMA Guidelines (ESMA 2016, paras. 12–15).

Thus, the current legal framework could be sufficient for the tokenisation of covered bonds. As regards national law, a minor amendment to Article 5a(3)–(4) of the Covered Bonds Act would be required, to enable the use of DLT accounts referred to in Article 3(28aa) of the Act on Trading in Financial Instruments. As for Regulation 2022/858, in theory, no amendments are necessary. Nevertheless, such changes would be recommended in a general sense, the discussion of which goes beyond the scope of this article. This is due to the generally limited utility of this

[22] Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ EU L 2022 No 151, p. 1; hereinafter: Regulation 2022/858).

[23] Hereinafter referred to as: ESMA.

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legal act, its high degree of complexity, and the unfortunate assumptions regarding the temporary nature of the authorisations issued under it – there is a lack of widespread interest in the EU regarding its use. It is to be hoped that changes in this regard, resulting in the introduction of the possibility and subsequent practice of tokenising covered bonds, will be brought about *by the proposed Market Integration Package.* Among other things, it aims to enable wider adoption of tokenisation in EU financial markets and to simplify the legal framework of Regulation 2022/858[24].

Bibliography

Bilski A., Kiełbus R. (2024), *Kryptoaktywa i blockchain. Technologia, prawo, biznes*, Warsaw.

Buczek Ł. (2024), kom. do art. 2a, in: Ł. Buczek i in. *Ustawa o listach zastawnych i bankach hipotecznych. Komentarz*.

Conreder C., Diederichsen M., Okonska M. (2021), *Das neue Gesetz über elektronische Wertpapiere – digitale Zeitenwende im Wertpapierbereich*, Deutsches Steuerrecht, Beck Online.

Czaplicki P. (2022), *Tokenizacja obligacji – uwagi na tle art. 8 ust. 2 ustawy z dnia 15 stycznia 2015 r. o obligacjach*, "Internetowy Kwartalnik Antymonopolowy i Regulacyjny", No. 7.

Dżuryk A. (2018), *List zastawny jako przykład bezpiecznego hipotecznego instrumentu finansowego*, "Zarządzanie i Finanse", vol. 16.

ESMA (2016), *Guidelines on complex debt instruments and structured deposits*, ESMA/2015/1787, 4 February 2016.

ESMA (2025), *Report on the Functioning and Review of the DLT Pilot Regime – Pursuant to Article 14 of Regulation (EU) 2022/858*, ESMA75-117376770-460, 25 June 2025.

Explanatory Memorandum to the Draft Act Amending the Act on Covered Bonds and Mortgage Banks and Certain Other Acts of 4 January 2021, Government Legislation Centre (RCL) Legislative Works Register No.: UC68.

Famirski A. (2024), Commenatry to Article 5a, in: Ł. Buczek i in., *Ustawa o listach zastawnych i bankach hipotecznych. Komentarz*, Warsaw.

Godlewski M., Sójka T. (2022), Commentary to Article 8, w: T. Sójka (ed.), *Ustawa o obligacjach. Komentarz*, ed. 1.

Guilliaume F., Riva S. (2021), *DAO, code et loi: le régime technologique et juridique de la decentralized autonomous organization*, "Revue de droit international d'assas", No. 4.

IOSCO, *Tokenization of Financial Assets*, FR/17/25, November 2025.

Janiak A. (2016), *Rozdział 6. Listy zastawne*, in: M. Stec (ed.), *Prawo instrumentów finansowych. System Prawa Handlowego. Tom 4*.

[24] Proposal of the European Commission of 4 December 2025 for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1095/2010, No 648/2012, No 600/2014, No 909/2014, 2015/2365, 2019/1156, 2021/23, 2022/858, 2023/1114, No 1060/2009, 2016/1011, 2017/2402, 2023/2631 and 2024/3005 with regard to the further development of capital market integration and supervision in the Union, COM(2025) 943, final 2025/0383(COD).

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Jastrzębski J. (2009), *Pojęcie papieru wartościowego wobec dematerializacji*, Warsaw.

Judgment of the Court of Appeal in Warsaw of 10 November 2004, VI ACa 276/04, LEX No. 166784.

Judgment of the Federal Administrative Court of the Swiss Confederation (Bundesverwaltungsgericht, BVGer) of 16 January 2024, ref. no. B-4185/2020, Division II.

Karasek-Wojciechowicz I. (2021), *Reconciliation of anti-money laundering instruments and European data protection requirements in permissionless blockchain spaces*, Journal of Cybersecurity, vol. 7, No. 1, (accessed on 8 June 2026: https://doi.org/10.1093/cybsec/tyab004).

Langer M., Pinior P. (2024), *Tokenizacja akcji i innych praw udziałowych w spółkach kapitałowych*, Przegląd Ustawodawstwa Gospodarczego, No. 10.

Lassen T. (2005), *Specialization of Covered Bond Issuers in Europe*, Housing Finance International.

Martysz C. (2025), *Polski rynek obligacji nieskarbowych – kluczowe statystyki, zmiany prawa i wyzwania rozwojowe*, "Finanse i Prawo Finansowe", No. 1.

Michalski M. (2006), *Rozdział IV. Listy zastawne*, in: A. Szumański (ed.), *Prawo papierów wartościowych. System Prawa Prywatnego. Tom 19*.

Niewęgłowski K. (2022), The Sejm Analysis Office of the Sejm Chancellery, *Ocena skutków prawnych regulacji rządowego projektu ustawy o zmianie ustawy listach zastawnych i bankach hipotecznych oraz niektórych innych ustaw (druk 2019)*, Warsaw, 13 April 2022.

Osiak M. (2022), *Czy dematerializacja czyni pojęcie i klasyczną koncepcję papieru wartościowego anachronizmem?*, "Przegląd Prawa Handlowego", No. 1.

Resolution of the Supreme Court (panel of 7 judges) of 29 June 1995, case no. III CZP 66/95, Supreme Court Reports (Civil Chamber) [OSNC] 1995, No. 12, item 168.

Romanowski M. (2016), *Rozdział I. Zagadnienia ogólne papierów wartościowych*, in: A. Szumański (ed.), *Prawo papierów wartościowych. System Prawa Prywatnego. Tom 18*, ed. 3.

Sójka T. (ed.), 2015, *Prawo rynku kapitałowego. Komentarz*, Warsaw.

Stopyra A., Woźniak R. (2017), *Ustawa o listach zastawnych i bankach hipotecznych. Komentarz*, ed. 1.

Stöcker O.M. (2014), *Covered Bond Models in Europe – legal conflict between secured bonds and deposits regarding insolvency remoteness and bail-in*, "NBP Working Papers", No. 182, vol. 1.

Szczygieł J. (2024), *Dematerializacja listów zastawnych w kontekście zmian regulacyjnych*, "Bezpieczny Bank", No. 1, vol. 94.

Włoczka R. (2022), *Pojęcie papieru wartościowego wobec zjawiska dematerializacji*, Cracow 2022, not publicly available (accessed on 8 June 2026: https://ruj.uj.edu.pl/entities/publication/7b143fd2-bdd8-4ef0-945d-27e1fdb78837).

Włoczka R. (2025), *Tokenizacja – nowość czy neutralny prawnie rozwój technologii? Uwagi na tle tokenizacji papierów wartościowych*, "Prawo Nowych Technologii", No. 3.

Zoll F. (2004), *Klauzule dokumentowe. Prawo dokumentów dłużnych ze szczególnym uwzględnieniem papierów wartościowych*, ed. 2, Warsaw.

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