



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 October 2009

14316/09

**Interinstitutional File:
2009/0099 (COD)**

**ECOFIN 621
EF 138
CODEC 1179**

NOTE

from:	Presidency
to:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies - Presidency compromise

Delegations will find attached a Presidency compromise on the above Commission proposal, following the meeting of 5 October.

With respect to the Commission's proposal, additions are underlined, deletions indicated as "...", and new text is highlighted in bold and underlined.

(26b) Article 152 of Directive 2006/48/EC requires certain credit institutions to provide own funds that are at least equal to certain specified minimum amounts for the three twelve month periods **between (...) 31 December 2006 and 31 December 2009.** In the light of the current situation in the banking sector and the extension of the transitional arrangements for minimum capital adopted by the Basel Committee on Banking Supervision, it is appropriate to **renew (...)** this requirement for a limited period of time **until 31 December 2011.**

(26c) In order not to discourage credit institutions from moving to the Internal Rating Based Approach or Advanced Measurement Approaches for calculating the capital requirements during the transitional period due to unreasonable and disproportionate implementation costs, credit institutions that move to IRB or AMA after the end of 2009 and which have therefore previously calculated their capital requirements in accordance with the standardised approach should, subject to supervisory approval, be allowed to use the standardised approach as the basis for the calculation of the transitional floor. Competent authorities should monitor their markets closely and where necessary, may impose an appropriate capital add-on on the credit institutions concerned in order to ensure a level playing field within all their markets and market segments and avoid any competition distortions in the internal market.

~~(26d) In accordance with point 34 of the Inter-institutional Agreement on Better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.~~

(27) Directives 2006/48/EC and 2006/49/EC should therefore be amended accordingly,

- (a) the quantitative and qualitative aspects of the credit institutions'(...) assessment process referred to in Article 123;
- (b) the credit institutions' arrangements, processes and mechanisms referred to in Article 22;
- (c) the outcome of the(...) review and evaluation(...) carried out in accordance with Article 124."

(10) Article 145(3) is replaced by the following:

"3. Credit institutions shall adopt a formal policy to comply with the disclosure requirements laid down in paragraphs 1 and 2, and have policies for assessing the appropriateness of their disclosures, including their verification and frequency. Credit institutions shall also have policies for assessing whether their disclosures convey their risk profile comprehensively to market participants.

Where those disclosures do not convey the risk profile comprehensively to market participants, credit institutions shall publicly disclose the information necessary in addition to that required according to paragraph 1. However, they shall only be required to disclose information which is material and not proprietary or confidential according to the technical criteria set out in Annex XII, Part 1."

(10a) In Article 152, the following paragraphs 5(a)-(e) are inserted:

- "5a. Credit institutions calculating risk-weighted exposure amounts in accordance with Articles 84 to 89 shall until 31 December 2011 provide own funds which are at all times more than or equal to the amount indicated in paragraph 5c **or paragraph 5d if applicable.**
- 5b. Credit institutions using the Advanced Measurement Approaches as specified in Article 105 for the calculation of their capital requirements for operational risk shall until 31 December 2011 provide own funds which are at all times more than or equal to the amount indicated in paragraph 5c **or paragraph 5d if applicable.**

5c. The amount referred to in 5a and 5b shall be 80% of the total minimum amount of own funds that the credit institutions would be required to hold under Article 4 of Directive 93/6/EEC and Directive 2000/12/EC, as applicable prior to 1 January 2007.

5d. Subject to approval by the competent authorities, for credit institutions referred to in paragraph 5c, the amount referred to in 5a and 5b may be 80% of the total minimum amount of own funds that those credit institutions would be required to hold under Articles 78 to 83, Article 103 or 104 and Directive 2006/49/EC applied prior to 1 January 2011.

5e. A credit institution may apply paragraph 5d only if it started to use the Internal Ratings Based Approach or the Advanced Measurement Approaches for the calculation of their capital requirements on or after 1 January 2010.

(11) The Annexes are amended as set out in Annex I to this Directive:

Article 2

Directive 2006/49/EC is amended as follows:

(1) In the first subparagraph of Article 3(1), the following point (t) is added:

"(t) 'securitisation position' and 're-securitisation position' mean securitisation position and re-securitisation position as defined in Directive 2006/48/EC."

(2) In Article 17(1), the introductory phrase is replaced by the following:

"Where an institution calculates risk-weighted exposure amounts for the purposes of Annex II to this Directive in accordance with Articles 84 to 89 of Directive 2006/48/EC, then for the purposes of the calculation provided for in point 36 of Part 1 of Annex VII to Directive 2006/48/EC, the following shall apply:"