

COMMISSION DIRECTIVE 2009/83/EC
of 27 July 2009
amending certain Annexes to Directive 2006/48/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,

HAS ADOPTED THIS DIRECTIVE:

Having regard to the Treaty establishing the European Community,

Article 1

Directive 2006/48/EC is amended as follows:

Having regard to 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 ⁽¹⁾, in particular Article 150(1)(l) thereof,

1. in Annex V, point 8 is replaced by the following:

Whereas:

‘8. The risks arising from securitisation transactions in relation to which the credit institutions are investor, originator or sponsor shall be evaluated and addressed through appropriate policies and procedures. These policies and procedures shall in particular ensure that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.’;

(1) In order to ensure a coherent implementation and application throughout the EU of Directive 2006/48/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 the implementation and application of that Directive. According to the CRDTG, certain technical provisions included in Annexes V, VI, VII, VIII, IX, X and XII to Directive 2006/48/EC need to be further specified in order to ensure a 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. Annex VI, Part 1, is amended as follows:

(2) For the sake of achievement of the internal market, the ways in which a credit institution can demonstrate that there is significant transfer of risk off its balance sheet should be clarified. It is also appropriate to increase the credit conversion factor for liquidity facilities granted by credit institutions to off-balance sheet vehicles.

(a) in point 29, the introductory phrase is replaced by the following:

(3) Directive 2006/48/EC should therefore be amended accordingly.

‘29. Exposures to institutions with a residual maturity of more than three months for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 4 in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.’;

(4) The measures provided for in this Directive are in accordance with the opinion of the European Banking Committee,

(b) in point 31, the introductory phrase is replaced by the following:

‘31. Exposures to an institution of up to three months residual maturity for which a credit assessment by a nominated ECAI is available shall be assigned a risk-weight according to Table 5 in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.’;

⁽¹⁾ OJ L 177, 30.6.2006, p. 1.

(c) point 14 is replaced by the following:

'14. EXPOSURES TO INSTITUTIONS AND CORPORATES WITH A SHORT-TERM CREDIT ASSESSMENT';

(d) in point 73, the introductory phrase is replaced by the following:

'73. Exposures to institutions where points 29 to 32 apply, and exposures to corporates for which a short-term credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 7, in accordance with the mapping by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.;

(e) the following point 90 is added:

'90. The exposure value for leases shall be the discounted minimum lease payments. Minimum lease payments are the payments over the lease term that the lessee is or can be required to make and any bargain option (i.e. option the exercise of which is reasonably certain). Any guaranteed residual value fulfilling the set of conditions in Annex VIII, Part 1, points 26, 27 and 28 regarding the eligibility of protection providers as well as the minimum requirements for recognising other types of guarantees provided in Annex VIII, Part 2, points 14 to 19 shall also be included in the minimum lease payments. These exposures shall be assigned to the relevant exposure class in accordance with Article 79. When the exposure is a residual value of leased properties, the risk weighted exposure amounts shall be calculated as follows: $1/t * 100 \% * \text{exposure value}$, where t is the greater of 1 and the nearest number of whole years of the lease remaining.;

3. Annex VII, Part 1, is amended as follows:

(a) point 25 is replaced by the following:

'25. The risk weighted exposure amount shall be the potential loss on the credit institution's equity exposures as derived using internal value-at-risk models subject to the 99th percentile, one-tailed confidence interval of the difference between quarterly returns and an appropriate risk-free

rate computed over a long-term sample period, multiplied by 12.5. The risk weighted exposure amounts at the equity portfolio level shall not be less than the total of the sums of minimum risk weighted exposure amounts required under the PD/LGD Approach and the corresponding expected loss amounts multiplied by 12.5 and calculated on the basis of the PD values set out in Part 2, point 24 and the corresponding LGD values set out in Part 2, points 25 and 26.;

(b) point 27 is replaced by the following:

'27. The risk weighted exposure amounts shall be calculated according to the following formula:

$\text{Risk-weighted exposure amount} = 100 \% * \text{exposure value}$,

except for when the exposure is a residual value of leased properties in which case it shall be calculated as follows:

$1/t * 100 \% * \text{exposure value}$,

where t is the greater of 1 and the nearest number of whole years of the lease remaining.;

4. Annex VII, Part 2, is amended as follows:

(a) point 13(c) is replaced by the following:

'(c) For exposures arising from fully or nearly-fully collateralised derivative instruments (listed in Annex IV) transactions and fully or nearly-fully collateralised margin lending transactions which are subject to a master netting agreement, M shall be the weighted average remaining maturity of the transactions where M shall be at least 10 days. For repurchase transactions or securities or commodities lending or borrowing transactions which are subject to a master netting agreement, M shall be the weighted average remaining maturity of the transactions where M shall be at least 5 days. The notional amount of each transaction shall be used for weighting the maturity.;

(b) in point 14, the introductory phrase is replaced by the following:

'14. Notwithstanding point 13(a), (b), (c), (d) and (e), M shall be at least one-day for.;

5. in Annex VII, Part 4, point 96 is replaced by the following:

'96. The requirements in points 97 to 104 shall not apply for guarantees provided by institutions, central governments and central banks, and corporate entities which meet the requirements laid down in Annex VIII, Part 1, point 26(g) if the credit institution has received approval to apply the rules of Articles 78 to 83 for exposures to such entities. In this case the requirements of Articles 90 to 93 shall apply.;

6. Annex VIII, Part 1 is amended as follows:

(a) in point 9, the following paragraph is added:

'If the collective investment undertaking is not limited to investing in instruments that are eligible for recognition under points 7 and 8, units may be recognised with the value of the eligible assets as collateral under the assumption that the CIU has invested to the maximum extent allowed under its mandate in non-eligible assets. In cases where non-eligible assets can have a negative value due to liabilities or contingent liabilities resulting from ownership, the credit institution shall calculate the total value of the non-eligible assets and shall reduce the value of the eligible assets by that of the non-eligible assets in case the latter is negative in total.;

(b) in point 11, the following paragraph is added:

'If the collective investment undertaking is not limited to investing in instruments that are eligible for recognition under point 7 and 8 and the items mentioned in point (a) of this point, units may be recognised with the value of the eligible assets as collateral under the assumption that the CIU has invested to the maximum extent allowed under its mandate in non-eligible assets. In cases where non-eligible assets can have a negative value due to liabilities or contingent liabilities resulting from ownership, the credit institution shall calculate the total value of the non-eligible assets and shall reduce the value of the eligible assets by that of the non-eligible assets in case the latter is negative in total.;

7. Annex VIII, Part 2, is amended as follows:

(a) point 13 is replaced by the following:

'13. For life insurance policies pledged to the lending credit institution to be recognised, all the following conditions shall be met:

- (a) the life insurance policy is openly pledged or assigned to the lending credit institution;
- (b) the company providing the life insurance is notified of the pledge or assignment and as a result may not pay amounts payable under the contract without the consent of the lending credit institution;
- (c) the lending credit institution has the right to cancel the policy and receive the surrender value in the event of the default of the borrower;
- (d) the lending credit institution is informed of any non-payments under the policy by the policy-holder;
- (e) the credit protection is provided for the maturity of the loan. Where this is not possible because the insurance relationship ends before the loan relationship expires, the credit institution must ensure that the amount deriving from the insurance contract serves the credit institution as security until the end of the duration of the credit agreement;
- (f) the pledge or assignment is legally effective and enforceable in all jurisdictions which are relevant at the time of the conclusion of the credit agreement;
- (g) the surrender value is declared by the company providing the life insurance and is non-reducible;
- (h) the surrender value is to be paid in a timely manner upon request;
- (i) the surrender value cannot be requested without the consent of the credit institution;
- (j) the company providing the life insurance is subject to Directive 2002/83/EC and Directive 2001/17/EC of the European Parliament and of the Council (*) or is subject to supervision by a competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the Community.

(*) OJ L 110, 20.4.2001, p. 28.'

(b) in point 16, the introductory phrase is replaced by the following:

'16. Where an exposure is protected by a guarantee which is counter-guaranteed by a central government or central bank, a regional government or local authority, a public sector entity, claims on which are treated as claims on the central government in whose jurisdiction they are established under Articles 78 to 83, a multi-lateral development bank or an international organisation, to which a 0 % risk weight is assigned under or by virtue of Articles 78 to 83, or a public sector entity, claims on which are treated as claims on credit institutions under Articles 78 to 83, the exposure may be treated as protected by a guarantee provided by the entity in question, provided the following conditions are satisfied:;

8. Annex VIII, Part 3, is amended as follows:

(a) point 24 is replaced by the following:

'24. The Financial Collateral Simple Method shall be available only where risk-weighted exposure amounts are calculated under Articles 78 to 83. A credit institution shall not use both the Financial Collateral Simple Method and the Financial Collateral Comprehensive Method, unless for the purposes of Articles 85(1) and 89(1). Credit institutions shall demonstrate to the competent authorities that this exceptional application of both methods is not used selectively with the purpose of achieving reduced minimum capital requirements and does not lead to regulatory arbitrage.;

(b) point 26 is replaced by the following:

'26. The risk weight that would be assigned under Articles 78 to 83 if the lender had a direct exposure to the collateral instrument shall be assigned to those portions of exposure values collateralised by the market value of recognised collateral. For this purpose, the exposure value of an off-balance sheet item listed in Annex II shall be 100 % of its value rather than the exposure value indicated in Article 78(1). The risk weight of the collateralised portion shall be a minimum of 20 % except as specified in points 27 to 29. The remainder of the exposure value shall receive the risk weight that would be assigned to an unsecured exposure to the counterparty under Articles 78 to 83.;

(c) in point 33, the definition of the variable 'E' is replaced by the following:

'E is the exposure value as would be determined under Articles 78 to 83 or Articles 84 to 89 as appropriate if the exposure was not collateralised. For this purpose, for credit institutions calculating risk-weighted exposure amounts under Articles 78 to 83, the exposure value of an off-balance sheet item listed in Annex II shall be 100 % of its value rather than the exposure value indicated in Article 78(1), and for credit institutions calculating risk-weighted exposure amounts under Articles 84 to 89, the exposure value of the items listed in Annex VII, Part 3, points 9 to 11 shall be calculated using a conversion factor of 100 % rather than the conversion factors or percentages indicated in those points.;

(d) in point 69, the following sentence is added:

'For this purpose, the exposure value of the items listed in Annex VII, Part 3, points 9, 10 and 11 shall be calculated using a conversion factor or percentage of 100 % rather than the conversion factors or percentages indicated in those points.;

(e) point 75 is replaced by the following:

'75. Where the discretion provided for in point 73 is exercised by the competent authorities of a Member State, the competent authorities of another Member State may authorise their credit institutions to assign the risk weights permitted under the treatment of point 73 in respect of exposures collateralised by residential real estate property or commercial real estate property located in the territory of the former Member State subject to the same conditions as apply in the former Member State.;

(f) point 80 is replaced by the following:

'80. Where the conditions set out in Part 2, point 13 are satisfied, the portion of the exposure collateralised by the current surrender value of credit protection falling within the terms of Part 1, point 24 shall be either of the following:

(a) subject to the risk weights specified in point 80a where the exposure is subject to Articles 78 to 83;

(b) assigned an LGD of 40 % where the exposure is subject to Articles 84 to 89 but not subject to the credit institution's own estimates of LGD.

In case of a currency mismatch, the current surrender value shall be reduced according to point 84, the value of the credit protection being the current surrender value of the life insurance policy.;

(g) the following new point 80a is inserted after point 80:

‘80a. For purposes of point 80(a), the following risk weights shall be assigned on the basis of the risk weight assigned to a senior unsecured exposure to the company providing the life insurance:

- (a) a risk weight of 20 %, where the senior unsecured exposure to the company providing the life insurance is assigned a risk weight of 20 %;
- (b) a risk weight of 35 %, where the senior unsecured exposure to the company providing the life insurance is assigned a risk weight or 50 %;
- (c) a risk weight of 70 %, where the senior unsecured exposure to the company providing the life insurance is assigned a risk weight of 100 %;
- (d) a risk weight of 150 %, where the senior unsecured exposure to the company providing the life insurance is assigned a risk weight of 150 %;

(h) point 87 is replaced by the following:

‘87. For the purposes of Article 80, g shall be the risk weight to be assigned to an exposure, the exposure value (E) of which is fully protected by unfunded protection (G_A), where:

E is the exposure value according to Article 78; for this purpose, the exposure value of an off-balance sheet item listed in Annex II shall be 100 % of its value rather than the exposure value indicated in Article 78(1);

g is the risk weight of exposures to the protection provider as specified under Articles 78 to 83; and

G_A is the value of G^* as calculated under point 84 further adjusted for any maturity mismatch as laid down in Part 4.;

(i) in point 88, the definition of the variable ‘E’ is replaced by the following:

‘E is the exposure value according to Article 78. For this purpose, the exposure value of an off-balance sheet item listed in Annex II shall be 100 % of its value rather than the exposure value indicated in Article 78(1).;’

(j) points 90, 91 and 92 are replaced by the following:

‘90. For the covered portion of the exposure value (E) (based on the adjusted value of the credit protection G_A), the PD for the purposes of Annex VII, Part 2 may be the PD of the protection provider, or a PD between that of the borrower and that of the guarantor if a full substitution is deemed not to be warranted. In the case of subordinated exposures and non-subordinated unfunded protection, the LGD to be applied for the purposes of Annex VII, Part 2 may be that associated with senior claims.

91. For any uncovered portion of the exposure value (E) the PD shall be that of the borrower and the LGD shall be that of the underlying exposure.

92. G_A is the value of G^* as calculated under point 84 further adjusted for any maturity mismatch as laid down in Part 4. E is the exposure value according to Annex VII, Part 3. For this purpose, the exposure value of the items listed in Annex VII, Part 3, points 9 to 11 shall be calculated using a conversion factor or percentage of 100 % rather than the conversion factors or percentages indicated in those points.;

9. Annex IX, Part 2 is amended as follows:

(a) point 1 is amended as follows:

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

‘1. The originator credit institution of a traditional securitisation may exclude securitised exposures from the calculation of risk-weighted exposure amounts and expected loss amounts if either of the following conditions is fulfilled:

- (a) significant credit risk associated with the securitised exposures is considered to have been transferred to third parties;

- (b) the originator credit institution applies a 1 250 % risk weight to all securitisation positions it holds in this securitisation or deducts these securitisation positions from own funds according to Article 57 (r).;
- (ii) the following points 1a to 1d are inserted after the introductory phrase:
- ‘1a. Unless the competent authority decides in a specific instance that the possible reduction in risk weighted exposure amounts which the originator credit institution would achieve by this securitisation is not justified by a commensurate transfer of credit risk to third parties, significant credit risk shall be considered to have been transferred in the following cases:
- (a) the risk-weighted exposure amounts of the mezzanine securitisation positions held by the originator credit institution in this securitisation do not exceed 50 % of the risk weighted exposure amounts of all mezzanine securitisation positions existing in this securitisation;
- (b) where there are no mezzanine securitisation positions in a given securitisation and the originator can demonstrate that the exposure value of the securitisation positions that would be subject to deduction from own funds or a 1 250 % risk weight exceeds a reasoned estimate of the expected loss on the securitised exposures by a substantial margin, the originator credit institution does not hold more than 20 % of the exposure values of the securitisation positions that would be subject to deduction from own funds or a 1 250 % risk weight.
- 1b. For the purposes of point 1a, mezzanine securitisation positions mean securitisation positions to which a risk weight lower than 1 250 % applies and that are more junior than the most senior position in this securitisation and more junior than any securitisation position in this securitisation to which:
- (a) in the case of a securitisation position subject to points 6 to 36 of part 4 a credit quality step 1; or
- (b) in the case of a securitisation position subject to points 37 to 76 of part 4 a credit quality step 1 or 2 is assigned under Part 3.
- 1c. As an alternative to points 1a and 1b significant credit risk may be considered to have been transferred if the competent authority is satisfied that a credit institution has policies and methodologies in place, ensuring that the possible reduction of capital requirements which the originator achieves by the securitisation is justified by a commensurate transfer of credit risk to third parties. The competent authorities shall only be satisfied if the originator credit institution can demonstrate that such transfer of credit risk to third parties is also recognised for purposes of the credit institution’s internal risk management and its internal capital allocation.
- 1d. In addition to points 1 to 1c, all the following conditions shall be met:;
- (b) point 2 is amended as follows:
- (i) the introductory phrase is replaced by the following:
- ‘2. An originator credit institution of a synthetic securitisation may calculate risk-weighted exposure amounts, and, as relevant, expected loss amounts, for the securitised exposures in accordance with points 3 and 4, if either of the following is met:
- (a) significant credit risk is considered to have been transferred to third parties either through funded or unfunded credit protection;
- (b) the originator credit institution applies a 1 250 % risk weight to all securitisation positions he holds in this securitisation or deducts these securitisation positions from own funds according to Article 57 (r).;
- (ii) the following points 2a to 2d are inserted after the introductory phrase:
- ‘2a. Unless the competent authority decides on a case- by-case basis that the possible reduction in risk weighted exposure amounts which the originator credit institution would achieve by this securitisation is not justified by a commensurate transfer of credit risk to third parties, significant credit risk shall be considered to have been transferred if either of the following conditions is met:

- (a) the risk-weighted exposure amounts of the mezzanine securitisation positions which are held by the originator credit institution in this securitisation do not exceed 50 % of the risk weighted exposure amounts of all mezzanine securitisation positions existing in this securitisation;
- (b) where there are no mezzanine securitisation positions in a given securitisation and the originator can demonstrate that the exposure value of the securitisation positions that would be subject to deduction from own funds or a 1 250 % risk weight exceeds a reasoned estimate of the expected loss on the securitised exposures by a substantial margin, the originator credit institution does not hold more than 20 % of the exposure values of the securitisation positions that would be subject to deduction from own funds or a 1 250 % risk weight.
- 2b. For the purposes of point 2a, mezzanine securitisation positions means securitisation positions to which a risk weight lower than 1 250 % applies and that are more junior than the most senior position in this securitisation and more junior than any securitisation positions in this securitisation to which:
- (a) in the case of a securitisation position subject to points 6 to 36 of part 4 a credit quality step 1; or
- (b) in the case of a securitisation position subject to points 37 to 76 of part 4 a credit quality step 1 or 2 is assigned under Part 3.
- 2c. As an alternative to points 2a and 2b, significant credit risk may be considered to have been transferred if the competent authority is satisfied that a credit institution has policies and methodologies in place to ensure that a possible reduction of capital requirements that the originator achieves by the securitisation is justified by a commensurate transfer of credit risk to third parties. The competent authorities shall only be satisfied if the originator credit institution can demonstrate that such transfer of credit risk to third parties is also recognised for purposes of the credit institutions internal risk management and its internal capital allocation.
- 2d. In addition, the transfer shall comply with the following conditions:;
10. Annex IX, Part 4, is amended as follows:
- (a) in point 13 the introductory phrase is replaced by the following:
- ‘When the following conditions are met, to determine its exposure value a conversion figure of 50 % may be applied to the nominal amount of a liquidity facility.’;
- (b) points 2.4.2 and 14 are deleted;
- (c) point 48 is deleted;
- (d) points 3.5.1 and 56 are deleted;
11. in Annex X, Part 2, point 1 is replaced by the following:
- ‘1. The capital requirement for operational risk shall be calculated as the three-year average of the yearly summations of the capital requirements across business lines referred to in Table 2. In any given year, negative capital requirements (resulting from negative gross income) in any business line may offset positive capital requirements in other business lines without limit. However, where the aggregate capital requirements across all business lines within a given year are negative, the input to the numerator for that year shall be zero.’;
12. Annex X, Part 3, is amended as follows:
- (a) point 14 is replaced by the following:
- ‘14. Credit institutions shall be able to map their historical internal loss data into the business lines defined in Part 2 and into the event types defined in Part 5, and to provide these data to competent authorities upon request. Loss events which affect the entire institution may be allocated to an additional business line “corporate items” due to exceptional circumstances. There must be documented, objective criteria for allocating losses to the specified business lines and event types. The operational risk losses that are related to credit risk and have historically been included in the internal credit risk databases must be recorded in the operational risk databases and be separately identified. Such losses shall not be subject to the operational risk charge, as long as they continue to be treated as credit risk for the purposes of calculating minimum capital requirements. Operational risk losses that are related to market risks shall be included in the scope of the capital requirement for operational risk.’;

(b) point 29 is replaced by the following:

'29. The capital alleviation from the recognition of insurances and other risk transfer mechanisms shall not exceed 20 % of the capital requirement for operational risk before the recognition of risk mitigation techniques.'

13. in Annex XII, Part 2, point 10 the following points (d) and (e) are added:

'(d) the highest, the lowest and the mean of the daily value-at-risk measures over the reporting period and the value-at-risk measure as per the end of the period;

(e) a comparison of the daily end-of-day value-at-risk measures to the one-day changes of the portfolio's value by the end of the subsequent business day together with an analysis of any important overshootings during the reporting period.;

14. In Annex XII, Part 3, point 3 is replaced by the following:

'3. The credit institutions using the approach set out in Article 105 for the calculation of their own funds requirements for operational risk shall disclose a description of the use of insurances and other risk transfer mechanisms for the purpose of mitigation of this risk.'

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, 27 July 2009.

For the Commission

Charlie McCREEVY

Member of the Commission