

Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 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 (Text with EEA relevance)

DIRECTIVE 2009/111/EC OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

of 16 September 2009

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>(1)</sup>,

Having regard to the opinion of the European Central Bank<sup>(2)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(3)</sup>,

Whereas:

- (1) In accordance with the European Council and Ecofin Conclusions and international initiatives such as the Group of Twenty (G-20) summit on 2 April 2009, this Directive represents a first important step to address shortcomings revealed by the financial crisis ahead of further initiatives announced by the Commission and set out in Commission Communication of 4 March 2009 entitled 'Driving European recovery'.
- (2) Article 3 of 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<sup>(4)</sup> allows Member States to provide for special prudential regimes for credit institutions which are permanently affiliated to a central body since 15 December 1977, provided that those regimes were introduced into national law by 15 December 1979. Those time limits prevent Member States, especially those which acceded to the European Union since 1980, from introducing or maintaining such special prudential regimes for similarly affiliated credit institutions which were set up on their territories. It is therefore appropriate to remove the time limits set out in Article 3 of that Directive, in order to ensure equal conditions for competition between credit institutions in Member States.

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The Committee of European Banking Supervisors should provide for guidelines in order to enhance the convergence of supervisory practices in this regard.

- (3) Hybrid capital instruments play an important role in the ongoing capital management of credit institutions. Those instruments allow credit institutions to achieve a diversified capital structure and to access a wide range of financial investors. On 28 October 1998, the Basel Committee on Banking Supervision adopted an agreement on both the eligibility criteria and limits to inclusion of certain types of hybrid capital instruments in original own funds of credit institutions.
- (4) It is therefore important to lay down criteria for those capital instruments to be eligible for original own funds of credit institutions and to align the provisions in Directive 2006/48/EC to that agreement. The amendments to Annex XII to Directive 2006/48/EC result directly from the establishment of those criteria. Original own funds referred to in Article 57(a) of Directive 2006/48/EC should include all instruments that are regarded under national law as equity capital, rank *pari passu* with ordinary shares during liquidation and fully absorb losses on a going-concern basis *pari passu* with ordinary shares. It should be possible for those instruments to include instruments providing preferential rights for dividend payment on a non-cumulative basis, provided that they are included in Article 22 of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions<sup>(5)</sup>, rank *pari passu* with ordinary shares during liquidation and fully absorb losses on a going-concern basis *pari passu* with ordinary shares. Original own funds referred to in Article 57(a) of Directive 2006/48/EC should also include any other instrument under a credit institution's statutory terms taking into account the specific constitution of mutuals, cooperative societies and similar institutions and which are deemed equivalent to ordinary shares in terms of their capital qualities in particular as regards loss absorption. Instruments that do not rank *pari passu* with ordinary shares during liquidation or which do not absorb losses on a going-concern basis *pari passu* with ordinary shares should be included in the category of hybrids referred to in Article 57(ca) of Directive 2006/48/EC.
- (5) In order to avoid disruption of markets and to ensure continuity in overall levels of own funds it is appropriate to provide for specific transitional arrangements for the new regime on capital instruments. Once recovery is assured, the quality of original own funds should be further enhanced. In this regard, the Commission should report to the European Parliament and the Council together with any appropriate proposals by 31 December 2011.
- (6) 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, supervisory activities should be coordinated in a more effective manner. Colleges of Supervisors should therefore be established. The establishment of Colleges of Supervisors should not affect the rights and responsibilities of the competent authorities under Directive 2006/48/

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EC. Their establishment 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. The consolidating supervisor should, in association with the other members of the college, be able to decide to organise meetings or activities that are not of general interest and should therefore be able to streamline the attendance as appropriate.

- (7) The mandates of competent authorities should take into account, in an appropriate way, the Community dimension. Competent authorities should therefore duly consider the effect of their decisions on the stability of the financial system in all other Member States concerned. Subject to national law, that principle should be understood as a broad objective for promoting financial stability across the European Union and should not legally bind competent authorities to achieve a specific result.
- (8) The competent authorities should be able to participate in colleges established for the supervision of credit institutions having their parent in a third country. The Committee of European Banking Supervisors should, where necessary, provide for guidelines and recommendations in order to enhance the convergence of supervisory practices pursuant to Directive 2006/48/EC. In order to avoid inconsistencies and regulatory arbitrage, which could result from differences in the approaches and rules applied by the various colleges and the application of discretion by Member States, guidelines on the procedures and rules governing colleges should be developed by the Committee of European Banking Supervisors.
- (9) Article 129(3) of Directive 2006/48/EC should not change the allocation of responsibilities between competent supervisory authorities on a consolidated, sub-consolidated and individual basis.
- (10) Information deficits between the home and the host competent authorities may prove detrimental to the financial stability in host Member States. The information rights of host supervisors, in particular in a crisis involving significant branches, should therefore be reinforced. For that purpose, the notion of significant branches should be defined. The competent authorities should transmit information which is essential for the pursuance of the tasks of central banks and of Ministries of Finance with respect to financial crises and systemic risk mitigation.
- (11) The current supervisory arrangements should be subject to further developments. Colleges of Supervisors are a further and important step forward in streamlining European Union's supervisory cooperation and convergence.
- (12) Cooperation between supervisory authorities, dealing with groups and holdings and their subsidiaries and branches, by means of 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.

- (13) The crisis in international financial markets has demonstrated that it is appropriate to examine further the need for reform of the regulatory and supervisory model of the European Union's financial sector.
- (14) The Commission announced in its Communication of 29 October 2008 entitled 'From financial crisis to recovery: A European framework for action', that it had set up a group of experts, chaired by Mr Jacques de Larosière (the de Larosière Group), to consider the organisation of European financial institutions to ensure prudential soundness, the orderly functioning of markets and stronger European cooperation on financial stability oversight, early warning mechanisms and crisis management, including the management of cross-border and cross-sectoral risks, and also to look at cooperation between the European Union and other major jurisdictions to help safeguard financial stability at the global level.
- (15) In order to achieve the necessary level of supervisory convergence and cooperation at the European Union level, and to underpin the stability of the financial system, further wide-ranging reforms of the regulatory and supervisory model of the European Union's financial sector are highly needed and should be put forward swiftly by the Commission, with due consideration of the conclusions presented by the de Larosière Group on 25 February 2009.
- (16) By 31 December 2009, 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, taking into account that a stronger role for a European Union level supervisory system should be achieved by 31 December 2011.
- (17) Excessive concentration of exposures to a single client or group of connected clients may result in an unacceptable risk of loss. Such a situation could be considered prejudicial to the solvency of a credit institution. The monitoring and control of the large exposures of a credit institution should therefore be an integral part of its supervision.
- (18) The current large exposures regime dates back to 1992. Therefore, the existing requirements on large exposures set out in Directive 2006/48/EC and in 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<sup>(6)</sup> should be reviewed.
- (19) Since credit institutions in the internal market are engaged in direct competition, the essential rules for the monitoring and control of the large exposures of credit institutions should be further harmonised. In order to reduce the administrative burden on credit institutions, the number of options for Member States as far as large exposures are concerned should be reduced.
- (20) In determining the existence of a group of connected clients and thus exposures constituting a single risk, it is also important to take into account risks arising from a common source of significant funding provided by the credit institution or investment firm itself, its financial group or its connected parties.

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- (21) While it is desirable to base the calculation of the exposure value on that provided for the purposes of minimum own funds requirements, it is appropriate to adopt rules for the monitoring of large exposures without applying risk weightings or degrees of risk. Moreover, the credit risk mitigation techniques applied in the solvency regime were designed with the assumption of a well-diversified credit risk. In the case of large exposures dealing with single name concentration risk, credit risk is not well-diversified. The effects of those techniques should therefore be subject to prudential safeguards. In this context, it is necessary to provide for an effective recovery of credit protection for the purposes of large exposures.
- (22) Since a loss arising from an exposure to a credit institution or an investment firm can be as severe as a loss from any other exposure, such exposures should be treated and reported in the same manner as any other exposures. However, an alternative quantitative limit has been introduced to alleviate the disproportionate impact of such an approach on smaller institutions. In addition, very short-term exposures related to money transmission including the execution of payment services, clearing, settlement and custody services to clients are exempt to facilitate the smooth functioning of financial markets and of the related infrastructure. Those services cover, for example, the execution of cash clearing and settlement and similar activities to facilitate settlement. The related exposures include exposures which might not be foreseeable and are therefore not under the full control of a credit institution, inter alia, balances on inter-bank accounts resulting from client payments, including credited or debited fees and interest, and other payments for client services, as well as collateral given or received.
- (23) The provisions related to external credit assessment institutions (ECAIs) under Directive 2006/48/EC should be consistent with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies<sup>(7)</sup>. In particular, the Committee of European Banking Supervisors should review its guidelines on the recognition of ECAIs to avoid duplication of work and reduce the burden of the recognition process where an ECAI is registered as a credit rating agency (CRA) at Community level.
- (24) It is important that the misalignment between the interest of firms that ‘re-package’ loans into tradable securities and other financial instruments (originators or sponsors) and firms that invest in these securities or instruments (investors) be removed. It is also important that the interests of the originator or sponsor and the interests of investors be aligned. To achieve this, the originator or sponsor should retain a significant interest in the underlying assets. It is therefore important for the originators or the sponsors to retain exposure to the risk of the loans in question. More generally, securitisation transactions should not be structured in such a way as to avoid the application of the retention requirement, in particular through any fee or premium structure or both. Such retention should be applicable in all situations where the economic substance of a securitisation according to the definition of Directive 2006/48/EC is applicable, whatever legal structures or instruments are used to obtain this economic substance. In particular where credit risk is transferred by securitisation, investors should make their

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decisions only after conducting thorough due diligence, for which they need adequate information about the securitisations.

- (25) The measures to address the potential misalignment of those structures need to be consistent and coherent in all relevant financial sector regulation. The Commission should put forward appropriate legislative proposals to ensure such consistency and coherence. There should be no multiple applications of the retention requirement. For any given securitisation it suffices that only one of the originator, the sponsor or the original lender is subject to the requirement. Similarly, where securitisation transactions contain other securitisations as an underlying, the retention requirement should be applied only to the securitisation which is subject to the investment. Purchased receivables should not be subject to the retention requirement if they arise from corporate activity where they are transferred or sold at a discount to finance such activity. Competent authorities should apply the risk weight in relation to non-compliance with due diligence and risk management obligations in relation to securitisation for non-trivial breaches of policies and procedures which are relevant to the analysis of the underlying risks.
- (26) In their Declaration on Strengthening the Financial System of 2 April 2009, the leaders of the G20 requested the Basel Committee for Banking Supervision and authorities to consider due diligence and quantitative retention requirements for securitisation by 2010. In view of those international developments, and in order best to mitigate systemic risks arising from securitisation markets, the Commission should, before the end of 2009 and after consulting the Committee of European Banking Supervisors, decide whether an increase of the retention requirement should be proposed, and whether the methods of calculating the retention requirement deliver the objective of a better alignment of the interests of the originators or sponsors and the investors.
- (27) Due diligence should be used in order properly to assess the risks arising from securitisation exposures for both the trading book and the non-trading book. In addition, due diligence obligations need to be proportionate. Due diligence procedures should contribute to building greater confidence between originators, sponsors and investors. It is therefore desirable that relevant information concerning the due diligence procedures is properly disclosed.
- (28) Member States should ensure that competent authorities have sufficient personnel and resources to comply with their supervisory obligations under Directive 2006/48/EC and that employees involved in the supervision of credit institutions in accordance with that Directive have appropriate knowledge and experience for the duties assigned.
- (29) Annex III to Directive 2006/48/EC should be adapted in order to clarify certain provisions with a view to enhancing the convergence of supervisory practices.
- (30) Recent market developments have highlighted the fact that liquidity risk management is a key determinant of the soundness of credit institutions and their branches. The criteria set out in Annex V and XI to Directive 2006/48/EC should be reinforced in order to align those provisions to the work conducted by the Committee of European Banking Supervisors and the Basel Committee on Banking Supervision.

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- (31) The measures necessary for the implementation of Directive 2006/48/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(8)</sup>.
- (32) In particular the Commission should be empowered to amend Annex III of Directive 2006/48/EC in order to take account of developments on financial markets or in accounting standards or requirements which take account of Community legislation or with regard to convergence of supervisory practice. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2006/48/EC, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (33) The financial crisis has revealed a need for a better analysis of and response to macro-prudential problems, which lie at the interface between macroeconomic policy and financial system regulation. This will include a need to examine: measures that mitigate the ups and downs of the business cycle, including the need for credit institutions to build counter-cyclical buffers in good times that can be used during a downturn, which may include the possibility of building up additional reserves, ‘dynamic provisioning’ and the possibility to reduce capital buffers during difficult times, thus ensuring adequate availability of capital over the cycle; the rationale underlying the calculation of capital requirements in Directive 2006/48/EC; supplementary measures to risk-based requirements for credit institutions to help constrain the build-up of leverage in the banking system.
- (34) By 31 December 2009, the Commission should therefore, review Directive 2006/48/EC as a whole to address those issues and present a report to the European Parliament and the Council and any appropriate proposals.
- (35) In order to ensure financial stability, the Commission should review and report on measures to enhance transparency of OTC markets, to mitigate the counterparty risks and more generally to reduce the overall risks, such as by clearing of credit default swaps through central counterparties (CCPs). The establishment and development of CCPs in the EU subject to high operational and prudential standards and effective supervision should be encouraged. The Commission should submit its report to the European Parliament and the Council together with any appropriate proposals, taking into account parallel initiatives at the global level as appropriate.
- (36) The Commission should review and report on the application of Article 113(4) of Directive 2006/48/EC including whether exemptions should be a matter of national discretion. The Commission should submit that report to the European Parliament and the Council together with any appropriate proposals. The exemptions and options should be abolished where there is no demonstrated need for their maintenance with a view of achieving single set of consistent rules across the Community.
- (37) The specific characteristics of microcredit should be taken into account in the risk assessment, and the development of microcredit should be promoted. Furthermore, given the low development of microcredit, the development of adequate rating systems

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should be promoted, including the development of standard rating systems adapted to the risks of microcredit activities. Member States should endeavour to ensure that the prudential regulation and supervision of micro-credit activities at national level are proportionate.

- (38) Since the objectives of this Directive, namely the introduction of rules concerning the taking up and pursuit of the business of credit institutions, and their prudential supervision, cannot be sufficiently achieved by the Member States because it requires the harmonisation of a multitude of different rules existing in the legal systems of the various Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (39) In accordance with point 34 of the Interinstitutional agreement on better law-making<sup>(9)</sup>, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (40) Directives 2006/48/EC, 2006/49/EC and 2007/64/EC<sup>(10)</sup> should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

### *Article 1*

#### **Amendments to Directive 2006/48/EC**

Directive 2006/48/EC is hereby amended as follows:

1. Article 3(1) is amended as follows:
  - (a) in the first subparagraph, the introductory part is replaced by the following:
    1. One or more credit institutions situated in the same Member State and which are permanently affiliated to a central body which supervises them and which is established in the same Member State, may be exempted from the requirements of Article 7 and Article 11(1) if national law provides that;
  - (b) the second and third subparagraphs are deleted;
2. Article 4 is amended as follows:
  - (a) point (6) is replaced by the following:
    - (6) “institutions” for the purposes of Sections 2, 3 and 5 of Title V, Chapter 2, means institutions as defined in Article 3(1)(c) of Directive 2006/49/EC;
  - (b) in point (45) point (b) is replaced by the following:
    - (b) two or more natural or legal persons between whom there is no relationship of control as described in point (a) but who are



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to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would also be likely to encounter funding or repayment difficulties.;

(c) the following point is added:

(48) “consolidating supervisor” means the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies.;

3. in Article 40, the following paragraph is added:

3. The competent authorities in one Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.;

4. the following Articles are inserted:

*Article 42a*

1 The competent authorities of a host Member State may make a request to the consolidating supervisor where Article 129(1) applies or to the competent authorities of the home Member State, for a branch of a credit institution to be considered as significant.

That request shall provide reasons for considering the branch to be significant with particular regard to the following:

- a whether the market share of the branch of a credit institution in terms of deposit exceeds 2 % in the host Member State;
- b the likely impact of a suspension or closure of the operations of the credit institution on market liquidity and the payment and clearing and settlement systems in the host Member State; and
- c the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

The competent authorities of the home and host Member States, and the consolidating supervisor where Article 129(1) applies, shall do everything within their power to reach a joint decision on the designation of a branch as being significant.

If no joint decision is reached within two months of receipt of a request under the first subparagraph, the competent authorities of the host Member State shall take their own decision within a further period of two months on whether the branch is significant. In taking their decision, the competent authorities of the host Member State shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home Member State.

The decisions referred to in the third and fourth subparagraph shall be set out in a document containing the fully reasoned decision and transmitted to the competent authorities concerned, and shall be recognised as determinative and applied by the competent authorities in the Member States concerned.

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The designation of a branch as being significant shall not affect the rights and responsibilities of the competent authorities under this Directive.

- 2 The competent authorities of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 132(1)(c) and (d) and carry out the tasks referred to in Article 129(1)(c) in cooperation with the competent authorities of the host Member State.

If a competent authority of a home Member State becomes aware of an emergency situation within a credit institution as referred to in Article 130(1), it shall alert as soon as practicable the authorities referred to in the fourth paragraph of Article 49 and in Article 50.

- 3 Where Article 131a does not apply, the competent authorities supervising a credit institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the cooperation under paragraph 2 of this Article and Article 42. The establishment and functioning of the college shall be based on written arrangements determined, after consultation with competent authorities concerned, by the competent authority of the home Member State. The competent authority of the home Member State shall decide which competent authorities participate in a meeting or in an activity of the college.

The decision of the competent authority of the home Member State shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 40(3) and the obligations referred to in paragraph 2 of this Article.

The competent authority of the home Member State shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The competent authority of the home Member State shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

*Article 42b*

- 1 In the exercise of their duties, the competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:
- a the competent authorities participate in the activities of the Committee of European Banking Supervisors;
  - b the competent authorities follow the guidelines, recommendations, standards and other measures agreed by the Committee of European Banking Supervisors and shall state the reasons if they do not do so;
  - c national mandates conferred on the competent authorities do not inhibit the performance by them of their duties as members of the Committee of European Banking Supervisors or under this Directive.
- 2 The Committee of European Banking Supervisors shall report to the European Parliament, the Council and the Commission on the progress made towards supervisory convergence every year starting from 1 January 2011.;
5. Article 49 is amended as follows:

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- (a) in the first paragraph, point (a) is replaced by the following:
  - (a) central banks of the European system of the central banks and other bodies with a similar function in their capacity as monetary authorities when this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;

- (b) the following paragraph is added:

In an emergency situation as referred to in Article 130(1), Member States shall allow competent authorities to communicate information to the central banks of the European system of the central banks when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system.;

6. in Article 50, the following paragraph is added:

In an emergency situation as referred to in Article 130(1), Member States shall allow competent authorities to disclose information which is relevant to the departments referred to in the first paragraph of this Article in all Member States concerned.;

7. Article 57 is amended as follows:

- (a) point (a) is replaced by the following:
  - (a) capital within the meaning of Article 22 of Directive 86/635/EEC, in so far as it has been paid up, plus the related share premium accounts, it fully absorbs losses in going concern situations, and in the event of bankruptcy or liquidation ranks after all other claims.;

- (b) the following point is inserted:

- (ca) instruments other than those referred to in point (a), which meet the requirements set out in points (a), (c), (d) and (e) of Article 63(2) and in Article 63a.;

- (c) the third paragraph is replaced by the following:

For the purposes of point (b), the Member States shall permit inclusion of interim or year-end profits before a formal decision has been taken only if these profits have been verified by persons responsible for the auditing of the accounts and if it is proved to the satisfaction of the competent authorities that the amount thereof has been evaluated in accordance with the principles set out in Directive 86/635/EEC and is net of any foreseeable charge or dividend.;

8. the first paragraph of Article 61 is replaced by the following:

The concept of own funds as defined in Article 57(a) to (h) embodies a maximum number of items and amounts. Member States may decide on the use of those items and on the deduction of items other than those listed in Article 57(i) to (r).;

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9. in Article 63(2), the following subparagraph is added:

Instruments referred to in Article 57(ca) shall comply with the requirements set out in points (a), (c), (d) and (e) of this Article.;

10. the following Article is inserted:

*Article 63a*

1 Instruments referred to in Article 57(ca) shall comply with the requirements set out in paragraphs 2 to 5 of this Article.

2 The instruments shall be undated or have an original maturity of at least 30 years. The instruments may include one or more call options at the sole discretion of the issuer, but they shall not be redeemed before five years after the date of issue. If the provisions governing undated instruments provide for a moderate incentive for the credit institution to redeem as determined by the competent authorities, such incentive shall not occur within 10 years of the date of issue. The provisions governing dated instruments shall not permit an incentive to redeem on a date other than the maturity date.

Dated and undated instruments may be called or redeemed only with the prior consent of the competent authorities. The competent authorities may grant permission provided the request is made at the initiative of the credit institution and either financial or solvency conditions of the credit institution are not unduly affected. The competent authorities may require institutions to replace the instrument by items of the same or better quality referred to in point (a) or (ca) of Article 57.

The competent authorities shall require the suspension of the redemption for dated instruments if the credit institution does not comply with the capital requirements set out in Article 75 and may require such suspension at other times based on the financial and solvency situation of credit institutions.

The competent authority may at any time grant permission for early redemption of dated or undated instruments in the event that there is a change in the applicable tax treatment or regulatory classification of such instruments which was unforeseen at the date of issue.

3 The provisions governing the instrument shall allow the credit institution to cancel, when necessary, the payment of interest or dividends for an unlimited period of time, on a non-cumulative basis.

However, the credit institution shall cancel such payments if it does not comply with the capital requirements set out in Article 75.

The competent authorities may require the cancellation of such payments based on the financial and solvency situation of the credit institution. Any such cancellation shall not prejudice the right of the credit institution to substitute the payment of interest or dividend by a payment in the form of an instrument referred to in Article 57(a), provided that any such mechanism allows the credit institution to preserve financial resources. Such substitution may be subject to specific conditions established by the competent authorities.

4 The provisions governing the instrument shall provide for principal, unpaid interest or dividend to be such as to absorb losses and to not hinder the recapitalisation of the credit institution through appropriate mechanisms, as elaborated by the Committee of European Banking Supervisors under paragraph 6.

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- 5 In the event of the bankruptcy or liquidation of the credit institution, the instruments shall rank after the items referred to in Article 63(2).
- 6 The Committee of European Banking Supervisors shall elaborate guidelines for the convergence of supervisory practices with regard to the instruments referred to in paragraph 1 of this Article and in Article 57(a) and shall monitor their application. By 31 December 2011, the Commission shall review the application of this Article and shall report to the European Parliament and the Council together with any appropriate proposals to ensure the quality of own funds.;
11. in Article 65(1), point (a) is replaced by the following:
- (a) any minority interests within the meaning of Article 21 of Directive 83/349/EEC, where the global integration method is used. Any instruments referred to in Article 57(ca), which give rise to minority interests shall meet the requirements under points (a), (c), (d) and (e) of Article 63(2) and Articles 63a and 66.;
12. Article 66 is amended as follows:
- (a) paragraphs 1 and 2 are replaced by the following:
1. The items referred to in Article 57(d) to (h) shall be subject to the following limits:
- a the total of the items referred to in Article 57(d) to (h) must not exceed a maximum of 100 % of the items in points (a) to (ca) minus (i), (j) and (k) of that Article; and
- b the total of the items referred to in Article 57(g) to (h) must not exceed a maximum of 50 % of the items in points (a) to (ca) minus (i), (j) and (k) of that Article.
- 1a Notwithstanding paragraph 1 of this Article, the total of the items in Article 57(ca) shall be subject to the following limits:
- a instruments that must be converted during emergency situations and may be converted at the initiative of the competent authority, at any time, based on the financial and solvency situation of the issuer into items referred to in Article 57(a) within a pre-determined range must in total not exceed a maximum of 50 % of the items in points (a) to (ca) minus (i), (j) and (k) of that article;
- b within the limit referred to in point (a) of this paragraph, all other instruments must not exceed a maximum of 35 % of the items in points (a) to (ca) minus (i), (j) and (k) of Article 57;
- c within the limits referred to in points (a) and (b) of this paragraph, dated instruments and instruments with provisions that provide for an incentive for the credit institution to redeem must not exceed a maximum of 15 % of the items in points (a) to (ca) minus (i), (j) and (k) of Article 57;
- d the amount of items exceeding the limits set out in points (a), (b) and (c) must be subject to the limit set out in paragraph 1 of this Article.
- 2 The total of the items referred to in Article 57(l) to (r) shall be deducted half from the total of the items referred to in points (a) to (ca) minus (i), (j) and (k) of that Article, and half from the total of the items

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referred to in points (d) to (h) of that Article, after application of the limits laid down in paragraph 1 of this Article. To the extent that half of the total of the items (l) to (r) of Article 57 exceeds the total of the items (d) to (h) of that Article, the excess shall be deducted from the total of the items (a) to (ca) minus (i), (j) and (k) of that Article. Items referred to in Article 57(r) shall not be deducted if they have been included in the calculation of risk-weighted exposure amounts for the purposes of Article 75 as referred to in Annex IX, Part 4.;

(b) paragraph 4 is replaced by the following:

4. The competent authorities may authorise credit institutions to exceed the limits laid down in paragraphs 1 and 1a temporarily during emergency situations.;

13. the subtitle of Title V, Chapter 2, Section 2, Subsection 2 ‘Calculation of requirements’ is replaced by ‘Calculation and reporting requirements’;

14. in Article 74(2) the following subparagraph is inserted after the first subparagraph:

For the communication of those calculations by credit institutions, competent authorities shall apply, from 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 before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.;

15. Article 81(2) is replaced by the following:

2. The competent authorities shall recognise an ECAI as eligible for the purpose of Article 80 only if they are satisfied that its assessment methodology complies with the requirements of objectivity, independence, ongoing review and transparency, and that the resulting credit assessments meet the requirements of credibility and transparency. For those purposes, the competent authorities shall take into account the technical criteria set out in Annex VI, Part 2. Where an ECAI is registered as a credit rating agency in accordance with Regulation (EC) No 1060/2009 of 16 September 2009 of the European Parliament and of the Council on credit rating agencies<sup>(11)</sup>, the competent authorities shall consider the requirements of objectivity, independence, ongoing review and transparency with respect to its assessment methodology to be satisfied.;

16. Article 87 is amended as follows:

(a) paragraph 11 is replaced by the following:

11. Where exposures in the form of a collective investment undertaking (CIU) meet the criteria set out in Annex VI, Part 1, points 77 and 78 and the credit institution is aware of all or parts of the underlying exposures of the CIU, the credit institution shall look through to those underlying exposures in order to calculate risk-weighted exposure amounts and expected loss amounts in accordance with the methods set out in this Subsection. Paragraph 12 shall apply to the part of the underlying exposures of the CIU the credit institution is not aware of or could not reasonably be aware of. In particular, paragraph 12 shall apply where it would be unduly burdensome for the credit institution to look through the

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underlying exposures in order to calculate risk-weighted exposure amounts and expected loss amounts in accordance with methods set out in this Subsection.

Where the credit institution does not meet the conditions for using the methods set out in this Subsection for all or parts of the underlying exposures of the CIU, risk weighted exposure amounts and expected loss amounts shall be calculated in accordance with the following approaches:

- a for exposures belonging to the exposure class referred to in Article 86(1)(e), the approach set out in Annex VII, Part 1, points 19 to 21.
- b for all other underlying exposures, the approach set out in Articles 78 to 83, subject to the following modifications:
  - (i) for exposures subject to a specific risk weight for unrated exposures or subject to the credit quality step yielding the highest risk weight for a given exposure class, the risk weight must be multiplied by a factor of two but must not be higher than 1 250 %;
  - (ii) for all other exposures, the risk weight must be multiplied by a factor of 1,1 and must be subject to a minimum of 5 %.

Where, for the purposes of point (a), the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures. Without prejudice to Article 154(6), where those exposures, taken together with the credit institution's direct exposures in that exposure class, are not material within the meaning of Article 89(2), Article 89(1) may be applied subject to the approval of the competent authorities.;

- (b) in paragraph 12, the second subparagraph is replaced by the following:

Alternatively to the method described in the first subparagraph, credit institutions may calculate themselves or may rely on a third party to calculate and report the average risk weighted exposure amounts based on the CIU's underlying exposures in accordance with the approaches referred to in points (a) and (b) of paragraph 11, provided that the correctness of the calculation and the report is adequately ensured.;

17. in Article 89(1)(d), the introductory part is replaced by the following:

- (d) exposures to central governments of the Member States and their regional governments, local authorities and administrative bodies provided that.;

18. Article 97(2) is replaced by the following:

2. The competent authorities shall recognise an ECAI as eligible for the purpose of paragraph 1 of this Article only if they are satisfied as to its compliance with the requirements laid down in Article 81, taking into account the technical criteria set out in Annex VI, Part 2, and that it has a demonstrated ability in the area of securitisation, which may be evidenced by a strong market acceptance. Where an ECAI is registered as a credit rating agency in accordance with Regulation (EC) No 1060/2009, the competent authorities shall consider the requirements of

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objectivity, independence, ongoing review and transparency with respect to its assessment methodology to be satisfied.;

19. Article 106 is amended as follows:

(a) paragraph 2 is replaced by the following:

2. Exposures shall not include any of the following:
  - a in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the two working days following payment;
  - b in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during five working days following payment or delivery of the securities, whichever the earlier;
  - c in the case of the provision of money transmission including the execution of payment services, clearing and settlement in any currency and correspondent banking or financial instruments clearing, settlement and custody services to clients, delayed receipts in funding and other exposures arising from client activity which do not last longer than the following business day; or
  - d in the case of the provision of money transmission including the execution of payment services, clearing and settlement in any currency and correspondent banking, intra-day exposures to institutions providing those services.

The Committee of European Banking Supervisors shall provide for guidelines in order to enhance the convergence of supervisory practises in applying the exemptions in points (c) and (d).;

(b) the following paragraph is added:

3. In order to determine the existence of a group of connected clients, in respect of exposures referred to in points (m), (o) and (p) of Article 79(1), where there is an exposure to underlying assets, a credit institution shall assess the scheme, its underlying exposures, or both. For that purpose, a credit institution shall evaluate the economic substance and the risks inherent in the structure of the transaction.;

20. Article 107 is replaced by the following:

*Article 107*

For the purposes of calculating the value of exposures in accordance with this Section, the term “credit institution” also means any private or public undertaking, including its branches, which meets the definition of “credit institution” and has been authorised in a third country.;

21. Article 110 is replaced by the following:

*Article 110*

1 A credit institution shall report the following information about every large exposure to the competent authorities, including large exposures exempted from the application of Article 111(1):

- a the identification of the client or the group of connected clients to which a credit institution has a large exposure;



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- b the exposure value before taking into account the effect of the credit risk mitigation, when applicable;
- c where used, the type of funded or unfunded credit protection;
- d the exposure value after taking into account the effect of the credit risk mitigation calculated for the purpose of Article 111(1).

If a credit institution is subject to Articles 84 to 89, its 20 largest exposures on a consolidated basis, excluding those exempted from the application of Article 111(1), shall be made available to the competent authorities.

2 Member States shall provide that reporting is to be carried out at least twice a year. The competent authorities shall apply, from 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 before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

3 Member States shall require credit institutions to analyse, to the extent possible, their exposures to collateral issuers, providers of unfunded credit protection and underlying assets pursuant to Article 106(3) for possible concentrations and where appropriate take action and report any significant findings to their competent authority.;

22. Article 111 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. A credit institution shall not incur an exposure, after taking into account the effect of the credit risk mitigation in accordance with Articles 112 to 117, 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 the higher, provided that the sum of exposure values, after taking into account the effect of the credit risk mitigation in accordance with Articles 112 to 117, to all connected clients that are not institutions does not exceed 25 % of the credit institution's own funds.

Where the amount of EUR 150 million is higher than 25 % of the credit institution's own funds, the value of the exposure, after taking into account the effect of credit risk mitigation in accordance with Articles 112 to 117, shall not exceed a reasonable limit in terms of the credit institution's own funds. That limit shall be determined by credit institutions, consistently with the policies and procedures referred to in Annex V, point 7, to address and control concentration risk, and shall not be higher than 100 % of the credit institution's own funds.

Member States may set a lower limit than EUR 150 million and shall inform the Commission.;

(b) paragraphs 2 and 3 are deleted;

(c) paragraph 4 is replaced by the following:

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4. A credit institution shall at all times comply with the relevant limit laid down in paragraph 1. If, in an exceptional case, exposures exceed this limit, the value of the exposure 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 limit.

Where the amount of EUR 150 million referred to in paragraph 1 is applicable, the competent authorities may allow on a case-by-case basis the 100 % limit in terms of the credit institution's own funds to be exceeded.;

23. Article 112 is amended as follows:

(a) paragraph 2 is replaced by the following:

2. Subject to paragraph 3 of this Article, where, under Articles 113 to 117, the recognition of funded or unfunded credit protection is permitted, this shall be subject to compliance with the eligibility requirements and other minimum requirements, set out in Articles 90 to 93.;

(b) the following paragraph is added:

4. For the purpose of this Section, a credit institution shall not take into account the collateral referred to in Annex VIII, Part 1, points 20 to 22, unless permitted under Article 115.;

24. Article 113 is amended as follows:

(a) paragraphs 1 and 2 are deleted;

(b) paragraph 3 is amended as follows:

(i) the introductory part is replaced by the following:

3. The following exposures shall be exempted from the application of Article 111(1).;

(ii) points (e) and (f) are replaced by the following:

(e) asset items constituting claims on regional governments or local authorities of Member States where those claims would be assigned a 0 % risk weight under Articles 78 to 83 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 0 % risk weight under Articles 78 to 83;

(f) exposures to counterparties referred to in paragraph 7 or paragraph 8 of Article 80 if they would be assigned a 0 % risk weight under Articles 78 to 83; exposures that do not meet those criteria, whether or not exempted from Article 111(1), shall be treated as exposures to a third party.;

(iii) point (i) is replaced by the following:

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- (i) exposures arising from undrawn credit facilities that are classified as low-risk off-balance sheet items in Annex II and provided that an agreement has been concluded with the client or group of connected clients under which the facility may be drawn only if it has been ascertained that it will not cause the limit applicable under Article 111(1) to be exceeded.;
- (iv) points (j) to (t) are deleted;
- (v) the third, fourth and fifth subparagraphs are deleted;
- (c) the following paragraph is added:
  - 4. Member States may fully or partially exempt the following exposures from the application of Article 111(1):
    - a covered bonds falling within the terms of Annex VI, Part 1, points 68, 69 and 70;
    - b asset items constituting claims on regional governments or local authorities of Member States where those claims would be assigned a 20 % risk weight under Articles 78 to 83 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 20 % risk weight under Articles 78 to 83;
    - c notwithstanding paragraph 3(f) of this Article, exposures, including participations or other kinds of holdings, 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; exposures that do not meet these criteria, whether or not exempted from Article 111(1), shall be treated as exposures to a third party;
    - d asset items constituting claims on and other exposures, including participations or other kinds of holdings, to regional or central credit institutions with which the 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;
    - e asset items constituting claims on and other exposures to credit institutions incurred by credit institutions operating on a non-competitive basis, providing loans under legislative programmes or their statutes, to promote specified sectors of the economy under some form of government oversight and restrictions on the use of the loans, provided that the respective exposures arise from such loans that are passed on to the beneficiaries via other credit institutions;
    - f asset items constituting claims on and other exposures to institutions, provided that those exposures do not constitute such institutions' own funds, do not last longer than the following business day and are not denominated in a major trading currency;

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- g asset items constituting claims on central banks in the form of required minimum reserves held at those central banks which are denominated in their national currencies;
- h asset items constituting claims on central governments in the form of statutory liquidity requirements held in government securities which are denominated and funded in their national currencies provided that, at the discretion of the competent authority, the credit assessment of those central governments assigned by a nominated ECAI is investment grade;
- i 50 % of medium/low risk off-balance-sheet documentary credits and of medium/low risk off-balance sheet undrawn credit facilities referred to in Annex II, and subject to the competent authorities' agreement, 80 % of 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;
- j legally required guarantees used when a mortgage loan financed by issuing mortgage bonds is paid to the mortgage borrower before the final registration of the mortgage in the land register, provided the guarantee is not used as reducing the risk in calculating the risk weighted assets.;

25. Article 114 is amended as follows:

- (a) paragraph 1 is replaced by the following:
  - 1. Subject to paragraph 3 of this Article, for the purposes of calculating the value of exposures for the purposes of Article 111(1) a credit institution may use the “fully adjusted exposure value” as calculated under Articles 90 to 93, taking into account the credit risk mitigation, volatility adjustments, and any maturity mismatch (E\*);
- (b) paragraph 2 is amended as follows:
  - (i) the first subparagraph is replaced by the following:

Subject to paragraph 3 of this Article, a credit institution permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 shall 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).;
  - (ii) the fourth subparagraph is replaced by the following:

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 of this paragraph may use the Financial Collateral Comprehensive Method or the approach set out in Article 117(1)(b) for calculating the value of exposures.;

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- (c) paragraph 3 is amended as follows:
  - (i) the first subparagraph is replaced by the following:

A credit institution that makes use of the Financial Collateral Comprehensive Method or is permitted to use the method described in paragraph 2 of this Article in calculating the value of exposures for the purposes of Article 111(1), shall conduct periodic stress tests of their credit-risk concentrations, including in relation to the realisable value of any collateral taken.;
  - (ii) the fourth subparagraph is replaced by the following:

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 while making use of the Financial Collateral Comprehensive Method or the method described in paragraph 2 of this Article as appropriate, the value of collateral permitted to be recognised in calculating the value of exposures for the purposes of Article 111(1) shall be reduced accordingly.;
  - (iii) in the fifth subparagraph, point (b) is replaced by the following:
    - (b) policies and procedures in the event that a stress test indicates a lower realisable value of collateral than taken into account while making use of the Financial Collateral Comprehensive Method or the method described in paragraph 2; and;
- (d) paragraph 4 is deleted;

26. Article 115 is replaced by the following:

*Article 115*

1 For the purpose of this Section, a credit institution may reduce the exposure value by up to 50 % of the value of the residential property concerned, if either of the following conditions is met:

- a the exposure is secured, 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;
- b the exposure relates to a leasing transaction 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.

The value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of prudent valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once every three years for residential property.

The requirements in Annex VIII, Part 2, point 8, and in Annex VIII Part 3, points 62 to 65 shall apply for the purpose of this paragraph.

“Residential property” shall mean a residence to be occupied or let by the owner.

2 For the purpose of this Section, a credit institution may reduce the exposure value by up to 50 % of the value of the commercial property concerned only if the competent authorities concerned in the Member State where the commercial property

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is situated allow the following exposures to receive a 50 % risk weight in accordance with Articles 78 to 83:

- a 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; or
- b exposures related to property leasing transactions concerning offices or other commercial premises.

The value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of prudent valuation standards laid down by law, regulation or administrative provisions.

Commercial property shall be fully constructed, leased and produce appropriate rental income.;

27. Article 116 is deleted;

28. Article 117 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Where an exposure to a client is guaranteed by a third party, or secured by collateral issued by a third party, a credit institution may:

- a treat the portion of the exposure which is guaranteed as having been incurred to the guarantor rather than to the client provided that the unsecured exposure to the guarantor would be assigned an equal or lower risk weight than a risk weight of the unsecured exposure to the client under Articles 78 to 83;
- b treat the portion of the exposure collateralised by the market value of recognised collateral as having been incurred to the third party rather than to the client, if the exposure is secured by collateral and provided that the collateralised portion of the exposure would be assigned an equal or lower risk weight than a risk weight of the unsecured exposure to the client under Articles 78 to 83.

The approach referred to in point (b) of the first subparagraph shall not be used by a credit institution where there is a mismatch between the maturity of the exposure and the maturity of the protection.

For the purpose of this Section, a credit institution may use both the Financial Collateral Comprehensive Method and the treatment provided for in point (b) of the first subparagraph only where it is permitted to use both the Financial Collateral Comprehensive Method and the Financial Collateral Simple Method for the purposes of Article 75(a).;

(b) in paragraph 2, the introductory part is replaced by the following:

2. Where a credit institution applies paragraph 1(a).;

29. Article 119 is deleted;

30. the following Section is added in Chapter 2:

## Section 7

### Exposures to transferred credit risk

#### Article 122a

- 1 A credit institution, other than when acting as an originator, a sponsor or original lender, shall be exposed to the credit risk of a securitisation position in its trading book or non-trading book only 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 %.

For the purpose of this Article, “retention of net economic interest” means:

- a retention of no less than 5 % of the nominal value of each of the tranches sold or transferred to the investors;
- b in the case of securitisations of revolving exposures, retention of the originator’s interest of no less than 5 % of the nominal value of the securitised exposures;
- c retention of randomly selected exposures, equivalent to no less than 5 % of the nominal amount of the securitised exposures, where such exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is no less than 100 at origination; or
- d retention of the first loss tranche and, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total no less than 5 % of the nominal value of the securitised exposures.

Net economic interest is measured at the origination and shall be maintained on an ongoing 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.

For the purpose of this Article, “ongoing basis” means that retained positions, interest or exposures are not hedged or sold.

There shall be no multiple applications of the retention requirements for any given securitisation.

- 2 Where an EU parent credit institution or an EU financial holding company, or one of its subsidiaries, as an originator or a sponsor, securitises exposures from several credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirement referred to in paragraph 1 may be satisfied on the basis of the consolidated situation of the related EU parent credit institution or EU financial holding company. This paragraph shall apply only where credit institutions, investment firms or financial institutions which created the securitised exposures have committed themselves to adhere to the requirements set out in paragraph 6 and deliver, in a timely manner, to the originator or sponsor and to the EU parent credit institution or an EU financial holding company the information needed to satisfy the requirements referred to in paragraph 7.

- 3 Paragraph 1 shall not apply where the securitised exposures are claims or contingent claims on or fully, unconditionally and irrevocably guaranteed by:

- a central governments or central banks;

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- b regional governments, local authorities and public sector entities of Member States;
- c institutions to which a 50 % risk weight or less is assigned under Articles 78 to 83; or
- d multilateral development banks.

Paragraph 1 shall not apply to:

- a transactions based on a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions; or
- b syndicated loans, purchased receivables or credit default swaps where these instruments are not used to package and/or hedge a securitisation that is covered by paragraph 1.

4

Before investing, and as appropriate thereafter, credit institutions, shall be able to demonstrate to the competent authorities for each of their individual securitisation positions, that they have a comprehensive and thorough understanding of and have implemented formal policies and procedures appropriate to their trading book and non-trading book and commensurate with the risk profile of their investments in securitised positions for analysing and recording:

- a information disclosed under paragraph 1, by originators or sponsors to specify the net economic interest that they maintain, on an ongoing basis, in the securitisation;
- b the risk characteristics of the individual securitisation position;
- c the risk characteristics of the exposures underlying the securitisation position;
- d the reputation and loss experience in earlier securitisations of the originators or sponsors in the relevant exposure classes underlying the securitisation position;
- e the statements and disclosures made by the originators or sponsors, or their agents or advisors, about their due diligence on the securitised exposures and, where applicable, on the quality of the collateral supporting the securitised exposures;
- f where applicable, the methodologies and concepts on which the valuation of collateral supporting the securitised exposures is based and the policies adopted by the originator or sponsor to ensure the independence of the valuer; and
- g all the structural features of the securitisation that can materially impact the performance of the credit institution's securitisation position.

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 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.

5

Credit institutions, other than when acting as originators or sponsors or original lenders, shall establish formal procedures appropriate to their trading book and non-trading book and commensurate with the risk profile of their investments in securitised positions to monitor on an ongoing basis and in a timely manner performance information on the exposures underlying their securitisation positions. Where relevant, this shall include the exposure type, the percentage of loans more



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than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, collateral type and occupancy, and frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisation positions, credit institutions shall have the information set out in this subparagraph not only on the underlying securitisation tranches, such as the issuer name and credit quality, but also on the characteristics and performance of the pools underlying those securitisation tranches.

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.

Where the requirements in paragraphs 4, 7 and in this paragraph are not met in any material respect by reason of the negligence or omission of the credit institution, Member States shall ensure that the competent authorities impose a proportionate additional risk weight of no less than 250 % of the risk weight (capped at 1 250 %) which would, but for this paragraph, apply to the relevant securitisation positions under Annex IX, Part 4, and shall progressively increase the risk weight with each subsequent infringement of the due diligence provisions. The competent authorities shall take into account the exemptions for certain securitisations provided in paragraph 3 by reducing the risk weight it would otherwise impose under this Article in respect of a securitisation to which paragraph 3 applies.

- 6 Sponsor and originator credit institutions shall apply the same sound and well-defined criteria for credit-granting in accordance with the requirements of Annex V, point 3 to exposures to be securitised as they apply to exposures to be held on their book. To this end the same processes for approving and, where relevant, amending, renewing and re-financing credits shall be applied by the originator and sponsor credit institutions. Credit institutions shall also apply the same standards of analysis to participations or underwritings in securitisation issues purchased from third parties whether such participations or underwritings are to be held on their trading or non-trading book.

Where the requirements referred to in the first subparagraph of this paragraph are not met, Article 95(1) shall not be applied by an originator credit institution and that originator credit institution shall not be allowed to exclude the securitised exposures from the calculation of its capital requirements under this Directive.

- 7 Sponsor and originator credit institutions shall disclose to investors the level of their commitment under paragraph 1 to maintain a net economic interest in the securitisation. Sponsor and originator credit institutions shall ensure that prospective investors have readily available access to all materially relevant data on the credit quality and performance of the individual underlying exposures, cash flows and collateral supporting a securitisation exposure as well as such information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures. For that purpose, materially relevant data shall be determined as at the date of the securitisation and where appropriate due to the nature of the securitisation thereafter.

- 8 Paragraphs 1 to 7 shall apply to new securitisations issued on or after 1 January 2011. Paragraphs 1 to 7 shall, after 31 December 2014, apply to existing

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securitisations where new underlying exposures are added or substituted after that date. Competent authorities may decide to suspend temporarily the requirements referred to in paragraphs 1 and 2 during periods of general market liquidity stress.

- 9                   Competent authorities shall disclose the following information:
- a   by 31 December 2010, the general criteria and methodologies adopted to review the compliance with paragraphs 1 to 7;
  - b   without prejudice to the provisions laid down in Chapter 1, Section 2, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with paragraphs 1 to 7 identified on an annual basis from 31 December 2011.

The requirement set out in this paragraph is subject to the second subparagraph of Article 144.

- 10                  The Committee of European Banking Supervisors shall report annually to the Commission about the compliance by competent authorities with this Article. The Committee of European Banking Supervisors shall elaborate guidelines for the convergence of supervisory practices with regard to this Article, including the measures taken in case of breach of the due diligence and risk management obligations.;

31. Article 129 is amended as follows:

- (a)   in paragraph 1 point (b) is replaced by the following:
  - (b)   planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to in Articles 123, 124, 136, in Chapter 5 and in Annex V, in cooperation with the competent authorities involved;
  - (c)   planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with central banks, in preparation for and during emergency situations, including adverse developments in credit institutions or in financial markets using, where possible, existing defined channels of communication for facilitating crisis management.

The planning and coordination of supervisory activities referred to in point (c) includes exceptional measures referred to in Article 132(3)(b), the preparation of joint assessments, the implementation of contingency plans and communication to the public.;

- (b)   the following paragraph is added:

3.       The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company in a Member State shall do everything within their power to reach a joint decision on the application of Articles 123 and 124 to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile and the required level of own funds for the application of Article 136(2) to each entity within the banking group and on a consolidated basis.

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The joint decision shall be reached within four months after submission by the consolidating supervisor of a report containing the risk assessment of the group in accordance with Articles 123 and 124 to the other relevant competent authorities. The joint decision shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 123 and 124.

The joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the EU parent credit institution by the consolidating supervisor. In the event of disagreement, the consolidating supervisor shall at the request of any of the other competent authorities concerned consult the Committee of European Banking Supervisors. The consolidating supervisor may consult the Committee of European Banking Supervisors on its own initiative.

In the absence of such a joint decision between the competent authorities within four months, a decision on the application of Articles 123 and 124 and Article 136(2) shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities.

The decision on the application of Articles 123 and 124 and Article 136(2) shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor.

The decisions shall be set out in a document containing the fully reasoned decisions and shall take into account the risk assessment, views and reservations of the other competent authorities expressed during the four-month period. The document shall be provided by the consolidating supervisor to all competent authorities concerned and to the EU parent credit institution.

Where the Committee of European Banking Supervisors has been consulted, all competent authorities shall consider such advice, and explain any significant deviation therefrom.

The joint decision referred to in the first subparagraph and the decisions taken by the competent authorities in the absence of a joint decision shall be recognised as determinative and shall be applied by the competent authorities in the Member State concerned.

The joint decision referred to in the first subparagraph and any decision taken in the absence of a joint decision in accordance with the fourth and fifth subparagraphs, shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent credit institution or, an EU parent financial holding company makes a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Article 136(2). In the latter case, the update may be addressed on a bilateral basis between the consolidating supervisor and the competent authority making the request.

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The Committee of European Banking Supervisors shall elaborate guidelines for the convergence of supervisory practices with regard to the joint decision process referred to in this paragraph and with regard to the application of Articles 123, 124 and 136(2) with a view to facilitating joint decisions.;

32. in Article 130, paragraph 1 is replaced by the following:

1. Where an emergency situation, including adverse developments in financial markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or where significant branches as referred to in Article 42a are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, alert as soon as is practicable, the authorities referred to in the fourth subparagraph of Article 49 and in Article 50, and shall communicate all information that is essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities under Articles 125 and 126 and to the competent authority identified under Article 129(1).

If the authority referred to in the fourth paragraph of Article 49 becomes aware of a situation described in the first subparagraph of this paragraph, it shall alert as soon as is practicable the competent authorities referred to in Articles 125 and 126.

Where possible, the competent authority and the authority referred to in the fourth paragraph of Article 49 shall use existing defined channels of communication.;

33. the following Article is inserted:

*Article 131a*

1 The consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Article 129 and Article 130(1) and subject to the confidentiality requirements of paragraph 2 of this Article and compatibility with Community law, ensure appropriate coordination and cooperation with relevant third-country competent authorities where appropriate.

Colleges of supervisors shall provide a framework for the consolidating supervisor and the other competent authorities concerned to carry out the following tasks:

- a exchanging information;
- b agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;
- c determining supervisory examination programmes based on a risk assessment of the group in accordance with Article 124;
- d increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 130(2) and Article 132(2);
- e consistently applying the prudential requirements under this Directive across all entities within a banking group without prejudice to the options and discretions available in Community legislation;
- f applying Article 129(1)(c) taking into account the work of other forums that may be established in this area.

The competent authorities participating in the colleges of supervisors shall cooperate closely. The confidentiality requirements under Chapter 1, Section 2 shall not prevent competent authorities from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authorities under this Directive.

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2 The establishment and functioning of the colleges shall be based on written arrangements referred to in Article 131, determined after consultation with competent authorities concerned by the consolidating supervisor.

The Committee of European Banking Supervisors shall elaborate guidelines for the operational functioning of colleges, including in relation to Article 42a(3).

The competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company and the competent authorities of a host country where significant branches as referred to in Article 42a are established, central banks as appropriate, and third countries' competent authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under Chapter 1 Section 2, may participate in colleges of supervisors.

The consolidating supervisor shall chair the meetings of the college and shall decide which competent authorities participate in a meeting or in an activity of the college. The consolidating supervisor shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The consolidating supervisor shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

The decision of the consolidating supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 40(3) and the obligations referred to in Article 42a(2).

The consolidating supervisor, subject to the confidentiality requirements under Chapter 1, Section 2, shall inform the Committee of European Banking Supervisors of the activities of the college of supervisors, including in emergency situations, and communicate to that Committee all information that is of particular relevance for the purposes of supervisory convergence.;

34. Article 132 is amended as follows:

- (a) in paragraph 1(d), the reference to Article 136 is replaced by the reference to Article 136(1);
- (b) in paragraph 3(b), the reference to Article 136 is replaced by the reference to Article 136(1);

35. Article 150 is amended as follows:

- (a) in paragraph 1, points (k) and (l) are replaced by the following:
  - (k) the list and classification of off-balance sheet items in Annexes II and IV;
  - (l) adjustment of the provisions in Annexes III and V to XII in order to take account of developments on financial markets (in particular new financial products) or in accounting standards or requirements which take account of Community legislation, or with regard to convergence of supervisory practice.;
- (b) in paragraph 2, point (c) is replaced by the following:

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- (c) clarification of exemptions provided for in Article 113;;
36. in Article 153, the third paragraph is replaced by the following:
- In the calculation of risk weighted exposure amounts for the purposes of Annex VI, Part 1, point 4, until 31 December 2015 the same risk weight shall be assigned in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State as would be applied to such exposures denominated and funded in their domestic currency.;
37. in Article 154, the following paragraphs are added:
8. Credit institutions which do not comply by 31 December 2010 with the limits set out in Article 66(1a) shall develop strategies and processes on the necessary measures to resolve this situation before the dates set out in paragraph 9 of this Article.
- Those measures shall be reviewed under Article 124.
9. Instruments that by 31 December 2010, according to national law were deemed equivalent to the items referred to in points (a), (b) and (c) of Article 57 but do not fall within Article 57(a) or do not comply with the criteria set out in Article 63a, shall be deemed to fall within Article 57(ca) until 31 December 2040, subject to the following limitations:
- a up to 20 % of the sum of Article 57(a) to (ca), less the sum of points (i), (j) and (k) of Article 57 between 10 and 20 years after 31 December 2010;
- b up to 10 % of the sum of Article 57(a) to (ca), less the sum of points (i), (j) and (k) of Article 57 between 20 and 30 years after 31 December 2010.
- The Committee of European Banking Supervisors shall monitor, until 31 December 2010, the issuance of those instruments.
10. For the purpose of Section 5, assets items constituting claims on and other exposures to institutions incurred prior to 31 December 2009 shall continue to be subject to the same treatment as applied in accordance with Article 115(2) and Article 116 as they stood prior to 7 December 2009, however not longer than until 31 December 2012.
11. Until 31 December 2012, the time period referred to in Article 129(3) shall be six months.;
38. Article 156 is replaced by the following:
- Article 156*
- The Commission, in cooperation with Member States, and taking into account the contribution of the European Central Bank, shall periodically monitor whether this Directive taken as a whole, together with Directive 2006/49/EC, has significant effects on the economic cycle and, in the light of that examination, shall consider whether any remedial measures are justified.
- Based on that analysis and taking into account the contribution of the European Central Bank, the Commission shall draw up a biennial report and submit it to the European Parliament and to the Council, together with any appropriate proposals. Contributions from credit taking and credit lending parties shall be adequately acknowledged when the report is drawn up.

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By 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, including the examination of:

- (a) measures that mitigate the ups and downs of the business cycle, including the need for credit institutions to build counter-cyclical buffers in good times that can be used during a downturn;
- (b) the rationale underlying the calculation of capital requirements in this Directive; and
- (c) supplementary measures to risk-based requirements for credit institutions, to help constrain the build-up of leverage in the banking system.

The Commission shall submit a report on the above issues to the European Parliament and to the Council with any appropriate proposals.

The Commission shall, as soon as possible and in any event by 31 December 2009 present to the European Parliament and the Council a report on the need for further reform of the supervisory system, including relevant Articles of this Directive, and, in accordance with the applicable procedure under the Treaty, any appropriate legislative proposal.

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 referred to in Article 74(2). 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 with particular attention to all aspects of Articles 68 to 73, 80(7), 80(8) and its application to microcredit finance and shall submit this report to the European Parliament and the Council together with any appropriate proposals.

By 31 December 2011 the Commission shall review and report on the application of Article 113(4) including whether exemptions should be a matter of national discretion and shall submit this report to the European Parliament and the Council together with any appropriate proposals. With respect to the potential elimination of the national discretion under Article 113(4)(c) and its potential application at the EU level, the review shall in particular take into account the efficiency of group's risk management while ensuring that sufficient safeguards are in place to ensure financial stability in all Member States in which an entity of a group is incorporated.

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, and shall submit this report to the European Parliament and the Council together with any appropriate proposals.

By 31 December 2009 the Commission shall report on the expected impact of Article 122a, and shall submit that report to the European Parliament and the Council, together with any appropriate proposal. The Commission shall draw up its report after consulting the Committee of European Banking Supervisors. The report shall consider, in particular, whether the minimum retention requirement under Article 122a(1) delivers the objective of better alignment between the interests of originators or sponsors and investors and strengthens financial stability, and whether an increase of

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the minimum level of retention would be appropriate taking into account international developments.

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

39. Annex III is amended as follows:

(a) in Part 1, point 5, the following sentence is added:

Under the method set out in Part 6 of this Annex (IMM), all netting sets with a single counterparty may be treated as single netting set if negative simulated market values of the individual netting sets are set to 0 in the estimation of expected exposure (EE).;

(b) in Part 2, point 3 is replaced by the following:

3. When a credit institution purchases credit derivative protection against a non-trading book exposure, or against a CCR exposure, it may compute its capital requirement for the hedged asset in accordance with Annex VIII, Part 3, points 83 to 92, or subject to the approval of the competent authorities, in accordance with Annex VII, Part 1, point 4 or Annex VII, Part 4, points 96 to 104.

In those cases, and where the option in the second sentence of point 11 in Annex II of Directive 2006/49/EC is not applied, the exposure value for CCR for those credit derivatives is set to zero.

However, an institution may choose consistently to include for the purposes of calculating capital requirements for counterparty credit risk all credit derivatives not included in the trading book and purchased as protection against a non-trading book exposure or against a CCR exposure where the credit protection is recognised under this Directive.;

(c) in Part 5, point 15 is replaced by the following:

15. There is one hedging set for each issuer of a reference debt instrument that underlies a credit default swap. "Nth to default" basket credit default swaps shall be treated as follows:

(a) the size of a risk position in a reference debt instrument in a basket underlying an "nth to default" credit default swap is the effective notional value of the reference debt instrument, multiplied by the modified duration of the "nth to default" derivative with respect to a change in the credit spread of the reference debt instrument;

(b) there is one hedging set for each reference debt instrument in a basket underlying a given "nth to default" credit default swap; risk positions from different "nth to default" credit default swaps shall not be included in the same hedging set;

(c) the CCR multiplier applicable to each hedging set created for one of the reference debt instruments of



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an “nth to default” derivative is 0,3 % for reference debt instruments that have a credit assessment from a recognised ECAI equivalent to credit quality step 1 to 3 and 0,6 % for other debt instruments.;

40. Annex V is amended as follows:

(a) point 8 is replaced by the following:

8. The risks arising from securitisation transactions in relation to which the credit institutions are investor, originator or sponsor, including reputational risks (such as arise in relation to complex structures or products) shall be evaluated and addressed through appropriate policies and procedures, to ensure in particular that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.;

(b) point 14 is replaced by the following:

14. Robust strategies, policies, processes and systems shall exist for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that credit institutions maintain adequate levels of liquidity buffers. Those strategies, policies, processes and systems shall be tailored to business lines, currencies and entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks.;

(c) the following point is inserted:

14a. The strategies, policies, processes and systems referred to in point 14 shall be proportionate to the complexity, risk profile, scope of operation of the credit institution and risk tolerance set by the management body and reflect the credit institution's importance in each Member State, in which it carries on business. Credit institutions shall communicate risk tolerance to all relevant business lines.;

(d) point 15 is replaced by the following:

15. Credit institutions shall develop methodologies for the identification, measurement, management and monitoring of funding positions. Those methodologies shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk.

16. Credit institutions shall distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. They shall also take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account as well as their eligibility and shall monitor how assets can be mobilised in a timely manner.

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17. Credit institutions shall also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the EEA.
  18. A credit institution shall consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. Those arrangements shall be reviewed regularly.
  19. Alternative scenarios on liquidity positions and on risk mitigants shall be considered and the assumptions underlying decisions concerning the funding position shall be reviewed regularly. For these purposes, alternative scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of SSPEs or other special purpose entities, in relation to which the credit institution acts as sponsor or provides material liquidity support.
  20. Credit institutions shall consider the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time horizons and varying degrees of stressed conditions shall be considered.
  21. Credit institutions shall adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in point 19.
  22. In order to deal with liquidity crises, credit institutions shall have in place contingency plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls. Those plans shall be regularly tested, updated on the basis of the outcome of the alternative scenarios set out in point 19, be reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly.;
41. in Annex IX, Part 3, Section 2, the following point is added:
- 7a. Competent authorities shall, furthermore, take the necessary measures to ensure that, with regard to credit assessments relating to structured finance instruments, the ECAI is committed to make available publicly the explanation how the performance of pool assets affects its credit assessments.;
42. Annex XI is amended as follows:
- (a) in point 1, point (e) is replaced by the following:
    - (e) the exposure to, measurement and management of liquidity risk by the credit institutions, including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;;

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- (b) the following point is inserted:
    - 1a. For the purposes of point 1(e), the competent authorities shall regularly carry out a comprehensive assessment of the overall liquidity risk management by credit institutions and promote the development of sound internal methodologies. While conducting those reviews, the competent authorities shall have regard to the role played by credit institutions in the financial markets. The competent authorities in one Member State shall duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned.;
43. in point 3 of Part 2 of Annex XII, points (a) and (b) are replaced by the following:
- (a) summary information on the terms and conditions of the main features of all own-funds items and components thereof, including instruments referred to in Article 57(ca), instruments the provisions of which provide an incentive for the credit institution to redeem them, and instruments subject to Article 154(8) and (9);
  - (b) the amount of the original own funds, with separate disclosure of all positive items and deductions; the overall amount of instruments referred to in Article 57(ca) and instruments the provisions of which provide an incentive for the credit institution to redeem them, shall also be disclosed separately; those disclosures shall each specify instruments subject to Article 154(8) and (9);.

## *Article 2*

### **Amendments to Directive 2006/49/EC**

Directive 2006/49/EC is hereby amended as follows:

1. in Article 12, the first paragraph is replaced by the following:
  - “Original own funds” means the sum of points (a) to (ca), less the sum of points (i), (j) and (k) of Article 57 of Directive 2006/48/EC.;
2. Article 28 is amended as follows:
  - (a) paragraph 1 is replaced by the following:
    1. Institutions, except investment firms that fulfil the criteria set out in paragraph 2 or 3 of Article 20 of this Directive, shall monitor and control their large exposures in accordance with Articles 106 to 118 of Directive 2006/48/EC.;
  - (b) paragraph 3 is deleted;
3. in Article 30, paragraph 4 is replaced by the following:
4. By derogation from paragraph 3 competent authorities may allow assets constituting claims and other exposures on recognised third country investment firms and recognised clearing houses and exchanges to be subject to the same treatment as laid down in Article 111(1) of Directive 2006/48/EC and in Article 106(2)(c) of that Directive respectively.;

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4. Article 31 is amended as follows:
- (a) in the first paragraph, points (a) and (b) is replaced by the following:
    - (a) the exposure on the non-trading book to the client or group of clients in question does not exceed the limit laid down in Article 111(1) of Directive 2006/48/EC, this limit being calculated with reference to own funds as specified in that Directive, so that the excess arises entirely on the trading book;
    - (b) the institution meets an additional capital requirement on the excess in respect of the limit laid down in Article 111(1) of Directive 2006/48/EC, that additional capital requirement being calculated in accordance with Annex VI to this Directive;;
  - (b) in the first paragraph, point (e) is replaced by the following:
    - (e) institutions shall report to the competent authorities every three months all cases where the limit laid down in Article 111(1) of Directive 2006/48/EC has been exceeded during the preceding three months.;
  - (c) the second paragraph is replaced by the following:

In relation to point (e), in each case in which the limit has been exceeded, the amount of the excess and the name of the client concerned shall be reported.;
5. in Article 32(1), the first subparagraph is replaced by the following:
- 1. The competent authorities shall establish procedures to prevent institutions from deliberately avoiding the additional capital requirements that they would otherwise incur, on exposures exceeding the limit laid down in Article 111(1) of Directive 2006/48/EC once those exposures have been maintained for more than 10 days, by means of temporarily transferring the exposures in question to another company, whether within the same group or not, and/or by undertaking artificial transactions to close out the exposure during the 10-day period and create a new exposure.;
6. in Article 35, the following paragraph is added:
- 6. Investment firms shall be covered by the uniform formats, frequencies and dates of reporting referred to in Article 74(2) of Directive 2006/48/EC.;
7. in Article 38, the following paragraph is added:
- 3. Article 42a of Directive 2006/48/EC, with the exception of point (a) of its paragraph 1, shall apply *mutatis mutandis* to the supervision of investment firms unless the investment firms fulfil the criteria set out in Article 20(2), 20(3) or 46(1) of this Directive.;
8. in Article 45(1), the date ‘31 December 2010’ is replaced by ‘31 December 2014’;
9. in Article 47, the date ‘31 December 2009’ is replaced by ‘31 December 2010’ and the reference to points 4 and 8 of Annex V of the Directive 93/6/EEC is replaced by reference to points 4 and 8 of Annex VIII;
10. in Article 48(1), the date ‘31 December 2010’ is replaced by ‘31 December 2014’.

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### *Article 3*

#### **Amendment to Directive 2007/64/EC**

Article 1(1)(a) of Directive 2007/64/EC is replaced by the following:

- (a) credit institutions within the meaning of Article 4(1)(a) of Directive 2006/48/EC, including branches within the meaning of Article 4(3) of that Directive located in the Community of credit institutions having their head offices inside or, in accordance with Article 38 of that Directive, outside the Community;

### *Article 4*

#### **Transposition**

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 October 2010.

They shall apply those measures from 31 December 2010.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### *Article 5*

#### **Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

### *Article 6*

#### **Addressees**

This Directive is addressed to the Member States.

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Done at Strasbourg, 16 September 2009.

*For the European Parliament*

*The President*

J. BUZEK

*For the Council*

*The President*

C. MALMSTRÖM

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- (1) Opinion of 24 March 2009 (not yet published in the Official Journal).
- (2) [OJ C 93, 22.4.2009, p. 3.](#)
- (3) Opinion of the European Parliament of 6 May 2009 (not yet published in the Official Journal) and Council Decision of 27 July 2009.
- (4) [OJ L 177, 30.6.2006, p. 1.](#)
- (5) [OJ L 372, 31.12.1986, p. 1.](#)
- (6) [OJ L 177, 30.6.2006, p. 201.](#)
- (7) See page 1 of this Official Journal.
- (8) [OJ L 184, 17.7.1999, p. 23.](#)
- (9) [OJ C 321, 31.12.2003, p. 1.](#)
- (10) [OJ L 319, 5.12.2007, p. 1.](#)
- (11) [OJ L 302, 17.11.2009, p. 1'](#);