Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2004/0155(COD)	Procedure completed

Credit institutions: taking up and pursuit of the business. Recast

Repealing Directive 2000/12/EC 1997/0357(COD)
Amended by 2005/0245(COD)
Amended by 2006/0166(COD)
Amended by 2006/0284(COD)
Amended by 2008/0190(COD)
Amended by 2008/0191(COD)
Amended by 2009/0099(COD)
Amended by 2009/0161(COD)
Amended by 2010/0232(COD)
See also 2010/2074(INI)
Repealed by 2011/0203(COD)

Subject
2.50.04 Banks and credit
2.50.10 Financial supervision

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		21/09/2004
		PPE-DE RADWAN Alexander	
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs		03/02/2005
		PSE BERGER Maria	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	2734	07/06/2006
	Economic and Financial Affairs ECOFIN	2682	11/10/2005
	Economic and Financial Affairs ECOFIN	2628	07/12/2004
European Commission	Commission DG	Commissioner	
	Economic and Financial Affairs		

Key events

14/07/2004	Legislative proposal published	COM(2004)0486	Summary
07/12/2004	Debate in Council	2628	
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		
28/09/2005	Results of vote in Parliament		
28/09/2005	Decision by Parliament, 1st reading	T6-0351/2005	Summary
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	2004/0155(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
	Repealing Directive 2000/12/EC 1997/0357(COD) Amended by 2005/0245(COD) Amended by 2006/0166(COD) Amended by 2006/0284(COD) Amended by 2008/0190(COD) Amended by 2008/0191(COD) Amended by 2009/0099(COD) Amended by 2009/0161(COD) Amended by 2010/0232(COD) See also 2010/2074(INI) Repealed by 2011/0203(COD)
Legal basis	EC Treaty (after Amsterdam) EC 047-p2
Stage reached in procedure	Procedure completed

Documentation gateway

Legislative proposal		COM(2004)0486	14/07/2004	EC	Summary
Document attached to the procedure		SEC(2004)0921	14/07/2004	EC	Summary
European Central Bank: opinion, guideline, report		BCE(2005)0004 OJ C 052 02.03.2005, p. 0037-0046	17/02/2005	ECB	Summary
Economic and Social Committee: opinion, report		CES0244/2005 OJ C 234 22.09.2005, p. 0008-0013	09/03/2005	ESC	
Amendments tabled in committee		PE357.763	24/05/2005	EP	
Committee report tabled for plenary, 1st		A6-0257/2005	29/08/2005	EP	

reading/single reading					
Text adopted by Parliament, 1st reading/single reading		T6-0351/2005 OJ C 227 21.09.2006, p. 0085-0166 E	28/09/2005	EP	Summary
Commission response to text adopted in plenary		SP(2005)4139	20/10/2005	EC	
Draft final act		03669/4/2005	14/06/2006	CSL	
Follow-up document		COM(2010)0262	28/05/2010	EC	Summary
Follow-up document		COM(2010)0327	23/06/2010	EC	Summary
Follow-up document		SEC(2010)0754	23/06/2010	EC	
Follow-up document		COM(2012)0400	17/07/2012	EC	Summary
Follow-up document		SWD(2012)0218	17/07/2012	EC	
Follow-up document		COM(2012)0769	18/12/2012	EC	Summary

Additional information

European Commission	EUR-Lex

Final act

Directive 2006/48
OJ L 177 30.06.2006, p. 0001-0200 Summary

Final legislative act with provisions for delegated acts

Credit institutions: taking up and pursuit of the business. Recast

PURPOSE : to recast Directive 2000/12/EC and lay down rules on the business of credit institutions and their prudential supervision.

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 new proposal aims to ensure that financial institutions' capital is more closely aligned with the risks they face and sets out new rules on capital requirements. The framework consists of three different approaches allowing financial institutions to choose the approach most suited to them: simple, intermediate and advanced. The simple and intermediate approaches would be available by end 2006 (but banks could still opt to apply the current rules until end 2007) and the most advanced approaches from end 2007. In addition, specifically designed rules on capital requirements for financing small- and medium-sized enterprises indicate lower capital requirements for lending to such institutions and preferential treatment for certain types of venture capital. The new framework also recognises the lower risks associated with retail lending to individuals ? both for general purposes and for house purchasing ? by introducing lower capital requirements for these types of lending.

To reduce single market barriers arising from the responsibilities of separate national supervisory authorities, supervisors will be required to work more closely together, including in deciding on applications by financial institutions to use the more sophisticated methodologies. The Committee of European Banking Supervisors will have an important role in promoting consistency of approach between different supervisors.

The new provisions replace the existing solvency ratio requirements for credit risk and introduce two methods to calculate risk weighted exposure amounts. The Standardised Approach is based on the existing framework, with risk weights determined by the allocation of assets

and off-balance sheet items to a limited number of risk buckets. Risk sensitivity has been increased by the number of exposure classes and risk buckets. There are lower risk weights for non-mortgage retail items (75%) and residential mortgages (35%). A 150% risk weight for assets which are 90 days past due (100% for residential mortgages) is introduced. The use of credit rating agencies' ratings to assign risk weights where these are available is permitted. The Internal Ratings Based (IRB) approach permits credit institutions to use their own estimates of the risk parameters inherent in their different credit risk exposures. These parameters form the inputs into a prescribed calculation designed to provide soundness to a 99.9% confidence level.

The ?Foundation' Approach allows credit institutions to use their own estimates of probability of default, while using regulatory prescribed values for other risk components. Under the ?Advanced' Approach, credit institutions may use their own estimates for losses given default and their exposure at default. Credit institutions are allowed to use pooled data in the estimation of risk parameter values. This allows smaller credit institutions to apply a more risk sensitive approach to calculating capital requirements.

Credit institutions: taking up and pursuit of the business. Recast

The ECB is convinced that the proposed directives, once properly transposed by the Member States, will considerably strengthen the soundness and stability of the EU banking system through the application of more sophisticated, risk-sensitive capital standards. The ECB therefore stresses its generally positive view of the proposed directives. However, without prejudice to this general view, the ECB has a number of general and specific remarks with regard to the proposed directives and their future application:

Legal instruments for consistent implementation across the EU : in line with the agreement to extend the Lamfalussy process from the securities sector to all other financial sectors, it would have been preferable to have limited the proposed directives to cover framework principles reflecting the basic political choices and substantive matters in the field of capital adequacy for credit institutions and investment firms and to have brought the technical provisions on capital adequacy together in one directly applicable Level 2 regulation. This approach would reinforce a convergent implementation of Basel II throughout the EU, facilitate compliance by financial groups operating across different EU countries and reduce costs, as well as promoting a level playing field and further financial integration. The ECB considers that the envisaged legal structure should not be viewed as the final desirable outcome, but rather as one step in a long-term process towards establishing, whenever possible, a directly applicable set of Level 2 technical rules for financial institutions within the EU.

The reduction of national options and national discretion : given the need for a further reduction in national options, the ECB would support the introduction of a specific provision requiring the Commission to monitor the progress made in this direction and, within a reasonable period of time (e.g. three years), to report to the Community institutions on the use of residual national discretion, assessing how necessary it is and whether there is a need for further regulatory initiatives. It also recommends the use of consistent terminology to express how the competent authorities can intervene prior to the use of certain risk weights and measurement

techniques. Furthermore, the ECB expects that the coordinating role played by the supervisor on a consolidated basis, together with the explicit requirement to exchange information, will contribute to the stability of the banking sector both at EU and Member State level.

Timing and transitional provisions : the ECB welcomes the provisions on the timing of the introduction of the new capital requirements in Chapter 1 of Title VII of the proposed banking directive. These provisions mirror the timing provided for in Basel II.

Monitoring the structural and possible pro-cyclical impacts of the new framework : the ECB supports the proposal that the Commission should periodically monitor whether the proposed banking directive has significant effects on the economic cycle, as set out in Article 156 thereof. Furthermore, the ECB observes that it is the Commission's prerogative to adopt proposals for any amendment to the recast Consolidated Banking Directive, and that this also applies to the possible legislative ?remedial measures? mentioned in Article 156. However, from a macro-prudential perspective it is crucial that possible legislative ?remedial measures? are of a symmetric nature and that capital standards are only changed when the adjustment is prudentially sustainable through the entire cycle.

Credit institutions: taking up and pursuit of the business. Recast

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.

Credit institutions: taking up and pursuit of the business. Recast

LEGISLATIVE ACT: Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions (recast).

CONTENT: The Council adopted two directives aimed at introducing new capital adequacy requirements for banks and investment firms, accepting all amendments voted by the European Parliament in first reading (please refer also to 2004/0159(COD)).

The new requirements are intended to contribute to financial stability and strengthened confidence in the financial system by fostering

enhanced risk management by financial institutions. The new requirements are part of the EU's financial services action plan, and are aimed at strengthening the competitiveness of the European economy by lowering capital costs for companies.

The new requirements follow international guidelines established in June 2004 (?Basel II'agreement) by the Basel committee on banking supervision1, which formulates supervisory standards and recommends best practice for banking supervisory authorities.

The directive enables financial institutions to choose from three different approaches to capital adequacy - simple, intermediate and advanced - depending on which suits them best. The simple and intermediate approaches may be used from the end of 2006 (although banks may still choose to apply the current rules until the end of 2007), and the most advanced approach from the end of 2007.

The new rules set more precise own funds requirements (i.e. the amount of 'internal' capital which banks and investment institutions must hold in order to cover their risks and protect their depositors) for the financing, amongst other things, of small and medium-sized enterprises. The rules provide for preferential treatment for some types of risk capital.

The two directives recast directive 2000/12/EC on the business of credit institutions and directive 93/6/EEC on the capital adequacy of investment firms and credit institutions, whilst transposing the Basel II agreement into EU law.

ENTRY INTO FORCE: 20/07/2006.

DATE OF APPLICATION: 31/12/2006.

Credit institutions: taking up and pursuit of the business. Recast

The Commission presents a report on the expected impact of Article 122A of Directive 2006/48/EC.

The document recalls that since the summer of 2007, securitisation markets have been in broad distress after large unexpected losses on securitisations of mortgage loans surfaced and are only slowly and partially recovering. Because this distress has deeply affected the financial system and the wider economy, it is crucial that regulation addresses the root causes of the large unexpected losses in certain securitisations. A root cause can be identified as a lack sound loan underwriting practices on the part of the issuers that was made possible because professional investors in the securitisation tranches did not exercise due diligence in their investments and did therefore not impose effective discipline on the issuers.

Article 122a imposes requirements on credit institutions in the European Union in order to make sure that they invest only in securitisations where they have applied appropriate due diligence and where the originators have an incentive to act diligently in the underwriting of the loans to be securitised. The article also obliges credit institutions ? where they act as originators themselves ? to cater for the relevant disclosures needed for investors' due diligence.

The Article underwent substantial change during the legislative process and there was, also given the difficult condition that securitisation markets were in, no impact assessment carried out about its requirements in their final shape. In particular, during the legislative process, concerns were expressed about the effectiveness of one of its elements, the requirement for issuers of securitisations to retain exposure to the securitisation ("the retention requirement") so that they have an incentive to diligently originate loans.

In accordance with Directive 2008/46/EC, this report provides a high level assessment of the overall impact of Article 122a, and then considers the questions about effectiveness of the retention requirement and the appropriateness of raising its minimum level. There is also an Annex of this report that discusses technical suggestions made by CEBS for improving specific aspects of the retention rule.

In terms of overall impact, the Commission expects that Article 122a will help aligning the incentives of issuers and investors more closely. Thereby, it will make securitisation sounder and instil new confidence in this source of financing. The ultimate consequence will be that securitisations return in larger volumes as a source of refinancing of the financial sector's lending to the real economy, while however preventing the excesses that became apparent in the course of the crisis. Regarding the specific question of the effectiveness of the minimum retention level chosen, the Commission concludes that the existing moderate minimum retention level of 5% should be kept, acknowledging that investors should require higher retention levels depending on the securitisation in question.

Therefore, the overall design of Article 122a can be expected to meet its purpose. In concluding on this report, the Commission would point to a number of technical points raised by CEBS that are briefly discussed in the annex to this report. The Commission considers that there is no immediate need to propose legislative changes to Article 122a in this context. However, the Commission will closely monitor international developments in this field, acknowledging that also in jurisdictions outside the EU there is interest in introducing requirements similar to Article 122a, including retention requirements. As these developments materialise further, the Commission will make sure that Article 122a will also be assessed in light of potentially different solutions found in other jurisdictions.

Credit institutions: taking up and pursuit of the business. Recast

The Commission presents a report on the application of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions, to microcredit. It recalls that in November 2007, the European Commission published its Communication A European initiative for the development of microcredit in support of growth and employment in order to promote a more favourable environment for microcredit provision. More recently, the Commission has been directly engaged with both the microcredit sector and national public authorities to identify obstacles microcredit providers face in deploying their services throughout the EU and to consider how these might be overcome and whether there is a need for regulatory action at national or EU level.

The report notes that the Commission is very active in this area notably with the JEREMIE and JASMINE initiatives and the European Progress Microfinance Facility launched in 2010 to increase the availability of microcredit for alleviating unemployment amongst young people.

The report clarifies what is meant by microcredit with a special focus on microlenders. It gives an overview of the prudential supervision of microlenders across the EU and identifies the effects of the prudential requirements on microcredit activities resulting from the application of the Directive 2006/48/EC.

The Commission does not consider that the prudential requirements, as laid down in Directive 2006/48/EC, impede the development of microcredit activities. The prudential rules do not seem to penalise microcredit in the EU, partly because a large portion of microcredit providers are exempted from the application of prudential requirements laid down in the Directive 2006/48/EC. For those not exempt, several factors tend to mitigate the impact of the prudential requirements laid down in Directive 2006/48/EC on microcredit activities:

- access to public guarantee schemes enables microcredit providers to significantly reduce the level of own funds required to cover the credit risk to which they are exposed;
- given the small size of microcredits, most microcredit can be exempted from the large exposure limit designed to limit concentration risk (25% of the regulatory own funds of the banking microcredit providers);
- the Directives requirements in terms of risk management help the banking microlenders to mitigate their risks;
- Directive 2006/48/EC requires that banking institutions, including microlenders, have sound liquidity management strategies, policies and processes to identify, measure, monitor and control liquidity risk on a day-to-day basis, and contingency plans for handling liquidity problems;
- the Directive may involve high administrative burdens which may reduce the attractiveness of microcredit as a banking business. However, some prudential requirements, especially those related to prudential reporting, the risk assessment process and capital adequacy can be commensurate with the smaller size and complexity of these institutions, which helps to alleviate the administrative burden.

Since prudential rules do not penalise microcredit, this precludes the need to tailor them to the particular features of microcredit activities. Moreover, microcredit brings together a wide range of actors who are not subject to similar rules and is dealt with in a diversity of ways across Member States depending on the policy framework and the legislation in place. Given this heterogeneous situation combined with the lack of a consistent definition of microcredit, any action to modify the prudential and regulatory framework would require careful consideration to ensure that microcredit activities are effectively promoted.

It might also be argued that no prudential reform needs to be undertaken if the development of microcredit is driven to a large extent by non-prudential factors. That does not mean that prudential regulation has no impact on the development of such activities, but that prudential factors do not play a critical role in the development of microcredit, making any prudential reforms unnecessary. A number of areas outside of the prudential sphere could instead be the focus of reforms:

- one way to foster the supply of microcredits may be to create a more favourable general environment for institutions specialising in microcredit by facilitating their access to financial resources. This development might be promoted through a wider provision of loan guarantees, encouraging closer cooperation between banks and non-banks or more financial transparency;
- the development of voluntary codes of conduct such as those which have been issued by the microcredit industry itself in recent years, or more recently by the Commission, can help to provide a higher degree of recognition and credibility to those microcredit providers adhering to them;
- a review of the consumer protection environment for microcredit, which is outside the remit of Directive 2006/48/EC, and any appropriate improvements, may also have positive effects on microcredit activities;
- greater attention to the institutional framework for self-employment and microenterprises could also increase chances of success and make microcredit more profitable.

Lastly, the report suggests fostering measures to simplify legal and administrative regimes or to smooth the transition between unemployment or social welfare dependence and self-employment.