



STATUTORY INSTRUMENTS.

S.I. No. 514 of 2009



EUROPEAN COMMUNITIES (CAPITAL ADEQUACY OF CREDIT
INSTITUTIONS) (AMENDMENT) REGULATIONS 2009

(Prn. A9/1823)

EUROPEAN COMMUNITIES (CAPITAL ADEQUACY OF CREDIT INSTITUTIONS) (AMENDMENT) REGULATIONS 2009

I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Directive 2006/48/EC dated 14 June 2006 of the European Parliament and of the Council¹, hereby make the following Regulations:

Citation.

1. These Regulations may be cited as the European Communities (Capital Adequacy of Credit Institutions) (Amendment) Regulations 2009.

Commencement.

2. These Regulations come into operation on the day after the day on which notice of their making is published in the *Iris Oifigiúil*.

Amendment of European Communities (Capital Adequacy of Credit Institutions) Regulations 2006.

3. The European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006) are amended as set out in the Schedule.

¹ OJ L 177, 30/06/2006 p. 1

SCHEDULE

AMENDMENT OF EUROPEAN COMMUNITIES (CAPITAL ADEQUACY OF CREDIT INSTITUTIONS) REGULATIONS 2006

Regulation 3

Item	Provision amended	Amendment
1	Regulation 2(1)	Before the definition of "Bank", insert: " 'asset item', in relation to a credit institution, includes a loan made by the institution;".
2	Regulation 2(1)	After the definition of "competent authority", insert: " 'Consolidated Accounts Directive' means Directive 83/349/EEC ² ;"
3	Regulation 2(1), definition of "CRD Regulations (IF)"	Substitute: " 'CRD Regulations (IF)' means the European Communities (Capital Adequacy of Investment Firms) Regulations 2006 (S.I. No. 660 of 2006); 'credit institution' means: (a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or (b) an electronic money institution within the meaning of the European Communities (Electronic Money) Regulations 2002 (S.I. No. 221 of 2002); 'European Act' means a provision of the treaties governing the European Communities or an act adopted by an institution of the European Communities; 'European Communities' has the same meaning as in the European Communities Act 1972;"
4	Regulation 3(1)	Substitute: "Subject to the limits imposed by or under Regulation 11 or paragraph (5), the unconsolidated own funds of a credit institution consist of the following items:" for "Subject to the limits imposed in Regulation 11, the unconsolidated own funds of a credit institution shall consist of the following items:"
5	Regulation 3(1)(c)	Substitute: "the Fourth Council Directive of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC) ³ " for "Directive 78/660/EEC of the European Parliament of the Council of 27 July 1978 on the annual accounts of certain types of companies".

² OJ L 193, 18.7.1983, p. 1³ OJ No. L 222, 14.8.1978, p. 11.

Item	Provision amended	Amendment
6	Regulation 3	<p>After paragraph (4), insert:</p> <p>“(5) The Bank may—</p> <p>(a) impose on a credit institution limitations as to the items referred to in paragraph (1) that the institution may treat as own funds for the purposes of the recast Directive (CI) and these Regulations, and</p> <p>(b) fix a lower limit than one specified in Regulation 11, or authorise the institution to exceed the limits in temporary and exceptional circumstances.”.</p>
7	Regulation 6	<p>Substitute:</p> <p>“<i>Circumstances in which certain credit institutions need not deduct items referred to in Regulation 3(2)(d) to (h).</i></p> <p>6.—(1) This Regulation applies to a credit institution that is subject to—</p> <p>(a) supervision on a consolidated basis in accordance with Part 9, or</p> <p>(b) supplementary supervision in accordance with Directive 2002/87/EC⁴.</p> <p>(2) A credit institution to which this Regulation applies need not, when calculating its own funds on a stand-alone basis, deduct the items referred to in subparagraphs (d) to (h) of Regulation 3(2) if the items are held in—</p> <p>(a) another credit institution, or</p> <p>(b) a financial institution, insurance undertaking, reinsurance undertaking or insurance holding company,</p> <p>that is included within the scope of consolidated or supplementary supervision of the first-mentioned credit institution.</p> <p>(3) This Regulation applies to all the prudential rules harmonised by or under a European Act.”.</p>
8	Regulation 10(2)	After “credit”, insert “(negative)”.
9	Regulation 10(3)	After “debit”, insert “(positive)”.
10	Regulation 11(6)	Delete.
11	Regulation 13(1)	<p>Substitute:</p> <p>“(1) Every credit institution shall comply with the obligations specified in paragraphs (3) and (4) of Regulation 16, Regulation 19 and Part 6.”.</p>
12	Regulation 24(9)(e)	<p>Substitute:</p> <p>“(e) there is no current or foreseen material, practical or legal impediment to the prompt transfer of own funds, or to the repayment of liabilities, from the counterparty to the credit institution.”.</p>

⁴ OJ No. L 35, 11.2.2003, p. 1.

Item	Provision amended	Amendment
13	Regulation 28(3)	Substitute: “(3) For the purposes of point 17 of Part 1 of Annex VI to the recast Directive (CI), if the competent authority of a third country— (a) applies supervisory and regulatory arrangements at least equivalent to those applied in the Member States; and (b) treats exposures to public sector entities as exposures to institutions, a credit institution may apply a risk weight to exposures to any such entities in the same manner.”.
14	Regulation 29(8)	Substitute: “(8) If the EU parent credit institution and its subsidiaries, or the EU parent financial holding company and its subsidiaries, intend to use the IRB Approach, the Bank shall co-operate closely with the competent authorities responsible for supervision of the different legal entities as provided for in— (a) Regulations 67 and 68 of these Regulations, and (b) Regulations 5 and 6 of the European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009.”.
15	Regulation 33(6)	Substitute “dilution risk of” for “dilution risk or”.
16	Regulation 34(1)(e)	Substitute: “(e) exposures of a credit institution to a related counterparty, if the counterparty is a regulated entity,”.
17	Regulation 34	After paragraph (1), insert: “(1A) In paragraph (1)— ‘regulated entity’ means a credit institution (within the meaning given by Article 4(1) of Directive 2006/48/EC ⁵), investment firm (within the meaning given by Article 4(1)(l) of Directive 2004/39/EC ⁶), financial holding company, financial institution, asset management company or ancillary services undertaking that— (a) is subject to appropriate prudential requirements, or (b) is linked by a relationship within the meaning of Article 12(1) of the Consolidated Accounts Directive and exposures between credit institutions that meet the requirements set out in Regulation 24(9); ‘related counterparty’, in relation to a credit institution, means a counterparty that is— (a) the parent undertaking of the credit institution, (b) a subsidiary of the credit institution, or (c) a subsidiary of the parent undertaking of the credit institution.”.
18	Regulation 52, definition of “guarantee”	Substitute: “ ‘guarantee’ includes credit derivatives recognised under Chapter 4 of Part 4, other than credit linked notes.”.

⁵ O J No. L 177, 30.6.2006, p. 1.

⁶ O J L 145, 30.4.2004, p. 1

Item	Provision amended	Amendment
19	Paragraphs (1) to (3) of Regulation 56	<p>Substitute:</p> <p>“(1) A credit institution shall report to the Bank all large exposures at least 4 times in each year.</p> <p>(2) Notwithstanding paragraph (1), a credit institution—</p> <p>(a) need not report an exposure exempted under subparagraph (a), (b), (c), (d), (f), (g) or (h) of Regulation 59(1), and</p> <p>(b) may reduce the reporting frequency prescribed by paragraph (1) to twice a year for an exposure referred to in paragraph (8) or (9) of Regulation 57 or subparagraph (e) or (i) of Regulation 59(1).</p> <p>(3) Paragraph (2) does not apply to a credit institution that relies on Regulation 60 for the recognition of collateral in calculating the value of an exposure for the purposes of paragraphs (1) to (3) of Regulation 57.”.</p>
20	Regulation 57	<p>Substitute:</p> <p>“<i>Large exposure to clients or group of connected clients.</i></p> <p>57.—(1) Except as otherwise provided by this Regulation, a credit institution may not incur an exposure to a client or group of connected clients if the value exceeds 25% of its own funds.</p> <p>(2) If a client, or a group of connected clients—</p> <p>(a) is the parent undertaking of a credit institution,</p> <p>(b) is a subsidiary or subsidiaries of that undertaking,</p> <p>(c) is a subsidiary or subsidiaries of the institution, or</p> <p>(d) comprises any 2 or more such entities,</p> <p>the institution may not incur an exposure to the client or group that exceeds 20% of its own funds.</p> <p>(3) A credit institution shall not incur large exposures that in total exceed 8 times the value of its own funds.</p> <p>(4) A credit institution shall ensure that at all times it complies with the limits specified in paragraphs (1), (2) and (3).</p> <p>(5) If, in an exceptional case, exposures of a credit institution exceed a limit specified in paragraph (1), (2) or (3), the institution shall, without delay, notify the Bank of the occurrence, and the Bank may, if the circumstances warrant, allow the credit institution a specified period within which it must comply with those limits.</p> <p>(6) The Bank may impose a limit on a particular credit institution more stringent than that prescribed by paragraph (1), (2) or (3), and if it does so, the credit institution shall comply with the more stringent limit.</p> <p>(7) The Bank may fully or partly exempt from the application of paragraphs (1) to (3) an exposure incurred by a credit institution—</p> <p>(a) to its parent undertaking,</p> <p>(b) to other subsidiaries of that parent undertaking, or</p> <p>(c) to its own subsidiaries,</p>

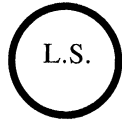
Item	Provision amended	Amendment
		<p>to any extent that those entities and the credit institution are subject to the same supervision on a consolidated basis in accordance with the recast Directive (CI) or to equivalent standards in force in a third country.</p> <p>(8) For the purposes of paragraphs (1) to (3), the Bank may assign a weighting of 20%—</p> <p>(a) to asset items constituting claims on regional governments and local authorities of Member States if a 20% risk-weight would be assigned to those claims under Regulations 22 to 27, and</p> <p>(b) to other exposures to, or guaranteed by, regional governments and local authorities, claims on which are assigned a 20% risk-weight under those Regulations.</p> <p>However, the Bank may reduce that percentage rate to zero in respect of—</p> <p>(i) asset items constituting claims on regional governments and local authorities of Member States if those claims would be assigned a 0% risk-weight under Regulations 22 to 27, and</p> <p>(ii) other exposures to or guaranteed by any such entities, claims on which are assigned a 0% risk-weight under those Regulations.</p> <p>(9) For the purposes of paragraphs (1) to (3), the Bank may assign—</p> <p>(a) a weighting of 20% to asset items constituting claims on, and other exposures to, institutions with a maturity of more than 1 but not more than 3 years, and</p> <p>(b) subject to paragraph (10), a weighting of 50% to asset items constituting claims on institutions with a maturity of more than 3 years.</p> <p>(10) In the case of an asset item mentioned in paragraph (9)(b), the Bank may assign the weighting there mentioned only if the asset item—</p> <p>(a) is represented by debt instruments issued by an institution, and</p> <p>(b) either—</p> <p>(i) the debt instruments are, in the opinion of the Bank, effectively negotiable on a market made up of professional operators, and are subject to daily quotation on that market, or</p> <p>(ii) the issue of those debt instruments was authorised by the competent authority of the Member State where the issuing institution is established.</p> <p>(11) No asset item mentioned in paragraph (9)(a) or (b) is eligible to be counted as part of an institution's own funds.”.</p>
21	Regulation 58(1)	Substitute “paragraphs (7) to (10) of Regulation 57 and Regulations 59, 60 and 60A” for “Regulations 59 and 60”.

Item	Provision amended	Amendment
22	Regulation 59	<p data-bbox="773 174 886 201">Substitute:</p> <p data-bbox="773 222 1365 270"><i>“Regulation 57 not to apply to certain exposures of credit institutions.</i></p> <p data-bbox="773 270 1365 319">59.—(1) Regulation 57 does not apply to the following exposures of a credit institution:</p> <ul style="list-style-type: none"> <li data-bbox="789 340 1451 415">(a) asset items that constitute claims on a central government or central bank that would, if unsecured, be assigned a 0% risk-weight under Chapter 2 of Part 4; <li data-bbox="789 436 1451 533">(b) asset items that constitute claims on international organisations or multilateral development banks that would, if unsecured, be assigned a 0% risk-weight under Chapter 2 of Part 4; <li data-bbox="789 554 1451 701">(c) asset items that constitute claims carrying explicit guarantees of a central government, central bank, international organisation, multilateral development bank or public sector entity if unsecured claims on the entity that is providing the guarantee would be assigned a 0% risk-weight under Chapter 2 of Part 4; <li data-bbox="789 722 1451 869">(d) other exposures attributable to, or guaranteed by, a central government, central bank, international organisation, multilateral development bank or public sector entity if unsecured claims on the entity to which the exposure is attributable, or by which it is guaranteed, would be assigned a 0% risk-weight under Chapter 2 of Part 4; <li data-bbox="789 890 1451 987">(e) asset items that constitute claims on, and other exposures to, a central government or central bank not mentioned in subparagraph (a) that are denominated and, if applicable, funded in the national currencies of the borrowers; <li data-bbox="789 1008 1451 1197">(f) asset items and other exposures that are, to the satisfaction of the Bank, secured by collateral in the form of debt securities issued by a central government or central bank, an international organisation, a multilateral development bank, or a regional government, local authority or public sector entity of a Member State, where those securities constitute claims on their issuer and would be assigned a 0% risk-weighting under Chapter 2 of Part 4; <li data-bbox="789 1218 1451 1293">(g) asset items and other exposures that are, to the satisfaction of the Bank, secured by collateral in the form of cash deposits placed with— <ul style="list-style-type: none"> <li data-bbox="813 1314 1295 1341">(i) the lending credit institution concerned, or <li data-bbox="813 1362 1419 1411">(ii) a credit institution that is the parent undertaking or a subsidiary of the lending credit institution; <li data-bbox="789 1432 1451 1507">(h) asset items and other exposures that are, to the satisfaction of the Bank, secured by collateral in the form of certificates of deposit— <ul style="list-style-type: none"> <li data-bbox="813 1528 1398 1556">(i) issued by the lending credit institution concerned, or <li data-bbox="813 1577 1360 1652">(ii) issued by a credit institution that is the parent undertaking or a subsidiary of the lending credit institution and lodged with either of them;

Item	Provision amended	Amendment
		<p>(i) asset items that constitute claims on, and other exposures to, institutions where those items have a maturity of 12 months or less, but not constituting own funds of those institutions;</p> <p>(j) bills of trade and other similar bills having a maturity of 12 months or less and signed by a person authorised to do so by a credit institution on its behalf;</p> <p>(k) covered bonds that fall within the terms of points 68 to 70 of Part 1 of Annex VI to the recast Directive (CI);</p> <p>(l) exposures that are, to the satisfaction of the Bank, secured by collateral in the form of securities other than those of the kind referred to in subparagraph (f);</p> <p>(m) 50% of the medium/low risk off-balance-sheet items referred to in Annex II to the recast Directive (CI);</p> <p>(n) the low-risk off-balance-sheet items referred to in Annex II to the recast Directive (CI), to any extent that an agreement has been entered into with a client or group of connected clients under which the exposure may be incurred only if it has been ascertained that it will not cause the limits applicable under paragraphs (1) to (3) of Regulation 57 to be exceeded.</p> <p>(2) Paragraph (1)(g) extends to—</p> <p>(a) cash received under a credit linked note issued by the credit institution concerned, and</p> <p>(b) loans and deposits of a counterparty to or with that credit institution that are subject to an on-balance sheet netting agreement recognised under Chapter 4 of Part 4.</p> <p>(3) For the purposes of paragraph (1)(l)—</p> <p>(a) the securities used as collateral shall—</p> <p>(i) be valued at market price,</p> <p>(ii) have a value that exceeds the exposures guaranteed, and</p> <p>(iii) be either traded on a stock exchange or effectively negotiable and regularly quoted on a market operated under the auspices of recognised professional operators and allowing, to the satisfaction of the competent authorities of the Member State of origin of the credit institution, for the establishment of an objective price such that the excess value of the securities may be verified at any time,</p> <p>(b) the excess of value referred to in subparagraph (a)(ii) shall be—</p> <p>(i) 50% in the case of debt securities issued by an institution, or a regional government or local authority of a Member State, other than one referred to in paragraph (1)(f),</p> <p>(ii) 50% in the case of debt securities issued by a multilateral development bank, other than one receiving a 0% risk-weighting under Chapter 2 of Part 4,</p> <p>(iii) 150% in the case of shares, and</p>

Item	Provision amended	Amendment
		<p>(iv) 100% in any other case,</p> <p>(c) the maturity of the exposure shall be the same as the maturity of the collateral, and</p> <p>(d) securities used as collateral shall not be counted as part of credit institutions' own funds.”.</p>
23	Regulation 60(1)	Substitute “paragraphs (1) to (3) of Regulation 57” for “Regulation 57(1) to (5)”.
24	Regulation 60	<p>After paragraph (1), insert:</p> <p>“(1A) Paragraph (1) applies to a credit institution that uses the Financial Collateral Comprehensive Method under Regulations 36 to 39 as an alternative to making use of the full exemptions available under subparagraphs (f), (g), (h) and (l) of Regulation 59(1).”.</p>
25	Regulation 60(3)	Substitute “paragraphs (1) to (3) of Regulation 57” for “Regulation 57(1) to (5)”.
26	Regulation 60(7)	Substitute “paragraphs (1) to (3) of Regulation 57” for “Regulation 57(1) to (5)”.
27	Regulation 60(10)	Substitute “paragraphs (1) to (3) of Regulation 57” for “Regulation 57(1) to (5)”.
28		<p>After regulation 60, insert:</p> <p><i>“Other requirements applicable to funded and unfunded credit protection.</i></p> <p>60A.—(1) If an exposure to a client is guaranteed by a third party, the Bank may treat the exposure as having been incurred not to the client but to the guarantor.</p> <p>(2) If an exposure to a client is guaranteed by collateral in the form of securities issued by a third party under conditions referred to in subparagraph (1) of Regulation 59(1), the Bank may treat the exposure as having been incurred not to the client but to the third party, but only if the collateral is governed by those conditions.</p> <p>(3) When the Bank treats a credit institution’s exposure as having been incurred to the guarantor of a client—</p> <p>(a) if the guarantee is denominated in a currency different from that in which the exposure is denominated, the institution shall calculate the amount of the exposure to be covered in accordance with the provisions on the treatment of currency mismatch for unfunded credit protection set out in Annex VIII of the recast Directive (CI),</p> <p>(b) the institution shall treat a mismatch between the maturity of the exposure and the maturity of the protection in accordance with the provisions on the treatment of maturity mismatch set out in that Annex, and</p> <p>(c) the institution may recognise partial coverage in accordance with the treatment set out in that Annex.”.</p>

Item	Provision amended	Amendment
29	Paragraphs (1) and (2) of Regulation 62	<p>Substitute:</p> <p>“(1) A credit institution shall ensure that it does not have in an undertaking a qualifying holding the amount of which exceeds 15% of its own funds, unless the undertaking is a permitted undertaking.</p> <p>(2) A credit institution shall ensure that the total amount of the institution’s qualifying holdings in undertakings (other than permitted undertakings) do not exceed 60% of its own funds.”.</p>
30	Regulation 62	<p>After paragraph (4), insert:</p> <p>“(5) For the purposes of this Regulation, a permitted undertaking is one of the following:</p> <p>(a) a credit institution;</p> <p>(b) a financial institution;</p> <p>(c) an undertaking that carries on one or more activities that either are a direct extension of banking, or involve the provision of services that are ancillary to banking (such as leasing, factoring, the management of unit trusts and the management of data processing services).”.</p>
31	Regulation 70(1)	Substitute “any law of the State giving effect to the recast Directive (CI)” for “these Regulations”.
32	Regulation 73(3)	<p>Substitute:</p> <p>“(3) In the exceptional cases referred to in paragraph (2), a credit institution shall—</p> <p>(a) state in its disclosures that some items of information have not been disclosed, and specify the items not disclosed and the reason for non-disclosure, and</p> <p>(b) publish more general information about the subject-matter of the disclosure,</p> <p>except where the institution proposes to classify the disclosures as proprietary or confidential in accordance with the criteria specified in points 2 and 3 of Part 1 of Annex XII to the recast Directive (CI).”.</p>
33	Regulation 82(6)	Substitute “paragraphs (1) to (5)” for “paragraphs (1) to (4)”.
34	Regulation 84(1)	<p>Substitute:</p> <p>“(1) For the purpose of point 61 of Part 1 of Annex VI to the recast Directive (CI), the Bank may, for exposures to counterparties located in the State, specify the number of days past due (up to 180) for exposures indicated in points 12 to 17 and 41 to 43 of that Part if, in its opinion, local conditions make it appropriate. For that purpose, different numbers of days can be specified for different product lines. The power conferred by this paragraph is not exercisable after 31 December 2011.”.</p>



GIVEN under my Official Seal,
15 December 2009.

BRIAN LENIHAN,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations amend the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006), which transposed Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions. The Regulations provide for further transposition of Directive 2006/48/EC in relation to provisions for large exposures and correct certain errors in transposition contained in S.I. No. 661 of 2006.

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