

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2008/0191(COD) Procedure completed
Financial markets: banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management  Amending Directive 2006/48/EC <a href="#">2004/0155(COD)</a> Amending Directive 2006/49/EC <a href="#">2004/0159(COD)</a> Amending Directive 2007/64/EC <a href="#">2005/0245(COD)</a>	
Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.10 Financial supervision	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs		22/04/2008
		PPE-DE <a href="#">KARAS Othmar</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>JURI</b> Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">General Affairs</a>	<a href="#">2957</a>	27/07/2009
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2948</a>	09/06/2009
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2911</a>	02/12/2008
European Commission	Commission DG	Commissioner	
	<a href="#">Financial Stability, Financial Services and Capital Markets Union</a>	MCCREEVY Charlie	

Key events			
30/09/2008	Legislative proposal published	<a href="#">COM(2008)0602</a>	Summary
09/10/2008	Committee referral announced in Parliament, 1st reading		
02/12/2008	Debate in Council	<a href="#">2911</a>	
09/03/2009	Vote in committee, 1st reading		Summary
16/03/2009	Committee report tabled for plenary, 1st reading	<a href="#">A6-0139/2009</a>	
06/05/2009	Results of vote in Parliament		
06/05/2009	Debate in Parliament		
06/05/2009	Decision by Parliament, 1st reading	<a href="#">T6-0367/2009</a>	Summary
	Resolution/conclusions adopted by		Summary

09/06/2009	Council		
27/07/2009	Act adopted by Council after Parliament's 1st reading		
16/09/2009	Final act signed		
16/09/2009	End of procedure in Parliament		
17/11/2009	Final act published in Official Journal		

### Technical information

Procedure reference	2008/0191(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2006/48/EC <a href="#">2004/0155(COD)</a> Amending Directive 2006/49/EC <a href="#">2004/0159(COD)</a> Amending Directive 2007/64/EC <a href="#">2005/0245(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 053-p1
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/68095

### Documentation gateway

Legislative proposal	<a href="#">COM(2008)0602</a>	01/10/2008	EC	Summary
Document attached to the procedure	<a href="#">SEC(2008)2532</a>	01/10/2008	EC	
Document attached to the procedure	<a href="#">SEC(2008)2533</a>	01/10/2008	EC	
Committee draft report	<a href="#">PE416.308</a>	27/11/2008	EP	
Amendments tabled in committee	<a href="#">PE418.169</a>	19/01/2009	EP	
Amendments tabled in committee	<a href="#">PE418.224</a>	19/01/2009	EP	
Amendments tabled in committee	<a href="#">PE418.253</a>	19/01/2009	EP	
European Central Bank: opinion, guideline, report	<a href="#">CON/2009/0017</a> <a href="#">OJ C 093 22.04.2009, p. 0003</a>	05/03/2009	ECB	Summary
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0139/2009</a>	17/03/2009	EP	
Economic and Social Committee: opinion, report	<a href="#">CES0615/2009</a>	24/03/2009	ESC	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T6-0367/2009</a>	06/05/2009	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2009)3616</a>	07/07/2009	EC	
Draft final act	<a href="#">03670/2009/LEX</a>	16/09/2009	CSL	

### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

## Financial markets: banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

---

**PURPOSE :** to revise EU rules on capital requirements for banks and amending Directives 2006/48/EC and 2006/49/EC.

**PROPOSED ACT :** Directive of the European Parliament and of the Council

**CONTENT :** The Capital Requirements Directive (CRD) comprises Directives 2006/48/EC and 2006/49/EC. This proposal aims to ensure that the effectiveness of the Capital Requirements Directive is not compromised. The revision relates to:

- revisions of rules that were brought forward from previous directives, such as the large
- exposures regime and derogations for bank networks from prudential requirements;
- establishing principles and rules that had not been formalised at the EU level such as the
- treatment of hybrid capital instruments within original own funds;
- clarifying the supervisory framework for crisis management and establishing colleges for
- enhancing both efficiency and effectiveness of supervision.

The revision of certain other areas has been prompted by the financial market turbulence that started in 2007 and is aimed at ensuring adequate protection of creditor interests and overall financial stability. The new rules are designed to reinforce the stability of the financial system, reduce risk exposure and improve supervision of banks that operate in more than one EU country. Under the new rules, banks will be restricted in lending beyond a certain limit to any one party, while national supervisory authorities will have a better overview of the activities of cross-border banking groups.

The main changes proposed are as follows:

**Improving the management of large exposures:** banks will be restricted in lending beyond a certain limit to any one party. As a result, in the inter-bank market, banks will not be able to lend or place money with other banks beyond a certain amount, while borrowing banks will effectively be restricted in how much and from whom they can borrow. The Commission proposes to limit all inter-bank exposures to 25% of own funds or an alternative threshold of EUR 150 million, whichever is higher.

**Improving supervision of cross-border banking groups:** the amendments require:

- the establishment of colleges of supervisors to facilitate the tasks of the consolidating supervisor and host supervisors;
- a joint decision on two key supervisory aspects for group supervision (Pillar 2 and reporting requirements) with a last say for the consolidating supervisors. This is coupled with a mediation mechanism in case of disagreement;
- the competent authorities involved in the supervision of a group to consistently apply within a banking group the prudential requirements under the Directive.

The consolidating supervisors will be required to inform CEBS on the activities of colleges to develop consistent approaches across colleges. Colleges will also be required for supervisors overseeing cross-border entities that do not have subsidiaries in other Member States but that do have systemically important branches.

In addition, the rights and responsibilities of the respective national supervisory authorities will be made clearer and their cooperation will become more effective.

**Improving the quality of banks' capital:** there will be clear EU-wide criteria for assessing whether 'hybrid' capital, i.e. including both equity and debt, is eligible to be counted as part of a bank's overall capital ? the amount of which determines how much the bank can lend.

**Improving liquidity risk management:** for banking groups that operate in several EU countries, their liquidity risk management ? i.e. how they fund their operations on a day-to-day basis ? will also be discussed and coordinated within 'colleges of supervisors'. These provisions reflect the on-going work at the Basel Committee on Banking Supervision and the Committee of European Banking Supervisors.

**Improving risk management for securitised products:** rules on securitised debt ? the repayment of which depends on the performance of a dedicated pool of loans ? will be tightened. Originators and sponsors of the more opaque credit risk transfer instruments retain a proportion of the risk that is being transferred to investors. For this reason, originators and sponsors must retain a material share (not less than 5%) of the risks so that effectively, both originators and sponsors that are regulated by this directive and those that are not will have to retain a share of the risks for their own account. This requirement is complemented by ensuring that investors have a thorough understanding of the underlying risks and the complex structural features of what they are buying. To enable informed decisions, detailed information has to be available to investors.

## Financial markets: banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

---

On 22 October 2008 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Directive amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

The ECB makes a number of general observations, including:

Reform of European supervisory arrangements in the financial sector: the specific observations in this opinion are without prejudice to possible future contributions to the broader European debate on the reform of European supervisory arrangements.

Legal instruments for consistent implementation of European banking legislation: the current structure of Directives 2006/48/EC and 2006/49/EC should not be viewed as the final desirable outcome. The ECB is of the view that most of the technical Annexes to Directives 2006/48/EC and 2006/49/EC should be adopted directly as Level 2 measures and as Commission regulations. Moreover, the proposed directive should specify the areas in which the Committee of European Banking Supervisors (CEBS) is requested to contribute to enhance convergence of supervisory practices. Lastly, in the ECB's view, a radical overhaul of these directives would greatly contribute to enhancing the transparency and legal certainty of Community banking legislation.

Comitology: the ECB agrees with the Commission's view that: (i) Level 2 measures should not precede Level 1 measures and thus risk pre-empting the discussion on their substance; (ii) work on Level 1 and 2 measures should be carried out as much as possible in parallel.

The ECB also makes a number of specific observations concerning:

Inter-bank exposures and implementation of monetary policy: the ECB shares the Commission's view that inter-bank exposures pose a significant risk as banks, although regulated, can fail and that large inter-bank exposures require very prudent management. Nevertheless, the ECB calls for caution when designing measures on limits to inter-bank exposures as the proposed measures should avoid impairing the smooth flow of liquidity within the inter-bank market. Moreover, the ECB is of the view that the proposed limit on inter-bank exposures (25 % of the credit institution's own funds or the amount of EUR 150 million) would constrain the smooth flow of liquidity within the inter-bank market and could be detrimental to the smooth functioning of the euro money market.

Liquidity issues: the amendments to Directive 2006/48/EC are a necessary and welcome step in view of the importance of liquidity risk management revealed by the current market turmoil. Having regard to the on-going work on liquidity risk management and liquidity concessions practices, the ECB notes that one consequence of economic and monetary union is that only the home Member State should be responsible for supervising the liquidity of credit institution branches within the euro area.

Exchange of information and cooperation between central banks and supervisory authorities: the ECB supports the clarification of the existing coordination and information sharing obligations between financial stability authorities in an emergency situation, including adverse developments in financial markets. The proposed amendments do not intend to modify the current framework for information sharing between supervisory authorities and central banks in normal situations but seek to further improve information sharing among these authorities when an emergency situation arises.

Colleges of supervisors: the use of supervisory colleges would enhance cooperation in the day-to-day supervision of cross-border banks, financial stability risk assessment and the coordination of the management of crisis situations.

The Community dimension of the mandate of national supervisory authorities: the ECB fully supports the objective of enhancing the Community dimension in the mandate of national supervisors.

Securitisation: the ECB stresses the need to avail of a broad, liquid and well functioning secondary securitisation market, in particular with regard to the eligibility of asset-backed securities as collateral for monetary policy operations. If this proposed directive remains a Level 1 act, the ECB highlights the need to: (i) clarify the scope of application; (ii) define 'material net economic interest?'; (iii) use terms consistently to increase convergence in their implementation. Moreover, the ECB welcomes the Commission's intention of reporting to the European Parliament and the Council on the application and effectiveness of the proposed provisions in light of market developments. Lastly, the ECB would see merits in a general review of the securitisation terminology used both in Directive 2006/48/EC and in the proposed directive to align it more closely with the usual legal terminology and to ensure increased legal certainty.

The ECB also makes a number of legal and technical observations.

## Financial markets: banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

---

The Committee on Economic and Monetary Affairs adopted the report drawn up by Othmar KARAS (EPP-ED, AT) amending, under the first reading of the codecision procedure, the proposal for a directive of the European Parliament and of the Council on amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

The main amendments are as follows:

Supervision - a temporary step: the committee voted to establish the colleges of supervisors to facilitate cooperation among national authorities dealing with cross-border financial institutions. It considers, however, that the proposed colleges of supervisors should only be a temporary step towards a new system of supervision. The financial crisis has highlighted weaknesses in EU supervision and in the consolidating supervisor model. MEPs therefore consider that further supervisory integration is necessary in order to establish a decentralised European System of Banking Supervisors, building on the model of the European System of Central Banks.

The Commission should, by 31 December 2009, report to the European Parliament and the Council any findings in this respect and put forward any legislative proposal needed to tackle the shortcomings identified regarding the provisions related to supervisory cooperation arrangements. It should also take into account the outcomes of discussions by expert groups on these issues, in particular, those of the High Level Group on cross-border financial supervision (Larosière Group) and the lessons from the financial crisis.

MEPs also call on the Committee of European Banking Supervisors to report to the Council, the European Parliament and the European Commission on the progress made towards supervisory convergence every year starting from 1 January 2011.

Large exposures - more transparency: the committee supports reinforcing the existing rules on the large exposure regime, including interbank trading. Member States will have to require all credit institutions to report to the supervisory authorities on their large exposure.

MEPs also call on the competent authorities, from 1 January 2013, to apply uniform formats, frequencies and dates of reporting. To facilitate this, the Committee of European Banking Supervisors shall, by 31 December 2011, elaborate guidelines to introduce, within the Community, a uniform reporting format. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities

Securitisation: MEPs welcome stricter rules on securitisation. They believe it is also important to distinguish securitisations where the interests of the originator or sponsor and the interests of investors are aligned, because, for example, the originator or sponsor retains a significant interest in the underlying assets, from those where they are not aligned.

Moreover, MEPs propose an explicit and unconditional warranty by the originator, a sponsor or original lender, as the case requires. The warranty should indicate that the securitised exposures and the obligors meet the asset and obligor criteria in the transaction documentation, and that due diligence was carried out by the originator, sponsor, or original lender in respect thereof, including the risk profiles thereof. This would work as an alternative solution to the 5% retention limit, to ensure the retention of an economic interest by the institution.

The Commission's proposed penalty for non-compliance with disclosure and due diligence obligations should be scaled according to the gravity of the failure and reflect the relevant supervisor's judgement. By 31 December 2009, the Commission should report to the European Parliament and the Council on the appropriateness and expected impact of requiring institutions to retain a material net economic interest in their securitisations in the light of international market and policy developments.

Credit Default Swaps: according to the committee, Credit Default Swaps (CDS), the most traded derivative in recent years, also need to be regulated. In order to ensure financial stability, the Commission should review and report on measures to enhance the transparency of over-the-counter markets, such as by requiring the processing of credit default swaps through a central clearinghouse counterparty, established, regulated and supervised in the European Union, to mitigate the counterparty risks and more generally to reduce the overall risks, ensuring effective supervision of those entities. The Commission shall submit that report, by 31 December 2009, to the European Parliament and the Council together with any appropriate proposals.

Response to macro-prudential problems: the crisis has revealed a need for better analysis of and response to macro-prudential problems - problems which lie at the interface between macro-economic policy and financial system regulation. This will include a need to examine:

- policies that exacerbate the ups and downs of the business cycle (including, possibly, exacerbating financial crises by requiring excess capital in downturns and inadequate capital in upturns), and whether banks should build strong capital buffers and make provisions through-the-cycle that can be used during a downturn;
- assumptions concerning correlations that underlie the methodologies for calculating regulatory capital;
- introducing a leverage ratio for banks.

By 31 December 2009, the Commission should therefore review the Directive as a whole to address those issues and present a report to the European Parliament and the Council and any appropriate proposals.

Transposition: MEPs call on the national governments to transpose the proposed legislation by 31 October 2010 and apply the new provisions from the beginning of 2011.

## Financial markets: banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

---

The European Parliament adopted by 454 votes to 106, with 25 abstentions, a legislative resolution amending, under the first reading of the codecision procedure, the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

The resolution stresses that the crisis in international financial markets has demonstrated that it is appropriate to examine further the need for a reform of the regulatory and supervisory model of the EU financial sector. It has also revealed a need for better analysis of and response to macro-prudential problems - problems which lie at the interface between macro-economic policy and financial system regulation.

The amendments adopted in plenary are the result of a compromise negotiated with the Council.

The main amendments are as follows:

Calculation and reporting requirements: for the communication of these calculations by credit institutions, competent authorities shall apply, by 31 December 2012, uniform formats, frequencies and dates of reporting. To facilitate this, the Committee of European Banking Supervisors shall elaborate guidelines to introduce, within the Community, a uniform reporting format at the latest by 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

More transparency in the event of high exposure: the text provides that a credit institution may not incur an exposure to a client or group of connected clients the value of which exceeds 25% of its own funds. Where that client is an institution or where a group of connected clients includes one or more institutions, this value may not exceed 25% of the credit institution's own funds or the amount of EUR 150 million, whichever is higher.

The compromise adds that where the amount of EUR 150 million is higher than 25% of the credit institution's own funds, the value of the exposure shall not exceed a reasonable limit in terms of the credit institution's own funds. This limit shall be determined by credit institutions to address and control concentration risk, and shall not be higher than 100% of the credit institution's own funds.

Securitisation: under the compromise, a credit institution, other than when acting as an originator, a sponsor or original lender, shall only be exposed to the credit risk of a securitisation position in its trading book or non-trading book if the originator, sponsor or original lender has explicitly disclosed to the credit institution that it will retain, on an ongoing basis, a material net economic interest which, in any event shall not be less than 5%.

The text clarifies the meaning of retention of net economic interest. This shall be measured at the origination and shall be maintained on an on-going basis. It shall not be subject to any credit risk mitigation or any short positions or any other hedge. The net economic interest shall be determined by the notional value for off-balance sheet items.

Credit institutions shall regularly perform their own stress tests appropriate to their securitisation positions. To this end, credit institutions may rely on financial models developed by an External Credit Assessment Institution (ECAI) provided that credit institutions can demonstrate, when requested, that they took due care prior to investing to validate the relevant assumptions in and structuring of the models and to understand methodology, assumptions and results.

Credit institutions shall have a thorough understanding of all structural features of a securitisation transaction that would materially impact the performance of their exposures to the transaction such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definition of default.

The Committee of European Banking Supervisors shall elaborate guidelines for the convergence of supervisory practices, including the measures taken in case of breach of the due diligence and risk management obligations.

Developing current supervisory arrangements: colleges of supervisors are a further and important step forward in streamlining EU supervisory cooperation and convergence. Cooperation between supervisory authorities, dealing with groups and holdings and their subsidiaries and branches, in colleges is a phase in a development towards further regulatory convergence and supervisory integration.

Trust between supervisors and respect for their respective responsibilities is essential. In the event of a conflict between members of a college linked to those different responsibilities, neutral and independent advice, mediation and conflict resolving mechanisms at Community level are essential.

Report: the Commission should report to the European Parliament and the Council and propose appropriate legislation needed to tackle the shortcomings identified regarding the provisions related to further supervisory integration at the latest by 31 December 2009, having in mind that a stronger role for an EU level supervisory system should be achieved at the latest by 31 December 2011.

The Commission shall review, inter alia: (i) the need for further reform of the supervisory system; (ii) the progress made by the Committee of European Banking Supervisors towards uniform formats, frequencies and dates of reporting; (iii) the application of the provisions of the Directive to microcredit finance; (iv) whether exemptions should be a matter of national discretion; (v) measures to enhance transparency of OTC markets, including the credit-default swap (CDS) markets, such as by clearing through central counterparties (CCPs).

By 1 January 2012, the Commission shall report to the European Parliament and the Council on the application and effectiveness of Article 122a (securitisation) in the light of international market developments.

Transposition: Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 October 2010 at the latest and shall apply those provisions from 31 December 2010.

## Financial markets: banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

---

The Council approved conclusions on the reform of the European supervisory framework for financial markets and agreed to submit them to the European Council (18-19 June) along with certain issues that remain outstanding.

The conclusions set out the Council's position on a communication from the Commission on the European financial supervision in Europe (see COM(2009)0252) which builds on the recommendations of the De Larosière group.

The new framework is aimed at strengthening the supervisory system and rebuilding trust in the financial system following the global financial crisis. It involves the creation of:

- a) a European Systemic Risk Board to continuously assess the stability of the financial system as a whole. Where necessary, it will issue risk warnings and recommendations to policy makers and supervisors, and monitor their follow-up;
- b) three European supervisory authorities, dealing with the banking, insurance and securities industries, working in a network with national supervisors, inter alia in preparing technical standards, ensuring the consistent application of EU law and resolving disputes between national supervisors.

On the establishment of a European Systemic Risk Board: the Council agrees that an independent macro-prudential body covering all financial sectors, the European Systemic Risk Board (ESRB), should be established - without legal personality - and charged with defining and analysing all the information relevant for identifying, monitoring and assessing potential threats and risks to financial stability in the EU that arise from macro-economic developments and developments within the financial system as a whole, without prejudice to the role and responsibilities of existing bodies.

On the establishment of a European System of Financial Supervisors: the Council agrees that the recommendation by the de Larosière Group to establish a European System of Financial Supervisors (ESFS) should be carried out and completed without delay. It recommends that a European System of Financial Supervisors be established as an operational European network with shared and mutually reinforcing responsibilities.

The Council considers that the ESAs should be entrusted with the following tasks and powers:

- ensure that a single set of harmonised rules and consistent supervisory practices is applied by national supervisors;
- draw up non-binding standards, recommendations and interpretative guidelines;
- ensure a common supervisory culture and consistent supervisory practices;
- collect micro-prudential information;
- ensuring consistent application of EU rules, in cases to be further clearly specified in Community legislation such as: (a) manifest breach of EU law or ESAs' standards; (b) disagreement between national supervisors or within a college of supervisors;
- use full supervisory powers for some specific pan-European entities;
- ensure a coordinated response in crisis situations.

The Council stresses that ensuring the ESAs independence vis-à-vis national authorities other than supervisors and vis-à-vis the European Institutions will be crucial. It supports the acceleration of work to build a comprehensive cross-border framework to strengthen the EU financial crisis management systems and calls on the Commission to bring forward appropriate proposals in this regard, including on guarantee schemes and winding up of financial institutions.

The Commission is invited to present all necessary proposals by early autumn 2009 at the latest. The draft legislation for the setting up of the ESRB and the ESAs should specify the organisational and structural aspects, and the mechanism through which the ESRB and the ESAs should work in close cooperation. The aim should be to have the new European Financial Supervision system, comprising both macro-prudential and micro-prudential components, fully in place in the course of 2010.

## Financial markets: banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

---

**PURPOSE:** to tighten up the rules on own funds applicable to banks in response to the shortcomings that have been revealed by the financial crisis.

**LEGISLATIVE ACT:** Directive 2009/111/EC of the European Parliament and of the Council amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

**CONTENT:** the Council adopted a directive updating the EU's capital requirements for banks, following an agreement reached with the European Parliament in first reading. This Directive follows on from calls from the European Council and the G20 to address various shortcomings and is one of a series of initiatives taken in response to the financial crisis that includes:

- A [regulation on credit rating agencies](#),
- A [regulation on cross-border payments](#),
- A [directive on electronic money](#), and
- A [decision](#) establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing.

The directive is aimed at tightening up the rules on capital requirements for banks, in response to specific weaknesses identified in the light of the financial crisis. It amends directives 2006/48/EC relating to the taking up and pursuit of the business of credit institutions and 2006/49/EC on the capital adequacy of investment firms and credit institutions in five key areas:

1) strengthening the supervision of cross-border banking groups:

close coordination is required between the supervisor of the member state where the parent undertaking is located and the supervisors of its subsidiaries with regard to decisions relating to risk assessment and additional capital requirements;

reporting requirements will be fully harmonised at European level in 2012;

colleges of supervisors, chaired by the supervisor of the parent undertaking, will be established for all cross-border groups;

the role of the Committee of European Banking Supervisors (CEBS) is strengthened;

the mandates of national supervisory authorities are given a European dimension;

2) improving the framework for securitisation practices: in order to remedy the faults of the "originate to distribute" model, due diligence and transparency obligations imposed on the originators of securitisation operations and on investors are strengthened. Investors should be able to assess the risks involved in structured products otherwise than solely by the means of the ratings given by agencies. In order to encourage better risk assessment, the text introduces the obligation for originators to retain on their balance sheets 5% of risks transferred or sold to investors. Credit institutions shall regularly perform their own stress tests appropriate to their securitisation positions. Credit institutions shall have a thorough understanding of all structural features of a securitisation transaction that would materially impact the performance of their exposures to the transaction such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definition of default;

3) harmonising the classification of banks' "tier 1" capital funds and hybrid instruments, with a central role given to CEBS in ensuring greater uniformity of supervisors' practices;

4) introducing rules on liquidity risk management, in particular as regards the setting up of liquid asset reserves, conducting liquidity stress tests and establishing contingency plans;

5) tightening the supervision of exposure to a single counterparty ("large exposures"): the text establishes arrangements that place a greater restriction on the extent of exposure to a single counterparty, whatever its nature, including when it is a bank (in all cases, the limit is 25% of banks' own funds).

Within the current framework, concentration limits for bank counterparties are less restrictive than for "undertaking" counterparties, yet the financial crisis has shown that bank counterparties also present a risk of default. The text states that a credit institution shall not incur an exposure to a client or group of connected clients the value of which exceeds 25% of its own funds. Where that client is an institution or where a group of connected clients includes one or more institutions, that value shall not exceed 25% of the credit institution's own funds or EUR 150 million, whichever is the higher.

Where the amount of EUR 150 million is higher than 25% of the credit institution's own funds, the value of the exposure shall not exceed a reasonable limit in terms of the credit institution's own funds. That limit shall be determined by credit institutions to address and control concentration risk, and shall not be higher than 100% of the credit institution's own funds.

College of Supervisors: for the purpose of strengthening the crisis management framework of the Community, it is essential that competent

authorities coordinate their actions with other competent authorities and, where appropriate, with central banks in an efficient way, including with the aim of mitigating systemic risk. In order to strengthen the efficiency of the prudential supervision of a banking group on a consolidated basis, provision is made for supervisory activities to be coordinated in a more effective manner. The establishment of Colleges of Supervisors should be an instrument for stronger cooperation by means of which competent authorities reach agreement on key supervisory tasks. The Colleges of Supervisors should facilitate the handling of ongoing supervision and emergency situations.

Trust between supervisors and respect for their respective responsibilities is essential. In the event of a conflict between members of a college linked to those different responsibilities, neutral and independent advice, mediation and conflict-resolving mechanisms at Community level are essential.

Reports: before 31 December 2009, the Commission shall review this Directive as a whole to address the need for better analysis of and response to macro-prudential problems. It will submit a report on the above issues to the European Parliament and to the Council with any appropriate proposals. It will also submit a report on the need for further reform of the supervisory system.

By 31 December 2009, the Commission shall review and report on measures to enhance transparency of OTC markets, including the credit default swap markets, such as by clearing through central counterparties.

By 1 January 2011, the Commission shall review the progress made by the Committee of European Banking Supervisors towards uniform formats, frequencies and dates of reporting. In light of that review, the Commission shall report to the European Parliament and the Council.

By 31 December 2011, the Commission shall review and report on the application of this Directive in regard to its application to microcredit finance and the question as to whether exemptions should be a matter of national discretion.

By 1 January 2012, the Commission shall report on the application and effectiveness of Article 122a (securitisation) in the light of international market developments.

ENTRY INTO FORCE: 07/12/2009.

TRANSPOSITION: 31/10/2010.

APPLICATION: from 31/12/2010.