Basic information

2004/0159(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Investment firms and credit institutions: capital adequacy. Recast Repealed by 2011/0203(COD) Amended by 2006/0283(COD) Amended by 2008/0191(COD) Amended by 2009/0099(COD) Amended by 2009/0161(COD) See also 2010/2074(INI) **Subject** 2.50.04 Banks and credit 2.50.10 Financial supervision 4.60.06 Consumers' economic and legal interests	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	RADWAN Alexander (PPE-DE)	21/09/2004

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	BERGER Maria (PSE)	03/02/2005

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2734	2006-06-07
Economic and Financial Affairs ECOFIN	2682	2005-10-11
Economic and Financial Affairs ECOFIN	2628	2004-12-07

European Commission

Commission DG	Commissioner
Economic and Financial Affairs	

Key events

Date	Event	Reference	Summary
14/07/2004	Legislative proposal published	COM(2004)0486	Summary
07/12/2004	Debate in Council		
14/04/2005	Committee referral announced in Parliament, 1st reading		

13/07/2005	Vote in committee, 1st reading		Summary
29/08/2005	Committee report tabled for plenary, 1st reading	A6-0257/2005	
26/09/2005	Debate in Parliament	CRE link	
28/09/2005	Decision by Parliament, 1st reading	T6-0352/2005	Summary
28/09/2005	Results of vote in Parliament		
07/06/2006	Act adopted by Council after Parliament's 1st reading		
14/06/2006	Final act signed		
14/06/2006	End of procedure in Parliament		
30/06/2006	Final act published in Official Journal		

Technical information

Procedure reference	2004/0159(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
	Repealed by 2011/0203(COD) Amended by 2006/0283(COD) Amended by 2008/0191(COD) Amended by 2009/0099(COD) Amended by 2009/0161(COD) See also 2010/2074(INI)
Legal basis	EC Treaty (after Amsterdam) EC 047-p2
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/24375

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Amendments tabled in committee		PE357.896	18/05/2005	
Amendments tabled in committee		PE357.763	24/05/2005	
Committee report tabled for plenary, 1st reading/single reading		A6-0257/2005	29/08/2005	
Text adopted by Parliament, 1st reading/single reading		T6-0352/2005 OJ C 227 21.09.2006, p. 0086-0371 E	28/09/2005	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	03670/3/2005	14/06/2006	

European Commission

Document type	Reference	Date	Summary
	SEC(2004)0921		

Document attached to the procedure		14/07/2004	Summary
Legislative proposal	COM(2004)0486	14/07/2004	Summary
Commission response to text adopted in plenary	SP(2005)4139	20/10/2005	
Follow-up document	SEC(2010)0754	23/06/2010	
Follow-up document	COM(2010)0327	23/06/2010	Summary
Follow-up document	COM(2012)0400	17/07/2012	Summary
Follow-up document	SWD(2012)0218	17/07/2012	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
ESC	Economic and Social Committee: opinion, report	CES0244/2005 OJ C 234 22.09.2005, p. 0008-0013	09/03/2005	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2006/0049
OJ L 177 30.06.2006, p. 0201-0255 Summary

Investment firms and credit institutions: capital adequacy. Recast

2004/0159(COD) - 14/06/2006 - Final act

LEGISLATIVE ACT: Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)

CONTENT: the Council has adopted two Directives (see also 2004/0155(COD)), both of which seek to introduce new capital adequacy requirements for banks and investment firms. The Council accepted all of the 11 amendments voted in by the European Parliament following the first reading of the proposal.

The purpose of this Directive is two-fold. Firstly, to recast the Directive *on the capital adequacy of investment firms and credit institutions* (Council Directive 93/6/EEC), which has been frequently amended and secondly, to adopt measures which modernise and update EU provisions on capital adequacy requirements, in line with changing needs and practice.

Part of this modernisation process has been done through the introduction of Basel II provisions on "capital standards", which were adopted in 2004 and agreed to by the G-10. Improved risk management in the capital requirements sector should lead to a more effective allocation of capital, thereby contributing to the EU's overall economic competitiveness.

In adopting this legislation new rules on the capital adequacy requirements applying to investment firms and credit institutions are laid down as are new rules for their calculation and their prudential supervision. The Directive allows the Member States to impose, should they wish to do so, more stringent requirements than those set out in the Directive.

A further feature of the new legislation is its flexibility. The "institutions" (here referring to investment firms or credit institutions) are given the option of choosing from three different approaches, according to their needs. The three approaches refer to: the simple approach; the intermediate approach; and the advanced approach. The simple or intermediate approach will apply as from 2007, whereas the most advanced approach will be available as from 2008.

The new provisions also take account of the needs of SMEs by introducing special capital requirement for lending to small and medium sized enterprises.

ENTRY INTO FORCE: 20 July 2006

TRANSPOSITION: 31 December 2006.

Investment firms and credit institutions: capital adequacy. Recast

2004/0159(COD) - 14/07/2004 - Legislative proposal

PURPOSE : to recast Directive 93/6/EC on the capital adequacy of investment firms and credit institutions.

LEGISLATIVE ACT : Directive of the European Parliament and of the Council.

CONTENT : The Basel Accord in 1988 (Basel I) led to the adoption of minimum capital requirements across over 100 countries. The EU adopted, inter alia, Directive 2000/12/EC which addressed credit institutions' risks arising from credit-granting activities. Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions extended both the credit risk and market risk rules to investment firms. The existing rules have made a significant contribution to the single market and high prudential standards. However, various important shortcomings have been identified. These include the following:

- crude estimates of credit risks result in an extremely crude measure of risk and is in danger of falling into disrepute;

- scope for capital arbitrage: innovations in markets have enabled financial institutions to effectively arbitrage the mismatch between institutions' own allocation of capital to risks and minimum capital requirements.

- lack of recognition of effective risk mitigation: the present Directives do not provide appropriate levels of recognition for risk mitigation techniques.

- incompleteness of the risks covered under the existing directives, including operational risk, which are not subject to any capital charges.

There is strong consensus that the present situation is unsustainable. Capital requirements and risks would continue to be misaligned resulting in limited effectiveness of the prudential rules and increased risks to consumers and financial stability. The Commission has presented a proposal on re-casting Directive 2000/12/EC (Please see COD/2004/0155.) This proposal specifies how the requirements apply to individual investment firms, groups of investment firms and mixed groups.

It prescribes, for credit institutions and investment firms, the minimum capital requirements for market risk. The treatment of positions in collective investment undertakings and credit derivatives and a number of other modifications for increased risk-sensitivity are new. It extends the rules on capital requirements for credit risk and operational risk in Directive 2000/12 to investment firms, as at present. New credit risk elements include the provision of a treatment for credit derivatives and an amended measure of exposure for repurchase transactions and securities/commodities financing transactions. For operational risk there are significant modifications to take account of the specific features of the investment firm sector, with an option to continue the ‘Expenditure Based Requirement' for investment firms falling into the low-, medium- and medium/high-risk categories.

The new proposal incorporates the obligation for credit institutions (see Directive 2000/12), for investment firms to have in place effective internal risk management systems. Given the diversity of the institutions covered, these requirements will have to be met on a proportionate basis. It also applies the requirement in the new proposal for Directive 2000/12/EC to investment firms to have internal processes to measure and manage the risk they are exposed to and the amount of capital (‘internal' capital) they deem adequate to support those risks. It adds to the existing risk management requirements for investment firms in Directive 2004/39/EC.

Finally, Directive 93/6 needs to keep pace with market developments. The necessary flexibility is brought by distinguishing between core and technical rules (particularly in the annexes) that will need adaptations in the short to medium run. The technical Annexes should be able to be modified following a rapid procedure. To reflect expected further important developments in regulatory practice in the coming years, a review clause is included for the treatment of counterparty risk.

Investment firms and credit institutions: capital adequacy. Recast

2004/0159(COD) - 14/07/2004 - Document attached to the procedure

COMMISSION’S IMPACT ASSESSMENT

Further information concerning the context of this issue may be found in the summary of the Commission’s initial document COM(2004)0486.

1- POLICY OPTIONS AND IMPACTS

In the context of the Basel process, there are four main options available to the Commission:

1.1- No policy change approach: in the absence of a revision of the present regime for capital requirements in Europe: financial institutions’ activities would keep being imposed a misallocation of resources and/or a suboptimal financial structure; capital requirements and risks would continue to be misaligned resulting in limited effectiveness of the rules on MCR; significant capital arbitrage would continue and would increase, with likely serious consequences to the economic and social objectives at which prudential regulation is aimed; the full extent or nature of the risks that some financial institutions are undertaking would keep not being captured by the present requirements; the most sophisticated and most effective risk management techniques would not be actively encouraged or recognised; financial services groups operating in more than one Member State would continue to be subject to disproportionate burdens resulting from multiple layers of regulation and supervision; market forces would keep not being leveraged to

strengthen the safety and the soundness of the financial system; the EU would be unable to benefit appropriately from future developments in financial markets and in institutions' risk management practices or from improvements in regulatory or supervisory tools, given the difficulty in speedily updating the current EU regulatory framework; in view of the proposed global implementation of the new Basel Accord at end-2006 (Basel 2), the EU financial services sector would be significantly disadvantaged as compared with its overseas competitors.

1.2- The "Basel only" option:no action is taken at the EU level to revise the existing prudential standards framework and banks apply voluntarily the new Basel II accord on the basis of indications by their regulator and / or supervisor. At the same time, banks would continue to apply the EU framework derived from Basel I as prescribed in the Consolidated Banking Directive and in the Capital Adequacy Directive. This option has the benefit of minimizing the workload for EU institutions, but creates a series of very undesirable consequences. First, it does not promote financial stability in the EU as it does not foster the adoption by banks of the most advanced risk management and control methods. Second, it obliges de facto banks acting at the international level to apply a double set of prudential standards, with an important additional regulatory burden. Third, it does not respond to the development of globally agreed prudential standards among supervisors which reflect EU needs and perspectives. Fourth, it puts EU financial institutions at a competitive disadvantage vis à vis their international competitors as they would not be able to benefit from any reduction in capital requirements deriving from the new set of rules. For the above reasons, this option has not been retained by the Commission as a possible working method in developing the new prudential standards framework.

1.3- The "EU only" option:action is taken at the EU level without a close link with the work done by the Basel Committee. The results of the discussions at the EU level would be translated into a new EU prudential framework. This option presents the theoretical advantage of developing a framework tailored on the specificities of the EU financial system, and of ensuring a fully-fledged discussion at all moments of the development of the new rules with all Member States. However, it also presents a series of very serious drawbacks. First, it duplicates the work by EU regulators and supervisors involved in the Basel process. Second, it leads to the creation of double prudential standards for EU banks acting at the international level which would be subject to two completely different sets of rules: those imposed in the EU and those agreed by supervisors in Basel. Third, it does not allow the creation of a level playing field between the EU and the other major actors of the global financial system, such as the US, Japan and Canada. For the above reasons, this option has not been retained by the Commission as a possible working method in developing the new capital requirements framework.

1.4- The "Basel and EU" option:action is taken at the EU level in parallel with the Basel process. Discussions are held at the same time in Basel and in the EU. While the new rules on capital adequacy are agreed by supervisors in Basel, at the same time the development of the discussions is presented in the EU to all Member States so that EU interests and points of convergence can be identified on specific issues and agreed if possible in Basel. If, however, the EU presents the need to pursue a line which cannot be agreed in Basel on selected topics, such a line can still be pursued in the EU. Disadvantages of this option include the use of heavy procedures to make sure that all Member States are informed of the discussions in Basel and the issue that not all Member States are present at the negotiations in Basel. It presents however a series of very important advantages. First, it allows the creation – except for specific topics – of a globally agreed prudential framework which ensures a worldwide level playing field in the financial system. Second, it allows the EU to benefit from the discussions in Basel without the need to replicate an important amount of technical work in order to ensure that the EU financial institutions are subject to a state-of-the-art prudential framework. Third, it allows the EU to influence the Basel process and to arrive at the creation of a broadly single prudential framework (in Basel and in the EU) for European financial institutions with an important limitation in the regulatory burdens they have to sustain. Fourth, it provides the EU with a sufficiently flexible framework for necessary departures from the Basel agreed solutions whenever strong EU reasons require doing so.

CONCLUSIONS: For the above reasons, the **"Basel and EU" option has been retained** by the Commission services as the only possible working method in developing the new capital requirements framework.

2- FOLLOW-UP

There is now a need to adopt a legislative approach and to apply the new capital adequacy rules across all types of EU financial institutions. The proposal is expected to follow normal implementation procedures, i.e. transposition in Member States within 18-24 months.

Investment firms and credit institutions: capital adequacy. Recast

2004/0159(COD) - 23/06/2010 - Follow-up document

The minimum capital requirements for banks under the EU Capital Requirements Directive (CRD), which comprise Directive 2006/48/EC and Directive 2006/49/EC, are risk sensitive: the higher the risk, the more capital a bank needs to hold to meet that risk and cover potential losses. By consequence, as credit and market risks increase in a downturn, minimum capital requirements for banks will also increase to meet those higher risks. Banks may need to raise additional capital to meet these higher requirements at a time when their capital resources are being eroded by losses and opportunities for raising capital are scarce and costly. This may potentially constrain banks' lending capacity into the economy. The possibility that the CRD may contribute to the pro-cyclicality observed in the financial system under the predecessor Basel I framework led to the inclusion in the CRD of Article 156 which requires the Commission to monitor whether the CRD has significant effects on the economic cycle'. This report has been drawn up for that purpose.

It notes that bank capital regulation may potentially amplify the cyclicality endemic to bank lending behaviour. Due to their risk-sensitive nature, capital requirements under the Basel II framework, transposed in the EU by the CRD, are expected to rise more in recessions and grow less during expansions. Since it may be expensive for banks to raise additional capital during economic downturns, this may encourage them to cut back on lending instead. By contrast, as capital requirements become more relaxed during economic upturns, banks may have more room for manoeuvre to extend more and / or riskier credit as compared to historical average over the business cycle.

However, bank lending is pro-cyclical in nature and it cannot be assumed that cyclical capital requirements per se have an amplifying effect. Indeed, the pro-cyclical nature of bank lending has many, often interconnected sources such as limitations in the measurement of risk and information asymmetries between borrowers and lenders. Furthermore, pro-cyclicality in lending may also stem from inappropriate responses of financial system participants to changes in the economic conditions. As pro-cyclicality is driven by various factors, it is difficult to identify the exact impact of minimum capital requirements. In particular, it remains a challenge to distinguish the effects of loan supply from those of loan demand, especially as shifts in demand and supply both have an impact on bank lending rates and credit volumes.

In order correctly to identify those effects, it would be necessary to have a detailed and sufficiently large data set, which – because the CRD has only recently been implemented – is yet not available. This first assessment set out in this report is therefore partly based on qualitative information collected from banks and

borrowers.

In order for the CRD to have pro-cyclical effects, certain conditions must be fulfilled. To determine the extent to which they have held empirically, the report asks following questions:

- does the increased risk sensitivity of the CRD framework lead to a stronger cyclicality of minimum required capital (MRC) and, if so, to what extent?
- do cyclical capital requirements have an impact on the level of capital that banks hold and impact bank loan supply?
- does the cyclicality of bank loan supply have an amplifying effect on the economic cycle?

The report considers these issues and states that overall, **the extent to which the introduction of the CRD has led to more pro-cyclical bank lending** is still difficult to assess. Although the evidence presented does point to some potential links between CRD and bank lending behaviour, analysis over a longer period is needed to draw more robust conclusions. Moreover, it is important to stress that as the implementation of the Basel II framework coincided with the outbreak of the financial crisis, disentangling the effects of these two events is particularly difficult.

With regard to **the impact of credit availability on the economic cycle**, the report states that, notwithstanding the indications of ongoing substitution between market-based and bank-based financing in recent months, the predominant role of banks in providing funds for spending and investment should not be underestimated, especially given the fact that obtaining the necessary funding from alternative sources has been burdensome for some, particularly smaller, businesses. Moreover, there is recent empirical evidence that shocks to loan supply have the potential to affect economic activity in the predominantly bank-based euro area financial system.

On measures to address pro-cyclicality, the report notes thatthe recent crisis has shown that market participants expect a rise in capital levels where they do not believe that an institution is well placed to absorb losses. Enhanced counter-cyclical measures within the regulatory framework for capital requirements could help to restore confidence in banks' balance sheets, and thus reduce the likelihood that banks will have to increase capital requirements or sharply de-leverage their credit portfolios to meet market participants' expectations. The Commission agrees with international institutions such as the FSB and the Basel Committee that **additional measures are necessary to avoid excessive pro-cyclicality**. It discusses the possibility of introducing **capital buffers and/or through-the-cycle provisions.** The report also states that the in line with the Basel Committee, the Commission is considering the **introduction of a leverage ratio** with the aim of limiting the build-up of leverage in the banking sector, and introducing additional safeguards against model risk and measurement error.

The paper goes on to describe **measures already adopted by the Commission**, such as: to supplement the requirements of the CRD by an express obligation for credit institutions and investment firms to establish and maintain, for those categories of staff whose professional activities have a material impact on their risk profile, remuneration policies and practices that are consistent with effective risk management; amendments to the CRD to increase regulatory capital requirements for the trading book activities and re-securitizations held in the banking book; the establishment of European Systemic Risk Board (ESRB) to oversee the stability of the financial system as a whole. On the latter, the Commission considers that adding a robust macro-prudential overlay to the current micro-prudential approach should help to address sources of procyclicality linked to limitations in the risk measurement and inappropriate responses of market participants to risk. This should support the timely identification of cycles and the build-up of risks in the system which could enable action to be taken earlier to avoid excessive volatility and pro-cyclicality in a downturn.

In conclusion, the Commission notes that many international institutions have emphasised the importance of introducing counter-cyclical measures in the prudential framework in order to reduce excessive pro-cyclicality within the financial system. In parallel with work going on in the Basel Committee, the Commission will **examine the options which address systemic risk and pro-cyclicality in the most effective way**. These measures should be able to limit excessive risk-taking in times of economic growth but should also be designed in a way that they can be drawn down during economic downturns to increase the resilience of the banking sector and to support the credit flow into the economy. The Commission will take into account the ongoing work by the international accounting standard setter (IASB) and prudential supervisors (in particular, the Basel Committee) when considering a legislative proposal.

Investment firms and credit institutions: capital adequacy. Recast

2004/0159(COD) - 11/10/2005

The Council noted agreement on a draft directive updating rules on the audit of company accounts, accepting all amendments voted by the European Parliament in first reading.

The directive can now be adopted without discussion at a forthcoming Council meeting, once the text has been finalised.

The directive is aimed at improving the reliability of company financial statements by establishing minimum requirements for statutory audit of annual accounts and consolidated accounts.

Investment firms and credit institutions: capital adequacy. Recast

2004/0159(COD) - 28/09/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Alexander **RADWAN** (EPP-ED,DE) and made many amendments to the Commission’s proposal. (Please see the document dated 13/07/2005.)

On the matter of comitology, Parliament pointed out in a recital to the Directive that it had previously requested that Parliament and Council should have an equal role in supervising the way in which the Commission exercises its executive role in order to reflect the legislative powers of Parliament under Article 251 EC. Parliament did not consider this proposal to preserve its legislative prerogatives. In the view of the European Parliament, Parliament and Council should have the opportunity of evaluating the conferral of implementing powers to the Commission within a determined period. Parliament felt it appropriate to limit the period during which the Commission may adopt implementing measures. Accordingly, a new clause states that, without prejudice to the implementing measures already adopted, upon expiry of a two year period following the adoption of the Directive and, on 1 April 2008 at the latest, the application of its provisions requiring the adoption of technical rules, amendments and decisions shall be suspended. Acting on a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they will review them prior to the expiry of the period or date referred to above.

Investment firms and credit institutions: capital adequacy. Recast

2004/0159(COD) - 17/07/2012 - Follow-up document

The Commission presents its second report on effects of the Capital Requirements Directive (CRD) on the economic cycle. The CRD comprises Directive 2006/48/EC on the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions. To recall, the possibility that the CRD may contribute to the pro-cyclicality observed in the financial system under the predecessor Basel I framework led to the inclusion in the CRD of a clause which requires the Commission periodically to examine whether the CRD has significant effects on the economic cycle and to submit a biennial report together with any appropriate corrective measures. This is the purpose of the report, which, like the first report, is based on the analysis of the ECB.

Cyclicality of capital requirements: there is a consistent view among the national supervisory authorities surveyed by the ECB in 2011 that the CRD minimum required capital (MRC) is more risk-sensitive and tends to be more cyclical than previous Basel I requirements. The increase of cyclicality in capital requirements is mainly attributed to the higher risk sensitivity of the overall framework, in particular as regards the calculation of capital requirements under the internal ratings based (IRB) approaches.

The ECB quantitative analysis examined the extent to which input risk parameters to IRB models, namely probabilities of default (PDs) and loss given default (LGDs) estimations, and exposures, are correlated with macroeconomic factors, and how much this feeds through into cyclical MRC.

The ECB found some evidence for a cyclical MRC driven by cyclical PDs for larger Group 1 banks using the IRB approach to credit risk, offset somewhat by cyclical exposures (i.e. reduced in a downturn). Although cyclical MRCs are tentatively identified at the portfolio (corporate and retail) level, this effect seems to be mitigated at the bank level when the whole sample of banks is considered.

This mitigation is likely to be primarily due to portfolio adjustment concerning the size and composition of banks' overall portfolios. However, the observed reallocations of assets were likely triggered by the financial crisis rather than changes in the underlying risk parameters *per se*. For instance, banks may have targeted a higher amount of assets eligible as collateral in central bank liquidity operations to improve their liquidity position and to be able to benefit from cheap central bank funding. In the absence of the crisis, then, the MRC may have been more cyclical.

Banks using the Standardised Approach may also have a cyclical MRC due to the method's reliance on external CRAs whose ratings are cyclical.

Impact on lending: the ability and willingness of banks to lend depends in part on the degree to which the minimum capital constraints are binding. Although the MRC calculated under the current CRD may have had some impact on actual capital levels held by banks, in addition to several other factors, expectations of stricter future regulatory requirements may have resulted in capital targets set considerably above the MRC, with significant impacts on balance sheets and lending policies. However, this is a driver that is different from the cyclicality of the current legislation.

Impact of credit availability on the economic cycle: quantifying the impacts of MRC changes on lending and GDP remains difficult.

Given all the caveats encountered in the ECB's quantitative analysis of MRC cyclicality, for instance the very limited data available and the impact of the financial crisis both via additional regulatory changes, government interventions and behavioural adjustments, it seems to be too early to make a quantitative estimate of how big the pro-cyclical impact of CRD capital requirements on lending and GDP might be.

Measures to address pro-cyclicality: in July 2011, the Commission proposed a legislative package for the reform of banking regulation, including a directive (CRD IV) and a regulation (CRR). This follows the Basel III agreement and will meet the key objective of maintaining the credit supply to the real economy in the EU.

The proposal includes a number of measures that may mitigate pro-cyclicality in banking lending:

- a single rule book;
- a countercyclical capital buffer;
- the introduction of a leverage ratio;
- reduced dependency on credit rating agencies for prudential requirements, and
- scope to undertake further measures to enhance loan availability for small and medium sized enterprises.

Where appropriate, the implementation of measures will be phased in over time in order to avoid pro-cyclical effects.