

Directive 2006/48/EC of the European Parliament and of the council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance) (repealed)

TITLE V

PRINCIPLES AND TECHNICAL INSTRUMENTS FOR PRUDENTIAL SUPERVISION AND DISCLOSURE

CHAPTER 2

Technical instruments of prudential supervision

Section 5

Large exposures

Article 106

1 'Exposures', for the purposes of this Section, shall mean any asset or off-balance sheet item referred to in Section 3, Subsection 1, without application of the risk weights or degrees of risk there provided for.

Exposures arising from the items referred to in Annex IV shall be calculated in accordance with one of the methods set out in Annex III. For the purposes of this Section, Annex III, Part 2, point 2 shall also apply.

All elements entirely covered by own funds may, with the agreement of the competent authorities, be excluded from the determination of exposures, provided that such own funds are not included in the credit institution's own funds for the purposes of Article 75 or in the calculation of other monitoring ratios provided for in this Directive and in other Community acts.

- 2 Exposures shall not include either of the following:
- a in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the 48 hours following payment; or
 - b in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during the five working days following payment or delivery of the securities, whichever is the earlier.

Article 107

For the purposes of applying this Section, the term 'credit institution' shall cover the following:

- (a) a credit institution, including its branches in third countries; and
- (b) any private or public undertaking, including its branches, which meets the definition of 'credit institution' and has been authorised in a third country.

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Article 108

A credit institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10 % of its own funds.

Article 109

The competent authorities shall require that every credit institution have sound administrative and accounting procedures and adequate internal control mechanisms for the purposes of identifying and recording all large exposures and subsequent changes to them, in accordance with this Directive, and for that of monitoring those exposures in the light of each credit institution's own exposure policies.

Article 110

1 A credit institution shall report every large exposure to the competent authorities. Member States shall provide that reporting is to be carried out, at their discretion, in accordance with one of the following two methods:

- a reporting of all large exposures at least once a year, combined with reporting during the year of all new large exposures and any increases in existing large exposures of at least 20 % with respect to the previous communication; or
- b reporting of all large exposures at least four times a year.

2 Except in the case of credit institutions relying on Article 114 for the recognition of collateral in calculating the value of exposures for the purposes of paragraphs 1, 2 and 3 of Article 111, exposures exempted under Article 113(3)(a) to (d) and (f) to (h) need not be reported as laid down in paragraph 1 and the reporting frequency laid down in point (b) of paragraph 1 of this Article may be reduced to twice a year for the exposures referred to in Article 113(3)(e) and (i), and in Articles 115 and 116.

Where a credit institution invokes this paragraph, it shall keep a record of the grounds advanced for at least one year after the event giving rise to the dispensation, so that the competent authorities may establish whether it is justified.

3 Member States may require credit institutions to analyse their exposures to collateral issuers for possible concentrations and where appropriate take action or report any significant findings to their competent authority.

Article 111

1 A credit institution may not incur an exposure to a client or group of connected clients the value of which exceed 25 % of its own funds.

2 Where that client or group of connected clients is the parent undertaking or subsidiary of the credit institution and/or one or more subsidiaries of that parent undertaking, the percentage laid down in paragraph 1 shall be reduced to 20 %. Member States may, however, exempt the exposures incurred to such clients from the 20 % limit if they provide for specific monitoring of such exposures by other measures or procedures. They shall inform the Commission and the European Banking Committee of the content of such measures or procedures.

3 A credit institution may not incur large exposures which in total exceed 800 % of its own funds.

4 A credit institution shall at all times comply with the limits laid down in paragraphs 1, 2 and 3 in respect of its exposures. If in an exceptional case exposures exceed those limits, that fact shall be reported without delay to the competent authorities which may, where the

circumstances warrant it, allow the credit institution a limited period of time in which to comply with the limits.

Article 112

1 For the purposes of Articles 113 to 117, the term ‘guarantee’ shall include credit derivatives recognised under Articles 90 to 93 other than credit linked notes.

2 Subject to paragraph 3, where, under Articles 113 to 117, the recognition of funded or unfunded credit protection may be permitted, this shall be subject to compliance with the eligibility requirements and other minimum requirements, set out under Articles 90 to 93 for the purposes of calculating risk-weighted exposure amounts under Articles 78 to 83.

3 Where a credit institution relies upon Article 114(2), the recognition of funded credit protection shall be subject to the relevant requirements under Articles 84 to 89.

Article 113

1 Member States may impose limits more stringent than those laid down in Article 111.

2 Member States may fully or partially exempt from the application of Article 111(1), (2) and (3) exposures incurred by a credit institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the credit institution itself is subject, in accordance with this Directive or with equivalent standards in force in a third country.

3 Member States may fully or partially exempt the following exposures from the application of Article 111:

- a asset items constituting claims on central governments or central banks which, unsecured, would be assigned a 0 % risk weight under Articles 78 to 83;
- b asset items constituting claims on international organisations or multilateral development banks which, unsecured, would be assigned a 0 % risk weight under Articles 78 to 83;
- c asset items constituting claims carrying the explicit guarantees of central governments, central banks, international organisations, multilateral development banks or public sector entities, where unsecured claims on the entity providing the guarantee would be assigned a 0 % risk weight under Articles 78 to 83;
- d other exposures attributable to, or guaranteed by, central governments, central banks, international organisations, multilateral development banks or public sector entities, where unsecured claims on the entity to which the exposure is attributable or by which it is guaranteed would be assigned a 0 % risk weight under Articles 78 to 83;
- e asset items constituting claims on and other exposures to central governments or central banks not mentioned in point (a) which are denominated and, where applicable, funded in the national currencies of the borrowers;
- f asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of debt securities issued by central governments or central banks, international organisations, multilateral development banks, Member States' regional governments, local authorities or public sector entities, which securities constitute claims on their issuer which would be assigned a 0 % risk weighting under Articles 78 to 83;
- g asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of cash deposits placed with the lending credit institution or with a credit institution which is the parent undertaking or a subsidiary of the lending institution;

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- h asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of certificates of deposit issued by the lending credit institution or by a credit institution which is the parent undertaking or a subsidiary of the lending credit institution and lodged with either of them;
- i asset items constituting claims on and other exposures to institutions, with a maturity of one year or less, but not constituting such institutions' own funds;
- j asset items constituting claims on and other exposures to those institutions which are not credit institutions but which fulfil the conditions referred to in Annex VI, Part 1, point 85, with a maturity of one year or less, and secured in accordance with the same point;
- k bills of trade and other similar bills, with a maturity of one year or less, bearing the signatures of other credit institutions;
- l covered bonds falling within the terms of Annex VI, Part 1, points 68 to 70;
- m pending subsequent coordination, holdings in the insurance companies referred to in Article 122(1) up to 40 % of the own funds of the credit institution acquiring such a holding;
- n asset items constituting claims on regional or central credit institutions with which the lending credit institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash# clearing operations within the network;
- o exposures secured, to the satisfaction of the competent authorities, by collateral in the form of securities other than those referred to in point (f);
- p loans secured, to the satisfaction of the competent authorities, by mortgages on residential property or by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation and leasing transactions under which the lessor retains full ownership of the residential property leased for as long as the lessee has not exercised his option to purchase, in all cases up to 50 % of the value of the residential property concerned;
- q the following, where they would receive a 50 % risk weight under Articles 78 to 83, and only up to 50 % of the value of the property concerned:
 - (i) exposures secured by mortgages on offices or other commercial premises, or by shares in Finnish housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of offices or other commercial premises; and
 - (ii) exposures related to property leasing transactions concerning offices or other commercial premises;

for the purposes of point (ii), until 31 December 2011, the competent authorities of each Member State may allow credit institutions to recognise 100 % of the value of the property concerned. At the end of this period, this treatment shall be reviewed. Member States shall inform the Commission of the use they make of this preferential treatment;
- r 50 % of the medium/low#risk off#balance#sheet items referred to in Annex II;
- s subject to the competent authorities' agreement, guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions, subject to a weighting of 20 % of their amount; and
- t the low#risk off#balance#sheet items referred to in Annex II, to the extent that an agreement has been concluded with the client or group of connected clients under which the exposure may be incurred only if it has been ascertained that it will not cause the limits applicable under Article 111(1) to (3) to be exceeded.

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Cash received under a credit linked note issued by the credit institution and loans and deposits of a counterparty to or with the credit institution which are subject to an on# balance sheet netting agreement recognised under Articles 90 to 93 shall be deemed to fall under point (g).

For the purposes of point (o), the securities used as collateral shall be valued at market price, have a value that exceeds the exposures guaranteed and be either traded on a stock exchange or effectively negotiable and regularly quoted on a market operated under the auspices of recognised professional operators and allowing, to the satisfaction of the competent authorities of the Member State of origin of the credit institution, for the establishment of an objective price such that the excess value of the securities may be verified at any time. The excess value required shall be 100 %. It shall, however, be 150 % in the case of shares and 50 % in the case of debt securities issued by institutions, Member State regional governments or local authorities other than those referred to in sub#point (f), and in the case of debt securities issued by multilateral development banks other than those assigned a 0 % risk weight under Articles 78 to 83. Where there is a mismatch between the maturity of the exposure and the maturity of the credit protection, the collateral shall not be recognised. Securities used as collateral may not constitute credit institutions' own funds.

For the purposes of point (p), the value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of strict valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once a year. For the purposes of point (p), residential property shall mean a residence to be occupied or let by the borrower.

Member States shall inform the Commission of any exemption granted under point (s) in order to ensure that it does not result in a distortion of competition.

Article 114

1 Subject to paragraph 3, for the purposes of calculating the value of exposures for the purposes of Article 111(1) to (3) Member States may, in respect of credit institutions using the Financial Collateral Comprehensive Method under Articles 90 to 93, in the alternative to availing of the full or partial exemptions permitted under points (f), (g), (h), and (o) of Article 113(3), permit such credit institutions to use a value lower than the value of the exposure, but no lower than the total of the fully#adjusted exposure values of their exposures to the client or group of connected clients.

For these purposes, 'fully adjusted exposure value' means that calculated under Articles 90 to 93 taking into account the credit risk mitigation, volatility adjustments, and any maturity mismatch (E*).

Where this paragraph is applied to a credit institution, points (f), (g), (h), and (o) of Article 113(3) shall not apply to the credit institution in question.

2 Subject to paragraph 3, a credit institution permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 may be permitted, where it is able to the satisfaction of the competent authorities to estimate the effects of financial collateral on their exposures separately from other LGD#relevant aspects, to recognise such effects in calculating the value of exposures for the purposes of Article 111(1) to (3).

Competent authorities shall be satisfied as to the suitability of the estimates produced by the credit institution for use for the reduction of the exposure value for the purposes of compliance with the provisions of Article 111.

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Where a credit institution is permitted to use its own estimates of the effects of financial collateral, it shall do so on a basis consistent with the approach adopted in the calculation of capital requirements.

Credit institutions permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 which do not calculate the value of their exposures using the method referred to in the first subparagraph may be permitted to use the approach set out in paragraph 1 or the exemption set out in Article 113(3)(o) for calculating the value of exposures. A credit institution shall use only one of these two methods.

3 A credit institution that is permitted to use the methods described in paragraphs 1 and 2 in calculating the value of exposures for the purposes of Article 111(1) to (3), shall conduct periodic stress tests of their credit-risk concentrations, including in relation to the realisable value of any collateral taken.

These periodic stress tests shall address risks arising from potential changes in market conditions that could adversely impact the credit institutions' adequacy of own funds and risks arising from the realisation of collateral in stressed situations.

The credit institution shall satisfy the competent authorities that the stress tests carried out are adequate and appropriate for the assessment of such risks.

In the event that such a stress test indicates a lower realisable value of collateral taken than would be permitted to be taken into account under paragraphs 1 and 2 as appropriate, the value of collateral permitted to be recognised in calculating the value of exposures for the purposes of Article 111(1) to (3) shall be reduced accordingly.

Such credit institutions shall include the following in their strategies to address concentration risk:

- a policies and procedures to address risks arising from maturity mismatches between exposures and any credit protection on those exposures;
- b policies and procedures in the event that a stress test indicates a lower realisable value of collateral than taken into account under paragraphs 1 and 2; and
- c policies and procedures relating to concentration risk arising from the application of credit risk mitigation techniques, and in particular large indirect credit exposures, for example to a single issuer of securities taken as collateral.

4 Where the effects of collateral are recognised under the terms of paragraphs 1 or 2, Member States may treat any covered Part of the exposure as having been incurred to the collateral issuer rather than to the client.

Article 115

1 For the purposes of Article 111(1) to (3), Member States may assign a weighting of 20 % to asset items constituting claims on Member States' regional governments and local authorities where those claims would be assigned a 20 % risk weight under Articles 78 to 83 and to other exposures to or guaranteed by such governments and authorities claims on which are assigned a 20 % risk weight under Articles 78 to 83. However, Member States may reduce that rate to 0 % in respect of asset items constituting claims on Member States' regional governments and local authorities where those claims would be assigned a 0 % risk weight under Article 78 to 83 and to other exposures to or guaranteed by such governments and authorities claims on which are assigned a 0 % risk weight under Articles 78 to 83.

2 For the purposes of Article 111(1) to (3), Member States may assign a weighting of 20 % to asset items constituting claims on and other exposures to institutions with a maturity of more than one but not more than three years and a weighting of 50 % to asset items constituting

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claims on institutions with a maturity of more than three years, provided that the latter are represented by debt instruments that were issued by a institution and that those debt instruments are, in the opinion of the competent authorities, effectively negotiable on a market made up of professional operators and are subject to daily quotation on that market, or the issue of which was authorised by the competent authorities of the Member State of origin of the issuing institutions. In no case may any of these items constitute own funds.

Article 116

By way of derogation from Article 113(3)(i) and Article 115(2), Member States may assign a weighting of 20 % to asset items constituting claims on and other exposures to institutions, regardless of their maturity.

Article 117

1 Where an exposure to a client is guaranteed by a third party, or by collateral in the form of securities issued by a third party under the conditions laid down in Article 113(3)(o), Member States may:

- a treat the exposure as having been incurred to the guarantor rather than to the client; or
- b treat the exposure as having been incurred to the third party rather than to the client, if the exposure defined in Article 113(3)(o) is guaranteed by collateral under the conditions there laid down.

2 Where Member States apply the treatment provided for in point (a) of paragraph 1:

- a where the guarantee is denominated in a currency different from that in which the exposure is denominated the amount of the exposure deemed to be covered will be calculated in accordance with the provisions on the treatment of currency mismatch for unfunded credit protection in Annex VIII;
- b a mismatch between the maturity of the exposure and the maturity of the protection will be treated in accordance with the provisions on the treatment of maturity mismatch in Annex VIII; and
- c partial coverage may be recognised in accordance with the treatment set out in Annex VIII.

Article 118

Where compliance by a credit institution on an individual or sub#consolidated basis with the obligations imposed in this Section is disapplied under Article 69(1), or the provisions of Article 70 are applied in the case of parent credit institutions in a Member State, measures must be taken to ensure the satisfactory allocation of risks within the group.

Article 119

By 31 December 2007, the Commission shall submit to the European Parliament and to the Council a report on the functioning of this Section, together with any appropriate proposals.