

DIRECTIVES

COMMISSION DIRECTIVE 2009/27/EC

of 7 April 2009

**amending certain Annexes to Directive 2006/49/EC of the European Parliament and of the Council
as regards technical provisions concerning risk management**

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 ⁽¹⁾, in particular Article 41(1)(g) thereof,

Whereas:

- (1) In order to ensure a coherent implementation and application throughout the EU of Directive 2006/49/EC, the Commission and the Committee of European Banking Supervisors set up a working group (Capital Requirements Directive Transposition Group — CRDTG) in 2006, entrusted with the task of discussing and resolving issues related to implementation and application of the Directive. According to the CRDTG, certain technical provisions included in Annexes I, II and VII of Directive 2006/49/EC need to be further specified in order to ensure their convergent application. Moreover, certain provisions are not commensurate with sound risk management practices of credit institutions. It is therefore appropriate to adjust these provisions.
- (2) Directive 2006/49/EC should therefore be amended accordingly.
- (3) The measures provided for in this Directive are in accordance with the opinion of the European Banking Committee,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/49/EC is amended as follows:

1. Annex I is amended as follows:

- (a) Point 8.B is replaced by the following:

B. TREATMENT OF THE PROTECTION BUYER

For the party who transfers credit risk (the protection buyer), the positions are determined as the mirror principle of the protection seller, with the exception of a credit linked note (which entails no short position in the issuer). If at a given moment there is a call option in combination with a step-up, such moment is treated as the maturity of the protection. In the case of first-to-default credit derivatives and nth-to-default credit derivatives, the following treatment applies instead of the mirror principle.

First-to-default credit derivatives

Where an institution obtains credit protection for a number of reference entities underlying a credit derivative under the terms that the first default among the assets shall trigger payment and that this credit event shall terminate the contract, the institution may offset specific risk for the reference entity to which the lowest specific risk percentage charge among the underlying reference entities applies according to Table 1 of this Annex.

⁽¹⁾ OJ L 177, 30.6.2006, p. 201.

Nth-to-default credit derivatives

Where the nth default among the exposures triggers payment under the credit protection, the protection buyer may only offset specific risk if protection has also been obtained for defaults 1 to n-1 or when n-1 defaults have already occurred. In such cases, the methodology set out above for first-to-default credit derivatives shall be followed appropriately modified for nth-to-default products.'

(b) In point 14, Table 1 is replaced by the following:

Table 1

Categories	Specific risk capital charge
Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional government or local authorities which would qualify for credit quality step 1 or which would receive a 0 % risk weight under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC.	0 %
Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional governments or local authorities which would qualify for credit quality step 2 or 3 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by institutions which would qualify for credit quality step 1 or 2 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by institutions which would qualify for credit quality step 3 under the rules for the risk weighting of exposures under point 29, Part 1 of Annex VI to Directive 2006/48/EC, and debt securities issued or guaranteed by corporates which would qualify for credit quality step 1, 2 or 3 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC.	0,25 % (residual term to final maturity six months or less) 1,00 % (residual term to final maturity greater than six months and up to and including 24 months) 1,60 % (residual term to maturity exceeding 24 months)
Other qualifying items as defined in point 15.	
Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional governments or local authorities or institutions which would qualify for credit quality step 4 or 5 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by institutions which would qualify for credit quality step 3 under the rules for the risk weighting of exposures under point 26 of Part 1 of Annex VI to Directive 2006/48/EC, and debt securities issued or guaranteed by corporates which would qualify for credit quality step 4 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC. Exposures for which a credit assessment by a nominated ECAI is not available.	8,00 %
Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional governments or local authorities or institutions which would qualify for credit quality step 6 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by corporates which would qualify for credit quality step 5 or 6 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC.	12,00 %

2. In Annex II, point 11 is replaced by the following:

‘11. Where a credit derivative included in the trading book forms part of an internal hedge and the credit protection is recognised under Directive 2006/48/EC, no counterparty risk shall be deemed to arise from the position in the credit derivative. Alternatively, an institution may consistently include for the purposes of calculating capital requirements for counterparty credit risk all credit derivatives included in the trading book forming part of internal hedges or purchased as protection against a CCR exposure where the credit protection is recognised under Directive 2006/48/EC.’

3. In Annex VII, Part C, point 3 is replaced by the following:

‘3. By way of derogation from points 1 and 2, when an institution hedges a non-trading book credit risk exposure using a credit derivative booked in its trading book (using an internal hedge), the non-trading book exposure shall not be deemed to be hedged for the purposes of calculating capital requirements unless the institution purchases from an eligible third party protection provider a credit derivative meeting the requirements set out in point 19 of Part 2 of Annex VIII to Directive 2006/48/EC with regard to the non-trading book exposure. Without prejudice to the second sentence of point 11 in Annex II, where such third party protection is purchased and recognised as a hedge of a non-trading book exposure for the purposes of calculating capital requirements, neither the internal nor external credit derivative hedge shall be included in the trading book for the purposes of calculating capital requirements.’

Article 2

1. Member States shall adopt and publish, by 31 October 2010 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 31 December 2010.

When Member States adopt those provisions, 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 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 7 April 2009.

For the Commission
Charlie MCCREEVY
Member of the Commission