



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Economic and Monetary Affairs

2009/0099(COD)

2.3.2010

*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council 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 (COM(2009)0362 – C7-0096/2009 – 2009/0099(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Arlene McCarthy

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	52

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council 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

(COM(2009)0362 – C7-0096/2009 – 2009/0099(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0362),
 - having regard to Article 251(2) and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0096/2009),
 - having regard to the Communication from the Commission to the European Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures" (COM(2009)0665),
 - having regard to Article 294(3) and Article 53 of the Treaty on the Functioning of the EU,
 - having regard to the opinion of the European Central Bank of 12 November 2009¹,
 - having regard to the opinion of the European Economic and Social Committee,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Employment and Social Affairs and the Committee on Legal Affairs (A7-0000/2010),
1. Adopts the position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

¹ OJ C 291, 1.12.2009, p. 1.

Amendment 1

Proposal for a directive – amending act Recital 1

Text proposed by the Commission

(1) Excessive and imprudent risk-taking in the banking sector has led to the failure of individual financial institutions and systemic problems in Member States and globally. While the causes of such risk-taking are many and complex, there is agreement by supervisors and regulatory bodies, including the G20 and the Committee of European Banking Supervisors, that the inappropriate remuneration structures of some financial institutions have been a contributory factor. Remuneration policies which give incentives to take risks that exceed the general level of risk tolerated by the institution can undermine sound and effective risk management and exacerbate excessive risk-taking behaviour.

Amendment

(1) Excessive and imprudent risk-taking in the banking sector has led to the failure of individual financial institutions and systemic problems in Member States and globally. While the causes of such risk-taking are many and complex, there is agreement by supervisors and regulatory bodies, including the G20 and the Committee of European Banking Supervisors, that the inappropriate remuneration structures of some financial institutions have been a contributory factor. Remuneration policies which give incentives to take risks that exceed the general level of risk tolerated by the institution can undermine sound and effective risk management and exacerbate excessive risk-taking behaviour. ***The internationally agreed and endorsed principles of the Financial Stability Board for sound compensation practices are therefore of particular importance.***

Or. en

Amendment 2

Proposal for a directive – amending act Recital 4

Text proposed by the Commission

(4) Because excessive and imprudent risk-taking may undermine the financial soundness of financial institutions and destabilise the banking system, it is important that the new obligation concerning remuneration policies and practices should be implemented in a

Amendment

(4) Because excessive and imprudent risk-taking may undermine the financial soundness of financial institutions and destabilise the banking system, it is important that the new obligation concerning remuneration policies and practices should be implemented in a

consistent manner. It is therefore appropriate to specify **core** principles on sound remuneration to ensure that the structure of remuneration does not encourage excessive risk-taking by individuals and is aligned with the risk appetite, values and long-term interests of the institution. In order to ensure that the design of remuneration policies is integrated in the risk management of the financial institution, the management body (supervisory function) of each credit institution or investment firm should establish the general principles to be applied, and the policies should be subject to at least annual independent internal review.

consistent manner. It is therefore appropriate to specify principles on sound remuneration to ensure that the structure of remuneration does not encourage excessive risk-taking by individuals **or moral hazard** and is aligned with the risk appetite, values and long-term interests of the institution. In order to ensure that the design of remuneration policies is integrated in the risk management of the financial institution, the management body (supervisory function) of each credit institution or investment firm should establish the general principles to be applied, and the policies should be subject to at least annual independent internal review.

Or. en

Amendment 3

Proposal for a directive – amending act Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) This Directive lays down minimum core principles on remuneration policy. Those principles should be applied in a manner that is proportionate to the nature, scope, complexity and riskiness of the activities and the size and internal structure of the credit institution or investment firm concerned. This Directive should not preclude Member States from adopting stricter or additional requirements or from adopting more stringent national measures taken in the context of financial support for specific banks.

Or. en

Justification

Taking into account the constraints on small firms the Commission proposal applies a proportionality test to the remuneration measures. This should however be reviewed to ensure it does not lead to an unlevel playing field that could be exploited for the purpose of regulatory arbitrage. It is important that the legislation does not prevent innovation by Member States in regulating remuneration policies and therefore it should be made clear that they may go beyond these minimum requirements.

Amendment 4

Proposal for a directive – amending act

Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) By December 2012, the Commission should review the principles on remuneration policy with particular regard to the need to close any loopholes and to the efficiency, implementation, and enforcement of the principles, taking into account international developments.

Or. en

Justification

The debate on appropriate remuneration policies is rapidly developing and therefore a short review period is appropriate to ensure any necessary adjustments can be considered in a timely way.

Amendment 5

Proposal for a directive – amending act

Recital 8

Text proposed by the Commission

Amendment

(8) In order to ensure fast and effective enforcement, competent authorities should also have the power to impose either financial or non-financial measures or penalties for breach of a requirement under Directive 2006/48/EC, including the requirement to have remuneration policies that are consistent with sound and effective

(8) In order to ensure fast and effective enforcement, competent authorities should also have the power to impose either financial or non-financial measures or penalties for breach of a requirement under Directive 2006/48/EC, including the requirement to have remuneration policies that are consistent with sound and effective

risk management. Those measures and penalties should be effective, proportionate and dissuasive.

risk management. Those measures and penalties should be effective, proportionate and dissuasive. ***In order to ensure consistency and a level playing field, the Commission should review the implementation of that provision with regard to the consistency between the measures and penalties across the Union and, where appropriate, come forward with proposals.***

Or. en

Justification

The application of significantly varying penalties would risk undermining a level playing field and could lead to regulatory arbitrage. The Commission should therefore be required to review the measures or penalties adopted by the Member States.

Amendment 6

**Proposal for a directive – amending act
Recital 9 a (new)**

Text proposed by the Commission

Amendment

(9a) In order further to enhance transparency as regards the remuneration practices of credit institutions and investment firms, the competent authorities of Member States should collect information on remuneration to benchmark institutions in accordance with the categories of quantitative information that those institutions are required to disclose under this Directive. The competent authorities should provide the European Banking Authority (EBA) with such information to enable the EBA to conduct similar benchmarking at Union level.

Or. en

Justification

To fully understand patterns and trends of remuneration policies national supervisors should

use the information they collect on remuneration policies and payments to benchmark the institutions at a national level, and refer this to the European Banking Authority enabling it to undertake a Europe wide benchmarking exercise.

Amendment 7

Proposal for a directive – amending act Recital 10

Text proposed by the Commission

(10) In order to promote supervisory convergences in the assessment of remuneration policies and practices, the **Committee of European Banking Supervisors** should **ensure the existence of guidelines on sound remuneration policies** in the banking sector. The **Committee of European Securities Regulators** should assist in the elaboration of such **guidelines** to the extent that they also apply to remuneration policies for persons involved in the provision of investment services and the carrying out of investment activities by credit institutions and by investment firms within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

Amendment

(10) In order to promote supervisory convergences in the assessment of remuneration policies and practices, the **EBA** should **elaborate technical standards to facilitate information collection and the consistent implementation of the remuneration principles** in the banking sector. **The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union to establish those standards.** The **European Securities and Markets Authority** should assist in the elaboration of such **technical standards** to the extent that they also apply to remuneration policies for persons involved in the provision of investment services and the carrying out of investment activities by credit institutions and by investment firms within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

Or. en

Amendment 8

Proposal for a directive – amending act Recital 11

Text proposed by the Commission

(11) Since poorly designed remuneration policies and incentive schemes are capable of increasing to an unacceptable extent the risks to which credit institutions and investment firms are exposed, it is appropriate that competent authorities impose qualitative or quantitative measures on the relevant entities that are designed to address problems that have been identified in relation to remuneration policies in the Pillar 2 supervisory review. Qualitative measures available to competent authorities include requiring credit institutions or investment firms to reduce the risk inherent in their activities, products or systems, including structures of remuneration to the extent that they are inconsistent with effective risk management. Quantitative measures include a requirement to hold additional own funds.

Amendment

(11) Since poorly designed remuneration policies and incentive schemes are capable of increasing to an unacceptable extent the risks to which credit institutions and investment firms are exposed, ***prompt remedial action and, if necessary, appropriate corrective measures should be taken. Consequently,*** it is appropriate that competent authorities ***have the power to*** impose qualitative or quantitative measures on the relevant entities that are designed to address problems that have been identified in relation to remuneration policies in the Pillar 2 supervisory review. Qualitative measures available to competent authorities include requiring credit institutions or investment firms to reduce the risk inherent in their activities, products or systems, including structures of remuneration to the extent that they are inconsistent with effective risk management. Quantitative measures include a requirement to hold additional own funds.

Or. en

Amendment 9

Proposal for a directive – amending act Recital 12

Text proposed by the Commission

(12) In order to ensure adequate transparency to the market of their remuneration structures and the associated risk, credit institutions and investment firms should disclose information on their

Amendment

(12) ***Good governance structures, transparency and disclosure are essential for sound remuneration policies.*** In order to ensure adequate transparency to the market of their remuneration structures and

remuneration policies and practices for those staff whose professional activities have a material impact on the risk profile of the institution. However, this obligation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with the regard to the processing of personal data and the free movement of such data.

the associated risk, credit institutions and investments forms should disclose information on their remuneration policies and practices for those staff whose professional activities have a material impact on the risk profile of the institution. However, this obligation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with the regard to the processing of personal data and the free movement of such data.

Or. en

Amendment 10

Proposal for a directive – amending act Recital 16

Text proposed by the Commission

(16) In order to promote the convergence of supervisory practices with regard to the supervision of due diligence for highly complex re-securitisations, the **Committee of European Banking Supervisors** should **establish guidelines, which should include a definition of** or criteria for the types of re-securitisations that should be considered as 'highly complex' for this purpose. That definition or those criteria should be adapted to developments in market practices.

Amendment

(16) In order to promote the convergence of supervisory practices with regard to the supervision of due diligence for highly complex re-securitisations, the **Commission** should **be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union to define or establish** criteria for the types of re-securitisations that should be considered as 'highly complex' for this purpose **and to adapt** that definition or those criteria to developments in market practices.

Or. en

Justification

The lack of due diligence by banks led to heavy exposure to risks that were not well understood, and thus played a key role in the crisis. There is therefore a strong rationale for requiring due diligence to be demonstrated to the supervisor. However it is essential to have a clear and tight definition of such re-securitisations to provide regulatory certainty and prevent supervisors from being overwhelmed by an excessively broad application of this

provision. The definition should therefore be subject to approval in accordance with the procedure for delegated acts.

Amendment 11

Proposal for a directive – amending act Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) This Directive lays down limited exceptions for certain correlation trading activities, where banks may be allowed by their supervisor to calculate a comprehensive risk capital charge subject to strict minimum requirements. In such cases it might be appropriate to establish a floor to the capital requirement. Having regard to the fact that the Basel Committee on Banking Supervision is conducting an impact study on the capital charges for securitisation positions in the trading book, including those that would result from the specific treatment for correlation trading, the Commission should report to the European Parliament and the Council about any measures agreed at international level regarding the methodology and minimum levels and the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union for the purposes of setting such a floor.

Or. en

Justification

Subsequent to the publication of the Commission proposal the Basel Committee agreed to exclude correlation trading for the full application of the new provisions. Basel is conducting an impact assessment to determine the need for a floor requirement for correlation trading. The introduction of such a requirement should be subject to approval by Parliament and Council by means of a delegated act.

Amendment 12

Proposal for a directive – amending act Recital 26 b (new)

Text proposed by the Commission

Amendment

(26b) The measures in this Directive are steps in the reform process in response to the financial crisis. In line with the conclusions of the G-20, the Financial Stability Board and the Basel Committee on Banking Supervision further reforms may be necessary, including the need to build counter-cyclical buffers, "dynamic provisioning", the rationale underlying the calculation of capital requirements in Directive 2006/48/EC and supplementary measures to risk-based requirements for credit institutions to help constrain the build-up of leverage in the banking system. In order to ensure appropriate democratic oversight of the process, the European Parliament and the Council must be involved in a timely and effective manner.

Or. en

Justification

The provisions in 'CRD 2' (Directive 2009/111/EC) require the Commission to report to the Parliament on these wider reform issues. It is important to ensure that the Commission negotiates on behalf of the EU at the Basel Committee on the basis of a proper democratic mandate, in particular prior to negotiating such fundamental issues.

Amendment 13

Proposal for a directive – amending act Recital 26 c (new)

Text proposed by the Commission

Amendment

(26c) Article 152 of Directive 2006/48/EC requires certain credit institutions to provide own funds that are at least equal to certain specified minimum amounts for

the three twelve-month periods between 31 December 2006 and 31 December 2009. In the light of the current situation in the banking sector and the extension of the transitional arrangements for minimum capital adopted by the Basel Committee on Banking Supervision, it is appropriate to renew that requirement for a limited period of time until 31 December 2011.

Or. en

Justification

Following the publication of the Commission proposal the Basel Committee agreed to continue with the current Basel I floors for an extended period while further reforms are under discussion.

Amendment 14

Proposal for a directive – amending act Recital 26 d (new)

Text proposed by the Commission

Amendment

(26d) In order not to discourage credit institutions from moving to the Internal Ratings-Based Approach (IRB) or the Advanced Measurement Approache (AMA) for calculating the capital requirements during the transitional period due to unreasonable and disproportionate implementation costs, credit institutions that move to IRB or AMA after 31 December 2009 and which have therefore previously calculated their capital requirements in accordance with the less sophisticated approaches should, subject to supervisory approval, be allowed to use the less sophisticated approaches as the basis for the calculation of the transitional floor. Competent authorities should monitor their markets closely and ensure a level playing field within all their markets and market segments and avoid distortions in

the internal market.

Or. en

Justification

Provision subsequent to the continuation of the Basel I floors.

Amendment 15

Proposal for a directive – amending act
Recital 26 e (new)

Text proposed by the Commission

Amendment

(26e) In accordance with point 34 of the Interinstitutional Agreement on better law-making¹, Member States should draw up, for themselves and in the interest of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and make them public.

¹ OJ C 321, 31.12.2003, p. 1.

Or. en

Justification

Standard provision concerning correlation tables.

Amendment 16

Proposal for a directive – amending act
Article 1 – point 2 – subpoint a a (new)
Directive 2006/48/EC
Article 22 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(aa) The following paragraph is inserted:
"2a. Home Member State competent authorities shall collect information to benchmark institutions in accordance with the criteria for disclosure established

***in point 15(ea) of part 2 of Annex XII.
The competent authority shall provide the
European Banking Authority (EBA) with
this information."***

Or. en

Justification

To fully understand patterns and trends of remuneration policies national supervisors should use the information they collect on remuneration policies and payments to benchmark the institutions at a national level, and refer this to the European Banking Authority enabling it to undertake a Europe wide benchmarking exercise.

Amendment 17

Proposal for a directive – amending act

Article 1 – point 2 – point b

Directive 2006/48/EC

Article 22 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. The ***Committee of European Banking Supervisors*** shall ensure ***the existence of guidelines on sound remuneration policies which comply with the principles*** set out in ***point 22*** of Annex V. The ***Committee of European Securities Regulators*** shall cooperate closely with the ***Committee of European Banking Supervisors*** in ***ensuring the existence of guidelines*** on remuneration policies for categories of staff involved in the provision of investment services and activities meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

Amendment

3. The ***EBA may elaborate technical standards to facilitate the implementation of, and ensure consistency of information collected under, paragraph 2a of this Article and the principles on remuneration policy as set out in points 22 and 22a of Annex V. The Commission shall adopt those technical standards by means of delegated acts in accordance with Articles 151, 151a and 151b.*** The European Securities and Markets Authority shall cooperate closely with the ***EBA*** in ***elaborating such technical standards*** on remuneration policies for categories of staff involved in the provision of investment services and activities ***within the*** meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

Or. en

Justification

Depending on the experience of the EBA with regard to the collection of information and implementation of the principles in Member States the EBA may wish to establish technical standards to ensure necessary coherence and consistency. Such technical standards must be subject to approval by the European Parliament and Council, by means of a delegated act.

Amendment 18

Proposal for a directive – amending act

Article 1 – point 2 – point b

Directive 2006/48/EC

Article 22 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The EBA shall conduct and publish benchmarking of remuneration practices at the Union level on the basis of information provided by competent authorities under paragraph 2a of this Article.

Or. en

Justification

Benchmarking requirement as above.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 9

Directive 2006/48/EC

Article 122b – paragraph 2

Text proposed by the Commission

Amendment

2. Paragraph 1 shall apply in respect of positions in new re-securitisations issued after 31 December 2010. In respect of positions in existing re-securitisations, paragraph 1 shall apply from 31 December 2014 where new underlying exposures are added or substituted after that date.

2. Paragraph 1 shall not apply until such a time as a definition for highly complex re-securitisations has been adopted in accordance with Article 150(2)(ea). Subject to the adoption of such a definition, paragraph 1 shall apply in respect of positions in new re-securitisations issued after 31 December 2010. In respect of positions in existing re-

securitisations, **and subject to the adoption of a definition**, paragraph 1 shall apply from 31 December 2014 where new underlying exposures are added or substituted after that date.

Or. en

Justification

The lack of due diligence by banks led to heavy exposure to risks that were not well understood, and thus played a key role in the crisis. There is therefore a strong rationale for requiring due diligence to be demonstrated to the supervisor. However it is essential to have a clear and tight definition of such re-securitisations to provide regulatory certainty and prevent supervisors from being overwhelmed by an excessively broad application of this provision. The definition should therefore be subject to approval in accordance with the procedure for delegated acts.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 10 a (new)

Directive 2006/48/EC

Title VI – title

Text proposed by the Commission

Amendment

(10a) The title of Title VI is replaced by the following:

"DELEGATED ACTS AND POWERS OF EXECUTION"

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 21

Proposal for a directive – amending act

Article 1 – point 10 b (new)

Directive 2006/48/EC

Article 150 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

(10b) In Article 150(1), the introductory part is replaced by the following:

"1. Without prejudice, as regards own funds, to the proposal that the Commission is to submit pursuant to Article 62, the technical adjustments [...] in the following areas shall be adopted by means of delegated acts in accordance with Articles 151, 151a and 151b:"

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 22

Proposal for a directive – amending act

Article 1 – point 10 c (new)

Directive 2006/48/EC

Article 150 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

(10c) In the first subparagraph of Article 150(2), the introductory part is replaced by the following:

"The Commission may adopt the following [...] measures:"

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 10 d (new)

Directive 2006/48/EC

Article 150 – paragraph 2 – subparagraph 1 – point f a (new)

PE439.301v03-00

20/56

PR\807519EN.doc

Text proposed by the Commission

Amendment

(10d) In the first subparagraph of Article 150(2), the following point is added:

"(fa) definition of or criteria for the types of re-securitisation that should be considered as 'highly complex' as provided for in Article 122b of this Directive."

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 10 e (new)

Directive 2006/48/EC

Article 150 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

(10e) In Article 150(2), the second subparagraph is replaced by the following:

"Those measures [...] shall be adopted by means of delegated acts in accordance with Articles 151, 151a and 151b."

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 25

Proposal for a directive – amending act

Article 1 – point 10 f (new)

Directive 2006/48/EC

Article 151 – paragraph 2

Text proposed by the Commission

Amendment

(10f) Article 151(2) is replaced by the following:

"2. The power to adopt delegated acts referred to in Article 150 shall be conferred on the Commission for an indeterminate period of time."

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 26

Proposal for a directive – amending act

Article 1 – point 10 g (new)

Directive 2006/48/EC

Article 151 – paragraph - 2a (new)

Text proposed by the Commission

Amendment

(10g) In Article 151, the following paragraph is inserted:

"-2a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council."

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 27

Proposal for a directive – amending act

Article 1 – point 10 h (new)

Directive 2006/48/EC

Article 151 – paragraph - 2b (new)

Text proposed by the Commission

Amendment

(10h) In Article 151, the following paragraph is inserted:

"-2b. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 151a and 151b."

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 28

Proposal for a directive – amending act

Article 1 – point 10 i (new)

Directive 2006/48/EC

Article 151 – paragraph 3

Text proposed by the Commission

Amendment

(10i) Article 151(3) is deleted.

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 10 j (new)

Directive 2006/48/EC

Article 151 a (new) (in title VI)

Text proposed by the Commission

Amendment

(10j) The following article is inserted after Article 151:

"Article 151a

Revocation of the delegation

- 1. The delegation of power referred to in Article 150 may be revoked by the European Parliament or by the Council.*
- 2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission stating the delegated powers which could be subject to revocation.*
- 3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."*

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 30

Proposal for a directive – amending act

Article 1 – point 10 k (new)

Directive 2006/48/EC

Article 151 b (new) (in title VI)

Text proposed by the Commission

Amendment

(10k) The following article is inserted after Article 151a:

"Article 151b

Objections to delegated acts

- 1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.*

2. If on the expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force at the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force."

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 10 l (new)

Directive 2006/48/EC

Article 152 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(10l) In Article 152, the following paragraph is inserted:

“5a. Credit institutions calculating risk-weighted exposure amounts in accordance with Articles 84 to 89 shall, until 31 December 2011, provide own funds which are at all times more than or equal to the amount indicated in paragraph 5c or paragraph 5d if applicable.”

Or. en

Justification

Following the publication of the Commission proposal the Basel Committee agreed to continue with the current Basel I floors for an extended period while further reforms are under discussion.

Amendment 32

Proposal for a directive – amending act

Article 1 – point 10 m (new)

Directive 2006/48/EC

Article 152 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

(10m) In Article 152, the following paragraph is inserted:

"5b. Credit institutions using the Advanced Measurement Approach as specified in Article 105 for the calculation of their capital requirements for operational risk shall, until 31 December 2011, provide own funds which are at all times at least equal to the amount indicated in paragraph 5c or 5d, if applicable."

Or. en

Justification

Following the publication of the Commission proposal the Basel Committee agreed to continue with the current Basel I floors for an extended period while further reforms are under discussion.

Amendment 33

Proposal for a directive – amending act

Article 1 – point 10 n (new)

Directive 2006/48/EC

Article 152 – paragraph 5 c (new)

Text proposed by the Commission

Amendment

(10n) In Article 152, the following paragraph is inserted:

"5c. The amount referred to in paragraphs 5a and 5b shall be 80 % of the total minimum amount of own funds that the credit institutions would be required to hold under Article 4 of Directive 93/6/EEC and Directive 2000/12/EC, as

applicable prior to 1 January 2007."

Or. en

Justification

Following the publication of the Commission proposal the Basel Committee agreed to continue with the current Basel I floors for an extended period while further reforms are under discussion.

Amendment 34

Proposal for a directive – amending act

Article 1 – point 10 o (new)

Directive 2006/48/EC

Article 152 – paragraph 5 d (new)

Text proposed by the Commission

Amendment

(10o) In Article 152, the following paragraph is inserted:

"5d. Subject to approval by the competent authorities, for credit institutions referred to in paragraph 5e, the amount referred to in paragraphs 5a and 5b may be 80% of the total minimum amount of own funds that those credit institutions would be required to hold under Articles 78 to 83, Article 103 or 104 and Directive 2006/49/EC, as applicable prior to 1 January 2011."

Or. en

Justification

Following the publication of the Commission proposal the Basel Committee agreed to continue with the current Basel I floors for an extended period while further reforms are under discussion.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 10 p (new)

Directive 2006/48/EC

Article 152 – paragraph 5 e (new)

Text proposed by the Commission

Amendment

(10p) In Article 152, the following paragraph is inserted:

"5e. A credit institution may apply paragraph 5d only if it started to use the Internal Ratings-Based Approach or the Advanced Measurement Approach for the calculation of its capital requirements on or after 1 January 2010."

Or. en

Justification

Following the publication of the Commission proposal the Basel Committee agreed to continue with the current Basel I floors for an extended period while further reforms are under discussion.

Amendment 36

Proposal for a directive – amending act

Article 1 – point 10 q (new)

Directive 2006/48/EC

Article 156 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(10q) In Article 156, the following paragraph is inserted after paragraph 3:

"By December 2012, the Commission shall review and report on the provisions on remuneration, including those set out in Annexes V and XII, with particular regard to their efficiency, implementation, enforcement, taking into account international developments. That review shall identify any lacunae arising from the application of the principle of proportionality to these provisions. The Commission shall submit this report to the European Parliament and the Council together with any appropriate proposals."

Or. en

Justification

The debate on appropriate remuneration policies is rapidly developing and therefore a short review period is appropriate to ensure any necessary adjustments can be considered in a timely way.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 10 r (new)

Directive 2006/48/EC

Article 156 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

(10r) In Article 156, the following paragraph is inserted after paragraph 3a:

"In order to ensure consistency and a level playing field, the Commission shall review the implementation of Article 54 with regard to the consistency between the measures and penalties across the Union and, if appropriate, put forward proposals."

Or. en

Justification

The application of significantly varying penalties would risk undermining a level playing field leading to regulatory arbitrage. The Commission should therefore be required to review the measures or penalties adopted by the Member States.

Amendment 38

Proposal for a directive – amending act

Article 2 – point 3 a (new)

Directive 2006/49/EC

Chapter VIII - Section 2 – title

Text proposed by the Commission

Amendment

(3a) The title of Section 2 of Chapter VIII is replaced by the following:

"Delegated acts and powers of

execution"

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 39

Proposal for a directive – amending act

Article 2 – point 3 b (new)

Directive 2006/49/EC

Article 41 – paragraph 2

Text proposed by the Commission

Amendment

(3b) Article 41(2) is replaced by the following:

"2. The measures referred to in paragraph 1 [...] shall be adopted by means of delegated acts in accordance with Articles 42, 42a and 42b."

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 40

Proposal for a directive – amending act

Article 2 – point 3 c (new)

Directive 2006/49/EC

Article 42 – paragraph 2

Text proposed by the Commission

Amendment

(3c) Article 42(2) is replaced by the following:

"2. The power to adopt delegated acts referred to in Article 41 shall be conferred on the Commission for an indeterminate period of time."

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 41

Proposal for a directive – amending act

Article 2 – point 3 d (new)

Directive 2006/49/EC

Article 42 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(3d) In Article 42, the following paragraph is inserted:

"2a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council."

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 42

Proposal for a directive – amending act

Article 2 – point 3 e (new)

Directive 2006/49/EC

Article 42 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

(3e) In Article 42, the following paragraph is inserted:

"2b. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 42a and 42b."

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 43

Proposal for a directive – amending act

Article 2 – point 3 f (new)

Directive 2006/49/EC

Article 42 a (new)

Text proposed by the Commission

Amendment

(3f) The following article is inserted after Article 42:

"Article 42a

Revocation of the delegation

- 1. The delegation of power referred to in Article 41 may be revoked by the European Parliament or by the Council.***
- 2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission stating the delegated powers which could be subject to revocation.***
- 3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."***

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 44

Proposal for a directive – amending act

Article 2 – point 3 g (new)

Directive 2006/49/EC

Article 42 b (new)

Text proposed by the Commission

Amendment

(3g) The following Article is inserted after Article 42a:

"Article 42b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If on the expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force at the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force."

Or. en

Justification

Alignment with Lisbon Treaty provisions on delegated acts.

Amendment 45

Proposal for a directive – amending act

Article 2 – point 3 h (new)

Directive 2006/49/EC

Article 51 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(3h) In Article 51, the following paragraph is added:

"The Commission shall report to the European Parliament and the Council on

any measures agreed at international level regarding the methodology and minimum levels for capital charges that result from the specific treatment for correlation trading, including the setting of a minimum floor. In the event that there is international agreement regarding such a floor, the Commission shall adopt a delegated act in accordance with Articles 42, 42a and 42b."

Or. en

Justification

Following the decision to exclude correlation trading from the measures in this directive the Basel Committee is conducting an impact assessment to determine the need for a floor requirement for correlation trading. The introduction of such a requirement should be subject to approval by Parliament and Council by means of a delegated act.

Amendment 46

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – introductory part

Text proposed by the Commission

22. When establishing and applying the remuneration policies for those categories of staff whose professional activities have a material impact on their risk profile, credit institutions shall comply with the following principles in a way that is appropriate to their size, internal organisation and the nature, the scope and the complexity of their activities:

Amendment

22. When establishing and applying the remuneration policies for those categories of staff, ***including senior management***, whose professional activities have a material impact on their risk profile, credit institutions shall comply with the following principles in a way that is appropriate to their size, internal organisation and the nature, the scope and the complexity of their activities:

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 47

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point b

Text proposed by the Commission

(b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the credit institution;

Amendment

(b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the credit institution, **and includes measures to avoid conflicts of interest**;

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 48

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point c

Text proposed by the Commission

(c) the management body (supervisory function) of the credit institution **establishes** the general principles of the remuneration policy and is responsible for its implementation;

Amendment

(c) the management body (supervisory function) of the credit institution **adopts and periodically reviews** the general principles of the remuneration policy and is responsible for its implementation;

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 49

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point d

Text proposed by the Commission

(d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration **defined** by the management body (supervisory function);

Amendment

(d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration **adopted** by the management body (supervisory function);

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 50

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point d a (new)

Text proposed by the Commission

Amendment

(da) staff members engaged in control functions are independent from the business units they oversee, have appropriate authority, and are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 51

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the assessment of the performance is set in a multi-year framework in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the credit institution and its business risks;

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 52

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point e b (new)

Text proposed by the Commission

Amendment

(eb) the total variable remuneration does not limit the ability of the credit institution to strengthen its capital base;

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 53

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point e c (new)

Text proposed by the Commission

Amendment

(ec) in the case of credit institutions that are currently benefiting from exceptional government intervention, no variable remuneration is paid to the directors of that institution;

Or. en

Justification

As directors are responsible for the overall performance of their firm, and in line with the FSB requirements that bonuses reflect performance, there can be no justification for their receipt of bonus payments while a firm continues to require exceptional state support. Such a measure also prevents the risk of moral hazard with respect to such payments and ensures a prime focus on strengthening the institution, and in particular its capital base, to repay taxpayers and relieve the need for government support.

Amendment 54

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point e d (new)

Text proposed by the Commission

Amendment

(ed) guaranteed variable remuneration is exceptional and occurs only in the context of hiring new staff and is limited to the first year;

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 55

Proposal for a directive – amending act Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point f

Text proposed by the Commission

(f) *Fixed* and variable components of total remuneration are appropriately balanced; the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible **bonus** policy, including the possibility to pay no **bonus**;

Amendment

(f) *fixed* and variable components of total remuneration are appropriately balanced; the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy **on variable remuneration components**, including the possibility to pay no **variable remuneration component and, in any event, the variable remuneration component does not exceed 50 % of the total remuneration of the individual concerned**;

Or. en

Justification

In line with the approach taken in other provisions of the FSB principles, the principle of an appropriate balance between fixed and variable components of remuneration should be accompanied by a minimum standard to ensure it is effectively implemented.

Amendment 56

Proposal for a directive – amending act Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point h

Text proposed by the Commission

(h) **the measurement of performance used to calculate bonuses or bonus pools includes an adjustment for current and future risks and takes into account the cost of the capital and the liquidity required**;

Amendment

(h) **the size of the pool of variable remuneration components and its allocation within the credit institution takes into account the full range of current and potential risks, and in particular:**

– **the cost and quantity of capital**

required to support the risks taken;
– the cost *and quantity* of the liquidity
risk assumed in the conduct of business;
and
– *consistency with the timing and*
likelihood of potential future revenues
incorporated into current earnings;

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 57

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point h a (new)

Text proposed by the Commission

Amendment

*(ha) subdued or negative financial
performance of the credit institution
generally leads to a considerable
contraction of the its total variable
remuneration, taking into account both
current compensation and reductions in
payouts of amounts previously earned,
including through malus or clawback
arrangements;*

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 58

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point h b (new)

Text proposed by the Commission

Amendment

(hb) a substantial proportion of any variable remuneration component is made in shares or share-linked instruments of the credit institution, subject to the legal structure of the credit institution concerned, or, for non-listed credit institutions, in other non-cash instruments where appropriate and that proportion is at least 50%; those shares, share-linked instruments and non-cash instruments are subject to an appropriate retention policy designed to align incentives with the longer-term interests of the credit institution and the retention period is no less than three years;

Or. en

Justification

Alignment to the FSB principle on payment in the form of shares. Such an approach aligns incentives and strengthens the capital position of the firm. The FSB principles require an appropriate retention period be applied to ensure that the measure is effective. In line with the approach taken elsewhere it is appropriate to ensure a minimum figure is set for this retention period. Consistent with Commission Recommendation (2009)3177 and the FSB rules of deferral of bonuses it is appropriate to set this minimum period at three years.

Amendment 59

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point i

Text proposed by the Commission

Amendment

(i) payment of the major part of a significant bonus is deferred for an appropriate period and is linked to the future performance of the firm.

(i) a substantial proportion of the variable remuneration component is deferred over a sufficient period; the size of the deferred proportion and the length of the deferral period is established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question;

remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; at least 40 % of the variable remuneration component is deferred; iIn the case of a variable remuneration component of a particularly high amount at least 60 % of the amount is deferred and the deferral period is no less than three years;

Or. en

Justification

FSB alignment regarding deferral of bonuses. The amendment is phrased to make clear that the priority must be that the amount and period of deferral be established according to the business cycle and the activities of the individual, their business unit and the firm and therefore that a three year deferral period is only a minimum requirement and a longer period may be appropriate.

Amendment 60

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point i a (new)

Text proposed by the Commission

Amendment

(ia) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the credit institution as a whole, and justified according to the performance of the credit institution, the business unit and the individual concerned;

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 61

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 – point i b (new)

Text proposed by the Commission

Amendment

(ib) staff members are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements.

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 62

Proposal for a directive – amending act

Annex I – point 1

Directive 2006/48/EC

Annex V – section 11 – point 22 a (new)

Text proposed by the Commission

Amendment

(22a) Credit institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the

credit institution concerned and which are to be taken by the management body in its supervisory function. The Chair and a majority of the members of the remuneration Committee shall be members of the management body who do not perform any executive functions in the credit institution concerned. When preparing such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the credit institution.

Or. en

Justification

To ensure the remuneration policy is set with the long term interests of the firm, its shareholders, its investors and its other stakeholders, the committee should at least have a majority of members and a chair drawn from its non-executive directors.

Amendment 63

Proposal for a directive – amending act

Annex I – point 3 a (new)

Directive 2006/48/EC

Annex XII – title

Text proposed by the Commission

Amendment

(3a) The title of Annex XII is replaced by the following:

**TECHNICAL CRITERIA ON
TRANSPARENCY AND DISCLOSURE**

Or. en

Justification

To reflect the new transparency requirements introduced to align the Directive with the FSB principles.

Amendment 64

Proposal for a directive – amending act

Annex I – point 4 – point c

Directive 2006/48/EC

Annex XII – part 2 – point 15 – introductory part

Text proposed by the Commission

15. The following information shall be disclosed regarding the remuneration policy and practices of the credit institution for those categories of staff whose professional activities have a material impact on **their** risk profile:

Amendment

15. The following information, **including regular updates no less than annually**, shall be disclosed **to the public** regarding the remuneration policy and practices of the credit institution for those categories of staff whose professional activities have a material impact on **its** risk profile. **Credit institutions shall comply with those requirements in a way that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:**

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 65

Proposal for a directive – amending act

Annex I – point 4 – point c

Directive 2006/48/EC

Annex XII – part 2 – point 15 – point c

Text proposed by the Commission

(c) information on the criteria used for performance measurement and the risk adjustment;

Amendment

(c) **the most important design characteristics of the remuneration system, including** information on the criteria used for performance measurement and risk adjustment, **deferral policy and vesting criteria;**

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20.

Amendment 66

Proposal for a directive – amending act

Annex I – point 4 – point c

Directive 2006/48/EC

Annex XII – part 2 – point 15 – point e

Text proposed by the Commission

(e) the main parameters and rationale for any **bonus** scheme and any other non-cash benefits.

Amendment

(e) the main parameters and rationale for any **variable components** scheme and any other non-cash benefits.

Or. en

Amendment 67

Proposal for a directive – amending act

Annex I – point 4 – point c

Directive 2006/48/EC

Annex XII – part 2 – point 15 – point e a (new)

Text proposed by the Commission

Amendment

(ea) aggregate quantitative information on remuneration, broken down by business area any by senior management and members of staff whose actions have a material impact on the risk profile of the credit institution, indicating the following:

(i) amounts of remuneration for the financial year, split into fixed and variable remuneration, and number of beneficiaries;

(ii) amounts and form of variable remuneration, split into cash, shares and share-linked instruments and other;

(iii) amounts of outstanding deferred remuneration, split into vested and unvested portions;

(iv) the amounts of deferred remuneration awarded during the financial year, paid out and reduced through performance adjustments;

(v) new sign-on and severance payments made during the financial year, and number of beneficiaries of such payments; and

(vi) the amounts of severance payments awarded during the financial year, number of beneficiaries, and highest such award to a single person.

In the case of directors of the credit institution the quantitative information referred to in this point shall also be made available to the public at the level of the individual director.

Or. en

Justification

Alignment to the FSB principles as endorsed by the G20. As transparency is a key tool in allowing stakeholders to hold a firm to account and thus prevent unacceptable practices that can contribute to risk the required quantitative aggregate information should also be broken down by business area of the firm to enable remuneration practices to be linked to different activities. The directors of a firm are ultimately responsible for the management decisions taken and therefore, in line with Commission Recommendation 2004/913/EC, the required remuneration information should be published on an individual basis.

Amendment 68

Proposal for a directive – amending act

Annex II – point 1 – point a a (new)

Directive 2006/49/EC

Annex I – point 14 a (new)

Text proposed by the Commission

Amendment

(aa) The following point is inserted:

"14a. By way of derogation from point 14, an institution may determine the specific risk capital charge for the correlation trading portfolio as follows: The institution computes (i) the total specific

risk capital charges that would apply just to the net long positions of the correlation trading portfolio, and (ii) the total specific risk capital charges that would apply just to the net short positions of the correlation trading portfolio. The larger of these total amounts shall be the specific risk capital charge for the correlation trading portfolio.

For the purpose of this Directive, the correlation trading portfolio shall consist of securitisation positions and nth-to-default credit derivatives that meet the following criteria:

(a) the positions are neither re-securitisation positions, nor options on a securitisation tranche, nor any other derivatives of securitisation exposures that do not provide a pro-rata share in the proceeds of a securitisation tranche (excluding inter alia synthetically leveraged super-senior tranche); and

(b) all reference instruments are single-name instruments, including single-name credit derivatives, for which a liquid two-way market exists. This shall also include commonly traded indices based on these reference entities. A two-way market is deemed to exist where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at such price within a relatively short time conforming to trade custom."

Or. en

Justification

Alignment with Basel Committee decision on exclusion of correlation trading.

Amendment 69

Proposal for a directive – amending act

Annex II – point 1 – point a b (new)

Directive 2006/49/EC

Annex I – point 14 b (new)

Text proposed by the Commission

Amendment

(ab) The following point is inserted:

"14b. Positions which reference to either of the following cannot be part of the correlation trading portfolio:

(a) an underlying that could be assigned to the exposure classes in Article 79(1)(i) and (h) of Directive 2006/48/EC in a credit institution's non-trading book; or

(b) a claim on a special purpose entity.

An institution may include in the correlation trading portfolio positions which are neither securitisation positions nor nth-to-default credit derivatives but which hedge other positions of this portfolio, provided that a liquid two-way market as described in point 14a(b) exists for the instrument or its underlyings."

Or. en

Justification

Alignment with Basel Committee decision on exclusion of correlation trading.

Amendment 70

Proposal for a directive – amending act

Annex II – point 3 – point d

Directive 2006/49/EC

Annex V – point 5 k a (new)

Text proposed by the Commission

Amendment

5ka. Competent authorities shall recognise the use of an internal approach for calculating an additional capital charge instead of a capital charge for the

correlation trading portfolio in accordance with Annex I, point 14a provided that all conditions in this point are fulfilled. Such an internal approach shall adequately capture all price risks at the 99,9 % confidence interval over a capital horizon of one year under the assumption of a constant level of risk, and adjusted where appropriate to reflect the impact of liquidity, concentrations, hedging and optionality. The institution may incorporate any positions in this approach that are jointly managed with positions of the correlation trading portfolio and may then exclude those positions from the approach required under point 5a of this Annex.

In particular, the following risks shall be adequately captured:

- (i) the cumulative risk arising from multiple defaults, including the ordering of defaults, in tranching products;*
- (ii) credit spread risk, including the gamma and cross-gamma effects;*
- (iii) volatility of implied correlations, including the cross effect between spreads and correlations;*
- (iv) basis risk, including both:
 - the basis between the spread of an index and those of its constituent single names; and*
 - the basis between the implied correlation of an index and that of bespoke portfolios;**
- (v) recovery rate volatility, as it relates to the propensity for recovery rates to affect tranche prices; and*
- (vi) to the extent the comprehensive risk measure incorporates benefits from dynamic hedging, the risk of hedge slippage and the potential costs of rebalancing such hedges.*

For the purpose of this point, an

institution shall have sufficient market data to ensure that it fully captures the salient risks of these exposures in its internal approach in accordance with the standards set out in this point, demonstrates through back testing or other appropriate means that its risk measures can appropriately explain the historical price variation of these products and ensures that it can separate the positions for which it holds approval in order to incorporate them in the capital charge according to this point from those positions for which it does not hold such approval.

With regard to portfolios subject to this point, the institution shall regularly apply a set of specific, predetermined stress scenarios. These stress scenarios shall examine the effects of stress to default rates, recovery rates, credit spreads, and correlations on the profit and loss of the correlation trading desk. The institution shall apply these stress scenarios at least weekly and report at least quarterly to the competent authorities the results, including comparisons with the institution's capital charge according to this point. Any instances where the stress tests indicate a material shortfall of this capital charge must be reported to the competent authorities in a timely manner. Based on these stress testing results, the competent authorities shall consider a supplemental capital charge against the correlation trading portfolio as set out in Article 136(2) of Directive 2006/48/EC. An institution shall calculate the capital charge to capture all price risks at least weekly."

Or. en

Justification

Alignment with Basel Committee decision on exclusion of correlation trading.

EXPLANATORY STATEMENT

Summary

This 3rd revision of the Capital Requirements Directive was adopted by the Commission on 13 July 2009. The main elements of this proposal are:

- the introduction of explicit rules and appropriate supervisory measures and sanctions regarding **remuneration policies**, in particular bonuses, to prevent policies that encourage unacceptable risk
- reinforced capital requirements for items in the **trading book**¹
- upgraded capital requirements for **re-securitisations**²

The financial crisis and the need for large scale taxpayer support have demonstrated major weaknesses in global banking practices.

The lack of adequate capital in the banking system was central to the crisis. Banks' risk models increasingly suggested that less capital was required against much of their trading activity.

As the crisis developed the lack of capital was quickly exposed and large scale direct and indirect government support was required. In the EU direct state intervention of circa 3.9 trillion Euros was provided.

Taxpayers will no longer accept banks privatising profits but socialising losses, particularly following a year of elevated profits and bonuses generated on the back of exceptional government support.

Remuneration policies in the banking sector, in particular excessive bonuses, have incentivised short term profit chasing over long term stability. As the incentives of individual traders and directors are central to a firm's decision making these policies exacerbated risks to firms and to the financial system as a whole.

The G20 and the EU has embarked on a broad reform programme to prevent future crises, end incentives for excessive risk taking and ensure taxpayers are not responsible for future bailouts. Your rapporteur supports this Commission proposal as part of that reform process, while proposing measures to strengthen the remuneration provisions and ensure Parliamentary oversight of the Basel process.

Remuneration

Following the financial crisis the Commission has looked closely at variable remuneration.

¹ assets held by banks and investment firms in the short term with a view to sale

² securitisations that include underlying securitisation positions

The De Larosière report recommends that bonuses should reflect performance, not be guaranteed and should be spread over a number of years. These principles were taken up in the Commission recommendation on remuneration policies in the financial services sector of 30 April 2009 which form the basis of the remuneration text in this proposal. The proposal provides for sanctions, in terms of financial and non-financial measures and a penalty increase in capital requirements. The Commission text also provides for increased transparency and disclosure requirements.

In September 2009 the Financial Stability Board (FSB) published its Principles for Sound Compensation Practices, endorsed by G20 leaders in Pittsburgh. The principles are designed to end remuneration structures that encourage excessive risk taking or weaken financial institutions. The principles set out the elements for sound remuneration practice in five areas:

- governance
- compensation and capital
- pay structure and risk alignment
- disclosure
- supervisory oversight

New Principles for Sound Remuneration Policies

The amendments tabled by your rapporteur intend to incorporate and strengthen the FSB principles in this proposal in order to deliver a robust and fair remuneration system. Member States may go further than the requirements in this proposal but it is important to avoid the risk of regulatory arbitrage by establishing strong minimum standards. Your rapporteur therefore proposes the following requirements:

- Bonuses must be awarded on the basis of long term performance and not be guaranteed, with no 'golden parachutes' that reward failure.
- Maintaining a firm's stability must be its priority, therefore firms' bonus payments must not limit their ability to strengthen their capital base.
- The FSB principles apply special measures to banks in receipt of exceptional government support. In order to prevent moral hazard, firms should be obliged to repay taxpayers, strengthen their capital base and only then be able to pay bonuses to their directors.
- There must be an appropriate balance between bonus and salary; in particular an individual's bonus must not make up more than 50% of their total annual remuneration.
- At least 50% of a bonus must be paid in shares. In line with Commission Recommendation (2009)3177 the shares must be retained for at least three years.
- A substantial proportion of any bonus must be deferred for a period commensurate with the business cycle of the products traded, and the deferred proportion should be clawed back in the event of underperformance.

- In any case, at least 40% of a bonus (60% for particularly large bonuses) must be deferred. The deferral period must not be less than three years.

Provisions to improve corporate governance, transparency and disclosure

Regulatory measures and supervision do not substitute for effective corporate governance and transparency. It is clear that in the lead up to the crisis shareholders did not oversee banks' remuneration policies effectively. Your rapporteur proposes that:

- Firms must establish a remuneration committee to oversee their policies.
- The chair and a majority of the committee members be non-executive directors.
- The members be tasked with defending the long term interests of the firm's shareholders, investors and other stakeholders.
- Firms publicly disclose information on their remuneration policies and payments, including payments by business unit and to individual directors.

National and EU wide benchmarking

These measures are clearly focussed on addressing risk factors in remuneration policies. However your rapporteur is concerned that remuneration practices in the financial sector distort incentives within the wider economy. National supervisors should use the information they collect on remuneration policies and payments to benchmark the institutions at a national level, with the European Banking Authority undertaking a similar exercise at the European level. Benchmarking, stronger corporate governance, stakeholder involvement and greater transparency will help the public, investors and policymakers draw wider conclusions on the financial sector's remuneration practices.

Implementing Basel: Capital Requirements for the Trading Book and Re-securitisations

International discussions on capital requirements are organised through the Basel Committee on Banking Supervision. A set of modifications agreed at Basel has already been adopted in the EU¹, to be applied from 31 December 2010. The current proposal reflects further measures agreed at Basel for the same application date. More fundamental reforms are still under discussion. This proposal should therefore be seen as a step in the reform process.

More Stable Banks

Banks have accepted the principle of higher capital requirements, while seeking a delay in the introduction of these measures or the "grandfathering" of existing assets. In their arguments banks focus on the potential effect on lending capacity and the real economy. Your rapporteur

¹ Directive 2009/111/EC, "CRD 2"

acknowledges the central importance of fostering a strong recovery and has listened carefully to these concerns. However, three main facts must be considered:

1. These measures are designed to correct the current undervaluing of risk in the trading book and for re-securitisations. Failure to correct this would result in new vulnerabilities building up on banks' balance sheets and leave existing vulnerabilities insufficiently covered. There can be no doubt that we need to make timely progress on these measure or risk a recurrence of major bank failures.
2. Trading book assets have, compared to loans in the banking book, been 'underpriced' in terms of the cost of holding capital against them, encouraging an excessive focus on higher risk trading activity. Bringing this cost into line will in general reduce this excessive focus rather than encourage a reduction in lending activity.
3. The core elements of the proposal were agreed at Basel in the first half of 2009, giving banks more than 18 months to comply with the foreseen implementation date. Since this agreement banks have, while restraining the proportion somewhat, disbursed a considerable portion of their 2009 income in the form of dividends and staff bonuses, signalling that they themselves believe they can meet the Basel commitments.

Your rapporteur therefore endorses those Commission proposals implementing agreements at Basel. Your rapporteur proposes amendments in three areas:

Firstly, it is necessary to reflect the further Basel decision to exclude correlation trading from the new trading book requirements.

Secondly, discussions are ongoing at Basel on a minimum "floor" capital requirement for correlation trading. As this has not yet been fully assessed it is premature to introduce such a provision. Your rapporteur therefore provides for delegated powers to implement a floor if agreed at Basel.

Thirdly, the Commission proposal that due diligence for highly complex re-securitisations be subject to prior approval by the supervisor has a strong rationale. The lack of due diligence by banks led to heavy exposure to risks that were not well understood and thus played a key role in the crisis. However, it is essential to have a clear and tight definition of such re-securitisations to provide regulatory certainty and prevent supervisors from being overwhelmed by additional workload. The measure should therefore be subject to Parliament's approval of a definition in accordance with the procedure for delegated acts.

Stronger Parliamentary Oversight

The Commission negotiates agreements at Basel on behalf of the EU. It is not acceptable for the democratic institutions of the EU to be left without meaningful input into this process, particularly when negotiating the fundamental, political rather than technical, reforms currently under discussion in Basel. CRD 2 incorporated a review clause requiring the Commission to report by end 2009 on these wider reforms. A comprehensive assessment is currently underway. It is essential that following the conclusion of this assessment, but **prior** to reaching further agreement on these issues at Basel, the Commission engages in

meaningful dialogue with the Parliament to ensure that it negotiates on the basis of a clear democratic mandate.