

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2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance) (repealed)

TITLE V

**PRINCIPLES AND TECHNICAL INSTRUMENTS FOR
PRUDENTIAL SUPERVISION AND DISCLOSURE**

CHAPTER 2

Technical instruments of prudential supervision

Section 3

Minimum own funds requirements for credit risk

Subsection 4

Securitisation

Article 94

Where a credit institution uses the Standardised Approach set out in Articles 78 to 83 for the calculation of risk-weighted exposure amounts for the exposure class to which the securitised exposures would be assigned under Article 79, it shall calculate the risk-weighted exposure amount for a securitisation position in accordance with Annex IX, Part 4, points 1 to 36.

In all other cases, it shall calculate the risk-weighted exposure amount in accordance with Annex IX, Part 4, points 1 to 5 and 37 to 76.

Article 95

1 Where significant credit risk associated with securitised exposures has been transferred from the originator credit institution in accordance with the terms of Annex IX, Part 2, that credit institution may:

- a in the case of a traditional securitisation, exclude from its calculation of risk-weighted exposure amounts, and, as relevant, expected loss amounts, the exposures which it has securitised; and
- b in the case of a synthetic securitisation, calculate risk-weighted exposure amounts, and, as relevant, expected loss amounts, in respect of the securitised exposures in accordance with Annex IX, Part 2.

2 Where paragraph 1 applies, the originator credit institution shall calculate the risk-weighted exposure amounts prescribed in Annex IX for the positions that it may hold in the securitisation.

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Where the originator credit institution fails to transfer significant credit risk in accordance with paragraph 1, it need not calculate risk-weighted exposure amounts for any positions it may have in the securitisation in question.

Article 96

1 To calculate the risk-weighted exposure amount of a securitisation position, risk weights shall be assigned to the exposure value of the position in accordance with Annex IX, based on the credit quality of the position, which may be determined by reference to an ECAI credit assessment or otherwise, as set out in Annex IX.

2 Where there is an exposure to different tranches in a securitisation, the exposure to each tranche shall be considered a separate securitisation position. The providers of credit protection to securitisation positions shall be considered to hold positions in the securitisation. Securitisation positions shall include exposures to a securitisation arising from interest rate or currency derivative contracts.

3 Where a securitisation position is subject to funded or unfunded credit protection the risk-weight to be applied to that position may be modified in accordance with Articles 90 to 93, read in conjunction with Annex IX.

4 Subject to point (r) of Article 57 and Article 66(2), the risk-weighted exposure amount shall be included in the credit institution's total of risk-weighted exposure amounts for the purposes of Article 75(a).

Article 97

1 An ECAI credit assessment may be used to determine the risk weight of a securitisation position in accordance with Article 96 only if the ECAI has been recognised as eligible by the competent authorities for this purpose (hereinafter 'an eligible ECAI').

[^{F12}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 objectivity, independence, ongoing review and transparency with respect to its assessment methodology to be satisfied.

[^{F2}In order to ensure consistent harmonisation of this Article, EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the assessment methodology relating to credit assessments. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.]]

3 If an ECAI has been recognised as eligible by the competent authorities of a Member State for the purposes of paragraph 1, the competent authorities of other Member States may recognise that ECAI as eligible for those purposes without carrying out their own evaluation process.

4 The competent authorities shall make publicly available an explanation of the recognition process and a list of eligible ECAIs.

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5 To be used for the purposes of paragraph 1, a credit assessment of an eligible ECAI shall comply with the principles of credibility and transparency as elaborated in Annex IX, Part 3.

Textual Amendments

- F1** Substituted by 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).
- F2** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Article 98

1 For the purposes of applying risk weights to securitisation positions, the competent authorities shall determine with which of the credit quality steps set out in Annex IX the relevant credit assessments of an eligible ECAI are to be associated. Those determinations shall be objective and consistent.

2 When the competent authorities of a Member State have made a determination under paragraph 1, the competent authorities of other Member States may recognise that determination without carrying out their own determination process.

Article 99

The use of ECAI credit assessments for the calculation of a credit institution's risk-weighted exposure amounts under Article 96 shall be consistent and in accordance with Annex IX, Part 3. Credit assessments shall not be used selectively.

Article 100

1 Where there is a securitisation of revolving exposures subject to an early amortisation provision, the originator credit institution shall calculate, in accordance with Annex IX, an additional risk-weighted exposure amount in respect of the risk that the levels of credit risk to which it is exposed may increase following the operation of the early amortisation provision.

2 For those purposes, a 'revolving exposure' shall be an exposure whereby customers' outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit, and an early amortisation provision shall be a contractual clause which requires, on the occurrence of defined events, investors' positions to be redeemed before the originally stated maturity of the securities issued.

Article 101

[^{F31} A sponsor credit institution, or an originator credit institution which in respect of a securitisation has made use of Article 95 in the calculation of risk-weighted exposure amounts or has sold instruments from its trading book to a securitisation special purpose entity to the effect that it is no longer required to hold own funds for the risks of those instruments shall not, with a view to reducing potential or actual losses to investors, provide support to the securitisation beyond its contractual obligations.]

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2 If an originator credit institution or a sponsor credit institution fails to comply with paragraph 1 in respect of a securitisation, the competent authority shall require it at a minimum, to hold capital against all of the securitised exposures as if they had not been securitised. The credit institution shall disclose publicly that it has provided non-contractual support and the regulatory capital impact of having done so.

Textual Amendments

- F3** Substituted by [Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies \(Text with EEA relevance\)](#).