

Financial markets: banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

2008/0191(COD) - 16/09/2009 - Final act

PURPOSE: to tighten up the rules on own funds applicable to banks in response to the shortcomings that have been revealed by the financial crisis.

LEGISLATIVE ACT: Directive 2009/111/EC of the European Parliament and of the Council 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.

CONTENT: the Council adopted a directive updating the EU's capital requirements for banks, following an agreement reached with the European Parliament in first reading. This Directive is a follows on from calls from the European Council and the G20 to address various shortcomings and is one of a series of initiatives taken in response to the financial crisis that includes:

- A [regulation on credit rating agencies](#),
- A [regulation on cross-border payments](#),
- A [directive on electronic money](#), and
- A [decision](#) establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing.

The directive is aimed at tightening up the rules on capital requirements for banks, in response to specific weaknesses identified in the light of the financial crisis. It amends directives 2006/48/EC relating to the taking up and pursuit of the business of credit institutions and 2006/49/EC on the capital adequacy of investment firms and credit institutions in five key areas:

1) strengthening the supervision of cross-border banking groups:

close coordination is required between the supervisor of the member state where the parent undertaking is located and the supervisors of its subsidiaries with regard to decisions relating to risk assessment and additional capital requirements;

reporting requirements will be fully harmonised at European level in 2012;

colleges of supervisors, chaired by the supervisor of the parent undertaking, will be established for all cross-border groups;

the role of the Committee of European Banking Supervisors (CEBS) is strengthened;

the mandates of national supervisory authorities are given a European dimension;

2) improving the framework for securitisation practices: in order to remedy the faults of the "originate to distribute" model, due diligence and transparency obligations imposed on the originators of securitisation operations and on investors are strengthened. Investors should be able to assess the risks involved in structured products otherwise than solely by the means of the ratings given by agencies. In order to encourage better risk assessment, the text introduces **the obligation for originators to retain on their balance sheets 5% of risks transferred or sold to investors**. Credit institutions shall regularly perform their own stress tests appropriate to their securitisation positions. 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;

3) harmonising the classification of banks' "tier 1" capital funds and hybrid instruments, with a central role given to CEBS in ensuring greater uniformity of supervisors' practices;

4) introducing rules on liquidity risk management, in particular as regards the setting up of liquid asset reserves, conducting liquidity stress tests and establishing contingency plans;

5) tightening the supervision of exposure to a single counterparty ("large exposures"): the text establishes arrangements that place a greater restriction on the extent of exposure to a single counterparty, whatever its nature, including when it is a bank (**in all cases, the limit is 25% of banks' own funds**).

Within the current framework, concentration limits for bank counterparties are less restrictive than for "undertaking" counterparties, yet the financial crisis has shown that bank counterparties also present a risk of default. The text states that a credit institution shall not incur an exposure 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 is the higher.

Where the amount of EUR 150 million is higher than 25% of the credit institution's own funds, the value of the exposure shall not exceed a reasonable limit in terms of the credit institution's own funds. That limit shall be determined by credit institutions to address and control concentration risk, and shall not be higher than 100% of the credit institution's own funds.

College of Supervisors: 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, provision is made for supervisory activities to be coordinated in a more effective manner. The establishment of Colleges of Supervisors 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.

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.

Reports: before 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. It will submit a report on the above issues to the European Parliament and to the Council with any appropriate proposals. It will also submit a report on the need for further reform of the supervisory system.

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.

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. 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 in regard to its application to microcredit finance and the question as to whether exemptions should be a matter of national discretion.

By 1 January 2012, the Commission shall report on the application and effectiveness of Article 122a (securitisation) in the light of international market developments.

ENTRY INTO FORCE: 07/12/2009.

TRANSPOSITION: 31/10/2010.

APPLICATION: from 31/12/2010.