

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and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (repealed)

CHAPTER VIII

Section 1

Article 40

For the purposes of the calculation of minimum capital requirements for counterparty risk under this Directive, and for the calculation of minimum capital requirements for credit risk under Directive 2006/48/EC, and without prejudice to the provisions of Part 2, point 6 of Annex III to that Directive, exposures to recognised third-country investment firms and exposures to recognised clearing houses and exchanges shall be treated as exposures to institutions.

Section 2

Powers of execution

Article 41

1 The Commission shall decide on any technical adaptations in the following areas [^{F1}in accordance with the procedure referred to in Article 42(2)]:

- a clarification of the definitions in Article 3 in order to ensure uniform application of this Directive;
- b clarification of the definitions in Article 3 to take account of developments on financial markets;
- c adjustment of the amounts of initial capital prescribed in Articles 5 to 9 and the amount referred to in Article 18(2) to take account of developments in the economic and monetary field;
- d adjustment of the categories of investment firms in Article 20(2) and (3) to take account of developments on financial markets;
- e clarification of the requirement laid down in Article 21 to ensure uniform application of this Directive;
- f alignment of terminology on and the framing of definitions in accordance with subsequent acts on institutions and related matters;
- g adjustment of the technical provisions in Annexes I to VII as a result of developments on financial markets, risk measurement, accounting standards or requirements which take account of Community legislation or which have regard to convergence of supervisory practices; or
- h technical adaptations to take account of the outcome of the review referred to in Article 65(3) of Directive 2004/39/EC.

[^{F2}The measures referred to in paragraph 1, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 42(2).]

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Textual Amendments

- F1** Deleted by [Directive 2008/23/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, as regards the implementing powers conferred on the Commission.](#)
- F2** Substituted by [Directive 2008/23/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, as regards the implementing powers conferred on the Commission.](#)

Article 42

1 The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC⁽¹⁾ of 5 November 2003 (hereinafter referred to as ‘the Committee’).

[^{F2} Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.]

[^{F23} By 31 December 2010, and, thereafter, at least every three years, the Commission shall review the provisions concerning its implementing powers and present a report to the European Parliament and to the Council on the functioning of those powers. The report shall examine, in particular, the need for the Commission to propose amendments to this Directive in order to ensure the appropriate scope of the implementing powers conferred on the Commission. The conclusion as to whether or not amendment is necessary shall be accompanied by a detailed statement of reasons. If necessary, the report shall be accompanied by a legislative proposal to amend the provisions conferring implementing powers on the Commission.]

Textual Amendments

- F2** Substituted by [Directive 2008/23/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, as regards the implementing powers conferred on the Commission.](#)

Section 3

Transitional provisions

Article 43

Article 152(1) to (7) of Directive 2006/48/EC shall apply, in accordance with Article 2 and Chapter V, Sections 2 and 3 of this Directive, to investment firms calculating risk-weighted exposure amounts, for the purposes of Annex II to this Directive, in accordance with Articles 84 to 89 of Directive 2006/48/EC, or using the Advanced Measurement Approach as specified in Article 105 of that Directive for the calculation of their capital requirements for operational risk.

Article 44

Until 31 December 2012, for investment firms the relevant indicator for the trading and sales business line of which represents at least 50 % of the total of relevant indicators for all of their business lines calculated in accordance with Article 20 of this Directive

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and points 1 to 4 of Part 2 of Annex X to Directive 2006/48/EC, Member States may apply a percentage of 15 % to the business line ‘trading and sales’.

Article 45

1 Competent authorities may permit investment firms to exceed the limits concerning large exposures set out in Article 111 of Directive 2006/48/EC. Investment firms need not include any excesses in their calculation of capital requirements exceeding such limits, as set out in Article 75(b) of that Directive. This discretion is available until 31 December 2010 or the date of entry into force of any modifications consequent to the treatment of large exposures pursuant to Article 119 of Directive 2006/48/EC, whichever is the earlier. For this discretion to be exercised, the following conditions shall be met:

- a the investment firm provides investment services or investment activities related to the financial instruments listed in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC;
- b the investment firm does not provide such investment services or undertake such investment activities for, or on behalf of, retail clients;
- c breaches of the limits referred to in the introductory part of this paragraph arise in connection with exposures resulting from contracts that are financial instruments as listed in point (a) and relate to commodities or underlyings within the meaning of point 10 of Section C of Annex I to Directive 2004/39/EC (MiFID) and are calculated in accordance with Annexes III and IV of Directive 2006/48/EC, or in connection with exposures resulting from contracts concerning the delivery of commodities or emission allowances; and
- d the investment firm has a documented strategy for managing and, in particular, for controlling and limiting risks arising from the concentration of exposures. The investment firm shall inform the competent authorities of this strategy and all material changes to it without delay. The investment firm shall make appropriate arrangements to ensure a continuous monitoring of the creditworthiness of borrowers, according to their impact on concentration risk. These arrangements shall enable the investment firm to react adequately and sufficiently promptly to any deterioration in that creditworthiness.

2 Where an investment firm exceeds the internal limits set according to the strategy referred to in point (d) of paragraph 1, it shall notify the competent authority without delay of the size and nature of the excess and of the counterparty.

Article 46

By way of derogation from Article 20(1), until 31 December 2011 competent authorities may choose, on a case-by-case basis, not to apply the capital requirements arising from point (d) of Article 75 of Directive 2006/48/EC in respect of investment firms to which Article 20(2) and (3) do not apply, whose total trading book positions never exceed EUR 50 million and whose average number of relevant employees during the financial year does not exceed 100.

Instead, the capital requirement in relation to those investment firms shall be at least the lower of:

- (a) the capital requirements arising from point (d) of Article 75 of Directive 2006/48/EC; and
- b) 12/88 of the higher of the following:

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- (i) the sum of the capital requirements contained in points (a) to (c) of Article 75 of Directive 2006/48/EC; and
- (ii) the amount laid down in Article 21 of this Directive, notwithstanding Article 20(5).

If point (b) applies, an incremental increase shall be applied on at least an annual basis.

Applying this derogation shall not result in a reduction in the overall level of capital requirements for an investment firm, in comparison to the requirements as at 31 December 2006, unless such a reduction is prudentially justified by a reduction in the size of the investment firm's business.

Article 47

Until 31 December 2009 or any earlier date specified by the competent authorities on a case-by-case basis, institutions that have received specific risk model recognition prior to 1 January 2007 in accordance with point 1 of Annex V may, for that existing recognition, treat points 4 and 8 of Annex V to Directive 93/6/EEC as those points stood prior to 1 January 2007.

Article 48

1 The provisions on capital requirements as laid down in this Directive and Directive 2006/48/EC shall not apply to investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC and to whom Directive 93/22/EEC⁽²⁾ did not apply on 31 December 2006. This exemption is available until 31 December 2010 or the date of entry into force of any modifications pursuant to paragraphs 2 and 3, whichever is the earlier.

2 As part of the review required by Article 65(3) of Directive 2004/39/EC, the Commission shall, on the basis of public consultations and in the light of discussions with the competent authorities, report to the Parliament and the Council on:

- a an appropriate regime for the prudential supervision of investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the commodity derivatives or derivatives contracts set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC; and
- b the desirability of amending Directive 2004/39/EC to create a further category of investment firm whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC relating to energy supplies (including electricity, coal, gas and oil).

3 On the basis of the report referred to in paragraph 2, the Commission may submit proposals for amendments to this Directive and to Directive 2006/48/EC

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Section 4

Final provisions

Article 49

1 Member States shall adopt and publish, by 31 December 2006, the laws, regulations and administrative provisions necessary to comply with Articles 2, 3, 11, 13, 17, 18, 19, 20, 22, 23, 24, 25, 29, 30, 33, 34, 35, 37, 39, 40, 41, 43, 44, 50 and the Annexes I, II, III, V, VII. 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 1 January 2007.

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. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive.

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 50

1 Article 152(8) to (14) of Directive 2006/48/EC shall apply mutatis mutandis for the purposes of this Directive subject to the following provisions which shall apply where the discretion referred to in Article 152(8) of Directive 2006/48/EC is exercised:

- a references in point 7 of Annex II to this Directive to Directive 2006/48/EC shall be read as references to Directive 2000/12/EC as that Directive stood prior to 1 January 2007; and
- b point 4 of Annex II to this Directive shall apply as it stood prior to 1 January 2007.

2 Article 157(3) of Directive 2006/48/EC shall apply mutatis mutandis for the purposes of Articles 18 and 20 of this Directive.

Article 51

By 1 January 2011, the Commission shall review and report on the application of this Directive and submit its report to the Parliament and the Council together with any appropriate proposals for amendment.

Article 52

Directive 93/6/EEC, as amended by the Directives listed in Annex VIII, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex VIII, Part B.

References made to the repealed directives shall be construed as being made to this Directive and should be read in accordance with the correspondence table set out in Annex IX.

Article 53

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

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Article 54

This Directive is addressed to the Member States.

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- (1) [OJ L 3, 7.1.2004, p. 36.](#)
- (2) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ([OJ L 141, 11.6.1993, p. 27](#)). Directive as last amended by Directive 2002/87/EC.